

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

July 31, 2009

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:01 p.m. in the Council Chambers, 200 East Main Street, on July 31, 2009. Members present were Chairman Peter Brown, James Griggs, Carolyn Edwards, Barry Stumbo, and Jan Meyer. Members Louis Stout and Kathryn Moore were absent. Others present were Jim Hume, Division of Building Inspection; Jim Gallimore, Division of Traffic Engineering; Capt. Charles Bowen, Division of Fire & Emergency Services, and Rochelle Boland, Department of Law. Staff members in attendance were Barbara Rackers, Jim Marx and Wanda Howard.

Swearing of Witnesses – Prior to sounding the agenda, Chairman Brown asked all who wished to speak at today's meeting to raise their hand and be sworn. He administered the oath to numerous citizens in attendance.

- II. **APPROVAL OF MINUTES** – Chairman Brown announced that the minutes of the September 26, 2008, February 27, 2009 and June 26, 2009 meetings would be considered for adoption at this time.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously (Moore and Stout absent) to approve the minutes of the September 26, 2008, February 27, 2009 and June 26, 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 asked if there was any person having an appeal before the Board that wished to request postponement or withdrawal of such at this time. There was no response to his inquiry.

- a. **A-2009-47: SANDRA SCHRYVER** - an administrative review to determine that the Division of Building Inspection's issuance of a fence permit was done in error, in a Single Family Residential (R-1T) zone, on property located at 2717 Chelsea Woods Court (Council District 7).

The Division of Building Inspection will report at the public hearing.

Representation – Ms. Sandra Schryver, appellant, was present. She requested a one-month postponement of her appeal. She stated that she was "in the middle of some litigation."

Objection – Mr. Paul DeBose was present, and stated that he was in opposition to the requested postponement.

Discussion – Ms. Schryver said that she was in the middle of some litigation, but was trying to resolve this issue, and asked for additional time to do so. Mr. Griggs asked Ms. Schryver about how she intended to do that. Ms. Schryver replied that there was an "adverse possession" suit in the works which she hoped would resolve this issue, and the need for this review. Mr. Griggs asked if 30-days would be sufficient time to do so. She said that she hoped so, but that both attorneys were working to resolve this matter.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stumbo, and carried unanimously (Moore and Stout absent) to postpone to the Board's August 28, 2009 meeting **A-2009-47: SANDRA SCHRYVER** – an administrative review to determine that the Division of Building Inspection's issuance of a fence permit was done in error, in a Single Family Residential (R-1T) zone, on property located at 2717 Chelsea Woods Court.

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.

- a. **V-2009-43: CASTINE PROPERTIES / LEXINGTON TWO, LLC** - appeal for a variance to reduce the required setback from a residential zone (for storage units with overhead doors) from 100 feet to 60 feet, in a Light Industrial (I-1) zone, on property located at 981 Contract Street (Council District 1).

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 area. The proposed building will be similar in appearance to other commercial buildings in the immediate area, and the door openings will not be oriented toward the residential area that borders the north side of the property. A substantial landscape buffer is to be provided along the rear property line that adjoins a residential zone.
- b. The relatively narrow width of the lot, although not highly unusual, has placed some constraints on how a long and narrow building with individual storage units can be sited on the property.
- c. Strict application of the Zoning Ordinance would result in a loss of 25% of the units that can be built, or possibly force the appellant to construct two buildings rather than one in order to provide the desired number of units. Such significant implications do not appear to be warranted in this particular case.
- d. The circumstances surrounding this variance request have arisen from the appellant's desire to use the property as efficiently as possible, and are not the result of any prior actions intended to circumvent the requirements of the Zoning Ordinance.

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

1. The storage building 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. If deemed necessary by the Division of Engineering, encroachment agreements for the portions of the handicap parking space and dumpster pad within a drainage easement at the rear of the property shall be obtained prior to the issuance of any building permits.

Representation – Mr. Jeff Duncan, architect, was present, along with Mr. David Thompson, principal with Castine Properties. Chairman Brown asked if the appellant had read the conditions recommended by the staff, and if the appellant would agree to abide by those conditions. Mr. Duncan and Mr. Thompson both replied in the affirmative.

Discussion – Mr. Marx asked if an additional condition (#4) could be added to the Board's action. He displayed a fourth condition on the overhead projector, which read as follows:

- "4. The final design of the parking layout and circulation shall be subject to review and approval by the Division of Traffic Engineering."

Chairman Brown asked if the appellant was agreeable to the added condition. Mr. Duncan and Mr. Thompson both replied in the affirmative.

Ms. Meyer asked if the trees shown on the site plan would be retained. Mr. Marx replied in the affirmative.

Action – A motion was made by Ms. Meyer, seconded by Ms. Edwards, and carried unanimously (Moore and Stout absent) to approve **V-2009-43: CASTINE PROPERTIES / LEXINGTON TWO, LLC** – an appeal for a variance to reduce the required setback from a residential zone (for storage units with overhead doors) from 100 feet to 60 feet, in a Light Industrial (I-1) zone, on property located at 981 Contract Street, for the reasons provided by the staff, and subject to the four conditions recommended by the staff.

- b. **V-2009-44: WILLIAM KEVIN MURPHY** - appeals for a variance to reduce the required side yard from 1 foot, 6 inches to 1 foot in order to add a new roof to a detached garage, in a Two-Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 141 West Bell Court (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, since the existing walls of the detached garage, and their location relative to the side property line, will be retained.
- b. Replacing the existing flat roof with a gable roof should result in the structure being more in character with

- other accessory structures in this historic neighborhood.
- c. The location of the existing detached garage is a special circumstance that contributes to justifying a 6" reduction in the required side yard setback, in order to allow the proposed roof replacement.
 - d. Strict application of the Zoning Ordinance would require that the overall size of the detached garage not be increased, thus preventing the installation of a roof with a greater pitch. Alternatively, strict application would require that the entire structure be torn down and rebuilt with a setback of at least 18". Under the circumstances, neither option appears to be reasonable.
 - e. The circumstances surrounding this variance request are not the result of actions taken by the appellant, but can be attributed to actions taken by a previous owner many years ago. The appellant's actions are intended to fix an existing leakage problem and improve the appearance and storage capacity of the garage, while retaining the historic location one foot in from the side property line.

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

- 1. The new roof shall be installed 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. The new roof shall be designed and constructed in accordance with a Certificate of Appropriateness issued by the Board of Architectural Review, or as otherwise approved by the Division of Historic Preservation.

Representation – Mr. William Kevin Murphy was present for his appeal. Chairman Brown asked if there were any questions from Board members for Mr. Murphy, but there were none. Chairman Brown then asked staff how this relief, if granted, would not increase the structure's non-conformity. Mr. Marx replied that if the building is to remain at the same setback, it would not constitute an increase in non-conformity.

Mr. Murphy stated that he had a brief power point presentation he wished to present, reiterating that it was a short presentation. Chairman Brown asked that the presentation be confined to the drawings only.

Mr. Murphy then presented the proposed building elevations for this garage, stating they had already been approved by the BOAR. He further explained the elevations, stating that there is no overhang on the garage roof as proposed.

Mr. Stumbo asked if storage space was being added to the garage. Mr. Murphy replied affirmatively and asked to show some pictures explaining the need for the proposed repair and restoration. Mr. Murphy stated that he stabilized his roof in 1999 and has re-roofed it twice since owning his home. He explained that the roof was not built to standards and used materials were utilized. He said it had been "a nightmare" and that what he was proposing, with the gable roof and increased pitch, was more compatible with the neighborhood.

Mr. Hume expressed concern with the non-conformity with the amount of storage space being added. He stated that in the future, this amount of space could be finished out as office space, therefore increasing the non-conformity. He stated that he was not concerned about the perimeter setback proposed.

Mr. Murphy asked to show additional photos of the garage prior to 1955. He did so, and stated that the increased space would allow him to store outdoor furniture, awnings and the like in the garage space and not in his attic.

Mr. Stumbo asked why he was not tearing the garage down and building new, considering its poor condition. Mr. Murphy said he had considered that, but ultimately the cost of remodeling was cheaper than building new construction. He said he was not averse to the Board adding a condition restricting future remodeling of the space to prevent it from increasing any non-conformity.

Mr. Griggs asked about the timetable proposed for this construction. Mr. Murphy replied that his contractor had estimated five days to construct the new gable roof.

Mr. Hume said he is not against the project but suggested that the Board add the condition as agreed to by the appellant. Ms. Boland asked for clarification from the staff on the issue of the non-conformity. Mr. Marx replied that the 12" setback was non-conforming. Ms. Boland stated that if the applicant was to build a new garage at 18" it would be conforming, and would be allowed the extra storage he desires, as well. She said she did not believe the additional note was necessary.

Action - A motion was made by Mr. Griggs to approve **V-2009-44: WILLIAM KEVIN MURPHY** – an appeal for a variance to reduce the required side yard from 1 foot, 6 inches to 1 foot in order to add a new roof to a detached garage, in a Two-Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 141 West Bell Court based upon the staff recommendation, and subject to three conditions recommended by the staff, as he did not believe that the fourth condition was still necessary.

The motion was seconded by Ms. Edwards and passed unanimously (Moore and Stout absent).

- c. **V-2009-46: LEXINGTON HABITAT FOR HUMANITY** - appeals for a variance to reduce the required rear yard from 10 feet to 5 feet in order to retain an elevated wood deck, in a Two-Family Residential (R-2) zone, on property located at 408 Peachtree Road (Council District 7).

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 deck is only 4.5' wide, and will serve not as an activity area but as a means of egress from the rear door of a one-story residence.
- b. The limited depth of this corner lot, and downward slope from front to rear, are special circumstances that contribute to justifying a reduction in the rear yard setback requirement.
- c. Strict application of the Zoning Ordinance would force the appellant to modify the deck so that it could be classified by the Division of Building Inspection as just part of a stairway rather than as a deck. At the minimum, this would require that either the width or the height of the deck be reduced. There do not appear to be any clear-cut benefits to requiring such a modification.
- d. The circumstances related to this variance request appear to have arisen out of a misunderstanding regarding the conditions under which structures such as a deck can project into a required rear yard.

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

1. The rear deck may remain in place as depicted in the submitted application and site plan.
2. An amended building permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board.

Representation – Mr. Adam Bradshaw was present on behalf of the appellant. Chairman Brown asked if he had reviewed the two recommended conditions, and if he and the appellant would agree to abide by them. Mr. Bradshaw replied in the affirmative.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously (Moore and Stout absent) to approve **V-2009-46: LEXINGTON HABITAT FOR HUMANITY** – an appeal for a variance to reduce the required rear yard from 10 feet to 5 feet in order to retain an elevated wood deck, in a Two-Family Residential (R-2) zone, on property located at 408 Peachtree Road, for the reasons provided by the staff, and subject to the two conditions recommended by the staff.

- d. **CV-2009-40: HAYMAKER DEVELOPMENT CO., LLC** - appeals for a conditional use permit to construct and occupy an outdoor theater; and variances to: 1) reduce the required setback from a residential zone from 1,000 feet to 0 feet, and 2) increase the allowable distance for required off-street parking from 300 feet to 1,000 feet, in a Highway Service Business (B-3) zone, on property located at 956 Midnight Pass (Council District 10).

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

- a. An amphitheater at this location should be a beneficial amenity for the Beaumont community, and should not adversely affect the surrounding properties, provided that the timing of events is managed to minimize the potential for noise or other disturbances. Use of the facility will be available to a variety of community-oriented groups, and needed management oversight will be provided by a non-profit organization.
- b. All necessary public facilities and services will be available and adequate for the proposed use.

The Staff Recommended: Approval of a variance reducing the residential setback from 1,000' to 0', for the following reasons:

- a. Granting this variance should not adversely affect the public health, safety or welfare, nor alter the character of the area. The townhome development in the adjoining R-3 zone was designed with the knowledge that a central feature would be built, and the performing stage of the amphitheater will be located on the opposite side of the inner circle, away from the townhomes.

- b. The development history of the central area inside of Beaumont Centre Circle, and the provision of an open space buffer between the townhomes and the subject property, are special circumstances that contribute to justifying the elimination of the residential setback.
- c. Strict application of the Zoning Ordinance would prevent the construction of a community amphitheater at this location, which would deprive the community of an amenity that has been expected for several years.
- d. The circumstances surrounding this variance request have arisen as the details of the central feature and the surrounding developments have evolved, and are not the result of any actions taken by the appellant intended to circumvent the setback requirement.

The Staff Recommended: Approval of a variance increasing the allowable distance from the facility to required off-street parking from 300' to 1,000', for the following reasons:

- a. Granting this variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, provided that reasonable accommodations are made for alternative parking and access arrangements for handicapped persons. Having to walk a short distance for special events is a customary practice, and many parking spaces will be available closer than 1,000' from the subject property. As nearby properties currently under the control of the appellant are developed, provisions will be made to accommodate parking needs associated with the use of the amphitheater, diminishing the importance of this variance, over time.
- b. The nature of the proposed use, the fact that many adjacent lots have not yet developed, and the desire to preserve open space around the amphitheater, are reasonably considered as special circumstances that serve to justify the requested variance.
- c. Strict application of the Zoning Ordinance would either delay construction of the amphitheater until the adjoining or nearby properties are developed, or force the appellant to substantially reduce the size of the amphitheater and seating areas so that there is sufficient space on site for the required off-street parking. An uncertain delay, which might be several years, would deprive the community of a desired amenity. Providing all of the required parking on site would result in a total elimination of open space surrounding the amphitheater, which would not be desirable.
- d. The circumstances leading to this variance request have resulted primarily from the uncertainty as to when the adjoining and nearby properties less than 300' from the subject property are developed.

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

- 1. The amphitheater shall be constructed and operated in accordance with the submitted application and a revised site plan depicting the following: (1) The provision of at least 6 handicap parking spaces within 100' of the subject property, or (2) A drop-off area for handicapped persons along the southerly portion of the subject property that fronts on Midnight Pass; (3) A 5' wide sidewalk from Midnight Pass to the inner circle; and (4) at least three 8' by 16' (approximate dimensions-can be amended to comply with ADA requirements) paved seating areas for handicapped persons; one where the sidewalk from Midnight Pass connects to the inner circle, one where the sidewalk from the townhome development connects to the inner circle, and one in the immediate vicinity of the amphitheater stage near where the access drive/pathway will connect to the inner circle. Any amendments to the Final Development Plan sanctioned by the Planning Commission in the future, whether related to these revisions or otherwise, shall be considered as acceptable and shall not void this conditional use.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction, with an occupancy permit to be obtained prior to opening the facility.
- 3. The paved seating areas for handicapped persons shall be designed to be ADA compliant, with railings and other features provided as required therein.
- 4. Shared parking agreements to the satisfaction of the Division of Building Inspection shall be obtained for a minimum of 200 off-street parking spaces located no more than 1,000' from the subject property.
- 5. At such time that any of the adjoining or nearby properties currently known as 3194 & 3052 Beaumont Centre Circle and 940, 961 & 973 Midnight Pass are developed by the appellant or another entity, off-street parking spaces on those properties shall be shared with the amphitheater. Priority shall be given to providing up to 6 handicap parking spaces on that portion of 3194 Beaumont Centre Circle that immediately adjoins the north and east sides of the subject property.
- 6. The final design of the loading/unloading access drive shall be subject to review and approval by the Division of Traffic Engineering.
- 7. The final design of the drop-off area along Midnight Pass shall be subject to review and approval by the Division of Traffic Engineering.
- 8. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
- 9. The timing of and type of events taking place at the amphitheater shall be managed to ensure that the

requirements of the Noise Ordinance are adhered to.

Representation – Mr. Tim Haymaker, developer, was present and stated that, generally speaking, most of the conditions for approval were acceptable; however, he said some revisions would be requested after clarification of a few items. He stated that the proposed amphitheater (Moondance Pavilion) will serve as an amenity for the Beaumont residents and the community at large, being available to the YMCA, public library, local schools and other groups. The facility will be owned and maintained by a not-for-profit corporation. A minimal user fee will be charged for the facility's upkeep and maintenance of the grounds as well. The 1.6-acre parcel on which the structure and amenities will be built was donated by Mr. C. M. Gattton.

Mr. Haymaker initially spoke about the list of property addresses (identified under Condition #5) where off-site parking for the proposed amphitheater was to be provided. He stated that there are about one million square feet of office space in the Beaumont Centre; and that the parking lots associated with those uses are not utilized during the evenings and weekends -- which is not the case in the retail area. He said the 3194 Beaumont Centre Circle address actually makes up 6 professional office lots, although they have not been divided up yet. Mr. Haymaker noted that a three-story 3,000 square-foot building is currently under construction for Whitaker Bank; and there is a signed agreement for shared parking on the property where 120 parking spaces will be provided. In addition, the owner of the Whitaker Bank building also owns two adjoining buildings (Forcht Bank and offices) that will have 120 spaces each. He reiterated about having signed agreements on all three of those buildings totaling over 300 spaces, and the prospect of having under reservation two lots for two additional companies where the sales will be conditioned upon a shared parking agreement. Mr. Haymaker said they would like to condition the parking on the 3194 Beaumont Centre Circle address and eliminate the other listed addresses for properties that are zoned B-3, where such uses as restaurants, shops, etc., would conflict with the events to be held at the proposed amphitheater. He believed there would be over 1,000 parking spaces within 1,000 feet of the subject property.

Secondly, Mr. Haymaker addressed the three 8' x 16' pads or paved seating areas in front of and on either side of the stage for handicapped persons, and the problem with the location of one pad on the side that adjoins the townhouse project, which has stairs to meet the grade of the walk. Instead, he proposed combining all three of the paved seating areas into one and placing the entire area in front of the stage. He said this one large, centrally located pad will be approximately 25% larger than the three separate seating areas combined, and it will ultimately be the closest point to the handicapped parking when the building adjoining it is constructed. Mr. Haymaker noted the 500-600 feet of Majestic Drive that is to be constructed contemporaneously with the amphitheater. He proposed painting 6 handicapped spaces on the street, constructing the sidewalk adjacent to them, and placing three ADA approved ramps up to the sidewalks for wheelchair access to the paved seating area.

Mr. Haymaker talked about the condition to provide a temporary turnaround area off Midnight Pass, and the problem with having this at the opposite end of where the proposed paved seating area is located, which he felt would be in conflict with the traffic pattern. Referring to the site rendering, he proposed to take the 150-foot strip, temporarily paint it and add the three crosswalks. He spoke about the 12-foot-wide access road that would have bollards at the entrance for every performance, but would allow equipment, props, costumes, etc. to be transported to the back of the stage. He said that connection would be made when the structure is built.

Mr. Griggs stated that this was an admirable project. However, considering the number of changes Mr. Haymaker was proposing, he felt that the details should have been worked out previously with the Planning staff and incorporated into the application before this appeal was brought to the Board for consideration today. Mr. Haymaker responded that after receiving a copy of the staff report on Thursday, he started moving as fast as he possibly could to get things resolved. Mr. Griggs asked if Mr. Haymaker would be agreeable to a 30-day postponement to allow time to get the proposed changes worked out. Mr. Haymaker replied that they really needed to get started on the project as soon as possible; particularly since the permit for the road construction would soon expire, which they had wanted to coincide with building the amphitheater. He asked for the Board's indulgence.

Chairman Brown asked if there were any other changes Mr. Haymaker wished to make at this time. Mr. Haymaker reiterated the items that were covered: 1) to consolidate the paved seating area for handicapped persons; 2) to have the handicapped parking marked on the street; and 3) to eliminate the temporary turnaround in the curve of Midnight Pass. He expressed his appreciation for whatever the Board could do to assist them with this project.

In response to Chairman Brown's request for comment, Mr. Gallimore stated, with regard to the on-street handicapped parking, that there has to be a striped unloading area for people who are limited to a wheelchair, in order for them to get out of their vehicles either by mechanical means or on their own; and that it wasn't sufficient to paint stripes on the road, erect a sign and call it handicapped parking, which does not comply with ADA standards. He said the complexity of the issue might be the reason this plan was originally approved without any kind of handicapped parking in the proximity, and basically utilizing the handicapped parking of the adjacent buildings. However, the problem with that issue is a caveat in the ADA guidelines that states that handicapped parking should be strategically located. He said if the handicapped parking is a good distance away from the amphitheater, it is questionable whether that would be compliant with ADA guidelines.

Secondly, Mr. Gallimore noted his concern with the way the parking at the back end of the curve was outlined, the geometry of which didn't work very well. He thought that either the spaces could be shifted away from the curve a little, or some changes in the vicinity of the intersection could be made in order for this to work, although there were no dimensions to go by. He said they had mostly concentrated on looking at a drop-off area for handicapped persons on the portion of the property that fronts along Midnight Pass, although he understood the appellant's preference for not wanting to do that; and he was better prepared to talk about alternatives along Midnight Pass, instead of Monarch, as suggested. Mr. Gallimore stated that, rather than having dedicated handicapped spaces, they also had discussed striping the unloading areas where handicapped persons could possibly be dropped off/picked up, and the vehicle itself would actually be parked off site. He said this is a very unique scenario because there is basically no on-site parking.

Ms. Meyer questioned the use of the property parallel to the handicapped parking. Mr. Haymaker responded that it was zoned P-1 or Professional Office. She asked if the handicapped parking could be put there. Mr. Haymaker replied that when the building is constructed, there will be 6 dedicated handicapped parking spaces. He also noted that there will be a park next to the amphitheater. A rendering of the proposed amphitheater was shown to the Board.

At this point, Mr. Gallimore and Mr. Haymaker briefly discussed putting the handicapped parking on the adjacent lot, which Mr. Gallimore felt would solve a lot of problems, one of which was proximity to the amphitheater.

Referring to the map shown previously, Chairman Brown asked what was planned for the two lots located near the townhomes adjacent to the amphitheater. Mr. Haymaker responded that those are greenspace buffers between the townhouse community and the edge of the amphitheater. He noted having an agreement with Mike Warner (Warnerbuilt Homes) to install a dense tree line in the 30-foot landscape easement that would address noise and light pollution. He estimated that it was about 85 feet from the front doors of those townhouses to where the trees will be located.

Chairman Brown asked whether Mr. Gallimore would be more comfortable with this plan if the parking, including handicapped parking, was subject to review and approval by the Division of Traffic Engineering. Mr. Gallimore replied that if a workable solution cannot be found for the handicapped parking, he would like to have the option where they would go back to what the Planning Commission agreed to, because he wasn't sure if the offers on the table are going to be viable. With regard to the small access road that was already proposed, he said they had thought about having 90-degree handicapped parking off that; however, the road probably would have to be widened and a sidewalk installed. Mr. Gallimore said the other thing that would make him more comfortable with this plan was when the adjacent lot was developed, there would be 6 handicapped spaces along that side that are ADA compliant and accessible to the amphitheater. Mr. Haymaker concurred and said that was their plan, to have 6 handicapped spaces adjacent to the amphitheater.

At this point, Chairman Brown determined that it was the Board's pleasure to try to get the plan-related issues, particularly regarding the parking, worked out today. He requested counsel's assistance with drafting the necessary modifications pertinent to Conditions #1 and #5. For clarification purposes, a brief discussion between Mr. Haymaker and Ms. Boland followed. Chairman Brown announced that this case would be tabled while Ms. Boland, with the assistance of Mr. Marx, Mr. Hume and Mr. Gallimore, worked on drafting the suitable conditions.

Note: Chairman Brown recessed the meeting at 2:10 p.m. The meeting was reconvened at 2:20 p.m., at which time the Board proceeded to hear the next case on the agenda and subsequently returned to the subject appeal.

At this time, Mr. Marx read the following revision of Condition #1, which was shown on the overhead: "The

amphitheater shall be constructed and operated in accordance with the submitted application and a revised site plan as needed after working with Traffic Engineering to attempt to provide at least six handicap parking spaces within 100' of the subject property, if practical at this time, and also providing an ADA compliant paved seating area for handicapped persons directly in front of the stage in a minimum area of 600 square feet."

The revision of Condition #5 was read by Mr. Marx as follows: "At such time that any of the adjoining property currently known as 3194 Beaumont Centre Circle is developed by the appellant or another entity, off-street parking spaces on that property shall be shared with the amphitheater. Priority shall be given to providing at least 6 handicap parking spaces on that portion of 3194 Beaumont Centre Circle that immediately adjoins the north and east sides of the subject property and will be ADA accessible to the amphitheater."

Chairman Brown asked what the property at 3194 Beaumont Centre Circle was zoned to be used for. Mr. Haymaker responded that it is zoned Professional Office and is currently empty development property. Chairman Brown then asked if the tenants of 3194 would be utilizing the parking area in the evening. Mr. Haymaker said there may be some tenants that occasionally utilize the parking; however, he reiterated that there will be at least 1,000 parking spaces available once 3194 is completed into 5 office buildings.

For the Chairman's clarification, Mr. Marx showed the notification area map on the overhead and pointed out the property located at 3194 Beaumont Centre Circle in relation to the proposed amphitheater. Mr. Haymaker noted that the Whitaker Bank building was actually on one lot coming out of what is presently 3194 Beaumont Centre Circle and will be 30,000 square feet in size with 130 parking spaces.

Chairman Brown asked if there were any other questions or discussion necessary for this request. There was no response from Board members. Chairman Brown then asked if Mr. Haymaker had reviewed the changes offered to the original conditions, if he was satisfied with them and would abide by them. Mr. Haymaker responded affirmatively.

Action – A motion was made by Mr. Stumbo, and seconded by Ms. Edwards to approve **CV-2009-40: HAYMAKER DEVELOPMENT CO., LLC** - a conditional use permit to construct and occupy an outdoor theater; and variances to: 1) reduce the required setback from a residential zone from 1,000 feet to 0 feet; and 2) increase the allowable distance for required off-street parking from 300 feet to 1,000 feet, in a Highway Service Business (B-3) zone on property located at 956 Midnight Pass, for the reasons listed by the staff and subject to the conditions listed by the staff, including the revisions of Condition #1 and Condition #5 as stated herein.

The votes on the motion were as follows:

Ayes: Edwards, Griggs, Meyer, Stumbo
Nays: Brown
Absent: Moore, Stout

The motion for approval carried 4 to 1.

- e. **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 conditions imposed at the time of approval by the Board 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.

Representation – Mr. Clint Abbott, M2D Design, was present representing the appellant. Mr. Abbott told the Board that he had not been working on this project from the start, but that Mr. Hume from the Division of Building Inspection had been here since the beginning of this process. He then asked Mr. Hume to explain what had taken place over the last seven years, since this was first presented to Building Inspection.

Mr. Hume stated that the first layout for the parking was to have an exit to the rear on to the adjacent alley. The new plan submitted to his office shows an exit out onto Fourth Street--allowing for more control and a smooth flow of traffic. This plan will also allow for more parking than originally presented. Mr. Hume said that this had been reviewed by several other city agencies, including Mr. Gallimore from Traffic Engineering and Mr. Brock from Engineering. Mr. Brock said that before his office would issue a grading permit he wanted approval from Building Inspection and this Board. Mr. Hume stated that he and Mr. Brock and Mr. Gallimore were more comfortable with approving this new plan, allowing this process to move forward.

Chairman Brown asked what needed to be done to move forward because he thought they were there for a revocation of this plan. Mr. Hume asked for a commitment from the Diocese that they would have this job done within the next 60 days (from today). Mr. Hume asked if Mr. Abbott could speak for the Diocese, and noted that the Diocese is somewhat in a corner because they need to comply with Building Inspection because they are in violation with the project at this time. Building Inspection had worked with the Diocese and believes that this plan is now approvable, and he asked for Board approval, so the plan could move forward.

Chairman Brown asked if they could approve a plan that they have not seen. Mr. Hume asked them to approve this plan because they have now met approvals of Building Inspection and other governmental agencies, and he did not want to have to delay them by having to re-advertise their new plan. Mr. Hume believed if this was to move forward as a continuance, then they could continue to work and may have this project in compliance within a short period of time. He felt that if this plan should have to be re-advertised, then it could drag on for the next few months.

Mr. Abbott thought that the 60-day limit could be a little too aggressive, and asked for 90 days. Mr. Abbott said that the company he works with would help the Diocese in picking out a contractor or taking the project out to bid, but could not guarantee the job would be completed in even the 90 day period of time. Mr. Abbott asked for a 90-day continuance. Mr. Hume asked that everything that needed to be done to be in compliance be completed by then.

Chairman Brown asked if they were not able to have everything completed within 90 days, whether the Board would need to hold a revocation hearing. He recalled that, at the last meeting, the Reverend for the Diocese admitted that they were not in compliance with the Board's limitations. Mr. Abbott said that he had tried to "get hold of someone" but was unable to contact anyone. He did not want to commit to having this work completed without speaking to someone at the Diocese. He was not familiar with their financial status and did not want to commit to anything without first speaking to the Diocese.

Chairman Brown asked what the pleasure of the Board would be. After a moment of silence, he then asked if there were any other questions.

Mr. Hume offered to retrieve a set of plans from his office for Board review, if that would be of help to the Board. He then said that he felt that they had made a positive step forward with this new plan.

Mr. Griggs said that they were not approving a set of plans but agreeing to a continuance of this revocation hearing for 90 days. Mr. Hume stated that Ms. Boland brought up the point this morning that, looking at the approved conditions, one of them states that there needs to be "an amended plan to the approval of any necessary parties." Mr. Hume said that he felt more comfortable with this condition.

Action – A motion was made by Mr. Griggs, seconded by Ms. Edwards and carried unanimously (Moore and Stout absent) to continue for 90 days **C-2002-2: THE EPISCOPAL DIOCESE OF LEXINGTON, INC.** –a revocation hearing at that time for the property in a (R-4) zone located at 203 East Fourth Street, to allow the Diocese to have their plan come into compliance. If this is not completed within 90 days, then they would return to the Board.

Mr. Hume asked Mr. Griggs if the purpose of the 90-day continuance was to allow time for the church to come into compliance. Mr. Griggs replied affirmatively.

- f. **C-2005-53: FENDER FUNERAL DIRECTORS** - the Board of Adjustment has requested a revocation hearing for a conditional use permit granted in May 2005 (to expand and occupy an existing residential structure as a funeral home in an Agricultural Urban [A-U] zone, on property located at 1593 Russell Cave Road [Council District 2]) for failure to comply with conditions imposed at the time of approval.

The conditions imposed at the time of the approval by the Board are as follows:

1. The funeral home shall be established in accordance with the submitted application and site plan, or as approved by the Division of Building Inspection.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The design of the off-street parking areas and access to Russell Cave Road shall be subject to approval by the Division of Traffic Engineering.
4. The off-street parking areas shall be paved, with spaces delineated and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
5. Any landscape buffers required by Article 18 of the Zoning Ordinance for the vehicular use areas shall be extended to include the full extent of the property perimeter, excluding frontage on Russell Cave Road. Existing landscaping shall be retained and maintained to the maximum extent feasible.
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 outdoor pole lighting for the facility shall be of a shoebox (or similar) design, with light shielded and directed downward to prevent any disturbance to surrounding residential properties.
8. That current privacy fence shall be maintained and extended to 10' from the sidewalk at Russell Cave Road, unless the affected neighbor is opposed.

The Division of Building Inspection will report at the hearing.

Representation – Mr. Richard Murphy, attorney, was present representing the appellant. Mr. Murphy stated that they had been given 30 days to complete a plan as set forth by the Board of Adjustment last month and that, to date, it had not been completed. He said that Mr. Fender was working to do some additional paving as requested by Mr. Gallimore and was attempting to gather the funds required to complete the plan that was put forth by Strand Associates.

Mr. Murphy stated that Mr. Fender still had every intention of completing the plan as approved by the Board, but asked for a two month continuance, in order to allow enough time to finish the work. Mr. Murphy said that Mr. Fender acknowledged that he could not have funerals or services on the site during this time.

Mr. Hume stated that he thought the applicant was making a good faith effort to comply with the plan as approved. He had no issue with the requested continuance, provided the applicant was not using the property directly to conduct business during that time.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stumbo to continue **C-2005-53: FENDER FUNERAL DIRECTORS** - a revocation hearing for a conditional use permit granted in May 2005 (to expand and occupy an existing residential structure as a funeral home in an Agricultural Urban [A-U] zone) on property located at 1593 Russell Cave Road, to the Board's September, 2009 meeting, provided that there was no use of the facility during this time.

The votes on the motion were as follows:

Ayes: Brown, Meyer, Stumbo

Nays: Griggs

Abstain: Edwards

Absent: Moore, Stout

The motion for approval carried 3 to 1, with one abstention.

- g. **C-2009-36: JERRILL JOHNSON** - appeals for a conditional use permit to establish a home occupation (career and finance coaching), in a Single Family Residential (R-1E) zone, on property located at 2813 Michelle Park (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Noisy equipment or potentially hazardous material will not be used for the counseling services to be provided. Adequate off-street parking is available for a limited number of clients that will be coming to the home, and no significant increase in traffic is anticipated.
- b. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The home occupation shall be established in accordance with the submitted application and site plan, with no more than two appointments for individual clients to take place at this location on any given day.
2. Appointment times shall be staggered so that there will not be any overlap between arrival and departure times of clients.
3. The activity shall at all times comply with the restrictive provisions for home occupations as outlined in Article 1-11 of the Zoning Ordinance.
4. A Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to beginning the home occupation.
5. This approval shall become null and void should the appellant cease to either own or occupy the subject property.

Representation – Mr. Jerrill Johnson, appellant, was present. Chairman Brown asked if Mr. Johnson had read the staff's recommended conditions for approval, and if he would agree to abide by them. Mr. Johnson replied affirmatively.

Action – A motion was made by Ms. Edwards, seconded by Mr. Stumbo and carried unanimously (Moore and Stout absent) to approve **C-2009-36: JERRILL JOHNSON** – an appeal for a conditional use permit to establish a home occupation (career and finance coaching), in a Single Family Residential (R-1E) zone, on property located at 2813 Michelle Park, for the reasons recommended by the staff, and subject to the two conditions recommended by the staff.

- h. **C-2009-38: HOPE CENTER, INC.** - appeals for a conditional use permit to construct and occupy a community center, in a Light Industrial (I-1) zone, on property located at 299 West Loudon Avenue (Council District 1).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit will not adversely affect the subject or surrounding properties. Commercial uses to the east and north are not likely to be disturbed by the proposed community center and property to the west and south is either currently vacant or used for a similar housing purpose. Adequate off-street parking will be provided, and significant increases in traffic are not expected due to the nature of the use.
- 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 facility shall be constructed and operated in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The final design of the parking areas and access points shall be subject to review and approval by the Division of Traffic Engineering.
4. A storm water management plan shall be implemented in accordance with the requirements of the

adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

Representation – Mr. Walter May, attorney, was present for the appellant, along with Mr. Kevin Warner, Carman & Associates, and Mr. Cecil Dunn, Executive Director for the Hope Center. Chairman Brown asked if Mr. May had read the staff's recommended conditions for approval, and if the appellant would agree to abide by them. Mr. May replied in the affirmative.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (Moore and Stout absent) to approve **C-2009-38: HOPE CENTER, INC.** – an appeal for a conditional use permit to construct and occupy a community center, in a Light Industrial (I-1) zone, on property located at 299 West Loudon Avenue, for the reasons recommended by the staff, and subject to the four conditions recommended by the staff.

Mr. May thanked the Board for their consideration and approval of their request.

- i. **A-2009-41: LARRY W. HAMILTON** - appeals for an administrative review to allow the construction of an additional 648 square-foot garage, in a Single Family Residential (R-1C) zone, on property located at 690 East Loudon Avenue (Council District 1).

The Staff Recommended: Approval, for the following reasons:

- a. A moderate increase in the allowable square footage for accessory buildings is justified in this particular case, due to the large size of the lot and plentiful open space that is available. These conditions prevent this modest increase from being considered a circumvention of the Zoning Ordinance.
- b. An additional accessory building of the size proposed should not adversely affect any of the adjoining properties, which consist of two lots owned by the appellant or his family (on each side) and a railroad and commercial properties to the rear. This building will provide some buffering from those uses.
- c. Large accessory buildings are not uncommon in the general vicinity, so the overall character of the neighborhood should not be diminished by the proposed construction.

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

- 1. The additional detached garage shall be constructed and used 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.

Representation – Mr. Larry Hamilton, appellant, was present. Chairman Brown asked if Mr. Hamilton had read the staff recommendation, and if he would agree to abide by the two conditions recommended. Mr. Hamilton replied in the affirmative.

Action – A motion was made by Ms. Edwards, seconded by Mr. Stumbo, and carried unanimously (Moore and Stout absent) to approve **A-2009-41: LARRY W. HAMILTON** – an appeal for an administrative review to allow the construction of an additional 648 square-foot garage, in a Single Family Residential (R-1C) zone, on property located at 690 East Loudon Avenue, for the reasons recommended by the staff, and subject to the two recommended conditions.

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

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

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of

- the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

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

1. **V-2009-45: DAVID J. and MARYROSE MARTIN** - appeal for a variance to reduce the required side yard from 8 feet to 0 feet in order to retain a detached carport, in a Single Family Residential (R-1C) zone, on property located at 1111 Eldemere Road (Council District 3).

The Staff Recommended: Disapproval, for the following reasons:

- a. Special circumstances unique to this particular property, and sufficient to justify the total elimination of the required side yard, have not been identified by the appellants and are not otherwise apparent.
- b. Justification for the requested variance provided by the appellants, which emphasizes that the chosen location for the carport is the only reasonable location on the subject property, would have very broad applicability to other properties that are also already developed with a number of improvements. This would result in an unfortunate precedent that could, over time, adversely affect the public health, safety or welfare.
- c. Allowing the carport to remain with a 0' side yard setback would negatively alter the character of the general vicinity, because such structures are not typical of this well established neighborhood.
- d. Strict application of the Zoning Ordinance will not unreasonably restrict the use of the property or create an unnecessary hardship; it will simply result in just a portion of the vehicle storage area being uncovered, which is typical of this neighborhood and many others in Lexington. It also will not preclude additional vehicle storage areas from being provided in the rear yard of the subject site.

Representation – David & Maryrose Martin, appellants, were present for their application. Chairman Brown asked the staff to present its report, and then the Martins would be allowed to respond to the staff's report.

Staff Report – Mr. Marx presented the staff report on this application, and distributed a few letters of both support and objection to the Board members. He displayed several photographs on the overhead projector, indicating several views of the carport that has been constructed on the subject property. He said that the R-1C zone requires a minimum side yard of 8', but that it has been requested to be reduced to 0' on this property. He stated that a dimensional variance has been requested by the appellants to allow the carport to remain as constructed on the subject property.

Mr. Marx stated that, in reviewing this request, from the staff's point of view, there has been nothing provided to justify granting the requested variance for a total elimination of the side yard. He said that there is nothing unique about this property. He thought that this variance, if approved, could have broad applicability to other residential properties, and possibly in all of Lexington-Fayette County. He stated that this type of construction, up to the side property line, is not indicative of this neighborhood. He concluded by stating that the staff can't support this request, for the reasons listed in the staff report and on the agenda.

Board Question – Mr. Griggs asked if there was a paved area under the carport. Mr. Marx stated that it had been paved, but that it had been placed there prior to the construction of the carport.

Appellant's Presentation – Mr. David Martin thanked his neighbors for meeting with him and Ms. Martin in the hall outside of the chambers before this case was called by the Chairman. Mr. Martin submitted several photographs of their property that show a burr oak and some unique ornamental grasses that hide the view of their carport. He said that these photos also show the neighbors' 8' high fence and carport structure, which is unique in that it is the only one of that height in this neighborhood.

Mr. Hume asked about a downspout displayed in one of the photographs. Mr. Martin stated that the gutter is to divert water that had been a drainage problem for them. It directs the rainwater to flow toward the street so that the ornamental grasses can grow and not be washed away. He thanked Mr. James Archembeaue, a friend, for taking these photographs for them.

Mr. Martin said that their carport was inadvertently built without a permit. He had asked the contractor if a permit had been obtained, and was told that this was so.

Mr. Martin circulated photographs of various carports and detached garages in their neighborhood, which inspired him and Ms. Martin to build this one on their property. He said that these photos illustrate that these property improvements are common in this neighborhood.

Board Questions – Mr. Griggs asked about the setback for this structure, which is the problem. The others, shown in the photos, still allowed a side yard to be maintained. Mr. Martin responded that some did not appear to maintain a side yard. They did not have a side yard, since there was an 8' fence there.

Ms. Meyer asked about the photos of the rear yard, and if the carport could be placed there. Mr. Martin showed photos of the gate. They have a workshop attached to the rear of the garage and a mature pine tree there that would prohibit a vehicle from being able to turn around on that part of their lot. They also have a sunroom and a patio in the rear of the house. A carport in the middle of their back yard did not seem feasible.

Appellant's Presentation (cont.) – Ms. Martin stated that this is not rental property, as they have resided here for 17 years, and their family has enjoyed growing and living in this neighborhood. The carport was inadvertently built without a permit, and is needed for their teenage son—now a driver. It will also prevent her from having to scrape the windows in the winter when she is called into work as a registered nurse at the University of Kentucky hospital. Their health and safety, and their neighbors' health and safety were a concern when the carport was constructed. Their sons do play basketball in their driveway and play in the rear yard, so the carport limits the need to maneuver vehicles in and out of their driveway. She told the Board that since she is a registered nurse, health and safety is a major concern of theirs.

Ms. Martin stated that there are special circumstances that are unique to their property which are factors to be considered. They have an 8' tall fence, which is unique in the neighborhood, and adds safety to the neighborhood. They also have mature landscaping on their lot, and it would be a detriment to the neighborhood if that landscaping must be removed in the rear yard in order to relocate the carport. As far as they know, they have built the carport entirely on their property. She felt that the carport was beneficial to the neighborhood and would add to property values in the area. She appreciated the Board's consideration of their request, and asked the Board for approval of their application.

Mr. Martin submitted a petition signed by a dozen of his neighbors, some of which have resided in the neighborhood for more than 40 years, which in support of their application for this variance.

Chairman Brown asked the Division of Building Inspection to present its report, and then told the Martins that they would be allowed to respond to that report.

Building Inspection Presentation – Mr. Hume commented that the construction was performed without a building permit. He supported the recommendation to disapprove this request. Chairman Brown asked if this was a temporary structure. Mr. Hume responded that, since it is attached to the residence and to the ground, it can not be considered as a temporary structure.

Objectors – Mr. Ted Martin, attorney, was present representing Greg and Anne Marie Pitts, who are owners of 1115 and 1119 Eldemere Road. His clients reside at 1115 Eldemere Road.

Mr. Martin stated that they have reviewed the staff report, and agree with it. He stated that the circumstances surrounding this request are entirely the result of the action of the Martins. He criticized the Martins for not obtaining a building permit for this construction.

Mr. Martin stated that the carport, as constructed, encroaches into the neighbors' side yard. Under Tab #1 of his exhibits, a boundary survey of the Pitts property at 1115 Eldemere Road was performed by Mr. Randy Martin (L. S.) of Foster-Roland, Inc. He said that this survey indicates this.

Mr. Martin submitted a plat of the subject property under Tab #2 of his exhibits. The "Revised Plat of a Portion of the Mt. Vernon Subdivision" indicates that there is a utility easement along the side of the appellants' property where the carport has been constructed. He stated that, as far as they can ascertain, the Martins have not obtained the necessary encroachment permits to allow the carport to remain in this easement.

Under Tab #3, a demand letter was submitted by Mr. Ted Martin, indicating trespass and other transgressions of the Martins' against the Pitts, asking that these issues be resolved by August, 2009. The letter was

accompanied by photographs of the solid wood fence that separates their properties. He stated that there will not be a substantial hardship to the appellants if this construction is removed. The area can still be used for parking without the carport.

Behind Tab #4, Mr. Ted Martin provided several photographs which illustrated that the carport, and the car parked under it that day, is clearly visible from the street. Several letters of objection to this variance by residents of Berry Lane, Tates Creek Road and Eldemere Road—all of which are within 200' of the Martin's home, were provided to the Board under Tab #5. Many of those individuals would have liked to attend this meeting, but were unable to do so. Under Tab #6, several additional letters of opposition were submitted by residents of properties beyond the 200' notice area. These letters are from residents of Providence Lane, Providence Road, and Mt. Vernon Drive. Mr. Martin said that this shows that the entire neighborhood is concerned about the precedent this request illustrates.

Mr. Martin concluded his presentation by agreeing with the staff's findings, and requested that the Board deny this variance request.

Mr. Greg Pitts then addressed the Board. He and his wife own the property at 1115 Eldemere Drive. He said that if the variance to 0' is granted it would be detrimental to the neighborhood. Ms. Ann Marie Pitts stated that Mr. Martin has encroached onto their property with this construction. She asked the Board not to "reward bad behavior" by approving this request. She also believed that this variance would establish a negative precedent in the neighborhood.

Mr. Ed Brown, 712 Mt. Vernon Drive, was present to object to this request. He stated that he is currently the Co-President of the Hollywood-Mt. Vernon Neighborhood Association. He has been Co-President for 16 of the 24 years he has resided in this neighborhood, but is not here today in that capacity, and was not speaking as an officer of the Neighborhood Association. He said that this variance would allow a worrisome precedent in the area.

Supporter – Ms. Diane Spurlock, 665 Berry Lane was present in support of the Martins' application. She is a neighbor to the Martins, and said that they both have been excellent stewards of their rental properties in the neighborhood, and good neighbors. She said that she walks the neighborhood daily and has personally made these observations. She stated that the Martins have been interested in maintaining and improving the area's property values and the character of their neighborhood. She did not feel that the carport was noticeable from the street, and it does not cover any new "greenspace" on the lot. She concluded by asking the Board to approve the Martins' requested variance.

Appellants' Rebuttal – Ms. Martin responded by disputing that the carport has encroached upon their neighbors' property. Mr. Martin said that they were "blindsided" by that assertion. As a result, Mr. Allen Thompson came by their house that morning and furnished a letter to them stating that the driveway does not trespass. Ms. Martin reiterated that the construction is entirely on their property.

Mr. Hume asked Mr. Martin as to what was his profession. Mr. Martin replied that he was a remodeler. He said that he had spoken with a local building inspector who advised him that a building permit was not necessary due to its small size. Mr. Hume asked which inspector had told him this. Mr. Martin declined to name him, but told Mr. Hume that he would be glad to tell him, in private, at the end of the meeting.

Board Questions – Mr. Stumbo asked if the carport could be removed, if the concrete pad could still be used for the parking of a vehicle. Mr. Hume responded in the affirmative. Mr. Hume stated that the variance was only about the structure.

Mr. Stumbo asked if the carport was 'wired' and if there was a light fixture shown in one of the photographs. Mr. David Martin responded that there is a light fixture there, but it has not been 'wired' as of yet.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried unanimously (Moore and Stout absent) to deny and disapprove **V-2009-45: DAVID J. and MARYROSE MARTIN** – an appeal for a variance to reduce the required side yard from 8 feet to 0 feet in order to retain an attached carport, in a Single Family Residential (R-1C) zone, on property located at 1111 Eldemere Road, for the reasons provided by the staff.

Chairman Brown stated that this appeal had been denied. Mr. Martin asked how long he had to remove the

carport. Mr. Griggs replied that he should direct that question to the Division of Building Inspection, as they may be more flexible in making allowances for its removal.

D. Conditional Use Appeals

1. **C-2009-37: SAILESH BABHANIA** - appeals for a conditional use permit to establish a home occupation (fitness training), in a Planned Neighborhood Residential (R-3) zone, on property located at 717 Sprucewood Drive (Council District 9).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Potentially hazardous material will not be used for the fitness training to be provided, and noise disturbances are not expected to be significant. Adequate off-street parking is available for the dwelling, and for a limited number of clients that will be coming to the home, and no significant increase in traffic is anticipated.
- b. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The home occupation shall be established in accordance with the submitted application and site plan, with no more than four training sessions to be provided per day, training to be provided only for individuals or couples, and training to not take place after 7:00 PM or before 6:00 AM.
2. Appointment times shall be staggered so that there will not be any overlap between arrival and departure times of clients.
3. The garage door(s) shall remain closed during training activities.
4. The activity shall at all times comply with the restrictive provisions for home occupations as outlined in Article 1-11 of the Zoning Ordinance.
5. A Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to beginning the home occupation.
6. This approval shall become null and void should the appellant cease to either own or occupy the subject property.

Representation - Mr. Sailesh Babhania, appellant, was present.

Chairman Brown explained that, although the staff had recommended approval of his request, because there was opposition present, he would hear from those opposed to his case and then would let Mr. Babhania respond. Mr. Babhania was agreeable to that.

Opposition - Ms. Vahra Mirzaei, 743 Sprucewood Drive, was present. She expressed several concerns regarding the proposed use. Her first comment was that Sprucewood Drive was totally residential in nature, noting that the street was a small cul-de-sac. Her primary concern was that children are often playing either in or near the street, and she was concerned for their safety. She said that if a car is parked on the street, it is very difficult to maneuver, as is only room for one car to pass. She was also concerned about noise and privacy, because the houses are built so close together. Her main concern was the children's safety and how traffic associated with the use would be managed, as Mr. Babhania's residence is at the end of the court.

She had several questions (e.g., what kind of personal training would be done, noise associated with music, what times clients would be at Mr. Babhania's residence, if it would be an everyday occurrence, etc.). She said that when she and her husband built their residence in 2006, they paid the builder (Ball Homes) an extra \$5,000 to live adjacent to a City-owned property that would be considered permanent green space in order to have the privacy it would provide. She asked what would happen to that privacy if her neighbors were able to conduct a business such as what Mr. Babhania was proposing.

Chairman Brown asked Ms. Mirzaei if she was aware of the staff's recommendation and associated six conditions, one of which was that Mr. Babhania would not be able to have more than four sessions per day, and none before 6:00 a.m. or after 7:00 p.m. Because she had not read the conditions, and Chairman Brown thought that the conditions might address Ms. Mirzaei's concerns, a copy of the agenda was provided for her review.

Mr. DaeWon Hong, 716 Sprucewood Drive, was also present in opposition. He said that he lives directly across from Mr. Babhania's property. He echoed Ms. Mirzaei's concerns about traffic, reiterating the statement she had made about the narrowness of the street and the problems it caused when even one car was parked on the street. He was also concerned about safety, particularly for the children in the neighborhood.

In response to a request from Chairman Brown, Mr. Marx displayed the notification map on the overhead, which showed the location of Mr. Babhania's residence relative to the remainder of the street.

Mr. Hong said that the point he wanted to make was that there is only one way in and one way out of the street; if Mr. Babhania operated a business at his house, the problems that they already experience with regard to traffic (blocked driveways and mailboxes, as well as difficulty maneuvering) would be exacerbated. It was his opinion that there would be no place for Mr. Babhania's clients to park without causing added difficulty on the street. He repeated that his main concern was the safety of the children that play in or near the street, noting that he has two children of his own. He said that he didn't want anything to happen to them because of increased traffic.

Chairman Brown agreed that that was a reasonable concern and asked if the fact that there would be a limited number of training sessions (no more than four) each day and having the appointment times staggered throughout the day so that no more than one car would be in the driveway at any one time would help to alleviate his concerns. In response, Mr. Hong said that he didn't know how that would really help. He added that he is a mental health professional that meets with clients on a regular basis. He said that there are times when people arrive late, and sometimes people arrive early – it is just something that happens and he was not sure how it could be controlled.

Mr. Griggs asked how many automobiles Mr. Hong owns, to which he replied that he has two. He said that he also has a garage, but most of the houses on his side of the street have sloped driveways. People don't like to park in the driveway, creating a problem just as a result of the residents' parking on the street. When they have guests, there is even more of a problem.

Chairman Brown then asked if Ms. Mirzaei had reviewed the conditions and if they provided any relief for her concerns. She responded that they did, but she was still concerned about the safety of the children that live in the neighborhood. She asked again about loud music and the perceived loss of privacy from the increased number of people in the neighborhood. She mentioned the condition that addressed scheduling of clients and asked, if the schedule were not followed, the neighbors would have any recourse, and if they would have to take action themselves.

In response, Chairman Brown said that the Board could impose a condition requiring a review of the case after a period of time to see if there were any negative impacts. He said that, should the Board approve this use, then such a condition would allow the neighbors an opportunity to return and voice their concerns, should they have any, once Mr. Babhania had operated his training business for a period of time.

Mr. Griggs asked about the number of automobiles Ms. Mirzaei owned. She replied that she also owned two vehicles, but they are parked in her garage.

As there were no more questions, Chairman Brown asked Mr. Babhania to address the Board and to respond to his neighbors' concerns.

Mr. Babhania said that the use would not be a high intensity home occupation, as there would only be three or four 1-hour sessions per day, all of which would be by appointment only. With regard to the parking, he said that his driveway was long and wide enough to accommodate more than one vehicle at a time. He stressed that the garage will be closed at all times, which should mitigate any noise, although he didn't anticipate that there would be noise enough to cause any disturbance. He said that this is something he enjoys doing, and he was planning to purchase training equipment for his personal use anyway. He added that he would appreciate the Board's approval. In response to a question from Chairman Brown regarding the number of cars he owned, Mr. Babhania said that he also owned two vehicles; and Chairman Brown's assumption that they would be in the driveway while he was conducting his training sessions was correct.

Chairman Brown asked Mr. Babhanian if he had reviewed the six staff recommended conditions and if he would agree to abide by them, to which he replied that he had and he would. Chairman Brown then asked if he would agree to a 7th condition requiring a review by the Board. He said that he had no problem with the proposed 7th condition. Mr. Marx displayed a photo of the residence where the personal training was to take place, which highlighted the driveway on the property. Mr. Babhanian indicated that the driveway would accommodate more than three cars – even up to five or six, based on its size. He repeated that this would not be a high-intensity use – that it was just something he enjoyed doing, and he likes to help people.

Mr. Griggs suggested that, if he agreed to a 6-month review, that he ask his clients to park in his driveway. This would create less of an opportunity at the 6-month review for anyone to cite problems with parking associated with the use. He said that driveway parking could not be required, but it would be a good idea for him to suggest it to his clients. Mr. Babhanian agreed to do so.

Chairman Brown asked if the staff had any objections to a 6-month review, to which Mr. Marx responded that the only thing to be considered (and clarified) would be whether or not to require official notification to property owners within 400 feet of the property; or if a report from Building Inspection in six months would suffice.

Mr. Hume commented that it would be important for Mr. Babhanian to contact Building Inspection for a Certificate of Occupancy in order to know when the 6-month review was due. Chairman Brown replied that Condition #5 would address that situation, and asked Mr. Babhanian if he understood that he needed to obtain a Certificate of Occupancy prior to beginning any personal training activity. Mr. Babhanian responded affirmatively and said that he clearly understood the issues raised by his neighbors, and he shared those concerns. He assured everyone that this would be a very professional operation.

Action - A motion was made by Ms. Meyer, seconded by Ms. Edwards and carried unanimously (Moore and Stout absent) to approve **C-2009-37: SAILESH BABHANIAN** - an appeal for a conditional use permit to establish a home occupation (fitness training), in a Planned Neighborhood Residential (R-3) zone, on property located at 717 Sprucewood Drive, for the reasons provided by the staff, and subject to the six original conditions, with the addition of a seventh condition, to read:

"7. There shall be a Board of Adjustment review in six months, with notification to be provided to neighbors."

Chairman Brown explained to the two neighbors that they would get another notice in six months regarding another hearing to review this use. Should they have any complaints, they would be welcome to return and share their observations.

2. **C-2009-39: GAYLE TURNER / GET TWISTED, INC.** - appeal for a conditional use permit to establish a wine bar with live background music, in a Planned Shopping Center (B-6P) zone, on property located at 3344 Partner Place, #6 (Council District 9).

The Staff Recommended: Approval of a conditional use with no new deck construction, for the following reasons:

- a. A small wine bar with live background music at this location should not adversely affect the subject or surrounding properties. The bar and entertainment area will be more than 100' from the nearest residential zone (to the south), in compliance with the setback requirement of the Zoning Ordinance. The subject property is bordered by a parking lot to the north and other commercial uses to the east and west.
- b. All necessary public services and facilities are available and adequate for the proposed use.

The Staff Recommended: Disapproval of the requested conditional use involving a 12' by 24' deck, for the following reasons:

- a. The proposed deck is likely to interfere with delivery trucks and other service vehicles that use the back side of the building.
- b. The proposed deck location is immediately adjacent to the drive-through service lane that runs along that side of the building, thereby creating more potential conflicts.
- c. The proposed deck is oriented toward the residential area on the opposite side of Keithshire Way, thereby increasing the probability of the wine bar disturbing those nearby residents.

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

1. The wine bar with live music shall be established in accordance with the submitted application and an amended site plan indicating the deletion of the originally proposed 12' by 24' deck and specifying the bar and entertainment areas as being located toward the front of the store more than 100' from the residential zone boundary that follows the centerline of Keithshire Way.
2. An occupancy permit shall be obtained from the Division of Building inspection prior to opening the wine bar.
3. Live music shall consist only of individual performers providing background music with limited amplification, only between the hours of 6:00 PM to 10:00 PM on Monday through Saturday.
4. The suite to be occupied shall be soundproofed to the maximum extent feasible using existing technology, with noise emissions not creating a disturbance to the surrounding neighborhood.

Staff Presentation – Mr. Marx gave an overview of the appellant's request to establish a wine bar with background live music. He displayed several photographs to the Board, showing the subject property from different angles, including the front of the existing wine store, the parking area and traffic aisle at the rear of the shopping center, the rear corner of the store where the outdoor deck was proposed, and the side of the store with the existing drive-through window and traffic lane.

Mr. Marx presented several reasons why the staff was concerned about the proposed location of the 12' by 24' outdoor deck. He stated that the rear area immediately adjacent to the proposed deck location is used by delivery trucks, and that an additional complication would result from the drive-through lane passing right by the side of the deck. He also stated that there is a residential neighborhood on the opposite side of Keithshire Way which might be impacted by activities at an outdoor deck, and noted that the one letter of objection the staff had received (which he distributed to the Board) was from a resident of that area.

Mr. Marx concluded by stating that the staff was supportive of a conditional use for a wine bar at this location, but without the proposed outdoor deck.

Appellant's Presentation – Ms. Gayle Turner was present. In response to an inquiry from Chairman Brown, she indicated that she had met outside the chambers with the one citizen from the Wellington subdivision that had previously indicated they were in opposition to the requested conditional use, and that they were no longer opposed after being informed that the proposed outdoor deck would not have any music. Ms. Turner informed the Board that she had obtained three affidavits of no objection to the outdoor deck from other businesses in the section of the shopping center where her wine store is located (which only had five other businesses, one of which is currently vacant), and 19 affidavits of support from patrons of her store for an outdoor deck. She also advised the Board that, in response to the 240 or so letters that had been sent to surrounding property owners, only one letter of objection had been received, which she thought did not indicate widespread concerns regarding her proposal.

Ms. Turner explained that there were some things that could be done to address concerns about the outdoor deck. For starters, vehicles using the drive-through could be directed away from the deck, as there is adequate room in that area to make a full u-turn after leaving the drive-through window, and not travel behind the store where the deck would be located. She stated that a barrier of some sort could be established along the deck, which would have railings. She advised the Board that, at least currently, none of the businesses have large delivery trucks using the traffic aisle at the back of the shopping center. She also told the Board that there is approximately 46' of space between the edge of the proposed deck and the rear parking spaces, which she thought was very adequate for vehicles to travel safely. She concluded by also noting that there are two access points to the back side of the shopping center, which she thought would be beneficial for this use.

Board Questions - Chairman Brown asked Mr. Gallimore, with the Division of Traffic Engineering, for his assessment of the situation with regard to the proposed outdoor deck. Mr. Gallimore responded that he thought it would be possible to create a "bulb-out" that would direct drive-through traffic away from the deck, and that there might be some benefit to creating one-way traffic circulation at the rear of this section of the shopping center. He cautioned that a deck in the midst of a traffic aisle would not be advisable, and that there would clearly need to be some improvements, such as a sidewalk, to provide adequate separation of the deck from vehicular traffic movements. He believed that establishing a sufficient separation would require a considerable investment on the part of the appellant. He also noted that there might be other issues, not shown on the site plan, such as dumpster locations and access limitations,

which might influence how things could get worked out.

Chairman Brown asked Ms. Turner if the deck would have steps to the rear parking area. She responded that the deck was to be low level so there might just be one step. She emphasized that the purpose of the deck was to provide an outdoor area where smokers could sit and enjoy a glass of wine.

Mr. Marx displayed an aerial photograph showing the large delivery truck parked in the immediate vicinity of the proposed deck location. Ms. Turner stated that there used to be a catering business that may have had deliveries in that area, but that business had since moved. She reiterated that currently none of the businesses use the rear area for deliveries. Mr. Marx advised that should the Board be inclined to approve the deck, there is a Development Plan for the shopping center that would have to be amended, subject to approval by the Planning Commission, which should be addressed as a condition of approval.

Chairman Brown asked Ms. Boland, with the Law Department, how long the appellant would have to wait to reapply if the deck was disapproved. Ms. Boland confirmed that there is a one-year waiting period unless the new application is for a substantially different design. Mr. Griggs commented that there appears to be a solution in this case, but that it might be expensive, and suggested that one option might be to approve the request conditioned on the deck and associated improvements being approved by Traffic Engineering. Mr. Gallimore cautioned that any revised site plan would have to be much different than what was currently proposed to garner Traffic Engineering's approval.

Chairman Brown expressed to Ms. Turner that there are several options for how to proceed, one being to withdraw the outdoor portion of the appeal, which she could reapply for at any time. Ms. Turner subsequently elected to withdraw the deck portion of the appeal, with the understanding that she could reapply for that in less than one year.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously to approve **C-2009-39: GAYLE TURNER/GET TWISTED, INC.** – an appeal for a conditional use permit to establish a wine bar with live background music, in a Planned Shopping Center (B-6P) zone, on property located at 3344 Partner Place, #6, for the reasons provided by the staff, and subject to the four conditions recommended by the staff.

E. Administrative Review

1. **A-2009-42: MARK SIEVER** - appeals for an administrative review to allow a portable storage/shipping container to be used as an accessory garage for a single family residence, in a Planned Neighborhood Residential (R-3) zone, on property located at 446 Silver Maple Way (Council District 1).

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

- a. The appellant has not provided any compelling reasons as to why a shipping container should be considered a "building" or "structure" as those terms are defined and used in the Zoning Ordinance.
- b. The appellant has not demonstrated that the proposed placement of a shipping container on a residential lot will be done in compliance with all applicable provisions of the Kentucky Building Code.
- c. Approval of this particular request would set a dangerous precedent with regard to the placement of portable containers on residential properties for the purpose of being used for accessory storage. Such a precedent would potentially have significant ramifications for public health and safety, given the wide variety of portable containers that might be used by other property owners.

Representation – Mr. Mark Siever, architect, was present. He provided several graphic renderings of the proposed garage and carport that is proposed to be constructed out of a metal shipping container. Chairman Brown asked the staff to present the case information and staff recommendation for consideration by the Board.

Mr. Marx presented the Staff Report, concluding with a recommendation of disapproval for the appellant's request. The renderings provided by the appellant were displayed for the Board. Mr. Marx stated that the proposed structure had not been built to his knowledge.

Mr. Marx stated that the Zoning Ordinance does not contemplate using a shipping container as a structure

or as an accessory use. He said that the staff had concerns about utilizing this type of construction because the "structure" would be temporary. More importantly, the Kentucky Building Code regulates how buildings are constructed, and there is difficulty in interpreting how this "structure" would be regulated. Several questions remain unanswered that are concerning to the staff, including:

- How the "structure" will be attached to the ground;
- The structural integrity of a particular shipping container unit;
- The lifespan of a shipping container;
- What other types of temporary containers might be proposed for use; and
- What other uses might be contemplated for this type of container in the future.

He said that these are all questions and concerns of the Division of Building Inspection as well. Mr. Marx asked Mr. Hume to elaborate on the Division of Building Inspection's concerns.

Mr. Hume stated that the proposed "structure" is not even technically considered a "building" because the Kentucky Building Code defines a "structure" based upon the building's physical properties, strengths, tests, loads, etc. He said that the Division of Building Inspection's main concern, as mentioned by Mr. Marx earlier, is that these are commercial containers (also known as boxes, shipping containers, or "pods"); they are concerned that other types of mobile units, such as transfer trailers or mobile homes, might be used for this same purpose. The Division of Building Inspection had difficulty in "drawing the line;" that is, allowing one type of unit to be used and not another type. He said that these are commercial containers that, if placed on their own, are considered a violation of the Zoning Ordinance. The main question is whether this shipping container meets the test of being considered a building. Mr. Hume stated that this is not a building; it is a shipping container that was never intended to be used as a building. A foundation, footing system and attachment system can be designed by a structure engineer, but that will be just be "dressing up" the container. He believed that turning a commercial shipping container, made for shipping, into a building can set a very poor precedent for Lexington-Fayette County.

Discussion – Ms. Edwards stated that these commercial containers are currently being used for building purposes in the western portion of the United States. She stated that the local government needs to be prepared to accommodate this type of structure. It is a "green" way of building and will most likely become more prevalent in the future as people re-use products or work to find new uses for existing products.

Ms. Meyer asked Ms. Boland if there was some way that the Board could approve this use with appropriate conditions to address Mr. Hume's concerns. Ms. Boland stated that the main question is whether the Board is able to determine that a shipping container is an accessory structure. She stated that an Administrative Appeal is not typically the type of case where conditions are placed, but the Board can make very strict findings of fact to limit the applicability of this case for other future building permit requests. Ms. Boland agreed that Mr. Hume had some very serious concerns. She stated that the Board can relay to the Planning Commission, through the staff, that a possible text amendment to the Zoning Ordinance may be necessary. However, the question at hand today is whether Mr. Siever's proposal is an accessory structure rather than a shipping container.

Chairman Brown asked Mr. Siever to present a copy of the building permit that was issued by the Division of Building Inspection. Mr. Siever clarified that he does not currently have a building permit. He was refused a permit, which is the reason he had filed this Administrative Appeal to the Board.

Appellant's Presentation – Mr. Siever read the Zoning Ordinance definitions of "building" and "structure" into the record, and emphasized that a building is "any structure for the enclosure of persons, animals or property" and that the carport he is proposing had been considered by the Division of Building Inspection to be a structure in the past. He stated that he intends to enclose a sailboat and other household items in the building and that it would no longer be a shipping container, once finished, because he would attach it to the ground via the carport. He stated that he plans to make appropriate structural accommodations, as necessary. Mr. Siever stated that the Kentucky Building Code is even more specific in defining a "building" and a "structure"; and he opined that his plans for the garage and carport met all of those requirements.

Chairman Brown asked how the structure would be secured to the ground. Mr. Siever approached the Board members and displayed several exhibits displaying a foundation detail and siding details, and a site plan. Mr. Siever also shared photographs of existing storage containers that have been re-conditioned for use as residences or business uses in other parts of the country. Mr. Hume asked Mr. Siever the

dimensions of the storage container, and stated that a typical parking space is 9 feet wide. He reiterated that the storage container would be re-conditioned for storage of a boat, not an automobile. Mr. Siever stated that the containers are far more structurally sound than a typical wood frame constructed building. They are typically stacked six high on ocean liners and transported on tractor trailers all over the United States. Mr. Siever stated that reuse of a storage container is environmentally friendly as well.

Chairman Brown asked for clarification from Ms. Boland about communicating the Board's desire for a text amendment to the Planning Commission. Ms. Boland suggested that such communication be separate from any motion made by the Board for this case.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Edwards and carried unanimously (Moore and Stout absent) to approve **A-2009-42: MARK SIEVER** – an appeal for an administrative review to allow a portable storage/shipping container to be used as an accessory garage for a single family residence, in a Planned Neighborhood Residential (R-3) zone, on property located at 446 Silver Maple Way, for the following reasons:

1. This structure will be placed on a permanent location and will be incorporated as part of a carport, which is indisputably considered a structure. In addition, the structure will have a permanent foundation.
2. The original shipping container in this case will function more as a "building material" to provide the internal structural support added to a permanent foundation and then covered with traditional exterior materials, thus creating a new accessory structure.

- IV. **BOARD ITEMS** – Chairman Brown announced that he wished to recognize Mr. Barry Brock's faithful service to the Board, while an employee of the Division of Engineering. He stated that today is his last day.

Chairman Brown also requested that the staff inform the Planning Commission or the Council of the Board's decision today on the **A-2009-42: MARK SIEVER** administrative appeal, and consider whether a text amendment to the Zoning Ordinance is in order.

- V. **STAFF ITEMS** – There were no staff items presented at this meeting.
- VI. **NEXT MEETING DATE** – Chairman Brown announced that the next meeting date would be August 28, 2009.
- VII. **ADJOURNMENT** - There being no further business, Chairman Brown declared the meeting adjourned at 4:35 PM.

Peter Brown, Chairman

James Griggs, Secretary