

**MINUTES FOR THE BOARD OF ADJUSTMENT
MEETING**

September 12, 2022

- I. **CALL TO ORDER** – Chair Raquel Carter 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, Carolyn Plumlee, Linda Tucker and Chad Walker. Branden Gross was absent. Others present were: Tracy Jones, Department of Law; Vaughan Adkins, Division of Engineering and Stephen Parker, Division of Traffic Engineering. Planning staff members present were: Jim Duncan, Traci Wade, Autumn Goderwis, Daniel Crum, Stephanie Cunningham and Paula Schumacher.
- III. **APPROVAL OF MINUTES** – Ms. Carter announced that the minutes from the July 11, 2022 and the August 8, 2022 meetings would be considered for approval at this time.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 6-0 (Gross absent), to **approve** the minutes from the July 11, 2022 and the August 8, 2022 meetings.

IV. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Swearing of Witnesses** – Ms. Carter 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 who planned to speak.

- B. **Sounding the Agenda** - In order to expedite completion of agenda items, Ms. Carter sounded the agenda with regard to any postponements, withdrawals, and items requiring no discussion.

C. **Postponements**

1. **PLN-BOA-22-00033: KENTUCKY EPSILON PHI DELTA THETA HOUSE CORPORATION** – requested a conditional use permit for an eighteen (18) bed fraternity house within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 236 Lexington Ave. (Council District 3)

A representative for the applicant informed the Board that the applicant wished to request postponement of their application to the October 10, 2022 meeting.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 6-0 (Gross absent), to **approve the postponement of PLN-BOA-22-00033: KENTUCKY EPSILON PHI DELTA THETA HOUSE CORPORATION** – request for a conditional use permit for an eighteen (18) bed fraternity house within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 236 Lexington Ave., as requested by the applicant, to the October 10, 2022 meeting.

2. **PLN-BOA-22-00045: INDEPENDENCE BANK** – requested a conditional use to establish drive-through facilities for a proposed bank within the defined Infill and Redevelopment Area in a Downtown Business (B-2) zone, on property located at 366, 370, and 376 E. Main St. (Council District 3)

Mr. Shawn Spalding, attorney on behalf of the applicant, informed the Board that the applicant wished to request postponement of their application to the October 10, 2022 meeting.

Action – A motion was made by Mr. Needham, seconded by Ms. Tucker and carried 6-0 (Gross absent), to **approve the postponement of PLN-BOA-22-00045: INDEPENDENCE BANK** – request for a conditional use to establish drive-through facilities for a proposed bank within the defined Infill and Redevelopment Area in a Downtown Business (B-2) zone, on property located at 366, 370, and 376 E. Main St.

D. Abbreviated Hearing

1. **PLN-BOA-22-00038: GARY & LARRY HAMILTON** – requested variances to reduce the eastern side yard setback from eight (8) feet to three (3) feet and increase the maximum front yard setback from thirty-five (35) feet to one hundred and twenty-four (124) feet in order to convert an existing accessory structure into a principal structure in a Single-Family Residential (R-1C) zone, on property located at 684 E. Loudon Ave. (Council District 1)

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 structure will be converted into a single-family residence and the property will be brought into more conformity with the zone and surrounding properties.
- 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 and neighborhood by creating a new residential structure along East Loudon Avenue.
- c. The existing configuration of the structure on the property is a special circumstance that justifies the need for the variances. Granting the variances will allow the applicant to convert an existing accessory structure into an independent dwelling unit, providing needed housing within the Urban Service Area.
- d. The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance. The applicants wish to utilize an existing structure in order to minimize costs in providing a new residence in the neighborhood. Additionally, the applicants 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 applicants shall file for both a subdivision plan and a residential building permit prior to beginning construction.
2. The new dwelling unit shall not be occupied until the subdivision plat is recorded and a Certificate of Occupancy has been issued.
3. An access easement shall be established on the plat of record across both lots which permits associated utility companies' access to the cell tower on the rear of the property.
4. The lot and structure shall be redeveloped in accordance with the submitted application materials and site plan.
5. Any action of the Board of Adjustment shall be noted on the subdivision plan prior to it being recorded.

Representation – Mr. Gary S. Hamilton, 637 S. Anthony Dr., applicant and property owner, was present on behalf of this application. Mr. Hamilton indicated that he had reviewed the five conditions recommended by Staff and agreed to abide by them.

Board question – Mr. Needham asked for clarification as to the location of a cell tower that was mentioned in the staff report. Mr. Hamilton stated that a utility tower approximately one-hundred and sixty (160) feet tall, was located behind the house bordering the railroad track, but there was no cell tower nearby.

Staff comments – Ms. Jennings clarified that Staff reported the tower as a cell tower based on the aerial imagery interpretation.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 6-0 (Gross absent), to **approve PLN-BOA-22-00038: GARY & LARRY HAMILTON** – requests for variances to reduce the eastern side yard setback from eight (8) feet to three (3) feet and increase the maximum front yard setback from thirty-five (35) feet to one hundred and twenty-four (124) feet in order to convert an existing accessory structure into a principal structure in a Single-Family Residential (R-1C) zone, on property located at 684 E. Loudon Ave., based on Staff's recommendation and subject to the five conditions as listed.

2. **PLN-BOA-22-00042: PADAVET, LLC** – requested a variance to reduce the required setback from a residential zone from one-hundred (100) feet to eighty (80) feet in order to operate an animal clinic in a Highway Service Business (B-3) zone, on property located at 2870 Richmond Rd. (Council District 5)

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, as the use will be operated indoors, and the nearest residential structure is over 150 feet from the proposed use.
- b. The small remnant portion of R-3 zoning present on the site is a unique circumstance that limits the applicant's ability to operate at this location.
- c. 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 occupying the space.

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

1. The use shall operate in accordance with the submitted application materials and site plan.
2. No outdoor kennels, pens, or exercise areas shall be permitted.
3. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.

Applicant Representation – Mr. Nelson Rodes, attorney, was present on behalf of the applicant. He indicated that the applicant had reviewed the staff report and the conditions therein, and agreed to abide by them.

Action – A motion was made by Mr. Needham, seconded by Mr. Walker and carried 6-0 (Gross absent), to **approve PLN-BOA-22-00042: PADAVET, LLC** – request for a variance to reduce the required setback from a residential zone from one-hundred (100) feet to eighty (80) feet in order to operate an animal clinic in a Highway Service Business (B-3) zone, on property located at 2870 Richmond Rd., based on Staff's recommendation and subject to the three conditions as listed.

E. Items for Discussion

1. **PLN-BOA-22-00032: AARON AND MEGHANN BIDARIAN** – requested a variance to reduce the side yard setback from twenty-five (25) feet to ten (10) feet in order to construct a single-family residence in an Agricultural Rural (A-R) zone, on property located at 1440 Deer Haven Ln. (Council District 12)

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 reduced side yard setback will not visually impact the surrounding properties as the closest neighboring principal structures are located over one-hundred and fifty (150) feet from the proposed residence.
- b. The non-conforming size of the lot in an Agricultural Rural (A-R) zone is a special circumstance that is unique to the subject property and justifies the need for the variance.
- c. Strict application of the Zoning Ordinance would create an unnecessary hardship for the applicant due to the required setbacks being more restrictive on the subject property than other lots in the same zone. Additionally, if urban zoning standards were applied to the subject property, the lot would meet the standards for a Single-Family Residential (R-1A) zone, which only requires ten (10) foot side yards, as well as the recommended Expansion Area Residential 1 (EAR-1) zone, which only requires five (5) foot side yards.
- d. 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.

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

1. The front-facing garage shown on the submitted site plan shall be relocated to the side or rear of the structure in order to allow the two garages to share one driveway, and no additional paving for vehicular use area shall be permitted in front of the front wall-plane of the house.
2. Construction shall be in accordance with the submitted application materials and a modified site plan reflecting condition #1.

3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which she displayed a presentation of the proposed project. She reminded the Board members that this application had been continued from the August 8, 2022 hearing, and updated them on the results of a meeting between Planning Staff and the applicants following that hearing. Ms. Jennings displayed a revised site plan which had been submitted by the applicant, showing a reduction in the amount of paving proposed for this project. She explained additional revisions the applicants had made to the site plan and to the proposed project in general. Ms. Jennings explained Staff's reasons for maintaining their recommendation of approval of the requested variance, subject to the three conditions as stated.

Board question – Ms. Carter asked how much pavement was allowed on the subject property. Ms. Jennings explained that the standards state that the maximum allowable amount of paving per lot is fifty percent of the lot coverage. She added that this particular application does not come close to that amount, but given the other information Ms. Jennings had shared with the Board concerning the Scenic Resource Area and the Expansion Area Master Plan design considerations, Staff was basing their recommendation of redesign on those considerations.

Mr. Clarke asked if Staff's recommendation of approval was dependent upon moving the front garage to the side or the rear, and eliminating the driveway in the front of the house. Ms. Jennings replied that Staff was concerned with the amount of paving in the front of the home and had presented options to the applicants for reducing the amount of pavement.

Representation – Mr. Aaron Bidarian, applicant and property owner, was present on behalf of this request for a variance. He responded to some of the items Ms. Jennings had mentioned in her presentation concerning his application. Mr. Bidarian stated that redesigning the proposed house would not be an option for them. He asked Staff if the current layout of the driveway would be an issue if a variance was not requested. Ms. Jennings replied that if a variance was not needed, the pavement would not be an issue. There was further discussion.

Board question – Mr. Clarke asked for clarification of a statement made by Staff referring to Mr. Bidarian backing the boat out onto Deer Haven Lane. Mr. Bidarian replied that was a comment made in error by Staff as he would not be backing onto Deer Haven Lane. Mr. Clarke asked Mr. Bidarian if it was correct that he would not agree to the conditions of approval as stated by Staff. Mr. Bidarian replied that was correct. He added that to redesign the entire house was not an option for his wife and him.

Staff question – Ms. Jennings asked the applicant to use the laser pointer on the overhead screen to demonstrate how he planned to pull the boat out from the garage and make it down the driveway without having to turn around. Mr. Bidarian did so and explained that it is much harder to back a boat into a garage than it is to pull a boat out of the garage. There was further discussion.

Action – A motion was made by Mr. Needham, seconded by Ms. Plumlee and carried 4-2 (Carter and Walker opposed; Gross absent), to **approve PLN-BOA-22-00032: AARON AND MEGHANN BIDARIAN** – request for a variance to reduce the side yard setback from twenty-five (25) feet to ten (10) feet in order to construct a single-family residence in an Agricultural Rural (A-R) zone, on property located at 1440 Deer Haven Ln., based on Staff's recommendation and subject to the three conditions as listed.

2. **PLN-BOA-22-00039: JEAN MACHADO** – requested a variance to reduce the side yard setback for an accessory structure that projects between the principal structure and side lot line from twenty-five (25) feet to twenty (20) feet in order to construct an equipment storage shed in an Agricultural Rural (A-R) zone, on property located at 7959 Old Richmond Rd. (Council District 12)

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

1. 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.

2. 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. There appears to be sufficient space for the applicant to relocate the structure or reduce its size, which would eliminate the need for a variance.
3. Approval of the variance would allow for an unreasonable circumvention of the requirements of the Zoning Ordinance, as the need for a variance is the result of the applicant's actions taken after the adoption of the current Zoning Ordinance. The applicant did not secure a building permit prior to construction of the accessory structure.

Staff Presentation – Mr. Crum directed the Board's attention to the overhead screen on which he displayed aerial views of the subject property, showing the various structures on the property. He added that there had been a long history of zoning issues with this property, dating back to the 1950's. Mr. Crum explained the various zoning violations that had occurred on this property since that time, including the most recent violation, which prompted the applicant's request for a variance.

Board question and comments – Mr. Needham asked if the proposed use of the subject structure was an allowable use in the Agricultural Rural (A-R) zone. Mr. Crum replied that based on the applicant's revised information, this would be a residential accessory structure which would not be an allowable use in conjunction with a business. Doing so would constitute a violation of the Certificate of Occupancy that had been issued for this structure. There was further discussion.

Representation – Mr. Jean Machado, applicant and property owner, was present on behalf of his application for a variance. He addressed some of the comments made in the presentation by Staff. Mr. Machado stated that the miss-uses that were spoken of were prior to his acquisition of the property in February of 2021. Mr. Machado presented documentation showing that his business is located at 371 United Ct. He added that there would be no commercial use at the subject property of 7959 Old Richmond Rd. Mr. Machado admitted that he had erred in not obtaining a permit prior to the construction of the subject structure. He explained his request for a variance and thanked the Board for their time.

Board question – Ms. Carter asked Mr. Machado what the intended use was for the 2800 square foot building. Mr. Machado replied that he had moved his business equipment out of that building to his business address that he is renting. He added that there are ladders, power washers, sprayers and mowers in the building; things that anyone can have at their home. Mr. Machado stated that he has worked very hard to clean up the subject property.

Mr. Clarke asked Mr. Machado if he had talked with Staff about the emails he had discussed with the Board. Mr. Machado said that he had discussed the building with Staff. Mr. Clarke asked Staff to comment on whether the issue at hand was just the purpose of the building.

Ms. Jennings explained that the applicant applied for building permits after receiving a Notice of Violation for constructing a building without a permit. He applied for a commercial accessory structure permit with the Division of Building Inspection. After discussing with the Division of Building Inspection, it was agreed upon that the structure should be changed to a residential accessory structure, given the history of the use. She provided further explanation.

Audience support - Brian Erickson, 7973 Old Richmond Rd., stated he has no opposition to the variance. He added that Mr. Machado has improved the appearance of the property a great deal by the work he has done.

Board comments – Mr. Needham commented that he was inclined to grant Mr. Machado the variance, rather than having him tear down the structure, as long as it remains residential in nature and use. He added that Mr. Erickson's statements meant a lot. Mr. Clarke stated that he agreed with Mr. Needham.

Ms. Plumlee asked if the applicant was living on the property now, or if he planned to. Mr. Machado indicated that he was not living on the property.

*Note – The Board took a ten minute recess at approximately 2:40 p.m.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 4-2 (Carter and Plumlee opposed; Gross absent) to **approve PLN-BOA-22-00039: JEAN MACHADO** – request for a

variance to reduce the side yard setback for an accessory structure that projects between the principal structure and side lot line from twenty-five (25) feet to twenty (20) feet in order to construct an equipment storage shed in an Agricultural Rural (A-R) zone, on property located at 7959 Old Richmond Rd., based on the following:

The Board of Adjustment **Approves the requested variance**, based on the following findings:

- a. Due to circumstances creating confusion as to whether the building was a residential accessory structure or a commercial accessory structure, the setbacks were unclear. When the Division of Building Inspection changed the building to a residential accessory structure, it created a hardship on the applicant that he built the structure without the appropriate side yard setbacks.
- b. Approval of the variance will not cause an unreasonable circumvention of the requirements of the Zoning Ordinance and it will not adversely affect the health, safety or welfare of the general vicinity.

This decision was made subject to the following conditions:

1. The structure shall not be used for any commercial purpose. Only residential and/or agricultural items may be stored in this location.
 2. All necessary permits and approvals shall be secured prior to the use of the structure.
 3. Use of the property shall be in accordance with the submitted application materials and site plan.
3. **PLN-BOA-22-00041: CHARLIE WILLIAMS DESIGN, INC.** – requested a variance to reduce the side yard setback for an accessory structure that projects between the principal structure and the side lot line from eight (8) feet to one-and-three-quarters (1¾) feet within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) in a High Density Apartment (R-4) zone, on property located at 606 W. Short St. (Council District 11)

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 proposed construction will improve the character of the property and will be in keeping with other residential properties in the general vicinity.
- b. The restrictive developable area of the lot, and limitations of making improvements to a historic property, are special circumstances that justify the need for the variance.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variance as soon as it was determined that it was needed during the permit process, and prior to beginning construction.

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

1. The accessory structure's second story living space is prohibited from featuring a kitchen and shall not be rented.
2. The accessory structure shall be constructed in accordance with the submitted application materials and site plan.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Charlie Williams, applicant, 1626 Windsor Pl., Louisville, KY 40204, was present on behalf of this application and indicated that he had reviewed the staff report and was in agreement with the conditions therein. He directed the Board's attention to the site plan displayed on the overhead screen. Mr. Williams explained the need for the requested variance.

Board question – Ms. Plumlee asked the applicant to explain the intended use for the area over the proposed garage. Mr. Williams replied that it may be used as a home office or a studio use. Ms. Plumlee asked if it was going to have heat. Mr. Williams replied that it would have heat and plumbing.

Audience comments – Ms. Kay Anderson, 612 W. Short St., commented that she previously had a concern regarding parking in the alley. She stated that her concerns had been addressed and she has no opposition to this application.

Action – A motion was made by Mr. Clarke, seconded by Mr. Walker and carried 6-0 (Gross absent), to **approve PLN-BOA-22-00041: CHARLIE WILLIAMS DESIGN, INC.** – request for a variance to reduce the side yard setback for an accessory structure that projects between the principal structure and the side lot line from eight (8) feet to one-an-three-quarters (1¾) feet within the defined Infill and

Redevelopment Area and a Historic District Overlay (H-1) in a High Density Apartment (R-4) zone, on property located at 606 W. Short St., based on Staff's recommendation and subject to the three conditions as listed.

4. **PLN-BOA-22-00043: CALLIE & KIRK RZASA** – requested a variance to reduce the required setback for a 6-foot tall fence within a side street side yard from three (3) feet to one (1) foot within a Neighborhood Design Character Overlay (ND-1) in a Single Family Residential (R-1C) zone, in property located at 150 Old Cassidy Ave. (Council District 5)

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

- a. The applicant has not provided a sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance or KRS 100.243. There do not appear to be special circumstances that are unique to the subject property that do not generally apply to land in the general vicinity, or in the same zone that justify the need for the variance. Three-foot side street setbacks for fencing taller than 4 feet are consistent across residential zones.
- b. There is sufficient space on the subject property to accommodate the desired fencing at the required setback.
- c. Approval of the variance would allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the need for the variance arises from the applicant's actions taken after the adoption of the current Zoning Ordinance and who undertook work without a permit to construct the fence.
- d. Strict application of the Zoning Ordinance would not deprive the applicant of the reasonable use of their land. The applicant could add privacy to their rear yard without requiring a variance by either constructing a 6-foot tall fence at a 3-foot setback, or reducing the height of the fence and utilizing landscaping elements to provide additional screening.
- e. Approval of the requested variance could have a negative impact on the walkability of the immediate vicinity, as the property is located immediately adjacent to an elementary school. Best practices regarding sidewalk design often discourage tall fences adjacent to pedestrian facilities, as pedestrians do not feel comfortable walking directly adjacent to a building wall or a fence.

Staff presentation – Mr. Crum directed the Board's attention to the overhead screen on which he displayed aerial views of the subject property. He gave a brief background history of the property, explaining the applicant's request for a variance. Mr. Crum explained that the applicants had removed the existing shrub and hedge and replaced them with new fencing without first obtaining a permit.

Board question – Ms. Carter asked to have the image of the completed brick wall displayed on the overhead screen again. There was some discussion.

Applicant representation - Mr. Michael Strutz, Executive Landscape Services, LLC, was present on behalf of the applicant. He explained that the previous existing fence and hedge had been growing over the sidewalk, resulting in the property owners being cited on several occasions. Mr. Strutz added that neighbors had also complained to the property owners about the fencing and hedge. He stated that in the process of removing the hedge; an existing fence was also removed. Mr. Strutz explained that there was confusion over the placement and height of the replacement fence.

Callie and Kirk Rzasas, applicants and property owners, were also present. Ms. Rzasas explained that the existing hedge and fencing were in poor condition when they purchased the home and they were trying to improve it while preserving the historic nature of their house in the neighborhood. Mr. Rzasas explained the problems with the honeysuckle that had been growing in the previous fence. He added that several neighbors had complimented them on the aesthetics of the new brick wall.

Another representative with Executive Landscape Services, LLC, stated that he built the new fence, and explained the poor condition of the previous fence. He said the line for the new fence was run in the same line of the existing fence.

Staff comments - Ms. Jennings noted that hedges are not regulated the same as fences are and they can be as tall as they need to be, or the property owner likes. She added that Staff's ability to look at what was existing before was dependent upon imagery from Google Street View. Ms. Jennings stated that it appeared the existing metal fence with the hedge growing around it was only about two feet tall, and the height of the new fence was increasing the non-conformity of the brick wall. She added that in order for it to be compliant with the current regulations, the new fence needs to be set back three feet

from the property line. She also mentioned the close proximity of the elementary school and the barrier that a six-foot tall fence could cause. There was further discussion.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 6-0 (Gross absent), to **disapprove PLN-BOA-22-00043: CALLIE & KIRK RZASA** – request for a variance to reduce the required setback for a 6-foot tall fence within a side street side yard from three (3) feet to one (1) foot within a Neighborhood Design Character Overlay (ND-1) in a Single Family Residential (R-1C) zone, in property located at 150 Old Cassidy Ave., based on Staff's recommendation.

5. **PLN-BOA-22-00037: CHELCEA RAMBURGER** – requested a conditional use permit in order to operate a home-based dog grooming business in a Single Family Residential (R-1D) zone, on property located at 605 Lin Wal Rd. (Council District 1)

The Staff Recommended: Approval, for the following reasons:

- 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 on a daily and weekly basis.
- 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:

- The home-based dog and cat grooming business shall be operated in accordance with the submitted application materials and modified site plan, with appointments only on an individual basis.
- The operation of the grooming business be confined to within the home and limited to 300 square feet of the residence.
- No overnight boarding or kenneling shall be permitted.
- 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.
- The conditional use shall become null and void should the applicant no longer reside at this address.

Representation – Ms. Chelcea Ramburger, applicant and property owner, was present on behalf of her application for a conditional use permit. She indicated that she had reviewed the staff report and was in agreement with the conditions therein.

Audience comments – Ms. Shirley Williams, 613 Lin Wal Rd., expressed her concerns with having a business in their neighborhood. She added that others in the neighborhood had expressed their concerns as well.

Mr. Martin Sullivan, 601 Lin Wal Rd., spoke in support of the applicant and her request for a conditional use permit for a home-based business.

Board question – Mr. Needham asked Staff to list the home-based businesses that are allowed to operate in a residential zone with a conditional use permit. He also asked when the Zoning Ordinance was modified to allow home-based businesses.

Ms. Jennings replied that Article 3 of the Zoning Ordinance states that home-based business means a gainful occupation or profession carried on in a residence that involves customers or clients coming to the residence and/or the use of materials or equipment that are potentially disturbing to surrounding properties due to noise, odors, flammability or some other risk factors. Examples include, but are not limited to, individual music instruction, athletic training, counseling services, upholstery work and fire arm repair. The term home-based business shall not include offices for escort services, massage parlors, automobile or small engine repair, medical or dental offices, palm reading, or fortune telling, home cooking and catering and other uses, other than upholstery, which are first permitted in the B-4, I-1 and I-2 zone.

Ms. Carter thanked Mr. Needham for his question, adding that the information provided by Ms. Jennings was helpful to the residents, identifying the types of businesses that are allowed in residential zones.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 6-0 (Gross absent) to **approve PLN-BOA-22-00037: CHELCEA RAMBURGER** – request for a conditional use permit in order to operate a home-based dog grooming business in a Single Family Residential (R-1D) zone, on property located at 605 Lin Wal Rd., based on Staff's recommendation and subject to the five conditions as listed.

6. **PLN-BOA-22-00040: NEW PIKE, LLC** – requested a conditional use permit to establish an extended stay hotel in a Professional Office (P-1) zone, on property located at 1432 Newtown Pass. (Council District 1)

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. With the incorporation of pedestrian scale lighting and vehicular use area and perimeter landscaping, the use should have a minimal impact on adjacent residential uses.
- b. Sufficient parking is available through the reciprocal parking agreement with the adjoining property to the north.
- 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 extended stay hotel shall be conducted in accordance with the submitted application materials and site plan, or as modified by the amended Final Development Plan.
2. Action of the Board shall be reflected on the Final Development Plan for the property.
3. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning, Engineering, and Building Inspection prior to construction and occupancy.
4. Lighting utilized for the use shall be pedestrian in scale, shall be directed away from the adjacent residential uses, and not exceed 12-feet in height.
5. Reciprocal parking shall be provided with the adjacent property at 1448 Newtown Pass.
6. The parking lot shall be paved, with spaces delineated, and landscaped/screened according to the provisions of Article 16 and 18 of the Zoning Ordinance.

Applicant representation – Mr. Jake Michul, attorney, was present on behalf of the applicant. Ms. Carter asked Mr. Michul if the applicant had reviewed the staff report and agreed to abide by the conditions. He stated that the applicant had reviewed the conditions and agreed to abide by them. Mr. Michul gave a brief explanation of this application for a conditional use permit.

Audience comments – Mr. Kevin Stumbo, 1326 Russell Springs Dr., was present on behalf of the Newtown Springs Homeowners' Association. He displayed a petition, which was signed by members of the Homeowners' Association. Mr. Stumbo expressed concerns regarding security, lighting, long-term-stay clientele, the amount of other hotels in the area, abandoned cars, increased traffic, pets belonging to the clientele of the hotel coming onto the lawns of the residents, and the possibility of a decrease in the value of their homes. He asked the Board to consider disapproval of this project.

Board question – Mr. Clarke asked Staff if it was possible to see the location of the subject property in relation to the homeowners. Ms. Jennings displayed an aerial view of the subject property on the overhead screen, stating that the homes mentioned are to the east of the subject property. Ms. Carter added that the subject property is located in a Professional Office (P-1) zone, and the proposed use is an allowable conditional use in that zone.

Audience comments – Ms. Susan Peters, 1310 Russell Springs Dr., expressed her displeasure with the view that she will have if the proposed project is approved. She also mentioned the number of hotels already in existence in the area.

Applicant rebuttal – Mr. Michul addressed the comments concerning a buffer. He stated that the applicant was very cognizant of the neighbors' comments, and met with some of the concerned citizens earlier, outside of Council Chambers to discuss them. Mr. Michul added that the applicant had offered to construct an eight-foot tall fence instead of the recommended six-foot tall fence, to provide more of a visual buffer. He stated the applicant plans to meet with the homeowners at their next meeting to answer more questions. Mr. Michul added that the proposed project was intended to be a higher-end use, targeting a professional clientele.

Board questions and comments – Mr. Clarke asked a question about the shared parking that was mentioned in the staff report. Mr. Michul responded that part of the parking would be located on the adjacent parcel and be available to the hotel user via an easement. He added this was a common arrangement in other commercial developments in Lexington, and that the easement will be put in place by the mutual owner of the two lots.

Ms. Plumlee stated that she sympathized with the neighbors of the proposed project; however, a P-1 zone means that there will be something of a commercial nature on that property.

Motion – A motion was made by Mr. Walker, seconded by Mr. Clarke, and carried 6-0 (Gross absent), to **approve PLN-BOA-22-00040: NEW PIKE, LLC** – request for a conditional use permit to establish an extended stay hotel in a Professional Office (P-1) zone, on property located at 1432 Newtown Pass, based on Staff's recommendation and subject to the six conditions as listed.

*Note – The Board took a ten minute recess at approximately 3:30 p.m.

7. **PLN-BOA-22-00044: IVCP ATHENS SOUTH, LLC** – requested a conditional use permit for outdoor recreational facilities (soccer fields) with outdoor lighting in an Agricultural Rural (A-R) zone, on property located at 5354 Athens Boonesboro Rd. (Council District 12)

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

- a. The proposed outdoor athletic facility (soccer fields) should not adversely affect the remainder of the subject or surrounding properties, provided the activities are in accordance with the recommended conditions herein. The preservation of existing vegetative screening, inclusion of additional landscape buffers, prohibitions against restaurants or food service, loudspeakers and substantially similar uses, and limitations of on-site operations and durations should minimize the impact of the use on properties within the general vicinity.
- b. The proposed facility is supported by the 2018 Comprehensive Plan which calls for the creation of a regional sports complex. The facility will provide a centralized location for local youth and future professional soccer teams to practice, as well as for youth tournaments. The site has convenient access to Athens Boonesboro Road and Interstate I-75, which will benefit local and regional soccer teams traveling to and from Lexington.
- c. The lighting study submitted with the request indicates that there will be no spillover lighting on adjacent properties as a result of the proposed lighting.
- d. The proposed use should not have an adverse impact on traffic in the immediate vicinity as the facility will be easily accessible from the interstate and Athens Boonesboro Road.
- e. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The use shall be conducted in accordance with the submitted application materials and site plan reflecting the conditions herein.
2. The applicant amend the site's current development plan with the Division of Planning to reflect the proposed development.
3. All necessary permits shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.
4. A stormwater management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
5. A sewage treatment system shall be installed in accordance with the requirements of the Department of Health.
6. The applicant shall submit a landscape plan for review and approval by the Division of Environmental Services reflecting the landscaping required in condition #9.
7. The proposed temporary access drive shall be paved with asphalt or concrete and shall include pedestrian facilities.
8. The design of the off-street parking, internal circulation, and access to the site shall be subject to review and approval by the Division of Traffic Engineering.
9. The parking lot shall be screened in accordance with the requirements of Article 18 of the Zoning Ordinance.
10. There shall be a review of the conditional use one year after approval in order to assess traffic impacts.
11. Existing vegetative areas in the south and southwestern portions of the site shall be preserved to maintain screening for the adjacent properties.
12. Loudspeakers and restaurants or food service are prohibited.
13. The proposed outdoor recreational facilities shall be limited to use for athletic-related activities only and shall not be used for non-athletic commercial events or gatherings, including concerts, festivals, fireworks, off-site parking and substantially similar uses.
14. Hours of operation shall be limited to 7 A.M. to 10 P.M., daily.

15. The use shall be developed and operate in accordance with the requirements of the United States Fish and Wildlife Service (USFWS).
16. Coordination with the Division of Environmental Services and/or the US Corps of Engineers shall occur prior to construction within fifty (50) feet of an identified sinkhole or wetland on the property.

Applicant representation – Mr. Steve Ruschell, attorney, was present on behalf of IVCP Athens South, LLC, the applicant and current landowner of the subject property. He stated that the applicant intended to lease the property to Lexington Sporting Club. Mr. Ruschell introduced Mr. Vince Gabbert, Lexington Sporting Club; Mr. Steve Dawahare and Mr. Josh Lewis, representatives for the applicant, and Mr. Brad Boaz, landscape architect for the applicant. He stated that the applicant has worked with Staff on the recommended conditions and very much appreciated Staff and their recommendation for approval.

Staff presentation – Mr. Daniel Crum stated that after discussion among Planning Staff and staff from other divisions, Staff recommended amending Conditions #7 and #10, which pertain to the temporary access drive and the review of the conditional use to state:

7. The proposed temporary access drive shall be constructed and sealed with a “chip and seal” surface. Such temporary access drive surface shall be maintained free of fractures, potholes and failures.
10. There shall be a review of the conditional use one year after approval in order to assess (1) traffic impacts, (2) lighting impacts, (3) stormwater management, and (4) stability of temporary access drive.

Applicant representation - Mr. Ruschell stated that the two conditions listed above were two of the three conditions that the applicant had issue with. He added that the revision of Condition #10 includes reviews of lighting impacts and stormwater management, which was at the request of Fayette Alliance. Mr. Ruschell mentioned that the applicant would like to have Condition #2 amended to state a “minor” development plan, instead of a major development plan, and that Staff had already agreed to that amendment since the requested changes would qualify under the Zoning Ordinance for a minor amendment. He asked the Board to approve the applicant’s request for a conditional use permit.

Opposition representation – Mr. Tom Miller, attorney representing 5075 AWHP, LLC, a thoroughbred horse farm adjacent to the subject property. He directed the Board’s attention to the overhead screen on which was displayed an aerial image of the subject property and the surrounding area, as well as a copy of the submitted site plan for the proposed project. Mr. Miller gave a brief explanation of his client’s property and the operation of their business. He commented on how the proposed use may affect the horses that are boarded on their farm. Mr. Miller also expressed concern over the addition of more soccer fields in Lexington and the difficulty in attempting to make a left turn from the subject property onto Athens Boonesboro Rd.

Mr. Miller mentioned that his client would like for the developer to construct a six-foot high security fence along the entire boundary of the property. His client also requested trees be planted along the fence as a buffer, and to minimize injuries to children wanting to climb the fence or pet the horses through the fence.

Applicant rebuttal – Mr. Ruschell directed the Board’s attention to an aerial image of the subject property, which was displayed on the overhead screen. He said that the applicant did not believe that a fence was needed and neither did Staff. Mr. Ruschell added that a fifty-foot wide buffer will be added in the area where the Staff feels it is necessary.

Board question – Mr. Needham asked what the distance was between the closest soccer field and the property line of Mr. Miller’s client. Mr. Brad Boaz, CMW Engineers, responded that the distance was one hundred and seventy feet at the closest point. There was further discussion.

Mr. Clarke asked if the farm belonging to Mr. Miller’s client could be shown on the overhead screen. Ms. Jennings pointed to the 5075 AWHP, LLC property on the site plan.

Audience comments – Ms. Brittany Roethemeier, Fayette Alliance, expressed the concerns of the membership of Fayette Alliance, specifically that permitted conditional uses do not undermine the intent of the Agricultural Rural zone; do not cause irreparable harm to the uses that the Agricultural Rural zone

was made for; and that any adverse impacts that are imposed be mitigated or prevented by carefully written conditions. She stressed that the right questions need to be asked and considered, as was seen at this meeting. Ms. Roethemeier stated that Fayette Alliance was not in support, nor opposition of the proposed project; however, they wanted their concerns for allowing conditional uses in the Agricultural Rural zone on the record.

Board comments – Mr. Clarke opined that it was important to have assurance by the applicant that there will be sufficient barriers to keep any kind of impact on the horses to a minimum. Mr. Ruschell responded that the applicant agreed to not disturb the horses more than necessary by installing the fifty-foot wide buffer, as was a condition and recommended by staff. He added that if that does not work, the applicant would be agreeable to discussions to find a solution. Mr. Clarke asked about the details of the proposed landscape buffer. Mr. Boaz responded that it would be a double row of evergreen trees, planted thirty feet on center. He added that special care has been taken with the sports lighting to ensure that it does not spill onto adjacent properties, and that the lights are directed down towards the field. There was further discussion.

Ms. Plumlee congratulated the Staff on the conditions listed, but stated that she would like to see more strength within the conditions. She asked that a list of additions to the conditions which she had compiled be shown on the overhead screen. Ms. Plumlee read the amended additions aloud.

Ms. Carter asked if a motion was needed to add Ms. Plumlee's wording to the conditions listed or if this was considered to be discussion. Ms. Jones replied that at that time, a motion was not in place; Ms. Plumlee was only presenting her suggestions to the Board. She encouraged the Board to discuss Ms. Plumlee's suggested revisions.

Mr. Ruschell addressed the items mentioned in Ms. Plumlee's list of recommended additions to the conditions. There was further discussion.

Mr. Josh Lewis, IVCP Athens South, LLC, stated he was not sworn in at the beginning of the meeting. Ms. Carter administered the oath to Mr. Lewis at that time. He stated that it was the applicant's intent to have a permanent road installed well within a three year period of time. Mr. Lewis added that the temporary road would be removed. He addressed other concerns of Ms. Plumlee's and her list of revisions to the conditions. There was further discussion.

Mr. Steven Parker, Division of Traffic Engineering, addressed Ms. Plumlee's list of additions, specifically the request for pervious materials for the parking lots. He stated there are several options for that and the design engineer for the project would determine the appropriate material.

Ms. Tucker asked what would happen to the property if the applicant decides they do not wish to move forward with the soccer fields. Mr. Ruschell deferred to Ms. Jones to answer the question. Ms. Jones stated that once a conditional use is granted, it must be used based on the terms and conditions imposed by the Board of Adjustment. She added that if someone else wants to ask for a different conditional use or to expand a conditional use, or if it is abandoned for a period of time, it would have to be brought back to the Board. Ms. Tucker expressed her concern with the proposed tree buffer, stating that it may not be enough of a deterrent to keep children and dogs away from the adjacent horse farm.

Staff comments – Ms. Jennings commented that there did appear to be some redundancy in the verbiage of Ms. Plumlee's suggested revisions. She stated the suggested revisions are already addressed in other conditions, or regulations, or how permitting is done in other divisions. Ms. Jennings added that an amended Condition #7 had been presented earlier, and that it conflicts with Ms. Plumlee's suggested revisions for Condition #7. Ms. Jennings read through each of Ms. Plumlee's suggested revisions individually and conferred with Ms. Jones, when necessary.

Applicant rebuttal – Mr. Ruschell requested, on behalf of the applicant, that there be no language in Condition #12 concerning mobile food vehicles on site, due to the fact that the subject property is approximately one thousand feet away from the nearest convenience store. He added that until a restaurant is constructed on the property that is located within the Interchange Service Business (B-5P) zone, a place for refreshments is needed. Mr. Ruschell stated that this could be temporary; for example after two years, mobile food vehicles could no longer be on site.

Opposition rebuttal – Mr. Miller stated that Staff had appropriately limited the use of the subject property. Mr. Miller agreed with Ms. Tucker's comments about the screening between the proposed property and his client's property. He stated his client is very much opposed to concession stands on the property.

Applicant rebuttal – Mr. Ruschell clarified, stating the applicant was not asking for concession stands; they were asking for a mobile food truck to come during a game to supply food and beverages.

Board comments – Mr. Clarke commented that Staff had stated that mobile food trucks would be included in the comment concerning food service in Condition #12. He stated that it should be decided what food service actually means. Mr. Ruschell stated that the applicant was requesting that mobile food vehicles be included on a temporary basis, for two years, not permanently.

Staff comments – Ms. Wade stated that the way the Zoning Ordinance is worded, itinerant merchants such as mobile food vendors do have some flexibility. Specifically, food trucks are allowed to be located anywhere a restaurant might be located, such as business zones. Ms. Wade added that it would be very difficult to prohibit a food truck from driving to the subject property and serving lunch during an event, due to the irregular schedule. She gave the example of prohibiting a taco truck from going to a horse farm during the week and serving lunch.

Action – A motion was made by Mr. Needham and seconded by Mr. Walker to **approve PLN-BOA-22-00044: IVCP ATHENS SOUTH, LLC** – request for a conditional use permit for outdoor recreational facilities (soccer fields) with outdoor lighting in an Agricultural Rural (A-R) zone, on property located at 5354 Athens Boonesboro Rd., based on Staff's recommendation and subject to the sixteen conditions listed to include the modifications to Conditions #2, #7 and #10.

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

- a. The proposed outdoor athletic facility (soccer fields) should not adversely affect the remainder of the subject or surrounding properties, provided the activities are in accordance with the recommended conditions herein. The preservation of existing vegetative screening, inclusion of additional landscape buffers, prohibitions against restaurants or food service, loudspeakers and substantially similar uses, and limitations of on-site operations and durations should minimize the impact of the use on properties within the general vicinity.
- b. The proposed facility is supported by the 2018 Comprehensive Plan which calls for the creation of a regional sports complex. The facility will provide a centralized location for local youth and future professional soccer teams to practice, as well as for youth tournaments. The site has convenient access to Athens Boonesboro Road and Interstate I-75, which will benefit local and regional soccer teams traveling to and from Lexington.
- c. The lighting study submitted with the request indicates that there will be no spillover lighting on adjacent properties as a result of the proposed lighting.
- d. The proposed use should not have an adverse impact on traffic in the immediate vicinity as the facility will be easily accessible from the interstate and Athens Boonesboro Road.
- e. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The use shall be conducted in accordance with the submitted application materials and site plan reflecting the conditions herein.
2. The applicant amend the site's current development plan via a minor amendment with the Division of Planning to reflect the proposed development.
3. All necessary permits shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.
4. A stormwater management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
5. A sewage treatment system shall be installed in accordance with the requirements of the Department of Health.
6. The applicant shall submit a landscape plan for review and approval by the Division of Environmental Services reflecting the landscaping required in condition #9.
7. The proposed temporary access drive shall be constructed and sealed with a "chip and seal" surface. Such temporary access drive surface shall be maintained free of fractures, potholes and failures.
8. The design of the off-street parking, internal circulation, and access to the site shall be subject to review and approval by the Division of Traffic Engineering.

9. The parking lot shall be screened in accordance with the requirements of Article 18 of the Zoning Ordinance.
10. There shall be a review of the conditional use one year after approval in order to assess (1) traffic impacts, (2) lighting impacts, (3) stormwater management, and (4) stability of temporary access drive.
11. Existing vegetative areas in the south and southwestern portions of the site shall be preserved to maintain screening for the adjacent properties.
12. Loudspeakers and restaurants or food service are prohibited.
13. The proposed outdoor recreational facilities shall be limited to use for athletic-related activities only and shall not be used for non-athletic commercial events or gatherings, including concerts, festivals, fireworks, off-site parking and substantially similar uses.
14. Hours of operation shall be limited to 7 A.M. to 10 P.M., daily.
15. The use shall be developed and operate in accordance with the requirements of the United States Fish and Wildlife Service (USFWS).
16. Coordination with the Division of Environmental Services and/or the US Corps of Engineers shall occur prior to construction within fifty (50) feet of an identified sinkhole or wetland on the property.

Discussion on the motion – Ms. Plumlee stated that she would like to see some of the discussion that took place regarding the revisions to the conditions as she had suggested. Ms. Carter asked if there was a particular condition that Ms. Plumlee was referring to, given the fact that Staff considered many of Ms. Plumlee's suggested revisions to be redundant. Ms. Plumlee opined it would be appropriate to meet with Ms. Jones to determine if there was anything that could be salvaged from her list of suggestions. Mr. Needham stated that he would like to vote on the motion at hand as most of what Ms. Plumlee had proposed was very similar to what was already in Staff's conditions.

Action – Ms. Carter called for a vote. The motion as made by Mr. Needham and seconded by Mr. Walker, was voted on and carried 4-2 (Plumlee and Tucker opposed; Gross absent).

- V. **BOARD ITEMS** – Ms. Carter announced that any items a Board member wished to present would be heard at this time.

There were no Board items.

- VI. **STAFF ITEMS** - Ms. Carter announced that any items a Staff member wished to present would be heard at this time.

There were no Staff items.

- VII. **NEXT MEETING DATE** – Ms. Carter announced that the next meeting date will be October 10, 2022 at 1:30 p.m. in Council Chambers, 2nd Floor, 200 E. Main St., Lexington, KY 40507.

- VIII. **ADJOURNMENT** – As there was no further business, the meeting was adjourned at 5:01 p.m.

Raquel Carter, Chair

Harry Clarke, Secretary

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For further information on these matters, or for persons with a disability who may need assistance in order to participate in the above meeting, please contact the Division of Planning, 101 E. Vine St., Lexington, KY, at 859-258-3160.