

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

November 8, 2021

- I. **CALL TO ORDER** – Chair Glover called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.
- II. **ATTENDANCE** – Members present were: Raquel Carter, Harry Clarke, Thomas Glover, Chad Needham, Chad Walker and Joan Whitman. Branden Gross was absent. Others present were: Tracy Jones, Department of Law and Stephen Parker, Division of Traffic Engineering. Planning staff members present were Traci Wade, Autumn Goderwis, and Donna Lewis.
- III. **APPROVAL OF MINUTES** – Chair Glover announced that the minutes from the October 11, 2021 meeting would be considered at this time.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 6-0 (Gross absent), to **approve** the minutes from the October 11, 2021 Board of Adjustment meeting.

IV. **PUBLIC HEARING ON ZONING APPEALS**

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

Postponements and Withdrawals

1. **PLN-BOA-21-00057: HILLS PROPERTIES** - requested a variance to increase the maximum number of parking spaces allowed from 230 spaces to 236 spaces for a multi-family residential development in a Commercial Center (B-6P) zone, on property located at 3151 Mapleleaf Drive. (Council District 7).

Staff comments – Ms. Goderwis informed the Board that the applicant for this case had requested to withdraw their application.

2. **PLN-BOA-21-00064: LFUC HOUSING AUTHORITY** – requested 1) variances to reduce the required front yards from 30' to 20' for lots 1-26 and 2) variances to reduce the required side street side yards from 30' to 20' for lots 5 and 22 in order to construct 26 new duplexes in a Two-Family Residential (R-2) zone, on property located at 1604 Versailles Rd. (Council District 11)

Representation – Mr. Tony Barrett, Barrett Partners, was present on behalf of the applicant and requested postponement of this application to the December 13, 2021 Board of Adjustment meeting in order to work with staff to resolve concerns as depicted in the staff report, and to also make some changes to the plans.

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and carried 6-0, (Whitman abstained; Gross absent), to **postpone** **PLN-BOA-21-00064: LFUC HOUSING AUTHORITY** – requests for 1) variances to reduce the required front yards from 30' to 20' for lots 1-26 and 2) variances to reduce the required side street side yards from 30' to 20' for lots 5 and 22 in order to construct 26 new duplexes in a Two-Family Residential (R-2) zone, on property located at 1604 Versailles Rd. to the December 13, 2021 Board of Adjustment meeting, based on the applicant's request.

3. **PLN-BOA-21-00063: CHENAULT INTERESTS LTD** – requested a conditional use for drive-through facilities and a variance to increase the maximum allowable front yard setback from 20' to 54' in order to construct a new restaurant in a Neighborhood Business (B-1) zone, on property located at 2191 Nicholasville Rd. (Council District 3)

Representation – Mr. Dan Rose, attorney, was present on behalf of the applicant and the developer, Fouzbox QSR, LLC. Mr. Rose requested a one-month postponement of this application in order to make changes to the site plan, as recommended by staff.

Opposition – Mr. Jon Blehar, 2121 Nicholasville Rd., #709, expressed his opposition of the application. He suggested the Board deny this application rather than approve a one-month postponement so that citizens would not have to return next month for the December meeting.

Ms. D.G. Linton-Gridley, 2121 Nicholasville Rd., was present and expressed her opposition of the application, based on her concerns that traffic may increase if the application was approved.

Action – A motion was made by Mr. Clarke, seconded by Ms. Carter and carried 6-0 (Gross absent), to **postpone PLN-BOA-21-00063: CHENAULT INTERESTS LTD** – requests for a conditional use for drive-through facilities and a variance to increase the maximum allowable front yard setback from 20' to 54' in order to construct a new restaurant in a Neighborhood Business (B-1) zone, on property located at 2191 Nicholasville Rd., to the December 13, 2021 Board of Adjustment meeting, based on staff's recommendation and the applicant's request.

B. Abbreviated Hearing

1. **PLN-BOA-21-00061: BOARD OF TRUSTEES OF FIRST UNITED METHODIST CHURCH** - requested a conditional use to expand the existing place of religious assembly in order to construct an open-air pavilion in an Agricultural Rural (A-R) zone, on property located at 3801 Polo Club Blvd. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- a. Approval of the expansion of a conditional use in order to construct an outdoor pavilion should not adversely affect the subject or adjoining/nearby properties. The proposed structure is well within the size limitation for such structures, will meet all setback requirements, and will be located outside of utility easements.
- b. Approval of the request will not result in an increase in traffic on the site and adequate parking exists.
- c. All necessary public services and facilities are or will be available and adequate for the proposed use.

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

1. The pavilion shall be constructed and operated in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to construction and use of the pavilion.

Representation – Mr. Chad Foster, Campus Pastor, Andover Campus, First United Methodist Church was present on behalf of this application for a conditional use.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 6-0 (Gross absent), to **approve PLN-BOA-21-00061: BOARD OF TRUSTEES OF FIRST UNITED METHODIST CHURCH** – request for a conditional use to expand the existing place of religious assembly in order to construct an open-air pavilion in an Agricultural Rural (A-R) zone, on property located at 3801 Polo Club Blvd., based on staff's recommendation and subject to the two conditions as listed.

C. Discussion Items

1. **PLN-BOA-21-00060: NEW LEXINGTON CLINIC PSC** – requested a variance to increase the allowable height of a free-standing sign from 10' to 10'8" in a Professional Office (P-1) zone, on property located at 1221 S. Broadway. (Council District 11)

The Staff Recommended: Disapproval, for the following reasons:

- a. The applicant has not provided a sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance or KRS 100.243. 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.
- b. The applicant has not provided sufficient information to determine that strict enforcement of the Zoning Ordinance will result in an unnecessary hardship or deprive the applicant of the reasonable use of their land. It appears that the height of the sign could be modified to meet the requirements of the Zoning Ordinance without resulting in a significant change in visibility.

Representation – Mr. Jordan Wess, Instant Signs, was present on behalf of this application for a variance.

Board question – Mr. Glover asked why the applicant wanted to raise the height of the sign another 8". Mr. Wess responded that the applicant wanted the sign to be as large as possible and similar in design to the competitor across the street, Baptist Health. Mr. Glover added that instead of asking for a variance, the applicant could have raised the grade around the base of the sign by 8". Mr. Wess replied that they had not thought of that. There was further discussion.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke and carried 6-0 (Gross absent), to **disapprove PLN-BOA-21-00060: NEW LEXINGTON CLINIC PSC** – request for a variance to increase the allowable height of a free-standing sign from 10' to 10'8" in a Professional Office (P-1) zone, on property located at 1221 S. Broadway, based on staff's recommendation.

2. **PLN-BOA-21-00059: THE CHURCH IN LEXINGTON INC** – requested a conditional use for a place of religious assembly in order to construct a church in Agricultural Urban (A-U)/Single Family Residential (R-1C) zones, on property located at 1220 and 1250 Higbee Mill Rd. (Council District 9)

The Staff Recommended: Approval, for the following reasons:

- a. Approval of the proposed conditional use should not adversely affect the subject or adjoining/nearby properties, provided that all necessary permits and approvals, including a stormwater management plan are secured prior to construction and occupancy.
- b. While there are several churches in the immediate vicinity, the applicant is proposing a church for a relatively modest congregation. Although they plan to increase their number of participants over time, it is unlikely that the proposed church would create traffic issues in the neighborhood.
- c. All necessary public services and facilities are or will be available and adequate for the proposed use.

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

1. The property shall be developed and operated in accordance with the submitted application materials and site plan, subject to any alterations required throughout the permitting process.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering, as well as necessary state and federal agencies, prior to construction and occupancy.
3. The final configuration of the parking areas shall be subject to approval by the Division of Traffic Engineering.
4. The parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Article 16 and 18 of the Zoning Ordinance.
5. 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.
6. Any pole lighting for the parking lot shall be of a shoebox (or similar) design, with light directed downward to avoid disturbing any adjoining residential properties.

Representation – Mr. Doug Johnson, applicant, was present on behalf of the application and briefly explained this request for a conditional use.

Opposition – Ms. Michelle Harr, 3701 Higbee Woods Ct., was present on behalf of the Higbee Woods Neighborhood Association. She shared the concerns of the neighborhood association and those of herself regarding flooding. Ms. Harr also expressed concerns over the proposed construction of a new bridge on the property.

Mr. Greg Mason, St. Andrew Greek Orthodox Church, 1136 Higbee Mill Rd., was also present and expressed his concerns regarding flooding of the subject property. Mr. Mason requested that screening similar to what is currently between St. Andrew's property and the subject property remain, if the proposed project is approved.

Rebuttal – Mr. Johnson responded to the concerns of Ms. Harr and Mr. Mason. He stated that if the application is approved by the Board, the applicant would be required to meet FEMA requirements and also provide a local storm water management plan. Mr. Johnson added that the proposed construction is above the floodplain and that they plan to keep the tree line along Man O' War Blvd. He mentioned that there is a need for a new bridge, just to get the construction vehicles across. There was further discussion.

Board questions and comments – Mr. Glover asked if either of the buildings had been designed yet. Mr. Johnson replied they had not been designed yet. He added they are currently considering pre-fabricated buildings, as they are more cost effective and quicker to construct.

Mr. Clarke asked staff if the concerns about flooding and the proposed bridge would be addressed in condition number six. Ms. Goderwis replied those issues would be addressed in conditions number two and number five. Mr. Clarke clarified by adding he had meant to refer to condition number five; not number six.

Mr. Walker asked if anyone was planning to reside at the proposed site. Mr. Johnson stated no one was going to reside there.

Audience question – Ms. Harr asked whether the existing bridge was adequate to prevent the additional flooding that may occur. Mr. Glover stated that the Board appreciated Ms. Harr's concern about stormwater and flooding in

the area. He added that one of the requirements of this application was to provide a storm water management plan, and that plan must be approved by the appropriate government personnel, not the members of the Board of Adjustment.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried 6-0 (Gross absent), to **approve PLN-BOA-21-00059: THE CHURCH IN LEXINGTON INC** – request for a conditional use for a place of religious assembly in order to construct a church in Agricultural Urban (A-U)/Single Family Residential (R-1C) zones, on property located at 1220 and 1250 Higbee Mill Rd., based on staff's recommendation and subject to the six conditions as listed.

3. **PLN-BOA-21-00062: MOM MOM'S LAVENDER** – requested a conditional use for agritourism activities in order to establish a farm gift shop in an Agricultural Rural (A-R) zone, on property located at 1061 S. Cleveland Rd. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- Approval of the proposed conditional use should not adversely affect the subject or adjoining/nearby properties. The use will provide additional revenue for a small farm and allow members of the public a means to experience the Rural Service Area.
- The proposed use should not generate a significant amount of traffic and will likely be a complement to other agritourism activities (wineries) in the vicinity.
- All necessary public services and facilities are or will be available and adequate for the proposed use.

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

- The property shall be developed and operated in accordance with the submitted application materials and an amended site plan.
- The proposed barn/gift shop building shall have a front setback at or greater than the existing dwelling unit's front yard setback.
- The septic system shall be reviewed and approved, as necessary, by the Fayette County Board of Health.
- All parking areas shall be designed in accordance with the recommendations of the Division of Traffic Engineering.
- All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.

Representation – Mr. Philip Santiago, applicant and property owner, was present on behalf of his request for a conditional use. He briefly explained the application and asked if the Board members had any questions.

Board comments and questions – Mr. Glover commented that the Zoning Ordinance states there must be a working farm prior to operating a retail facility on the property. Mr. Santiago stated he has ordered the lavender plants and he will have them in May of 2022.

Mr. Needham recalled an application that was before the Board in the past in which the owners of a winery wanted to have a shop or venue built first, prior to the vines, which caused concern. There was further discussion.

Opposition – Angela Stivers, 1060 S. Cleveland Rd., was present and expressed her concerns over the possibility of increased traffic if this project is approved. She also expressed her concerns regarding signage for the retail operation. There was further discussion.

Board question – Mr. Needham asked Ms. Stivers how the wineries in the area affect the traffic. Ms. Stivers replied there were several wineries in the area, but none on S. Cleveland Rd. itself.

Staff comments – Ms. Wade commented that Mr. Santiago stated in his application that he does not intend to operate the gift shop until May 1, 2022, and he intends to restrict his gift shop to three to four months out of the year. She recommended the Board factor that into their decision. Ms. Wade added that there were a lot of agricultural activities that could take place on the farm prior to May 1.

Board comments and questions – Mr. Glover stated that he had forgotten to swear in the other applicants and speakers earlier. He informed Mr. Santiago that he would be sworn in at this time. Mr. Glover administered the oath to Mr. Santiago prior to continuing.

Mr. Glover asked Mr. Santiago if he had begun farming. Mr. Santiago replied he had not. Mr. Glover asked Mr. Santiago if he expected to begin farming activities on the property before he opened the farm gift shop. Mr. Santiago replied that he did. Mr. Glover asked Mr. Santiago if he had a plan or a schedule. Mr. Santiago replied that on May 10, 2022 he is to pick up 1,120 lavender plants. Prior to picking up the plants, he needs seven prepared beds for the plants. There was further discussion.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and passed 4-2 (Carter, Clarke, Walker and Whitman in favor; Glover and Needham opposed; Gross absent), to **approve PLN-BOA-21-00062: MOM MOM'S LAVENDER** – request for a conditional use for agritourism activities in order to establish a farm gift shop in an Agricultural Rural (A-R) zone, on property located at 1061 S. Cleveland Rd., as recommended by staff and subject to the five conditions as listed.

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

A. Consideration of the 2022 Board of Adjustment Meeting and Filing Schedule.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 6-0 (Gross absent), to **adopt the 2022 Board of Adjustment Meeting and Filing Schedule.**

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

VI. **NEXT MEETING DATE** – Mr. Glover announced that the next meeting date will be December 13, 2021 at 1:30 p.m. in the Council Chambers at 200 E. Main St.

VII. **ADJOURNMENT** – Mr. Glover declared the meeting adjourned at 2:52 p.m.

Thomas Glover, 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>.