

**MINUTES FOR THE BOARD OF ADJUSTMENT
MEETING**

March 13, 2023

- I. **CALL TO ORDER** – Chair Raquel Carter called the meeting to order at 1:32 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 and Michael Cravens, 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 February 13, 2023 meeting would be considered at this time.

Action – A motion was made by Mr. Gross, seconded by Mr. Needham and carried 6-0 (Plumlee abstained), to **approve** the minutes from the February 13, 2023 meeting of the Board of Adjustment.

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 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 April 10, 2023 meeting, due to the transition of legal counsel. Mr. Harned added that he had recently been assigned as the primary counsel and had not had sufficient time to work with Staff and the applicant.

Action – A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 7-0 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 to the April 10, 2023 Board of Adjustment meeting.

2. **PLN-BOA-23-00006: WHITETAIL HEAVEN OUTFITTERS** – requested an administrative appeal 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. (Council District 12)

3. **PLN-BOA-23-00014: WHITETAIL HEAVEN OUTFITTERS** – requested an administrative appeal 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 5725 Jacks Creek Pike. (Council District 12)
4. **PLN-BOA-23-00015: WHITETAIL HEAVEN OUTFITTERS** – requested an administrative appeal 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 5751 Jacks Creek Pike. (Council District 12)
5. **PLN-BOA-23-00016: WHITETAIL HEAVEN OUTFITTERS** – requested an administrative appeal 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 5837 Jacks Creek Pike. (Council District 12)
6. **PLN-BOA-23-00017: WHITETAIL HEAVEN OUTFITTERS** – requested an administrative appeal 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 3508 Crawley Lane. (Council District 12)
7. **PLN-BOA-23-00018: WHITETAIL HEAVEN OUTFITTERS** – requested an administrative appeal 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 7418 Old Dry Branch Road. (Council District 12)

Representation – Mr. Wes Harned, attorney, was present on behalf of the applicant for the six (6) Administrative Appeal requests listed above. He informed the Board that the applicant wished to request a sixty-day postponement of these applications to the May 8, 2023 meeting, with the stipulation that the applicant will maintain the status quo; there will not be any hunting or related activity on any of the properties involved. Mr. Harned stated the reason for the request for a sixty-day postponement was that the applicant was unavailable for the April 10, 2023 Board of Adjustment meeting.

Opposition – Mr. Jon Woodall, attorney on behalf of the opposition to these administrative appeals, stated that there were several objectors present in the audience, expecting to have the appeals heard this date and asked the audience members to indicate their presence by show of hand. He added that these applications were on the agenda to be heard last month, but were postponed to this month, not to be postponed again. Mr. Woodall requested that if these appeals were not heard this month, they be heard within thirty days, due to the upcoming hunting seasons, and that the status quo be maintained as mentioned.

Representation rebuttal – Mr. Harned remarked it was his understanding that Mr. Woodall was informed the previous Thursday of a request for postponement, and that the status quo will be maintained. He added this request is based on the unavailability of at least one of the witnesses.

Board questions – Mr. Gross asked why the witness would not be able to attend the meeting on the tenth of April. Mr. Harned replied that the witness was going to be out of state. Mr. Gross asked Staff for a reminder of when these applications were first scheduled to be heard. Ms. Wade replied that they were first scheduled to be heard on February 13, 2023.

Ms. Carter asked for confirmation that the cease and desist order prohibiting hunting on these properties would be in place in either the case of a thirty-day or a sixty-day postponement. Mr. Harned confirmed that to be correct.

Ms. Wade asked for clarification of what the status quo being maintained meant. Mr. Harned replied that it meant there would be no hunting operations on the affected properties.

Mr. Needham asked if the status quo of no hunting was currently being abided by. Mr. Harned responded that the representation made to him was that the status quo is being maintained and will continue to be maintained; there will be no hunting on the properties.

Mr. Clarke asked under what authority Mr. Harned could make that assurance. Mr. Harned replied that he could make the assurance under the commitment of his client.

Opposition rebuttal – Mr. Woodall stated that there were reports of shots fired at one of the affected properties a couple of days ago. He asked that the status quo also mean there would be no firearms discharged on these properties by the applicant, Mr. McCauley, his employees or anyone under his supervision or control.

Board questions and comments – Ms. Carter asked Staff if the Board was allowed to assess conditions if there is a recommendation for postponement of these applications. Ms. Smith with the Law Department, stated that if the applicant was agreeable to the conditions stated, the Board can approve postponement with those conditions in place.

Mr. Gross expressed his concern regarding the property owners themselves being bound to a condition that they could not shoot a firearm on their own personal property. He asked Ms. Smith for the Law Department's interpretation of such a condition. Ms. Smith replied that Mr. Gross was correct; that the Board would need to specify that the condition was limited to the appellant, the individual that the Notice of Violation was directed towards, and not towards the property owner.

Ms. Plumlee opined that the Board and citizens present in the audience at the current meeting were there because there was not supposed to be any hunting activity of any kind, anywhere on these properties. She added that if the applicant was serious and considerate of the Board and government time, it would be appropriate for him to present at the April meeting.

Ms. Carter stated that she was in agreement with Ms. Plumlee's comments and she agreed that thirty days should be a sufficient postponement. She added that given the concerns of the approaching hunting season, there is an urgency in making the decision that is before them.

Action – A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 7–0 to **postpone 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 and 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 properties located at 5701 Jacks Creek Pike; 5725 Jacks Creek Pike; 5751 Jacks Creek Pike; 5837 Jacks Creek Pike; 7418 Old Dry Branch Road and 3508 Crawley Lane, respectively, with the condition that the appellant, Whitetail Heaven Outfitters, be prohibited from conducting recreational outfitters activities, which would include commercial guided hunting at this time on the subject properties, to the April 10, 2023 Board of Adjustment meeting.

C. Abbreviated Hearing

1. **PLN-BOA-23-00020: MULBERRY BUILDERS** – requested variances to reduce the front yard setback from thirty feet (30') to sixteen feet (16'), and reduce the side yard setback for a deep building from seven feet and two inches (7' 2") to three feet (3') 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 421 E. Second Street. (Council District 1)

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

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. The applicant's proposal is similar to existing properties in the general vicinity, and the proposed setbacks are consistent with the historical development of the surrounding area.
- b. The restrictive size of the lot is a special circumstance that justifies the need for the variances.
- c. 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 was made subject to the following conditions:

1. Construction shall be in accordance with the submitted application materials and amended site plan dated February 14, 2023.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Chris Mulberry, applicant, was present to answer questions on behalf of this application. He indicated that he had read and understood the conditions of approval and agreed to abide by them. There were no questions from the Board.

Action – A motion was made by Mr. Clarke, seconded by Ms. Tucker and carried 7-0 to **approve PLN-BOA-23-00020: MULBERRY BUILDERS** – request for variances to reduce the front yard setback from thirty feet (30') to sixteen feet (16'), and reduce the side yard setback for a deep building from seven feet and two inches (7' 2") to three feet (3') 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 421 E. Second Street, based on Staff's recommendation and subject to the two conditions as listed.

2. **PLN-BOA-23-00021: MULBERRY BUILDERS** – requested variances to 1) reduce the front yard setback from twenty feet (20') to sixteen feet (16'), 2) reduce the side yard setback for a deep building from four feet and eleven inches (4' 11") to three feet (3'), and 3) reduce the rear yard setback from twenty feet (20') to eleven feet and eight inches (11' 8") in order to construct a single family residence within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 423 E. Second Street. (Council District 1)

The Staff Recommended: Approval for the following reasons:

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. The applicant's proposal is similar to existing properties in the general vicinity, and the proposed setbacks are consistent with the historical development of the surrounding area.
- b. The restrictive size of the lot is a special circumstance that justifies the need for the variances.
- c. 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 was made subject to the following conditions:

1. Construction shall be in accordance with the submitted application materials and amended site plan dated February 14, 2023.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Chris Mulberry, applicant, was present to answer questions on behalf of this application. He indicated that he had read and understood the conditions of approval and agreed to abide by them. There were no questions from the Board.

Action - A motion was made by Mr. Clarke, seconded by Ms. Tucker and carried 7-0 to **approve PLN-BOA-23-00021: MULBERRY BUILDERS** – requests for variances to 1) reduce the front yard setback from twenty feet (20') to sixteen feet (16'), 2) reduce the side yard setback for a deep building from four feet and eleven inches (4' 11") to three feet (3'), and 3) reduce the rear yard setback from twenty feet (20') to eleven feet and eight inches (11' 8") in order to construct a single family residence within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 423 E. Second Street based on Staff's recommendation and subject to the two conditions as listed.

3. **PLN-BOA-23-00024: J. PERRY HOMES, INC.** – requested variances to reduce the required side street side yard for a deep building from twenty feet and ten inches (20' 10") to three feet (3') and reduce the required side yard from three feet and ten inches (3' 10") to three feet (3') in order to construct a single family residence within the defined Infill and Redevelopment Area in a Single Family Residential (R-1E) zone, on property located at 198 Prall Street. (Council District 3)

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, nor alter the character of the general vicinity. The applicant's proposal is similar to existing properties in the surrounding area, and the proposed setbacks are greater than the non-conforming structure that previously existed on the site.
- b. The restrictive configuration of the lot is a special circumstance that justifies the need for the variances, as the lot is a narrow corner lot within the defined Infill and Redevelopment Area. The Zoning Ordinance specifically calls for increased flexibility in review of variances to accommodate compatible development on existing small lots within the defined Infill and Redevelopment Area.
- c. 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 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. Rory Kahly, EA Partners, was present to answer any questions on behalf of this application. 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-23-00024: J. PERRY HOMES, INC.** – request for variances to reduce the required side street side yard for a deep building from twenty feet and ten inches (20' 10") to three feet (3') and reduce the required side yard from three feet and ten inches (3' 10") to three feet (3') in order to construct a single family residence within the defined Infill and Redevelopment Area in a Single Family Residential (R-1E) zone, on property located at 198 Prall Street, based on Staff's recommendation and subject to the two conditions as listed.

4. **PLN-BOA-23-00025: AMY MCSHARRY** – requested variances to reduce the required front yard from twenty feet (20') to ten feet (10') and reduce the required side street side yard for a deep building from twenty feet and ten inches (20' 10") to five feet (5') in order to construct a single family residence within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 228 Race Street. (Council District 1)

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 applicant's proposal is similar to existing setbacks in the surrounding area, and is set back further than the previous structure that previously occupied this site.
- b. The restrictive configuration of the lot is a special circumstance that justifies the need for the variance, as the lot is a narrow corner lot within the defined Infill and Redevelopment Area. The Zoning Ordinance specifically calls for increased flexibility in review of variances to accommodate compatible development on existing small lots within the defined Infill and Redevelopment Area.
- 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 updated site plan dated February, 22, 2023.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

Representation – Ms. Amy McSharry and Mr. Chris Thompson were both present to answer questions on behalf of their application.

Board question – Ms. Carter asked the applicant if they had read the letter of opposition to their application from the neighborhood association. Ms. McSharry indicated that they were not aware of a letter of opposition. Ms. Jennings presented a copy of the subject letter to Ms. McSharry and Mr. Thompson for

their review. Ms. McSharry asked if anyone from the neighborhood association was present in the audience.

Audience comments – Mr. Robert Hodge was present on behalf of the William Wells Brown Neighborhood Association and expressed concern regarding the access to the proposed garage as it would exit onto Goodloe St. He also mentioned the amount of pedestrian and vehicular traffic in the area, and voiced concerns of safety.

Mr. Thompson commented that the site plan for the proposed project had been updated to include a driveway in the back, to eliminate the garage exiting directly onto Goodloe St. Mr. Hodge stated that he had not seen the updated site plan.

Mr. Hodge requested the application be postponed to the April 10, 2023 meeting to allow the neighborhood association time to discuss the updated site plan. Ms. Carter suggested that the applicant meet with the neighbors to discuss their project, which had been recommended for approval by Staff. Ms. McSharry indicated she would be happy to meet with the neighbors.

Board question – Mr. Gross asked if the variances requested in this application involved the driveway. Ms. Wade replied that the requested variances before the Board for approval at this meeting did not involve the driveway. However, the original site plan submitted was reviewed by the Divisions of Traffic Engineering and Planning, and suggestions for revisions were made and the applicant amended their application.

Action – A motion was made by Mr. Needham, seconded by Mr. Gross and carried 7-0, to **approve PLN-BOA-23-00025: AMY MCSHARRY** – request for variances to reduce the required front yard from twenty feet (20') to ten feet (10') and reduce the required side street side yard for a deep building from twenty feet and ten inches (20' 10") to five feet (5') in order to construct a single family residence within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 228 Race Street, based on Staff's recommendation and subject to the two conditions as listed.

D. Conditional Use Appeals

1. **PLN-BOA-23-00022: LEXINGTON COMMUNITY LAND TRUST, INC.** – requested a conditional use permit to establish a community center within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 615 De Roode Street. (Council District 11)

The Staff Recommended: Approval, for the following reasons:

- a. Establishing the conditional use for a community center should not adversely affect the subject or surrounding properties, as the proposed use was recommended within the 2002 Newtown Pike Extension Corridor Plan and the 2003 Southend Park Urban Village Plan and will allow the applicant to expand the functionality of the adjoining Davis Park and provide an amenity to the surrounding neighborhood.
- b. The proposed use should not adversely affect traffic in the immediate area and sufficient parking for the use will be provided via shared parking agreement with Davis Park or along the public local streets in the immediate area. 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 community center use shall operate in accordance with the submitted site plan and application materials.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of this use.

Representation – Mr. Ed Holmes, EHI Consultants, was present on behalf of the applicant and was sworn in at this time as he arrived late to the meeting. There were no questions from the Board.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 7-0, to **approve PLN-BOA-23-00022: LEXINGTON COMMUNITY LAND TRUST, INC.** – request for a conditional use permit to establish a community center within the defined Infill and Redevelopment Area in a Planned

Neighborhood Residential (R-3) zone, on property located at 615 De Roode Street, based on Staff's recommendation and subject to the two conditions as listed.

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)

The Staff Recommended: **Approval of the conditional use for a cocktail lounge**, 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 commercial capacity throughout much of its history. The general vicinity features a mix of commercial, residential, and professional healthcare uses, typical of a downtown area. In addition, there will be restrictions on outdoor live entertainment and outdoor speakers allowed as a part of this use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommended: **Approval of the variance for a cocktail lounge**, 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 university-related uses.
- b. Live entertainment will be limited to the interior of the cocktail lounge and located at least 90 feet from the nearest residential zone. Use of the courtyard for outdoor seating and gathering without live entertainment should not create a nuisance.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the portion of the residentially-zoned property within 100 feet of the subject property functions as a parking lot and the closest residentially-zoned dwelling unit is over 100 feet away.

These recommendations of approval were 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. The rear doors shall remain closed any time that indoor live entertainment is provided, and outdoor live entertainment and outdoor speakers are prohibited. Interior areas in which live entertainment is provided shall be sound-proofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.
4. All necessary permits including a Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to the expansion of the use.

The Staff Recommended: **Disapproval of the conditional use for outdoor live entertainment**, for the following reasons:

- a. The applicant has not provided sufficient evidence that the proposed outdoor live entertainment use will not adversely affect the subject or surrounding properties. The proposed outdoor live entertainment is not appropriate for the subject property due to the density of residential uses in the general vicinity.
- b. The proposed outdoor live entertainment will likely adversely affect the surrounding area as the subject property has existing issues with noise-related nuisances.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which was displayed an aerial view of the general vicinity of the subject property. She noted various nearby properties; some of which were commercial uses and others residential in use. Ms. Jennings also displayed a map of the various properties' zones identified within the general vicinity of the subject property. She explained that the applicant had been issued a Notice of Zoning Violation from the Division of Building Inspection in December 2022 regarding outdoor live entertainment that was taking place on the property. In response to that Notice of Violation, the applicant submitted a conditional use application in order to come into compliance with the Zoning Ordinance. The Notice of Violation was issued for the outdoor live entertainment and also some indoor live entertainment. Ms. Jennings stated that in the past, The Paddock was permitted as a restaurant only and not a cocktail lounge. She explained the different requirements for indoor and outdoor live entertainment.

Ms. Jennings displayed a street view of the subject property and briefly explained its various past uses. She added that this property had been before the Board of Adjustment on two different occasions; the most recent being in 2013. In 2013, the applicant known as The Other Bar, located on the left side of the building, came before the Board for a conditional use for a cocktail lounge, which was approved by the Board. The Paddock's certificate of occupancy was issued as a restaurant. The Paddock is now requesting to expand the conditional use for a cocktail lounge throughout the entire structure. There will no longer be apartments on the ground floor and it will all function as one cocktail lounge as The Paddock. The applicant applied for a remodel permit in April 2022 in order to turn the property into one unit. Because The Paddock was permitted as a restaurant, that remodel permit was approved. However, in order to operate as a cocktail lounge, they must come before the Board for a conditional use permit.

Ms. Jennings directed the Board's attention to the site plan on the overhead screen and explained the major components of the site plan such as the proposed stage area outdoors and the fire emergency escape exit with stairs from the second floor. She explained the applicant's proposed uses for the subject property and their proposed hours of operation. Ms. Jennings explained the definitions of cocktail lounges in which live entertainment is included, and outdoor entertainment as described in the Zoning Ordinance. She explained Staff's reasons for their recommendation of disapproval of the conditional use for outdoor live entertainment, Staff's recommendation of approval of the conditional use for a cocktail lounge and approval of the variance for the cocktail lounge.

Board questions – Mr. Clarke asked how close the nearest residences were. Ms. Jennings replied that the nearest residence was over one hundred feet away.

Ms. Carter asked about the other commercial properties in the area that have patios and outdoor entertainment. Ms. Jennings explained which properties have conditional use permits for indoor or outdoor live entertainment and which properties have outdoor patios, but are not permitted to have outdoor live entertainment. There was further discussion.

Applicant representation – Mr. Jon Woodall, attorney for the applicant, was present on behalf of this application and distributed information to the members of the Board. He introduced Mr. Steve Osborne, The Paddock's General Manager, who was also present. Mr. Woodall briefly explained his client's application, directing the Board's attention to the aerial images on the overhead screen.

*Note – Due to the frequent sounding of an alarm in the Government Center, the Board took a brief recess at 2:32 p.m. and reconvened at 2:37 p.m.

Mr. Woodall continued with his presentation, noting the various businesses and residences in the general vicinity of the subject property. He mentioned that one of the residents who lived closest to the subject property had no objections to the application before the Board today. Mr. Woodall stated that though there are a few letters of objection from some of the nearby residents, the majority of the negative comments pertained to the Hookah Lounge at 287 S. Limestone, not The Paddock. These comments came in the form of reviews from renters of the residential properties that are used as Airbnb rental properties. He noted The Paddock had not received any violations cited by the Alcohol and Beverage Control, and neither have there been any noise violations cited by the Lexington-Fayette Urban County Police Department, in all of their years of operation.

Mr. Woodall displayed an image of the Tin Roof, 303 S. Limestone, and noted the outdoor speakers on the property. He displayed images of the close proximity of 28 Lounge to the Kimball House. Mr. Woodall mentioned the Cinco De Mayo Mexican Restaurant at 122 W. Maxwell St. that has outdoor speakers and an outdoor stage with performances from time to time and displayed a photo the restaurant. He also displayed a photo of The Hub residential property directly across the street from Two Keys Tavern at 385 S Limestone. Mr. Woodall shared several more photos of the Tin Roof, depicting their exterior speakers. He remarked that the applicant was asking for the same treatment that the Two Keys Tavern had received and the same hours of operation. Mr. Woodall added that in terms of the outdoor entertainment and speakers, the applicant had requested the hours of 9:00 p.m. to 1:00 a.m. on Thursday; 5:00 p.m. to 1:00 a.m. on Friday; and on Saturday, 11:00 p.m. to 1:00 a.m.

Mr. Woodall explained the musical system of The Paddock being a juke box which is wired into the interior and exterior speakers with the maximum volume preset by the vendor. The Paddock employees

cannot turn that volume up, but they can turn it down. Mr. Woodall stated that The Paddock is not asking to have live bands play, but to have a disc jockey on the patio, using the sound system provided by the applicant, not the disc jockey's own amplification or additional speakers. He added that under the Zoning Ordinance, having outdoor speakers and patrons sitting on the patio, does not constitute live entertainment. He added that the applicant has taken the requests of their neighbors into consideration. Mr. Woodall mentioned that his client was also requesting to be open on Sundays, whether they are allowed to use a disc jockey on Sundays or not.

Audience comments – Ms. Hannah LeGris, District 3 Councilmember, expressed her concerns and those of her constituents, regarding this application. She stated that she had submitted a letter of opposition to Staff and the Board and that she supported Staff's recommendation of disapproval of the conditional use permit for the use of outdoor live entertainment. Ms. LeGris cited concerns of noise and the quality of life for those who reside in the area near the subject property.

Mr. Rutherford B., "Biff", Campbell, 328 S. Mill St., stated that he and his wife have been residents of S. Mill St. since 1975. He expressed his concerns with the applicant's request for outdoor entertainment and the noise that would occur as a result.

Mr. Darrin Gulla, 275 S. Limestone, #205, spoke in support of the applicant being permitted to have exterior speakers, like the other similar establishments in the general area. He expressed his opinion that, although this area where he lives is a vibrant, loud location, most of the noise is generated by the ambulance sirens in route to the hospital across the street. Mr. Gulla stated that aside from the sirens, the loudest sound comes from the volume of the college students talking loudly while at the bars, not the music.

Applicant rebuttal – Mr. Jon Woodall addressed some of the comments that were made by members of the audience. He stated that in being respectful to the neighborhood, the applicant was not requesting acoustic performance or performance by a live band at their location. Mr. Woodall reiterated that the applicant just wanted to have a disc jockey who only used the sound equipment on site at The Paddock, for which the decibel level can be controlled.

Board questions and comments – Ms. Carter asked a question about the applicant's request for outdoor live entertainment. Mr. Woodall replied that pre-programmed music through a juke box was not considered to be live entertainment, but if a disc jockey was on site, selecting the music, that is considered to be live entertainment. Ms. Carter asked Mr. Woodall if the applicant was in agreement with the restriction of no outdoor live entertainment and no outdoor speakers being used. Mr. Woodall replied that the applicant was not in agreement with that condition, nor the condition of not being open on Sunday.

Ms. Tucker asked approximately how many people would be on the back patio where the stage is proposed. Mr. Woodall deferred to Mr. Osborne, who stated that their capacity on the patio per the Fire Department was approximately four hundred and twenty people. Mr. Osborne opined that the sound of the patrons talking was louder than the music. There was further discussion concerning the other bars in the area and activities taking place on their properties.

Staff rebuttal – Ms. Jennings clarified comments made about the application that the Board reviewed last month for the 28 Lounge. She stated that application was for a conditional use for a cocktail lounge; it was not a request to have live outdoor entertainment, and added that part of their conditions of approval was the prohibition of outdoor live entertainment, as well as prohibiting outdoor speakers. Ms. Jennings stated that Staff would likely be amenable to The Paddock having hours of operation on Sunday. She confirmed that a disc jockey does constitute live entertainment and with the approval of a conditional use for a cocktail lounge, a disc jockey can be allowed to operate inside the establishment.

Board comments – Mr. Needham stated that he was originally in agreement with Staff's recommendations; however, he felt somewhat swayed now to be in support of the conditional use for outdoor live entertainment.

Mr. Clarke stated that he had some of the same feelings as Mr. Needham. He added that there were some inconsistencies within the various establishments in this area.

Ms. Plumlee stated that she agreed with the other members of the Board who had spoken in favor of the applicant's request.

Ms. Wade asked Ms. Carter if Ms. Goderwis could give a brief explanation of the Tin Roof application as it had come up in some of the conversations earlier. Ms. Carter agreed to allow it.

Ms. Goderwis clarified that regarding the conversations about the Tin Roof having outdoor live entertainment, they are only approved for live indoor entertainment, having never asked for or received a conditional use permit for live outdoor entertainment. She added that Staff has not received any formal complaints about the Tin Roof, but Staff has heard that they will routinely have televisions or projector screens in their parking lot. Ms. Goderwis stated that she has not received reports about bands before, but she has just heard someone say they have bands. She added that is not part of their conditional use that they are allowed to do. Ms. Goderwis mentioned that the only other business that is permitted to have live outdoor entertainment permitted is the former Pazzo's location, which is now the new Two Keys which is closer the S. Limestone and the Avenue of Champions area. She commented that televisions or projection screens are not considered live outdoor entertainment as there is no live person involved in that. Ms. Goderwis clarified that it may appear there are inconsistencies, but it is rather a matter of differences amongst the businesses.

Ms. Wade stated that if a complaint was heard today, Staff will follow up with the Division of Building Inspection to ensure that all of the businesses are operating within the confines of their individual conditional uses.

*Note – The Board took a brief recess at 3:19 p.m. and reconvened at 3:32 p.m.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 7-0, to **approve 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, based partially on Staff's recommendation as well as the information presented, the findings below and subject to the conditions as listed:

The Board Recommended: **Approval of the conditional use for a cocktail lounge with live outdoor entertainment**, for the following reasons:

- a. The proposed cocktail lounge should not adversely affect the subject property or surrounding properties as the subject property has functioned in a commercial capacity throughout much of its history. The general vicinity features a mix of commercial, residential and professional healthcare uses typical of a downtown area.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Board Recommended: **Approval of the variance for a cocktail lounge**, 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 university-related uses.
- b. Live entertainment will be limited to the interior of the cocktail lounge and located at least 90 feet from the nearest residential zone. Use of the courtyard for outdoor seating and gathering with live entertainment should not create a nuisance.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance.

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

1. The cocktail lounge shall be operated in accordance with the submitted application materials and site plan, including the amended justification statement.
2. Hours of operation shall be limited to 12:00 P.M. – 2:00 A.M., Monday-Sunday.
3. Interior areas in which live entertainment is provided shall be sound-proofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.
4. All necessary permits including a Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to expansion of the use.

5. Outdoor live entertainment shall be limited to acoustic performances and DJs. Amplification shall be limited to that of The Paddock's permanent sound system including an electronic governor mechanism. Outdoor live entertainment shall not include additional speakers or other amplification.
6. Speakers are oriented toward the center of the property, or facing the rear of the building.

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

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

VII. **NEXT MEETING DATE** - Ms. Carter announced that the next meeting date will be April 10, 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, the Chair Carter declared the meeting adjourned at 3:36 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

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.