MINUTES FOR THE BOARD OF ADJUSTMENT MEETING
June 13, 2022

I. **CALL TO ORDER** - The Chair called the meeting to order at 1:30 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, Chad Needham, Chad Walker and Joan Whitman. Others present were: Tracy Jones, Department of Law and Joseph Edmiston, Division of Traffic Engineering. Planning staff members present were: Traci Wade, Autumn Goderwis, Meghan Jennings Daniel Crum and Donna Lewis.

III. **APPROVAL OF MINUTES** – Mr. Glover announced that the minutes from the May 9, 2022 meeting would be considered at this time.

Action – A motion was made by Mr. Gross, seconded by Ms. Whitman and carried 7-0, to approve the minutes from the May 9, 2022 meeting.

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.

The oath was administered to several members of the audience and staff members 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.

Postponements

1. **PLN-BOA-22-00022: HARPER WOODS** – requested a variance to reduce the required building setback from a floodplain, from twenty-five feet (25') to five feet (5') in order to build single-family homes on property located in a Planned Neighborhood Residential (R-3) zone, on property located at 3509, 3513, 3573, 3577 Harper Woods Ln. and 2311 Armstrong Mill Rd. (Council District 8)

   Representation – Mr. Rory Kahly, EA Partners, was present on behalf of the applicant, and requested a one-month postponement to the July 11, 2022 Board of Adjustment hearing in order to work with Staff to resolve some of their concerns.

   Action – A motion was made by Mr. Gross, seconded by Mr. Needham and carried 7-0, to **postpone PLN-BOA-22-00022: HARPER WOODS** – request for a variance to reduce the required building setback from a floodplain, from twenty-five feet (25') to five feet (5') in order to build single-family homes on property located in a Planned Neighborhood Residential (R-3) zone, on property located at 3509, 3513, 3573, 3577 Harper Woods Ln. and 2311 Armstrong Mill Rd., in order to work on their application with Staff.

C. **Abbreviated Hearing**

*Note – Prior to hearing this application, Ms. Carter recused herself due to a conflict of interest.

1. **PLN-BOA-22-00021: KEITH JONES** – requested a variance to reduce the required front yard setback from thirty feet (30') to twenty feet (20') in order to construct a single-family residence on property located within the defined Infill and Redevelopment Area in a Two-Family Residential (R-2) zone, on property located at 765 Whitney Ave. (Council District 2)

   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 variance will result in construction that is consistent with the existing neighborhood character as other homes in the general vicinity have similar front yard setbacks.
   b. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance. The intent of the Infill and Redevelopment regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. The Zoning Ordinance specifically states

that BOA action may sometimes be required in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood. Additionally, the applicant has applied for the necessary variance as soon as it was determined that it was needed and prior to beginning construction.

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

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

Representation – Mr. Keith Jones, applicant, was present on behalf of this application.

Board comments – Mr. Gross stated that he appreciated Mr. Jones taking on these types of projects that were hard to develop in the Infill and Redevelopment area. Mr. Needham concurred.

Action – A motion was made by Mr. Gross, seconded by Ms. Whitman and carried 6-0 (Carter recused), to **approve PLN-BOA-22-00021: KEITH JONES** – request for a variance to reduce the required front yard setback from thirty feet (30') to twenty feet (20') in order to construct a single-family residence on property located within the defined Infill and Redevelopment Area in a Two-Family Residential (R-2) zone, on property located at 765 Whitney Ave., based on Staff's recommendation and subject to the two conditions as listed.

*Note – At this time, Ms. Carter returned to the meeting.

2. **PLN-BOA-22-00025: OSCAR AND JULIE VARGAS** – requested variances to a) reduce the rear yard setback from twenty-five feet and two inches (25'-2") to one foot and six inches (1'-6"); b) reduce the side street side yard setback from thirty feet (30') to nineteen feet and six inches (19'-6"); and c) reduce the side yard setback for a deep building from eight feet and four inches (8'-4") to six feet (6') in order to construct additions on property located in a Two-Family Residential (R-2) zone, on property located at 255 Irvine Rd. (Council District 5)

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, nor alter the character of the general vicinity. The proposed construction will improve the character of the property and will be in keeping with other residential structures in the general vicinity and along Irvine Road and Slashes Road.
b. The restrictive platted building line setbacks as well as the configuration of the existing addition and carport are special circumstances that justify the need for the variances.
c. The granting of these variances 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.

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

1. The additions shall be constructed 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 – Mr. Craig Rushing, architect, as well as Oscar and Julie Vargas, applicants and property owners, were present on behalf of their application. Mr. Rushing distributed a handout depicting the 3-D model of the proposed project.

Board comments and questions – Mr. Needham asked a question about the projection of the carport. Mr. Rushing replied that the carport projection lined up with the porch next door.

*Note – At this time, Mr. Glover announced that he had been made aware by the Fire Marshal that members of the audience could not stand along the back of the room. He added that there was an overflow area set up downstairs for those who were not seated in Council Chambers. Several audience members left the Council Chambers at that time and found seats in the overflow area.

Board comments – There was some discussion regarding the 3-D rendering Mr. Rushing had distributed and the uniqueness of the design of this project.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried 7-0 to **approve PLN-BOA-22-00025: OSCAR AND JULIE VARGAS** – requests for variances to a) reduce the rear yard setback from twenty-five feet and two inches (25'-2") to one foot and six inches (1'-6"); b) reduce the side street side yard setback from thirty feet (30') to nineteen feet and six inches (19'-6"); and c) reduce the side yard setback for a deep building from eight feet and four inches (8'-4") to six feet (6') in order to construct additions on property located in a Two-Family Residential (R-2) zone, on property located at 255 Irvine Rd., based on Staff's recommendation and subject to the two conditions as listed.

*Note – Prior to hearing this application, Mr. Needham recused himself due to a conflict of interest.

3. **PLN-BOA-22-00027: RLV VENTURES** – requested variances to reduce the front yard setback from twenty feet (20’) to thirteen-and-a half feet (13’-6”) and reduce the side yard setback for deep buildings from six-feet, five inches (6’-5”) to three feet (3’) in order to construct single-family homes on properties located within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 430, 434, 438, 440, 444, 446, 448 Jefferson St. and 451 Smith St. (Council District 1)

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

a. There are special circumstances that justify the need for the requested variances. The subject properties are narrow lots that were created prior to the creation of the current development standards.
b. The requested variances are generally reasonable and their approval will allow the applicant to utilize currently vacant lots within the Infill & Redevelopment Area for needed housing.
c. Granting the variances will not result in construction that is out of character with the general vicinity. Other homes in the general vicinity are set back a similar distance from the front and side property lines.
d. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The intent of the Infill and Redevelopment regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. The Zoning Ordinance specifically states that BOA action may sometimes be required in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood. Additionally, the applicant has applied for the variances as soon as it was determined that they were needed, prior to starting construction.

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

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

Representation – Mr. Darren Taylor, architect, was present on behalf of this application.

Board Question – Mr. Clarke asked about the property at 451 Smith St. Mr. Taylor clarified that there was only one property on Smith St., with the others being on Jefferson St.

Action – A motion was made by Ms. Carter, seconded by Mr. Gross and carried 6-0 (Needham recused), to **approve PLN-BOA-22-00027: RLV VENTURES** – request for variances to reduce the front yard setback from twenty feet (20’) to thirteen-and-a half feet (13’-6”) and reduce the side yard setback for deep buildings from six-feet, five inches (6’-5”) to three feet (3’) in order to construct single-family homes on properties located within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 430, 434, 438, 440, 444, 446, 448 Jefferson St. and 451 Smith St., based on Staff’s recommendation and subject to the two conditions as listed.

*Note – At this time, Mr. Needham returned to the meeting.

D. Discussion Items

1. **PLN-BOA-22-00015: LITTLE CAESARS (AMENDED)** – 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. Julian Gorham and Mr. Robbie Gorham, applicants, were both present on behalf of this application. Julian Gorham stated that they have addressed many of the neighbors' concerns that were mentioned at the May meeting.

Opposition – Ms. Margaret A. Sealey, 158 Goodrich Ave. expressed her opposition to this request for drive-through facilities. She presented an exhibit of the area near the proposed project. Ms. Sealey requested the applicant install as much buffer as possible and an eight-foot fence. She also asked that the applicant use downward directed lighting; use no neon or glowing signs; use no outdoor speakers and secure the dumpsters and move them away from the neighboring back yards. Ms. Sealey distributed a print-out of information for the Board members to review. There was discussion regarding condition number five which states: The applicant shall maintain a 6-foot tall, solid fence at the rear property line. Ms. Sealey indicated that the statement was unclear and she would like it to state: "install and maintain". Mr. Glover stated that, for the record, maintain does not mean maintain the fence that is there; it means to install and maintain.

Tim Whalen, 160 Goodrich Ave. mentioned the amount of money that had been spent recently on the improvement of Southland Dr., to beautify it and make it more pedestrian friendly. He remarked that allowing a drive-through which would bring in a lot of extra traffic, seemed to go against what has been done. Mr. Whalen mentioned that his neighborhood had requested to become, and is now, a historic neighborhood. He added that all of the businesses that are behind the neighborhood work well with the neighborhood and close early; whereas, this applicant is asking to stay open every night until 11:00 p.m. and midnight on Friday and Saturday. Mr. Whalen expressed his concern with the possibility of additional traffic should this request be approved. He asked if a traffic study had been done.

Francois Pomereau, 143 Goodrich Ave., WGPL Neighborhood Association president, and captain of the Pensacola Park Neighborhood Association, expressed his concern with the hours of the proposed project, and the possible noise that would come from the new business. He requested an eight-foot fence and a vegetative buffer; posts not higher than twelve-feet, and downward directed lighting. Mr. Pomereau also mentioned that the site and immediate area are in a floodplain, with flooding in the rear of the neighboring properties. He mentioned the placement of the dumpsters and that they may flood.

Staff comments – Mr. Crum stated that there is floodplain on the property; however, no portion of the structure is located in the floodplain. He added that as this is nearly all existing impervious surface, the applicant's proposed change should not impact flooding on adjacent properties. Mr. Crum stated that staff took the placement of the dumpsters into consideration when they reviewed the site plan.

Mr. Pomereau asked whether the conditional use would remain if the applicant vacates this property. Ms. Jennings stated that a condition could be added that the conditional use would be null and void if the ownership changes.

Opposition – Ms. Tenlee Tarrier, 99 Goodrich Ave., expressed her concern with the proposed loud speaker, stating it would be the only one on that side of Southland Dr. She also mentioned potential flooding in the rear of the subject property, which could turn into ice in the winter. Ms. Tarrier asked if the applicant would take down the existing canopy. She requested the Board consider not allowing a loud speaker and that they also reconsider the location of parking and of the dumpsters.

Applicant rebuttal – Mr. Julian Gorham stated he felt all of the comments from citizens in the audience were reasonable and he didn't discount any of the concerns. He added that the speaker is integral to his business but there are things that can be done to reduce speaker noise. Mr. Gorham stated that they are going to build a new fence, according to what is allowable by the Zoning Ordinance. He added that they want to be good neighbors.

Mr. Glover asked Mr. Gorham if he planned to replace the canopy that is over the speakers. Mr. Gorham indicated that he did not plan to replace the canopy. Mr. Glover mentioned adding a condition known as a "sunset clause" to the list of conditions, should this application be approved. Mr. Crum explained that the Board has the option to let this conditional use only apply to the current owner or the current occupant so that it is specific to this use or this particular owner. Mr. Glover recommended that the Board do that.

Mr. Gorham stated the dumpster, per the health department, will have to be enclosed, so there will be a full fenced enclosure around the dumpster. He added that he has not witnessed flooding of the subject property.

Board comments – Mr. Needham stated that he was fine with the conditions and that he would be agreeable to adding a condition that the conditional use become null and void upon the applicant vacating the building.

Mr. Glover remarked that the Board had received a letter from Pensacola Park Neighborhood Association, summarizing their concerns. He suggested that if the applicant had not received a copy of that letter, they should see staff to obtain one.

There was some discussion among the Board members regarding the sunset clause as part of the conditions for approval.

Opposition – Rebecca Riding, 160 Goodrich Ave. stated that there was a sunset clause with the previous use of the subject property, which was the Cat Hospital. This use did have a drive-through but not a speaker. The drive-through was used only during the COVID-19 pandemic to allow pet owners to drop their pets off without going into the building. She added there was never a speaker.

Lori Rodriguez, 152 Goodrich, Ave. stated that the sunset clause is important to the neighborhood because if and when the applicant vacates the property, the loud speaker would not remain.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 7-0, to **approve** **PLN-BOA-22-00015: LITTLE CAESARS (AMENDED)** – 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.), based on Staff's recommendation and subject to the five conditions as listed, including the amendment of Condition number five, stating that the applicant shall install and maintain an eight-foot tall solid fence at the rear property line.

2. **PLN-BOA-22-00020: NEW LIFE BAPTIST CHURCH** – requested to amend an existing conditional use for a place of religious assembly in order to modify landscaping conditions on property located within a Single-Family Residential (R-1C) zone, on property located at 333 Redding Rd. and 3457 Bellmeade Rd. (Council District 4)

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

a. Requiring the 3-foot (3') tall privet hedge is in keeping with current minimum VUA perimeter landscaping requirements as well as the previously approved conditional use. The required hedge will provide appropriate screening of the vehicular use area to the neighboring properties. Proper maintenance of the hedge to an average height of 3ft should mitigate visibility issues and safety concerns.

Staff Presentation – Ms. Jennings directed the Board's attention to the overhead screen, on which she displayed aerial images of the subject property, a site plan of the property and a PowerPoint presentation. She explained the applicant's request to amend an existing conditional use, and the history between this property and the Board of Adjustment. Ms. Jennings explained Staff's reasons for recommending disapproval of this application.

Opposition – Ms. Jane Chaput, 3456 Bellmeade Rd., expressed her opposition to amending this conditional use. She distributed photos of the subject property as seen from her home. She requested the applicant redo the landscaping to restore the property to its previous state.

Mr. Caleb Woodard, 3464 Bellmeade Rd., expressed his opposition to this application. He explained the adverse effects the removal of the hedge has had on his property.

Ms. Susan Lamb, Council Member, 4th District, was present on behalf of constituents who had reached out to her concerning this application. She stated she was strongly opposed to the removal of the buffer on this property, and requested the Board deny the application.

Representation – Pastor Steve Wainright, applicant and Pastor of New Life Baptist Church, was present on behalf of this application. He stated that when the church bought the subject property, they were unaware of the requirement of the hedge. Pastor Wainright added that the church opened up the parking lot due to the fact that it was overgrown and contained poison ivy, and also to discourage people from parking behind the hedge in the church parking lot.

Board questions and comments - Mr. Clarke asked why a three-foot hedge would block the view of people in the parking lot. Pastor Wainright replied that a three-foot hedge would not block the view if it was on level ground, but this parking lot has about a three-foot incline where the crossing guard stands. There was further discussion.

Ms. Carter asked Staff how someone would know if there is a conditional use or guidelines associated with a property when they purchase that property. Ms. Jennings replied that a Certificate of Land Use Restriction is filed with the County Clerk's office and is on file there. It should show up on the property title. Ms. Carter asked if that would show up in a title search. Mr. Gross replied that it should; however, this particular one is older and he couldn't recall when the Certificate of Land Use Restriction statute was adopted. He added that he typically requests that information from the city when he is working with a client who is purchasing property.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 7-0, to **disapprove** **PLN-BOA-22-00020: NEW LIFE BAPTIST CHURCH** – request to amend an existing conditional use for a place of religious assembly in order to modify landscaping conditions on property located within a Single-Family Residential (R-1C) zone, on property located at 333 Redding Rd. and 3457 Bellmeade Rd., based on staff's recommendation as listed.

*Note – after the vote, Pastor Wainright asked what the timeline was for the church to replace the hedge. Mr. Glover suggested he meet with staff for a determination of the timeline. At this time, 3:15 p.m., Mr. Glover called for a recess. The Board reconvened at 3:30 p.m.

3. **PLN-BOA-22-00026: ANDERSON COMMUNITIES, INC** – requested a conditional use permit for outdoor recreational facilities (soccer fields) on property located in an Agricultural Rural (A-R) zone, on property located at 2501 Russell Cave Rd. (Council District 12)

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

a. The relationship between the proposed recreational fields and the anticipated commercial stadium needs to be further clarified and the separation between the uses more clearly delineated.
b. The proposed parking area is out of scale for the size of the proposed use.
c. Additional screening and landscaping is necessary in order to screen the use and parking areas from adjacent properties.
d. The applicant should consider reconfiguring the site access to provide a more direct route for emergency services to the use.

Representation – Mr. Richard Murphy, attorney, was present on behalf of the applicant. He stated the applicant had addressed most of Staff's issues, in reference to Staff's recommendation for postponement, including an amended site plan. Mr. Murphy stressed that it was very important that this application be heard today, as this is the foundational part of the Lexington Sporting Club's plan for their youth athletic facilities. There was further discussion on whether the Board should hear this application, or postpone the case, as was Staff's recommendation.

Action – A motion was made by Ms. Carter, seconded by Mr. Needham and carried 5-2 (Glover and Clarke opposed), to **consider PLN-BOA-22-00026: ANDERSON COMMUNITIES, INC** – request for a conditional use permit for outdoor recreational facilities (soccer fields) on property located in an Agricultural Rural (A-R) zone, on property located at 2501 Russell Cave Rd.

Representation – Mr. Murphy distributed a hand-out to members of the Board and to Staff. He stated he was representing the applicant, Anderson Communities and introduced Mr. Dennis Anderson. Mr. Murphy also introduced Mr. Vince Gabbert, Lexington Sporting Club, and Rory Kahly, EA Partners, who were present in the audience, as well. He explained the application and the proposed project. Mr. Murphy mentioned that Lexington Sporting Club plans to bring a professional soccer team to Lexington, but that is not part of the application before the Board today. The application today is for twelve soccer fields proposed on Russell Cave Rd. He added that the applicant would like to get approval for a nearby stadium, which will require a text amendment that they have already filed with the Planning Commission. Mr. Murphy directed the Board's attention to the overhead screen on which he displayed an aerial of the subject property and their amended site plan. He explained the changes that had been made to the site plan and described the proposed traffic route to the fields. Mr. Murphy explained in detail how the proposed project fits within the 2018 Comprehensive Plan.

Mr. Vince Gabbert, Lexington Sporting Club, spoke regarding the professional soccer team that will be coming to Lexington and the benefits the proposed project would bring to the community.

Mr. Murphy continued with his presentation and asked the Board to approve their request for a conditional use permit on this property.

Board question – Mr. Glover asked Staff if they still recommended postponement of this application, or if they felt they'd heard enough today to go forward. Mr. Crum stated that the staff report was based on the previous site plan that had been submitted with the application. He added that the applicant had since revised their site plan, but Staff had not had time to substantially review the revised site plan; therefore, the Staff still recommended postponement at this time.

Opposition – Aveory Faircloth, 556 Judy Lane, horse trainer, stated that he and the other trainers had just been made aware of the proposed project within the previous month, and that it would not be easy for them to relocate. He added that the trainers had missed the application dates to relocate to other facilities and that many families and horses would be displaced.

Mr. Mort Shirazi, 2501 Russell Cave Rd., had been appointed as the primary speaker on behalf of the horse trainers at Ashwood Training Center. He agreed with Mr. Faircloth's statement that the deadlines for stall applications at other training facilities had passed. He explained the procedures of training facilities. Mr. Shirazi said there were approximately three hundred horses that would be affected by this proposed project.

Board questions – Mr. Glover asked for clarification regarding the property in question for the proposed soccer fields. He asked if it was correct that the property was currently being used by Mr. Shirazi and the other trainers. Mr. Shirazi confirmed that to be true; the property was a horse training center. He stressed that the trainers should have been given more notification that this project was in the works in order to make plans to relocate.

Opposition – Ms. Brittany Roethemeier, Executive Director, Fayette Alliance, spoke on behalf of the members of the Fayette Alliance, expressing their opposition to the proposed project. She gave background information on the organization and its purpose within Lexington-Fayette County. Ms. Roethemeier requested the Board postpone the application for additional discussion on the proposal.

Ms. Lisa Lourie, 3700 Newtown Pike, owner, Spy Coast Farm, stated her concern over the trainers at Ashwood Training Facility having to relocate on short notice. She expressed her opposition to the proposed project due to thoughts of future development of the subject area. Ms. Lourie also mentioned her concerns over traffic and traffic accidents.

Ms. Stacy Mitchell, 2043 Iron Works Pike, owner of Briland Farm, spoke in opposition to the proposed project based on the current traffic and the likelihood that traffic would increase should the project be approved. She also expressed concerns over the development of farmland in the rural areas.

Mr. Mike Owens, 1362 Estates Hill, farm manager and former Planning Commission member, spoke in opposition of the proposed project. He asked the Board to consider continuing the application to a meeting at a later date, in order to gain a better understanding of what is being proposed by the applicant.

Ms. Carolyn Oldfield, 2185 N. Yarnallton Pike, expressed her concerns with the proposed project, stating that she currently has a horse at Ashwood Training Center, and if the training center closes, she has no other place to train her horse.

Mr. Ryan Bean, 2152 Iron Works Pike, said he was concerned with the fact that he wasn't made aware of the proposed project until the day of the meeting. He also stated that he felt this was just the beginning of something larger, such as the construction of a stadium for games and concerts.

Mr. Tommy Hearn, 2300 Newtown Pike, described the proximity of the property he and his wife, Dr. Barbara Poole, own, to the proposed project. He explained that they board horses on their property and stated his concerns with the traffic that is currently on Newtown Pike. He asked if there had been a traffic impact study conducted. Dr. Poole displayed pictures of the traffic on Newtown Pike in the late afternoon, as well as traffic re-routed from the interstate onto Iron Works Pike, due to an incident on the interstate. She added that she is concerned with light pollution that would result if a stadium is constructed in the future, as well as the effects fireworks would have on the horses boarded at their property, should fireworks be allowed.

Mr. Bill Justice, 518 E. Main St. asked why the proposed project had not been postponed, as Staff had recommended. He implored the Board to postpone the hearing of this application.

Mr. Kirk Wycoff, Three Diamonds Farm, 228 Iron Works Pike, spoke in opposition to the proposed project, recommending allowing the applicant three soccer fields instead of twelve.

Mr. John O'Meara, 2775 Russell Cave Rd., stated that his farm is less than one hundred fifty yards from the subject property. He added that the proposed project would be detrimental to his farming operation, and that he was opposed to it.

Dr. Pedro de Pedro, 2470 Russell Cave Rd., stated that he had not been contacted by Anderson Communities to see how the proposed project would benefit him or affect his property. He added that he does have a horse farm.

Mr. Jay Ingle, 633 Bellaire Ave., attorney, was present on behalf of Fasig Tipton, 2400 Newtown Pike. He stated that the proposed soccer fields are in as close a proximity to Fasig Tipton as possible. Mr. Ingle commented that his client's main concern was the rush to approve this application. He added they were concerned with the lack of information and the changing of information. Mr. Ingle added that the Staff's recommendation for postponement was for good reason. He cited several of Staff's concerns which had been addressed in the recently submitted amended plan. However, Staff had not had ample opportunity to review the plan.

Ms. Carrie Davis, 2399 Carnegie Lane, High School Agriculture teacher and land owner, expressed her concern with conservation and protecting agriculture spaces. She also expressed her support of the horse industry in Fayette County.

Ms. Hanna Windom, owner, WinForce Thoroughbreds, spoke in opposition to the proposed project, due to the horse training industry growing smaller and smaller. She listed multiple jobs that are in conjunction with horses and horse training. She also expressed concern over an increase in traffic in the area.

Ms. Lydia Epner, 4550 Newtown Pike, stated that she owns multiple thoroughbreds. She spoke on behalf of the Ashwood Training Center and the importance of training centers in the lives of thoroughbreds and their owners. Ms. Epner elaborated on the multiple people that are involved with the daily training and livelihood of the horses.

<u>Board comments and questions</u> – Mr. Glover asked if there was anyone else present who wished to speak. No one in the audience came forward. Mr. Glover asked Mr. Murphy if he was ready to respond to the opposition's comments. Mr. Murphy requested five minutes to speak with the applicant prior to starting his rebuttal, given the amount of information that had been given.

*Note – At 5:15 p.m., the Board took a short recess. The Board reconvened at 5:25 p.m.

<u>Applicant Rebuttal</u> – Mr. Murphy thanked the Board for the opportunity for him and his clients to talk amongst themselves. Mr. Murphy stated that the first time he and the applicants met with Fayette Alliance and others, they had assured them there would be no fireworks; whether at the new stadium that is going to be built, or at the proposed location for the soccer fields. He reminded the Board that they would not be voting on lighting at this meeting, nor would they be voting on the stadium. Mr. Murphy explained there is a long process to go through for approval of the

stadium, and that it has been initiated through the Planning Commission. He said that he would like to mention that there is another connection to Providence Place Parkway through Stanton Way, avoiding Newtown Pike. Mr. Murphy directed the Board's attention to the map on the overhead screen. He added there will also be emergency access at the gate to Russell Cave Road.

Board question – Mr. Glover asked where the emergency access would be. There were questions and comments shouted from the audience, to which Mr. Glover asked that the audience allow Mr. Murphy to answer Mr. Glover's question, and allow him to finish his rebuttal. Mr. Murphy asked Mr. Anderson to describe where the emergency access was planned, which he did.

Mr. Murphy stated that the applicant was not asking for loud speakers at this field, nor in their request for a text amendment for this property. He mentioned the discussion about the trainers that were currently located on the subject property, stating in his conversations with Mr. Anderson, the property owner, Mr. Anderson had informed him that there has been a running legal dispute with the tenant of the property. Mr. Murphy added that the tenant in turn leases space out to the trainers. He stated there have been years of litigation and what is happening to the property is going to happen, whether the Board votes to approve the application before them or not, unfortunately, due to the issues over the lease. He added that the application for outdoor recreation at this site has nothing to do with those ongoing legal issues. Mr. Murphy stated that Mr. Anderson has given notice to the lessee to vacate the property and to notify the renters that they have to vacate as well.

Mr. Murphy communicated to the Board that the applicants had been informed by representatives of Ashford Stud, a neighbor to the west, that Ashford Stud was not in support of this application. He further elaborated on how the processes for this conditional use permit, a text amendment and a zone change differ. He reiterated that this request does not change the zone of the property.

Mr. Glover asked Mr. Murphy why the existing soccer fields in Fayette County were not sufficient. Mr. Murphy responded that, according to Mr. Gabbert, those fields are leased to the adult portion of LYSA and used for adult recreational usage and they cannot be under lease to the youth organization as well. He added that there has been discussion of a youth soccer complex for years; to the point that it is called for in the most recent Comprehensive Plan. He mentioned the economic benefits this project would bring to the community through travel and tourism. Mr. Murphy commented that it is the goal of the Lexington Sporting Club, to have 70% of the future team members of the professional soccer team, if the stadium is approved, come up through this youth soccer system. He added that the applicant understands the importance of the horse industry to Lexington, and reminded the Board that their decision today will not impact the future of the facility that is currently on the subject property. Mr. Murphy commented that it is important for horses to exercise and grow and it is important for children to exercise and grow.

After Mr. Murphy's statement, there were loud comments and laughter from some members of the audience. Mr. Glover sounded the gavel and announced that there would no further outbursts from the audience, and if there were, he would have security clear the room. He added that he expected respect for all who wished to speak, and that they not be interrupted by outbursts from the audience.

Mr. Murphy advised the Board that he had a list of findings, should the Board vote to approve the application today. He summarized, saying, "This is the time to do this. This is the place, and this is the group that has the financial backing to do it." He thanked the Board for considering this application.

Board question – Mr. Gross asked what the urgency was in not continuing this for thirty more days. Mr. Murphy replied that he felt the applicant could work out any unresolved issues with staff and that the applicant needed to file an erosion control plan, a grading plan, obtain a building permit and many other issues that may arise. He stated that the youth league would like to start using the soccer fields next February, and now is prime construction season.

Mr. Needham commented that he would be in favor of a continuance to allow the Staff to work through the application with the attorneys. He added that based on all of the information they had already heard, it would not be necessary to hear it all again in a month.

Mr. Clarke stated that he agreed with Mr. Needham, and that there were a lot of issues before them. He also said that he was concerned about the relationship between the stadium and this proposed project. Mr. Clarke commented that he wondered what would happen to this project if the Planning Commission did not approve the stadium. He asked if they would have a place. He added there was much more to be settled before making a decision.

Mr. Glover remarked that he was in favor of continuing this application to the meeting in thirty days. He commented that he and Ms. Whitman would not be in attendance at that meeting as their terms were ending at the end of June. Therefore, there would be two new members that would be hearing, and deciding on the proposed project.

Ms. Whitman commented that she was not in favor of continuation of the application. She added that she was very open-minded about the application when she came to the hearing today, but now felt a lot of issues had gotten confused with what the Board is actually there for, which was the approval of the soccer fields. Ms. Whitman stated she felt there was enough information at hand to make a decision on the soccer fields today. She added that she was in favor of the proposed project.

Mr. Glover recommended to the Board that they take a vote on whether to continue the application to the next month's meeting.

Ms. Carter stated that with having two new Board members that would have to vote, the Board would need to listen to testimony again.

Mr. Glover asked Ms. Jones for her input. Ms. Jones stated that if the application was continued to July's hearing, at least four of the Board members in attendance today would have to be in attendance at the July hearing in order to have a quorum. She added that if the two new Board members were appointed by the July hearing, they would have to go back and listen to the recording of today's meeting in its entirety before they could vote. Ms. Jones said that the Board could also call a Special Meeting of the Board in order to hear this application before the terms for Ms. Whitman and Mr. Glover expired.

Mr. Glover asked for further explanation of a Special Meeting. Ms. Jones explained and said that it would be up to Staff to determine if they would have enough time to do what they need to do.

Ms. Wade informed the Board that Staff does not typically send a mailed notice again for a continued hearing at a Special Board meeting, considering that those who chose to come today had already spoken, and would be aware of a continuation. She added that notice would need to be given in the newspaper, via legal ad, and the members of the Board would need to be notified within seven days ahead of a meeting.

Ms. Carter stated that she agreed with both Mr. Needham and Ms. Whitman, and as Ms. Whitman said, the issue before the Board is much simpler than all of the conversation because the Board is just one piece of the process. She added that she did have some concerns about making a decision today without more information.

Mr. Glover stated that due to the fact that there was not a staff report recommending approval and no proposed conditions, he was more inclined to continue the application to July, or call a Special Meeting. He asked Staff if there was enough time before the end of the month of June for them to review the revised proposal that was before them in order for the Board to resolve this issue at a Special Meeting.

Ms. Jennings remarked that the end of the month was seventeen days away and the legal ad must be published seven to ten days ahead of the meeting. She added that would give Staff approximately ten days to review the revised proposal and work with the applicant on any of the discussion items. There was further discussion.

Mr. Clarke stated that he wanted to be sure that Staff had enough time to do what they needed to do, adding that he would depend greatly on Staff's recommendation. He asked Staff if they would be comfortable with that period of time. Ms. Jennings responded that Staff would be able to review the revised site plan and compile a new, amended staff report ahead of a meeting at the end of the month.

Action – A motion was made by Mr. Gross, seconded by Ms. Whitman and carried 7-0 to **continue PLN-BOA-22-00026: ANDERSON COMMUNITIES, INC** – request for a conditional use permit for outdoor recreational facilities (soccer fields) on property located in an Agricultural Rural (A-R) zone, on property located at 2501 Russell Cave Rd., to a Special Meeting of the Board of Adjustment to be held on Tuesday, June 28th, 2022, at 1:30 p.m. at a location to be determined by Staff.

4. PLN-BOA-22-00023: WAYNE MICHAEL PROPERTIES, LLC & WALTER P. GLOVER ENTERPRISES – requested a third party appeal to contest the Division of Planning's issuance of a Zoning Compliance Permit for a rehabilitation home based on an existing conditional use permit on property located within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 866 S. Broadway. (Council District 10)

*Note – At this time, Ms. Carter recused herself from hearing this application, due to a conflict of interest.

Representation – Mr. Bruce Simpson, attorney, was present on behalf of the appellants of this appeal. He introduced Mr. Al Grasch and Mr. Howard Ball, attorneys also representing the appellants. Mr. Ball distributed a hand-out of information to the members of the Board. Mr. Simpson explained the history of the subject property and the appellants' reasons for filing this appeal. He directed the Board's attention to information and photos on the overhead screen, which he displayed as part of his presentation.

Board comments and questions – Mr. Gross said that he thought the subject property had been in use during the past ten years, contrary to a statement made by Mr. Simpson. He asked Mr. Simpson for clarification. Mr. Simpson replied that the property owners on both sides of the subject property were present and could attest to the fact that the building had not been in use over the past ten years. Mr. Gross stated that it appeared to him that the owners of the subject property did the right thing by obtaining the Zoning Compliance Permit. He asked how the property owners can be told now that they cannot use the property for the use they intended. Mr. Simpson stated that was the purpose of this appeal. There was further discussion. Mr. Simpson continued with his presentation on behalf of the appellants.

Ms. Whitman asked why a new conditional use permit would not be necessary if the property has been vacant for so long. Mr. Simpson replied that was his point, he was of the opinion that the property owner should file for a new conditional use permit.

Appellant Presentation – Mr. Michael Williams, property/salon owner at 860 S. Broadway, spoke in opposition of the proposed use at the subject location. He listed several reasons for his opposition; one reason being the detrimental effect it would have on the neighborhood.

Mr. John Thomas Glover, property owner, 862 S. Broadway, spoke in opposition of the proposed use being allowed at the subject location. He attested to the fact that there has not been a resident in the subject property since it closed in 2010. Mr. Glover asked that the nearby property owners be given more information about the proposed use.

Board comments and questions – Mr. Glover asked Mr. Simpson why it was necessary for the Board to hear more testimony about the growth of the neighborhood, when what the Board was to decide was whether or not the permit was improperly granted. Mr. Simpson responded that no more such testimony was necessary.

Mr. Glover asked staff why the Zoning Compliance Permit was granted, and what staff took into consideration when they decided to support the issuance of the permit.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which was displayed a copy of a portion of the 1975 Zoning Ordinance. She explained that in 1975, the Zoning Ordinance listed rehabilitation centers as a conditional use in the R-3 zone. She added that at the end of the Zoning Ordinance were definitions; however, rehabilitation centers did not have their own specific definition, but they were included by reference or example in the definition of another use. Ms. Jennings read the definition of "Institutions for Human Care", which listed rehabilitation centers as one type of institution. She clarified that in the 1975 Zoning Ordinance, rehabilitation centers were addressed; they just didn't have their own separate definition.

Mr. Glover asked for more clarification, which Ms. Jennings provided. Ms. Jennings explained that the staff report covered the permitting history on site, starting in the 1970's going through the 2010's. She reiterated the more recent history of the site, listing various certificates, permits, etc. that had been issued pertaining to this property. Ms. Jennings explained that this more recent permitting history more than likely informed and led to Planning Staff's decision in early 2020 to grant the Zoning Compliance Permit to The Commitment House. According to PVA, they officially became the new owners of the subject property in 2022 and prior to that, LexWay LLC was the property owner.

Mr. Glover stated that it wasn't clear in the staff report, who the Zoning Compliance Permit was issued to. Ms. Jennings replied it was issued to The Commitment House. Mr. Glover invited the property owners to come forward and speak.

Mr. Dennis Barnett, owner and CEO of The Commitment House and owner of the property located at 864 and 866 S. Broadway, thanked the Board members for hearing the concerns of both parties. He stated that when he filed for the Zoning Compliance Permit in 2020 as he was directed, he was informed that he did not need to change the use and go before the Board of Adjustment. Mr. Barnett stated that The Commitment House is a state licensed, nationally accredited facility and that they abide by over 2000 standards. He added that they are working towards getting the property upgraded to a thirty-two bed facility. Mr. Barnett asked the Board to not revoke the Zoning Compliance Permit.

Mr. James Duke, The Commitment House Executive Director, advised the Board that he understood the concerns and fears that exist when working with a population that you are unfamiliar with. He added that they have been doing this successfully for some time, and allowing them to move forward with this project will allow individuals to get the help they need and get better.

Board question – Mr. Glover asked the Staff when Article 1-11, which was referred to in the staff report, was adopted. He added that is the definition of rehabilitation homes, and the timing of that is important to this case. Ms. Wade stated that the entire Zoning Ordinance was re-written in 1983, so that is when Article 1-11, in its current form, would have been created. She added that she wasn't sure when that particular definition went into effect.

Rebuttal – Mr. Simpson addressed the phrase "Institutions for Human Care", which was previously mentioned by Ms. Jennings as an allowable conditional use at the time a conditional use permit was granted for this property. He stated that was not the case; that the conditional uses attached to the R-3 zone at the time this application was approved, also applied to the R-2 zone, and he read a list of allowable conditional uses from a copy of definitions, which was also distributed to members of the Board by Mr. Ball. Mr. Simpson continued with his rebuttal. He recommended to the Board that they hold a new hearing to determine if new conditions should be imposed upon the proposed use.

Board questions – Mr. Glover asked Mr. Simpson for clarification of what Mr. Ball previously distributed. Mr. Simpson directed the Board's attention to the highlighted portion at the bottom of the page. He explained that it was a list of the conditional uses allowed in the R-3 zone in 1976 when the subject conditional use was approved. Mr. Glover stated that rehabilitation centers were included in that description. Mr. Simpson affirmed that to be true. There was further discussion.

Mr. Clarke asked when the term “halfway house” was mentioned, as he didn’t see a reference to that term until around 2011. Mr. Simpson responded that the term rehabilitation center (halfway house) was mentioned in the staff report in 1976. There was further discussion.

Mr. Glover asked Staff what conditions pertaining to this property, are reviewed on a yearly basis. Ms. Jennings responded, explaining that the Zoning Enforcement Officers make inspections each month on conditional uses that were previously issued in that calendar month; ensuring the conditions are still being met. There was further discussion.

Mr. Clarke stated that the main question seemed to be, “Is this a rehabilitation center?” He added that no matter how it is defined now, it would be beneficial to have a clearer definition. Mr. Clarke said that there seemed to be no way to get around the fact that the current use is a rehabilitation center.

Mr. Gross asked if the current use could continue without the Board imposing additional conditions on it. Ms. Jones responded that is not what is before the Board today. She added that what was before the Board today was to determine whether the Zoning Compliance Permit was properly issued by Planning Staff. Therefore, the Board could not impose additional conditions during a hearing to determine whether the Zoning Compliance Permit was properly issued. Ms. Jones added that should the property owners come back to the Board for a conditional use permit hearing at a later date, then the Board could impose different conditions. She stated that if the Board upholds the current Zoning Compliance Permit, the business will continue to operate as a rehabilitation center. She also said that is difficult to say what the term “rehabilitation center” meant in 1976, and the term “halfway house” is not defined now, nor was not defined in the 1976 Zoning Ordinance either. There was further discussion.

<u>Action</u> – A motion was made by Mr. Clarke to **uphold** the Division of Planning’s decision in the issuance of a Zoning Compliance Permit for a rehabilitation home based on an existing conditional use permit on property located within the defined Infill and redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 866 S. Broadway.

<u>Discussion on the motion</u> – Ms. Jones advised the Board that findings were needed, and offered to assist the Board with those findings.

*Note – The Board took a recess at 7:37 p.m. and reconvened at 7:43 p.m.

<u>Board question</u> - Mr. Gross asked if the conditional use permit would remain in place if the Zoning Compliance Permit was revoked. Ms. Jones replied that she was not sure; that it could still be in place but it would depend on what the findings were if the Board chose to revoke the Zoning Compliance Permit. There was more discussion.

<u>Action</u> – An amended motion was made by Mr. Clarke, seconded by Mr. Walker and carried 5-1 (Carter recused; Gross opposed), to **uphold** the Division of Planning’s decision in the issuance of a Zoning Compliance Permit for a rehabilitation home based on an existing conditional use permit on property located within the defined Infill and redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 866 S. Broadway, based on the following three findings:

1. The conditional use was not abandoned as the records indicate; that in 1989 a permit was issued to remodel; in 2004 a permit was issued for a new HVAC; in June 2011 a certificate of occupancy was issued to operate a rehabilitation housing facility; in May 2014 a remodeling permit was issued for Shepherd’s House and sale was made to the current owner in March 2022.
2. The Zoning Ordinance in 1976 included rehabilitation services and rehabilitation centers.
3. This definition includes medical services and rehabilitation services, which could include drug and alcohol rehabilitation.

*Note – At this time, Ms. Carter returned to the meeting.

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

A. <u>Appoint a new member to the Landscape Review Committee.</u>

The Division of Environmental Services had previously submitted a recommendation to appoint Mr. Todd Kelly to the Landscape Review Committee, to fill the position of Nurseryman Representative, vacated by Louis Hillenmeyer, III on 11/30/2021.

<u>Action</u> – A motion was made by Mr. Needham, seconded by Mr. Gross and carried 7-0 to appoint Mr. Todd Kelly to the Landscape Review Committee, in the position of Nurseryman Representative.

B. **Election of Officers** – Since Mr. Glover will be vacating the position of Chair, effective July 1, 2022, a new Chair shall be elected.

The current officers are:
Chairperson – Thomas Glover
Vice-Chairperson – Chad Needham
Secretary – Raquel Carter

Action – A motion was made by Mr. Gross and seconded by Mr. Needham to nominate Ms. Carter to the position of Chair of the Board of Adjustment. The motion was voted on and carried 6-0, (Ms. Carter abstained from voting.)

Action – A motion was made by Mr. Gross and seconded by Mr. Needham to nominate Mr. Clarke to the position of Secretary of the Board of Adjustment. The motion was voted on and carried 6-0 (Mr. Clarke abstained from voting.)

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

A. **Acknowledgement of Retiring Board Members Thomas Glover and Joan Whitman**

Thomas Glover has fulfilled three terms of service with the Board of Adjustment for a total of twelve years, with his final term ending June 30, 2022.

Joan Whitman has fulfilled two terms of service with the Board of Adjustment for a total of eight years, with her second term ending June 30, 2022. She did not seek re-appointment for another term.

Ms. Carter thanked Ms. Whitman and Mr. Glover for their years of service with the Board of Adjustment.

VII. **NEXT MEETING DATE** – Mr. Glover reminded the Board members and others present of the Special Meeting that has been called to be held on Tuesday, June 28, 2022 at 1:30 p.m. in a location to be determined by Staff, to continue hearing **PLN-BOA-22-00026: ANDERSON COMMUNITIES, INC** – request for a conditional use permit for outdoor recreational facilities (soccer fields) on property located in an Agricultural Rural (A-R) zone, on property located at 2501 Russell Cave Rd.

VIII. **ADJOURNMENT** – Mr. Glover declared the meeting adjourned at 7:58 p.m.

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Raquel Carter, Chair

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Harry Clarke, Secretary