

**MINUTES FOR THE BOARD OF ADJUSTMENT
MEETING**

November 14, 2022

- I. **CALL TO ORDER** – Chair Raquel Carter called the meeting to order at 1:35 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.
- II. **ATTENDANCE** – Board members present were Raquel Carter, Harry Clarke, Branden Gross, Chad Needham, Carolyn Plumlee, Linda Tucker and Chad Walker. Others present were: Michael Cravens and Brittany Smith, Department of Law; Josh Dezarn, Division of Engineering and Stephen Parker, Division of Traffic Engineering. Planning staff members present were: Jim Duncan, Autumn Goderwis, Meghan Jennings, Daniel Crum and Donna Lewis.
- III. **APPROVAL OF MINUTES** – Ms. Carter announced that the minutes from the September 12, 2022 and October 10, 2022 Board of Adjustment meetings would be considered at this time.

Action – A motion was made by Mr. Clarke and seconded by Ms. Plumlee to **approve** the minutes from the September 12, 2022 and October 10, 2022 Board of Adjustment meetings.

IV. PUBLIC HEARING ON ZONING APPEALS

- A. **Swearing of Witnesses** – Ms. Carter asked that any applicant, objector, or anyone who planned to speak to any appeal before the Board, please stand in order to be sworn in.

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 and Withdrawals

1. **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. (Council District 3)

Ms. Jennings informed the Board that the representative on behalf of the applicant asked to withdraw their application, in order for it to be reviewed under new parking regulations which were adopted by the City Council on October 27, 2022. She added that the applicant is in the process of refiling their application for it to be heard at the Board of Adjustment meeting on December 12, under the new parking regulations.

D. Abbreviated Hearing

1. **PLN-BOA-22-00052: VICTOR AND FAIDA NATOUR** - requested a variance to reduce the required setback from a floodplain from 25' to 18' in order to construct an addition in a Planned Neighborhood Residential (R-3) zone, on property located at 1045 Chasewood Way. (Council District 10)

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 existing retaining wall and 7-foot grade change between the proposed addition and the floodplain base elevation should limit the potential for flooding to affect the residence.

- b. The restrictive size of the lot and floodplain are special circumstances that justify the need for the variance, as the developable area of the lot is limited and any improvements to the structure would require a 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 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 approvals shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. George Day was present on behalf of the applicant and indicated that the applicant had read Staff's recommendation of approval and agreed to abide by the conditions set forth. There were no questions from the Board.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 7-0, to **approve PLN-BOA-22-00052: VICTOR AND FAIDA NATOUR** - request for a variance to reduce the required setback from a floodplain from 25' to 18' in order to construct an addition in a Planned Neighborhood Residential (R-3) zone, on property located at 1045 Chasewood Way, based on Staff's recommendation and subject to the two conditions as listed.

2. **PLN-BOA-22-00055: STACY AND ERIC HENRY** - requested a variance to reduce the required rear yard setback from 10' to 0' in order to construct an addition to an existing deck in a Single Family Residential (R-1C) zone, on property located at 446 Monticello Blvd. (Council District 9)

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 modifications to the existing non-conforming deck should have little visual impact to the surrounding properties, as the non-conforming deck has existed for many years.
- b. The restrictive configuration of the lot and existing slope are special circumstances that justify the need for the variance, as the available buildable area for a deck is limited.
- c. While the existing deck was constructed without a permit, the applicant has attempted to secure the proper permit to improve the deck; therefore, the granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance. The applicant has applied for the variance as soon as it was determined that it was needed during the permit process, and prior to completion of construction.

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

1. The modifications to the existing deck shall be constructed in accordance with the submitted application materials and site plan.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to completion of construction.

Representation – Ms. Stacy Henry, applicant and property owner was present on behalf of this application for a variance.

Board question – Ms. Carter asked the applicant if the deck was already there. Ms. Henry replied that the deck was there when she and her husband bought the home in 2013. She added that they are only planning to repair the steps out the back door down to the deck because the steps have rotted. Ms. Carter asked Ms. Henry if the proper permits had been obtained. Ms. Henry replied that when the contractor applied for the permit, it led to this request for a variance. Ms. Carter thanked Ms. Henry for following the proper procedures.

Action – A motion was made by Mr. Needham, seconded by Ms. Plumlee and carried 7-0, to **approve PLN-BOA-22-00055: STACY AND ERIC HENRY** – request for a variance to reduce the required rear yard setback from 10' to 0' in order to construct an addition to an existing deck in a Single Family Residential (R-1C) zone, on property located at 446 Monticello Blvd., based on Staff's recommendation and subject to the two conditions set forth.

3. **PLN-BOA-22-00053: DREAM CARE LEARNING CENTER, LLC** – requested to amend an existing conditional use in order to expand an existing childcare center in a Light Industrial (I-1) zone, on property located at 2414 Palumbo Drive. (Council District 7)

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

- a. Expanding the conditional use for a childcare center should not adversely affect the subject or surrounding properties, and will allow the applicant to provide additional services that are compatible with the existing activities on site.
- b. The expansion of the use should not adversely affect traffic in the immediate area and sufficient parking is available on the subject property.
- c. 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 childcare center shall operate in accordance with the submitted site plan and application materials.
2. The use shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.

Representation – Mr. Mike Scott, applicant, was present on behalf of his application to amend an existing conditional use. Mr. Scott acknowledged that he had read Staff's recommendation of approval of this request and that he agreed to abide by the conditions as listed.

Action – A motion was made by Mr. Clarke, seconded by Ms. Tucker and carried 7-0, to **approve PLN-BOA-22-00053: DREAM CARE LEARNING CENTER, LLC** – request to amend an existing conditional use in order to expand an existing childcare center in a Light Industrial (I-1) zone, on property located at 2414 Palumbo Drive, based on Staff's recommendation and subject to the two conditions as listed.

4. **PLN-BOA-22-00057: SHUNAR CONCRETE AND CONSTRUCTION, LLC** – requested an administrative appeal to change one non-conforming use (adult day care facility) to another non-forming use (childcare center) in a Single Family Residential (R-1D) zone, on property located at 3600 Appian Way. (Council District 8)

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

- a. The requested change in non-conforming use from an adult day care center to a childcare center should not adversely affect the subject or surrounding properties, as this change is very minor in scope and the two uses have similar impacts on the subject and surrounding properties.
- b. No expansion of the building's footprint is proposed, and the change in non-conforming uses should not negatively impact the neighborhood or alter the character of the subject or surrounding properties.
- c. With a limit of 99-children, the proposed use is in line with the scope of the original childcare center use that successfully operated at this location from 1978-2014.
- d. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The childcare center shall operate in accordance with the submitted application materials site plan and application materials.
2. The use shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
3. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the childcare center.
4. The childcare center shall be limited to a maximum of 99 children.
5. The applicant shall provide 25 square feet of fenced, screened, and functional outdoor play area per child.

Representation – Mr. Chris Clendenen, attorney, was present on behalf of the applicant. He indicated that the applicant had read the conditions set forth by Staff and their recommendation of approval, and that the applicant agreed to abide by the conditions.

Board questions and comments – Mr. Needham had a question regarding the location of the required 2,475 square feet of outdoor play area. Mr. Clendenen noted the location of the play area on an aerial image of the property, which was displayed on the overhead screen. He added that the applicant could remove some of the existing pavement and replace it with grass, and they would have more than sufficient outdoor play area.

Ms. Plumlee asked why the subject property was considered to be non-conforming. Mr. Crum explained that over time, what was permitted as a conditional use in the residential zones changed. Originally, this property went through the conditional use process in the early 1970's. After it was approved and established, the zoning was changed and the use was no longer allowed in that zone. He added that in order for the business to continue to operate or change to another non-conforming use, the property had to go through the administrative appeal process.

Mr. Clarke asked Staff if the facility could operate as a daycare if these additions were not made. Mr. Crum replied that the applicant would have to fulfill all of the conditions as established by the Board in order to operate.

Action – A motion was made by Mr. Needham, seconded by Mr. Walker and carried 7-0, to **approve PLN-BOA-22-00057: SHUNAR CONCRETE AND CONSTRUCTION, LLC** – request for an administrative appeal to change one non-conforming use (adult day care facility) to another non-forming use (childcare center) in a Single Family Residential (R-1D) zone, on property located at 3600 Appian Way, based on Staff's recommendation and subject to the five conditions as listed.

E. Discussion Items

1. **PLN-BOA-22-00029: HEIDI FRAZIER** – requested an Early Rehearing of a variance request to increase the allowable height of a fence in the front yard from four (4) feet to six (6) feet in a Single-Family Residential (R-1C) zone, on property located at 143 E. Lowry Lane. (Council District 3)

The Staff Recommended: Disapproval of an Early Rehearing, for the following reasons:

- a. The new information provided by the applicant does not substantially alter the character of the original appeal. The home was constructed to face E. Lowry Lane as its front face and front yard, and the 4-foot fence limitation in the front yard is consistent across all residential zones.
- b. Neither the original subdivision plat, letters of support, references to another BOA case at a different property, nor the police report for another property provide any new information that would impact the Board's original decision.

*Note – Mr. Gross recused himself from hearing the following application due to a possible conflict of interest.

Staff Presentation – Mr. Crum explained the process of an appeal for an early rehearing, as this is a somewhat unusual request before the Board. He gave an overview of Ms. Frazier's previous appeal for a variance before the Board in July of 2022. Mr. Crum directed the Board's attention to the overhead screen on which he displayed an aerial view of the subject property and nearby vicinity. He explained Staff's reasons for recommending disapproval of this request for an early rehearing.

Applicant Representation – Ms. Jessica Winters, attorney, was present on behalf of the applicant. She distributed information to the members of the Board, prior to directing their attention to her presentation on the overhead screen. Ms. Winters explained the applicant's reasoning for filing this request for an early rehearing; listing various new information which was not available to Ms. Frazier at the time she previously filed a request for a variance.

Board comments and questions – Ms. Carter asked Staff to clarify what the Board was to determine at this meeting. She also had questions about the definition of "new information" that Ms. Winters spoke of. Mr. Crum responded by quoting from the Board of Adjustment bylaws, that "the Board can consider granting a rehearing if there are new facts or conditions which were not presented and considered previously and would substantially alter the character of the original appeal". He added that if the Board did not previously consider the information, and it would substantially alter the appeal, the Board has the flexibility and the ability to re-hear the request.

Mr. Clarke opined that there was enough new information to consider a rehearing. He added that he had taken the time to go by the subject property and discovered a lot of trash and debris on the site, creating a real mess.

Ms. Plumlee agreed with Mr. Clarke and added there was fodder for a new hearing, mentioning some of the new information which had been presented to the Board.

Ms. Carter asked about the type of precedent that would be set if the Board should re-hear Ms. Frazier's request for a variance, given the additional information that she has obtained. There was further discussion.

Mr. Needham commented that the only information that he considered to be new was the development of the Smoothie King.

Mr. Crum clarified that the development for the Smoothie King was approved in 2019. He added that it was part of the discussion and the findings of creating a pedestrian friendly environment, with regard to the pedestrians that would be traveling from the neighborhood itself, to these commercial entities.

Ms. Carter stated that if the Board decided to approve the applicant's request for an early rehearing, it would be prudent to consult with legal, as the Staff had recommended disapproval of the applicant's request.

*Note – The Board took a brief recess at 2:33 p.m. and reconvened at 2:42 p.m.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 4-2 (Carter and Needham opposed; Gross recused), to **approve PLN-BOA-22-00029: HEIDI FRAZIER** – request for an early rehearing of a variance request to increase the allowable height of a fence in the front yard from four (4) feet to six (6) feet in a Single-Family Residential (R-1C) zone, on property located at 143 E. Lowry Lane, based on the following new information presented by the applicant:

- a. Photographs of a homeless encampment abutting the property.
- b. A police report documenting trespassers near the fence line on the property.
- c. A new development that will go in directly behind the property.
- d. Letters of support from neighbors at surrounding properties, and this new information substantially alters the character of the original appeal.

*Note – Mr. Gross returned to the meeting following the vote on the previous application.

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)

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 explained that this application was continued from the October 10, 2022 Board of Adjustment meeting to afford the applicant time to work with Staff on the more technical issues concerning the proposed site plan and the development. She gave a brief overview of the application and directed the Board's attention to the overhead screen on which she displayed aerial images of the subject property and nearby vicinity. Ms. Jennings also mentioned some safety concerns that the Division of Traffic Engineering had with the site plan. She introduced Mr. Stephen Parker, Division of Traffic Engineering and asked him to elaborate on his concerns for safety and explain the alternate site plan presented by the Division of Traffic Engineering.

Mr. Parker directed the Board's attention to the alternate site plan submitted by the Division of Traffic Engineering, which was displayed on the overhead screen. He explained the differences, regarding access points and safety issues, between this site plan and the one the applicant had submitted.

Board comments and questions – Ms. Carter asked Mr. Parker if there were three access points, each of them for two-way traffic, on the plan he presented. He confirmed that to be true. Ms. Carter asked if the access point which had caused major concern had been removed. Mr. Parker confirmed that to be true as well. There was some discussion about the orientation of the building on the site.

Mr. Gross asked Mr. Parker if the existing access points along Main St. would be moved for the new development. There was discussion about what the applicant planned to do. Mr. Parker stated that he believed the applicant planned to keep the parallel parking spaces. There was further discussion.

Staff comments – Ms. Jennings directed the Board's attention to the overhead screen on which was displayed the site plan submitted by the applicant. She stated that simply because an access point was in existence that did not mean that it was in compliance with the restrictions. Ms. Jennings expressed several of Staff's concerns of safety, with regard to the existing access points. She added that a representative of staff with Town Branch Commons, Ms. Brandi Peacher, was present, should anyone have any questions for her.

Applicant representation – Mr. Nick Nicholson, attorney, was present on behalf of this application and stated that he had submitted for the record a copy of his PowerPoint presentation and the applicant's proposed findings and conditions for the record. Mr. Shawn Spalding, attorney, distributed a copy of these documents to the Board members. Mr. Nicholson introduced Mr. Phil Riney and Ms. Stacey Berg, with Independence Bank, and Mr. Dennis Wilson, with Axiom Architecture, who were also present in the audience. Mr. Nicholson explained the recent revisions which the applicant had made to the site plan in comparison to the previous site plan.

Board comments and questions – Mr. Gross commented that he was more in favor of the revised site plan than the previous site plan. He asked how the right of way between the bypass lane and the drive-through lanes would be controlled, and also whether ADA (Americans with Disabilities Act), access could be added from the building sidewalk to the Water St. sidewalk. Mr. Nicholson stated that a speed table or some type of marking could be added. He also added that the drive-through was one-way only and signage could be added to control the right-of-way at the drive-through and bypass lanes. Mr. Gross stated that he would like to see both items that he mentioned resolved with the Divisions of Traffic Engineering and Planning if this application is approved.

Ms. Plumlee asked who would be responsible for maintaining the parking area. Mr. Nicholson replied that the applicant would be responsible for it, as the property is owned by the applicant.

Mr. Gross asked about markings or signage for merging traffic on Main St. Mr. Nicholson stated the applicant would work with the Division of Public Works to mark that area of the street with yellow paint. There was further discussion about the access points for the subject property.

Audience comments – Mr. Blake Hall, 36 Richmond Ave., expressed his concerns with drive-through facilities in the downtown area.

Staff comments – Ms. Jennings addressed some of the comments previously made concerning the possible rotation of the proposed building and the site plans that had been viewed. She pointed out that Mr. Parker was careful about not locating the building where the utility lines are. Ms. Jennings clarified for the Board and audience members where the utility lines were located on Mr. Parker's site plan, as well as other specifics of it.

Board question – Ms. Plumlee asked if the request for a drive-through is approved, and this applicant no longer occupies the property, would the next occupant automatically have approval for a drive-through. Ms. Jennings replied that the Board has the option to add a sunset clause to their conditions of approval that the approval for the drive-through would not transfer to any future users or future redevelopment of the site.

Mr. Gross added that the Board could limit it to bank drive-through use only. Ms. Plumlee stated that she would like to see that added, if this application moves forward.

Applicant rebuttal – Mr. Nicholson stated that the applicant would not have a problem with adding that clause to the conditions. With regard to the site plan, he commented that the egress traffic on the applicant's plan would have much better sight distance; being able to see unobstructed up Main St. for pedestrian safety. He opined that moving it closer to Carson's restaurant, closer to the existing pedestrian congregation point, and the existing building, limits the sight distance vision.

*Note – The Board took a recess at 3:48 p.m. and reconvened at 3:58 p.m.

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 7-0, to **approve 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., based on the following findings:

- a. A drive-through facility for a bank should not adversely affect the subject or surrounding properties the access points on Main St. and Water St. have been designed to minimize conflict with pedestrian traffic.
- b. The proposed plan includes adequate vehicular stacking along the Water St. frontage and additional screening from the Water St. frontage, which will lessen the visual impact on the downtown environment.
- c. All necessary public facilities and services are adequate to serve the increased needs of the drive-through facility.

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

1. The drive-through facility shall be designed and developed in accordance with the submitted application materials and site plan, with any modifications requested by the Division of Engineering, Division of Traffic Engineering, and Building Inspection.
 2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction.
 3. The parking lot and associated traffic aisles shall be paved, with spaces delineated, in accordance with Article 16 of the Zoning Ordinance.
 4. The proposed plan shall meet all landscaping and screening requirements listed in Article 18 of the Zoning Ordinance.
 5. This drive-through facility shall be permitted only for the purposes of operating a bank.
 6. The proposed plan shall comply with the Town Branch Commons Master Plan and Design Standards.
3. **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)

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

- a. Drive-through facilities for a convenience store should not adversely affect the subject or surrounding properties. The physically delineated drive-through line will prevent potential conflicts with drive-through stacking.
- b. The applicant has clarified that physically delineating the drive-through lane will not create a conflict for the fuel trucks accessing the refueling connections.
- c. The proposed plan meets screening and landscaping requirements as listed in Article 18 of the Zoning Ordinance.

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

1. The property shall operate in accordance with the submitted application materials and site plan.
2. All vehicular use areas shall be designed in accordance with the recommendations of the Division of Traffic Engineering.
3. All property landscaping and screening shall be reviewed and approved by the Division of Environmental Services.
4. All necessary permits and/or approvals shall be obtained from the Divisions of Planning, Building Inspection, and Traffic Engineering, prior to occupancy.

Representation – Ms. Kim Bragg, applicant, was present on behalf of this application. She gave an overview of the application to the Board.

Board comments and questions – Mr. Clarke asked if the drive-through was for the convenience store itself and not for the restaurant. Ms. Bragg responded, confirming that the drive-through was only for the

convenience store as there is no menu board for the restaurant at the beginning of the drive-through for anyone to order from.

Audience comments – Ms. Paula Singer, 110 Hamilton Park, expressed her concerns regarding the safety of bicyclists and pedestrians in the area due to the heavy traffic congestion already there. She mentioned drivers making illegal left turns across Versailles Rd. to access the existing drive-through at the Starbucks on Parkers Mill Rd. Ms. Singer made reference to the Cardinal Valley Small Area Plan and the work and expense that had gone into implementing it.

Mr. Peter Brown, 149 Hamilton Park, former Board of Adjustment member, expressed his opposition to the proposed project. He stated various reasons; one being that his property is in very close proximity to the subject property and he is concerned about his property value decreasing. Mr. Brown also mentioned the safety of pedestrians and bicyclists should this application be approved. He requested the dumpster on the subject property be moved and also screening be established if the Board decides to approve this application.

Staff presentation – Ms. Jennings asked Ms. Singer and Mr. Brown if they had previously been sworn in. Mr. Brown stated that he was sworn in. Ms. Singer replied that she had not been sworn in previously. Ms. Ms. Carter administered the oath to Ms. Singer at this time.

Ms. Jennings presented an overview of the application and directed the Board's attention to the overhead screen on which she displayed the site plan and aerial images of the subject property and properties in close proximity to it. She explained the intended operation of the proposed business, including the drive-through. Ms. Jennings pointed out items on the aerial images that the applicant intends to remove from the property in order to improve the appearance of the site.

Board comments and questions – Mr. Needham asked if there was discussion about a sidewalk continuing along Parkers Mill Rd. Ms. Jennings replied that she did not believe that had been discussed.

Mr. Walker asked Ms. Bragg if the drive-through facility was going to have any amplification, such as a speaker box. Ms. Bragg stated that there would not be any amplification or speaker box.

Mr. Needham asked if there was a change in ownership. Ms. Bragg responded that the property owner did not change; however, the client was previously a sub-lessee and is now a direct lessee of the property and has the ability to clean it up substantially.

Mr. Clarke expressed his concerns with the intersection at this property.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 5-2 (Plumlee opposed and Gross abstained), to **approve 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., based on Staff's recommendation and subject to the four conditions as listed.

4. **PLN-BOA-22-00054: JOHN DEHART** – requested a conditional use permit for accessory drive-through facilities and a variance to increase the maximum front yard setback from twenty (20) feet to seventy-six (76) feet in order to construct a retail use in a Neighborhood Business (B-1) zone, on property located at 490 Southland Dr. (Council District 10)

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

- a. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. Increasing the front yard setback will ensure that the proposed building is in keeping with existing non-conforming setbacks of adjoining retail uses, and will preserve existing site access and circulation for vehicular and pedestrian users of the subject property and surrounding properties.
- b. The existing non-conforming setbacks of the adjoining retail uses, as well as the existing parking area and vehicular access, are special circumstances that limit the applicant's ability to develop the subject property in accordance with the Zoning Ordinance without adversely affecting the subject property and surrounding properties.

- 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 construction.

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

1. Construction shall be in accordance with the submitted application materials and a revised site plan without drive-through facilities.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Traffic Engineering prior to occupancy.

The Staff Recommended: **Disapproval of the conditional use permit for accessory drive-through facilities**, for the following reasons:

- a. The applicant has not provided sufficient information regarding the future tenant of the proposed retail use, the expected hours of operation, or number of customers and Staff is unable to adequately assess the impact of the proposed drive-through facilities.
- b. The proposed drive-through facilities will likely adversely affect the subject property and surrounding properties. The subject property is located in a congested area of both vehicular and pedestrian users and the proposed facilities would create numerous conflict points for vehicles and pedestrians.

Applicant representation – Mr. Chris Clendenen, attorney, was present on behalf of the applicant. He stated that there are two parts to the application and the applicant wished to postpone the request for the drive-through facility for two months, to the January 2023 meeting, but to continue with their request for a variance to increase the front yard setback. Mr. Clendenen directed the Board's attention to the overhead screen on which was displayed an aerial image of the subject property and those properties surrounding it. He gave an overview of the application and explained why the requested variance was necessary for the proposed project.

Board questions – Mr. Gross asked what the proposed use for the project was and who the end user was going to be, should this application be approved. Mr. Clendenen stated that was not known at this time. He added that they have had several inquiries from prospective tenants but no decision had been made, and that is in part the reason the applicant wished to postpone the request for the drive-through.

Audience comments – Mr. Mark Little, Re-Store Director, Lexington Habitat for Humanity, stated that he had not been sworn in previously. Ms. Carter administered the oath to Mr. Little at this time. He stated that his company's property was across the street from the subject property, also on Southland Drive. Mr. Little expressed his concerns with the lack of detail regarding the proposed project, primarily with regard to parking. He added that without knowing the intended use for the space, the impact on other businesses on Southland Dr. is unknown at this time, with regard to parking.

Mr. Dan Becker, Chief Financial Officer, Health First, Bluegrass Community Health Center, 496 Southland Dr. expressed his concerns for the patients that he serves. He mentioned that the proposed business could provoke anxiety in his patients or create barriers to them seeking affordable health care. He asked that his concerns be considered by the Board when they are making their decision.

Mr. Sandy Levy, 451-455 Southland Dr., expressed concerns regarding parking issues for businesses on Southland Dr. and the additional parking issues that could arise with the construction of a drive-through facility.

Applicant rebuttal – Mr. Clendenen stated that he respected the opinions of opposition from the audience, but opined they were premature at this point because what the applicant was requesting at this meeting was postponement of the request for a drive-through, and approval of their request for a variance to increase the front yard setback.

Board questions and comments – Mr. Gross questioned approving the application with the site plan including the drive-through. He asked if the entire application should be postponed for two months. Ms. Jennings replied that Staff's recommendation of approval as stated in the Staff Report includes a condition of approval which states, "construction shall be in accordance with the submitted application materials and a revised site plan without drive-through facilities". Mr. Gross asked Ms. Jennings if Staff was comfortable with that. She replied that Staff was comfortable with that.

Action – A motion was made by Mr. Gross to postpone **PLN-BOA-22-00054: JOHN DEHART** – request for a conditional use permit for accessory drive-through facilities on property located at 490 Southland Dr. for two months, to the January 2023 meeting.

Discussion on the motion – Ms. Goderwis remarked that there may be some conflict in approving one of the requests in this application, and not approving the other request. She added that procedurally, it may be better to hear both requests at the same time. There was further discussion.

Action – Mr. Gross withdrew his motion of postponement of the request for a conditional use for a drive-through. He asked Mr. Clendenen if the applicant was agreeable to a two-month postponement. Mr. Clendenen replied that the applicant was agreeable to a two-month postponement.

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 7-0, to **postpone PLN-BOA-22-00054: JOHN DEHART** – request for a conditional use permit for accessory drive-through facilities and a variance to increase the maximum front yard setback from twenty (20) feet to seventy-six (76) feet in order to construct a retail use in a Neighborhood Business (B-1) zone, on property located at 490 Southland Dr. to the January 2023 Board of Adjustment meeting.

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

A. Consider Board of Adjustment 2023 Meeting and Filing Schedule for adoption.

Action – A motion was made by Mr. Clarke, seconded by Mr. Gross and carried 7-0 to **approve** the 2023 Board of Adjustment Meeting and Filing Schedule.

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

A. Parking ZOTA announcement

Staff presentation – Ms. Jennings distributed copies of a document which explained changes to the Zoning Ordinance regarding parking requirements. These changes to the Zoning Ordinance were adopted by Council on October 27, 2022. She gave a brief overview of the changes for the Board's behalf. There was some discussion between Board members and Staff.

- VII. **NEXT MEETING DATE** – Ms. Carter announced that the next meeting will be on December 12, 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, Ms. Carter declared the meeting adjourned at 5:02 p.m.

Raquel Carter, Chair

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://fucg.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.