MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

October 10, 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, Branden Gross, Carolyn Plumlee, Linda Tucker and Chad Walker. Others present were: Tracy Jones and Brittany Smith, Department of Law and Stephen Parker, Division of Traffic Engineering. Planning staff members present were: Traci Wade, Autumn Goderwis, Meghan Jennings and Donna Lewis.

III. **APPROVAL OF MINUTES** – Ms. Carter announced that the minutes from the September 12, 2022 meeting were not available for consideration at this time.

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-22-00047: KIM BRAGG** – requested a conditional use to establish drive-through facilities accessory to a gas station in a Neighborhood Business (B-1) zone, on property located at 2312 Versailles Rd. (Council District 11)

   Staff comments – Ms. Jennings informed the Board that the representative for this application, Kim Bragg, had indicated that the applicant was agreeable to Staff's recommendation of postponement of their application to the November 14, 2022 meeting. She added that Ms. Bragg was not present at the meeting due to an illness.

   Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 7-0, to **approve the postponement** of **PLN-BOA-22-00047: KIM BRAGG** – request for a conditional use to establish drive-through facilities accessory to a gas station in a Neighborhood Business (B-1) zone, on property located at 2312 Versailles Rd. to the November 14, 2022 Board of Adjustment meeting.

2. **PLN-BOA-22-00050: REDWOOD COOPERATIVE SCHOOL, INC.** – requests to amend an existing conditional use for a school for academic instruction in order to construct and occupy an additional educational building in a Single Family Residential (R-1C) zone, on property located at 166 Crestwood Drive. (Council District 3)

   Applicant Representation – Mr. Steve Baker, Midwest Engineering, informed the Board that the applicant for this case would like to postpone to the November 14, 2022 meeting. He indicated that he had discussed this with Staff and that Staff was in agreement with the postponement.

   Action – A motion was made by Mr. Gross, seconded by Mr. Needham and carried 7-0, to **approve the postponement** of **PLN-BOA-22-00050: REDWOOD COOPERATIVE SCHOOL, INC.** – request to amend an existing conditional use for a school for academic instruction in order to construct and occupy an additional educational building in a Single Family Residential (R-1C) zone, on property located at 166 Crestwood Drive, to the November 14, 2022 Board of Adjustment meeting.

D. Variance Appeals

1. **PLN-BOA-22-00048: TRAVIS ISON** – requested a variance to reduce the required front yard setback from three hundred (300) feet to one hundred and fifty (150) feet in order to construct a single-family home in an Agricultural Rural (A-R) zone, on property located at 5501 Haley Downs Dr. (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 front yard setback is in keeping with the average setbacks of the other residential structures along Haley Downs Drive.
b. While there do not appear to be special circumstances that justify the need for the variance and the proposed structure could be constructed at the required 300-foot setback without creating a hardship for the applicant, the request is generally reasonable as it will allow for similar construction to the existing residential structures nearby on Haley Downs Drive.
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 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. An Administrative Action Minor Subdivision Plat to amend the setback shall be filed with the Division of Planning and recorded prior to a building permit being issued.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Samuel Ison, applicant and property owner, was present on behalf of his application.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 7-0, to **approve PLN-BOA-22-00048: TRAVIS ISON** – requested a variance to reduce the required front yard setback from three hundred (300) feet to one hundred and fifty (150) feet in order to construct a single-family home in an Agricultural Rural (A-R) zone, on property located at 5501 Haley Downs Dr., based on Staff's recommendation and subject to the three conditions as listed.

2. **PLN-BOA-22-00049: ISAAC BLANFORD** – requested a variance to reduce the required front yard setback from three hundred (300) feet to two hundred and thirty (230) feet in order to construct a single-family home in an Agricultural Rural (A-R) zone, on property located at 5867 Athens Walnut Hill Pike. (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. This area was subdivided prior to the adoption of the current Zoning Ordinance; consequently, numerous properties in the vicinity are legally nonconforming with respect to current lot sizes or have front building setbacks that are significantly closer to the Athens Walnut Hill Pike than the proposed residence.
b. Due to the property's non-conforming size and the large portions of wooded area to the rear of the property, the applicant is limited in where they can place the home and establish their proposed agricultural use.
c. Placing the home at the proposed setback would allow it to be the primary visual focal point of the property, not the existing accessory barn.
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. 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. Issac Blanford, applicant and property owner, was present on behalf of his application.

Action – A motion was made by Ms. Plumlee, seconded by Mr. Clarke and carried 7-0 to **approve PLN-BOA-22-00049: ISAAC BLANFORD** – request for a variance to reduce the required front yard setback from three hundred (300) feet to two hundred and thirty (230) feet in order to construct a single-family home in an Agricultural Rural (A-R) zone, on property located at 5867 Athens Walnut Hill Pike, based on Staff's recommendation and subject to the two conditions as listed.

E. Conditional Use Appeals

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)

   The Staff Recommended: **Disapproval**, for the following reasons:
   a. The proposed use would likely have adverse effects on the subject and adjoining/nearby properties. The proposed use would increase the intensity of use and density of the property, and likely create a nuisance for the neighborhood. There are several other fraternity houses in the general vicinity, and the concentration of this type of use has resulted in enforcement issues. The events associated with a fraternity house are not suitable for the proposed location as there is an existing concentration of dense multi-family housing immediately adjacent to the subject property.

   Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which she displayed aerial images of the subject property and those properties surrounding it. She mentioned the fact that the subject property had been before the Board in January of 2021 in order to have the structure approved for a four-unit multi-family residential apartment building. Ms. Jennings added that the property was approved in 1997 to serve as a fraternity house, providing housing for eight residents. She explained that the current application was a request for an eighteen bedroom fraternity. Ms. Jennings displayed the site plan which had been submitted by the applicant and explained the layout of the subject property, as well as the proposed uses, per the applicant. She expressed Staff's concerns regarding this application and the reasons behind Staff's recommendation of disapproval.

   Board questions – Mr. Clarke commented that the applicant's letter of justification stated they have a house manager and a house director, and asked if that was correct. Ms. Jennings deferred to the applicant to answer that question.

   Mr. Needham asked if the subject property had been sold after it had been approved by the Board of Adjustment for a four-unit multi-family apartment building with fourteen bedrooms, in January of 2021. Ms. Jennings confirmed that it was functioning as a four-unit multi-family structure, which it was approved for in January of 2021. Mr. Needham asked if the current structure has fourteen bedrooms. Ms. Jennings replied that between the two buildings on the property, there are fourteen bedrooms. There was further discussion.

   Applicant representation – Mr. Richard Murphy, attorney, was present on behalf of the applicant, and explained a handout which had been distributed to the Board members. He introduced Mr. Kyle Heffernan, Kentucky Epsilon Phi Delta Theta House Chapter President and former President of the University of Kentucky Inter-Fraternity Council. Mr. Murphy also introduced Mr. Baxter Brown, the Chapter Secretary; Mr. Craig Hardin, owner of the subject property, and Mr. Hunter Porter, Alumni President, who were also present. Mr. Murphy presented background information pertaining to the subject property. He directed the Board's attention to the overhead screen, on which he displayed photographs of the subject property, including the wall surrounding the buildings.
   Mr. Murphy referred to the handout which was previously distributed to the Board and mentioned several of the subject fraternity's notable accomplishments. He clarified that the applicant was not actually requesting eighteen bedrooms, as was previously mentioned by Staff; but in fact was requesting fourteen bedrooms, to be used by eighteen residents. Mr. Murphy apologized for that mistake on the applicant's part, and added that there would not be an increase in the number of bedrooms. He mentioned that the letters of objection which had been received by the Division of Planning actually referred to another fraternity, not this particular fraternity. He then directed the Board's attention to the overhead screen, on which was shown a photo of the deck which had been approved by the Board of Adjustment at the January

2021 meeting. Mr. Murphy commented that the deck connected to the building in the rear of the property, which is referred to as the East Wing. He also remarked that the deck was not large enough to be a "party deck", as had been suggested by some concerned citizens. Mr. Murphy addressed concerns of parking at the subject property, which had been expressed by citizens.

Board questions – Ms. Carter asked why a request for a conditional use was necessary if the number of beds remained the same. Mr. Murphy explained that the applicant was requesting to use this property as a fraternity; to be allowed to put their sign on the building and to be allowed to have their meetings on site, rather than at the University of Kentucky. Ms. Carter asked how the current five units are being leased. Mr. Murphy replied that there are multiple students in each unit and Mr. Hardin has an individual lease with each student and each lease is also signed by the student's parents.

Audience comments - Mr. Blake Standafer, 120 E. Main St., University of Kentucky Political Science student, expressed his concerns with having another fraternity in this area. He mentioned trash and debris, noise and potential crime, among other concerns.

Ms. Amy Clark, 628 Kastle Rd., stated she was not sworn in at the beginning of the meeting due to arriving late. Ms. Carter administered the oath to Ms. Clark at this time. Ms. Clark directed the Board's attention to the overhead screen, on which she displayed a presentation, which she had also distributed to the Board members. She expressed several concerns she had with having a fraternity at the subject property. Among those concerns were parking, access, landscaping and greenspace. Ms. Clark opined that there should have been a development plan for the subject property.

Staff rebuttal – Ms. Jennings thanked the applicant for their clarification of the number of units and bedrooms in the subject property. She added that Staff was still concerned with the increase in the intensity of use, even though the number of bedrooms would not increase, but with the change in use from a multi-family structure to a fraternity house, which would cause an increase in visitors for meetings and fraternity functions. Ms. Jennings directed the Board's attention to the overhead screen on which was displayed the image previously shown by Mr. Murphy, depicting the parking in front of the larger of the two buildings on the subject property. She stated that this was illegal angled parking and was not what was on their site plan, adding that would most likely be a problem with the Division of Traffic Engineering. Ms. Jennings also mentioned Staff's concerns with the use of the deck by a fraternity, and not for the multi-family structure as it was approved for. She addressed Ms. Clark's concern of the absence of a development plan for the subject property, stating that when the deck was approved in 2021, the Division of Building Inspection clarified that as the deck was proposed, it was large enough and also elevated, so that it acted as a connection between the two buildings, and they essentially functioned as one. Ms. Jennings explained that no development plan was required as it was the interpretation of the Division of Building Inspection that the deck be built that way and the site function as one building.

Applicant rebuttal – Mr. Murphy addressed some of the comments regarding the deck, stating that it is functioning as the Board had approved it and given that it is only nine feet wide at its widest, it is not large enough for large fraternity gatherings. He added that the deck functions as an access point; as a stairway going up to the back. Mr. Murphy added that if there are people outside on the deck, it is well insulated from other uses, as it is not up against the property line, but against a building with a two-story wall with no windows or openings in it. He addressed other comments of opposition to the proposed use.

Board questions and comments - Mr. Clarke stated that he had mixed feelings regarding this application. He asked for clarification of the number of on-site parking spaces, given the fact that there are eighteen beds. Ms. Carter responded that seven parking spaces were approved in January of 2021 by the Board when the variance for the same number of beds was approved. Therefore, the applicant was not required to ask for a reduction in their parking. There was further discussion.

Applicant comments – Mr. Craig Hardin, property owner, commented on his rationale for purchasing the subject property, and his wishes to repair the buildings for future use. He mentioned that the property was also located in the City's "opportunity zone".

Board question – Ms. Tucker asked how many members were in the fraternity, and how many people would be coming and going for meetings and functions. Mr. Murphy stated there were sixty-seven members in the fraternity, not all of them in residence at the subject property. He added that if this application is approved, the fraternity would have their chapter meetings there, in a large common-area room, just as the previous fraternity that occupied the property for twenty-four years had done.

Ms. Plumlee commended the fraternity for striving to be alcohol-free, but added that she would support the Staff in their recommendation of disapproval of this application.

Ms. Carter remarked that she did not want it to appear that the Board “singled out” fraternities. She added that if the proposed use is not approved at the subject property, with its high density building, in a high density zone, behind a big stone wall with parking, then where could the use be approved?

Mr. Clarke commented that he was not sure of the future of this building, if it is not used for a fraternity house. He added that the use will be very dense, no matter what happens to this house, as it’s already been approved for a certain amount of density. Mr. Clarke stated that he tended to disagree with Staff in this case.

Mr. Needham stated that he struggled with the fact that meetings and social activities would be held on the subject property, rather than it simply being a place for several fraternity members to live. He added that those additional activities would increase the intensity.

Ms. Carter asked if there was a motion or if the Board would like to have a brief recess. Mr. Clarke added that he felt it would be beneficial for the Board to discuss their thoughts before making a motion.

Mr. Gross added that he had lived near a fraternity at one time and didn’t have a problem with that fraternity because they cleaned up after any parties. He stated that he would like to see the list of conditions proposed by the applicant, and that he may be agreeable to recommend approval.

*Note, the Board took a brief recess at 3:10 p.m. and reconvened at 3:21 p.m.

Action – A motion was made by Mr. Clarke and seconded by Mr. Walker to **approve** **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.**,** based on the following findings:

a. The requested conditional use is appropriate in this location as this property has been used for density and communal living and a fraternity is a permitted conditional use in the High Density, Apartment (R-4) zone.
b. All necessary public facilities and services are existing and will be adequate to serve the proposed use.
c. The development is in a very pedestrian and bike-friendly area near downtown and the University of Kentucky.
d. The proposed use will not harm the public safety, health or welfare and will not impair the integrity of the zone in which it is located because residential density of the property will not change.

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

1. The proposed use shall be developed in accordance with the submitted application materials and site plan.
2. The fraternity house shall be limited to a total of eighteen beds.
3. Social activities and chapter meetings including non-residents shall be scheduled after 5:00 p.m.

Discussion on the motion – Prior to voting on the motion, Ms. Plumlee suggested adding a condition which would limit the number of people present at the fraternity house at one time. Mr. Gross suggested adding a condition stating that if the fraternity were to move they could not transfer the conditional use to another fraternity. He asked Ms. Jones for the language most commonly used for that condition. Ms. Carter asked Mr. Clarke if the conditions he read into his motion stated that the chapter meetings or social activities would also be held on the weekends, in addition to after 5:00 p.m. on week days. Mr. Clarke stated that he had neglected to mention that, therefore he would amend his motion to include “after 5:00 p.m. on week days or on weekends”. Ms. Jones stated that the common language for Mr. Gross’s additional condition was “the conditional use will become null and void should the applicant no longer reside or operate at this address”. Mr. Clarke agreed to amend his original motion.

Mr. Gross asked if the Board should discuss Ms. Plumlee’s suggested condition pertaining to occupancy. There was further discussion. Mr. Clarke mentioned that complying with the occupancy restrictions was a matter of following the law, and that he did not feel it was necessary to list that as a separate condition as the fraternity would be required to abide by the law. There was further discussion.

Applicant representation - Mr. Murphy stated that the applicant was in agreement with all of the conditions as amended.

Action – Following the discussion of the motion and the friendly amendment of the motion by Mr. Clarke, the Board voted 7-0 to **approve** **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**.,** based on the following findings:

a. The requested conditional use is appropriate in this location as this property has been used for density and communal living and a fraternity is a permitted conditional use in the High-density, Apartment R-4 zone.
b. All necessary public facilities and services are existing and will be adequate to serve the proposed use.
c. The development is in a very pedestrian and bike-friendly area near downtown and the University of Kentucky.
d. The proposed use will not harm the public safety, health or welfare and will not impair the integrity of the zone in which it is located because residential density of the property will not change.

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

1. The proposed use shall be developed in accordance with the submitted application materials and site plan.
2. The fraternity house shall be limited to a total of eighteen beds.
3. Social activities and chapter meetings including non-residents shall be scheduled after 5:00 p.m. on week days or on the weekend.
4. The conditional use will become null and void should the applicant no longer reside or operate at this address.

2. **PLN-BOA-22-00046: LAUREN GILBERT** – requested a conditional use permit in order to operate a home-based concierge medical consulting business in a Two-Family Residential (R-2) zone, on property located at 165 Walton Ave. (Council District 3)

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

a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as it should not create disturbing levels of traffic, noise, or odors. The proposed use is more accurately described as an administrative office, rather than a medical office. Consultations will be by appointment only and will include a limited scope of services. Adequate off-street parking is available to serve the limited number of clients to the home on a daily and weekly basis.
b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The home-based medical consulting business shall be operated in accordance with the submitted application materials and site plan, with appointments only on an individual basis.
2. The operation of the administrative office shall be confined to within the home and limited to 300 square feet of the residence.
3. Activities conducted during client visits to the residence should be limited to those also available via telemedicine visits. This may include monitoring of existing health conditions, prescription (but not administering) of medication, evaluation of lab results from diagnostic testing conducted elsewhere, etc. The use of some small medical devices such as weight scales, pulse oximeters, blood glucose meters, and blood pressure monitors may be appropriate. No physical examinations requiring special equipment or diagnostic testing requiring lab confirmation or that produces infectious or hazardous medical waste shall be conducted in the residence.
4. All necessary permits including a Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the use.
5. The conditional use shall become null and void should the applicant no longer reside at this address.

Representation – Ms. Lauren Gilbert, 165 Walton Ave., applicant, was present on behalf of her application. She gave a brief overview of her experience as a medical professional and explained her request for the proposed conditional use permit, as well as how she would use a portion of her residential space for this home-based business.

Board questions – Mr. Gross asked about patient parking. Ms. Gilbert replied that there was on-street parking, as well as adequate parking in the rear of the building. Mr. Gross asked how many patients Ms. Gilbert intended to see at one time. She replied that there will just be one patent on site at a time, but she would be seeing tele-health patients when she was not seeing patients face to face.

Mr. Needham asked Ms. Gilbert if she lived on the property. She replied that she did live on the property, and she explained the layout of the property, with regard to her residence and where the proposed home-based business would be located.

Opposition - Mr. Zachary O'Connor, 706 Hambrick Avenue, expressed his opposition to the proposed home-based business, based on his concerns of a possible increase in traffic in the area. He mentioned a nearby elementary school, a church and various businesses in the area which contribute to the current traffic volume.

Ms. Amy Clarke – 628 Kastle Road, expressed her concerns with the proposed home-based business, citing a possible increase in the value of the subject property, should this application be approved and a business operate from the residence.

Board questions – Ms. Carter had a question about the applicant seeing patients face to face in her home as part of her home-based business, while the Zoning Ordinance does not allow for medical or dental offices in a Two-Family Residential (R-2) zone. Ms. Jennings replied that Staff had met with the applicant earlier in the application process and explained how Ms. Gilbert would need to move forward in order to legally operate her home-based medical business. She stated that Ms. Gilbert informed Staff that most of her business would be on a virtual basis and not in person. Ms. Jennings explained why Staff felt the applicant's request was an appropriate use for the proposed location.

Mr. Gross asked if consideration had been given to how many clients could be present on site at one time. Ms. Jennings replied that due to this home-based business operating as appointment only, Staff was not overly concerned with a large number of clients arriving at the same time, affecting traffic. Therefore, Staff did not add a condition limiting the numbers of clients at one time. She added that the three hundred square foot limit of a home-based business will also limit the number of people on site at the same time.

Mr. Needham asked how this proposed use differed from other home-based businesses which the Board had approved in the past. Ms. Jennings responded that the majority of Ms. Gilbert's business activities did not require a conditional use for a home-based business, but because she would like for clients to come to her home for an initial consultation, a conditional use permit was necessary. Mr. Needham asked if signage would be allowed. Ms. Jennings replied that home-based businesses are not allowed to have signage.

Ms. Carter asked the applicant if she had reviewed Staff's recommendation and agreed to abide by the conditions. Ms. Gilbert indicated that she had reviewed Staff's recommendation and agreed with the conditions set forth.

Action – A motion was made by Mr. Needham, seconded by Ms. Tucker and carried 7-0, to **approve** **PLN-BOA-22-00046: LAUREN GILBERT** – request for a conditional use permit in order to operate a home-based concierge medical consulting business in a Two-Family Residential (R-2) zone, on property located at 165 Walton Ave., based on Staff's recommendation and subject to the five conditions as listed.

*Note – The Board took a brief recess at 3:55 p.m. and reconvened at 3:59 p.m.

3. **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)

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

a. The applicant has not provided sufficient evidence that the proposed use will not have an adverse influence on the subject property or the surrounding neighborhood. Drive-through facilities are not appropriate for the subject property due to adversely affecting vehicular traffic and pedestrian safety along the Main Street and Water Street frontages and the recently constructed Town Branch Commons.

b. Drive-through facilities are no longer appropriate in this location due to the change in development context of the general vicinity and a significant increase in pedestrian and multi-modal users immediately adjacent to the subject property.
c. The subject property is unique in shape, access, and location, and drive-through facilities cannot be properly integrated into the downtown community at this location.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which she displayed aerial images of the subject and surrounding properties, as well as the site plan which had been submitted by the applicant. She gave an overview of this application for a conditional use, mentioning the proximity of the Town Branch Commons Park to the proposed project. Ms. Jennings briefly explained the history and some of the previous uses of the subject property. She mentioned that there are some complicated engineering issues associated with the site, which have hindered its redevelopment. Ms. Jennings provided background information of past instances when the subject property had been approved for drive-through facilities by the Board of Adjustment. She noted that none of the previously approved conditional uses had ever been developed. Ms. Jennings provided additional information pertaining to Staff's reasoning for recommending disapproval of this application, noting the changes in the immediate area and pedestrian-oriented nature of the site now.

Applicant representation – A handout was distributed to the Board on behalf of this application. Mr. Shawn Spalding and Mr. Nick Nicholson, attorneys for the applicant, were present on behalf of the applicant. Mr. Spalding introduced Ms. Stacey Berg and Mr. Phil Riney, Independence Bank, who were also present. He mentioned that Mr. Dennis Wilson, architect with Axiom Architecture, was present as well. Mr. Spalding directed the Board's attention to the overhead screen, on which were displayed aerial images of the subject property and a copy of the site plan. He presented an introduction of the proposed project, and described how the applicant planned to make use of the subject property.

Board questions – Ms. Carter asked Staff if the previous conditional use permit for this subject property had expired. Ms. Jennings stated that per Kentucky Revised Statutes, conditional uses expire after one year if they are not exercised once approved. She added that the conditional use permit for a drive-through facility, which was approved by the Board of Adjustment in January of 2016, was never developed; therefore, the permit did expire.

Audience comments – Mr. Clay Collier, 350 E. Main St., Unit 312, expressed his opposition of the proposed project. He opined that the gravel parking lot next to Carson's restaurant was not a good use of that property, nor was it appropriate for the "Gateway to Downtown", as the subject property has been referred to for over a decade. Mr. Collier added that the Downtown Master Plan has designated this area as such, and it should be treated with care, respect and forethought to that site. He also mentioned that the area is an intensive pedestrian use.

Ms. Amy Clark, 628 Kastle Rd., thanked the Staff for their care and concern with this application. She mentioned that she was present at the 2016 Board of Adjustment meeting when the subject property was approved for a conditional use permit for a drive-through facility. Ms. Clark stated that she was opposed to that decision, and she expressed her opposition of the current application, as well.

Staff comments – Mr. Stephen Parker, Division of Traffic Engineering, stated that he fully supported Staff's recommendation for disapproval of this application for drive-through facilities at this location. He suggested eliminating the access point closest to the intersection of Vine St. and Main St. There was further discussion.

Staff rebuttal - Ms. Jennings addressed Mr. Parker's comment about the access point, stating that the access point mentioned by Mr. Parker is dangerous as it is currently proposed. She added that given the fact that the applicant states that access point is needed in order to support the drive-through facilities and other internal circulation issues, it further supports the fact that drive-through facilities are not compatible with the subject property due to the circulation issues and dangerous access points along Main St. in relation to the pedestrian context of this site. Ms. Jennings addressed other comments made by the applicant, particularly concerning pedestrian safety around the subject property.

Board comments – Ms. Carter stated that if the drive-through component were removed, the access points would still exist, the number of parking spaces would still exist and the traffic would still flow through due to the other businesses. She added that the Board was to make a decision on the drive-through. Mr. Gross stated that he was not in favor of this particular plan. Ms. Jennings stated that if the drive-through facilities were not included on this plan, the applicant would have more room to address their circulation issues. There was further discussion.

Applicant rebuttal – Mr. Nick Nicholson mentioned some of the obstacles the applicant has faced during this application process, and the steps that the applicant has taken to address those obstacles while working with various government entities.

Board comments – Mr. Gross mentioned some of the pedestrian safety issues that he found with the subject plan. There was some discussion.

Applicant representation – Mr. Phil Riney, Independence Bank Market Development, was sworn in at this time. He addressed some of the questions regarding the access points and pedestrian concerns. Mr. Riney also mentioned working with the various government entities during this application process. He stressed the applicant's desires to work with the neighboring businesses as well as be accommodating to the government. There was further discussion.

Action – A motion was made by Mr. Clarke and seconded by Mr. Gross to **continue 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., to the November 14, 2022 Board of Adjustment meeting.

Discussion on the motion – Mr. Gross stated that he would like to see approval for this project at next month's meeting, after the applicant and Staff work together to develop a better plan. Ms. Tucker indicated her agreement and stated that she would like to see the Division of Traffic Engineering continue to be involved. She added that she appreciated Mr. Parker's comments on safety.

Action – Ms. Carter called for a vote. The motion carried 7-0, to **continue 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., to the November 14, 2022 meeting of the Board of Adjustment.

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 at this time.

VI. STAFF ITEMS – Ms. Carter announced that any items a Staff member wished to present would be heard at this time.
Ms. Jones introduced Ms. Brittany Smith, attorney. Ms. Jones stated that Ms. Smith was with the Law Department and that she had been in attendance at this meeting. She informed the Board that Ms. Smith would most likely serve as legal counsel for the Board of Adjustment meetings in the future.

VII. NEXT MEETING DATE – Ms. Carter announced that the next meeting date will be November 14, 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 Ms. Carter declared the meeting adjourned at 5:51 p.m.

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Raquel Carter, Chair

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Harry Clarke, Secretary

The media and public may view the hearing on LexTV Spectrum channel 185, MetroNet channel 3, or via live stream at the following link: http://lfucg.granicus.com/MediaPlayer.php?publish_id=12

Archived videos and minutes can be viewed at https://www.lexingtonky.gov/public-meetings-videos

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.