

**MINUTES FOR THE BOARD OF ADJUSTMENT
MEETING**

February 13, 2023

- 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, Linda Tucker and Chad Walker. Carolyn Plumlee was absent. Others present were: Tracy Jones and Brittany Smith, Department of Law. 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 January 9, 2023 meeting would be considered for approval at this time.

Action – A motion was made by Mr. Walker, seconded by Mr. Clarke and carried 4 – 0 (Gross and Tucker abstained; Plumlee absent), to **approve** the minutes from the January 9, 2023 Board of Adjustment meeting.

IV. PUBLIC HEARING ON ZONING APPEALS

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

Postponements

1. **PLN-BOA-23-00005: JACKSON'S WINE & SPIRITS, LLC** – requested a conditional use for accessory drive-through facilities in order to construct a retail use within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 1406 & 1408 N. Limestone. (Council District 1)

Representation – Mr. Wes Harned, attorney, was present on behalf of the applicant. He informed the Board that the applicant had requested postponement of their application to the March 13, 2023 meeting, due to their primary legal counsel not being available to work with Staff due to health issues.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 6 – 0 (Plumlee absent), to **approve** the request for postponement of **PLN-BOA-23-00005: JACKSON'S WINE & SPIRITS, LLC** – request for a conditional use for accessory drive-through facilities in order to construct a retail use within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 1406 & 1408 N. Limestone.

2. **PLN-BOA-23-00013: THE PADDOCK** – requested a conditional use permit for a cocktail lounge with indoor and outdoor live entertainment, and a variance to reduce the required setback from a residential zone from one-hundred (100) feet to thirty-five (35) feet within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 319 S. Limestone. (Council District 3)

Representation – Mr. Jon Woodall, attorney, was present on behalf of the applicant. He informed the Board that he had recently been retained as legal counsel by the applicant, and that the applicant had

requested a one-month postponement of his application to the March 13, 2023 meeting to allow them more time to work together on this application.

Action – A motion was made by Mr. Needham, seconded by Ms. Tucker and carried 6 - 0 (Plumlee absent), to **approve** the request for postponement of **PLN-BOA-23-00013: THE PADDOCK** – request for a conditional use permit for a cocktail lounge with indoor and outdoor live entertainment, and a variance to reduce the required setback from a residential zone from one-hundred (100) feet to thirty-five (35) feet within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 319 S. Limestone.

3. **PLN-BOA-23-00006: WHITETAIL HEAVEN OUTFITTERS; PLN-BOA-23-00014: WHITETAIL HEAVEN OUTFITTERS; PLN-BOA-23-00015: WHITETAIL HEAVEN OUTFITTERS; PLN-BOA-23-00016: WHITETAIL HEAVEN OUTFITTERS; PLN-BOA-23-00017: WHITETAIL HEAVEN OUTFITTERS; PLN-BOA-23-00018: WHITETAIL HEAVEN OUTFITTERS** – requested administrative appeals to contest the issuance of Notices of Zoning Violations by the Division of Building Inspection for recreational outfitters (commercial guided hunting) in an Agricultural Rural (A-R) zone, on property located at 5701 Jacks Creek Pike; 5725 Jacks Creek Pike; 5751 Jacks Creek Pike; 5837 Jacks Creek Pike; 3508 Crawley Lane and 7418 Old Dry Branch Road, respectively.

Representation – Mr. Wes Harned, attorney, was present on behalf of the applicant. He informed the Board that the appellant had requested a one-month postponement to the March 13, 2023 meeting for the six administrative appeals filed, to allow the applicant time to work with their original legal counsel who has been ill.

Action – A motion was made by Mr. Needham, seconded by Ms. Tucker and carried 6 – 0 (Plumlee absent), to **approve** the request for postponement of **PLN-BOA-23-00006: WHITETAIL HEAVEN OUTFITTERS; PLN-BOA-23-00014: WHITETAIL HEAVEN OUTFITTERS; PLN-BOA-23-00015: WHITETAIL HEAVEN OUTFITTERS; PLN-BOA-23-00016: WHITETAIL HEAVEN OUTFITTERS; PLN-BOA-23-00017: WHITETAIL HEAVEN OUTFITTERS; PLN-BOA-23-00018: WHITETAIL HEAVEN OUTFITTERS** – requests for administrative appeals to contest the issuance of Notices of Zoning Violations by the Division of Building Inspection for recreational outfitters (commercial guided hunting) in an Agricultural Rural (A-R) zone, on property located at 5701 Jacks Creek Pike; 5725 Jacks Creek Pike; 5751 Jacks Creek Pike; 5837 Jacks Creek Pike; 3508 Crawley Lane and 7418 Old Dry Branch Road, respectively.

C. Abbreviated Hearing

1. **PLN-BOA-22-00072: GIBSON TAYLOR THOMPSON ARCHITECTURE & DESIGN** – requested a variance to reduce the required side street side yard for a deep building from thirty-one feet (31') to six feet and three inches (6' 3") in order to construct a two-story addition and porch to an existing single family residence within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Two-Family Residential (R-2) zone, on property located at 172 Forest Avenue. (Council District 3)

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, the proposed addition should have little visual impact on the surrounding properties as it is located on the rear of the structure, and other residences in the vicinity feature similar rear-additions.
- b. The restrictive size of the lot and the legally non-conforming setback of the existing structure are special circumstances that justify the need for the variance.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance 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 addition 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. Vincent Thompson, Gibson Taylor Thompson Architecture and Design, was present on behalf of this application. There were no comments or questions from the Board.

Action – A motion was made by Mr. Needham, seconded by Mr. Walker and carried 6 – 0 (Plumlee absent), to **approve PLN-BOA-22-00072: GIBSON TAYLOR THOMPSON ARCHITECTURE & DESIGN** – request for a variance to reduce the required side street side yard for a deep building from thirty-one feet (31') to six feet and three inches (6' 3") in order to construct a two-story addition and porch to an existing single family residence within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Two-Family Residential (R-2) zone, on property located at 172 Forest Avenue, based on Staff's recommendation and subject to the two conditions as listed.

2. **PLN-BOA-23-00001: STEVE MILLER** – requested variances to 1) reduce the front yard setback from thirty feet (30') to twenty-one feet (21'), 2) to reduce the side street side yard setback from thirty feet (30') to eighteen feet (18'), and 3) increase the maximum number of parking spaces from two (2) to three (3) in order to construct a single family residence within the defined Infill and Redevelopment Area in a Single Family Residential (R-1D) zone, on property located at 147 Burley Avenue. (Council District 10)

The Staff Recommended: Approval for the following reasons:

- Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. The applicant's proposal is similar to existing setbacks in the surrounding area, and the extra requested parking space will help reduce demand for on-street parking in this area without detracting from the single-family residential character of the lot.
- The restrictive configuration of the lot is a special circumstance that justifies the need for the variances, as the lot is a narrow lot that is bound on multiple sides by existing roadways, and the narrow nature of the adjoining streets significantly limit the ability to utilize on-street parking.
- The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variances as soon as it was determined that they were needed and prior to construction.

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

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

Representation – Mr. Steve Miller, applicant and property owner, was present on behalf of his 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 6 – 0 (Plumlee absent), to **approve PLN-BOA-23-00001: STEVE MILLER** – requests for variances to 1) reduce the front yard setback from thirty feet (30') to twenty-one feet (21'), 2) to reduce the side street side yard setback from thirty feet (30') to eighteen feet (18'), and 3) increase the maximum number of parking spaces from two (2) to three (3) in order to construct a single family residence within the defined Infill and Redevelopment Area in a Single Family Residential (R-1D) zone, on property located at 147 Burley Avenue, based on Staff's recommendations and subject to the two conditions as listed.

3. **PLN-BOA-23-00002: ANN THOMAS** – requested variances to 1) reduce the front yard setback from twenty feet (20') to eight feet (8'), 2) to reduce the rear yard setback from twenty feet (20') to twelve feet (12'), and 3) increase the maximum height of a building from twenty-four feet (24') to twenty-nine feet (29') in order to construct a single family home within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 545 Harry Street. (Council District 1)

The Staff Recommended: Approval of a lesser variance for the reduced front yard setback to ten feet (10') for the following reasons:

- 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. There are other structures along Harry Street with similar setbacks and the lesser variance will allow for safe backing out of vehicles from the proposed garage into the Harry Street right-of-way.
- The restrictive size of the lot is a special circumstance that justifies the need for the variance.

- 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.

The Staff Recommended: **Approval for the reduced rear yard setback to twelve feet (12') and increased building height to twenty-nine feet (29')** for the following reasons:

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. Several structures along Harry Street feature multiple stories and are of similar height to the proposed structure. The applicant's proposed rear yard setback is similar to existing setbacks in the surrounding area.
- b. The restrictive size of the lot is a special circumstance that justifies the need for the variance.
- c. The granting of the variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variances as soon as it was determined that it was needed and prior to construction.

These recommendations of approval were made subject to the following conditions:

1. Construction shall be in accordance with the submitted application materials and an amended site plan depicting a 10-foot front yard setback.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to completion of construction.

Representation – Mr. Frederick Blackford, Blackford Properties, was present on behalf of the applicant of this application.

Board question - Ms. Carter asked Mr. Blackford if the applicant was in agreement with the lesser variance for the front yard setback that Staff had recommended approval of. He stated that the applicant had read Staff's recommendations and the conditions of approval and was in agreement with them.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 6 – 0 (Plumlee absent), to **approve PLN-BOA-23-00002: ANN THOMAS** – requests for variances to 1) reduce the front yard setback from twenty feet (20') to ten feet (10'), 2) to reduce the rear yard setback from twenty feet (20') to twelve feet (12'), and 3) increase the maximum height of a building from twenty-four feet (24') to twenty-nine feet (29') in order to construct a single family home within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 545 Harry Street, based on Staff's recommendations for a lesser variance for the reduced front yard setback, and subject to the two conditions as listed.

4. **PLN-BOA-23-00003: GIBSON TAYLOR THOMPSON ARCHITECTURE & DESIGN** – requested a variance to reduce the required rear yard setback from seventeen feet and four inches (17' 4") to eight feet and seven inches (8' 7") in order to construct additions to an existing single family residence within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Planned Neighborhood Residential (R-3) zone, on property located at 519 Central Avenue. (Council District 3)

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, the proposed addition should have little visual impact on the surrounding properties as it is located on the rear of the structure, and other residences in the vicinity feature similar rear-additions.
- b. The restrictive size of the lot and the legally non-conforming setback of the existing structure are special circumstances that justify the need for the variance.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance 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 addition 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. Vincent Thompson, Gibson Taylor Thompson Architecture and Design, was present on behalf of this application. He indicated that he, the applicant, 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 6 – 0 (Plumlee absent), to **approve PLN-BOA-23-00003: GIBSON TAYLOR THOMPSON ARCHITECTURE & DESIGN** – request for a variance to reduce the required rear yard setback from seventeen feet and four inches (17' 4") to eight feet and seven inches (8' 7") in order to construct additions to an existing single family residence within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Planned Neighborhood Residential (R-3) zone, on property located at 519 Central Avenue, based on Staff's recommendation and subject to the two conditions as listed.

*Note – Ms. Carter recused herself prior to hearing the next application, due to a conflict of interest. Mr. Needham assumed the role of Chair in her absence.

5. **PLN-BOA-23-00004: KEITH JONES** – requested variances to 1) reduce the front yard setback from thirty feet (30') to ten feet (10'), 2) reduce the side street side yard setback from thirty feet (30') to five feet and eight inches (5' 8"), and 3) reduce the side yard setback from six feet (6') to three feet (3') in order to construct a duplex on property located within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 775 N. Upper Street. (Council District 1)

The Staff Recommended: Approval for the following reasons:

- 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 applicant's proposal is similar to existing setbacks in the surrounding area.
- The restrictive configuration of the lot is a special circumstance that justifies the need for the variance, as the lot is narrow and is bound on multiple sides by existing roadways and a rear alley.
- 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:

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

Representation – Mr. Keith Jones, applicant, was present on behalf of this application. There were no comments or questions from the Board.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 5 – 0 (Plumlee absent; Carter recused), to **approve PLN-BOA-23-00004: KEITH JONES** – requests for variances to 1) reduce the front yard setback from thirty feet (30') to ten feet (10'), 2) reduce the side street side yard setback from thirty feet (30') to five feet and eight inches (5' 8"), and 3) reduce the side yard setback from six feet (6') to three feet (3') in order to construct a duplex on property located within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 775 N. Upper Street, based on Staff's recommendations and subject to the two conditions as listed.

*Note – Ms. Carter returned to the meeting and resumed her position as Chair, following the vote on this application.

6. **PLN-BOA-23-00007: THOMAS & CHRISTINA PARRISH** – request a variance to increase the allowable floor area ratio (FAR) from 0.5 to 0.58 in order to construct a two-story accessory structure within the defined Infill & Redevelopment Area and a Historic District Overlay (H-1) zone in a Planned Neighborhood Residential (R-3) zone, on property located at 260 Clay Avenue. (Council District 5)

The Staff Recommends: Approval, for the following reasons:

- Granting the requested variance will not represent an attempt to circumvent the Zoning Ordinance, but will meet the intent of the provisions of the Ordinance that allow for variances to FAR, as it will not create an opportunity for more units on the subject property than would be allowed by right.

- b. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. A two-story garage located at the rear of the property will not have much, if any, impact on the appearance of the house from the public rights-of-way. Adjacent properties are configured similarly with detached garages close to the rear lot lines.
- c. The variance is generally reasonable, as the subject property is somewhat larger than many within the defined Infill and Redevelopment area and allowing some additional floor area on this particular lot will not result in construction that is out of character with the general vicinity. The Zoning Ordinance specifically states that BOA action may sometimes be required within the defined Infill and Redevelopment Area in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood.

This recommendation of approval is 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 and the Historic Preservation Office prior to construction and occupancy.

Representation – Mr. Vincent Thompson, Gibson Taylor Thompson Architecture and Design, was present on behalf of this application. Ms. Carter asked him if he had reviewed Staff's recommendations and the conditions of approval. Mr. Thompson indicated that he had reviewed them.

Action – A motion was made by Mr. Walker, seconded by Mr. Needham and carried 6-0 (Plumlee absent), to **approve PLN-BOA-23-00007: THOMAS & CHRISTINA PARRISH** – request for a variance to increase the allowable floor area ratio (FAR) from 0.5 to 0.58 in order to construct a two-story accessory structure within the defined Infill & Redevelopment Area and a Historic District Overlay (H-1) zone in a Planned Neighborhood Residential (R-3) zone, on property located at 260 Clay Avenue, based on Staff's recommendations and subject to the two conditions as listed.

- 7. **PLN-BOA-23-00008: AU ASSOCIATES** – requested variances to reduce the front yard setback from twenty feet (20') to zero feet (0') and to reduce the side yard setback from five feet (5') to zero feet (0') in order to construct a multi-family dwelling in a Planned Neighborhood Residential (R-3) zone, on property located at 96 Codell Drive. (Council District 7)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity as the proposed structure will be located 50 feet from the property line at 200 Alsab Court, and will be located 140 feet from the nearest structure within the development. The proposed structure will meet the required setbacks from the remaining portions of Codell Drive and Old Todds Road.
- b. Granting the requested variances should not have an adverse effect on the surrounding area as the applicant owns the only parcels that utilize the remnant right-of-way, as well as the property that adjoins the subject property's side yard. Once consolidated with the adjoining parcels and right-of-way, the proposed structure will comply with the current setbacks required for a group residential project in an R-3 zone.
- c. The unconventional shape of the subject property and adjoining remnant portions of Old Todd's Road right-of-way are special circumstance that significantly limit the ability of the applicant to utilize the property, and justifies the need for the variances.
- d. The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance, as the applicants applied for the variances prior to beginning construction.

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

- 1. The lot and structure shall be developed in accordance with the submitted application materials and site plan.
- 2. Action of the Board shall be noted on an amended Final Development Plan and the associated Final Record Plat.
- 3. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Clay Johnson, Prime Engineering, was present on behalf of the applicant.

Board comments – Ms. Tucker stated that she had visited the subject property and noticed a large pedestrian presence. She expressed her concern with the zero foot setback and said that she felt there may be a safety issue there.

Representation – Mr. Johnson replied that the applicant was not requesting a zero foot setback from any property line where there would be contact with pedestrians. He added that all of the applicant's setback needs were internal. Mr. Johnson stated that once the consolidation plat is complete, the property lines in question will not exist. He added that the applicant is working with an out of state property owner to settle the matter of some old rights of way. Ms. Tucker commented that the sidewalk seemed very narrow and that there were a lot of pedestrians in the in area. Mr. Johnson stated that the applicant is conforming to all of the setbacks with the sidewalk Ms. Tucker was referring to. There was further discussion.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 5-1 (Plumlee absent; Tucker opposed), to **approve PLN-BOA-23-00008: AU ASSOCIATES** – request for variances to reduce the front yard setback from twenty feet (20') to zero feet (0') and to reduce the side yard setback from five feet (5') to zero feet (0') in order to construct a multi-family dwelling in a Planned Neighborhood Residential (R-3) zone, on property located at 96 Codell Drive, based on Staff's recommendations and subject to the three conditions as listed.

*Note – Mr. Walker recused himself prior to hearing the application below, due to a conflict of interest.

8. **PLN-BOA-23-00012: SCOTT BOOK** – requested a variance to reduce the rear yard setback from twenty feet (20') to one foot and six inches (1' 6") and reduce the setback for an accessory structure where a corner lot adjoins in the rear a lot in any residential zone from twenty-seven feet (27') to twenty-five feet and nine inches (25' 9") in order to construct an accessory structure within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Single Family Residential (R-1C) zone, on property located at 112 Wabash Drive. (Council District 10)

The Staff Recommended: Approval, for the following reasons:

- Granting the variances should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. Detached garages of this size in rear yards are typical in the general vicinity and a similar garage existed on this portion of the property for a number of years prior to 2017.
- The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variances as soon as it was determined that they were needed and prior to construction.
- The platted "garage line" is a special circumstance that applies to the subject property and justifies the need for the variance, as "garage lines" were not commonly depicted on plats in other neighborhoods and its intent appears to have been interpreted inconsistently in the immediate vicinity.
- The side street side yard variance is generally reasonable, as the request is minimal and the garage will be constructed less than two feet (2') closer to the street lot line than the principal structure on the adjoining lot.

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

- Construction shall be in accordance with the submitted application materials and site plan.
- All necessary permits and/or approvals shall be obtained from the Division of Building Inspection and the Historic Preservation Office prior to construction and occupancy.
- The applicant shall file an administrative action minor subdivision plat denoting action of the Board.

Representation – Mr. Scott Book, applicant, was present on behalf of this application.

Board comments – Mr. Needham commented that it was preferable to keep accessory structures for corner properties in alignment with the frontages of adjoining homes. He added that if Staff was agreeable to the submitted site plan and application, he was as well. Mr. Book stated that there had been an existing structure there for decades until just a few years ago. He added that the impressions of the structure can still be seen.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 5 – 0 (Plumlee absent; Walker recused), to **approve PLN-BOA-23-00012: SCOTT BOOK** – request for a variance to reduce the rear yard setback from twenty feet (20') to one foot and six inches (1' 6") and reduce the setback for an accessory structure where a corner lot adjoins in the rear a lot in any residential zone from twenty-seven feet (27') to twenty-five feet and nine inches (25' 9") in order to construct an accessory structure within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Single Family Residential (R-1C) zone, on property located at 112 Wabash Drive, based on Staff's recommendations and subject to the three conditions as listed.

*Note – Mr. Walker returned to the meeting following the vote on this application.

9. **PLN-BOA-23-00009: FIRSTHAND CARE KY, INC.** – requested an administrative appeal to change one non-conforming use (offices) to another non-conforming use (adult day care center) in a Wholesale and Warehouse Business (B-4) zone, on property located at 2224 Young Drive. (Council District 5)

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

- a. The requested change in non-conforming use from an office to an adult daycare center will not have an adverse effect on existing or future development of the subject or surrounding properties, as the use will be operated entirely indoors, no expansion to the building's footprint is proposed, nor are any changes to the exterior of the building.
- b. The requested change from an office use to an adult daycare center, will not be increase the non-conformity of the use in scope or area of its operation. The hours and days of operation, peak hours, and traffic patterns are similar to the office uses that preceded the proposed use at this location. In addition, the office use occupied the entirety of the structure when it was rezoned in 2004 and the proposed adult daycare center will also utilize the entire structure.
- 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 adult daycare center shall operate in accordance with the submitted site plan and application materials.
2. There shall be no exterior changes to the existing structure.
3. The use shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
4. The adult daycare center shall be limited to a maximum of 99 clients.
5. 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 adult daycare use.

Representation – Mr. Richard Murphy, attorney, was present on behalf of the applicant. He introduced Ms. Felicia Carrington, the owner of the corporation, who was also present. Mr. Murphy stated that the applicant agreed with Staff's recommendations and the conditions of approval and agreed to abide by them.

Action – A motion was made by Mr. Walker, seconded by Mr. Gross and carried 6 – 0 (Plumlee absent), to **approve PLN-BOA-23-00009: FIRSTHAND CARE KY, INC.** – request for an administrative appeal to change one non-conforming use (offices) to another non-conforming use (adult day care center) in a Wholesale and Warehouse Business (B-4) zone, on property located at 2224 Young Drive, based on Staff's recommendation and subject to the five conditions as listed.

D. Discussion Items

1. **PLN-BOA-23-00010: SASSAFRAS OZ, LLC** – requested a variance to reduce the side yard setback from three feet (3') to one foot and two inches (1' 2") within the defined Infill and Redevelopment Area in a Two-Family Residential (R-2) zone, on property located at 762 Florence Ave. (Council District 2)

The Staff Recommended: **Approval of a lesser variance of one foot and six inches (1' 6")** 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 structure will provide needed housing and infill a vacant lot within the neighborhood.
- b. The restrictive size of the lot and the encroaching structure from the immediately adjacent property are special circumstances that justify the need for the variance.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance 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 an amended site plan reflecting the lesser variance.

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

Staff Presentation – Ms. Jennings directed the Board's attention to the overhead screen on which aerial images of the subject property and properties surrounding it were displayed. Also displayed was the site plan submitted by the applicant, showing 760 Florence Ave. and 762 Florence Ave. She explained this application for a variance and Staff's reasons for recommending approval of a lesser variance of one foot and six inches, instead of the one foot and two inch variance as requested by the applicant.

Board questions – Ms. Carter asked if the applicant owned both properties. Ms. Jennings confirmed that to be true.

Mr. Clarke asked if the applicant was in agreement with the lesser variance. Mr. Chris Clendenen, attorney for the applicant, confirmed that the applicant was agreeable to the lesser variance.

Representation – Mr. Chris Clendenen, attorney, was present on behalf of the applicant and briefly summarized the application. He added that he had spoken with a member of the audience earlier, addressing some of her concerns with the proposed project and that he will reach out to the applicant to arrange further conversation with her and other members of the neighborhood concerning the proposed project.

Board question – Ms. Tucker asked if it was possible to consolidate the two lots and construct one larger building there. Mr. Clendenen replied that while that may be possible; his client preferred to remodel the existing structure, rather than demolish it. He added that the applicant had rather keep the existing structure and possibly use it for its former use or perhaps for a new use. There was further discussion.

Audience comments – Ms. Rolanda Woolfork, 730 Chiles Ave., was present on behalf of the Georgetown Street Area Neighborhood Association. She expressed her concerns with the proposed project, as well as the concerns of other members of the neighborhood association. Among those concerns was the small size of the proposed house. Ms. Woolfork added that several of the neighbors would like more information from the applicant, and possibly even postponement of this application until such a time that they had more information.

Board comments – Ms. Carter stated that the proposed residence is approximately 1,000 square feet in size. Ms. Woolfork commented that the street is very narrow and she expressed her concerns for the safety of the children in the neighborhood. There was further discussion.

Mr. Clarke asked to see the aerial image of the property and the lot next to it again. The image was shown on the overhead screen. Mr. Clarke asked Staff if they would agree that a twenty-five foot lot was common in the subject neighborhood. Staff indicated that it was a common size for that neighborhood. There was further discussion.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 6 - 0 (Plumlee absent), to **approve PLN-BOA-23-00010: SASSAFRAS OZ, LLC** – request for a variance to reduce the side yard setback from three feet (3') to one foot and two inches (1' 2") within the defined Infill and Redevelopment Area in a Two-Family Residential (R-2) zone, on property located at 762 Florence Ave., based on Staff's recommendation and subject to the two conditions as listed.

2. **PLN-BOA-23-00011: 28 LOUNGE** – requested a conditional use permit for a cocktail lounge and a variance to reduce the required setback from a residential zone from one-hundred (100) feet to sixty-three (63) feet within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Neighborhood Business (B-1) zone, on property located at 287 S. Limestone. (Council District 3)

The Staff Recommended: Approval of the conditional use, for the following reasons:

- a. The proposed cocktail lounge should not adversely affect the subject or surrounding properties, as the subject property has functioned in a mixed-use capacity throughout much of its history.

- b. The general vicinity features a mix of commercial, residential, and professional healthcare uses, typical of a downtown area. The inclusion of conditions prohibiting outdoor speakers and outdoor live entertainment, as well as minimal amplification of other noise, should limit nuisances to the surrounding properties.
- c. All necessary public facilities and services are available and adequate for the proposed use.

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

- a. Granting the variance should not adversely affect the subject or surrounding properties, nor alter the character of the general vicinity, as the area features a mix of commercial, residential, and professional healthcare uses.
- b. The portion of the residentially-zoned property within 100-feet of the subject property functions as a parking lot and is a unique circumstance as the closest residentially-zoned dwelling unit is over 100-feet away.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it was needed and prior to occupying the space.

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

- 1. The cocktail lounge shall be operated in accordance with the submitted application materials and site plan.
- 2. Hours of operation shall be limited to 12:00 P.M. – 2:00 A.M., Monday-Saturday.
- 3. Outdoor live entertainment and outdoor speakers are prohibited.
- 4. A barrier on the outdoor stairwell to prevent access to the residential dwelling units on the upper floors of the structure shall be installed in accordance with Division of Fire and Emergency Services requirements.
- 5. All necessary permits including a Zoning Compliance Permit shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the use.
- 6. The conditional use shall become null and void should the applicant no longer operate at this address.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which she displayed an aerial image of the vicinity map of the subject property. She briefly explained the surrounding properties and their uses. Ms. Jennings displayed a map of the existing zoning of the properties within the vicinity of the subject property, and explained how the zoning pertains to the variance portion of this application. She displayed the applicant's site plan and images of the desired layout of the proposed project on the overhead screen. Ms. Jennings explained the definition of a cocktail lounge per the Zoning Ordinance and noted the details about noise, particularly regarding the indoor uses.

Ms. Jennings explained Staff's reasons for recommending approval of the conditional use permit, noting Staff's concerns regarding noise and outdoor music becoming nuisances for the surrounding properties. She added that Staff had included conditions prohibiting outdoor speakers and outdoor live entertainment. Ms. Jennings explained Staff's reasons for recommending approval of the variance, noting the conditions of approval.

Board questions – Mr. Gross asked if it was correct that the applicant is currently allowed to have a patio. Ms. Jennings confirmed that to be correct. He asked if the applicant could follow the hours of operation as stated in the conditions, if they chose to do. Ms. Jennings stated that was true. Mr. Gross asked if what the Board was deciding on at this meeting was whether to allow the cocktail lounge and the variance to reduce the required setback from a residential zone from one-hundred (100) feet to sixty-three (63) feet. Ms. Jennings confirmed that to be correct also. There was further discussion.

Mr. Clarke asked about the barrier to the stairs, which was mentioned in condition number four. Ms. Jennings replied that the Division of Fire and Emergency Services would address that issue, as stated in condition number four.

Applicant representation – Mr. Gordon Couch, 275 S. Limestone, was present on behalf of the applicant. He stated that the applicant had read Staff's recommendations and was in agreement with them and agreed to comply with the conditions of approval.

Public comments – Third District Councilmember, Hannah LeGris, spoke in support of Staff's conditions regarding the prohibition of live outdoor entertainment and the prohibition of outdoor speakers for the

subject establishment. She added that Staff's proposed conditions make the applicant's proposal to operate an outdoor bar at 287 S. Limestone much more manageable when it comes to quality of life issues. Councilmember LeGris expressed her appreciation to Staff for their recommendations.

Mr. Darrin V. Gulla, 275 S. Limestone, Apt. #205, expressed his opposition to the proposed project, stating concerns over the noise coming from the subject establishment. He added that his property is closer to the subject property than all of the units in the Kimball House Square Condominiums.

Mr. Scott Stutts, attorney on behalf of Mr. Gulla, directed the Board's attention to the vicinity map displayed on the overhead screen. He stated that Mr. Gulla already experiences loud music from the Hookah Lounge as it is. Mr. Stutts stated that he had documentation from another owner in the Kimball House Square who has received complaints of loud music after 4:00 a.m. from renters who have rented their condominiums on Airbnb. He distributed the documentation to the Board members. Mr. Stutts mentioned documentation of minors purchasing tobacco products at the subject establishment. He shared this with Staff as Staff had not previously reviewed this documentation, and also distributed it to the Board. There was further discussion.

Board questions – Mr. Gross asked Staff if the applicant could currently have an indoor bar. Ms. Jennings replied that the applicant could not currently have an indoor bar. Mr. Gross asked if this application allow for an outdoor and indoor bar. Ms. Jennings confirmed that to be true. Mr. Gross asked if it was true that currently in this particular establishment, there could not be any serving of alcohol, but if this conditional use permit is approved, the applicant could have indoor serving of alcohol and potentially an outdoor bar area as well. Ms. Jennings replied that the applicant did not state in their application materials that they were pursuing an indoor bar, just the outdoor bar. She added that the applicant could clarify that. Mr. Gross asked if the Board could approve indoor cocktail but limit the bar from not being outside. Ms. Wade replied that the Board could approve a lesser variance. There was further discussion.

Public comment – Ms. Talat Jamil, 315 Eagle Dr., Nicholasville KY, was sworn in at this time as she arrived late to the meeting. She stated that she owns a condominium in the Kimball House Square Condominiums complex which she rents out to various young professionals. Ms. Jamil added that her renters tell her that it is loud, but manageable currently. She said that she is concerned that approval of this application will make the noise level worse. Ms. Jamil expressed concerns over not being able to rent her property due to an increase in noise.

Applicant rebuttal – Mr. Couch thanked the members of the audience who had voiced their concerns. He addressed some of the concerns that had been expressed and stated that he, too, lives in one of the condominiums in the complex at 275 S. Limestone. Mr. Couch assured the Board that the applicant will make every effort possible to ensure that they do not cause a disturbance in the evenings in the subject neighborhood. He mentioned the addition of acoustic materials and no amplification of music.

Board questions – Mr. Clarke asked about the proposed television for the outside area of the establishment. Mr. Couch replied that there would be televisions mounted inside the gated area of the back patio. Mr. Clarke added that televisions with sound seemed to be the same thing as outdoor speakers. Mr. Couch replied that they could mute the televisions and use them only for visual entertainment.

Action – A motion was made by Mr. Gross, seconded by Mr. Needham and carried 5 – 1 (Plumlee absent; Clarke opposed), to **approve PLN-BOA-23-00011: 28 LOUNGE** – request for a conditional use permit for a cocktail lounge and a variance to reduce the required setback from a residential zone from one-hundred (100) feet to sixty-three (63) feet within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Neighborhood Business (B-1) zone, on property located at 287 S. Limestone, based on Staff's recommendation and the testimony heard today and subject to the six conditions as listed.

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.

There were no Staff items at this time.

- VII. **NEXT MEETING DATE** - Ms. Carter announced that the next meeting date will be March 13, 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 3:01 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

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.