MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

May 8, 2023

I. **CALL TO ORDER** - Chair Raquel Carter called the meeting to order at 1:31 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.

II. **ATTENDANCE** - Board members present were Raquel Carter, Harry Clarke, Branden Gross, Chad Needham, Carolyn Plumlee, Linda Tucker and Chad Walker. Others present were: Michael Cravens, Department of Law; Joseph Edmiston, Division of Traffic Engineering and Josh Dezarn, Division of 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 April 10, 2023 meeting were not available for consideration at this time. She added that the minutes from the April 10, 2023 meeting and the May 8, 2023 meeting would both be considered for approval at the June 12, 2023 meeting.

IV. **PUBLIC HEARING ON ZONING APPEALS**

A. **Swearing of Witnesses** – Ms. Carter announced 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.

There were no postponements or withdrawals.

C. **Abbreviated Hearing**

1. **PLN-BOA-23-00030: KEN PARR** – requested a variance to reduce the required side yard from eight feet (8’) to three feet and eleven inches (3’ 11”) in order to construct an addition to an existing single family residence within a Neighborhood Character Design Overlay (ND-1) zone in a Single Family Residential (R-1C) zone, on property located at 161 Chenault Rd. (Council District 5)

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

a. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, as the addition will be set back the same distance as the closest portion of the existing residence that has occupied this site since 1939.
b. The granting of the variance will not alter the essential character of the general vicinity as the addition will meet the Chevy Chase Neighborhood Character Design (ND-1) standards, will not be visible from the road, and will be screened from adjoining properties through existing fencing and landscaping.
c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variance as soon as it was determined that it was needed and prior to construction.

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

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

Applicant representation – Mr. Tom Wilmes, Wilmes Architects, was present on behalf of this application. He indicated that the applicant had reviewed the two conditions listed and was in agreement with them.

Action – A motion was made by Mr. Needham, seconded by Ms. Plumlee and carried 7-0 to **approve PLN-BOA-23-00030: KEN PARR** – request for a variance to reduce the required side yard from eight feet (8') to three feet and eleven inches (3' 11") in order to construct an addition to an existing single family residence within a Neighborhood Character Design Overlay (ND-1) zone in a Single Family Residential (R-1C) zone, on property located at 161 Chenault Rd., based on Staff's recommendations and subject to the two conditions as listed.

2. **PLN-BOA-23-00033: JOSEPH COSTA** – requested a variance to reduce the setback for an accessory structure where a corner lot adjoins in the rear a lot in any residential zone from sixteen feet (16') to thirteen feet (13') in order to construct an 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 461 N. Limestone. (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 proposed garage should have little visual impact on the surrounding properties, as it is sufficiently screened from the Fifth Street right-of-way, and the principal structure on the immediately adjoining lot is located over 60 feet from the proposed garage. Other properties in the immediate vicinity feature similar setbacks along the Fifth Street corridor.
b. The historic nature of the property, and existing setbacks of structures in the vicinity, are special circumstances that justify the need for the setback 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 accessory structure shall be constructed in accordance with the submitted application materials and site plan.
2. The accessory structure shall not be utilized by the legally non-conforming secondary residence (carriage house).
3. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

Applicant representation – Mr. Joey Nolasco, Integrity Architecture, was present on behalf of the applicant. He stated that the applicant had reviewed the conditions of approval and had no objection to them.

Board comments – Mr. Clarke remarked that the subject property is a significant house in the Lexington area, known as Rose Hill. He added that it was the home of a well-known Lexingtonian, John Brand, who came to the United States in 1801 and built the house in 1812. Mr. Clarke stated that he and his wife had just written a book about Mr. Brand and he was pleased to make a motion to approve this application.

Mr. Nolasco added that his firm had recently moved their offices into the Brand Barrow House at 203 E. Fourth Street. He remarked that John Brand's son built the Brand Barrow House in 1840. There was further discussion.

Action – A motion was made by Mr. Clarke, seconded by Ms. Tucker and carried 7-0 to **approve PLN-BOA-23-00033: JOSEPH COSTA** – request for a variance to reduce the setback for an accessory structure where a corner lot adjoins in the rear a lot in any residential zone from sixteen feet (16') to thirteen feet (13') in order to construct an 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 461 N. Limestone, based on Staff's recommendation and subject to the three conditions as listed.

D. Discussion Items

1. **PLN-BOA-23-00034: GLEN HECK & KATE MARTIN** – requested a variance to reduce the required front yard setback from thirty feet (30') to zero feet (0') in order to provide a circular driveway in the front yard in a Single Family Residential (R-1C) zone, on property located at 1221 Indian Mound Rd. (Council District 5)

   The Staff Recommended: **Disapproval**, for the following reasons:
   a. The applicant has not provided a sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance or KRS 100.243. There do not appear to be special circumstances that are unique to the subject property that do not generally apply to land in the general vicinity, or in the same zone that justify the need for the variance.
   b. The applicant has not provided sufficient information to determine that strict enforcement of the Zoning Ordinance will result in an unnecessary hardship or deprive the applicant of the reasonable use of their land. There is sufficient space in the existing garage and driveway to park up to seven (7) vehicles. Additionally, on-street parking is suitable to meet the applicant's needs.

   Staff presentation – Ms. Jennings briefly explained the applicant's request for a variance for a circular driveway in their front yard. She directed the Board's attention to the overhead screen on which she displayed an aerial image of the subject property and the surrounding vicinity. Ms. Jennings displayed the site plan which the applicant had submitted with their application and stated the reasons the applicant had provided as justification for this circular driveway, as opposed to parking on the street. She mentioned that Staff had received a letter of opposition from the owner of the adjoining property. Ms. Jennings added that Staff was not in favor of this application and presented their reasons for recommending disapproval of the applicant's request.

   Applicant representation – Mr. Tony Barrett, Barrett Partners, was present on behalf of the applicant. He introduced Mr. Glen Heck, the applicant and property owner who was also present. Mr. Barrett directed the Board's attention to the overhead screen on which he displayed an aerial image of the subject property, similar to the one previously shown by Ms. Jennings. He remarked that the applicant would be agreeable to a narrower circular drive, such as twelve feet wide, versus the eighteen feet as requested. Mr. Barrett presented reasons why the applicant was requesting a circular drive in the front yard, mentioning elderly parents coming and going and the applicant's children starting to drive.

   Board questions – Mr. Needham asked Mr. Barrett to describe the curb cuts and the possibility of sharing the proposed driveway. Mr. Barrett explained that the applicant was not proposing to share a driveway, only sharing what would be perceived as the flare; the area between the sidewalk and the street.

   Ms. Carter asked if the applicant had spoken to the neighbor, Ms. Waller, about the proposed project. Mr. Barrett replied that he and the applicant had spoken to her and that she and her representation were present in the audience.

   Ms. Tucker asked how wide the current driveway was. Mr. Barrett replied that it was nine feet wide. Ms. Tucker asked if that was standard for that neighborhood. Mr. Barrett indicated that it was standard.

   Opposition – Mr. Eric Eaton, attorney, was present on behalf of Ms. Nancy Waller, 1213 Indian Mound Road. He stated that Ms. Waller's house is immediately to the left of the subject property, when facing it from the road. Mr. Eaton expressed concerns with the proposed project and requested that the Board disapprove this application.

   Staff rebuttal – Ms. Jennings addressed some of the comments that had been made by the applicant and the opposition.

   Board questions – Mr. Gross asked if the applicant would be allowed to have two parking spaces, instead of the circular driveway, without requesting a variance from the Board of Adjustment. Ms. Jennings responded that a request for two parking spaces would still require a variance and permission from the Board. There was further discussion.

Applicant rebuttal – Mr. Barrett distributed an alternative site plan to the Board and Staff. This plan showed a driveway of a reduced width and more separation between the subject property and the adjoining property.

Opposition rebuttal – Mr. Eaton stated that his client and the rest of the neighborhood had not seen this alternative plan. He added that there were procedural requirements for notifying the neighbors, should this alternative plan be taken into consideration by the Board. Mr. Eaton opined that the applicant should go through the entire submittal process again if he is interested in submitting a new site plan.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 7-0 to **disapprove** **PLN-BOA-23-00034: GLEN HECK & KATE MARTIN** – request for a variance to reduce the required front yard setback from thirty feet (30') to zero feet (0') in order to provide a circular driveway in the front yard in a Single Family Residential (R-1C) zone, on property located at 1221 Indian Mound Rd., as recommended by Staff.

2. **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)

*Note - The Board of Adjustment continued the public hearing for the requested drive-through facility from the April 10, 2023 meeting. The applicant has submitted a revised justification and site plan for further consideration.

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

a. Granting the variance should not adversely affect the public health, safety, or welfare, nor significantly alter the character of the general vicinity. The reduction in the number of access points and the simplification of the site circulation pattern makes the proposal safer for both vehicular and pedestrian traffic.
b. The proposal should not negatively impact the adjoining residential use, as the drive-through facility will be screened with fencing and landscaping, no outdoor speakers are proposed, and any exterior lighting will be directed away from adjoining properties.
c. With the inclusion of a direct pedestrian entrance from the building to N. Limestone, the structure will activate the primary streetscape and will make the development more pedestrian-friendly.
d. 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. Construction shall be in accordance with the submitted application materials and revised site plan dated April 26, 2023.
2. The design of the off-street parking, internal circulation, and access to the site shall be subject to review and approval by the Division of Traffic Engineering.
3. A direct pedestrian entrance from the building to N. Limestone shall be provided on the corner or on the front wall plane of the structure.
4. Hours of operation shall be limited to 7:00 a.m. – 12:00 a.m., Monday–Thursday; 7:00 a.m. – 1:00 a.m., Friday –Saturday; 1:00 p.m. – 9:00 p.m. on Sunday.
5. No outdoor speakers or external amplification shall be permitted.
6. All outdoor lighting shall be directed away from the adjoining properties.
7. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, Waste Management and Traffic Engineering prior to occupancy.
8. Should Jacksons Wine and Spirits, LLC no longer operate the drive-through facility, the conditional use shall be considered null and void.

Staff presentation – Mr. Crum directed the Board's attention to the overhead screen on which was displayed an aerial image of the subject property and neighboring properties in the vicinity. He explained that this application was continued from the Board of Adjustment meeting on April 10, 2023. Mr. Crum briefly explained the applicant's request for a conditional use for accessory drive-through facilities. He noted that Staff's initial recommendation for this application was that of disapproval, due to issues with the flow of vehicular and pedestrian traffic on the previous site plan. However, since the previous meeting, the applicant had revised their site plan to reflect changes that were suggested at that meeting. Mr. Crum stated that Staff is recommending approval for this application based on the reasons listed above and subject to the eight conditions as listed.

Board questions – Mr. Gross asked about the hours of operation. Mr. Crum replied that the hours of operation were submitted by the applicant; however, the Board could change those hours if they chose to. Mr. Gross asked about if the conditional use permit would be null if the business were sold to another entity. Mr. Crum confirmed that it would, as the condition was currently written. There was further discussion.

Applicant representation - Mr. Wes Harned, attorney, was present on behalf of the applicant. He indicated that the applicant was agreeable to the conditions set forth by Staff. Mr. Harned addressed Mr. Gross's comment regarding what would happen to the conditional use, should the applicant no longer operate there. He suggested verbiage for preserving the use as presented. There was further discussion.

Board question – Mr. Needham asked if there were landscape restrictions. Mr. Barrett confirmed there to be a full landscape requirement.

*Note – The Board took a brief recess at 2:35 p.m. to discuss revisions to condition number eight, and reconvened at 2:39 p.m.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker to **approve 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, based on Staff's recommendation, witness testimony heard today, and subject to the eight conditions as listed, with a revision to condition number eight so that it reads:

8. Should Jacksons Wine and Spirits, LLC or a successor package store, no longer operate the drive-through facility, the conditional use shall be considered null and void.

Discussion on the motion – Mr. Clarke stated that he disagreed with the change to condition number eight, as he thought it was a better proposal as it was originally stated; but he would vote for approval of the application with the revision of condition number eight.

Action – Following the discussion on the motion, the Board voted and the motion for **approval** of **PLN-BOA-23-00005: JACKSON'S WINE & SPIRITS, LLC** carried 7-0.

3. **PLN-BOA-23-00032: KEYHOLE TATTOO, LLC –** requested a conditional use permit to establish a tattoo parlor within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Downtown Center Business (B-2B) zone, on property located at 192 N. Broadway. (Council District 3)

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

a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood. The immediate vicinity is characterized by a mix of uses, several of which have similar (or longer) hours to those being proposed.
b. The proposed use should not have a negative impact on traffic, as only 10-12 customers are expected per day.
c. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The tattoo parlor use shall be established in accordance with the submitted application materials and site plan.
2. The tattoo parlor use shall operate in conformance with all state and local regulations related to tattooing, including registering and permitting with the Lexington-Fayette County Health Department.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection prior to occupancy.

Staff presentation – Mr. Crum directed the Board's attention to the images on the overhead screen. He displayed an aerial image of the subject property and surrounding properties, as well as the site plan that was submitted by the applicant. Mr. Crum briefly explained the applicant's request for a conditional use for a tattoo parlor. He stated that Staff recommended approval of this application and explained their reasons for doing so.

Applicant representation – Mr. Drew Embs, applicant was present on behalf of this application. When asked if he had reviewed Staff's recommendations and the conditions of approval, Mr. Embs indicated that he had and that he was in agreement with them.

Board questions – Mr. Gross asked the applicant if he was the owner, operator. Mr. Embs stated that he is one of the artists. Mr. Gross said that he would like to hear about the plans for the business. Mr. Embs replied that they will be working from appointments, so that the ten to twelve customers they are projecting will not all be there at the same time. He added that they do not expect to impact traffic and that they will be leasing six parking spaces from Broadway Christian Church. Mr. Embs stated there will be four artists with possibly two clients a day.

Ms. Plumlee asked if a Tattoo Parlor was required to be approved by the health department. Mr. Embs replied that it was a requirement and once they have their conditional use permit, they will apply for approval with the health department. He added that the fire marshal must inspect the space as well.

Mr. Needham asked what else was in the building. Mr. Embs replied that Mr. Guy Kemper has leased the building for approximately forty years and he has a stained glass business there. He added that Mr. Kemper's son lives upstairs.

Audience comments – Mr. Gary Reading, 417 W. Second St., was present in opposition of this application. He stated that he lives across the street from the subject property and owns several properties downtown in the Downtown Center Business (B-2B) zone. Mr. Reading added that when looking at the restrictions for his property recently, he noted that tattoo parlors were not allowed. He expressed his concerns with tattoo parlors in general and elaborated further.

Staff rebuttal – Mr. Crum clarified, stating that tattoo parlors are a permitted use in the Downtown Center Business (B-2B) zone, as a conditional use, adding they are not a prohibited use, but are required to go through the Board of Adjustment process for review to ensure there is no detrimental impact to the surrounding areas.

Board question – Mr. Gross asked if tattoo parlors are a permitted use in the Neighborhood Business (B-1) zone without a conditional use. Mr. Crum indicated that to be correct.

Audience comments – Mr. Guy Kemper, 1425 Elliston Lane, Versailles, KY, stated that he is the landlord for the building at 192 N. Broadway, and has been for the past forty years. He added that he has rented space to thirty or more businesses over the years and he spoke in support of the applicant.

Action – A motion was made by Mr. Walker, seconded by Mr. Gross and carried 7-0 to **approve PLN-BOA-23-00032: KEYHOLE TATTOO, LLC –** request for a conditional use permit to establish a tattoo parlor within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Downtown Center Business (B-2B) zone, on property located at 192 N. Broadway, based on Staff's recommendation and subject to the three conditions as listed.

4. **PLN-BOA-23-00035: JONABELL FARM** – requested a conditional use permit to establish a farm gift shop in an Agricultural Rural (A-R) zone, on property located at 3333 Bowman Mill Road. (Council District 12)

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

a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as it should not create disturbing levels of traffic, noise, or odors. The primary client base for the gift shop will be guests who are on the property for a tour of the equine facility, and the purpose of the gift shop is to enhance their experience of the farm.
b. The scale of the use, both in size of the space and the operation of the gift shop, is minimal compared to the overall size and general operation of the farm. No additional facilities or services are needed for the gift shop's operation as it will be located in an existing building and any additional traffic other than what will be associated with the scheduled farm tours will be minimal.
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 farm gift shop shall be operated in accordance with the submitted application materials and site plan.
2. Only farm or industry memorabilia shall be provided for sale on the property.
3. There shall be no signage, other than directional or identification signs interior to the property, advertising the farm gift shop.
4. 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.

Staff presentation – Ms. Jennings briefly explained this application for a conditional use for a farm gift shop. She directed the Board's attention to the overhead screen on which she displayed aerial images of the subject property and nearby vicinity, as well as the site plan submitted by the applicant. Ms. Jennings stated that Staff recommended approval of this application and explained the reasons for doing so, along with the four conditions of approval.

Applicant representation – Mr. Jim Cox, Head of Marketing, Godolphin, was present on behalf of this application. He briefly described the purpose of their appeal for a conditional use permit for a farm gift shop.

Board questions - Mr. Clarke asked if Jonabell Farm was part of Horse Country Tours. Mr. Cox confirmed that to be true.

Audience comments – Dr. Tom Larkin, retired professor at the University of Kentucky College of Dentistry, was present and had previously indicated that he was opposed to this application when Ms. Carter sounded the agenda at the beginning of the meeting. He stated that he has been a neighbor of Jonabell Farm for the past twelve years, and said that he has had numerous tours of the farm, speaking highly of Jonabell. Dr. Larkin added that what he wished to speak on was off-topic and not on the agenda. He began to express concerns he had with another neighbor. Ms. Jennings interjected, and asked Dr. Larkin if his comments were related to the application for the farm gift shop. He stated they were not, but he asked for some advice. Ms. Jennings replied that this may not be the correct Board to address his concerns. Dr. Larkin continued to describe his issue with a neighbor on the other side of his property and asked what the process was to address that issue.

Ms. Carter stated that she would defer to Staff to respond. Ms. Wade advised Dr. Larkin that Planning Staff would be available to meet with him and try to answer questions or concerns about a particular issue, although they may not be able to solve that issue. Mr. Crum offered one of his business cards to Dr. Larkin and spoke with him outside of the Council Chambers.

Action – A motion was made by Mr. Clarke, seconded by Ms. Tucker and carried 7-0 to **approve PLN-BOA-23-00035: JONABELL FARM** – request for a conditional use permit to establish a farm gift shop in an Agricultural Rural (A-R) zone, on property located at 3333 Bowman Mill Road, based on Staff's recommendation and subject to the four conditions as listed.

5. **PLN-BOA-23-00036: OHP SOUTHLAND, LLC** – requested to amend an existing conditional use permit for drive-through facilities in order to modify conditions to allow for a menu board, amplified speaker, and microphone devices in a Neighborhood Business (B-1) zone, on property located at 115 Southland Drive. (Council District 10)

The Staff Recommended: **Approval**, for the following reasons:
a. Amending the requested conditional use should not adversely affect the subject or surrounding properties, as a drive-through facility has successfully functioned on the subject property for several years and there is adequate vehicular stacking available after the proposed ordering point. There are access points on both Southland Drive and Collins Lane which allow parked customers to exit separately from customers utilizing the drive-through facility.
b. The addition of a separate ordering point with menu board, amplified speaker, and microphone devices should not negatively impact the subject or surrounding properties as the closest residential dwelling unit is over 300 feet away.
c. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The subject property shall be developed in accordance with the submitted application materials and site plan dated April 25, 2023, with changes as required by the Division of Traffic Engineering.
2. There shall be an interior ordering and service space for customers.
3. The final configuration of the parking lot shall be subject to approval of the Division of Traffic Engineering.
4. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.

Staff presentation - Ms. Jennings directed the Board's attention to the overhead screen on which she displayed aerial images of the subject property and the nearby vicinity. She noted that the subject property had been before the Board in 2019 and was approved for the existing conditional use permit for drive-through facilities. Ms. Jennings added that the structure that exists there today and the lot layout are results of that 2019 Board of Adjustment approval. She explained the reasons the applicant was requesting to amend that existing conditional use permit.

Ms. Jennings displayed the site plan submitted by the applicant and identified the proposed changes from the plan submitted in 2019. She stated that Staff recommended approval of this application and explained the reasons for doing so, along with the four conditions of approval.

Applicant representation – Mr. Scott Schuette, attorney, was present on behalf of the applicant and distributed an exhibit packet to the Board members and Staff for the record. He introduced Mr. Mike Hill, Land Design & Development, Inc. and Mr. Gary Holland, owner of the subject property. Mr. Schuette gave a brief background of the subject property and the existing conditional use. He added that with the intended change in use for the property, the applicant is requesting a menu board, amplified speaker, and microphone devices. Mr. Schuette directed the Board's attention to the overhead screen on which was displayed the proposed site plan, which he commented on. He requested the Board accept the Staff's recommendation of approval.

Audience comments – Ms. Tenlee Tarrier, 99 Goodrich Avenue, was present in opposition of this application. She expressed her concerns with the existing traffic congestion in the area and a possible increase in traffic due to the proposed project.

Mr. Dave Sevigny, Councilmember, District 10, was present on behalf of his constituents. He stated that members of the neighborhood near the subject property had reached out to him concerning an exterior speaker. He questioned the location of the speaker and asked if the speaker could be relocated from the back of the existing building so that it faces the gas station and not the neighborhood.

Applicant rebuttal – Mr. Schuette addressed the comments made regarding traffic and said that the applicant was not proposing to change the way the site is currently operating, nor the Southland Drive entrance point. He added that there was no request for a speaker on behalf of the applicant in the 2019 application for a conditional use permit. Mr. Schuette remarked that one of Staff's conditions of approval of the 2019 application was that there be no speaker.

Board comments – Mr. Gross opined that moving the menu board to the side of the building facing the gas station may not be feasible. He suggested placing it on the wall facing Taziki's restaurant. Mr. Schuette noted that the applicant may be agreeable to that location, as long as the Division of Traffic Engineering was amenable to it. There was further discussion.

Applicant representation – Mr. Schuette stated that the applicant was in agreement with Staff's recommendations and the four conditions of approval.

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 7-0 to **approve PLN-BOA-23-00036: OHP SOUTHLAND, LLC** – request to amend an existing conditional use permit for drive-through facilities in order to modify conditions to allow for a menu board, amplified speaker, and microphone devices in a Neighborhood Business (B-1) zone, on property located at 115 Southland Drive, based on Staff's recommendation and subject to the four conditions as listed, and the addition of a new condition, number five to read:

5. The applicant will utilize with its menu board, auto-regulation technology for its speaker and microphone devices.

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

Ms. Carter announced that Mr. Needham would not seek reappointment to serve on the Board of Adjustment for another term.

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 June 12, 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, Chair Carter declared the meeting adjourned at 3:33 p.m.

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Raquel Carter, Chair

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Harry Clarke, Secretary

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