

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

May 9, 2022

- I. **CALL TO ORDER** - Chair Glover called the meeting to order at 1:32 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.
- II. **ATTENDANCE** – Board members present were: Raquel Carter, Harry Clarke, Thomas Glover, Branden Gross (arrived at 1:48 p.m.), Chad Needham, Chad Walker and Joan Whitman. Others present were: Tracy Jones, Department of Law; Joseph Edmiston, Division of Traffic Engineering and Josh Dezarn, Division of Engineering. Planning staff members present were: Autumn Goderwis, Daniel Crum, Meghan Jennings, Traci Wade and Donna Lewis.
- III. **APPROVAL OF MINUTES** – Mr. Glover announced that the minutes from the March 14, 2022 and April 11, 2022 meetings would be considered at this time.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried 6-0 (Gross absent at this time), to approve the minutes from the March 14 and April 11 meetings.

IV. PUBLIC HEARING ON ZONING APPEALS

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

The oath was administered to the individuals in the audience and staff who planned to speak.

- 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.

C. **Abbreviated Hearing**

1. **PLN-BOA-22-00013: AMY MCSHARRY** – requested a variance to reduce the side yard setback for a deep building from 10'10" to 2'8" in order to complete construction of an addition on property located within a Single-Family Residential (R-1C) zone, on property located at 1029 McClain Dr. (Council District 1)

The Staff Recommended: Approval of a lesser variance for a side yard setback to three-feet (3') for the following reasons:

- Granting the lesser variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. There are other houses in the immediate vicinity with side yards less than the eight feet typically required for the R-1C zone.
- Approval of the lesser variance should not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as three-foot side yards are generally the narrowest allowed for single-family dwelling units, a requirement which is related to Building Code regulations for fire safety.

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

- Construction shall be in accordance with the submitted application materials and a modified site plan depicting a three-foot setback and an appropriate connection between the existing structure and the new construction.
- The addition shall be connected to the existing house, and the connection shall be enclosed and conditioned, per Building Inspection regulations.
- No wall, air-conditioning unit, structure, or other obstruction shall be located within the three-foot side yard.
- All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to the completion of construction.

Representation – Amy McSharry, applicant and property owner, was present on behalf of her application. Mr. Glover asked her if she was aware that staff recommended approval of a lesser variance of the side yard setback than what she had applied for. She acknowledged that she was aware of that, but she would still like to request approval of the variance to 2' 8" as the concrete pad had already been poured. She added that she had opted not to construct the dwelling unit above the garage; therefore, it will only be a garage.

Board questions - Mr. Glover asked the applicant if she would be required to tear out the concrete pad if the Board approved the lesser variance as recommended by staff. Ms. McSharry stated that she would have to discuss that with

her new contractor. She added that they had to get a new contractor due to several issues with the previous one. She stated that the previous contractor told her that the concrete pad had been approved so she thought that it was.

Mr. Glover asked staff to give their thoughts on this matter. Ms. Jennings responded, and asked Ms. McSharry if she planned to keep the structure as only a garage and not connect it to the primary structure. Ms. McSharry replied that although originally she had planned to build an accessory unit for their aging parents; they now plan to only enclose the garage. She added that the concrete pad that had been poured would allow for a two-car garage, and they could connect it to the primary structure if required. Ms. Jennings stated that if the garage remained detached, it would be classified as an accessory structure, which is allowed to be within eighteen inches of the property line and no variances are needed.

Ms. Goderwis asked the applicant what the footprint of the garage would be. Ms. McSharry replied that it was larger than fifty percent of the total square footage of the house. Ms. Goderwis stated that if the garage was larger than fifty percent of the total square footage of the primary structure, it cannot be an accessory structure; it would have to be attached and they would need a variance. Ms. McSharry stated that they would like to request a variance to reduce the side yard setback from 10'10" to 2'8", as that is where the pad is already poured and they could finish the construction.

Mr. Glover asked if there was a reason the construction was started without approval. Ms. McSharry replied that they had been told by their former contractor that there was a permit for the construction. She added that when that contractor filed for bankruptcy, they learned that he had only gotten a permit for the construction of the addition to the house, but not to pour the concrete.

Ms. Carter commented that she didn't feel she had clarity on what the plans were. Ms. McSharry responded that the plan going forward was to finish the three-car garage and put a roof on it, not construct the dwelling unit on top of the garage. Ms. Carter asked if the garage needed to be attached to the house. Ms. McSharry agreed that it did.

Mr. Needham asked staff how the change in the applicant's request affected the wording of the request for the variance. Ms. Jennings stated that the Division of Building Inspection uses the three-foot minimum side yard for the sake of fire safety. Ms. Goderwis stated that staff's recommendation would not change based on the reduction of the accessory dwelling unit. Ms. Carter asked if a three-foot minimum is what the staff would still recommend, even if the applicant just constructed a garage and no dwelling unit. Staff confirmed that to be true. There was further discussion.

*Note – Mr. Gross joined the meeting at 1:48 p.m.

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and carried 6-0 (Gross abstained), to **approve PLN-BOA-22-00013: AMY MCSHARRY** – request for a variance to reduce the side yard setback for a deep building from 10'10" to 3' in order to complete construction of a garage addition on property located within a Single-Family Residential (R-1C) zone, on property located at 1029 McClain Dr., based on staff's recommendation of approval of a lesser variance for a side yard setback to three-feet and subject to the four conditions as listed.

2. **PLN-BOA-22-00017: SARA MORKEN** - requested variances to reduce the front yard setback from twenty feet (20') to five and one-half feet (5.5') and to reduce the side yard setback from five feet (5') to one and one-half foot (1.5') in order to construct additions to an existing non-conforming structure so that a non-conforming commercial structure may be converted into a single-family residence on property located within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 634 Ballard St. (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 of the general vicinity as the non-conforming commercial use will be discontinued, and the structure will be converted into a single-family residence.
- b. Granting the requested variances should not have an adverse effect on the surrounding area. They will result in construction that will improve the character of the property by giving the structure a more residential-style appearance, in keeping with other residential structures in the general vicinity and along Ballard Street.
- c. The size of the lot and the existing configuration of the structure on the property are special circumstances that justify the need for the variances. Granting the variances will allow the applicant to discontinue a legally non-conforming use in favor of needed housing within the defined Infill and Redevelopment Area.
- d. The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance. The intent of the Infill and Redevelopment Area 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. Additionally, 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 site plan be modified to incorporate planting areas along the frontage of the lot in order to break up the existing pervious surface, prohibiting parallel parking within the front yard.
2. The additions shall be constructed in accordance with the submitted application materials and modified site plan.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

Representation – Ms. Sara Morken, applicant and property owner, was present on behalf of her application. She asked a question about one of staff's conditions regarding the planting areas along the frontage of the lot. Ms. Jennings responded, stating that condition #1 was meant to prevent someone from illegally parallel parking along the front of the property. She suggested the applicant add a walkway and a landing pad to ensure Ms. Morken had access to her garage.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 7-0, to **approve PLN-BOA-22-00017: SARA MORKEN** – requests for variances to reduce the front yard setback from twenty feet (20') to five and one-half feet (5.5') and to reduce the side yard setback from five feet (5') to one and one-half foot (1.5') in order to construct additions to an existing non-conforming structure so that a non-conforming commercial structure may be converted into a single-family residence on property located within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 634 Ballard St., based on staff's recommendation and subject to the three conditions as listed.

3. **PLN-BOA-22-00018: LYNN WINTER** – requested a variance to reduce the front yard setback from thirty-two feet (32') to twenty-four feet (24') in order to construct an addition of a balcony to the front wall plane of a single family residence on property located within the defined Infill and Redevelopment Area in a Single-Family Residential (R-1D) zone, on property located at 176 N. Ashland Ave. (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 of the general vicinity, nor alter the character of the general vicinity. The balcony will be constructed within the footprint of the existing covered front porch and should not have a negative impact on the streetscape.
- b. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it was needed, and prior to beginning construction of the balcony.

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

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

Representation – Ms. Lynn Winter, applicant and property owner, was present on behalf of her application for this variance. She advised the Board that the Mentelle Neighborhood Association gave their unanimous approval of the proposed project.

Board comments – Several of the Board members acknowledged this would be fitting for the neighborhood and that they appreciated the work Ms. Winter had put into her application.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 7-0, to **approve PLN-BOA-22-00018: LYNN WINTER** – request for a variance to reduce the front yard setback from thirty-two feet (32') to twenty-four feet (24') in order to construct an addition of a balcony to the front wall plane of a single family residence on property located within the defined Infill and Redevelopment Area in a Single-Family Residential (R-1D) zone, on property located at 176 N. Ashland Ave., based on staff's recommendation and subject to the two conditions as listed.

4. **PLN-BOA-22-00012: DOMINIQUE AND BLAKE STEVENSON** – requested a conditional use permit in order to operate a home-based esthetician business on property in a Single-Family Residential (R-1C) zone, on property located at 617 Freeman Dr. (Council District 6)

The Staff Recommended: Approval, for the following reasons:

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

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

1. The home-based esthetician business shall be operated in accordance with the submitted application materials and site plan, with appointments only on an individual basis.
2. The use shall operate in accordance with the requirements of the Kentucky Board of Cosmetology.

3. All necessary permits including a Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the use.
4. The conditional use shall become null and void should the applicant no longer reside at this location.

Staff Presentation – Mr. Crum explained the changes that had recently been made to the Zoning Ordinance, which now allow beauty shops and barber shops to operate as home-based businesses. He added that since esthetician services are similar to beauty salons; that is why this application was before the Board today.

Representation – Mr. Dominique Stevenson, applicant and property owner was present on behalf of the application.

Board questions and comments – Mr. Gross asked the applicant to elaborate on the types of services that would be offered. Mr. Stevenson replied that the services were listed on the staff report, which the Board had copies of.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried 7-0 to **approve PLN-BOA-22-00012: DOMINIQUE AND BLAKE STEVENSON** – request for a conditional use permit in order to operate a home-based esthetician business on property in a Single-Family Residential (R-1C) zone, on property located at 617 Freeman Dr., based on staff's recommendation and subject to the four conditions as listed.

5. **PLN-BOA-22-00016: CENTER POINT CHURCH** – requested to amend an existing conditional use permit for a place of religious assembly in order to expand the existing church facility into adjoining commercial space within the existing building on property located within a Highway Service Business (B-3) zone, on property located at 163 Old Todds Rd. (Council District 7)

The Staff Recommended: Approval, for the following reasons:

1. The proposed use should not adversely affect the subject or adjoining/nearby properties. Adjoining or nearby land uses are of a commercial nature and are not likely to be disturbed by typical church activities.
2. The church's expansion will provide designated space for their existing student and children's services and will not increase the impact of the use or required parking. More than adequate parking is available on the subject property during the week for the planned Wednesday night events and should not affect nearby commercial entities' parking needs during the week.
3. 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 expansion of the church shall be established in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the expansion of this use.

Representation – Mr. Brice Stockton and Mr. Graham Withers, applicants, were present on behalf of this application.

Board questions – Mr. Glover asked the applicants if the purpose of this application for a conditional use was only to expand the facilities; just making it bigger. Mr. Withers confirmed that to be true.

Mr. Clarke asked the applicants if this use was expanding into an existing building that the church already occupied. Mr. Withers acknowledged that to be correct.

Mr. Glover asked what that part of the building was used for before. Mr. Withers responded that Champion Windows previously occupied that space.

Action – A motion was made by Mr. Clarke, seconded by Ms. Carter and carried 7-0 to **approve PLN-BOA-22-00016: CENTER POINT CHURCH** – request to amend an existing conditional use permit for a place of religious assembly in order to expand the existing church facility into adjoining commercial space within the existing building on property located within a Highway Service Business (B-3) zone, on property located at 163 Old Todds Rd., based on staff's recommendation and subject to the two conditions as listed.

D. Discussion Items

1. **PLN-BOA-22-00011: DILLON OAKS** – requested variances to reduce the front yard setback from thirty feet (30') to fifteen feet (15') and to reduce the required setback for additional paved parking from six feet (6') to zero feet (0') in order to enclose the existing carport and utilize the existing driveway for the one required parking space for a single family dwelling unit in a Single Family Residential (R-1C) zone, on property located at 2367 Millbrook Dr. (Council District 10)

The Staff Recommended: Approval of a variance to reduce the front yard setback, for the following reasons:

- a. While the need for a variance could have been avoided had the applicant sought a permit prior to enclosing the existing carport, the requested variance to reduce the required front yard setback is generally reasonable as the size and orientation of the existing residence on the property prevents the applicant from using areas to the side or rear of the home to accommodate the required parking.
- b. Granting the variance should not negatively impact the character of the area because several homes in the immediate vicinity feature similar enclosures and have required parking located within the front building setback.

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

1. Construction and paving shall be in accordance with the submitted application materials and site plan, except for necessary changes to the pavement.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy.

The Staff Recommended: **Disapproval of the variance request to reduce the setback for additional paved parking.** for the following reasons:

- a. The need for a variance has come about because the applicant did not procure the proper permits prior to expansion of the additional paved parking area.
- b. 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. The setback for additional paved parking areas applies across all single-family residential zones.
- c. 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, as the site has historically operated with an additional paved parking area that met ordinance requirements.

Staff Presentation – Mr. Crum directed the Board's attention to the overhead screen on which he displayed a PowerPoint presentation of the application, explaining the need for two variances. He displayed an aerial view of the subject property and those surrounding it, as well as a street view of the subject property. Mr. Crum also described the site plan which had been submitted by the applicant. He explained Staff's reasons for recommending approval of the variance to reduce the front yard setback and Staff's reasons for recommending disapproval of the variance to reduce the setback for additional paved parking.

Board questions and comments – Mr. Glover asked if the proposal to build the driveway as the applicant had modified it had been for new construction, would that have been approved. Mr. Crum replied that it would not have been recommended for approval. He added that the proposed project exceeded what could be permitted by the Division of Building Inspection based on the Zoning Ordinance.

Ms. Carter asked if the applicant would be required to remove part of the paving, even though Staff had recommended approval of the first variance. Mr. Crum confirmed that the applicant would need to remove a portion of the paving. He added that the applicant would be allowed to utilize the addition as proposed, but they would be required to remove the unpermitted paved parking area. There was further discussion.

Mr. Gross asked if the applicant got a permit to enclose the carport. Mr. Crum stated they did not receive a permit for the enclosure or the work that occurred with the paving. Mr. Gross asked if a permit for both was required. Mr. Crum confirmed that to be true.

Ms. Carter asked if this application for a variance was the result of a complaint. Mr. Crum stated that there had been a complaint on this property submitted to the Division of Building Inspection in November of 2021. The applicant was then referred to the Division of Planning to apply for a variance.

Mr. Glover asked if a permit for the additional paving would have been approved, had the applicant had applied for one. Mr. Crum reiterated that variances were necessary for both components of this project. There was further discussion.

Representation – Mr. Dillon Oaks, applicant and Mr. David Lewis, property owner, were both present on behalf of this application.

Mr. Glover asked the applicant why he didn't get a permit. Mr. Oaks stated that he didn't think he needed one initially. He added that he thought the enclosure would be considered an existing structure. Mr. Oaks stated that once he was aware of a complaint, he followed the proper channels to obtain the permits.

Mr. Clarke asked the applicant why he needed the extra space at the curb. Mr. Oaks said that he thought pulling straight in from the curb made more sense.

Mr. Needham stated he felt that staff was being generous to the applicant; that the Board rarely approved the additional concrete from the curb cut. He added that the Board would normally only approve the portion that angles back from the sidewalk.

Mr. Oaks stated that he would be perfectly happy with that approval.

Mr. Lewis commented that if there is not the additional concrete, people tend to drive through the yard, making a much bigger mess.

Mr. Clarke asked if the extension would be approved if the enclosure was a two-car garage. Mr. Crum replied that it has been the interpretation of the Division of Building Inspection that if the driveway matches up with the parking

spaces, which in this case if the applicant had a two-car garage, they would be allowed to extend to match that width all the way back. If that lined up with the applicant's current proposal, that would be permitted without needing a variance for that portion. There was further discussion.

Action – A motion was made by Mr. Gross to **approve PLN-BOA-22-00011: DILLON OAKS** – request for a variance to reduce the front yard setback from thirty feet (30') to fifteen feet (15'), and **disapprove** a variance to reduce the required setback for additional paved parking from six feet (6') to zero feet (0') in order to enclose the existing carport and utilize the existing driveway for the one required parking space for a single family dwelling unit in a Single Family Residential (R-1C) zone, on property located at 2367 Millbrook Dr., based on staff's recommendation and subject to the two conditions as listed for the first variance.

Discussion on the motion – Ms. Wade suggested separating the motion into two separate motions as there were two variances. Mr. Gross agreed to amend his motion.

Action – An amended motion was made by Mr. Gross, seconded by Ms. Carter and carried 7-0, to strike the reference of disapproval of the second variance portion thereof, and only have **approval** of a variance to reduce the front yard setback from thirty feet (30') to fifteen feet (15'), for a single family dwelling unit in a Single Family Residential (R-1C) zone, on property located at 2367 Millbrook Dr., based on staff's recommendation and subject to the two conditions as listed.

Action – An amended motion was made by Mr. Gross, seconded by Ms. Carter and carried 6-1 (Clarke opposed), to **disapprove** a variance to reduce the required setback for additional paved parking from six feet (6') to zero feet (0') in order to enclose the existing carport and utilize the existing driveway for the one required parking space for a single family dwelling unit in a Single Family Residential (R-1C) zone, on property located at 2367 Millbrook Dr., based on staff's recommendation.

2. **PLN-BOA-22-00014: NORTHEAST CHRISTIAN CHURCH** – requested a conditional use to establish a child care center for up to 100 children in a Planned Neighborhood Residential (R-3) zone, on property located at 990 Star Shoot Parkway. (Council District 6)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The use will be located in the existing building and a fenced outdoor play area will be provided. Church properties are typically not used throughout the week, so are generally well-suited for this type of use. This use will provide a valuable service for the surrounding neighbors and broader community.
- b. More than adequate parking exists and is available on the subject property during the week.
- 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. The childcare use shall be conducted in accordance with the submitted application materials and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of this use.
3. The days and hours of operation shall not exceed Monday through Friday, from 7:00 a.m. to 6:00 p.m. without further approval by the Board of Adjustment.
4. The childcare facility shall be limited to 100 children.
5. A fenced and screened play area, containing a minimum of 25 square feet per child, shall be provided.
6. The facility shall be fully licensed and comply with requirements of the Kentucky Cabinet for Health and Family Services, Division of Regulated Child Care.

Representation – Ms. Abby Pace, Director of Preschool, and Keith Parish, Executive Minister, Northeast Christian Church, were present on behalf of this application. Ms. Pace explained that this application was for approval to use the existing building as a preschool on Monday through Thursday from 9:00 a.m. to 2:00 p.m., with students arriving at 9:30 a.m. and dismissal at 2:00 p.m. She added that this would be for children two months to five years old.

Board questions and comments – Mr. Glover asked Ms. Pace to explain how this proposed project would affect traffic at the church. Ms. Pace explained that there are two entrances to the church parking lot and ample parking spaces to accommodate pick up and drop off.

Opposition – Ms. Pat Harris, 2631 Flying Ebony Dr., expressed her concerns with the proposed project, mainly concerns of noise. She informed the Board that the HVAC units at the church are in close proximity to her property and they create a lot of noise, which bothers her. She also expressed concerns of there being a large enough space for an outside playground if the proposed childcare is approved.

Board questions and comments – Mr. Glover asked staff if there was a requirement in the Zoning Ordinance for the amount of space needed per child. Ms. Jennings stated the applicant is fifty feet short of the requirement for one hundred children; however, staff has included a condition of twenty-five feet per child, with approval of up to one hundred children, and there is ample space on the site to meet that twenty-five hundred feet requirement. There was further discussion.

Ms. Jennings clarified that the Zoning Ordinance does not require the outdoor play area to be on grass. It can be in the parking lot; it just has to be fenced and screened and meet the minimum twenty-five square feet per child. Mr. Glover asked if the applicant complied with that requirement. Ms. Jennings confirmed that they do comply. There was further discussion.

Mr. Gross asked if the site plan as drafted were approved, would that allow for one hundred children. Ms. Jennings replied that the site plan as it was submitted by the applicant and shown on the screen, would allow for ninety-eight children. Ms. Carter suggested amending the approval to up to ninety-eight children. Ms. Pace indicated that she was in agreement with limiting the enrollment to ninety-eight. There was further discussion.

Ms. Whitman asked the applicant to describe the screening they planned to do. Ms. Pace replied that there is already screening in place from when the church was built. She added there are shrubs and trees in the playground area. Ms. Pace stated the back row of the parking lot is lined with shrubbery and that the fencing is aluminum. Ms. Whitman asked how high the fencing was. Ms. Pace replied that it is four feet high.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 7-0, to **approve PLN-BOA-22-00014: NORTHEAST CHRISTIAN CHURCH** – request for a conditional use to establish a child care center for up to 98 children in a Planned Neighborhood Residential (R-3) zone, on property located at 990 Star Shoot Parkway, based on staff's recommendation and subject to the six listed conditions, including the modification of condition number four, stating the childcare facility be limited to ninety-eight (98) children.

3. **PLN-BOA-22-00015: LITTLE CAESARS** – requested a conditional use to establish drive-through facilities in a Neighborhood Business (B-1) zone, on property located at 269 Southland Dr. (aka 271 Southland Dr.) (Council District 10)

The Staff Recommended: Approval, for the following reasons:

- a. A drive-through facility for a proposed restaurant at this location should not adversely affect the surrounding properties. The subject property has recently operated with a drive-through window, and the drive-through facility will be visually screened from adjacent residential properties by vegetation and fencing to the rear of the site.
- b. The proposed drive-through facility should not have adverse effects on traffic at this location. Adequate vehicular stacking along the rear portions of the structure will be provided to accommodate the Little Caesar's commercial traffic. Furthermore, as the subject property derives access from a service road, the proposed drive-through facility traffic should have a minimal impact on traffic on Southland Drive.
- 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. The property shall be operated in accordance with the submitted application materials and site plan, subject to revisions to the site plan as deemed necessary during the permitting process.
2. All vehicular use areas shall be designed in accordance with the recommendations of the Division of Traffic Engineering.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Planning, Building Inspection, and Traffic Engineering, as well as necessary state agencies, prior to occupancy.
4. All exterior lighting shall be directed away from any adjoining residential property.
5. The applicant shall maintain a 6-foot tall, solid fence at the rear property line.

Representation – Mr. Robert Gorham, Jr. and Mr. Robert Gorham, III were present on behalf of this application for a conditional use at this location. Mr. Gorham, Jr. mentioned that he was aware of a neighbor's request for the use to not have a speaker at the drive-through.

Board questions and comments – Mr. Glover mentioned the site plan that was submitted incorporated three separate parcels. Mr. Gorham, Jr. concurred. Mr. Glover asked if the applicant's parcel was 269 Southland Dr. Mr. Gorham, Jr. concurred. Mr. Glover asked if the other two parcels listed were owned by other people. Mr. Gorham, Jr. concurred, stating there were two different owners. Mr. Glover asked if the applicant had an access or egress agreement with those other owners, about driving through their property. Mr. Gorham, Jr. said that they have not completed that, stating one owner has a few concerns. Mr. Gorham said he felt obtaining the conditional use, to use the subject property as a drive-through, was the most important thing for the applicant, not the site plan approval and how the property was set up.

Staff Presentation – Mr. Crum directed the Board's attention to the overhead screen on which he displayed a copy of the site plan that was submitted by the applicant, and mailed out to property owners with the notification letter.

Board questions and comments – Mr. Gross commented that there was not a proposed stand-alone order box, or at least he didn't see it on the site plan. There was some discussion. Mr. Gross stated it would be helpful for the Board if they knew where the ordering was going to occur. There was further discussion.

Mr. Glover stated that one of the conditions of approval was to maintain a six-foot solid fence on the back of the property. He asked the applicant if there was a fence there now. Mr. Gorham, III replied that there was currently a chain link fence in very poor condition there.

Mr. Clarke had questions about the directional arrows on the plan. Mr. Gorham, III replied that this plan was their proposed plan that he had used when he spoke with one of the other property owners. He added that there are several other plans. Mr. Gorham, Jr. interjected that the plan on the overhead screen, was not the plan that should have been submitted. He added that it was submitted in error as it was a "working plan". Mr. Gorham, Jr. stated he was under the impression that the purpose of this meeting was only to obtain a conditional use for a drive-through, not submitting a site plan for approval. There was further discussion.

Mr. Gorham, Jr. presented another site plan to Mr. Crum, which he displayed on the overhead screen. Mr. Gorham, Jr. added that this site plan was the plan he had intended to be submitted to the Board. There was discussion on whether this newly presented plan was sufficient for discussion or approval. Ms. Wade stated that for the record, staff had not seen this plan until now. She added that staff had reviewed the previously submitted plan and made their recommendations based on that plan. Mr. Gross added that he was not holding staff responsible for the misunderstanding with the site plan. He asked if staff was comfortable moving forward with the newly submitted site plan. There was further discussion.

Action – A motion was made by Mr. Gross, seconded by Ms. Whitman and carried 7-0 to **continue PLN-BOA-22-00015: LITTLE CAESARS** – request for a conditional use to establish drive-through facilities in a Neighborhood Business (B-1) zone, on property located at 269 Southland Dr. (aka 271 Southland Dr.) to the June 13, 2022 Board of Adjustment meeting.

E. Administrative Appeals

There were no Administrative Appeals for consideration at this time.

- V. BOARD ITEMS** – Mr. Glover announced that any items a Board member wished to present would be heard at this time.
- VI. STAFF ITEMS** – Mr. Glover announced that any items a Staff member wished to present would be heard at this time.
- VII. NEXT MEETING DATE** – Mr. Glover announced that the next meeting date will be June 13, 2022 at 1:30 p.m. in Council Chambers, 2nd Floor, 200 E. Main St., Lexington, KY 40507.
- VIII. ADJOURNMENT** – Mr. Glover declared the meeting adjourned at 3:18 p.m.

Thomas Glover, Chair

Raquel Carter, Secretary