

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

August 22, 2008

I. **ATTENDANCE** - The Chairman called the meeting to order at 1:01 p.m. in the Council Chambers, 200 East Main Street, on August 22, 2008. Members present were Mike Owens, Louis Stout, James Griggs, Barry Stumbo, Carolyn Edwards and Kathryn Moore. 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 Law Department. Staff members in attendance were Jim Marx, Barbara Rackers, Jimmy Emmons and Wanda Howard.

II. **APPROVAL OF MINUTES** - The Chairman announced that there were no minutes of past meetings to consider 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 Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

a. **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:

- a. 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.
- b. 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.
- c. 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 – Ms. Laura Vanatose, representing the applicant, requested a one month postponement of this request. There were no objections to the request.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously to postpone consideration of **V-2008-67: CARMAX AUTO SUPERSTORES, INC.** one month, until the September 26 meeting.

b. **C-2008-74: EVELYN A. JOHNSON** - appeals for a conditional use permit to establish a child care center for up to 50 children in an existing church building, in a Single Family Residential (R-1C) zone, on property located at 549 Parkside Drive (Council District 6).

The Staff Recommended: Postponement, for the following reasons:

- a. Insufficient notice has been provided to the surrounding property owners, based on the location of the proposed outdoor play area and portions of the existing church parking lot.
- b. Deeds and/or other forms of documentation confirming that the appellant has sufficient interest in the land occupied by the outdoor play area are required to complete an evaluation of this proposed child care center.
- c. The number of children to be cared for should be reduced, or the proposed outdoor play area expanded, so that the required 25 square feet of play area per child can be provided at this location.

Representation – Ms. Evelyn A. Johnson, applicant, requested a one-month postponement of this request. There were no objections to the request.

Action – A motion was made by Ms. Edwards, seconded by Mr. Stumbo, and carried unanimously to postpone **C-2008-74: EVELYN A. JOHNSON** one month, until the Board's September 26 meeting.

- c. **CV-2008-24: PANAGIA PANTOVASILISSA GREEK ORTHODOX CHURCH** - appeals for a conditional use permit to modify and expand an existing church, involving demolition of one building, in a Single Family Residential (R-1D) zone, on property located at 920 Bates Creek Road; and a variance to increase the allowable distance between the church and required parking (provided at Cassidy Elementary School) from 300 feet to 475 feet, in a Single Family Residential (R-1C) zone, on property located at 1125 Bates Creek Road (Council District 3).

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

- a. Granting the requested conditional use permit will not adversely affect the surrounding neighborhood. The church as expanded will be comparable to the size and scale of the Faith Lutheran Church situated on the opposite corner of Melrose Avenue and Bates Creek Road. Since many of the residential structures between the church property and the intersection of Sunset Avenue and Bates Creek road are two stories in height already, the relatively large increase proposed for this church will still not be out of character with these long-established residential uses to the north of this site.
- b. Except for a loop drive aisle now proposed off of Melrose Avenue, the church expansion has been designed appropriately from an architectural standpoint, and from a site design perspective, includes provision for a significant landscape buffer between the church and nearby residential properties to the north and west.
- c. Existing storm and sanitary sewers are available to the church property, and other public facilities are available and adequate to serve this congregation.

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

- a. Although a dimensional variance is not needed to continue use of the school parking lot some 475' away from the church building, and is "grandfathered" to the extent that it supports the activities at the existing church constructed over fifty years ago, it is necessary to allow the increase in sanctuary seating now proposed.
- b. Strict application of the Zoning Ordinance would dictate a more modest expansion of this church, thereby allowing some off-street parking on-site, but would not be feasible in a way that will not affect their worship, creating an unnecessary hardship to this congregation.
- c. The variance will not adversely affect the public health, safety or welfare, nor alter the character of this vicinity since a complete and adequate sidewalk system exists from the parking area at Cassidy Elementary School to the front door of the church, served by a signalized intersection at Hart Road and Bates Creek Road (with a crosswalk) to allow safe pedestrian movements along this 475' distance.
- d. This variance will not result in an unreasonable circumvention of the Zoning Ordinance, and is the result of special circumstances not generally found with other properties in this area, since the church was originally permitted at this location without off-street parking some 50 years ago, and since the on-street and off-street parking conditions will result in a continuation of the status-quo.
- e. The variance is not a direct result of actions by the church since its original construction years ago.

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

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

Representation – No representative was present. Mr. Marx stated that no new application had been filed for review by the Board. However, he had been in contact with the Church's representatives, and that they were aware, due to notice requirements, that this request would need to be postponed.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Moore, and carried unanimously to postpone **CV-2008-24: PANAGIA PANTOVASILISSA GREEK ORTHODOX CHURCH** one month, until the Board's September 26 meeting.

2. No Discussion Items - The Chair will ask 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, the Chairman asked all those present who would be speaking or offering testimony to stand, raise their right hand and be sworn. Several in the room did so at this time.

ABBREVIATED HEARINGS:

- a. **V-2008-40: REV. and MRS. GEORGE NAZE** - appeal for variances to: 1) reduce the required rear yard from 10 feet to 5.5 feet, and 2) reduce the side yard from 5 feet to 0 feet, to allow a sunroom and deck to remain as built in a Planned Neighborhood Residential (R-3) zone, on property located at 319 Retrac Road (Council District 9).

The Staff Recommended: Approval of a variance reducing the required rear yard from 10' to 5.5', for the following reasons:

- a. Granting the requested rear yard variance, solely for the purpose of allowing a small (10.5' by 13') sunroom to remain as constructed, should not adversely affect the public health, safety or welfare, nor significantly alter the character of the general vicinity. The adjoining property to the rear is used as a parking lot for ball fields at Shillito Park, and the addition is not visible from Retrac Road.
- b. The expansion of the parking lot at Shillito Park, immediately to the rear of the subject property, is a special circumstance that contributes to justifying some reduction in the required rear yard, to the extent that converting a previously existing open deck to an enclosed, more private room is considered both reasonable and understandable. Although that circumstance is widely applicable to other properties that back up to the park, the parking lot expansion did take place just as the appellants were purchasing the property, and it is likely that they were not even aware that such an expansion was being planned at the time they entered into a purchase contract.
- c. Strict application of the Zoning Ordinance would require that 4.5' of the sunroom be removed, leaving the sunroom with a width of just 5.5', which would be marginally functional and of limited value to the appellants or future homeowners. Since the adjoining park activities will not be impacted by retaining the full width of the sunroom (despite their recent intensification), and the appellants have agreed to fully comply with the 3' side yard requirement (requiring substantial alterations to an existing deck and porch), maintaining a rear yard of 5.5' at this location is reasonable and prudent under the circumstances.

The Staff Recommended: Withdrawal of the requested side yard variance, for the following reason:

- a. Based on the revised site plan dated July 30, 2008 a side yard variance is no longer needed, with all structures within the required 3' side yard area to be removed.

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

1. The sunroom and adjoining deck at this location may be retained in accordance with the revised site plan of July 30, 2008, with all structures within the 3' side yard area to be removed.
2. Retention of the sunroom and modification of structures that do not comply with the required 3' side yard shall be done in accordance with a building permit issued by the Division of Building Inspection.
3. All necessary encroachment agreements, including any needed from Lexington-Fayette Urban County Government, shall be obtained prior to the issuance of a building permit.
4. The rear yard reduction is only for the purpose of allowing the sunroom to remain as constructed, subject to any modifications needed to satisfy building code requirements.
5. All required modifications shall be completed within three months of action by the Board.

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. Phil Moloney, attorney, was present representing the appellants. He thanked the Board members for their patience and their indulgence over the past four months. The Nazes have been working to get encroachment agreements from the utility companies and from the LFUCG for the improvements that have been constructed on this property. Over the past few weeks it has been determined that the side yard setback is only 3' for the 31' deck that has been constructed alongside of the house, instead of the 5' variance originally sought. They have agreed to remove that part of the deck in the side yard, in order to maintain a minimum of a 3' setback, and withdraw that variance request.

Mr. Moloney said that the surviving request for a variance involves the sunroom on the rear of the property. It was constructed without a building permit. Rev. Naze, the former minister of the Meadowthorpe Presbyterian Church, was to have been provided a home for his retirement. In August 2006, this home was purchased for this purpose. The contractor retained at the time for the sunroom addition informed the Nazes that no permit was needed to cover the existing deck in the rear yard with this sunroom, since it was to occupy the same footprint as the deck. This, of course, was in error.

Mr. Moloney said that a removal of any portion of this sunroom would render it essentially useless. However, the variance to the rear yard setback to allow it to remain will not affect the health, safety or welfare of this area. The neighbor that has written a letter of objection in past months was opposed to the side yard deck, which will now be scaled back, and made no mention of the rear sunroom. They know of no other objections to it remaining.

Chairman Owens asked Mr. Marx how the staff has reviewed this revised request. Mr. Marx replied that the staff

reviewed several options with the appellant. The staff concluded that the side yard was the most important issue with this appeal, since that would involve the safety of emergency responders, if they needed to access the rear of the property. The sunroom portion of the appeal was not as important an issue, in terms of its encroachments, due to the recent parking lot expansions in the neighboring Shillito Park, right along the rear property line of the subject property. Mr. Marx showed a few photographs to illustrate these points.

Chairman Owens asked Mr. Hume about his thoughts on the remaining application. Mr. Hume replied that Building Inspection is OK with this solution. Mr. Moloney said that they would shear off 3' of the side of the constructed deck, leaving 9-10' of deck along the side of the house, and that the steps up to it would be relocated to the rear of the property.

Mr. Griggs asked if there has been a property survey. Mr. Moloney replied that one had been performed. Mr. Griggs asked if there would be no improvements placed within the 3' side yard. Mr. Moloney answered that, yes that was true.

Ms. Moore asked about the neighbor's letter of objection, and asked if other neighbors might use this rear yard variance to ask for similar variances to their rear yards. Mr. Moloney stated that the neighbor that wrote the letter Ms. Moore was referring to was a tenant, and now is in support of the Nazes' request. Ms. Moore wondered if this variance might prompt that property owner to seek a similar request on their property. Mr. Moloney replied that there was already a porch on the rear of that neighbor's house.

Mr. Sallee stated that "copy-cat" variances are somewhat rare but he felt that for these rear yards, the ability to obtain the necessary encroachment permits would be much more difficult than obtaining a variance for these other properties. Ms. Moore asked how many homes are on this street, backing up to the park. Mr. Sallee replied that there were a total of 14 such homes.

Mr. Stout stated that he is OK with the request, due to the new parking lot addition to the park, given its impact of that improvement on these residences.

Chairman Owens asked Mr. Marx about the timing of the sunroom addition in relation to the parking lot expansion in the park, and whether the parking lot expansion was a "special circumstance" in this case. Mr. Marx agreed that it was so. Chairman Owens did not think that granting this rear yard variance would set a precedent here.

Action - A motion was made by Mr. Stout to approve **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), and subject to the five conditions recommended by the staff.

Discussion – Mr. Marx stated that Mr. Moloney had agreed to withdraw the side yard variance earlier in the hearing. Mr. Stout agreed to make another motion in that case.

Action - A motion was made by Mr. Stout to approve **V-2008-40: REV. and MRS. GEORGE NAZE** appeal for variances to reduce the required rear yard from 10 feet to 5.5 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), subject to the five conditions recommended by the staff. Mr. Stumbo seconded the motion for approval, and the motion carried unanimously.

Discussion – Mr. Hume stated that the permits for these improvements needed to be issued soon. Mr. Moloney agreed, saying that they hoped to have the contractors lined up for the demolition work in the next 30 days.

- b. **V-2008-77: BEN and KIM ZIMMERMAN** - appeal for a variance to reduce the required front yard from 50 feet to 44 feet in order to construct a room addition in the Agricultural Rural (A-R) zone, on property located at 291 Carterbrook Lane (Council District 12).

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 front building wall of the expanded dwelling will only be 1' closer to Carterbrook Lane than what could be permitted by "averaging" the front yard provided by the dwelling as a whole. Also, there are several dwellings in the immediate vicinity of the subject lot with front yards of less than 50'.
- b. The rear location of the existing septic system and the small size of the lot are special circumstances that make a front addition to the home the most feasible alternative for the subject property.
- c. Strict application of the Zoning Ordinance would most likely result in the proposed room addition having a depth of 19' rather than 20'. While a one-foot difference would be very manageable in many instances, the appellants have indicated that the additional foot is important for their growing family.

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.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

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

Representation - Mr. Ben Zimmerman was present. Chairman Owens asked if he had read the staff report and would agree to the recommended conditions. Mr. Zimmerman answered in the affirmative.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Edwards, and carried unanimously to approve **V-2008-77: BEN and KIM ZIMMERMAN** appeal for a variance to reduce the required front yard from 50 feet to 44 feet in order to construct a room addition in the Agricultural Rural (A-R) zone, on property located at 291 Carterbrook Lane (Council District 12), for the reasons provided by the staff, and subject to the two recommended conditions.

- c. **V-2008-78: CAROL E. JORDAN** - appeals for a variance to reduce the required side yard from 6 feet to 0 feet in order to construct a room addition in a Two Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 515 South Mill Street (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely impact the public health, safety or welfare, nor alter the character of the general vicinity. The addition is fairly small, with just 11' of new side wall at a 0' setback to be added to the existing 17' of side wall that is already at a 0' setback. A Certificate of Appropriateness has already been approved by the Board of Architectural Review, ensuring compatibility with the character of the South Hill Historic District.
- b. The location of the existing dwelling relative to the side property line is a special circumstance that has significantly constrained the potential for making modest improvements to the property without a dimensional variance.
- c. Strict application of the Zoning Ordinance would require that any addition in the corner area proposed for improvements have a side yard setback of at least five feet, which would limit the width of the addition to just a few feet. Such a limited width would have little practical value and would essentially force the appellant to consider adding on to the residence at a location that would impair the rhythm of rear yards in this portion of the Historic District.

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

1. The addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. All construction shall comply with the conditions imposed by the Board of Architectural Review, as reflected in the Certificate of Appropriateness issued on November 14, 2007.

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. Letters of support were also circulated to the Board.

Representation – Mr. Brian Hill, CMW Architects, was present representing the appellant. Mr. Hill stated that Ms. Jordan was injured earlier in the week, and apologized for not being able to attend today's meeting. Mr. Hill said that this home was originally built in 1838, and that at one time in the past, part of the home actually occupied the spot that is now requested for this building addition. He asked for approval of this variance from the Board.

Mr. Stout complimented the architects for their design.

Action – A motion was made by Ms. Moore, seconded by Mr. Stout, and carried unanimously to approve **V-2008-78: CAROL E. JORDAN** appeal for a variance to reduce the required side yard from 6 feet to 0 feet in order to construct a room addition in a Two Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 515 South Mill Street (Council District 3) for the reasons provided by the staff, and subject to the three conditions recommended by the staff.

- d. **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:

- a. 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.

- b. 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.

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. Bruce Simpson, attorney, was present representing the appellant. He stated that the appellant wished to withdraw the request pertaining to the portion of the subject property located at 1826 Versailles Road. They submitted a revised plan to the staff one week earlier for the proposed expansion of Cardinal Hill Hospital, and the revised plan has since been reviewed by Mr. Marx and by other staff.

Mr. Simpson stated that this request had been postponed twice before, and that the applicant has engaged the adjoining property owners. They have since come to a resolution with Mr. & Mrs. Hodge, and he understood that, although they have not resolved all of their differences, the Hodges are not here to object to this application today.

Mr. Simpson told the Board that this project will also require a review by the Planning Commission next month, for their proposed development plan. Still, they request approval from the Board of their conditional use and variances for the other properties. The applicant agrees with the staff recommendations.

Mr. Simpson said that the applicant has submitted engineering and storm drainage studies to the Division of Engineering for their review. At this point in time, there is sanitary sewer capacity in this system. Also, storm water runoff from the subject property can be engineered to leave this site at a lower rate than currently exists. Thus, they believe they are in compliance with all necessary requirements, and request approval.

Board Questions - Mr. Stout asked the staff about the portion of the request now being withdrawn, and whether any conditions related to their recommendation needed to be altered to account for the withdrawal of the 1826 Versailles Road property. Mr. Marx replied that a portion of Condition #1 could be stricken, and displayed that change on the overhead screen. He also said that the motion for this request could also strike a portion of the language appearing on today's agenda, and also displayed that revision. Also, Mr. Marx suggested an additional condition be added, should the Board approve this request. It would read:

"7. A sanitary sewer capacity study shall be conducted in accordance with the requirements of the Division of Water Quality, and accepted prior to issuance of any building permits."

Chairman Owens asked Mr. Brock about the submitted engineering studies. Mr. Brock responded that their office is OK with the preliminary information submitted by the hospital's engineers. Based on that preliminary information, Engineering is OK with the design concepts outlined in those reports.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, to approve **CV-2008-51: KENTUCKY EASTER SEAL SOCIETY, INC.** appeal for a conditional use permit to construct a hospital addition in an Agricultural Urban (A-U) zone and on a separate lot in a Professional Office (P-1) zone; and variances 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; and 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, on properties located at 1826, 1832 and 2050 Versailles Road (Council District 11), for the reasons provided by the staff, including the following revised reasons, and revised conditions for approval:

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) 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.
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.
7. A sanitary sewer capacity study shall be conducted in accordance with the requirements of the Division of Water Quality, and accepted prior to issuance of any building permits.

The motion carried unanimously. Mr. Simpson thanked the Board for their consideration.

- e. **C-2008-76: RUSSELL SCHOOL COMMUNITY SERVICE CENTER** - appeals for a conditional use permit to establish a community center and a child development center in a Planned Neighborhood Residential (R-3) and a Neighborhood Business (B-1) zone, on property located at 201 West Fifth Street (Council District 1).

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 property has been used for many years for public education and related community services, and is well-suited for continued use as a community center with a child development component. Adequate parking and convenient access will be available, and the site is sufficiently large to also accommodate a number of elderly housing units, along with any new needs as they might arise.
- 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 community center and child development center shall be established in accordance with the submitted application and site plan, with the understanding that the play area will be expanded as necessary to provide at least 25 square feet of play area per child.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The outdoor play area shall be fenced and screened in accordance with the requirements of the Division of

Building Inspection.

4. The final design of the new 36-space parking lot and connecting access drive shall be subject to review and approval by the Division of Traffic Engineering, with caution signage and pavement textures and/or markings to be provided to ensure that vehicles safely cross the track to access the parking lot.
5. The new 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.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. A sewer capacity study shall be conducted in accordance with the requirements of the Division of Water Quality, and accepted prior to the issuance of any building permits.

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. Richard Murphy, attorney, was present representing the applicant, which is a non-profit corporation made up of the Community Action Council and the Urban League. Mr. Jack Burch, Executive Director of the Community Action Council, and Mr. Ty Certiva, Supervisor of Community Centers for the Urban League, were present with Mr. Murphy. Mr. Bob Berge, the project designer, was also present.

Mr. Murphy stated that the Russell Elementary School has been a community landmark for years. They all look forward to continuing that use at this location as a community center and an education facility for children in this neighborhood.

Mr. Murphy stated that the applicant agrees with the staff recommendations on this appeal, and the conditions recommended as well, with one clarification. Under the first recommended condition by the staff, Mr. Murphy said that the outdoor play area would be sized for 25 square feet per child; and that with increased enrollments expected in a few years, that play area will need to grow in size, as well. Thus, he hoped all would understand that this increased outdoor play area would NOT necessitate a return trip to the Board, so long as it is in the same location on the subject property.

There was no objection to this request from anyone present.

Mr. Murphy further stated that the applicant would like to propose an additional (8th) condition to this approval: that the appellant be allowed up to three years to exercise this conditional use permit. This added condition will allow a phased construction project for the community center and child development center proposed. The first work to be done will be to remodel the existing spaces within the building, followed by the new construction. Mr. Murphy displayed the proposed additional condition on the overhead screen.

Ms. Moore asked if the staff objected to the condition that this use be exercised within three years. Mr. Marx replied in the negative.

Mr. Hume asked Mr. Murphy if this use would involve a child care (day care) center. Mr. Murphy replied that it would be a "Head Start" center, designed to help children get ready to succeed in school. In this way, it is not quite the same as a typical day care center.

Mr. Marx recommended that condition #7 be modified to add the word "sanitary" so that it would clarify the type of study necessary for this reuse of the former elementary school.

Chairman Owens asked Mr. Murphy the purpose of the outdoor track on the rear of the property. Mr. Murphy responded that many thought it to be part of the Dunbar Community Center just to the north of this location, but it is not. The track is to remain, even though a parking area will be added to the center of the track area. The site plan was displayed on the overhead screen. This was an outcome of the numerous discussions that the appellant has held with area residents, because they had asked that the track be retained.

Chairman Owens complimented their efforts in developing this plan. Mr. Murphy replied that there have been community meetings over the past four years to gain input from area residents about this plan.

Action - A motion was made by Mr. Stout, seconded by Ms. Edwards, to approve **C-2008-76: RUSSELL SCHOOL COMMUNITY SERVICE CENTER** appeal for a conditional use permit to establish a community center and a child development center in a Planned Neighborhood Residential (R-3) and a Neighborhood Business (B-1) zone, on property located at 201 West Fifth Street (Council District 1), for the reasons provided by the staff, and subject to the conditions recommended by the staff, changing condition #7 and adding an eighth condition, to read as follows:

- "7. A sanitary sewer capacity study shall be conducted in accordance with the requirements of the Division of Water Quality, and accepted prior to the issuance of any building permits.

8. The applicant is granted 3 years to exercise the conditional use permit."

The motion carried unanimously. Mr. Murphy thanked the Board for their consideration of this request.

- B. **Transcript or Witnesses** - The Chair will announce 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** - None remaining.
- D. **Conditional Use Appeals**

1. **C-2008-75: TARA RICHARD** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1D) zone, on property located at 604 Tundra Court (Council District 7).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the surrounding properties, provided that child care for up to 12 children is only provided on Monday through Friday between the hours of 7 AM and 6 PM, and further provided that the appellant actively manage the parking situation to ensure that parents use the driveway for temporary parking. The non-gated portion of the driveway has sufficient space for the parking of two vehicles, which should be adequate for the proposed activity. The rear yard has more than adequate space for the required outdoor play area.
- 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. Family child care may be provided at this location for between 7 and 12 children on Monday through Friday between the hours of 7:00 AM and 6:00 PM. This shall not preclude the appellant from providing child care for up to six children at other times, as permitted as an accessory use in the R-1D zone.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to increasing the number of children cared for beyond that allowed as an accessory use (6).
3. Child care provided at this location shall at all times comply with requirements of the Commonwealth of Kentucky.
4. Parking for the appellant's personal vehicles at this location shall be provided to the rear of the residence, with the non-gated portion of the driveway to be left available for the temporary parking of patrons and/or employees of the child care. The appellant shall educate parents/guardians as to the importance of using the driveway for parking, and avoiding on-street parking, which may disturb nearby residents.
5. The outdoor play area to be provided, as reflected on the submitted site plan, shall be fenced in accordance with the requirements of the Division of Building Inspection.

Representation – Ms. Tara Richard was present. She stated that she currently cares for six children in her home, and hoped to expand to up to 12, total. She said that she now provides 24-hour care for up to six, but she does not have any children overnight. She understands that if expanded, the staff has recommended that the six additional children will have limitations on the hours she can provide for their care, and that she can continue to care for six children on a 24-hour basis.

Chairman Owens then asked if she had read and understood all of the recommended conditions for her child care use. Ms. Richard replied in the affirmative. Some letters of opposition to this conditional use permit were presented for the Board's review.

Mr. Stout asked Ms. Richard if she owns the subject property. Ms. Richard replied that she did not, but that her family owns the property. She stated that she currently cares for three children that arrive at her house in the morning, and that she has two children of her own. In the afternoon she provides care for five children, plus her own. The state has currently approved her for care in her home for up to eight children.

Chairman Owens asked if Ms. Richard has any employees. She responded that she currently has two assistants. One of them drives to her home, and the other takes the bus, so there is only one additional car on the property. Ms. Richard stated that her fiancé provides help on the weekends, and that he uses her car.

Mr. Griggs asked about the six additional children that are prompting this application. He stated that other problematic child care applications have centered on 24-hour care. He asked Ms. Richard that if the request for 12 children was approved by the Board, would she still need to provide 24-hour care for up to six children. She replied that she did not want to care for 12 children on a 24-hour basis. Mr. Griggs asked if she would be willing to give up the child care on a 24-hour basis. She answered that if she were approved for 12 children, then she would. Mr. Griggs asked when her afternoon shift ends. Ms. Richard replied that she currently provides care for some children as late as 9:00 PM, and sometimes even until 11:00 PM. Mr. Griggs said that some of the complaints in the letters circulated to the Board revolved around overnight stays.

Objectors – Ms. Bonnye Burton, 2820 Winter Garden Drive, stated that she does not believe that the applicant has a vested interest in this neighborhood, since she is not the property owner. Ms. Burton said that she is concerned about an increase in traffic caused by an increase in the number of children being cared for at this location. She is especially concerned about the increase in traffic in the cul-de-sac of the street in front of the subject property, and about the off-street parking proposed. The parking drop-off and pick-up is to be in the middle of the fenced play area for the children, which could pose a risk to the children.

Ms. Burton stated that she was also concerned with the introduction of a commercial use into the neighborhood. She did not wish to live next door to a commercial area. She also expressed concern about the applicant's lack of a business plan, and her business financing.

Mr. Stout asked Ms. Burton how long she had lived in Lexington. Ms. Burton replied that she had lived here for 16 years. Mr. Stout asked if she had ever noticed before how child care facilities have been located all over Lexington. She replied that she had, as the city has grown. He stated that these types of conditional use permits have been granted throughout Lexington. Mr. Stout said that the Board is most concerned about the neighborhoods, and about the recommended conditions associated with these permits. For example, will the use be disturbing? Ms. Burton replied that this one already is, as the children routinely throw things over the fence into her backyard.

Mr. Griggs stated that she is operating there now and there hasn't been a disruption to the neighbors. Child care in the community is a huge necessity. He felt that unless there is a disruption, then these facilities should be spread across the community. Ms. Burton replied that she was concerned about overloading the existing sanitary sewer system with the additional children. Mr. Griggs thought that the existing sanitary sewer system in this area could handle the additional six children proposed for care at this location.

Chairman Owens asked Ms. Boland if the property owner has a say in this request. Ms. Boland replied that the property owner would have needed to allow Ms. Richard, in writing, to apply for this conditional use permit. Mr. Saltee then displayed on the overhead screen the letter to this effect from the file.

Ms. Moore asked if this could be made null and void if Ms. Richard no longer operates this family child care business. Ms. Boland replied that this condition could be added to the others, if the Board were to approve this application. Ms. Moore asked Ms. Richard if she would object to such a condition being added. Ms. Richard replied that she would not object.

Objectors (cont.) – Mr. Leslie Burton, 2820 Winter Garden Drive, also objected to this request. He maintained that this would impact their life, because they own small dogs. If aggravated, he feared that the dogs could possibly bite the children, if they are not properly supervised.

Chairman Owens asked about the existing fencing. Ms. Richard replied that it is a chain link fence, but that the kids play in the entire back yard.

Mr. Stout asked if a barrier could be added along the bottom of the fence. Mr. Burton replied that the fence is on the property line. Mr. Stout recommended that a barrier be added along the line shared by 2820 Winter Garden Drive. Mr. Stout advised Ms. Richard that her child care business needs to be sure to maintain this property. She will not want to provide neighbors with an opportunity to complain about her conditional use.

Action - A motion was made by Mr. Stout, seconded by Mr. Griggs, to approve **C-2008-75: TARA RICHARD** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1D) zone, on property located at 604 Tundra Court (Council District 7) for the reasons provided by the staff, with the five conditions recommended by the staff, and with the additional two conditions:

- "6. This conditional use permit shall be null and void if the appellant no longer resides at this location.
- 7. The bottom portion of the fence shall be covered next to 2820 Winter Garden Drive."

The motion carried unanimously.

2. **C-2008-73: W.D. THOMAS / NEW VINE BAPTIST CHURCH** - appeal for a conditional use permit to expand the church's (already constructed) parking lot in a Single Family Residential (R-1D) zone, on properties located at 4339, 4349 & 4351 New Vine Lane and 5067 Old Versailles Road (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Retention of the new church parking lot should not adversely affect the subject or surrounding properties, provided that (a) the overall design is modified to satisfy requirements of the Division of Traffic Engineering, (b) the parking lot is landscaped as required by Article 18-3(a)(2)1 of the Zoning Ordinance, and (c) that water runoff is addressed through implementation of a storm water management plan. Compliance with these conditions can reasonably be expected, given the preliminary assessments that have already been undertaken.
- 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 new parking lot, located to the south of the church sanctuary, may be retained in accordance with a revised site plan that (a) satisfies design requirements of the Division of Traffic Engineering, (b) shows landscaping to be provided that complies with Article 18-3(a)(2)1 of the Zoning Ordinance, and (c) identifies major components of the storm water management plan to be implemented.
2. All necessary revisions and other parking lot improvements shall be done in accordance with permits issued by the Division of Building Inspection, and shall be completed within three months after action by the Board.
3. The storm water management plan to be implemented shall comply with requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

Representation – Mr. W. D. Thomas, engineer, was present along with other members of the New Vine Baptist Church. Chairman Owens asked if Mr. Thomas and the church had read the staff report, and would agree to the conditions recommended by the staff. Mr. Thomas replied in the affirmative.

Mr. Griggs asked about the paving and other site work that had already been done. Mr. Thomas replied that he is an engineer, and that more detailed information about storm drainage has not yet been submitted to the Urban County Engineer. Mr. Thomas felt that the information before the Board was accurate. The church will agree to extend curbing from their parking lot in order to help contain the storm water flowing from the new parking lot. Mr. Griggs did not believe that that improvement alone would solve the drainage problems from this site, and he noted that the staff recommendations would require the church to perform additional work. He warned that there may be additional expense to the church. Mr. Thomas felt that they have answered the complaints about the church's storm water drainage, but they are open to additional information.

Mr. Stout asked Mr. Brock if he knew anything about the drainage from the church's parking lot. Mr. Brock replied that his office has known about the problem since a site meeting was held in July with Mr. Thomas and church members. At that meeting, the curbing was discussed along with the need for a small detention basin. He added that no final plans have been submitted, but the concept for storm water drainage, using these improvements, is reasonable.

Mr. Thomas added that the curb has been added to their site plan, as was previously discussed. He said that the treed area downhill from the parking lot is planned for a basin near those trees.

Mr. Stout asked Mr. Hume if he is familiar with the site improvements. Mr. Hume responded that Building Inspection has been trying to get the church before the Board since May. Mr. Stout asked him if he felt that the church was ready to perform all of the recommended work. Mr. Hume advised the Board to consider this site as if work has not already been done, beginning with the off-street parking area.

Objectors – Ms. Gae Granville-Hoffman, 4331 New Vine Lane, was present in opposition to this request. She stated that a 6" curb alone will not solve the drainage problem. The parking area slopes downhill, meaning that water will top the curb. A detention basin might eliminate the problem; but, regardless, soil erosion is one of her concerns. Now the water is able to flow off the lot like a river. She displayed a Google-Earth photograph of the church property and of the Ft. Spring area, and she indicated her residence in relationship to the church's property.

Mr. Stout asked if the church is currently using the parking lot shown in the photo. Ms. Granville-Hoffman wasn't sure, and she didn't want to "pick a fight" with her church neighbors, but she felt like the amount of water was a lot.

Mr. Timothy Webb Beatty, 5041 Old Versailles Road, was also present. He spoke before the meeting with Mr. Thomas, and he felt that his main opposition has been addressed with the additional curbing proposed from the parking lot. His remaining problem is the amount of water that drains onto his property.

Discussion – Chairman Owens asked Mr. Beatty if the water he was referring to was drainage from the church parking lot. Mr. Beatty replied that, yes, it was from the church's lot. His house is downhill from the new parking lot.

Chairman Owens asked Mr. Thomas if the parking lot currently has curbing that has been installed. Mr. Thomas answered that no, none is there currently, but it is planned to be installed. Chairman Owens asked how far down the property line shared with Mr. Beatty the curbing would be installed. Mr. Thomas replied that it would be placed the necessary distance to divert water from Mr. Beatty's property. He said that the engineering design for the storm water would be for a 10-year to 25-year storm, which is the normal and customary design year for engineers. He said that is what he had tried to design for.

Mr. Gallimore stated that the Division of Traffic Engineering may also require additional curbing to be installed. They would like to see the church coordinate the requirements of his office with the need for landscaping and building permits from the Division of Building Inspection. Mr. Thomas agreed to do so.

Chairman Owens said that there are other issues with this requested conditional use besides just storm water

drainage. He thought a continuance was necessary for the Board to see a plan that is a result of the church working with Mr. Brock, Mr. Hume and Mr. Gallimore. Mr. Marx stated that he hoped these problems could be fixed as soon as possible. It was his recommendation that these site improvements be completed this fall, because the rainy season is coming soon.

Ms. Moore asked about possibly having a three-month review of this request. Mr. Stout stated that he believed that the work needs to be done sooner rather than six months from now, in order to avert additional complaints from the neighbors. Mr. Griggs agreed, as did Chairman Owens.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stout, and carried unanimously to continue **C-2008-73: W.D. THOMAS / NEW VINE BAPTIST CHURCH** appeal for a conditional use permit to expand the church's (already constructed) parking lot in a Single Family Residential (R-1D) zone, on properties located at 4339, 4349 & 4351 New Vine Lane and 5067 Old Versailles Road (Council District 12) to the Board's September 26 meeting.

E. **Administrative Reviews** – None remaining.

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

Chairman Owens noted that long-time Board member Joanne Bell had reached her term limit of service on the Board. He said that her service was exemplary, and that he, for one, will miss her input into these hearings. Chairman Owens said that the Board would deliver a resolution honoring Ms. Bell's service in the near future.

Mr. Stumbo announced that he would not be in attendance at the Board's September 26 meeting, as he will be out of town that day.

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 September 28, 2008.

VII. **ADJOURNMENT** - There being no further business, the Chairman declared the meeting adjourned at 2:35 p.m.

Mike Owens, Chairman

James Griggs, Secretary