

**MINUTES FOR THE BOARD OF ADJUSTMENT
MEETING**

December 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, Branden Gross, Chad Needham, Carolyn Plumlee, Linda Tucker and Chad Walker. Others present were: Brittany Smith, Department of Law; Josh Dezarn, Division of Engineering and Stephen Parker, Division of Traffic Engineering. Planning staff members present were: Traci Wade, Autumn Goderwis, Meghan Jennings, Daniel Crum and Donna Lewis.
- III. **APPROVAL OF MINUTES** – Ms. Carter announced that the minutes from the November 14, 2022 meeting would be considered at this time.

Action – A motion was made by Mr. Clarke, seconded by Ms. Tucker and carried 7-0, to **approve** the minutes from the November 14, 2022 Board of Adjustment meeting.

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**

Mr. Terrence Hicks, applicant and property owner, was present and requested a one-month postponement of his application in order to have more time to work with Staff concerning issues with his site plan.

Action – A motion was made by Mr. Needham, seconded by Ms. Plumlee and carried 7-0, to **postpone** **PLN-BOA-22-00063: TERRENCE HICKS** – request for variances to 1) reduce the front yard setback from thirty feet (30') to seven feet (7'); 2) reduce the side street side yard from thirty feet (30') to six feet (6'); 3) reduce the side yard setback from six feet (6') to three feet (3') and 4) to reduce the rear yard setback from twenty feet (20') feet to ten (10) feet in order to construct a duplex within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 701 N. Upper Street, to the January 9, 2023 Board of Adjustment meeting.

D. **Abbreviated Hearing**

1. **PLN-BOA-22-00051: JOE KANE** – requested a variance to reduce the side yard setback from eight (8) feet to six (6) inches in order to construct an attached carport to a single-family residence in a Single Family Residential (R-1C) zone, on property located at 479 Hollyhill Dr. (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. A detached carport has existed in this location for years and the proposed attached carport will enhance the appearance of the property. The proposed attached carport should not adversely affect adjoining properties as the closest residential structure is located over 100 feet away.

- b. The restrictive configuration of the lot is a special circumstance that justifies the need for the variance, as the available buildable area for additional covered parking is limited based on the width of the side yard and existing mature trees.
- 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 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. The carport shall include a water runoff collection system to eliminate runoff onto the adjoining property.
3. The carport may not be enclosed and otherwise become a garage without prior Board of Adjustment approval.
4. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

Representation - Mr. Joe Kane, applicant, was present on behalf of this application. He indicated that he had read Staff's recommendations and the conditions of approval and agreed to abide by them.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 7-0, to **approve PLN-BOA-22-00051: JOE KANE** – request for a variance to reduce the side yard setback from eight (8) feet to six (6) inches in order to construct an attached carport to a single-family residence in a Single Family Residential (R-1C) zone, on property located at 479 Hollyhill Dr., based on Staff's recommendations and subject to the four conditions as listed.

2. **PLN-BOA-22-00064: BO REYNOLDS** – requested a variance to reduce the required rear yard setback from twenty-three feet and eight inches (23' 8") to eighteen feet and nine inches (18' 9") in order to construct a deck with a floor level greater than three (3) feet above established grade to a duplex within a Historic District Overlay (H-1) in a Two-Family Residential (R-2) zone, on property located at 1012 and 1014 Fincastle Road. (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. The request has received approval from the Board of Architectural Review and the proposed deck should have little visual impact on the surrounding properties as it is located on the rear of the structure and is located a significant distance from adjoining structures.
- b. The existing slope is a special circumstance that justifies the need for the variance, as the deck must be higher than three feet above grade level in order to be in-keeping with the main level of the residential structure, removing it from qualifying as a projection.
- 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. The 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 – Mr. Bo Reynolds, applicant, was present on behalf of this application. He stated that he had read Staff's recommendations and the conditions of approval and agreed to abide by them.

Action – A motion was made by Mr. Needham, seconded by Ms. Plumlee and carried 7-0 to **approve PLN-BOA-22-00064: BO REYNOLDS** – request for a variance to reduce the required rear yard setback from twenty-three feet and eight inches (23' 8") to eighteen feet and nine inches (18' 9") in order to construct a deck with a floor level greater than three (3) feet above established grade to a duplex within a Historic District Overlay (H-1) in a Two-Family Residential (R-2) zone, on property located at 1012 and 1014 Fincastle Road, based on Staff's recommendations and subject to the two conditions as listed.

3. **PLN-BOA-22-00062: REDWOOD COOPERATIVE SCHOOL, INC.** – requested 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)

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

- a. The proposed additional educational building should not adversely affect the subject or surrounding properties as the previously approved limit of 230 students should limit nuisances associated with traffic.
- b. Due to the proposed increase in intensity of the school's use along the northern property line, additional buffering will be provided between the proposed building and the adjacent R-1C zoned lots to mitigate the proposed activity in this portion of the subject property.
- c. Establishing a shared parking agreement will alleviate on-street parking demand associated with the school's special events.
- d. All necessary public facilities and services are available and adequate for the proposed additional building.

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

1. Construction shall be in accordance with the submitted application materials and the amended site plan dated December 9, 2022 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 shall be obtained from the Divisions of Planning, Engineering, and Building Inspection prior to construction and occupancy.
4. Student enrollment shall be limited to 230 students.
5. A shared parking agreement shall be established with adjoining properties for use by parents and guests for the school's special events.
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.
7. Fire and Emergency access to the proposed building shall be established in accordance with Division of Fire and Emergency Services requirements.

Representation – Ms. Sarah Cummins, Redwood Cooperative School Inc. Director, was present on behalf of this application. She stated that she had read Staff's recommendations and the seven conditions of approval and agreed to abide by them.

Board questions – Ms. Plumlee asked Ms. Cummins if the school was in agreement with the maximum number of students not exceeding 230, as was listed in the conditions of the supplemental staff report. Ms. Cummins indicated the school was in agreement with 230 students. There was further discussion.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 7-0, to **approve PLN-BOA-22-00062: 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, based on Staff's recommendation and subject to the seven conditions as listed.

E. Discussion Items

1. **PLN-BOA-22-00060: ALLEN CARTER** – requested conditional use permits in order to operate a small farm Micro-Distillery and special events accessory to an existing small farm winery in an Agricultural Rural (A-R) zone, on property located at 3710 and 3780 Leestown Road. (Council District 12)

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

- a. The subject property contains an existing active agricultural use (small farm winery). The distilling of brandy and bourbon on the property will support the continued agricultural use of the property by utilizing agricultural resources grown on the subject property. At the small scale proposed by the applicant, the incorporation of distilling activity into the operations of the existing small farm winery should have little to no impact on adjoining properties. In addition, the requested special event use will be incidental and subordinate to the operation of the existing small farm winery, and with appropriate conditions of approval, should not adversely affect the subject or surrounding properties.
- b. The subject property is an appropriate site for agritourism and cultural tourism activities in accordance with the Rural Land Management Plan. The subject property is the site of a historic distillery that

operated prior to Prohibition and is an active horse farm and existing small farm winery. The requested conditional use permit will support the recommendations of the RLMP related to agritourism by allowing guests to visit the agribusiness operations for education and enjoyment.

- c. No new structures are proposed to accommodate the special events and small farm Micro-Distillery uses and adequate parking will be provided.
- d. All necessary public services and facilities will be available and adequate for the proposed use.

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 Divisions of Planning and Building Inspection prior to occupancy.
- 3. The applicant shall provide handicap-accessible parking adjacent to all buildings associated with the distillery use that are open to the public, and all parking areas shall be reviewed and approved by the Division of Traffic Engineering.
- 4. The distillery use shall operate in accordance with state and federal law, and shall obtain all necessary and appropriate licenses.
- 5. The hours of operation for the small farm Micro-Distillery and special events shall be 10:00 A.M. to 10:00 P.M., daily.
- 6. Special events shall be limited to a maximum of 50 participants and shall occur no more than two times per month.
- 7. Any outdoor lighting associated with the small farm Micro-Distillery and special events shall be directed away from adjoining properties.
- 8. Temporary structures, such as tents, shall be permitted for up to 180 days, provided approval is obtained from the Division of Building Inspection.
- 9. Approval for the septic system and/or any portable toilets, as well as for any food services offered, shall be obtained from the Fayette County Health Department.

Staff Presentation – Mr. Crum gave an overview of this application for conditional use permits to operate a small farm Micro-Distillery and special events accessory to an existing small farm winery. He directed the Board's attention to the overhead screen on which aerial images of the subject property and property surrounding it were displayed, as well as the site plan as submitted by the applicant. Mr. Crum explained the recently adopted Zoning Ordinance Text Amendment to allow a small farm Micro-Distillery in association with a small farm winery as a conditional use in the A-R zone, which is one of the conditional uses that the applicant had requested. He explained Staff's reasons for recommending approval of this application.

Applicant Representation – Mr. Allen Carter, applicant and property owner, was present and spoke on behalf of this application. He indicated that he had read Staff's recommendations and conditions of approval. Mr. Carter stated that he would like to request that condition number six reflect a maximum of 100 participants rather than 50 participants.

Board questions and comments – Mr. Needham asked if the events Mr. Carter planned to conduct would be held inside or outside. Mr. Carter replied that the events would most likely be in a tent outside. He added that the wine tastings would most likely be held in the barn.

Ms. Plumlee suggested the maximum number of participants be 75. There was further discussion.

Mr. Gross asked if the site plan could be displayed on the overhead screen again, so that Mr. Carter could explain the proposed flow of traffic for his project. Mr. Gross also asked Mr. Carter to speak on any water quality issues that he and staff from the various departments within the city had discussed. He asked Mr. Carter how he planned to control the water production from his facility. Mr. Carter responded that there was an existing spring on his property that was discovered in 1867. He added that he was recently awarded a grant to pump the water from that spring to a tank in the facility which is approximately seventy-five yards away. That water will be used in the process of distilling the bourbon. Mr. Carter further explained his proposed project.

Mr. Needham asked Mr. Carter to identify on the site plan where the spring is located. Mr. Carter identified the location of the spring on the site plan and explained the flow of the traffic for the proposed project. There was further discussion.

Mr. Clarke asked where the agriculture school, Locust Trace, was located, in proximity to Mr. Carter's property. Mr. Carter described the location of the school.

Ms. Plumlee asked Mr. Carter about the horses on his property. Mr. Carter replied that he has been breeding horses and racing horses for the tourism aspect. Ms. Plumlee asked where the horses are kept on the property. Mr. Carter identified where the horses are boarded on the site plan displayed on the overhead screen. Ms. Plumlee asked Mr. Carter to also indicate where the grapes are grown. Mr. Carter depicted the location of the vineyard. He also indicated where the corn, hops and possibly wheat will be grown.

Audience comments – Mr. David Powell, 3755 Leestown Rd., expressed his concern with the proposed project. He asked about the storage of the bourbon while it is aging.

Ms. Dottie Bean, 1364 Deer Lake Cir., expressed her concern with the number and sizes of micro-breweries and wineries in Lexington and the regulations associated with them.

Mr. John W. Phillips, owner of Darby Dan Farm, 3225 Old Frankfort Pike, expressed his concerns and objections with the creation of another party facility in the Agricultural Rural zone. He also expressed concerns with the possibility of increased traffic and other issues.

Ms. Stacia Sharff, 640 N. Yarnallton Pike, expressed her concerns with the proposed project, citing safety and environmental issues. She stated that the subject property is located along a dangerous stretch of road. Ms. Sharff mentioned her concern with the hours of operation and a potential for growth of the proposed project.

Applicant rebuttal – Mr. Carter stated that due to improvements in technology, there likely would not be the environmental effects that were previously mentioned resulting from this operation. He also addressed concerns from the audience involving traffic and potential waste from the distillery.

Board questions and comments – Mr. Clarke asked where the bourbon will be stored. Mr. Carter replied that it will be stored in the barn where it is made. He added that he is only producing 20 barrels of bourbon a year. There was discussion regarding the spring on Mr. Carter's property, which he had previously mentioned.

Mr. Clarke asked for clarification of the parties or special events that Mr. Carter planned to conduct. Mr. Carter stated that he would like to have dinners or possibly fundraisers. He elaborated on the events he envisioned.

Ms. Plumlee asked if the food for those events would be provided by an outside caterer. Mr. Carter stated that the food would be supplied by an outside caterer.

Mr. Needham asked how many bottles of wine were produced. Mr. Carter replied that he currently produces approximately 1,000 cases of wine per year, with twelve bottles per case. There was further discussion. Mr. Needham expressed his concerns with parties and events related to micro-distilleries and the effects they have on neighbors and neighboring horse farms in the Agricultural Rural zone.

Ms. Plumlee stated that she shared Mr. Needham's concerns. She referred to a concert that was held at a winery several years ago, and mentioned that the concert had gotten out of hand. Ms. Plumlee added that she had concerns with that happening again.

Ms. Carter asked how close the barrier of trees which were depicted on the site plan was to other properties. Mr. Carter explained where the barrier of trees was in relation to other properties. There was further discussion.

Mr. Gross asked the other Board members if they were in favor of increasing the maximum number of participants at special events. There was discussion among the Board and Staff.

Legal representation – Ms. Smith pointed out that the language in condition number five should be changed regarding the hours of operation so as not to mandate that the winery and/or micro-distillery operate 10 a.m. to 10 p.m. daily.

Action – A motion was made by Mr. Gross, seconded by Mr. Needham and carried 7-0, to **approve PLN-BOA-22-00060: ALLEN CARTER** – request for conditional use permits in order to operate a small farm Micro-Distillery and special events accessory to an existing small farm winery in an Agricultural Rural (A-R) zone, on property located at 3710 and 3780 Leestown Rd., based on Staff's recommendations and subject to the nine conditions as listed by Staff, with an amendment to condition number five and the addition of a tenth condition as follows:

5. The hours of operation for the small farm Micro-Distillery and special events shall be no earlier than 10:00 a.m., nor later than 10:00 p.m. daily.
10. No amplified music Monday through Wednesday, and no amplified music after 8:00 p.m. Thursday through Sunday.

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

Mr. Gross mentioned that the Board would hold their annual election of officers at the January 2023 Board of Adjustment meeting.

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 at this time.

VII. **NEXT MEETING DATE** – Ms. Carter announced that the next meeting date would be January 9, 2023 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 3:03 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://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.