

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

September 13, 2021

- I. **CALL TO ORDER** – Chair Thomas Glover called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.

II. **APPROVAL OF MINUTES**

There were no minutes to approve.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Swearing of Witnesses** – Mr. Glover announced that any applicant or objector to any appeal before the Board who wished to speak, would be sworn in at this time.

The oath was administered to several members of the audience.

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

Postponements

1. **PLN-BOA-21-00039: THE ARCADIA COMPANY LLC** – requested conditional uses to establish a school for academic instruction and an accessory nursery school in an Agricultural Rural (A-R) zone, on property located at 5768 Bates Creek Rd. (Council District 12)

Mr. Tom Miller, attorney for the opposition, asked for a one-month postponement of this application on behalf of his clients, who could not be at the meeting. Mr. Miller mentioned Ms. Sally Thomas who rents a substantial portion of land from Overbrook Farm and has thirty to fifty horses there at any given time. He also mentioned Mr. Terry Judd, facilities manager at Overbrook Farm, who has first-hand knowledge of the traffic problems in the subject area. Mr. Miller stated both clients took time off work to be present at last month's hearing and their testimony was crucial to this case. He added that the attorney for the applicant had been granted a one-month postponement last month; therefore, he felt it only right that the opposition be granted the same courtesy.

Mr. Jon Woodall, attorney for the applicant, asked Mr. Miller if both of the individuals he mentioned would be present next month. Mr. Miller affirmed that to be true. Mr. Woodall stated that out of fairness to the opposition, he and his clients had no objection to another postponement to the October meeting.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 7-0 (Gross abstained), to **continue PLN-BOA-21-00039: THE ARCADIA COMPANY LLC** – requests for conditional uses to establish a school for academic instruction and an accessory nursery school in an Agricultural Rural (A-R) zone, on property located at 5768 Bates Creek Rd., to the October 11, 2021 meeting.

2. **PLN-BOA-21-00038: CORSER THOROUGHBREDS LLC** – requested a variance to reduce the required side yard setback from 300' to 60' in order to place a mobile home in an Agricultural Rural (A-R) zone, on property located at 4422 Bryan Station Rd. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- The proposed placement of the mobile home should not have an adverse influence on the subject property or the surrounding neighborhood. The proposed mobile home will be located more than 2,000 feet away from any existing residential use on other property.
- The variance is generally reasonable as it will allow for placement of a mobile home to be used as a farm employee dwelling unit in a location where the existing driveway can be utilized and operations of the farm will not be disrupted.
- The FEMA floodplain that exists on the subject property associated with the Avon Branch of the North Elkhorn Creek is a special circumstance that justifies the need for a variance in this location.

- d. The variance request does not represent an attempt to circumvent the provisions of the Zoning Ordinance. The applicant applied for the variance as soon as it was determined that one was needed during the permit process, and prior to placement of the mobile home.

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

1. The mobile home shall be placed in accordance with the submitted application materials and site plan.
2. The mobile home shall be used as a farm employee dwelling unit only, maintained exclusively for the occupancy of employees and their families or the owner's immediate family, in connection with an agricultural use on the property.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to occupancy.
4. The septic system shall be reviewed and approved, as necessary, by the Fayette County Board of Health.

Representation – With the initial sounding of the agenda, there was no one present to represent this case. Mr. Glover remarked that he would call the case again before beginning the abbreviated cases to allow time for the applicant to attend the meeting. At the second call, there was still no representation. A phone call was made to the applicant on record, however there was no response. Mr. Glover called the case a third time at the end of the meeting. There was no representation present in the audience.

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 6-0 (Needham absent), to **continue PLN-BOA-21-00038: CORSER THOROUGHBREDS LLC** – request for a variance to reduce the required side yard setback from 300' to 60' in order to place a mobile home in an Agricultural Rural (A-R) zone, on property located at 4422 Bryan Station Rd. to the October 11, 2021 meeting.

C. Abbreviated Hearing

1. **PLN-BOA-21-00044: LUFTMAN PROPERTIES LLC** – requested a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.7 in order to construct an addition to an existing duplex within the defined Infill and Redevelop area in a High Density Apartment (R-4) zone, on property located at 426 S. Broadway. (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The proposed addition to the rear of the house will replace an existing addition that has fallen into disrepair and should have little impact on the appearance of the house from the public rights-of-way.
- b. The variance request is generally reasonable, as the intent of the Infill and Redevelopment regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. 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. The proposed construction is compatible with the existing neighborhood, as each of the other structures fronting S. Broadway in this block has a Floor Area Ratio ranging from 0.46 to 0.72.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance because the requested Floor Area Ratio will not result in an increase in density in this location and 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 Divisions of Building Inspection and Historic Preservation prior to construction and occupancy.

Representation – Mr. Brian Luftman, applicant and property owner was present and gave a brief overview of the proposed project, explaining the need for a variance to increase the Floor Area Ratio.

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and carried 7-0 to **approve PLN-BOA-21-00044: LUFTMAN PROPERTIES LLC** – request for a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.7 in order to construct an addition to an existing duplex within the defined Infill and Redevelop area in a High Density Apartment (R-4) zone, on property located at 426 S. Broadway, based on staff's recommendation and subject to the two conditions as listed.

2. **PLN-BOA-21-00045: JASON AND LAURA MARCUM** - requested a variance to reduce the required side yard from 25' to 10' in order to construct a new attached garage on property in Single Family Residential (R-1A)/Neighborhood Design Character Overlay (ND-1) zones, on property located at 1244 Colonial Dr. (Council District 11)

The Staff Recommended: Approval, for the following reasons:

- Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity as a number of houses in the vicinity have side yard setbacks of less than 25 feet.
- The requested variance is generally reasonable because the desired variance is relatively minor. The proposed average side yard will be 20.16 feet because the existing house and sunroom addition will exceed the 25-foot required side yard setback.
- The requested variance does not represent a circumvention of the Zoning Ordinance as the proposed setback is compatible with the Zoning Ordinance requirement for properties in many R-1A zones and a number of houses in this R-1A zone do not have 25-foot side yard setbacks.

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

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

Representation – Mr. Jason Marcum, property owner and applicant and his father Mr. Mike Marcum, were present on behalf of this application. There were no questions from the Board or from the audience.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke and carried 7-0 to **approve PLN-BOA-21-00045: JASON AND LAURA MARCUM** – request for a variance to reduce the required side yard from 25' to 10' in order to construct a new attached garage on property in Single Family Residential (R-1A)/Neighborhood Design Character Overlay (ND-1) zones, on property located at 1244 Colonial Dr., based on staff's recommendation and subject to the three conditions as listed.

3. **PLN-BOA-21-00047: BARON GIBSON** – requested a variance to reduce the minimum required lot frontage from 40' to 25' in order to subdivide an existing lot within the defined Infill and Redevelopment area in a Single Family Residential (R-1E) zone, on property located at 550 Maryland Ave. (Council District 2)

The Staff Recommended: Approval, for the following reasons:

- Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The requested variance will result in the creation of two lots that are of similar dimensions to a number of other lots in the immediate vicinity.
- The variance request is generally reasonable, as the intent of the Infill and Redevelopment regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. 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. While the desired variance will result in a change to the existing development pattern by replacing one lot with two, the two new lots will be consistent with many of the other existing lots along Maryland Ave.
- The variance request does not attempt to circumvent the provisions of the Zoning Ordinance because the two new lots will meet the minimum lot size requirement for lots in an R-1E zone and will have similar frontage to other existing lots along Maryland Ave.

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

- The subject property shall be subdivided in accordance with the submitted application materials and site plan. The variance shall be denoted on the amended final record plat.
- All other necessary approvals shall be obtained from the Divisions of Planning and Building Inspection prior to construction.
- The two new lots shall be limited to one shared access point, which shall be reviewed and approved by the Division of Traffic Engineering.

Representation – Mr. Baron Gibson, applicant and property owner, was present on behalf of this application.

Board questions – Mr. Clarke asked Mr. Gibson to explain the proposed shared driveway. Mr. Gibson responded that they plan to grant an easement on each property that would go between the two single-family houses that would lead to parking in the rear. He said it would be a legal easement to allow for that.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried 7-0, to **approve PLN-BOA-21-00047: BARON GIBSON** – request for a variance to reduce the minimum required lot frontage from 40' to 25' in order to subdivide an existing lot within the defined Infill and Redevelopment area in a Single Family Residential (R-1E) zone, on property located at 550 Maryland Ave., based on staff's recommendation and subject to the three conditions as listed.

4. **PLN-BOA-21-00050: LEIGHANNE AND KEITH DANIEL** – requested a variance to reduce the required side yard setback from 8' to 5' in order to construct an addition to an existing house in Single Family Residential (R-1C) /Neighborhood Design Character Overlay (ND-1) zones, on property located at 225 Chenault Rd. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The proposed addition is relatively modest in size and will not be visible from the public right-of-way.
- b. Granting the variance will not result in construction that will alter the character of the general vicinity, as there are a number of houses in the immediate vicinity that were constructed with side yards of less than 8 feet, which appear to have been expanded over the years in a similar fashion.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance as the applicants have applied for the variance as soon as it was determined that it 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. Construction shall be in accordance with the Chevy Chase ND-1 Design Standards.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

Representation – Ms. Avery Buckman was present on behalf of the applicants and gave a brief explanation of the proposed project.

Board questions – Mr. Needham asked Ms. Buckman what the details of the Design Overlay for that area were. Ms. Buckman explained that the design must be in keeping with the neighborhood. Ms. Goderwis added that the ND-1 Overlay is a design standard that is adopted by particular neighborhoods and that there are several of them throughout the county. The Overlay zone includes design standard requirements in addition to the Zoning Ordinance requirements for the zone for a particular neighborhood. She mentioned that the ND-1 Overlay zone was not being evaluated at this time; it was only for informational purposes for the staff report. Ms. Goderwis added that the proposed project does fall within the ND-1 Overlay zone for the Chevy Chase neighborhood. This plan is meeting the ND-1 Overlay zone requirements. She also stated that this variance does not have anything to do with the requirements of the ND-1 Overlay.

Mr. Clarke stated it appeared that the existing house is already at a 5' setback. Ms. Buckman confirmed that to be true, but added that the lot slopes in a little bit and it is more like 4.5' where the outer edge of the porch will be located.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 7-0, to **approve PLN-BOA-21-00050: LEIGHANNE AND KEITH DANIEL** – request for a variance to reduce the required side yard setback from 8' to 5' in order to construct an addition to an existing house in Single Family Residential (R-1C) /Neighborhood Design Character Overlay (ND-1) zones, on property located at 225 Chenault Rd., based on staff's recommendation and subject to the three conditions as listed.

5. **PLN-BOA-21-00046: HART FAMILY ENTERPRISES LLC** – requested a conditional use to modify the use of an existing private club in an Agricultural Rural (A-R) zone, on property located at 2179 Bahama Rd. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the conditional use to expand the existing private club will not adversely affect the subject property or any surrounding properties. The Greenbrier Golf and Country Club has operated in this location for about 50 years. The proposed construction will be compatible with the existing clubhouse development.
- b. There should not be any impact on traffic in the general vicinity, as the proposed construction will not result in an increase in membership and there will not be changes to the existing paved off-street parking area.
- c. All necessary public services and facilities are available and adequate for the proposed use.

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

1. Construction and occupancy 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.
3. No Certificate of Occupancy shall be issued until the 5,280 square-foot children's pavilion and the 1,700 square-foot metal building have been demolished.

Representation – Mr. Brian Weaver, ALT Architecture, was present on behalf of this application. Mr. Weaver complimented staff on the expeditious manner in which they worked with the applicant and prepared an amended staff report reflecting staff's recommendation of approval versus the initial recommendation of postponement. He expressed the applicant's appreciation for this, given the time restraints on the project.

Board question – Mr. Glover asked Mr. Weaver what changes were made to the application. Mr. Weaver replied this property has several accessory structures and one of those structures had been demolished after 1996, which is when the applicant was granted a conditional use, to allow for a 1,704 square foot addition to the clubhouse. That addition resulted in any new structures being limited to a total of 13,576 square feet. The applicant also plans to demolish an additional structure prior to the certificate of occupancy being issued.

Action – A motion was made by Ms. Carter, seconded by Mr. Needham and carried 7-0, to **approve PLN-BOA-21-00046: HART FAMILY ENTERPRISES LLC** – request for a conditional use to modify the use of an existing private club in an Agricultural Rural (A-R) zone, on property located at 2179 Bahama Rd., based on staff's recommendation and subject to the three conditions as listed.

6. **PLN-BOA-21-00048: OPEN DOOR CHURCH INC** – requested 1) a conditional use to expand an existing place of religious assembly; 2) a variance to reduce the required side street side yard from 30' to 18' and 3) a variance to reduce the required rear yard from 10' to 1' in order to construct an addition to an existing place of religious assembly in a Single Family Residential (R-1C) zone, on property located at 749 Addison Ave. (Council District 11)

The Staff Recommended: Approval, for the following reasons:

- a. Approval of a conditional use for the expansion of an existing place of religious assembly should not have an adverse influence on the subject property or the surrounding neighborhood, as the church has operated in this location for many years.
- b. Adequate parking exists and is available on the subject property, and the proposed addition will not increase the need for parking spaces.
- c. All necessary public services and facilities are available and adequate for the proposed use.
- d. Granting the requested rear and side street side yard setback variances should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The proposed side street side yard is generally consistent with the yards along Garrison Avenue. The requested rear yard variance maintains the existing rear yard setback of the recreation building.
- e. The requested variances are generally reasonable, as they will allow for modest additions to be constructed to enhance the existing recreation building without requiring the existing parking area or vehicular access point along Garrison Avenue to be altered or removed.

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

1. Construction and occupancy of the property shall be in accordance with the submitted application materials, to allow construction of both Phase "A" and "B", allowing two additions totaling up to 850 square feet, utilizing the existing one-foot rear yard setback and a minimum setback of 18' from the lot line along Garrison Avenue.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.
3. At least 15% of the wall plane facing Garrison Avenue shall be openings, including a minimum of one window in addition to the person door proposed in the façade facing Garrison Avenue.

Representation – Mr. Jacob Francisco, applicant, was present on behalf of this application.

Board comments and questions – Mr. Glover commented that the rendering that was with the application only showed the re-heat kitchen and did not show the bathroom. He asked the applicant if there was another rendering that showed where the bathroom is going to be. Mr. Francisco replied that there was an existing shed on the property and he brought an updated site plan with him for the Board members to review. The site plan was displayed on the overhead screen. Mr. Francisco explained where the new bathrooms would be and stated that the old HVAC room and storage room would be demolished and new ones would be built to include a bathroom instead of a storage room. Mr. Glover asked if entry to the bathroom was through the inside or the outside of the

accessory building. Mr. Francisco replied it would be accessed through a door on the inside. There were no other questions from the Board.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 7-0, to **approve PLN-BOA-21-00048: OPEN DOOR CHURCH INC** – requests for 1) a conditional use to expand an existing place of religious assembly; 2) a variance to reduce the required side street side yard from 30' to 18' and 3) a variance to reduce the required rear yard from 10' to 1' in order to construct an addition to an existing place of religious assembly in a Single Family Residential (R-1C) zone, on property located at 749 Addison Ave., based on staff's recommendation and subject to the three conditions as listed.

D. Discussion Items

1. **PLN-BOA-21-00049: TONY AND SUSAN HOLMES** – requested a variance to reduce the minimum required front yard setback from 300' to 100' in order to construct a Farm Employee Dwelling Unit in an Agricultural Rural (A-R) zone, on property located at 6721 Russell Cave Rd. (Council District 12)

The Staff Recommended: Disapproval, for the following reasons:

- a. There are not special circumstances that justify the need for the variance and strict application of the Zoning Ordinance would not deprive the applicant of the reasonable use of their land. The applicant could construct the desired structure at the 300-foot setback from Carrick Pike, or elsewhere on the property and meet the required front yard setback.
- b. The variance request could represent a circumvention of the provisions of the Zoning Ordinance because farm employee dwelling units are meant to be accessory to the principal agricultural and residential uses on the property, and to meet the required setbacks for a principal residence. The proposed location of the FEDU and its access point do not appear to facilitate a functional relationship between the proposed structure and the operation of the farm. Instead, it would result in a farm manager having to exit the property onto Carrick Pike and re-enter from Russell Cave Road in order to access the barn and other accessory structures in a vehicle.

Staff presentation – Ms. Goderwis explained the applicant's request for this variance. She displayed aerial views of the subject property, which showed accessory structures and the proposed location for the Farm Employee Dwelling Unit. She also displayed photographs, which submitted by the applicant, depicting the proposed entrance on Carrick Pike and what the existing property looks like from Russell Cave Rd. Ms. Goderwis explained staff's reasons for recommending disapproval of this application.

Board questions – Mr. Needham asked if the applicant had access from that home to their main dwelling unit, or the rest of the farm, would staff have recommended approval of this application. Ms. Goderwis stated she felt staff would still have concerns that there are no special circumstances that would require the reduction from 300' to 100'. She stated there were no topographic issues that prohibit the structure from being located elsewhere on the property as it is a 55-acre property, and there do appear to be other sites that could work for an additional structure.

Mr. Glover asked if the drawing was to scale. Ms. Goderwis said that it was not to scale. Mr. Glover commented that he would like to see what the proposed structure would look like if it was 200' back, at the required setback. There was further discussion.

Mr. Gross asked Ms. Goderwis where some alternative locations would be. She replied that the simplest alternative location would be to go back the additional 200' from Carrick Pike, if that is the vicinity of the property where they wish to construct the structure. There was further discussion.

Mr. Needham asked what the required side yard setback would be if the applicant were to take an access off Russell Cave Rd. Ms. Goderwis replied that it would still be required to be 300'.

Representation – Mr. Tony Holmes, applicant and property owner, and his daughter, Mrs. Sarah Holmes Dooley, were present on behalf of this application. Mrs. Dooley presented and explained the application from the applicant's standpoint, clarifying some points they felt staff had misunderstood. She also displayed aerial photographs of the subject property and photographs that the applicant had submitted.

Board question – Ms. Carter requested that the aerial view be displayed on the screen again. She asked how the farm is currently being used. Mrs. Dooley responded and explained that depending on the time of year, mares and foals are in the fields together until the foals are about six months old. At that time, the foals are weaned and all of the mares and foals grouped together. When the foals are a year old, they are grouped together in another field. There was further discussion.

*Note – The Board took a short recess at 2:40 p.m. and reconvened at 2:50 p.m.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke and carried 7-0, to **approve PLN-BOA-21-00049: TONY AND SUSAN HOLMES** – request for a variance to reduce the minimum required front yard setback from 300' to 100' in order to construct a Farm Employee Dwelling Unit in an Agricultural Rural (A-R) zone, on property located at 6721 Russell Cave Rd., based on the Findings of Facts and subject to the three conditions as listed below:

Findings

- a. There are special circumstances due to the 55-acre size of the farm and the need to preserve adequate pastureland for the safety and grazing acreage of thoroughbred horses.
- b. Due to the fact that this 55-acre farm also has a PDR conservation easement on the property, limiting impervious surface and preserving pastureland is a special circumstance on this property, required and encouraged by the PDR restrictions.
- c. Granting of this variance does not circumvent the Zoning Ordinances, due to the special circumstances on the 55-acre subject property at 6721 Russell Cave Rd.

Conditions

1. Construction of the Farm Employee Dwelling Unit shall be done in accordance with the submitted application materials and site plan.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection and Traffic Engineering.
3. All construction must be approved by the Rural Land Management Board.

*Note – At this time, 2:55 p.m., Mr. Needham left the meeting.

2. **PLN-BOA-21-00052: JUDY RAY LLC** – requested a conditional use for live outdoor entertainment in a Neighborhood Business (B-1) zone, on property located at 5902 Old Richmond Rd. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed hours of operation for the live outdoor entertainment use will occur during the restaurant's normal business hours, are generally reasonable, and should not violate local noise ordinances.
- b. The proposed location of the stage is more than 400 feet from the nearest residential structure and should not result in a negative impact on the health, safety or welfare of nearby residents.
- c. The proposed use should not result in a significant increase in traffic in this location, as the live outdoor entertainment will be accessory to the restaurant use.
- d. All necessary public facilities and services that will be needed are adequate to serve the proposed use.

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

1. The proposed live outdoor entertainment use shall be established and operated in accordance with the submitted application materials and site plan.
2. The applicant shall pave, stripe, and screen the existing gravel parking areas in accordance with Articles 16 and 18 of the Zoning Ordinance, and subject to review and approval by the Division of Traffic Engineering.
3. The live outdoor entertainment use shall be conducted accessory to the operation of the restaurant. The applicant shall not host ticketed concerts for a commercial purpose separate from the operation of the restaurant. The conditional use for live entertainment shall become null and void should the restaurant use cease to operate.
4. The outdoor live entertainment use shall be limited to the restaurant's hours of operation and shall comply with the LFUCG Noise Ordinance, meaning that live entertainment shall not be offered between the hours of 11:00 p.m. and 7:00 a.m.
5. Live outdoor entertainment shall be limited to minimal amplification. Amplification devices, such as speakers, shall not be located outside of the proposed stage area, and shall only be directed toward the center of the subject property.

*Note – Due to there being opposition present, Mr. Glover had previously asked Mr. Chris Clendenen, attorney for the applicant, if he and the members of the opposition would mind to step outside of the Council Chamber to work towards coming to an agreement.

Representation – Mr. Chris Clendenen, attorney for the applicant introduced Mr. Hilary Boone, one of the owners of JUDYRAY, LLC, and David Trivisonno, sound engineer, who were also present. Mr. Clendenen stated the applicant agreed to the five conditions as recommended by staff. He commented that there were

additional conditions requested by clients of Mr. Brice, attorney. Mr. Clendenen displayed the additional three conditions on the screen and indicated that the applicant is willing to agree to them as well. He mentioned the possibility of leasing parking spaces from a nearby church across the street, due to some concerns over parking limitations.

Board comments – Mr. Gross expressed concerns over enforcement of an auxiliary parking agreement. He asked Ms. Goderwis for her input on this issue. Ms. Goderwis expressed her concerns over adding a parking condition because parking is not allowed as a use on any agriculturally zoned properties. She stated that if the applicant were referring to off-site parking, they would need to be sure that it is in a location where parking can occur in accordance with the Zoning Ordinance.

Mr. Clendenen replied that the parking would be a reciprocal agreement with a church. Mr. Glover asked if the existing parking complied with the Ordinance. Ms. Goderwis commented that a condition that some of the existing parking had been paved, but not all of it, had been added. She said she was not sure how that occurred during the initial permitting process. Ms. Goderwis added that perhaps enough required parking spaces were paved. She added there are additional parking spaces that are located on a gravel surface, and staff is recommending the condition that the additional gravel surface be paved for the use of parking, and that she did not feel there was enough room on the site to add additional parking.

Mr. Glover commented that condition #2 states the applicant must get approval from Traffic Engineering in any event and he was comfortable entrusting it to Traffic Engineering to ensure compliance. He said he did not feel a parking agreement with the church needed to be part of this application.

Opposition - Mr. John Brice, attorney, was present on behalf of Mr. Jim Hodge and Ms. Mary Ann Delaney. He indicated his clients requested that additional conditions be incorporated into the final approval.

Board question – Mr. Gross asked Mr. Brice which additional conditions he was referring to. Mr. Brice replied that he was referring to conditions #4, #6 and #7, as displayed on the overhead screen.

Opposition – Ms. Brenda Addington, 6020 Old Richmond Rd., expressed her concerns about the parking issues that could arise based on the business generated by Boone Dogs. She remarked that the parking should be confined to the Boone Dog, LLC property and no other properties, with the exception of a reciprocal agreement with the church for staff parking. Ms. Addington commented that some patrons of Boone Dogs have started to park in an area across the road because it is vacant. She said that she and some neighbors are concerned with the traffic hazard this creates and that they are afraid there will be an accident.

Ms. Diana Heagarty, 5173 Jacks Creek Pike, expressed her concerns with the traffic and congestion at the intersection of Jacks Creek Pike and Old Richmond Rd. She also noted that people pull off the side of the road and park, which makes it very difficult to turn onto Jacks Creek Pike. Ms. Heagarty mentioned concerns of people crossing the road in the dark, after drinking at the restaurant. She suggested using traffic cones along the fence line to prevent people from pulling off the road onto the side of the road.

Board comments – Mr. Clarke asked what kind of live entertainment would be taking place at Boone Dogs. He expressed concerns about people parking across the street and crossing this rural roadway. Mr. Clendenen replied what the applicant had in mind was small acoustic type bands of two to four playing various genres of music. He said there would not be live rock shows with lights and the music would be piped in to the inside of the restaurant. Mr. Clarke asked if there was a way to control the number of people in attendance. Mr. Clendenen responded one way to control the crowd would be to base it on the number of parking spaces on the property and not allow parking along the side of the road. He also said that will be supervised by the staff.

Ms. Carter asked to have the revised conditions displayed on the overhead screen again.

Action – A motion was made by Mr. Gross, seconded by Ms. Carter and carried 5-1 (Needham absent; Clarke opposed), to **approve PLN-BOA-21-00052: JUDY RAY LLC** – request for a conditional use for live outdoor entertainment in a Neighborhood Business (B-1) zone, on property located at 5902 Old Richmond Rd., based on staff's recommendation and testimony heard today and subject to the revised set of seven conditions below:

1. The proposed live outdoor entertainment use shall be established and operated in accordance with the submitted application materials and site plan.
2. The applicant shall pave, stripe, and screen the existing gravel parking areas in accordance with Articles 16 and 18 of the Zoning Ordinance, and subject to review and approval by the Division of Traffic Engineering.
3. The live outdoor entertainment use shall be conducted accessory to the operation of the restaurant. The applicant shall not host ticketed concerts for a commercial purpose separate from the operation of the

- restaurant. The conditional use for live entertainment shall become null and void should the restaurant use cease to operate.
4. The outdoor live entertainment use shall be permitted only between 5:00 p.m. and 9:00 p.m. and shall comply with the LFUCG Ordinance.
 5. Live outdoor entertainment shall be limited to minimal amplification. Amplification devices, such as speakers, shall not be located outside of the proposed stage area, and shall only be directed toward the center of the subject property.
 6. All trees having a caliper of four (4) inches or more that are located along or adjacent to the southeastern boundary line of the property shall be preserved, except for any dead, damaged, or diseased trees recommended by removal the Urban County Forester.
 7. Should JudyRay, LLC or Boone Dogs, LLC cease to own the property or should the existing members or managers of JudyRay, LLC or Boone Dogs, LLC cease to be members or managers of same, as applicable, this conditional use permit shall be null and void.
3. **PLN-BOA-21-00053: CANDICE AND JON SETZER** – requested a variance to reduce the required side street side yard from 30' to 6' in order to construct an in-ground swimming pool in a Single Family Residential (R-1D) zone, on property located at 857 Sunny Slope Trace. (Council District 9)

The Staff Recommended: Disapproval, for the following reasons:

- a. There do not appear to be special circumstances that are unique to the subject property that do not generally apply to land in the general vicinity, or in the same zone that justify the need for the variance. The lot is a typical corner lot, similar to others in the vicinity.
- b. Granting the variance could adversely affect the public health, safety, or welfare, as the proposed location of the swimming pool does not comply with the Kentucky Residential Building Code.
- c. Disapproval of the variance will not deprive the applicant of the reasonable use of their land or create an unnecessary hardship. The size and shape of swimming pools are generally customizable and it is possible that the applicant could construct a smaller swimming pool that would not require a variance.

Staff presentation – Ms. Goderwis displayed aerial views and other photos of the subject property and explained the application for this variance request. She elaborated on staff's reasons for recommending disapproval of the application, as listed in the staff report.

Representation – Mr. Jon Setzer and Mrs. Candice Setzer were present on behalf of their application. They displayed an aerial photo of their property and explained that there is a sanitary easement on their property, which limits where they may be able to construct an in ground swimming pool.

Board question – Mr. Glover asked how deep the sanitary line was within the easement. Mr. Setzer responded it was 14' deep.

Mrs. Setzer displayed two other photos showing the topography of their property and explained that they have a walkout basement, which is not evident from the front of the property. She explained that due to the sloping grade of their back and side yard, they are not able to enjoy it as much as they would like to and that is why they would like to install a pool there. Mrs. Setzer informed the Board that they had found another pool in Lexington, at 4701 Carita Woods Way, that had done what they want to do. She displayed an aerial view of that property on the screen for the Board to view. The Setzers mentioned that they had received a letter of support from their HOA; copies of which were distributed to the Board members for their review.

Board questions – Mr. Glover asked if staff was familiar with the property on the screen, 4701 Carita Woods Way. Mr. Goderwis stated she was not familiar with the property and whether the pool was permitted or not, but that it had not been before the Board within the past five years. Mrs. Setzer stated that she looked on the PVA website and found that the home was constructed in 1998 but she was not certain when the pool was built.

Mr. Glover asked if the Setzers had talked with an engineer about building the proposed pool. Mrs. Setzer replied that they have reached out to a pool company that is also a landscape company. She said they have gotten quotes from this company and talked a lot about a retaining wall. Mr. Setzer added that they have gotten positive feedback from neighbors who had received their notification letter regarding this project. Mr. Glover remarked that he did not feel there were special circumstances that justified granting this variance at the distance requested. He asked if the Setzers had talked with staff about a lesser reduction to the side yard variance. Mrs. Setzer replied they had not done so. Mr. Glover stated that it might be helpful to them if they worked with staff to come up with a lesser variance. He stated if their application were disapproved today, they would have to wait a year before coming back to the Board with an amended application. However, if they chose to continue their application to next month and work with staff towards a reduced variance, their application could be heard next month.

Ms. Whitman asked the applicants if they have a patio and a deck. Mrs. Setzer replied that there is a deck on the back of the house with a step up to another section of the deck, which they added when they replaced the original

deck. She also said there is a poured concrete patio beneath the deck. There was continued discussion about the sloping grade of the back and side yards and the possibility of making the pool into an L-shape.

Mr. Glover stated he could not support the application as it currently was. He recommended the applicant work with staff and the pool company to come up with a more acceptable application. The applicants agreed to a continuance in order to work with staff for a better application.

Action – A motion was made by Mr. Gross, seconded by Ms. Whitman and carried 6-0 (Needham absent), to **continue PLN-BOA-21-00053: CANDICE AND JON SETZER** – request for a variance to reduce the required side street side yard from 30' to 6' in order to construct an in-ground swimming pool in a Single Family Residential (R-1D) zone, on property located at 857 Sunny Slope Trace, to the October 11, 2021 meeting.

IV. BOARD ITEMS – Mr. Glover announced that any items a Board member wished to present would be heard at this time.

No were no Board items to discuss.

V. STAFF ITEMS – Mr. Glover announced that any items a Staff member wished to present would be heard at this time.

A. Release of Certificate of Land Use Restrictions on PLN-BOA-17-00076: CONTINENTAL PROPERTIES CO, INC

Ms. Goderwis informed the Board that staff had received a request to release the Certificate of Land Use Restriction attached to PLN-BOA-17-00076, a conditional use application from 2017 for a temporary leasing trailer for an apartment complex. One of the conditions listed was the trailer would be in use no longer than 180 days, beginning approximately 3 months prior to completion of the clubhouse, and ending within 14 days of the issuance of a certificate of occupancy for the clubhouse. Ms. Goderwis said the trailer had been removed in accordance with that condition and the other conditions imposed by the Board. However, the property owner would like to have that Certificate of Land Use Restriction released. Ms. Goderwis added that the legal representative for that property owner had drawn up a legal document, which the LFUCG Law Department had reviewed and was agreeable with. She said that if the Board was agreeable with releasing that Certificate of Land Use Restriction, perhaps that could be done today.

Mr. Gross stated that as a real estate attorney, he would like to see a process to release Certificates of Land Use Restriction on property with multiple outdated conditional use permits.

Ms. Jones commented that LFUCG currently does not have such a process. She said that many times, particularly when the conditional use permit itself states that it is going to terminate in 180 days, a release is not necessary as it is not valid after 180 days. She added that the Law Department had relayed that information to this particular landowner, but they were insistent because they did not want the Certificate of Land Use Restriction to remain in the title of the property. There was further discussion.

Action – A motion was made by Mr. Gross, seconded by Ms. Carter and carried 6-0 (Needham absent), to **approve** a member of staff or the Law Department, or whomever, to sign on the Board's behalf **to release the Certificate of Land Use Restriction attached to PLN-BOA-17-00076: CONTINENTAL PROPERTIES CO, INC**, based upon the testimony and recommendations of staff and Ms. Jones.

VI. NEXT MEETING DATE – Mr. Glover announced that the next meeting date would be October 11, 2021 at 1:30 p.m. in the Council Chambers at 200 E. Main St.

Mr. Gross announced that he may not be at the meeting next month. Mr. Clarke stated that he will not be at the meeting next month due to his son getting married.

VII. ADJOURNMENT – Mr. Glover declared the meeting adjourned at 3:50 p.m.

Thomas Glover, Chair

Joan Whitman, Secretary

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