

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

December 13, 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: Harry Clarke, Thomas Glover, Branden Gross, Chad Needham and Chad Walker. Raquel Carter and Joan Whitman arrived late. Others present were: Keith Horn, Department of Law and Stephen Parker, Division of Traffic Engineering. Planning staff members present were Traci Wade, Autumn Goderwis, Daniel Crum and Donna Lewis.
- III. **APPROVAL OF MINUTES** – Mr. Glover announced that the minutes from the November 8, 2021 meeting would be considered at this time.

Action - A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 4-0 (Carter and Whitman absent at this time; Gross abstained), to **approve** the minutes from the November 8, 2021 Board of Adjustment meeting.

*Note – Ms. Carter and Ms. Whitman arrived after the November 8, 2021 minutes were approved.

IV. PUBLIC HEARING ON ZONING APPEALS

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

Withdrawals

1. **PLN-BOA-21-00063: CHENAULT INTERESTS LTD (AMD)** – an amended request for a conditional use for drive-through facilities in order to construct a new restaurant in a Neighborhood Business (B-1) zone, on property located at 2191 Nicholasville Rd. (Council District 11)

Ms. Goderwis informed the Board that the applicant for this case had withdrawn their application via email the week before. The staff accepted the withdrawal of the application on behalf of the Board; therefore, no discussion would occur at this time.

C. Abbreviated Hearing

1. **PLN-BOA-21-00065: LAURA PAPERIO** – requested a variance to reduce the required setback from 30' to 22' in order to partially enclose an existing front porch at a single-family dwelling in a Two-Family Residential (R-2) zone, on property located at 328 McDowell Rd. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

- Granting the variance should not adversely affect the public health, safety, or welfare, as the proposed addition will be located within the same footprint as the existing screen porch at this location and will not extend any closer to McDowell Road.
- Granting the variance will not result in construction that will alter the character of the general vicinity as the conversion from screen windows to glass windows will result in a minimal change to the appearance of the structure.
- The variance request does not attempt to circumvent the provisions of the Zoning Ordinance as the applicant has 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:

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

Representation – Ms. Laura Papero was present on behalf of her request for a variance. There were no questions from the Board.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 7-0 to **approve PLN-BOA-21-00065: LAURA PAPERIO** – request for a variance to reduce the required setback from 30' to 22' in order to partially enclose an existing front porch at a single-family dwelling in a Two-Family Residential (R-2) zone, on property located at 328 McDowell Rd., based on staff's recommendation and subject to the two conditions as listed.

D. Discussion Items

*Note – prior to hearing the following application, Ms. Whitman and Mr. Gross recused themselves due to conflicts of interest.

1. **PLN-BOA-21-00064: LFUC HOUSING AUTHORITY (AMD)** – amended requests for 1) variances to reduce the required front yards from 30' to 20' for lots 23-26 and 2) variances to reduce the required side street side yards from 30' to 20' for lots 5, 22 and 23 in order to construct 13 new duplexes in a Two-Family Residential (R-2) zone, on property located at 1604 Versailles Rd. (Council District 11)

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 vicinity is characterized by a variety of housing types and the requested variances will allow for a moderate increase in density in this location that allows for a transition between adjacent detached single-family residential and multi-family/institutional uses.
- b. The need for street connections to complete Hill Rise Drive and Hill View Place, and to connect Concord Drive are special circumstances that limit the buildable area of the property. Granting the variances will allow for a currently vacant lot within the Urban Service Boundary to be developed for needed housing.
- c. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance, as the applicant has applied for the variances as soon as it was determined that they were needed during the permit process, and prior to beginning construction.

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 dated December 1, 2021.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.
3. Variances shall be noted on the Final Record Plat.

Representation – Mr. Darby Turner, attorney for the applicant, was present and indicated his client was in agreement with staff's recommendations. He offered to answer any questions from the Board or anyone present in the audience.

Board comments – Mr. Glover commented that the application had been reduced from twenty-four lots to six lots, and according to the subject site plan, those lots appeared to be located at the southern end of the property. Mr. Turner replied that three of the units were corner lots and they requested the side street side yard variance, and four of the lots were front yard variance. The four lots are located at the bottom of the site plan near the Concord Dr. connection. Mr. Turner added that the Planning Commission required the applicant to make the connection to Concord Dr.

Action – A motion was made by Mr. Clarke, seconded by Ms. Carter and carried 5-0 (Gross and Whitman recused), to **approve PLN-BOA-21-00064: LFUC HOUSING AUTHORITY (AMD)** – amended requests for 1) variances to reduce the required front yards from 30' to 20' for lots 23-26 and 2) variances to reduce the required side street side yards from 30' to 20' for lots 5, 22 and 23 in order to construct 13 new duplexes in a Two-Family Residential (R-2) zone, on property located at 1604 Versailles Rd., based on staff's recommendation and subject to the three conditions as listed.

*Note – Ms. Whitman and Mr. Gross returned to the meeting prior to hearing the next application.

2. **PLN-BOA-21-00066: HPI PRESERVE LLC** – requested a variance to increase the allowable height of a fence in a front yard from 4' to 6.75' in order to allow components of a front yard fence (vehicular gate and columns) to exceed the 4-foot height maximum in a High Density Apartment (R-4) zone, on property located at 845 Red Mile Rd. (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. Four-foot tall fences, including all components, such as columns and gates are typical across residential zones.
- 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. Columns and gates with a maximum height of four feet could be installed in this location and would provide a similar aesthetic value and level of security.

Staff presentation – Ms. Goderwis presented an overview of the application, directing the Board's attention to the overhead screen on which she displayed the site plan and images of the subject property, and the fence and vehicular gates in question. She explained the applicant's request for a variance and stated that the applicant did not provide sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance. Ms. Goderwis added that there did not appear to be any special circumstances that justified the need for the variance. She stated that the columns and gate were constructed without securing a fence permit.

Board questions and comments – There was some discussion among the Board members and Ms. Goderwis regarding the height of the columns, of the gate, and the height of the fence.

Representation – Mr. Christopher Barnes, applicant, was present on behalf of this application and explained the circumstances that lead to the gate and columns being constructed without a fence permit. He commented that the applicant was trying to work with the existing fence on the property. Mr. Barnes displayed photographic images of the property, with the existing fence, and the new gate and columns. He stated that due to the required width of the gate, the support poles for the gate needed to be higher than the existing fence, which he believed to be at least 5 feet tall.

Board question – Mr. Glover asked if all of the columns were already constructed. Mr. Barnes confirmed that they were constructed and that there were seven columns. There was further discussion.

Mr. Gross asked Mr. Stephen Parker, Division of Traffic Engineering, if it was possible to have a 4-foot tall gate that is a total of 28 feet long, which is the length of the proposed gate. Mr. Parker approached the podium and responded to Mr. Gross's question. He said that it is possible, depending upon the material the gate is made from. Mr. Gross asked Mr. Parker if this particular gate would need six-foot tall columns. Mr. Parker said he did not believe the columns for this particular gate would have to be six feet tall. He commented that he reviewed this plan at the Development Plan phase and he was aware of the height. Mr. Gross asked Mr. Parker if he was aware of the six-foot height and Mr. Parker replied that he signed off on the Development Plan.

Ms. Wade commented that the Division of Traffic Engineering does not approve fences and gates as a matter of course. Mr. Parker commented that he was aware of the height of the gate, but he was under the impression that the applicant was going to obtain a fence permit as required. There was further discussion.

Mr. Gross asked Mr. Parker if there was discussion concerning the need for a fence permit. Mr. Parker replied that he knew that a fence permit was needed to complete the project as depicted on the Development Plan, and he believed that he did advise the applicant to obtain a fence permit.

Mr. Needham added that everyone is obligated to follow the same rules and that it was difficult for him to believe that the applicant was unaware that they needed a fence permit. Mr. Barnes replied that it wasn't a question of a fence permit, but a gate and column permit. He added that a fence permit had been applied for by the company that is installing the fence. There was further discussion.

Mr. Glover expressed his concerns with denying the application due to the fact that the applicant would be required to buy new columns or shorten the existing columns down to four feet, which would be costly. He added that 4-foot columns would not fit with the existing fence on the front of the property. Mr. Glover stated that he could not imagine installing a 4-foot column as an end column on a 5 ½-foot fence. Discussion continued.

Mr. Clarke commented that the Zoning Ordinance does not refer to gates or columns, specifically, just fences. Ms. Carter added that if the applicant had applied for a fence permit prior to the construction of the columns, and were denied the permit; the applicant would subsequently be before the Board of Adjustment requesting a variance as a result. She added that the Board has the ability to approve such variances on a case by case basis. Mr. Gross added that in this instance, per staff testimony, the applicant was informed that a permit was needed. There was further discussion.

Mr. Needham commented that had the Board evaluated this application with the five-foot horse fence next to the column, the Board likely would have agreed that lower than the end post would not look right, and the Board may have accepted that the columns be a little higher. Mr. Needham said he did not believe that the Board would have accepted columns that were one foot or more higher. Discussion continued.

Representation – Mr. Christian Elliott, Capstone Real Estate Investments, was also present on behalf of this application. He added that the fact that they did not obtain a permit for the proposed project was an honest mistake and he apologized for that. He mentioned that the applicant had been through various other permits for this project. He opined that a four-foot column would “look silly” in this instance.

Board comments – Mr. Clarke added that the Board has been through the discussion of a four-foot fence many times, and the Board has required the applicant to have a four-foot fence. He added this is an exception because of the gate and the columns. There was further discussion.

Action – A motion was made by Mr. Gross, seconded by Ms. Carter and carried 5-2 (Clarke and Needham voted nay), to **continue PLN-BOA-21-00066: HPI PRESERVE LLC** – request for a variance to increase the allowable height of a fence in a front yard from 4' to 6.75' in order to allow components of a front yard fence (vehicular gate and columns) to exceed the 4-foot height maximum in a High Density Apartment (R-4) zone, on property located at 845 Red Mile Rd., to the January 10, 2022 to allow time for the applicant and staff to have further discussions.

Discussion on the vote – Mr. Clarke stated he was not opposed to the continuance; he was unsure as to what exceptions the applicant could make to change the discussion. Mr. Needham agreed with Mr. Clarke.

3. **PLN-BOA-21-00068: UNIVERSITY PROPERTIES LLC** – requested a variance to reduce the required private open space from 10% to 4.5% in order to subdivide existing townhomes in a Planned Neighborhood Residential (R-3) zone, on property located at 1151 Unity Dr. (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. There appear to be possible solutions that would meet the requirements of the Zoning Ordinance. In addition, there do not appear to be plans for common open space that would provide a comparable amenity to private useable open space that the Zoning Ordinance requires.
- b. The request appears to be an attempt to circumvent the Zoning Ordinance, as the property was originally developed as a Group Residential Project. In order to subdivide such a property, the Zoning Ordinance regulations for individual lots must be met. The development of the property under a different set of regulations than is currently desired does not constitute a special circumstance that justifies the need for a variance.
- c. Denial of the variance will not deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the individual units can continue to be utilized as rental units or could be sold as condominiums without subdividing the existing property.

Staff presentation – Ms. Goderwis gave an overview of the application, directing the Board's attention to the overhead screen on which she displayed images of the subject property. She explained staff's recommendation of disapproval of this application.

Board question – Mr. Clarke asked about the address of the subject property. Ms. Goderwis responded and explained that 1151 Unity Drive is the address of the existing property which the applicant wished to subdivide. There was further discussion.

Representation – Mr. Richard Murphy, attorney, was present on behalf of the applicant. He introduced Mr. Jeff Morgan, Principal, University Properties LLC, and Mr. Kevin Phillips, Endris Engineering, who were also present in the audience. Mr. Murphy explained the history of the subject property and why the property owner was requesting this variance. He directed the Board's attention to the overhead screen, on which he displayed images of the subject property. Mr. Murphy explained the application in detail and asked the Board for their approval of the proposed project.

Board questions – Mr. Gross asked Mr. Murphy about access to the open space and whether sidewalks could be added. Mr. Murphy replied that the applicant had considered adding sidewalks.

Mr. Clarke had a question about parking. Mr. Murphy explained that the project met the parking requirements. Mr. Clarke asked how difficult it would be to expand the decks to be large enough to meet the open space

regulations. Mr. Morgan replied that if the decks are expanded, the stairs would be eliminated. There was further discussion.

Mr. Cameron Stratton, prospective buyer of one of the units, spoke on behalf of the play area for his three children. There was further discussion.

Staff comments – Ms. Goderwis indicated she would be available to answer any questions from the Board.

*Note – Mr. Glover called for a short recess at 3:20 p.m. The Board reconvened at 3:38 p.m.

Action – A motion was made by Ms. Carter, seconded by Mr. Gross and carried 6-1 (Clarke opposed), to **approve PLN-BOA-21-00068: UNIVERSITY PROPERTIES LLC** – request for a variance to reduce the required private open space from 10% to 4.5% in order to subdivide existing townhomes in a Planned Neighborhood Residential (R-3) zone, on property located at 1151 Unity Dr., based on the following finding of facts:

- a. Granting these three variances will not adversely affect the public health, safety or welfare and will not alter the character of the general vicinity and will not cause a hazard or nuisance to the public because this development has already been built and occupied for over ten years. Granting the variances will not result in any change to the existing development. There will be no change in number of units or population density. It will simply allow the units to be sold separately, rather than to one investor.
- b. Granting these variances is generally reasonable because each unit has a private deck/balcony and grass area. The front yard grass areas on these three lots cannot be counted under the definition of private open space. There also will be common areas maintained by a homeowners' association to provide other space.
- c. Strict application of the regulations of the zoning ordinance would deprive the applicant of a reasonable use of its land or create an unnecessary hardship because it would prevent the sale of reasonably priced residential units to individual purchasers.

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

1. The applicant shall create a Homeowners Association to maintain the common area in substantially the configuration as shown on the applicant's exhibit. The common area shall be available for use by all residents of the development.
2. Crosswalks shall be installed to provide direct accessibility to the area currently identified as a Childrens' play area by removing the one parking space directly adjacent to the common area.
3. The action of the Board shall be noted on the final record plat.

Board question – Mr. Glover asked Mr. Murphy if the applicant was in agreement with the facts and conditions. Mr. Glover replied that the applicant was in agreement.

*Note – At this time, Mr. Gross recused himself from the final two applications based on conflicts of interest. Also at this time, Mr. Walker excused himself from the rest of the hearing.

4. **PLN-BOA-21-00069: EXETER NEWTOWN LAND LLC** – requested variances to increase the allowable area of two traffic directional signs from 3 square feet each, to 6 square feet each by transferring 3 square feet each from two other allowable traffic directional signs along the same frontage in a Light Industrial (I-1) zone, on property located at 1180 Newtown Pike. (Council District 1)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. Allowing one slightly larger sign at each of two access points instead of two small signs at each of two access points will allow the signs to be more legible and easily understood by the various types of users accessing the property.
- b. Granting the requested variance will not represent a circumvention of the Zoning Ordinance. The request is allowable because the requested transfer is between the same signage type and along the same street frontage. Further, it will not result in an increase in the number of permitted signs, allow a design feature or type of sign not specifically permitted in the subject zone, nor will it increase the maximum total permitted sign area on a single lot or building.

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

1. The traffic directional signs shall be installed in accordance with the submitted application materials and site plan dated November 10, 2021.
2. All necessary permits shall be obtained from the Division of Building Inspection, prior to installation of the signs.
3. Board of Adjustment action shall be noted on the corollary Final Development Plan for the site.

Representation – Mr. Darby Turner, attorney, was present on behalf of the applicant. Mr. Turner advised the Board that an individual who had raised their hand in opposition earlier in the hearing, was not actually opposed to the application; they simply had some questions. Mr. Turner met with them outside of Council Chambers earlier and answered their questions.

Board questions – Mr. Glover asked where the proposed signs were going to be placed. Ms. Goderwis directed Mr. Glover to the site plan on which the signs were depicted by asterisks. Mr. Turner explained further.

Mr. Needham asked whether the street coming off of Newtown Pike was a public street and whether it was a dead-end street. Mr. Turner confirmed that it was a public street which currently comes to a dead end at the back of the property, but will continue to the north as residential development occurs in that location. There was further discussion.

Mr. Turner stated he would like to change condition number 3 on the staff report to read “noted on any future Development Plans or Record Plat”, as there already is a Final Development Plan and there will not likely be an amended Final Development Plan. Ms. Goderwis indicated that staff would be agreeable to that change.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 5-0 (Gross recused; Walker absent), to **approve PLN-BOA-21-00069: EXETER NEWTOWN LAND LLC** – requests for variances to increase the allowable area of two traffic directional signs from 3 square feet each, to 6 square feet each by transferring 3 square feet each from two other allowable traffic directional signs along the same frontage in a Light Industrial (I-1) zone, on property located at 1180 Newtown Pike, based on staff’s recommendation and subject to the three conditions as listed, including the change made to condition number 3 to read: “Board of Adjustment action shall be noted on any future Development Plans or Record Plats for the site.”

E. Conditional Use Appeals

1. **PLN-BOA-21-00067: 251 E MAXWELL LLC** – requested a conditional use to establish a fraternity house and a variance to reduce the required parking from 7 spaces to 6 spaces within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 251 E. Maxwell St. (Council District 3)

The Staff Recommended: Approval, for the following reasons:

- a. The requested conditional use is appropriate in this location as the property has historically been used for communal living, including as a fraternity house prior to 1984, and as a rehabilitation home for more than 35 years. The use should not have an adverse influence on the existing or future development of the property, as it will allow for the renovation and reuse of an existing structure to provide needed student housing options within walking distance of the University of Kentucky campus and downtown.
- b. All necessary public facilities and services are existing and will be adequate to serve the proposed use.
- c. Granting the variance should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity. The property is located within the defined Infill and Redevelopment Area where parking variances of up to 50% may be granted. The applicant is requesting a modest reduction of only one parking space. The general vicinity has adequate pedestrian facilities, including walk signals and crosswalks, and public transit is available.
- d. The special circumstances that justify the variance are the location of the development and the type of user expected. The development is in a very pedestrian and bike-friendly area, near the University of Kentucky campus. By definition, the residents are students at the University, and they will likely walk to school or work to take advantage of the amenities that are within walking distance.
- e. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process for this project and has requested the variance prior to commencing construction.

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

1. The proposed use shall be developed and operated in accordance with the submitted application materials and site plan, subject to alterations to the site plan to meet the requirements of the conditions below.
2. All necessary permits and/or approvals shall be obtained prior to construction and occupancy.
3. The fraternity house shall be limited to a total of 10 beds.
4. The final configuration of the parking areas shall be subject to approval by the Division of Traffic Engineering and 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. The existing paved area adjacent to the structure and extending from the existing landscaped area along Stone Avenue to the existing concrete patio of the property shall be removed and replaced with landscaping. This area shall be screened from the paved parking area by a three-foot average height hedge or fence.
6. The conditional use shall be transferable to another fraternity or sorority that operates in compliance with the

approved conditions. Any fraternity or sorority that occupies the premises shall be a University of Kentucky recognized fraternity or sorority that subscribes to the Student Code of Conduct.

Representation – Mr. Jake Michul, attorney, Dentons Bingham Greenebaum, was present on behalf of the applicant. Mr. Michul introduced Mr. Gordy Hoagland and Mr. Eric Bivins representatives of the applicant, who were also present. Mr. Michul explained the application for a conditional use on the subject property. He directed the Board's attention to the overhead screen on which was displayed a site plan depicting an alternative solution to removing asphalt and landscaping that is currently in place on the property. He explained the applicant's justification for the alternative plan, which suggested the use of planters.

Staff comments - Ms. Goderwis commented that staff would prefer to have the applicant adhere to the condition recommended by staff. However, staff understood the applicant's desire to have the hardscape space for outdoor activities that would occur on a patio. She stated staff had concerns regarding the applicant using planters that can be moved for deliveries, etc. Ms. Goderwis stated staff would not be in support of movable planters, but if the planters are affixed and not able to be moved, staff would be agreeable to that.

Board questions – Mr. Glover asked if there was only one way in and one way out of the property. Mr. Michul confirmed that to be correct and stated that was part of the reason that the applicant would prefer to use the planters than remove asphalt. He added that using the planters would allow for more space to pull in and turn around.

Ms. Carter asked staff to explain why they had requested the asphalt be removed. Ms. Goderwis explained that without the planters, the paved area may appear to be available for parking, but there is not sufficient space for a formal parking space. She added that staff is trying to prevent future traffic issues.

Mr. Michul continued by addressing many of the concerns that had been brought up by those in opposition to this application. Discussion continued.

Opposition – Ms. Peggy McAllister, 225 Stone Ave., expressed her concerns over problems that could occur if an additional fraternity is permitted in the area. She added that there is not adequate parking for this area as it is, and given the nature of the narrow street, it is difficult to drive up and down the street.

Ms. Amy Clark, 628 Kastle Rd., expressed her concerns with having another fraternity in this area. She urged the Board to deny this requested use on the subject property. She read a statement of her concerns aloud and asked that her statement be added to the record.

*Note – At this time, Mr. Glover administered the oath to those wishing to speak, who were not present when the oath was previously administered.

Ms. Vida Vitagliano, 240 Stone Ave., spoke in opposition to this application. She presented a short video clip of an altercation between neighbors and members of a local fraternity. Ms. Vitagliano mentioned the many times law enforcement has been called to this neighborhood due to actions of the fraternities, and several times she and other neighbors had solicited aid from the University of Kentucky's Office of Student Conduct.

Board question – Ms. Carter asked when the previously shown video was taken. Ms. Vitagliano replied the video was taken in January of 2021.

Mr. Chris Huestis, 709 Lynn Rd., expressed his opposition to a fraternity located at this address. He also objected to some of the conditions on the staff report.

Applicant rebuttal – Mr. Michul returned to the podium and addressed some of the previous comments from the opposition.

Board questions – Mr. Glover asked if Sigma Chi had another location. Mr. Michul replied that they do not. He added they are an official fraternity recognized by the University of Kentucky, but they have not had a house on campus for a year or two.

Mr. Clarke asked for clarification as to why Sigma Chi no longer had a house on campus. Mr. Michul deferred to Mr. Eric Bivins to answer this question. Mr. Bivins, a member of 251 E. Maxwell LLC, approached the podium and stated he did not know for sure why the fraternity was no longer on campus. He suggested the University could provide that information. There was further discussion.

Mr. Glover asked staff if conditional uses are reviewed annually by the Division of Planning. Ms. Goderwis stated that was correct and if any of the conditions are not being met, the applicant is given the opportunity to come back

into compliance. If that does not happen, the Board could potentially revoke the conditional use permit. There was further discussion.

Mr. Clarke stated he was very concerned about the student action, which he had seen for himself being a retired University of Kentucky professor. He added that it bothered him that residents have to endure this type of behavior from students who are not well-disciplined.

Opposition – Mr. Glover allowed Ms. Clark to speak again, because she stated she had new information for the Board concerning the applicant. There was further discussion.

Staff comments – Mr. Parker approached the podium and informed the Board that he had not seen the updated site plan with the proposed planters until today. He commented that the placement of the proposed planters on the site plan is such that a car could still be parked there. Mr. Parker added that the Division of Traffic Engineering would require the planters to be placed at the edge of the 24-foot drive aisle to prevent people from parking illegally. He stated the planters would need to be spaced 3' to 4' apart and constructed of crash rated materials. Mr. Parker added that the entrance apron to the property would need to be removed and rebuilt to current standards.

Mr. Michul stated that he was not aware that Mr. Parker had not seen the revised site plan until today. Mr. Glover advised Mr. Michul that the applicant would need to work with the Division of Traffic Engineering to finalize the terms of the conditions.

Action – A motion was made by Ms. Carter to **approve PLN-BOA-21-00067: 251 E MAXWELL LLC** – request for a conditional use to establish a fraternity house and a variance to reduce the required parking from 7 spaces to 6 spaces within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 251 E. Maxwell St., based on staff's recommendation and subject to the conditions #1-4 as listed and condition #5 as amended to state that the applicant agrees to install permanently affixed planters placed at the edge of the 24-foot drive, spaced 3'-4' apart and crash-rated, as indicated on the adjusted site plan which will be entered into the record, and condition #6 as listed.

Discussion on the motion – Mr. Glover suggested the space between the planters not be specified in the conditions. He suggested the condition be worded as such "The final configuration of the parking area be subject to the approval of the Division of Traffic Engineering." Mr. Glover added that it may be that Mr. Parker may come up with different and/or less stringent requirements.

Amendment to the motion on the floor – Ms. Carter made an amendment to the motion for condition #5 so that it reads: "The applicant agrees to install permanently affixed planters as approved by the Division of Traffic Engineering." The motion was seconded by Mr. Clarke and carried 5-0 (Gross recused; Walker absent).

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

There were no Board items to be heard.

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

Ms. Goderwis introduced Mr. Daniel Crum, Planner with the Division of Planning. She stated Mr. Crum will be working with the Board of Adjustment and on Zoning applications with the Planning Commission. The Board welcomed Mr. Crum.

VII. NEXT MEETING DATE – Mr. Glover announced that the next meeting date would be January 10, 2022 at 1:30 p.m. in the Council Chambers at 200 E. Main St.

VIII. ADJOURNMENT - Chair Glover declared the meeting adjourned at 5:04 p.m.

Thomas Glover, Chair

Joan Whitman, Secretary

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