

MINUTES
BOARD OF ADJUSTMENT
August 10, 2020 Meeting

I. CALL TO ORDER – Acting Chair Thomas Glover called the meeting to order at 1:30 p.m. via video teleconference.

Due to the COVID-19 pandemic, state of emergency and Governor Beshear's Executive Orders regarding social distancing, this meeting is being held via teleconference pursuant to Senate Bill 150 (as signed by the Governor on March 30, 2020) and Attorney General Opinion 20-05, and in accordance with KRS 61.826, because it is not feasible to offer a primary physical location for the meeting.

II. ATTENDANCE – Members present via video teleconference were: Thomas Glover, Joan Whitman, Harry Clarke, Raquel Carter, Chad Needham and Chad Walker. Chair Branden Gross was absent. Others present via video teleconference were: Josh Dezarn, Division of Engineering and Chad Edwards, Department of Law. Staff members in attendance were: Autumn Goderwis, Traci Wade, Hal Baillie, Stephanie Cunningham, Donna Lewis and Allison Morris.

III. APPROVAL OF MINUTES

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 6-0 (Gross absent), to approve the minutes from the July 10, 2020 Board of Adjustment hearing.

IV. PUBLIC HEARING ON ZONING APPEALS

A. Swearing of Witnesses - The chair opted to administer the oath to several staff members and other persons present via video teleconference at the time that each case was heard. The Chair asked each person who spoke or offered testimony via video teleconference to raise their right hand, and also raise their hand on their electronic device, to be sworn in.

B. Sounding the Agenda - In order to expedite completion of agenda items, the Chair sounded the agenda with regard to any postponements, withdrawals, and items requiring no discussion.

There were no postponements or withdrawals.

C. Abbreviated Hearings

1. **PLN-BOA-20-00035: JAMES T. MASTIN** – requested a variance to reduce the required side yard setback of 5.5' to 3.2' in order to construct an addition within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, on property located at 467 Johnson Ave. (Council District 1)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variances should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The requested setback will be similar to other setbacks in the area, and the addition will not be visible from any public rights-of-way.
- b. The size and configuration of the lot is a special circumstance that justifies the need for the variance, as it is dissimilar from many of the lots in the immediate vicinity.
- c. The requested variance is generally reasonable, as it will continue an existing setback for a modestly sized addition, replacing portions of a structure that has fallen into disrepair. It will allow for better access to the attic and make the living space more functional. Granting the variance will allow the applicant to update and better utilize a small lot within the Infill & Redevelopment area by adding features that are more desirable in the current housing market.
- d. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The proposed addition will be compatible with the existing development pattern in the neighborhood. The Zoning Ordinance specifically states that BOA action may sometimes be required in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood. Additionally, the applicant has applied for the variance as soon as it was determined that one was needed during the permit process, and prior to beginning construction.

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

1. Construction shall be in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

Representation – Mr. James T. Mastin, applicant, was present via video teleconference and sworn in. Mr. Mastin presented his application for a proposed remodel and addition to his property.

Board Question – Mr. Glover asked the applicant if the proposed addition was in line with the existing residence, which was how it appeared on the submitted drawings. Mr. Mastin confirmed that it was.

Action – A motion was made by Ms. Carter, seconded by Mr. Needham and carried 6-0 (Gross absent), to **approve PLN-BOA-20-00035: JAMES T. MASTIN** – request for a variance to reduce the required side yard setback of 5.5' to 3.2' in order to construct an addition within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, on property located at 467 Johnson Ave., based on staff's recommendation and subject to the two conditions as listed.

2. **PLN-BOA-20-00030: IDEAL EXCHANGE PAWN** – requested a conditional use to establish a pawnshop in a Highway Service Business (B-3) zone on property located at 1123 Winchester Rd. (Council District 5)

The Staff Recommended: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this type of use is not heavily concentrated along this portion of Winchester Road.
- b. The requested use should not create traffic issues, and sufficient parking is available on the subject property.
- c. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The pawnshop shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to any construction and/or renovation, and prior to opening the pawnshop.
3. Outdoor display or sales of merchandise shall be limited to the area of 4 parking spaces (approximately 650 square feet), in order to maintain the minimum parking requirement for the pawnshop. Outdoor display shall not be permitted between the front wall plane of the building and Winchester Road.
4. This approval shall become null and void should the appellant no longer operate this business on the subject property.

Representation – Mr. Richard Coppersmith, applicant, was present via video teleconference and was sworn in. Mr. Coppersmith explained that they are moving their business from its current location to 1123 Winchester Rd. and a conditional use permit is necessary to operate their business at that location.

Board Questions – Mr. Clarke asked if four parking spaces would be enough to display the merchandise outside. Mr. Coppersmith stated there are actually twelve parking spaces available, and four spaces to display the items would be more than enough. Mr. Needham asked the applicant where they were moving from. Mr. Coppersmith responded they are moving from 510 E. New Circle Rd.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 6-0 (Gross absent), to **approve PLN-BOA-20-00030: IDEAL EXCHANGE PAWN** - request for a conditional use to establish a pawnshop in a Highway Service Business (B-3) zone on property located at 1123 Winchester Rd., based on staff's recommendation and subject to the four conditions as listed.

3. **PLN-BOA-20-00034: THERESA NOWAK** - requested a conditional use for a home-based business (counseling), in a Single Family Residential (R-1C) zone, on property located at 233 Larch Lane. (Council District 2)

The Staff Recommended: **Approval**, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as it should not create disturbing levels of traffic, noise, or odors. Adequate parking is available.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The home-based business (counseling) shall be operated in accordance with the submitted application materials and site plan.
2. All necessary permits including a Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the use.
3. The conditional use shall become null and void should the applicant no longer reside at this location.

*Note – Ms. Goderwis informed the Board that one letter of opposition to this application had been received, but there was no one in opposition present in the audience via video teleconference.

Representation – Ms. Theresa Nowak, applicant, was present via video teleconference and was sworn in. Ms. Nowak presented her application for a conditional use.

Board Questions – Mr. Glover asked the applicant what type of counseling she was going to provide. Ms. Nowak responded that she works with children and her focus was predominantly on play therapy. Ms. Nowak stated that this counseling would only be part-time as she is a full time professor at EKU. Mr. Clarke asked what Ms. Nowak teaches at EKU. Ms. Nowak responded that she teaches psychology.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 6-0 (Gross absent), to **approve PLN-BOA-20-00034: THERESA NOWAK** – request for a conditional use for a home-based business (counseling), in a Single Family Residential (R-1C) zone, on property located at 233 Larch Lane, based on staff's recommendation and subject to the three conditions as listed.

*Note – Following the Board's action, Ms. Nowak asked what the objection from one of her neighbors was so that she could ensure she did not do anything to upset her neighbors. Mr. Glover responded that the neighbor's concerns had already been addressed by Ms. Nowak's responses to questions from the Board. Ms. Goderwis stated she could share that concern with Ms. Nowak later if she still wanted to know what it was.

D. Discussion Items

1. **PLN-BOA-20-00031: BEBY JAYARAM** – requested a variance to increase the allowable height of a fence in the side street side yard from 6' to 8' in a High Density Apartment (R-4) zone, on property located at 2201 Storey Ct. (Council District 8)

The Staff Recommended: Disapproval, for the following reasons:

- a. Approval of the variance would allow an unreasonable circumvention of the requirements of the Zoning Ordinance, as the need for a variance has come about as the result of the applicant's actions. The applicant did not secure a fence permit prior to beginning construction.
- b. While staff is sympathetic to the applicant's concerns regarding noise and the visibility of their home, there are not special circumstances that justify the requested variance. Strict application of the Zoning Ordinance would not deprive the applicant of the reasonable use of their land. A 6-foot tall fence is allowed by the Zoning Ordinance and would likely offer a similar level of security and privacy.
- c. Granting the variance would result in construction that is out of character for the general vicinity. There are very few fences located along this portion of Trent Boulevard, much less any of the requested height. Additionally, an 8-foot tall, solid wood fence is not appropriate along the public right-of-way in a high-density residential zone where the pedestrian experience is particularly important. An 8-foot tall fence is not permitted along the public right-of-way in any residential zone, nor in most commercial zones.

Representation – Mr. Beby Jayaram, applicant, was present via video teleconference and was sworn in.

Staff Presentation – Ms. Goderwis directed the Board's attention to her shared screen, on which she showed aerial photos and site plans of the subject property. Ms. Goderwis explained the requested variance.

Board Questions and Comments – Mr. Glover asked if it was correct that because this property in a residential zone, an eight-foot fence would not be permitted to be built regardless of how far back from the right-of-way it was. Ms. Goderwis confirmed that Mr. Glover's statement was correct. Mr. Glover asked if a six-foot fence could be built on this property as long as it was some distance from the right-of-way. Ms. Goderwis stated that was correct; that a six-foot fence would have to be three feet from the sidewalk. Mr. Glover asked if the fence that was being built is three feet from the sidewalk. Ms. Goderwis replied that it was. Mr. Clarke asked if the only conflict was the height of the fence. Ms. Goderwis replied that was correct; that this variance request was only for the height of the fence.

Representation – Mr. Beby Jayaram presented his application and explained his request for a variance to the height of his fence.

Board Questions – Mr. Glover asked if the Board was clear regarding Mr. Jayaram's explanation. Mr. Glover asked Mr. Jayaram if he had gotten a permit for the fence. Mr. Jayaram replied that he did not know there was a procedure for that. He said one day an inspector put a note on his door telling him to call about his fence. Mr. Jayaram admitted it was his mistake; he did not know he could not have an eight-foot fence. Mr. Glover asked if he called the inspector. Mr. Jayaram replied that he called immediately. He asked if he could have a six-foot tall fence along Trent Blvd. Mr. Glover confirmed that he could. Ms. Goderwis directed the Board to the site plan on

her screen, which she shared. She explained to Mr. Jayaram that he could have an eight-foot tall fence along the rear building line directly behind the house, but not in any portion of the side yard. There was further discussion.

Action – A motion was made by Ms. Carter, seconded by Mr. Needham and carried 6-0 (Gross absent), to **disapprove PLN-BOA-20-00031: BEBY JAYARAM** – request for a variance to increase the allowable height of a fence in the side street side yard from 6' to 8' in a High Density Apartment (R-4) zone on property located at 2202 Storey Ct., based on staff's recommendation.

2. **PLN-BOA-20-00033: KIDS UNLIMITED LEARNING CENTER** - requested a conditional use for a rehabilitation home located closer than 500 feet from a residential zone in a Professional Office (P-1) zone, on property located at 1365 Devonport Dr. (Council District 11)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. A mixture of uses exists in the general vicinity and adjacent to the subject property. The use should not have a negative impact on the nearby residential uses, as the property is just over half an acre in size and the building is located approximately 75' from the nearest residential structure. Additionally, the applicant plans to construct a privacy fence, which will allow the residents to enjoy outdoor areas of the property, while maintaining privacy for both neighbors and the residents.
- b. This use will allow the applicant to utilize an existing building in order to provide services that are needed in the community. The existing structure is uniquely suited to this type of use due to its architectural style. The building has two wings with a shared breezeway, making it well-suited to housing gendered populations.
- c. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The use shall be conducted in accordance with the submitted site plan and application.
2. Services including employability training, counseling, anger management, etc. shall be made available only to residents of the facility.
3. The layout of the parking areas and access points shall be subject to approval by the Division of Traffic Engineering.
4. The maximum number of residents shall not exceed 42, and all required parking for the facility (for both residents and employees) shall be provided on the subject property.
5. The parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
6. Any pole lighting for the parking lots shall be of a shoebox design with light directed downward to avoid disturbing adjoining residential areas.
7. The applicant shall install a 6' to 8' tall privacy fence in the side and rear yards (behind the front wall plane of the building).
8. All necessary permits and approvals, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection, as well as from the Commonwealth of Kentucky Department of Corrections.

Representation – Ms. Chiquita Hall, applicant, was present via video teleconference and was sworn in. Ms. Hall presented and explained her application for a proposed rehabilitation home.

Board Questions – Mr. Glover asked Ms. Hall how many occupants she intended to have in the proposed rehabilitation home. Ms. Hall responded she was planning to have 42 occupants. Mr. Glover asked if she was planning to have a staff. She replied that she was planning to have two to four staff members around the clock. There was discussion about the necessary licenses and approvals required prior to opening.

Mr. Glover commented that he was a little concerned about the description of what a rehabilitation home is, and the name, Kids Unlimited Learning Center. He asked if it was going to be called Kids Unlimited Learning Center. Ms. Hall explained that Kids Unlimited Learning Center owns the property. She stated previously it was a child care center and it was called Kids Unlimited Learning Center. Mr. Glover asked if it going to be called Tracy's House. Ms. Hall replied that it is.

Mr. Clarke asked how the project will be paid for. Ms. Hall stated she has been in business for twenty years and still has businesses operating today. She stated she has funds in her accounts and funds generating from her other businesses. Ms. Hall said that once she gets approval to open, income will be generated from that. Mr. Clarke asked what the source of the income will be once it is open. Ms. Hall replied it will be based on the residents. They will pay to reside there. If there are parolees, the Bureau of Prisons will also pay to have them stay at the residence. Mr. Clarke thanked Ms. Hall for her responses.

Ms. Carter commented that the facility is in a largely commercial area. Ms. Hall stated there are apartments next door, and across the street, a community center is being built nearby at Alexandria Dr. and Devonport Dr. She

said there was a variety of things going on in that area. Mr. Walker asked Ms. Hall about the center operating 24 hours a day, 7 days a week. He asked if she was expecting to accept people 7 days a week. She said they would not be doing intake in the middle of the night.

Opposition – Ms. Jennifer Reynolds, 11th District Council Member, was present via video teleconference and was sworn in. Ms. Reynolds indicated she was in strong opposition to this application as were several of her constituents. She mentioned there were already several such facilities in the area and felt this one could be located elsewhere.

Board Questions – Mr. Glover asked Ms. Reynolds if she had a recommendation for a better location for a facility such as this. She stated she did not have a location in mind. Mr. Needham asked Ms. Reynolds how many neighborhood associations make up the 11th District. Ms. Reynolds replied there were about five active. There was further discussion.

Opposition – Mr. Patrick Salvadori was present via video teleconference and was sworn in. Mr. Salvadori stated he was strongly opposed to this project and gave his reasons why. He requested the video he had previously submitted to staff be shown at this time, which it was.

Board Questions – Mr. Glover asked Ms. Goderwis if the property, 1365 Devonport Dr., was adjacent to a residential zone. Ms. Goderwis confirmed that it was. Ms. Carter stated that Ms. Hall's project will have to be approved by the appropriate people who will determine if it is a safe place for this facility. She commented that the responsibility before the Board today was to decide if this type of conditional use was appropriate for this property.

Rebuttal – Ms. Hall asked to share her screen to show the site plan for the proposed project. She further explained the intentions of her project.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 6-0 (Gross absent), to **approve PLN-BOA-20-00033: KIDS UNLIMITED LEARNING CENTER** – request for a conditional use for a rehabilitation home located closer than 500 feet from a residential zone in a Professional Office (P-1) zone, on property located at 1365 Devonport Dr. based on staff's recommendation and subject to the eight conditions as listed.

4. **PLN-BOA-20-00036: BFB HOLDINGS, LLC** – requested 1) a conditional use to establish a cocktail lounge with both indoor and outdoor live entertainment and/or dancing, and 2) a variance to reduce the required distance for outdoor live entertainment, from 100 feet from any residential zone, to 30 feet within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 385 S. Limestone St. (Council District 3)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, provided the applicant complies with appropriate measures, as recommended. These include restrictions on the days, hours, and amplification of the entertainment.
- b. All necessary public facilities and services are available and adequate for the proposed live entertainment conditional use.
- c. Granting the requested variance will not adversely affect the public health, safety or welfare. It will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public provided there are limits on the hours of operation and amplification is limited. No expansion of the existing building is required or proposed by the applicant to accommodate this use.
- d. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance because, although the residential zone is closer to the proposed use than 100', the nearest residential structure is approximately 100' away from the property line, and even further from the covered patio where live entertainment will occur.

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

1. The use shall be conducted in accordance with the submitted application materials and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection, prior to establishing the use.
3. Outdoor amplified music/entertainment shall be limited to Thursday through Saturday nights, ending no later than 1:00 a.m.
4. All music/entertainment shall be provided in a manner that does not create a nuisance to the surrounding neighborhood.

Representation – Zach Cato, attorney, was present via video teleconference, on behalf of the applicant, and was sworn in. Mr. Cato stated Mr. Ryan Foster was also present on behalf of the applicant. Mr. Cato presented and explained the application for a conditional use and a variance.

Board Questions – Mr. Glover asked how this application differed from what was there on the property before. Mr. Cato explained that the previous applicant had an outdoor patio area where they would broadcast UK games if the weather was nice. The sound was proposed to be generated from inside, and was slightly amplified. The building was occupied by a restaurant before. If permitted, the applicant plans to have a covered patio and have some live music or DJ's. It would then be classified as a cocktail lounge or nightclub, per the Zoning Ordinance. Mr. Cato directed the Board's attention to the site plan on his screen, which he shared, and continued to explain the application.

Mr. Glover asked Mr. Cato how he would define "moderately" amplified or "modestly" amplified music. He said he was concerned about the impact the sound would have on the UK dormitory across the street. Mr. Cato addressed Mr. Glover's concerns, stating that was the purpose of the sound study the applicant had conducted. He briefly explained the results of that study. Mr. Cato stated that if this application is approved, the applicant will put a cover over the patio to trap as much of the sound as possible. The applicant is also looking at adding green/shrubby barriers on site to provide additional sound buffers. Mr. Walker asked what time of day the sound test was done. Mr. Cato replied that it was done in the evening hours when a bar would be operating. Ms. Carter asked Ms. Goderwis if a similar variance was approved for this property a few years ago. Ms. Goderwis responded the applicant has not been before the Board for a variance for outdoor live entertainment, that was a previous applicant. There was further discussion.

Opposition – Ms. Carolyn Gago, president, South Hill Station, was present via video teleconference and was sworn in. She stated she represents sixty-three (63) condo owners, with approximately one hundred twenty (120) residents living in the building. Ms. Gago spoke regarding the noise currently in the area, indicating she and those she represented, were in opposition to this proposed project.

Mr. Robert Ryan, attorney representing Centre Court Condominium Association, was present via video teleconference and was sworn in. Mr. Ryan stated his clients have similar concerns as those of South Hill Station. Mr. Ryan stated his clients, one hundred fifty-eight (158) unit owners, are against this application for reasons of the noise, hours of operation and outdoor music. He requested this application be denied.

Board Questions and Comments – Mr. Walker asked Mr. Ryan if he would object if the music was not amplified. He also asked Mr. Ryan if he would still have an objection to the music if it ended earlier. Mr. Ryan responded that the amplification of the music was definitely an issue. He also said that ending the music at an earlier hour, such as 11:00 pm would be more preferable, but it would still depend on how loud the music was.

Ms. Carter commented that given the current situation, more outdoor restaurants, music, etc. will likely be seen. Mr. Ryan agreed that due to COVID-19 requirements that may be the case, but hopefully only for the short term. He stated he is concerned with the precedence this will set for the future after COVID-19. Discussion continued.

Mr. Clarke said he did not see how the sound would affect the residents of Centre Court Condominiums. He said he would be more concerned about the students in the dorm across the street. Mr. Ryan replied that the sound will bounce off of the UK dorms, back to Centre Court, due to there being only concrete and streets. He continued by saying there was just no buffer.

Mr. Glover asked Mr. Edwards of the Law Department, if the Board had the authority to subject certain applications to an annual review. Mr. Edwards deferred that question to staff, as he was not the usual Law representative for the Board of Adjustment. Ms. Goderwis responded to Mr. Glover's question, stating that has been done on occasion but not recently, and that all conditional uses are inspected once annually by the Zoning Inspectors. She elaborated that if an inspector found that the conditions were not being met, that would trigger the applicant to come back to the Board. Ms. Goderwis said requiring an applicant to come back to the Board one year later regardless of whether there were reports of violation or not has been done in the past, but not frequently and not recently. Mr. Glover said he was satisfied with the annual inspection, and if that inspection found a violation, that violation being brought before the Board. Ms. Goderwis noted that if a neighbor noticed a condition that they knew was not being met, they could bring that forward as a complaint at any time and that would warrant an inspection.

Rebuttal – Mr. Cato mentioned the two letters of concern that he was aware of as of noon this day. He stated that he and the applicant were not aware of any others. He pointed out the distinction that the two representatives who spoke today were representing the boards or councils of the associations they represent, not the hundreds of people who actually occupy those residences. When they say they are opposed, what they mean is that the boards or councils are opposed, not all of those people. Mr. Cato continued with his rebuttal.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke and carried 5-1 (Walker opposed; Gross absent) to **approve PLN-BOA-20-00036: BFB HOLDINGS, LLC** – request for 1) a conditional use to establish a cocktail lounge with both indoor and outdoor live entertainment and/or dancing, and 2) a variance to reduce the

required distance for outdoor live entertainment, from 100 feet from any residential zone, to 30 feet within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 385 S. Limestone St. based on staff's recommendation and subject to the four conditions as listed.

*Note – Mr. Glover called for a short break at 4:08 pm. The Board reconvened at 4:19 pm.

5. **PLN-BOA-20-00037: L. ROBERTS PROPERTIES** – requested a conditional use for a vehicle storage yard within the defined Infill and Redevelopment area in a Light Industrial (I-1)/Heavy Industrial with conditional zoning (I-2) zone, on property located at 745, 747, 751, 757, 765 and 775 E. Seventh St. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use is a conditional use in the I-1 zone and is appropriate in this location, where historically, legal and possibly illegal non-conforming uses have been conducted for a number of years. The proposed use will likely be less intense than many of the previous uses, and should have fewer environmental impacts.
- b. The proposed use should not adversely affect the subject or adjoining/nearby properties which mostly have I-1 zoning, and are being used for industrial purposes. It is unlikely that this use will disturb residential uses nearby, as the only residential uses are to the north, separated from the subject property by the railroad tracks.
- c. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The use shall be conducted in accordance with the submitted application materials and site plan.
2. The layout of the parking areas and access points shall be subject to approval by the Division of Traffic Engineering.
3. The parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
4. Fencing along East Seventh Street shall be set back a minimum of 5' from the public right-of-way.
5. Any pole lighting for the parking lots shall be of a shoebox design with light directed downward to avoid disturbing adjoining residential areas along the norther boundary of the subject property.
6. A stormwater management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.

Representation – Mr. Lee Roberts, President; Mr. Kevin Flannigan, CEO; and Mr. Jimmy Anderkin, DOT Compliance Officer, all of Roberts Heavy Duty Towing were present via video teleconference and were sworn in. Mr. Flannigan presented the application. He explained the reason for this request for a conditional use is to relocate their business from its current location at 1001 Manchester St., to increase its size.

Board Questions – Mr. Glover had a question about where the proposed operation would be on the drawing submitted to the Board. Mr. Flannigan explained what the various locations on the drawing would be used for. Mr. Glover asked where the entrance and exit were. Mr. Flannigan responded. Ms. Carter asked if there were any landscaping requirements along 7th Street. Mr. Flannigan stated there was currently a chain link fence on the property and they are required to have an 8 foot chain link for the property to store the vehicles. He stated he is not currently aware of any requirements for shrubbery or greenery. Ms. Carter asked Ms. Goderwis if that was due to the fact this is an industrial zone. Ms. Goderwis responded that there would not be any zone-to-zone screening for any parking areas, but there would be vehicular use screening requirements, which would be part of the plan that would be submitted to Traffic Engineering when the applicant applies for their permits.

Mr. Needham asked about the history of this property, whether it had been before the Board in recent years. Ms. Goderwis explained that in 2017, there was a request to change the non-conforming use from scrap iron storage to a junk yard for a pull-apart type junk yard. Ms. Goderwis noted that it appeared that the site was cleaned up substantially from when it was scrap iron storage, and it doesn't look like the junk yard use ever took place, based on aerial photos

Representation – Mr. Flannigan elaborated on what Ms. Goderwis said, stating the Cohen Property was going to lease the property out at one time to a company out of Louisville but that never came to be. Mr. Flannigan further explained the history of the property involved in this proposed project.

Board Questions – Mr. Glover asked if he was correct in that this property was not going to be used as a junk yard. Mr. Flannigan affirmed Mr. Glover's statement, and further stated they plan to have more curb appeal than that of a junk yard or other uses this property has seen in the past, and they look to improve the area. Mr. Clarke asked what would happen to vehicles on the property that are not reclaimed, and how often this happens. Mr. Flannigan responded that there are a number of things that could happen depending on the value of the vehicle. He explained further. Mr. Clarke asked about the security of the premises. Mr. Flannigan responded there is a

concrete block wall in the back of the property that shields them from the railroad tracks. They are also going to address the fencing that is currently there. Mr. Glover asked if they intend to construct a privacy fence like they have at their Manchester St. location. Mr. Flannigan replied that they plan to construct a block wall.

Opposition – Mr. Gary Hamilton, property owner 684 E. Loudon Ave. was present via video teleconference and was sworn in. Mr. Hamilton expressed concerns he and his family have over the lighting and noise of the proposed use, as well as the hours and days of operation. He said there was currently work occurring on the property, possibly changing the elevation of the property. That machinery caused noise which he could hear from his porch. He asked that conditions be placed on this proposed use to restrict the wreckers from being brought all the way to the back of the property between the hours of 10:00 p.m. and 7:00 a.m.

Board Questions – Mr. Glover asked Mr. Hamilton to state the addresses of the properties he and his family own. Mr. Hamilton replied that he and his brother own 684 E. Loudon Ave., his brother resides at 690 E. Loudon Ave. and his sister-in-law, Eva Hamilton owns 694 E. Loudon Ave. Mr. Needham asked Mr. Hamilton what his thoughts were on the 8 foot tall concrete wall on the back of the properties, whether he could see it from his property. Mr. Hamilton stated he could see it clearly. Mr. Hamilton also expressed his concerns about security on the property.

Rebuttal – Mr. Flannigan addressed Mr. Hamilton's concerns about the back-up alarms of their vehicles, stating those vehicles are equipped with back-up alarms that adjust to the noise in the environment in which they are operated. He stated backing up in that area at night after hours will be minimal, and activity on the weekends is low. In terms of lighting, Mr. Flannigan stated they have shoe box style lighting and they will follow the guidelines necessary to light up the lot as needed. He further stated there should be a decrease in traffic across the property, due to the property being staffed 24 hours a day.

Board Questions - Mr. Glover asked Mr. Flannigan if the property was in the floodplain. Mr. Flannigan replied that it was not. Mr. Glover referred to Mr. Hamilton's comment about a possible on-going change in elevation. Mr. Flannigan stated that was not what they have done. What they have done is remove materials and replace materials. They have removed a lot of materials left on the property by the previous occupants.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 6-0 (Gross absent), to **approve PLN-BOA-20-00037: L. ROBERTS PROPERTIES** – request for a conditional use for a vehicle storage yard within the defined Infill and Redevelopment area in a Light Industrial (I-1)/Heavy Industrial with conditional zoning (I-2) zone, on property located at 745, 747, 751, 757, 765 and 775 E. Seventh St., based on staff's recommendation and subject to the seven conditions as listed.

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

Mr. Clarke thanked Mr. Glover for filling in as Acting Chair in Chair Gross' absence.

V. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time.

VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date will be September 14, 2020, at 1:30 p.m., **via video teleconference.**

VII. **ADJOURNMENT** – There being no further business, Acting Chair Glover declared the meeting adjourned at 4:50 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

LexTV broadcasts live government meeting coverage, original programming and bulletin board information. You can find us on Spectrum channel 185, view our [live stream](#) and [archived meetings](#) online or watch programming on our [YouTube](#) channel.

Archived videos and minutes can be viewed at <https://www.lexingtonky.gov/public-meetings-videos>.