

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

May 29, 2009

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on May 29, 2009. Members present were Chairman Peter Brown, Louis Stout, Carolyn Edwards, Barry Stumbo, Kathryn Moore and Jan Meyer. Others present were Jim Hume, Division of Building Inspection; Barry Brock, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; Capt. Charles Bowen, Division of Fire & Emergency Services, and W. L. Wilson, Department of Law. Staff members in attendance were Planning Director Chris King, Bill Sallee, Jim Marx and Wanda Howard.

Recognition for Former Member Joanne Bell – Chairman Brown stated that he would like everyone to pause a moment to recognize former member Joanne Bell, who recently passed away. He said that she was a friend of his, and he learned a lot from Ms. Bell. He was glad to consider her a friend, and said that she will be missed.

- II. **APPROVAL OF MINUTES** – Chairman Brown announced that the minutes of the December 12, 2008 and the January 30, 2009 meetings would be considered for adoption at this time.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously (Griggs absent) to approve the minutes of the December 12, 2008 and the January 30, 2009 meetings.

III. **PUBLIC HEARING ON ZONING APPEALS**

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

1. **Postponement or Withdrawal of any Scheduled Business Item** – Chairman Brown announced that any person having an appeal before the Board may request postponement or withdrawal of such at this time.
- a. **C-2002-2: THE EPISCOPAL DIOCESE OF LEXINGTON, INC.** - the Board of Adjustment has requested a revocation hearing for failure to comply with conditions imposed in January 2002, in association with a conditional use permit to occupy an existing building as a church (and offices), in a High Density Apartment (R-4) zone, on property located at 203 East Fourth Street (Council District 1).

The Board of Adjustment approved a conditional use permit in January 2002 for use of the subject property as a church and imposed several conditions for approval. Those conditions are as follows:

1. Establishing the church shall be done in accordance with the submitted application and an amended site plan showing a paved main driveway and a minimum of six paved parking spaces on the site.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to undertaking any construction or renovation activities.
3. The proposed layout of the driveways, access points, and parking areas (including the differentiation between areas to be paved and areas to remain as gravel) shall be subject to approval by the Division of Traffic Engineering.
4. The paved parking areas shall have spaces delineated and shall be landscaped/screened according to Articles 16 and 18 of the Zoning Ordinance.
5. Any pole lighting for outdoor areas shall be of a shoebox design with light directed downward and away from adjoining properties to prevent any disturbance to area residents.
6. Should the appellant cease to either own or occupy the subject property, this conditional use shall become null and void.

The Division of Building Inspection will report at the hearing.

Request for Postponement – Mr. Wilson, Department of Law, requested a one-month postponement of this

item. Mr. Hume, Division of Building Inspection, objected to any postponement.

Mr. Wilson stated that he had been in recent contact with an attorney, Mr. Buck Hinkle, representing the Episcopal Diocese. Mr. Wilson stated that Mr. Hinkle had just this week received notification of this revocation hearing, but had a scheduled conflict for this afternoon, and who could not attend the meeting today. Mr. Hume stated that the Diocese had been unresponsive to communications from his office, and stated that he wished to proceed this afternoon. Chairman Brown asked if a representative of the Diocese was present.

Representation – Rev. Bryant Kibbler, of the Episcopal Diocese of Lexington came forward. He stated that on March 10, representatives of the Diocese had a meeting with Mr. Hume and the City. At that meeting, their architect committed to the parking lot being paved and the exit of that lot onto Kleiser Alley. Mark Arnold, the architect for the Diocese, and Rev. Kibbler were later told that they were not allowed to design an exit onto Kleiser Alley. That required a new plan to be made for the property. Since then, Rev. Kibbler and Mr. Arnold have had a miscommunication as to who was to revise their previous plan. However, that had been resolved, and construction is scheduled to start on the necessary paving on June 26. This will occur after their previously scheduled Children's Camp for the Incarcerated concludes in June.

Chairman Brown noted that this is a 2002 case, and asked if there was any dispute that the conditions have not yet been met. Rev. Kibbler noted that with this, they have no dispute. He said that his first notification of this problem was in February, 2008. Apparently, the previous administrator working with Building Inspection on this matter left the church at about that time. Until then, he thought all requirements from 2002 had been completed. He had since learned otherwise.

Chairman Brown stated that the church had admitted to not meeting the Board's 2002 conditions, and asked Mr. Hume his opinion. Mr. Hume said that he had been given "a run-around" by the Diocese and wished to proceed with a revocation hearing. He said that the church had not been very responsive.

Ms. Meyer asked if they could set a deadline for the Diocese. Chairman Brown asked if, instead, they could amend their conditional use site plan. Mr. Marx, Division of Planning, stated that, for the Diocese, if they need to amend their plan, they will need to come back to the Board anyway. He said that the Diocese should set a goal to get on a future Board agenda for an amended Conditional Use application. Chairman Brown thought a one-month postponement would be a good idea, to give the church the opportunity to amend their site plan.

Mr. Stout stated that this appeal is for a 2002 case, and that something needs to be done to wrap it up.

Ms. Moore asked about paving that needed to be done. In response, Mr. Hume said that there had been a Certificate of Occupancy issued in the dead of winter, based upon a past promise to pave their parking lot. Their CO had a condition for paving the lot within a reasonable time period. Ms. Moore asked when the CO was issued. Mr. Hume replied that in December of 2003, a CO was issued by his office. Ms. Moore said that either there needed to be no use of the property, or an amended Conditional Use permit should be sought.

Rev. Kibbler stated that there is also a drainage issue involved with their site, so there is a need for an amended site plan. Under the circumstances, Mr. Hume suggested a postponement to July to allow the church time to amend their Conditional Use Permit. Chairman Brown thanked Mr. Hume for his suggestion, and asked the Board if they were in agreement. All concurred.

Action – A motion was made by Ms. Moore, seconded by Mr. Stout, and carried unanimously (Griggs absent) to postpone **C-2002-2: THE EPISCOPAL DIOCESE OF LEXINGTON, INC.** - a revocation hearing for failure to comply with conditions imposed in January 2002, in association with a conditional use permit to occupy an existing building as a church (and offices), in a High Density Apartment (R-4) zone, on property located at 203 East Fourth Street, until the Board's July 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.

Swearing of Witnesses – Prior to sounding the remainder of the agenda for today's meeting, Chairman Brown asked all

who wished to speak at today's meeting to raise their hand and be sworn. He administered the oath to several citizens in attendance.

- a. **V-2009-33: BROADVIEW BUILDINGS, INC.** - appeals for a variance to reduce the required front yard from 300 feet to 178 feet in order to construct a single family residence in the Agricultural Rural (A-R) zone, on property located at 3229 Iron Works Pike (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, since the new residence will be located in the immediate vicinity of where a former residence was once located.
- b. The location of the original house site, presence of underground utilities to that site, and related improvements such as the existing plank fencing that surrounds the general area are all special circumstances that contribute to justifying a reduction of the 300' front yard requirement.
- c. Strict compliance with the Zoning Ordinance requirement is possible, but would require the removal of several trees and the relocation of underground utilities, to the detriment of the rural character of this area.
- d. The circumstances surrounding the requested variance are not the result of actions taken by the appellant or current farm owner, but resulted from how this portion of the farm was developed many years ago.

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

1. The residence 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. Access to the residence shall be from the private drive that serves other portions of the farm, with no access to be provided directly to Iron Works Pike.
4. Sewage treatment shall be provided in accordance with the requirements of the Department of Health.

Representation – Mr. Michael McCoskey was present, representing the appellant. Chairman Brown asked Mr. McCoskey if he understood the recommendation for approval and would agree with the four recommended conditions. Mr. McCoskey replied in the affirmative.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Edwards, and carried unanimously (Griggs absent) to approve **V-2009-33: BROADVIEW BUILDINGS, INC.** - appeal for a variance to reduce the required front yard from 300 feet to 178 feet in order to construct a single family residence in the Agricultural Rural (A-R) zone, on property located at 3229 Iron Works Pike, for the reasons provided by the staff; and subject to the four recommended conditions.

- b. **CV-2009-31: CLUB FACILITIES, LLC** - appeals for a conditional use permit to offer live entertainment and dancing as part of the operation of the open-to-the-public restaurant; and a variance to reduce the required 100-foot setback from the nearest residential zone to 19 feet in a Neighborhood Business (B-1) zone on property located at 3256 Lansdowne Drive (Council District 4).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The provision of live entertainment and dancing will continue as it has been provided in the past when the club restaurant was strictly private. The indoor area where both entertainment and dancing will be provided is to be soundproofed to minimize the potential for noise disturbances. Restrictions on hours and the type of entertainment to be provided outdoors will help to minimize the potential for any disturbances from that aspect of the proposed musical entertainment.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, since the decision to rezone the property to B-1 was made in response to a critical need relating to ensuring the long-term viability of the club, and was not made with the intent of attempting to circumvent any requirements of the Zoning Ordinance.
- b. The manner in which the club was developed many years ago, especially with regard to the location of the restaurant and outdoor patio, is a special circumstance that contributes to justifying a reduction in the

- required setback.
- c. Strict application of the Zoning Ordinance would effectively prevent the provision of any live entertainment and dancing at this restaurant location, at least as the recently renovated facilities have been laid out. Such an outcome could be considered as unreasonable and unnecessary, given the historical use of the property.

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

1. Live entertainment and dancing at this location may be provided in accordance with the submitted application and site plan, with outdoor entertainment to be limited to 6:00 PM through 9:30 PM on Monday through Saturday.
2. An occupancy permit shall be obtained from the Division of Building Inspection within 30 days after action of the Board.
3. Outdoor entertainment shall consist only of individual musicians that use limited amplification, or two or more musicians when they are not amplified.
4. The indoor entertainment and dancing area shall be soundproofed to the maximum extent possible using existing technology, in accordance with the requirements of the Division of Building Inspection.
5. The outdoor entertainment area shall be arranged, with a focus on the orientation of any amplification, to limit the potential for noise disturbances to surrounding residential properties, particularly those along Raven Road to the southeast of the outdoor patio.
6. In accordance with Article 8-16(d)5 of the Zoning Ordinance, live entertainment and/or dancing shall be provided in a manner that does not result in noise or other emissions creating a nuisance to the surrounding neighborhood.

Representation – Mr. Bruce Simpson, attorney, and Mr. Fred Eastridge, engineer, were present representing the Signature Club, along with Mr. Ron Turner, owner. Mr. Simpson told the Board that the appellant agrees with the staff recommendation and the recommended conditions for approval, and requested approval.

Discussion – Mr. Stumbo asked if the restriction proposed for a 9:30 PM deadline for outside music was acceptable. He asked if the appellant planned to have any live bands outside. Mr. Simpson replied that the music proposed is to be background or conversational type of music. It is to be “low key” for outdoor dining and will usually involve only one musician, with either a guitar or occasionally an organ. He stated that the pool noise is usually much greater than the proposed live entertainment would be.

Ms. Meyer asked if the neighbors are okay with this proposal. Mr. Simpson replied that negotiations have been ongoing with the neighborhood association since January, but their negotiations have only recently been concluded with the club's neighbors, and they have heard of no objections. He said that this proposal is, in essence, a continuation of the previous private club use over the past decades. Mr. Hume asked if any new structures were proposed, such as a bandstand. Mr. Simpson replied that the appellant intended to construct no new or additional structures.

Action – A motion was made by Ms. Edwards, seconded by Ms. Meyer, and carried unanimously (Griggs absent) to approve **CV-2009-31: CLUB FACILITIES, LLC** - appeal for a conditional use permit to offer live entertainment and dancing as part of the operation of the open-to-the-public restaurant; and a variance to reduce the required 100-foot setback from the nearest residential zone to 19 feet in a Neighborhood Business (B-1) zone, on property located at 3256 Lansdowne Drive, for the reasons provided by the staff, and subject to the six recommended conditions.

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

The Staff Recommended: Postponement, for the following reasons:

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

through is uncertain, the Board's consideration should be delayed accordingly.

Staff Presentation – Mr. Marx stated that the staff had provided a Supplemental Staff Report on this application for consideration by the Board at this time. The site plan had been recently revised, and was approved the day before by the Planning Commission. The supplemental report concludes with the following staff recommendation:

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, which are either vacant (zoned for commercial or office purposes) or are currently used for commercial and office purposes. Adequate stacking space for vehicles has been provided, and the final design of the facility will be subject to review and approval by the Division of Traffic Engineering.
- b. 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 the revised site plan dated May 28, 2009, or as amended by the Planning Commission, provided that the building envelope on the proposed drive-through facility plan is removed (as has been required 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 shall be subject to review and approval by the Division of Traffic Engineering.
4. Storm water management is to be provided in compliance with the Division of Engineering Storm Water Manual.

Mr. Marx stated that, since there are no objectors present, the Board could consider this as an item for no discussion at this time.

Representation – Mr. Richard Murphy, attorney, was present along with Mr. Jimmy Ball and Mr. Steve Wright, appellants; Mr. Charles Hite, planner; and Mr. Matt Carter, engineer. Mr. Murphy stated that the Planning Commission plan that had been approved yesterday for this site is identical to the one distributed earlier to the Board. He said that they had reviewed the staff's revised recommendation for approval, agreed with it, and would abide by the recommended conditions.

Discussion – Chairman Brown asked Mr. Marx to describe the changes to the plan submittal. Mr. Marx described the two changes to this plan from the one originally submitted with this request. He said that a new access point was proposed to Governors Lane, requiring an alteration to the median in this roadway. The other change was to propose pavement to the southern property line, thus allowing the possibility for connection into the adjoining property in the future, which is desirable. He stated that the drive-through lane proposed for the conditional use had not changed.

Chairman Brown asked Mr. Gallimore, Traffic Engineering, to comment on the revised plan and the proposed change to the median. He replied that this plan proposes a better circulation pattern for waste management and for the drive aisles, and allows for future connectivity. Chairman Brown asked if he had any serious argument with this proposal. Mr. Gallimore replied that he did not.

Mr. Murphy showed a photo from the office building that had been built across the street with a similar drive-through lane feature. The entrances to that bank building and the one on the subject property are to front on Governors Lane. He stated that their building will have a similar pattern, and the drive-through will face Beaumont Centre Circle. He said that their proposal works well right across the street. They propose to reduce the median in the existing street to address safety and to accommodate the new access point. They will keep flexibility to allow for future interconnectivity. Between their property and the lot to the south of theirs they will provide a paved access drive, so that they will not be a stumbling block to future interconnectivity between these two lots.

Chairman Brown asked if there were any known problems across the street from the subject property. Mr. Hume and Mr. Gallimore replied independently that there were none there that they were aware of.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stumbo and carried unanimously (Griggs absent) to approve **C-2009-25: BALL & WRIGHT CAPITAL HOLDING CO., LLC** - appeal for a conditional use

permit to construct and operate a drive-through facility for a proposed bank, in a Professional Office (P-1) zone, on property located at 998 Governors Lane, for the reasons provided by the staff in their supplemental report, and subject to the staff's recommended conditions.

- d. **C-2009-26: LEXINGTON CEMETERY CO.** - appeals for a conditional use permit to add a columbarium to an existing mausoleum in an Agricultural Urban (A-U) zone, on property located at 833 West Main Street (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. The columbarium additions are very limited in size, and will be sited in a fairly isolated area of the cemetery where the existing mausoleum is located.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The proposed building additions 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.

Representation – Mr. Dan Scalf, President and General Manager of the Lexington Cemetery Company, was present for the appellant. Chairman Brown asked if Mr. Scalf had reviewed the conditions recommended for approval, and if they would agree to conditions recommended for approval. Mr. Scalf replied affirmatively.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards and carried unanimously (Griggs absent) to approve **C-2009-26: LEXINGTON CEMETERY CO.** - appeal for a conditional use permit to add a columbarium to an existing mausoleum in an Agricultural Urban (A-U) zone, on property located at 833 West Main Street for the reasons provided by the staff, and subject to the recommended conditions.

- e. **C-2009-27: THE MARY E. WHARTON NATURE SANCTUARY AT FLORACLIFF** - appeals for a conditional use permit to construct and occupy a visitor/education center as part of an existing nature sanctuary in the Agricultural Rural (A-R) zone, on properties located at 7950 & 8000 Elk Lick Falls Road and 6350 Cedar Creek Lane (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit will not adversely impact the subject or surrounding properties, and should benefit the general public. The proposed building will comply with the 300' minimum front yard requirement for properties in the A-R zone, and will be over 200' away from the nearest adjoining property to the south. Adequate parking will be provided, which will include convenient accommodations for handicapped persons. With the opening of a nature center, expanded opportunities to enjoy, appreciate and learn from this designated nature preserve will be forthcoming.
- b. All necessary public facilities and services are available and adequate for the proposed use, with sewage treatment and garbage pick-up to be handled privately.

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

1. The proposed nature center shall be operated as described in the submitted application, and constructed in accordance with a revised site plan indicating compliance with the 300' front yard requirement for principal buildings in the A-R zone. Additional site plan revisions are acceptable as determined to be necessary to satisfy requirements of the Divisions of Traffic Engineering and Engineering.
2. The design of the access to Elk Lick Falls Road, driveway and off-street parking areas shall be subject to review and approval by the Division of Traffic Engineering.
3. The access apron to Elk Lick Falls Road and handicap parking space (including access to the ADA ramp) shall be paved. All other vehicular use areas shall be graveled in a manner that maximizes the potential for retaining permeability, with the 18-space parking area and bus parking area to be bordered by railroad ties or another similar feature to prevent the spread of gravel.
4. If deemed necessary by the Division of Engineering, a storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals.
5. A sewage treatment system shall be installed and maintained in accordance with permitting requirements of the Department of Health.

6. The facility shall not have any outdoor lighting (other than for security purposes), loud speakers, retail sales, restaurants or food service.

Representation – Mr. Charlie Sither was present for the petitioner. Mr. Sither stated that they had read the staff's recommendation, and that they agree with the conditions.

Discussion – Chairman Brown asked about the proposed use of gravel. Mr. Hume stated that his office recommended that the required parking and the access to those spaces be paved. Chairman Brown asked if that was the staff's recommendation as well. Mr. Marx replied that the conditions recommended do not require that amount of paving. Mr. Marx stated that additional driveway paving and at least six spaces would need to be paved as well, if Mr. Hume's recommendation is to be followed.

Chairman Brown stated that he had visited Floracliff with his daughter. He told the Board that this is designated as a State Nature Preserve. He stated that, since he is on the Board of another state agency, he would abstain from voting on this case.

Action – A motion was made by Ms. Meyer, seconded by Ms. Moore, to approve **C-2009-27: THE MARY E. WHARTON NATURE SANCTUARY AT FLORACLIFF** - appeal for a conditional use permit to construct and occupy a visitor/education center as part of an existing nature sanctuary in the Agricultural Rural (A-R) zone, on properties located at 7950 & 8000 Elk Lick Falls Road and 6350 Cedarcreek Lane, as recommended by the staff, and subject to the six conditions recommended, noting the limited paving recommended.

Staff Comments – Mr. Hume warned the Board of a possible future precedent if this passes. Mr. Sallee stated that the staff will take that into account in all future recommendations made on conditional use applications to the Board.

The votes were as follows:

Ayes: Edwards, Meyer, Moore, Stout, Stumbo

Abstained: Brown

Absent: Griggs

The motion passed, 5-0.

- f. **C-2009-30: ST. LUKE UNITED METHODIST CHURCH** - appeals for a conditional use permit to expand the church and accessory parking in a Planned Neighborhood Residential (R-3) zone, on property located at 2351 Alumni Drive (Council District 7).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. Provisions have been made to accommodate storm water management needs, and landscaping will be provided for the new parking areas as well as for portions of the property perimeter where existing landscaping will be augmented.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The new building and expanded parking areas shall be constructed in accordance with the submitted application and site plan, with the understanding that some revisions may be required to satisfy requirements of the Divisions of Engineering and Traffic Engineering.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The final design of the parking lot additions, new drive aisles and related improvements shall be subject to review and approval by the Division of Traffic Engineering.
4. All new parking areas shall be paved, with spaces delineated and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
5. Existing landscaping along the rear property line shall be augmented as necessary to provide a continuous 10' wide buffer comparable to that required by Article 18-3(a)(1)2 of the Zoning Ordinance, with that buffer to include plantings rather than a fence, wall or earth mound. Other areas of existing

landscaping, including that for the existing parking lots, shall be refurbished as necessary to comply with the requirements of the Division of Building Inspection.

6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. Any pole lighting for the new parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing surrounding residential properties.

Representation – Mr. Chris Howard, Carman & Associates, was present to represent the appellant. He stated that they have read the staff report, and will agree to abide by the seven recommended conditions. There was one letter of objection circulated to the Board at this time.

Discussion – Chairman Brown asked about the treatment of storm water. Mr. Howard stated that the church's site plan had been reviewed by the Technical Committee, and did receive their favorable review comments, including the Division of Fire's approval of the connections proposed to the parking lots. Mr. Howard replied that they had performed the necessary drainage calculations. With that, he said that the church was confident that they could provide the necessary storm water detention on their site. Mr. Howard stated that they understand that there are open ended issues to be resolved on this site.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously (Griggs absent) to approve **C-2009-30: ST. LUKE UNITED METHODIST CHURCH** - appeal for a conditional use permit to expand the church and accessory parking in a Planned Neighborhood Residential (R-3) zone, on property located at 2351 Alumni Drive for the reasons provided by the staff, and subject to the recommended conditions for approval.

- 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 – There were none remaining.
- D. Conditional Use Appeals
 1. **C-2009-28: DONNITA K. HUGHES** - 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 668 Lombardy Drive (Council District 6).

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

- a. An increase of four children, from six to ten, allowed at this family child care should not adversely affect the subject or surrounding properties, provided that appropriate precautions are taken to ensure children's safety around the dogs and pool in the rear yard. Adequate parking is available in the existing driveway, and on-street parking is available on Lombardy Drive. A large back yard is already fenced for use as an 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 shall be provided in accordance with the submitted application and site plan, with no more than ten children to be cared for between the hours of 6:00 AM and 6:00 PM on Monday through Friday. Any children cared for above the six that are allowed as an accessory use shall be limited to family members.
2. An occupancy permit shall be obtained from the Division of Building Inspection within two months following action by the Board.
3. Prior to obtaining an occupancy permit for this use, the back yard fencing shall be improved/maintained as deemed necessary to comply with the requirements of the Division of Building Inspection.
4. During times that children are using the back yard play area, the pool shall be completely covered, and the gated access to the pool shall be locked or otherwise secured to prevent entry into the pool area.
5. Activities in the outdoor play area shall be supervised at all times by at least one certified caregiver when children are outdoors.
6. The facility shall be operated at all times in full compliance with requirements of the Kentucky Cabinet for Health and Family Services.

Representation – Ms. Donnita K. Hughes, the appellant, was present. Chairman Brown suggested that the Board first hear from the objectors, and then Ms. Hughes would have an opportunity to address the Board.

Objector – Ms. Joan Atwell stated that she is a next door neighbor to the appellant. She said that a chain link fence is all that separates their properties. She and her family have lived here 40 years. She stated that 5-6 children are usually in the back yard at any one time. Ms. Atwell stated that she has flowers at the end of her yard. She stated that children have been in her garden, pulled up her flowers by reaching through the chain link fence. In the past, she said that she had confronted the children. She also stated that rocks have been thrown into her yard by the children in the back yard of the appellant. She thought that more supervision should be given the children. She said that sticks and other things have also been thrown into her yard by these children.

Ms. Atwell stated that there are two dogs in the appellant's back yard that worry her. She said that she appreciates the Board hearing her concerns. She told the Board that there are wood piles from cut down trees currently in the appellant's back yard. Most importantly, she said she was worried about the children's safety, given the wood piles and the swimming pool in the appellant's back yard. She appeared at this hearing today because she wanted to let the Board know about this current condition of the subject property.

Appellant's Presentation – Ms. Hughes told the Board that she had the appropriate State child care license. She entered into the record a letter from the State, which stated that her child care facility had passed inspection. She stated that she had a license for her two dogs. She told the Board that her swimming pool was erected in her back yard before they bought the house. She and her husband had considered taking the pool down. She stated that they had a cover over the pool. She did apologize to Ms. Atwell for the damage to her flowers. She and her husband had built a playground to keep the children off their neighbor's fence. She told the Board that when the children had gone out to play, the dogs were brought into the house. They have kept their kids' shoes clean from the dog droppings.

Ms. Hughes said that they have had six kids under their care since 2006, when they received their Occupancy Permit. She said that the State had approved her for six unrelated children and for her own that are related. She read from the State approval letter (submitted earlier), that a maximum of 10 children are permitted at this family child care at any one time. Ms. Hughes stated that she wanted to keep her family members' children, and wanted to still be in compliance with the 2008 State requirements as well.

Discussion – Ms. Meyer asked Ms. Hughes if the State requires her to have helpers to assist with the child care. Ms. Hughes replied that she did, and that she had her CEA and her Associates Degree. She replied that her husband also takes classes and had been certified in first aid. Together, they have provided the care for the children. The State regulations require one adult for every six children.

Ms. Meyer said that she was most concerned about the existing swimming pool and about the dogs. She said that there is a lot of review that needs to be done. Ms. Hughes replied that they have a playground, and that the pool is covered, and the stairs up to the pool had been blocked off. She repeated that the State did review her site earlier this year, inspected it, and had certified her family child care operation for another two years. The children are two to six years of age.

Mr. Stumbo told Ms. Hughes that he was concerned about unsupervised children. He asked about the supervision that was to be given to these children. Ms. Hughes again apologized about the damage to her neighbor's flowers. She replied that she and her husband had put the playground in the center of their yard to divert the children's attention there, rather than to the neighbor's fence. The wood pile was in her yard because the past storms had knocked down their existing trees. She had decided to leave them in their yard to remind her of the rustic area near Gatlinburg, Tennessee.

Mr. Stumbo asked Mr. Marx about the limitation of 10 children proposed. He replied that the proposed limitation to the number of children to be cared for at this location is to allow child care for additional family members. He told the Board that the back yard with the pool and the dogs is a concern, and one that will require some attention by the appellant. However, the longevity and familiarity of family members to the caregivers was an important consideration in the staff's recommendation for approval.

Mr. Stout stated that he had heard of many cases for child care facilities in his tenure. He had even dreamed about some of these cases over the years. He said that while he is concerned about the impact upon

neighbors, he is more concerned about the children's safety. He asked Ms. Hughes about the pool cover. She stated that it is an Aurora pool cover. Mr. Stout asked if it is made of plastic, or of felt, or of some other material. Ms. Hughes replied that it is a tarp, made of a material like plastic. She stated that there was no way for children to be able to loosen this cover from the pool. She stated that she reviewed its condition every day. She also said that they haven't used the pool since they bought the house, and that she and her husband were looking to remove it. However, they hadn't found someone to do so yet.

Mr. Stout recommended that Ms. Hughes provide a covering for the fence as well, to protect the neighbor's flowers. He told Ms. Hughes that this might be necessary in order to keep neighbors somewhat happy. He recommended to Ms. Hughes that her child care not disturb their comfort. He agreed with Ms. Atwell that children that disrupt neighbors are a problem. Mr. Stout said that he understood those concerns. Ms. Hughes replied that she understood Mr. Stout's recommendations.

Ms. Atwell stated that she objected to her placing a covering over the fence. She stated that the fence was hers, and thought that a covering would downgrade her property. She described that she and the former owner originally erected the fence. Mr. Stout stated that as it was Ms. Atwell's fence, no one would require a fence covering. Ms. Atwell didn't want someone to downgrade her property by putting something over the existing fence. She thought that a privacy fence was required for a day care center.

Mr. Marx asked Mr. Hume about the type of fence ordinarily required for family child care uses. Mr. Hume replied that there were no minimum requirements. Chairman Brown said that it was required to be a fence that a child could not get through. Ms. Atwell asked about the dogs. She warned that dogs can "turn on you quickly." Mr. Stout asked if the dogs were offensive to Ms. Atwell. She replied that they were. Mr. Stout said that he understood this was the case.

Ms. Hughes stated that other neighbors next to Ms. Atwell had dogs next door to her also. She repeated that the State requirements do not allow just any type of pets. Kentucky licensing requirements allow no snakes, no frogs, and so forth. She reiterated that there was no conflict with her dogs and the State regulations for her family child care. She stated that the fence keeps her dogs out of Ms. Atwell's yard. She said that the dogs are in the house from 10:00 to 4:00, and are put outside at 6:00 pm after the child care closes.

Mr. Stout asked if the dogs are tied to the fence. Ms. Hughes replied in the negative.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, to approve **C-2009-28: DONNITA K. HUGHES** - appeal for a conditional use permit to provide family child care for up to 10 children in a Single Family Residential (R-1D) zone, on property located at 668 Lombardy Drive, for the reasons provided by the staff, and subject to the six conditions recommended by the staff.

The votes were as follows:

Ayes: Brown, Edwards, Moore, Stout, Stumbo

Nays: Meyer

Absent: Griggs

The motion for approval of family child care for up to 10 children at this location passed, 5-1.

Board Comment – Mr. Stout recommended that Ms. Hughes remove a safety issue by removing the pool or by covering it properly.

Objector's Comment – Ms. Atwell said that the dogs were often outside when children are there in the back yard. Chairman Brown stated that these are the conditions approved for this use, and that Ms. Atwell should contact the Division of Building Inspection if there are suspected violations of these conditions in the future. Ms. Atwell stated that she had never even seen Ms. Hughes in the back yard—only her husband, who screams at the children.

2. **C-2009-29: KERRY and TINA BALL** - appeal for a conditional use permit to establish a temporary real estate sales office in an Expansion Area Residential (EAR-1) zone, on property located at 2149 Winning Colors Lane (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street parking will be provided, and the sales office will be discontinued after no more than two years.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The sales office shall be established in accordance with the submitted application and site plan, with the sales area to be limited to the first floor of the residence in a single room of less than 400 square feet.
2. An occupancy permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board.
3. The office shall be used solely for sales purposes, and not by subcontractors, architects, or others typically involved in the home building industry.
4. The sales office shall be discontinued after no more than two years from the date of Board action.

Representation – Mr. Kerry Ball, Kerry Ball Builders, was present. Chairman Brown asked Mr. Ball if he had read the recommendation for approval with the recommended conditions, and if he would agree to abide by them. Mr. Ball replied affirmatively.

Opposition – Mr. Dave Winters stated that he lived at 2157 Winning Colors Lane, next door to this property, and he was present to object to this request for a conditional use permit. Mr. Winters distributed a letter of opposition to the Board, along with several exhibits. Mr. Winters said that this office began operation in February 2008, despite notification from the City that a conditional use permit was necessary. This would be the second real estate sales office for the Balls, if approved. He outlined the contents of his packet of exhibits to the Board.

Mr. Winters called attention to Exhibit 3, which showed an office address in one of the real estate advertisements for this subdivision, for a sales office at 400 Real Quiet Lane, which had not been approved by the Board. He then addressed two private deed restrictions in effect for this subdivision, which prohibit this proposed use. Mr. Winters asked the Board to review a photograph in Exhibit 6 that showed the narrow width of the streets in the vicinity of Winning Colors Lane. Exhibit 7 demonstrates that this office will be used by two subdivisions, not just one. He thought that the barn between the two subdivisions would be a better location.

Mr. Winters asked the Board to deny this application with the following findings of fact:

1. The proposed use as a real estate sales office is inappropriate at this location, since the expected traffic that could be expected from two subdivisions would overwhelm the narrow streets and Winning Colors Lane. The net result would be an adverse impact to the residents and a safety concern for all those who drive on that street.
2. The proposed use as an office in a residential home would be the applicant's second office in the same subdivision, and thus, not permitted.

Mr. Winters summarized his objections by stating that this subdivision is now more than six years old. He thought that the proposed sales office should have been established far earlier than now. To take a residence six years later for this use is inappropriate. He stated that a real estate sales office is designed to advertise the builders' expertise in construction; however, this one was not constructed by Mr. Ball, but had been Mr. Ball's own residence at one time.

Board Questions - Chairman Brown asked Mr. Winters about Exhibit 9. Mr. Winters replied that is Walnut Grove Estates, and that only 20 of the 64 lots in this subdivision have houses built upon them. He stated that the developer wanted this to be for an equestrian community, where horses could be boarded in the barn. Mr. Winters stated that the barn is only a year old, and it could house this sales office, as the interior was not yet finished. He told the Board that it will have a tack room. Mr. Winters thought that there was plenty of room available there for vehicle parking for contractors and others visiting their subdivision. Chairman Brown asked if 40 or so were vacant lots, to which Mr. Winters replied affirmatively.

Objectors (cont.) – Ms. Sue Winters stated that she agreed with Mr. Winters' earlier comments. She stated that they have to place homemade "No parking" signs on the street when residents have guests visiting for parties. She thought that the vehicular parking on the street for this would make this use dangerous.

Ms. Pam Roderick stated that she and her husband own the second house completed in this subdivision. She told the Board that she opposes the second real estate office in this subdivision. She said that part of the purpose for this office is to sell the 75 other lots in the other neighborhood planned to the north of this one. She agreed that parking was a safety concern due to the added traffic. She agreed with Mr. Winters that the barn is midway between the two subdivisions, and would make a more suitable real estate sales office location. She was glad she was not living next to this proposed office.

Appellant's Presentation – Mr. Ball stated that there will not be any connector road between the two subdivisions. He said that they are not selling nor are they building any houses, and there will be no contractors or construction workers at this location. He said that 4000 Real Quiet Lane is his home, and is not used as a sales office. He asked Ms. Roderick if she had a business at her home. She replied that she is in real estate.

Mr. Ball stated that this subdivision is unique in that there is 80% open space required. The 20% is for streets and houses. In the past they have erected "NO PARKING" signs when there is a Grand Tour of Homes in the community. The house proposed for this use is not part of the Grand Tour of Homes. The existing sign on the front of the lot is small and attractive. They are trying to generate some sales traffic for this subdivision.

Board Questions – Mr. Stumbo asked if traffic is expected to come into the sales office at this location. Mr. Ball replied that there will be some, but he didn't expect to have an office there for two years. He said that they do not have a lot of customers. He stated that he usually had one car in the driveway there at night, and there are not four or five customers there at any one time during the day. He said that, usually, there is only one car parked on the street while visiting the office at a time.

Ms. Meyer complimented Mr. Ball, saying that the concept was great for this subdivision. She thought there might be more interest in spaces for people to have horses. Still, she asked why they had not considered using the barn for the real estate office. Mr. Ball replied that the barn is planned for horses, not for offices. He said that there is an old farm road that is not of sufficient width for use by visitors to the subdivision. He said that visitors will be able to tour the barn, but that they plan to lease the barn out to someone else. That individual will have a separate office there. Mr. Ball stated that there will not be contract negotiations held there for real estate.

Mr. Ball stated that they were trying to develop a new interest in the subdivision. In addressing Ms. Roderick's earlier statement, they can't get back to the new subdivision to the north yet. Next to both subdivisions and the barn, they also have 100 acres just beyond the Urban Services Area. He repeated that the barn can't be used as a sales office—as it is just a sales tool. The odor of the horses would prevent this. He told the Board that he wants to be done with a sales office at this location within two years.

Mr. Stout asked about the size of the sign that appears in Mr. Winters' photograph. Mr. Hume stated that he wasn't sure of its size. Mr. Ball replied that it is 2' by 3' in size. He stated that he could trim it down, if necessary. Mr. Stout said that he could erect the same sign in his front yard, for a nursery or for some other use. Mr. Stout wanted to know how a sign like this would be legally placed in front of a house. Mr. Hume replied that signs for some uses, such as for child care centers, are not permitted in residential zones, adding that this sign could be narrowed down to meet the Zoning Ordinance limitations.

Mr. Stout asked Mr. Ball if he lived next door to this proposed real estate sales office, if he would object to it. Mr. Ball replied in the negative. He said that there are five \$1 million homes for sale in this subdivision. He would not oppose anyone wanting to sell real estate there for that price. He stated that there will be only 55 additional lots for sale in the Walnut Grove Reserve subdivision to the north of this one, but those roads are not done yet.

Mr. Stumbo asked if a compromise could be reached for the existing sign about parking. Mr. Ball replied that he wouldn't object, but that would cause the need for another sign. They have not objected to the "NO PARKING" signs in the past.

Mr. Ball said that a country road is designed to be narrow, so that travelers do not speed. That is the character they have tried to provide in the Walnut Grove Subdivision.

Ms. Edwards stated that she would recuse from voting, as she is a friend of the Balls. She stated that this request was not uncommon, as she had experienced, being a real estate professional. The only difference

here is that these streets are a bit narrower than the usual.

Ms. Moore asked what would not be unusual – the conditional use or the sign. Ms. Edwards said that neither would be unusual in a subdivision. Mr. Ball said that there are several 10' by 8' signs posted for real estate in some subdivisions.

Objectors' Rebuttal – Mr. Winters stated that he didn't dispute Ms. Edwards' sentiments, but he was not sure that these uses are common in subdivisions. However, he wasn't sure that Ms. Edwards meant that the one next door to his could be used for two subdivisions. Mr. Winters said that where all of the traffic from one subdivision is brought into another, then that is an unusual circumstance. He said that there were significant problems in this area if there was more than one parked car on the street. This requires traffic to weave on their streets. Traffic from two subdivisions does not need to be brought into one subdivision. He reminded the Board that this was a home for three years. He said that it was built, occupied, and vacated; but now it is proposed for an office. He said that he was opposed to this latest change.

Mr. Winters said that they had discussed the proposed use of the barn. It will not be ready for use by horses for some time. Since it will be a while until they are there, he believed that this was a far better solution to use the barn for this purpose.

Appellant's Rebuttal – Mr. Ball said that a resident on Walnut Grove Lane will lease the barn and pay \$30-35K per year, beginning in the next few months. He said that this will be used as a horse barn, once it is finished, for 24 horses, and that this will help the neighborhood association. It will not be used as a sales office.

Board Questions – Chairman Brown asked about the lots in the subdivision. Mr. Ball stated that there were 60 lots in the Walnut Grove subdivision, but there were to be 62 originally. He said that they worked with the Winters, who took some 30' by 50' to add to their lot. He said that 20 lots have been built upon. He said that he and his dad currently have five lots for sale. Chairman Brown asked if he owns two houses in the subdivision. Mr. Ball replied that he is a partner for the developer. Chairman Brown asked if he and his family own the 40 or so vacant lots. Mr. Ball replied in the affirmative.

Action – A motion was made by Ms. Moore, seconded by Mr. Stumbo to approve **C-2009-29: KERRY and TINA BALL** - appeal for a conditional use permit to establish a temporary real estate sales office in an Expansion Area Residential (EAR-1) zone, on property located at 2149 Winning Colors Lane, for the reasons provided by the staff, and subject to the four conditions recommended by the staff.

The votes were as follows:

Ayes: Moore, Stumbo

Nays: Meyer, Brown

Abstained: Edwards, Stout

Absent: Griggs

Ms. Moore's motion failed to pass.

Action – A motion was made by Ms. Meyer to disapprove **C-2009-29: KERRY and TINA BALL** - appeal for a conditional use permit to establish a temporary real estate sales office in an Expansion Area Residential (EAR-1) zone, on property located at 2149 Winning Colors Lane. Her motion did not receive a second.

Chairman Brown declared that the Board's votes meant that the requested conditional use permit was not granted.

Appellant's Comment – Mr. Ball asked for an explanation. He asked what he could do to have his request approved. Chairman Brown said that he was not sure that the Board was required to offer Mr. Ball a justification for their vote. Mr. Marx said that a reapplication could be offered at any time, since the Board did not formally vote to "disapprove" this conditional use permit. Mr. Ball asked if the staff could advise him on "how to get this done." Mr. Marx stated that he could advise Mr. Ball on their possible steps in the future.

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

The Staff Recommended: Approval, for the following reasons:

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

This recommendation is made subject to the following conditions:

1. The drive-through facility shall be established in accordance with the submitted application and amended site plan of May 13, 2009, with the understanding that some further site plan revisions may be required by the Divisions of Engineering, Traffic Engineering, or Building Inspection to satisfy their requirements.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any demolition activities and prior to construction of the new facility.
3. The parking lot and associated traffic aisles shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the proposed access points, parking lot, and traffic aisles shall be subject to review and approval by the Division of Traffic Engineering.
5. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
6. Landscaping required by Article 18 of the Zoning Ordinance shall be augmented by features such as brick or stone columns and decorative fencing to provide an enhanced buffer and screen for the parking lot and drive aisles that will surround the proposed building and drive-through facility, as conceptually depicted in the landscaping plan submitted by the appellant dated 4-21-09.
7. The exterior façade of the proposed building shall include stone and brick elements, with extensive use of windows, designed to complement the architectural features of buildings on the surrounding properties. In addition, a prominent architectural feature extending above the main roof line shall be provided at the front of the building, and extend (in some fashion) around the corner toward East Main Street. That entrance feature is intended to be a substantial walled and roofed structure, rather than a one dimensional parapet or false façade. These elements and features shall be described and depicted in detail in a set of elevation drawings, subject to review and approval by the Divisions of Building Inspection and Planning.
8. Public right-of-way extending through a portion of the subject property shall be closed, and the individual lots consolidated, if deemed necessary.
9. Any necessary utility relocations and easement releases shall be completed prior to the issuance of any building permits.

Staff Presentation – Mr. Marx presented the revised staff report on this application, which still recommends approval of the conditional use for a dual drive-through for a pharmacy, and displayed a rendered site plan on the overhead projector. He said that the Board held an extensive discussion on this request at their meeting last month, especially about the drive aisle on the north side of the building, and the entrance and exit details into and out of this proposed site for a CVS drugstore. Mr. Marx stated that this item was granted a continuance by the Board at last month's meeting. He described the odd shape of the subject property, given the fact that it fronts on three sides by East Main and East Vine Streets.

Mr. Marx said that a revised "entrance only" access point is now proposed on the west side of the drugstore building, which eliminates much of the discussion at issue last month regarding conflicting turning movements on and off of East Main Street. He also said that a new access is now proposed to East Main Street for the accessory parking lot. Upon review by the State Transportation Cabinet, that

office made a recommendation that there be a shift of this access location a few feet to the east, in order to "straighten up" the entrance and pedestrian access proposed from the CVS parking lot to East Main Street.

Mr. Marx said that condition #7 addressed the only unresolved issue with this proposal, which is related to the architecture of the proposed pharmacy, because this location was identified as a "gateway" location in the *Downtown Master Plan*. He displayed a three-dimensional illustration of the new building surrounded by the existing buildings in the area, and identified the access locations proposed on the revised site plan for the pharmacy. Finally, Mr. Marx circulated the letters received from the public about this application.

Chairman's Comments – Chairman Brown stated that he had spent a lot of time looking at this site. He thanked both the staff and the applicant for their hard work on this application. He appreciated that everyone had worked hard to try to reach a resolution of the design issues with this site.

Chairman Brown asked if anyone on the Board thought that a drugstore with a grocery component was a bad idea here. No Board member thought so. Chairman Brown stated that, just a week or so ago, he had to get some cough drops, and had to go out of downtown to Loudon Avenue to get that item from a store.

Petitioner's Presentation – Ms. Rena Wiseman, attorney for the applicant, distributed a packet of information to the Board. She thanked the staff, and said that she appreciated the time and attention given to their request. For the record, she said that the applicant does agree with the recommendation from the staff, including the recommended conditions for this use. She told the Board that they have tried to address many of the issues discussed at last month's meeting.

Ms. Wiseman displayed an aerial photograph of the site, which illustrated a panoramic view of the subject site from East Vine Street. She said that the subject property had the challenge of the roads that are near it. They merge along their frontage, and drivers do not usually slow down in this area. She said that this makes it tough for pedestrians, and she described Vine Street as a one-way speedway. She said that it will take time to make changes to these streets as recommended in the *Downtown Master Plan*. She stated that downtown hotel guests and downtown residents will have a need for the proposed pharmacy for cough drops, groceries and toothpaste. They want to fill that need with the pharmacy that is at the heart of this proposal.

She said that modern pharmacies are free-standing, and are complete with drive-through windows for convenience. They have found that many elderly people do not want to exit their car to pick up prescriptions. It is also nice for mothers to be able to keep their children in their cars. She said that the drive-through is a convenience, much like those offered at banks. They are convenient to patrons. She said that the pharmacy at this location can offer this convenience. Ms. Wiseman stated that major drugstore chains won't come downtown without the ability to have a drive-through. These facilities are not the major part of the customer traffic to and from the pharmacy, because only about 25% of their customers use them. She opined that the pharmacy drive-through is a low traffic generator.

Ms. Wiseman said that two drive-through lanes are needed for this pharmacy. The lane closer to the building allows the motorist to talk directly with the pharmacist, and pick up prescriptions. She said that the outside lane is primarily available to drop-off prescriptions. She said that this use will further what the community wants downtown.

Ms. Wiseman said that they have modified the proposed site plan from last month. These changes were identified on the PowerPoint presentation made by Ms. Wiseman. She showed that the access point nearest the adjacent Coach Craft building is now only 17' wide, and it is now an entrance only into the site. The other, newer, Main Street access is for a two-way traffic movement into and out of the parking lot. This plan will allow better access into the parking lot, and to the drive-through lanes.

Ms. Wiseman described the pedestrian facilities that are now proposed. They are proposing raised crosswalks to guide pedestrians into the main entrance of the CVS. The only resulting conflict with the drive-through lanes and pedestrians is along the Main Street sidewalk. The building had been shifted back 13' from what was proposed last month. She stated that this allowed an additional three parking spaces to be provided nearer the front entrance to the pharmacy. The exit of the drive-through lanes onto Water Street has been reduced to only 18' in width by this plan. She said that their plan suggested that the City put raised crosswalks in the Midland and East Main Street intersection.

Ms. Wiseman identified the landscaping plan that they have developed for their site. There will be wrought-iron fencing with stone pillars installed along their lot frontage. She said that they were requested to address why the building couldn't be moved. She identified on the overhead a culvert that exists under the site, associated with the Town Branch. It would be cost prohibitive to move this culvert, but parking can be provided over top of this site feature.

Mr. Kevin Phillips, Endris Engineering, also addressed the culvert under the subject property. He stated that the Urban Renewal Program years ago in the downtown area allowed many things that are no longer allowable today. While they could move the building, he said that they wanted to stay off of the culvert with their pharmacy building. A parking lot over top of it, however, would not change much on the site.

Ms. Wiseman displayed a table of trip generation rates for the bank and other downtown business uses from the Institute of Traffic Engineers. This information showed that the pharmacy had less than many of the other uses that currently exist downtown. Ms. Wiseman said that in March, they studied the use of the drive-thru at the Walgreen's drugstore on Nicholasville Road at Lowry Lane. The total number of daily trips through that drive-through facility ranged from 122-130 over the period selected for the study. This equates to about 10 or so customers per hour utilizing that facility.

Mr. Phillips circulated elevations and site plan renderings of this proposal to the Board. Chairman Brown thanked them for submitting this information, because he found it most helpful. Ms. Wiseman described the proposed use of brick, and noted the added height shown on portions of the pharmacy building. She said that "this is a starting point" for the conversations that have already been held between the staff and Mr. Gary Joy. She reminded the Board about Mr. Phil Holoubek's comments last month about redevelopment possibilities for the remainder of this block. She stated that their proposal is just a piece of that vision, and still would allow for a parking structure, and other redevelopment in the area, should it be approved.

Ms. Wiseman displayed a map of drive-through facilities located in the downtown area. There are ten drive-through banks downtown. She said that Community Trust Bank was approved by the Board a few years ago to add drive-through lanes for that location.

Ms. Wiseman then displayed an article from the Herald-Leader about the McDonald's restaurant that used to be located to the east on East Main Street. That was one of the most controversial applications ever heard by the Board. There were numerous objectors to that request. She said that with a later case in 2001, that same location was approved for a drive-through for a bank, but restricted to that use only. The neighborhood and Kerr Brothers Funeral Home supported that request, and it was approved by the Board. That location is home to the Cielito Lindo Restaurant now, and there is no drive-through located there.

Ms. Wiseman discussed the need for this use. She provided the Board with a copy of a 1982 study by a group known as the Lexington Economic Development Commission. That study stated, in the Retail Overview for Downtown, there is increased demand for convenience goods, such as the items found in the CVS pharmacy. That document stated that Lexington needs a more vibrant downtown in terms of retail uses.

Ms. Wiseman then presented a *Downtown Lexington Master Plan* excerpt. That document calls for more convenience uses downtown. She stated that the former Rite Aid drugstore at the corner of West Main & Limestone Street was just the type of use called for in that Plan. It stated that the downtown area could support an additional 10,700 square feet of convenience retail use. That is what they hope to do, and why they are interested in this site. She pointed out to the Board that this recommendation was made when the Rite Aid existed.

Ms. Wiseman presented a map of the area of jurisdiction for the Downtown Development Authority. Her map indicated that there were no pharmacies within the DDA area. The nearest one to the location of the subject property is on Loudon Avenue, which is some 1.4 miles away. She said that there is a need for this use.

Ms. Wiseman stated that there are a few places downtown for sundry items, including three convenience stores that also sell gasoline. However, this is not enough to support more people living downtown. She stated that she had received several letters and petitions in favor of this request, Woodward Heights: the

residents of Main & Rose, and others, which she entered into the record at this time.

Ms. Wiseman asked former Board of Adjustment member Martha Jenkins to speak about this request. Ms. Jenkins stated that, although she is a resident of Glendover Road, she had been interested in downtown issues for years. Having been a BOA member, in the past, she said that she knows how hard the staff reviews applications that come before the Board, and how the Board sometimes agonizes over their decisions. She said that she also knows the applicants have to work hard to meet ordinance requirements, and keep their project in a mode of economic viability. Ms. Jenkins stated that this will provide a necessary service for downtown, and will be welcomed. She felt this application was a compromise, but that this was also a win-win project for all involved, and urged the Board to grant approval of this request.

Ms. Wiseman's final PowerPoint slide was of a *Herald-Leader* editorial from the time when the Rite Aid store at Main & Limestone Streets closed one year ago. The editorial stated that the retail scene downtown was non-existent. It also said that residents of nearby apartment buildings will not have a pharmacy within walking distance. She pointed out that the last part of the editorial says what can or should be done.

Ms. Wiseman reminded the Board that this project did not require any government money or Tax Increment Financing, or any of the items recommended in the editorial. She said that this is the result of a lot of hard work by a lot of people. She quoted the editorial that the "need is now." Ms. Wiseman concluded by saying that is their position as well, and she asked the Board to consider approving it at this meeting, for the reasons recommended by the staff.

Citizen Comment – Ms. Jenkins said that this project is much more like a bank than it is a McDonald's restaurant, which she vigorously opposed as a BOA member.

Board Questions – Chairman Brown stated that he had reviewed last month's site plan. He asked if the entrance will be safe now that the entrance will be closer to the junction of Main and Midland. He was pleased that the one will be an "entrance-only" access, but said that is a concern.

Ms. Wiseman replied that there are two problems. She said that there is some traffic that turns from Vine onto Main Street—only about 37 trips in the PM peak hour. Regardless, there is a need to slow down the traffic. Their recommendation is for raised crosswalks at the Main and Midland intersection, which will hopefully help that situation.

She stated that the other issue is traffic turning from Midland onto Main. When the traffic signal has Richmond Road traffic stopped, then the right turn is possible from Midland onto Main. She thought that that condition, on balance, will allow their new plan to work. She also reminded the Board that the State had recommended a closer shift of their new access point toward Midland Avenue.

Mr. Phillips said that last month's plan was not as close to Main and Vine as an earlier version, which was not approved by the State and by Traffic Engineering. That led them to bring last month's plan, which looked at access to the rear of the store, to get it as far from the intersection as possible. Since then, they have moved the building farther back to be able to re-use the existing entrance, which the State had approved, provided it is shifted as they have proposed.

Chairman Brown asked how the raised crosswalks would be provided at the intersection apex. Mr. Phillips said that this would need to be a government project within the existing right-of-way. He stated that the traffic flow there is light. They have agreed to clear out an existing box planter next to the existing crosswalk at this intersection, to allow better handicap accessibility. He showed a photo of the tree and planter at this location, and suggested that it could and should be removed, in his opinion, to make a safer crosswalk.

Mr. Stumbo said that there is no question for the need for this facility downtown. He asked Mr. Gallimore about the State's approval of the entrance and exit, and the movement of the access point farther toward the existing intersection. Mr. Gallimore said that this plan is about the best compromise possible between pedestrian and vehicular traffic. Last month, Mr. Gallimore said that Traffic Engineering was concerned about the exit proposed onto Main Street from this property. This plan today represents a compromise, and the State's requirement to straighten the pedestrian access is another necessary compromise. He

said that this is a much better plan than the one reviewed by the Board last month.

Ms. Meyer asked if the 12' drive-through lane parallel to East Main Street could be eliminated. Ms. Wiseman said that the building footprint is constrained by the Town Branch culvert. Mr. Phillips replied that their current plan only requires one conflict between traffic exiting the site and pedestrians. Their desire was that these conflicts not occur twice. Chairman Brown asked for an explanation. Mr. Phillips said that the parallel lane means that the pedestrian traffic on the sidewalk will only cross vehicular traffic entering and exiting their site once.

Ms. Moore asked about the traffic exiting their site and coming back to use the drive-through. She asked why traffic wouldn't just come around the intersection to the Main Street entrance to access the drive-through. Mr. Phillips said that they wanted to keep their traffic on their site. Ms. Wiseman then illustrated this on the overhead, using the rendered site plan.

Ms. Edwards asked if it was not stated last month that the pharmacy won't be built without a drive-through. Ms. Wiseman replied in the affirmative, adding that their design will also work for Vine Street with either one-way traffic or a future two-way traffic flow. She again illustrated the vehicular movement that would take place, noting the possible conflicts with pedestrians, using the rendered site plan illustration. Mr. Phillips said that they believed that their plan would take the stress off of the existing intersection. He said that it would be far safer to keep the vehicular traffic on their site rather than allow that traffic to use the adjacent public streets just to access the drive-through lanes.

Action – A motion was made by Ms. Edwards, seconded by Mr. Stout, and carried unanimously (Griggs absent) to approve **C-2009-14: JOY & ASSOCIATES, INC.** - appeal for a conditional use permit to construct and operate a drive-through facility for a proposed pharmacy in the Downtown Business (B-2) zone, on properties located at 366, 370, 376 and 400 East Main Street, for the reasons provided by the staff, and subject to the nine conditions recommended by the staff, *changing condition # 1 to reference the site plan dated May 26, 2009.*

E. **Administrative Review** – Chairman Brown stated that the following case would be heard prior to the conditional use appeals.

1. **A-2009-32: LIBERTY WORSHIP CENTER** - appeals for an administrative review to allow a 200 square-foot sign to be placed on an existing 50-foot-tall support structure in a Professional Office (P-1) zone, on property located at 1975 Haggard Court (Council District 2).

The Staff Recommended: Disapproval, for the following reasons:

- a. The proposed freestanding sign, with a height of 50' and a size of 200 square feet, would be five times taller and five times larger than what is permitted in the P-1 zone. Pursuant to Article 17-7(e) of the Zoning Ordinance, a freestanding identification sign of 40 square feet is permitted in the P-1 zone, with a maximum height of ten feet.
- b. The existing 50' tall and 20' wide sign support is considered a nonconforming structure on this P-1 property. Adding a nonconforming 200 square-foot sign would increase the nonconformity of the structure, which is contrary to the intent and restrictive provisions of Articles 4-2 and 4-4(a) of the Zoning Ordinance.

Staff Presentation – Mr. Marx presented the staff report on this administrative appeal to the Board. He showed two photos of the sign structure that is proposed to support the proposed sign. Mr. Marx stated that this church is located very near the interchange at Interstate 64 & 75 and North Broadway, where there are much taller signs, including one next door for the Red Roof Inn.

Mr. Marx stated that the existing structure is proposed again for a sign in a P-1 zone. There used to be a dinner theatre and a television studio at this location, before the church occupied it. He oriented the Board to the location of the proposed free-standing sign on the existing structure. Mr. Marx concluded by stating that the staff recommends disapproval of this administrative appeal, for the reasons provided in the staff report, and appearing on the agenda.

Discussion – Mr. Stout asked if the structure is already on the site. Mr. Marx replied in the affirmative, and said that the proposed sign is five times taller than and five times as large as is permitted in the P-1 zone.

Ms. Moore asked if the height of the sign could be varied. Mr. Marx stated that the height of the sign could be varied by the Board, but that had not been requested. He said that signage could be transferred from one type to another, but he was not sure about other existing signage currently at the subject site. The staff would like to work with the appellant to allow for a different type of sign.

Mr. Stout said that he believed that this sign structure should have been taken down years ago.

Representation – Mr. Glinden Ashcraft was present on behalf of the Liberty Worship Center. He understood that they are located in a P-1 zone, and the other, taller signs nearby are in a B-5P zone. All the surrounding businesses have tall signs, and this sign is also desired to be visible from the nearby streets, but the church is not interested in a sign that is visible from the interstate. They are situated in the lowest portion of the land in the area, and all the surrounding buildings are taller than theirs. The sign they request is strictly intended for greater visibility for the church. The trees along the edge of the property block its visibility from the Interstate.

Discussion – Mr. Stout asked why this sign needs to be this large. Mr. Ashcraft stated that they designed the sign based upon the existing sign structure. The church's sign is proposed to be 50' tall by 20' wide. However, he told the Board that he would be okay with a sign atop the structure that is only 9' by 12' in size.

Ms. Moore asked if this sign structure wasn't already there, if the staff would say that the Ordinance doesn't allow this. Mr. Marx replied that the height of the sign can be varied, but that is not true for its size. Mr. Sallee stated that the staff is unsure whether or not there was the possibility of a transfer of sign square footage allowable at this location.

Mr. Stout stated that he could understand their need for a sign for their church, but not one this large. He believed that 200 square feet is too large a sign. Mr. Ashcraft stated that they have only a free-standing sign for their church located near Haggard Lane. Mr. Hume stated that he felt that sign should be removed, since it is not on the church's property. Mr. Stout thought that the existing structure should have been removed previously.

Chairman Brown stated that he is inclined to recommend a continuance to allow for more detail for the church's sign. Mr. Ashcraft asked if a variance could be requested for its height. Mr. Ashcraft stated that he had one other question, noting that Mr. Walker had come by last week to discuss their existing sign, and he now had a question about signs around town for other churches. There are a number of signs that exist around town in the rights-of-way for various streets. Mr. Hume replied that a number of signs are non-conforming, and pre-date the current Ordinance.

Mr. Esther Turner, a member of the Liberty Worship Center church, told the Board that they are trying to do the right thing, and that he had spoken with Mr. Walker. A storm had blown down their existing sign on Haggard Lane, and they only recently put it back up. He did not understand this fuss.

Action – A motion was made by Ms Edwards, seconded by Mr. Stout and carried unanimously (Griggs absent) to continue **A-2009-32: LIBERTY WORSHIP CENTER** - appeal for an administrative review to allow a 200 square-foot sign to be placed on an existing 50-foot-tall support structure in a Professional Office (P-1) zone, on property located at 1975 Haggard Court, to the June meeting.

Mr. Stout stated that he wanted this church to have a visible sign of some type.

IV. **BOARD ITEMS** – Chairman Brown asked if there were any items a Board member wished to present or be heard at this time. There were none offered.

V. **STAFF ITEMS** – Chairman Brown asked if there were any items a Staff member wished to present at this time.

A. **House Bill 55 Training Opportunity** – Mr. Sallee reminded that Board that there will be an APA audio-conference on Wednesday, June 24, 2009 at 4:00 p.m. in the Division of Planning conference room on the 7th floor of the Phoenix Building. The title of this audio-conference conference is "Planning Law Review" and will count toward 1.5 hours of

training credits for Board of Adjustment members.

VI. **NEXT MEETING DATE** – Chairman Brown announced that the Board's next meeting date will be June 26, 2009.

VII. **ADJOURNMENT** – There being no further business, Chairman Brown declared the meeting adjourned at 4:13 PM.

Peter Brown, Chairman

James Griggs, Secretary