MINUTES FOR THE BOARD OF ADJUSTMENT MEETING
March 14, 2022

I. **CALL TO ORDER** – Chair Glover called the meeting to order at 1:30 p.m. **via video teleconference**, from the Division of Planning, 7th Floor, 101 E. Vine St., Lexington, KY 40507.

II. **ATTENDANCE** - Members present were: Raquel Carter, Harry Clarke, Thomas Glover, Branden Gross, Chad Needham, Chad Walker and Joan Whitman. Others present were: Keith Horn, Department of Law and Joseph Edmiston, Division of Traffic Engineering. Planning staff members present were: Traci Wade, Autumn Goderwis, Daniel Crum, Meghan Jennings, Stephanie Cunningham and Donna Lewis

II. **APPROVAL OF MINUTES** – Mr. Glover announced that the minutes from the January 10, 2022 and the February 14, 2022 meetings would be considered for approval at this time.

Action – A motion was made by Mr. Clarke, seconded by Ms. Carter and carried 7-0 to **approve** the minutes from the January 10, 2022 and the February 14, 2022 meetings.

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 individuals who were present via video teleconference.

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.

There were no postponements or withdrawals. All of the items on the agenda required discussion.

C. **Variance Appeals**

1. **PLN-BOA-22-00006: CARTER AND KATHERINE SCHUMACHER** – requested a variance to increase the allowable height of a fence in the front yard from 4’ to 5’ in a Single Family Residential (R-1B) zone, on property located at 300 Strathmore Rd. (Council District 6)

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 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. Fencing at the applicant’s proposed height could be installed within the rear yard and side yard, up to the front wall plane of the home without the need for a variance.

Staff presentation – Mr. Crum directed the Board’s attention to his screen, which he shared. He explained the applicant’s request for this variance, including a PowerPoint presentation. Mr. Crum shared staff’s reasoning for recommending disapproval of this application.

Board comments and questions – Mr. Needham remarked that this application was somewhat unique as there were no houses that backed up to it. He asked if there were any special circumstances due to this property sitting out on its own “peninsula”. Mr. Crum explained that the applicant could build a 5-foot fence along all of the sides of his property except for the side that faces Strathmore and that fence could be no taller than 4 feet tall.

Mr. Glover commented that the applicants could actually have a fence that is 6-foot tall except on the front plane of the property. Mr. Crum confirmed that to be correct.

Representation – Mr. Carter Schumacher, applicant and property owner, was present via video teleconference. Mr. Schumacher explained the reasons that he and his wife were requesting a 5-foot fence around their entire property.

Board comments and questions – Mr. Clarke asked why a 4-foot fence would be inadequate for keeping people out of the yard. Mr. Schumacher replied that previously there was a 4-foot fence, which children were climbing over on their way to and from school. There was further discussion.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 7-0, to **disapprove** **PLN-BOA-22-00006: CARTER AND KATHERINE SCHUMACHER** – request for a variance to increase the allowable height of a fence in the front yard from 4' to 5' in a Single Family Residential (R-1B) zone, on property located at 300 Strathmore Rd., based on staff's recommendation.

D. Conditional Use Appeals

1. PLN-BOA-22-00004: ANGELA SHAW – requested a conditional use to establish a family childcare for up to 12 children in a Single Family Residential (R-1C) zone, on property located at 3450 Wallingford Ct. (Council District 9)

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

a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. The applicant's proposed hours of operation should be compatible with the residential neighborhood, and are more limited than the hours previously approved under the 2004 Conditional Use Permit at this location. The use will not involve any modifications or expansions to the existing structure, and sufficient site improvements have been made to accommodate the increased parking requirements generated by the larger use.
b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. Childcare for up to 12 children shall be provided in accordance with the submitted application materials and site plan.
2. The total number of non-resident employees on the property shall be limited to two in accordance with the submitted application materials.
3. During hours of operation, visitors to the property shall be limited to residents of the dwelling, employees, and individuals picking up or dropping off children.
4. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the childcare use beyond 6 children.
5. The use shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
6. The conditional use shall become null and void should the applicant no longer reside at this location.

Representation – Ms. Angela Shaw, applicant and property owner, was present via video teleconference and explained her request for this conditional use. She explained her past experiences with providing childcare.

Board questions and comments – Mr. Clarke asked the applicant if the tree line on one side of her property was fenced. Ms. Shaw explained that there are no trees in the backyard now, due to the roots affecting their plumbing lines in the yard. She stated there are trees between the chain link fence and their privacy fence, and a very tall fence at the back of the new development that is behind her property. Ms. Shaw added that several improvements have been made to the property and there are no safety issues.

Mr. Clarke also asked about a pool in the backyard. Ms. Shaw replied that the pool has been removed. Mr. Needham complimented Ms. Shaw on her work but expressed his concerns about an increase in traffic on the street. He asked how many employees Ms. Shaw would need to operate her childcare center. She replied that she was going to provide care for two age groups. Ms. Shaw explained some of the federal and state-funded programs she planned to participate in. She said she would care for eight children and leave four spots open in the event her grandchildren needed to be cared for during the school year. She added that in addition to herself, there will be two other employees.

Opposition – Ms. Renee Park-Mooney, a 36-year resident of 3437 Wallingford Ct. spoke in opposition to the proposed daycare, stating that Ms. Shaw did not follow the conditions of her last childcare center for which she was granted a conditional use permit in 2004. Therefore, that conditional use permit was then revoked by the Board of Adjustment in 2007. Ms. Park-Mooney expressed her concerns over an increase in traffic and the noise that would likely come from having up to 12 children at this childcare location. She was also concerned about Ms. Shaw not adhering to the conditions of this use, and how that would be addressed.

Rebuttal – Ms. Shaw addressed several of the concerns expressed by Ms. Park-Mooney, stating she would follow the conditions placed on the application and continue to be a good neighbor.

Meiling Chee, 609 Saybrook Point, expressed her concerns over the noise that is currently coming from Ms. Shaw's property, and the increase in noise in the future should the prospective project be approved. She also expressed concern over the value of her property decreasing due to the noise from Ms. Shaw's property.

Mr. Tommy Pennington, 3449 Wallingford Ct., expressed the concerns of himself and his parents who have lived at this address since 1966. He spoke to the many other children who live on Wallingford Ct. Mr. Pennington expressed concerns over the smell of dirty diapers coming from the trash container on Ms. Shaw's property. He commented that he and his family like Ms. Shaw as a person, but they do not want a childcare center on their street.

Board comments – Ms. Carter stated for the record that she was uncomfortable with the conversations they had heard thus far concerning children and where they can and cannot live. She added that familial status is a protected class, and this type of conversation should not be occurring. Mr. Clarke and Ms. Whitman agreed with Ms. Carter.

Action – A motion was made by Ms. Carter and seconded by Ms. Whitman, to **approve PLN-BOA-22-00004: ANGELA SHAW** – request for a conditional use to establish a family childcare for up to 12 children in a Single Family Residential (R-1C) zone, on property located at 3450 Wallingford Ct., based on staff's recommendation and subject to the six conditions as listed.

Discussion on the motion – Prior to the vote, Mr. Clarke asked if the Board should ask Ms. Shaw if she agreed with the six conditions. Chair Glover asked Ms. Shaw if she had read the six conditions and agreed to them. She indicated that she had read the conditions and added that given the fact that she will be participating in several programs which require reviews and inspections done on site, there will be occasions when an additional vehicle is parked in the area. Mr. Glover asked Ms. Shaw if this would be in addition to the conditions in her application. She explained that this would be additional, due to the programs that her childcare will be participating in, and the need for inspections to occur. Mr. Glover suggested adding language to condition #3, to reflect this addition. The other Board members agreed to add this language.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 5-2 (Gross and Needham opposed), to approve the amended motion, which contained the following additional statement to condition #3: During the hours of operation, visitors to the property shall be limited to residents of the dwelling, employees, regulatory agencies and individuals picking up or dropping off children.

2. **PLN-BOA-22-00005: STEPWORKS RECOVERY CENTER** – requested a conditional use to establish a rehabilitation home within 500 feet of a residential zone, on property in a Professional Office (P-1) zone, located at 2240 Gulfstream Dr. (Council District 10)

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

a. The proposed rehabilitation home should not adversely affect the subject or adjoining/nearby properties. The proposed rehabilitation home will utilize the existing facilities on-site, is screened from adjacent residential uses by significant landscape buffers, and should be similar in size, hours of operation, and intensity as the previous hospice use at this location.
b. The proposed use should not create adverse traffic impacts, if directed to Greatstone Point exclusively. There is more than adequate parking available on the property and the proposed use should not generate more traffic than the previous use. By closing the Gulfstream access point, the traffic entering the site would not intermingle with the residential traffic for the Beaumont Woods subdivision.
c. The proposed use will allow the applicant to utilize existing development in order to provide services that will promote the health and welfare of the community by providing a resource to address drug addiction and dependency. The existing structures are uniquely suited to this type of use due to their previous use as a hospice facility, and the arrangement of the two existing buildings is well suited to housing gendered populations.
d. 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. The rehabilitation home shall be conducted in accordance with the submitted application materials and site plan, to be revised to close the Gulfstream Drive access point.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection, as well as necessary state agencies, prior to occupancy.
3. Outdoor congregation areas, such as smoking areas, shall be limited to the middle of the site, away from adjacent properties.

4. The Gulfstream Drive access point shall be closed, and all pavement removed. The existing landscape buffer along Gulfstream Drive shall be extended to meet the vehicular use area screening requirements of Article 18-3(a)(2) of the Zoning Ordinance.

<u>Representation</u> – Mr. Nick Nicholson, attorney, was present via video teleconference on behalf of the applicant. Mr. Nicholson introduced Ms. Melissa Koncar, the applicant, also present via video teleconference. He stated that they had read staff's recommendation and were in agreement with the listed conditions. Mr. Nicholson directed the Board's attention to his screen, which he shared. He presented a PowerPoint presentation, explaining the history of Stepworks Recovery Centers, and the proposed project in particular. Mr. Nicholson addressed some of the concerns that had been expressed by residents in the neighboring subdivision via email or mailed letters.

<u>Board comments and questions</u> – Mr. Gross asked Mr. Nicholson to explain the out-patient program, including the hours of the program. Mr. Nicholson responded that there are no out-patient services, only in-house residential services. He apologized if there was a misunderstanding based on the justification letter he sent to the Board.

Mr. Gross asked staff about the closing and screening of Gulfstream Ct., noting there were some possible restrictions as to what can be done. Mr. Glover pointed out that Condition #4 addresses the issue. Mr. Gross asked what type of screen was being planned. Mr. Nicholson indicated that the applicant was agreeable to the screening recommended by the staff.

Mr. Gross had a question about the outdoor smoking area on the site. He asked if there were going to be two smoking areas; one for each building. Mr. Nicholson responded that any outdoor activity that occurred would be around the buildings and not across the parking lot near the adjacent residential properties. Mr. Nicholson added that the residents would not be allowed out of the buildings without staff being with them. He added there were set times and no coming and/or going alone.

Mr. Glover asked about the number of residents proposed. Mr. Nicholson responded there would be fifty male and sixteen female residents. Ms. Koncar confirmed that to be correct. Mr. Nicholson added that the men would be housed in the larger building and the women would be housed in the smaller building.

Mr. Clarke asked if the patients would have access to the neighborhood at any part of the day. Mr. Nicholson replied they would not have access to the neighborhood. He said in response to some of the written comments that he had seen from neighbors, there seemed to be a concern about patients "escaping" from the facility. Mr. Nicholson remarked that in January 2022, there were one-hundred six total admissions across five facilities, and only four patients left and did not return to the facility. He added that those were not people who left of their own accord, they were transported to the hospital and did not come back for various reasons. Mr. Nicholson stated that the majority of people who do not complete the program are voluntarily discharged, but not allowed to walk out on their own; they have to be driven off site to a known location.

* Note – At 3:02 p.m. Mr. Glover called for a short break. The Board reconvened at 3:12 p.m.

<u>Opposition representation</u> - Mr. John Talbott, attorney, was present via video teleconference on behalf of Mr. Bob Cole and Mr. Stephen Bean, owners of nearby properties. Mr. Bean, co-owner of 2333 Alexandria Dr., expressed his concerns with having the proposed project at the specified location, which is directly across the street from his property. Mr. Bob Cole spoke on behalf of Four Plus Two Paragon, LLC, owners of property located at the corner of 2545 Harrodsburg Rd. and 2343 Alexandria Dr. He shared his concerns and those of his tenants, over the proposed project.

<u>Opposition representation</u> – Ms. Jessica Winters, attorney, was present via video teleconference on behalf of twenty-nine residents of the Beaumont Woods Neighborhood, primarily residents of Gulfstream Dr. and Newmarket Way. She requested that the position statement she sent to Planning staff prior to the meeting be entered into the record. Ms. Winters directed the Board's attention to her screen on which she displayed a PowerPoint presentation, explaining the neighborhood's objection to the proposed project. She listed several other property owners and business owners in the area who had expressed opposition as well. After her presentation in opposition to the proposed project, Ms. Winters asked the Board to deny the application.

*Note – Ms. Carter left the meeting at 4:00 p.m.

<u>Board comments and questions</u> – Mr. Gross asked if it was staff's interpretation that should the business model of the facility change to house involuntary patients through the penal system, the neighbors could file a complaint with the Board. Mr. Crum confirmed that to be true. Mr. Gross asked staff to show on an aerial view where 500' from the residential area would be. Staff presented the aerial on their screen, which was shared. Mr. Gross asked if it was possible to make the conditional use non-transferable to prevent another applicant from changing the use

of this property, should this applicant vacate the property. Mr. Nicholson stated that the applicant is purchasing the property and would not object to that condition.

Audience opposition – Mr. Benjamin Harberson was present via video teleconference, on behalf of the building ownership and management of 2400 Greatstone Point. He stated that this property currently houses the University of Kentucky Healthcare Pediatrics Clinic and the UK Healthcare Interventional Pain Management Clinic. Mr. Harberson stated that he and those he represented, were opposed to this proposed use. Among the reasons for their opposition was the fact that they house many of the controlled substances the perspective patients would be recovering from. He also expressed concerns of co-mingling of the residents in close proximity of the pediatrics clinic.

Dr. Donna Horn, Horn and Associates, and property owner, 2412 Greatstone Point, spoke in opposition of the proposed project. She explained the type of work that her practice is involved with, and expressed her concerns over the approval of the proposed project in this location.

Ms. Tracie Sayers and Mr. Tim Sayers, 2229 Gulfstream Dr. spoke in opposition of the proposed project. Ms. Sayers expressed her concerns with having this project in their neighborhood; preventing the residents from enjoying walking or running throughout their neighborhood. Mr. Sayers expressed his opposition to the proposed project as well.

Mr. Bob Payne, 22-year resident of 2220 Newmarket Way, expressed his opposition to the proposed project. He stressed the number of senior citizens and children who reside on this street.

Mr. Larry Goodrich, 28-year resident of 2244 Newmarket Way, spoke in opposition based on the lack of privacy for the residents should this proposed project be approved.

Ms. JoJuana Leavell-Greene, 2239 Newmarket Way, spoke in opposition based on the safety of the children in the neighborhood.

Ms. Pamela Goodrich, 28-year resident 2244 Newmarket Way, expressed her opposition of the proposed project as a whole in this location.

Mr. Robert and Mrs. Lisa Coleman, 12-year residents of 2241 Gulfstream Dr., expressed their concerns regarding the proposed project. Mr. Coleman commented that the previous business that operated at this location was open only during the day, and not nights and weekends. He also expressed concerns for his young daughters' safety as their home is located directly across the street from the subject property. Mrs. Coleman shared her concerns over the lack of privacy that the neighbors will have due to the elevation of the proposed project.

Mrs. Marianne Fox was present via video teleconference on behalf of her parents, Joseph and Mary Fugate, 29-year residents of 2402 Greatstone Point. Mrs. Fox stated that her family is opposed to the proposed project, stating various nuisances and a decrease in property value.

Mr. Charles Toy, 2217 Newmarket Way, expressed his concerns with the safety of children walking to their bus stop.

Mr. Alex Dibiasie, 2204 Gulfstream Dr., spoke in opposition of the proposed project, emphasizing the number of police and emergency response calls to the Nicholasville, KY Stepworks Recovery Center.

Rebuttal – Mr. Nicholson clarified that the proposed project is intended to be an in-patient facility only. He added there will be security cameras inside and outside the facility with personnel monitoring them. Mr. Nicholson stated that the residents will not be allowed free access to the neighborhood. He addressed many of the other concerns that had been expressed by the nearby residents.

Board questions and comments – Mr. Clarke asked if Stepworks Recovery Center was an alternative for the resident being incarcerated. Mr. Nicholson responded that it was not; that it is a voluntary program.

Mr. Glover asked if the residents were free to walk around the neighborhood unsupervised. Mr. Nicholson replied that is not the case; walking throughout the neighborhood is not allowed.

Mr. Gross asked if staff had had an opportunity to draft an additional condition that he had mentioned earlier. Ms. Goderwis read into the record the additional condition: "Should the applicant no longer own or operate the rehabilitation home, the conditional use shall be null and void." Mr. Gross was in agreement with that condition as was the applicant.

Mr. Clarke stated he was concerned about the number of patients that would be located on the subject property. He also expressed concern over the quality of life in the neighborhood. Mr. Clarke added that he felt this was the wrong use in the wrong place.

Mr. Glover said that he had concerns as well. He commented that he was viewing this application as if it were for a hospital. Mr. Glover stated that the description of this facility is one of treating patients who are in need of medical help, and with that in mind, some of his concerns were alleviated. He added that he did not dismiss the concerns of the neighborhood, as this facility does back up to a residential area.

Mr. Needham stated that both sides were well represented and he understood the concerns of both sides. He added that if he were a neighbor, he would want a fence around the area that adjoined the back property of the facility. Mr. Needham said that he didn't think that was too much to request of the applicant. He stated that he felt the applicant should be given the opportunity to try and be a good neighbor.

Ms. Whitman agreed that this was a difficult case for consideration. She remarked that a lot of people with addictions are not criminals.

Mr. Clarke added that he thought Mr. Nicholson did a great job with his presentation, and his comments were not a reflection of Mr. Nicholson and his presentation.

There was discussion among the Board members and the applicant regarding fencing. Ms. Goderwis asked if the Board and the applicant would be in agreement with a sixth condition which stated: "The applicant shall provide a 6-foot ornamental fence along Gulfstream Dr. and a 6-foot solid fence along the rear lot line." Members of the Board and Mr. Nicholson indicated they were in agreement with the addition of this condition. Mr. Glover asked staff to read the two additional conditions which had been discussed, for the benefit of all those present via video teleconference. Ms. Goderwis read the following two conditions into the record:

5. Should the applicant no longer own or operate the rehabilitation home, the conditional use shall be null and void.
6. The applicant shall provide a 6' ornamental fence along Gulfstream Dr. and a 6' solid fence along the rear lot line.

Mr. Gross commented that should this application be approved, the applicant will be bound by the conditions set forth. If the applicant does not abide by these conditions, the public may contact the Division of Planning to file a complaint, and that complaint will be investigated by the appropriate personnel, then reviewed by the Board of Adjustment. Conditional uses can and have been revoked if the conditions are not followed. Mr. Glover added that conditional uses are subject to annual review. Mr. Gross stated that he wanted the public to realize that the Board takes these requests seriously.

<u>Action</u> – A motion was made by Mr. Gross, seconded by Ms. Whitman and carried 4-2 (Clarke and Walker opposed; Carter absent), to **approve <u>PLN-BOA-22-00005: STEPWORKS RECOVERY CENTER</u>** – request for a conditional use to establish a rehabilitation home within 500 feet of a residential zone, on property in a Professional Office (P-1) zone, located at 2240 Gulfstream Dr., based upon staff's recommendation and the testimony heard, and subject to the four conditions as listed, and the following two additional conditions that were read aloud during the hearing:

5. Should the applicant no longer own or operate the rehabilitation home, the conditional use shall be null and void.
6. The applicant shall provide a 6' ornamental fence along Gulfstream Dr. and a 6' solid fence along the rear lot line.

E. <u>Administrative Appeals</u>

There were no Administrative Appeals for consideration at this time.

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

A. <u>Election of Officers</u> – The Board's By-Laws state that officers shall be elected at the first regular meeting in January of each year. The Board shall elect a Chairperson, a Vice-Chairperson and a Secretary. The election did not take place in January or February, 2022; therefore, it will take place at this meeting.

Ms. Goderwis stated that the current officers were:

Chairperson – Thomas Glover
Vice-Chairperson – Chad Needham
Secretary – Joan Whitman

She added that Mr. Glover's term of service would expire in just a few months. Mr. Glover stated that his term would end after the June 2022 meeting. He added that he would like to continue as Chair until his term ends at that time.

Ms. Whitman stated she would relinquish her position as secretary if anyone was interested in assuming that position.

Action – A motion was made by Mr. Gross to nominate Mr. Glover to the position of Chair, finishing out his final term; Ms. Carter to the position of Secretary and Mr. Needham to the position of Vice-Chair. The motion was seconded by Mr. Clarke and carried 6-0 (Carter absent).

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

Ms. Wade mentioned that at next month's meeting, Planning staff will provide presentations related to the Zoning Ordinance and recent Zoning Ordinance Text Amendments.

VI. NEXT MEETING DATE – Mr. Glover announced that the next meeting date would be April 11, 2022 at 1:30 p.m. in Council Chambers, 2nd Floor, 200 E. Main St., Lexington, KY 40507.

VII. ADJOURNMENT – As there was no further business, Mr. Glover declared the meeting adjourned at 5:20 p.m.

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Thomas Glover, Chair

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Raquel Carter, Secretary