

**MINUTES FOR THE BOARD OF
ADJUSTMENT MEETING**

June 12, 2023

- I. **CALL TO ORDER** – Chair Carter called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.
- II. **ATTENDANCE** - Board members present were Raquel Carter, Harry Clarke, Branden Gross, Chad Needham, Carolyn Plumlee, Linda Tucker and Chad Walker. Others present were: Brittany Smith, Department of Law and Joseph Edmiston, Division of Traffic Engineering. Planning staff members present were: Traci Wade, Meghan Jennings, Daniel Crum and Donna Lewis.

- III. **APPROVAL OF MINUTES** – Ms. Carter announced that the minutes from the April 10, 2023 and May 8, 2023 meetings would be considered at this time.

Action – A motion was made by Ms. Tucker, seconded by Mr. Needham and carried 7-0 to **approve** the minutes from the April 10, 2023 Board of Adjustment meeting.

Action – A motion was made by Mr. Clarke, seconded by Ms. Tucker and carried 7-0 to **approve** the minutes from the May 8, 2023 Board of Adjustment 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 at this time.

C. **Abbreviated Hearing**

1. **PLN-BOA-23-00037: GLENDALE FARM, LLC** – requested a variance to reduce the required front yard setback from three hundred feet (300') to one hundred and fifty-one feet (151') in order to construct an accessory structure (gatehouse) in an Agricultural Rural (A-R) zone, on property located at 884-886 Iron Works Pike. (Council District 12)

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. Gatehouses are common structures associated with large agricultural properties and are often located in close proximity to the right-of-way.
- b. The efficient operations and security purposes of a gatehouse 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 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 amended site plan reflecting condition #2.

2. All new vehicular use area shall be landscaped and screened in accordance with Article 18 of the Zoning Ordinance.
3. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Environmental Services prior to construction.
4. The septic tank shall be installed in accordance with the requirements of Lexington-Fayette County's Health Department.
5. The applicant shall confirm the property boundaries for the subject property prior to construction.

Representation – Mr. Tom Wilmes, Wilmes Architects, was present on behalf of the applicant. There were no questions from the Board or from anyone in the audience.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 7-0 to **approve PLN-BOA-23-00037: GLENDALE FARM, LLC** – request for a variance to reduce the required front yard setback from three hundred feet (300') to one hundred and fifty-one feet (151') in order to construct an accessory structure (gatehouse) in an Agricultural Rural (A-R) zone, on property located at 884-886 Iron Works Pike, based on Staff's recommendation and subject to the five conditions as listed.

2. **PLN-BOA-23-00038: JAMES AND ANNA ZHURKO** – requested a variance to increase the allowable height of a fence in the front yard from four feet (4') to six feet (6') on property located in a Single Family Residential (R-1D) zone, on property located at 2944 Waco Road. (Council District 10)

The Staff Recommended: Approval, for the following reasons:

- a. Granting a variance to allow a 6-foot tall fence in the front yard of this property should not have a negative impact on the character of the general vicinity, as 6-foot tall fencing exists along the border of their front yard. As the fencing will be set back at least 10 feet from the sidewalk, it will not negatively impact the pedestrian experience in this area.
- b. There are special circumstances that justify the need for a variance because the property is somewhat irregular in shape; narrowing significantly from one end to the other and having a rather shallow rear yard. These circumstances result in available outdoor space for private use by the applicant being significantly limited.

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

1. The fencing shall be installed in accordance with the submitted application materials and site plan, except the fence shall be set back at least 10 feet from the front property line.
2. A fence permit shall be obtained from the Division of Building Inspection, prior to construction.
3. No fencing exceeding 4 feet in height shall be installed in the front yard areas to the south of the existing driveway.

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

Board questions – Ms. Tucker asked the applicant why they needed a six foot gate. She also remarked that when she recently drove by the property, she noticed an equipment trailer in the back yard. Ms. Zhurko replied that they were using the trailer recently to remove some branches from their back yard. She stated that the reason they wanted a six foot gate was to match the height of the existing fence and also to prevent their children from reaching the top of the fence.

Mr. Gross asked Ms. Zhurko to clarify that the proposed gate is six feet tall, and not six feet wide. She confirmed that to be correct. She added that the space would be six feet wide, to keep it even with the width of the driveway.

Action – A motion was made by Mr. Gross, seconded by Mr. Needham.

Prior to the vote on the motion, Ms. Zhurko stated that she had a question regarding the portion of condition number one which stated, "the fence shall be set back at least ten feet from the front property line". She asked if that could be changed to a five foot setback instead, given the fact that they had requested a three foot setback. Mr. Crum responded that Staff's recommendation of a ten foot setback was based on the location of the adjoining fencing. He added that it was Staff's opinion that it would not be any more intrusive to match the existing setback. However, Staff was concerned that constructing the fence closer to the sidewalk could potentially impact the pedestrians in the right-of-way.

Board question – Ms. Carter asked the applicant if they were agreeable to the ten foot setback. Ms. Zhurko stated that they were.

Action – The motion on the floor was voted on and carried 7-0 to **approve PLN-BOA-23-00038: JAMES AND ANNA ZHURKO** – request for a variance to increase the allowable height of a fence in the front yard from four feet (4') to six feet (6') on property located in a Single Family Residential (R-1D) zone, on property located at 2944 Waco Road, based on Staff's recommendation and subject to the three conditions as listed.

3. **PLN-BOA-23-00039: VAN METER PETTIT** – requested a variance to reduce the required front yard setback from twenty feet (20') to nine feet (9') in order to construct an addition of a covered front porch to an existing single family residence within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, on property located at 242 Rand Avenue. (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 covered porch should have little visual impact on the surrounding properties as it is consistent with the development of the general vicinity and does not create sight-triangle issues at the intersection of Rand Avenue and Engman Avenue.
- b. The existing slope of the front yard is a special circumstance that justifies the need for the variance, as the covered porch is higher than three feet above grade level, removing it from qualifying as a projection.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it was needed and prior to construction.

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

1. 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. Van Meter Pettit, applicant, was present on behalf of this application for a variance.

Board comment – Mr. Needham remarked that he was familiar with this property and opined that it made sense to construct a new porch on it.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 7-0 to **approve PLN-BOA-23-00039: VAN METER PETTIT** – request for a variance to reduce the required front yard setback from twenty feet (20') to nine feet (9') in order to construct an addition of a covered front porch to an existing single family residence within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, on property located at 242 Rand Avenue, based on Staff's recommendation and subject to the two conditions as listed.

4. **PLN-BOA-23-00044: AARON SIMMERMAN** – requested a variance to reduce the required front yard setback from three hundred feet (300') to one hundred, thirty-eight feet (138') in order to construct a single family home in an Agricultural Rural (A-R) zone, on property located at 1156 Gentry Road. (Council District 12)

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 subject property is located at the end of a long extension of Gentry Road that is solely used and maintained by the applicant, and the proposed structure is located over 500 feet from the neighboring residence, where it will be screened by existing vegetation.
- b. Due to the property's non-conforming size and the large portions of wooded area, and a floodplain to the rear of the property, the applicant is limited in where they can place the home.
- 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 beginning 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/or approvals shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Aaron Simmerman, applicant and property owner, was present on behalf of his application for a variance.

Board questions – Mr. Clarke stated that he was unclear as to where the proposed house would be located on the subject property. The aerial image of the subject property was shown on the overhead screen. Mr. Simmerman explained that what was shown in the image was 1156 and 1160 Gentry Lane, both of which he owns. He added that the two properties are going to be combined into one. Mr. Simmerman depicted where he intends to build his house, using a laser pointer on the overhead screen. There was some discussion regarding the access to Mr. Simmerman's property.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 7-0 to **approve PLN-BOA-23-00044: AARON SIMMERMAN** – request for a variance to reduce the required front yard setback from three hundred feet (300') to one hundred, thirty-eight feet (138') in order to construct a single family home in an Agricultural Rural (A-R) zone, on property located at 1156 Gentry Road, based on Staff's recommendation and subject to the two conditions as listed.

D. Discussion Items

*Note – Prior to hearing the following application, Mr. Gross recused himself at 1:50 p.m. due to a potential conflict of interest.

1. **PLN-BOA-23-00041: OFF SEASON, LLC** – requested a variance to increase the allowable height of a fence in the front yard from four feet (4') to six feet (6') in a Planned Neighborhood Residential (R-3) zone, on property located at 3013 Bates Creek Road #115. (Council District 3)

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. Four-foot tall fences, including all components, such as columns and gates are typical across all residential zones.
- 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. Columns and gates with a maximum height of four feet could be installed in this location and would provide a similar aesthetic value and level of security.

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 its vicinity. He explained the applicant's request for a variance to increase the allowable height of a fence in the front yard. Mr. Crum explained Staff's reasons for recommending disapproval of this application.

Board comment – Ms. Carter noted that the Board had previously heard a similar application for a variance to increase the height of a gate in the Red Mile Rd. area of Lexington. Mr. Crum replied that within the past two years, the Board had approved a lesser variance to increase the height of a gate for the property of an apartment complex on Red Mile Rd. to five feet so that it would match an existing element. He added that it was a similar case; however, the previous case had an existing fencing element that could be matched. Mr. Crum noted that Staff had recommended disapproval of that previous case as well.

Ms. Plumlee had a question about the measurements of the gate. Mr. Crum explained the design of the gate, adding that the applicant could elaborate on that during their presentation.

Mr. Clarke asked if there was language about gates and columns in the Zoning Ordinance. Mr. Crum replied that Staff's interpretation of the Zoning Ordinance is that gates and columns are all components of the fencing and walls, and that they are all linked together and subject to the same height requirements.

Mr. Needham asked if the existing posts are four feet or six feet tall. Mr. Crum replied that there are portions of the perimeter fencing that are not including the gate that meet the height requirement. He added that the variance is concentrated on the portions that will be near the actual access point that is serving as the vehicular barrier.

Applicant representation – Mr. Darby Turner, attorney, was present on behalf of the applicant. He distributed a handout to the Board for their review and to Staff for the record. Mr. Turner directed the Board's attention to the overhead screen on which he displayed the site plan submitted by the applicant. He explained the dimensions of the proposed gates and gatehouse, stating that the gates would need to slide, rather than swing. Mr. Turner stated that the proposed design of the gate was so that it would blend aesthetically with the rest of the fence and the gatehouse. He addressed Staff's reasons for recommending disapproval of this application, citing various reasons why he disagreed with Staff's recommendation. Mr. Turner distributed a list of findings of approval, should the Board choose to approve this application. He also displayed another image of the proposed gate on the overhead screen, explaining the dimensions of the gate in further detail, as well as the list of findings.

Board questions – Mr. Walker asked if the proposed gatehouse was going to be in the center of the two gates. Mr. Turner confirmed that to be correct. There was further discussion.

Staff rebuttal – Mr. Crum directed the Board's attention to the aerial image of the subject property and its vicinity on the overhead screen. He referred to an application that was before the Board in 2016, which was a request for a five foot fence with six foot and seven foot columns, on property located at 3101 Bates Creek Road. Mr. Crum stated that Staff had recommended disapproval of the variance, and that the Board had denied it, finding that it was not in keeping with the Bates Creek Road corridor. He added that the special circumstances are part of the required findings and that the Zoning Ordinance lists those items for consideration.

Board questions and comments – Ms. Carter asked if the gatehouse could be counted as the front of the property. Mr. Crum replied that Staff determined that the townhomes themselves were the principal structure.

Mr. Clarke opined that considering the gatehouse as a house was not a functional argument. He added that he thought Staff had made the right decision. However, what the Board should decide is what will be best for the area and the look of the design. He added that the regulation itself could prevent the applicant from putting a gate that looks correct for this particular area. Mr. Clarke stated that he felt strongly that the six foot columns and the fence as designed were appropriate for this particular development, based on how it would look architecturally and fit into the project itself. He opined that a four foot fence with four foot columns would not fit the property or the area.

*Note – The Board took a brief recess at 2:20 p.m. and reconvened at 2:30 p.m.

Action – A motion was made by Mr. Clarke and seconded by Ms. Plumlee to **approve PLN-BOA-23-00041: OFF SEASON, LLC** – request for a variance to increase the allowable height of a fence in the front yard from four feet (4') to six feet (6') in a Planned Neighborhood Residential (R-3) zone, on property located at 3013 Bates Creek Road #115, for gate posts and gates, based on the following findings:

- a. The granting of the variance will not adversely affect the public health, safety or welfare because the requested variance would result in only eighteen feet (18') spread between four (4) gate portions of four and one half feet (4.5') over a three hundred foot (300') line of four foot (4') fence.
- b. The granting of the variance will not alter the essential character of the general vicinity and not unnecessarily circumvent the zoning regulations because there are a number of gate structures and landscaping on other properties within the immediate Bates Creek Road corridor which reflect six foot (6') gates, posts and other large landscaping and structures. The modest request here will not be inconsistent with anything that currently exists in the proximate corridor. The granting of the variance will not cause a hazard or nuisance to the public and will not allow an unreasonable circumvention of the requirements of the zoning regulations, because to the contrary, the scaling of the gate as requested by the applicant will add proportionality and scale to the gatehouse and townhouse development.
- c. The circumstances are not the results of action of the applicant taken subsequent to the adoption of the zoning regulations which relief is sought as the gates and columns have not yet been constructed.

Discussion on the motion – Prior to voting on the motion, Ms. Smith interjected that there are two conditions that are normally attached, but were not included on the applicant's list of findings. She added that those conditions are:

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

Action – A motion to **amend** Mr. Clarke's motion, in order to incorporate the two conditions listed above into the findings, was made by Mr. Needham, seconded by Ms. Plumlee, and carried 6-0 (Gross recused).

Action – The Board voted 6-0 (Gross recused), to **approve the amended motion of approval of PLN-BOA-23-00041: OFF SEASON, LLC** – request for a variance to increase the allowable height of a fence in the front yard from four feet (4') to six feet (6') in a Planned Neighborhood Residential (R-3) zone, on property located at 3013 Bates Creek Road #115, based on the findings with conditions as listed.

*Note – Mr. Gross returned to the meeting following the vote on the application above. At this time, Ms. Carter administered the oath to some members of the audience who arrived late to the meeting.

2. **PLN-BOA-23-00043: 545 EUCLID, LLC** – requested variances to 1) reduce the required front yard setback from twenty feet (20') to ten feet, nine inches (10' 9"), 2) reduce the western side yard setback from twelve feet (12') to ten feet and seven inches (10' 7"), 3) reduce the eastern side yard setback from twelve feet (12') to one foot (1'), and 4) increase the allowable building height to twenty three feet and six inches (23' 6") in order to construct additions to an existing non-conforming structure so that a dwelling unit may be provided on the proposed second floor within the defined Infill and Redevelopment Area in a Professional Office (P-1) zone, on property located at 545 Euclid Ave. (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 as it will allow the applicant to provide a dwelling unit within the defined Infill & Redevelopment Area.
- b. Granting the requested variances should not have an adverse effect on the surrounding area. The construction is in keeping with other structures in the general vicinity, which feature two-story configurations.
- c. The size of the lot and the existing configuration of the structure on the property are special circumstances that justify the need for the variances. Granting the variances will permit the applicant to provide a dwelling unit, an allowable use, while utilizing the existing structure on a lot of constricting size. Complying with the required setbacks would create a hardship for the applicant, as the allowable buildable area would not provide a reasonably functional building addition.
- d. The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance. The intent of the Infill and Redevelopment Area regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. The Zoning Ordinance specifically states that BOA action may sometimes be required 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 was made subject to the following conditions:

1. The additions shall be constructed in accordance with the submitted application materials and amended site plan reflecting condition #2.
2. The site plan shall be amended to provide open space in accordance with Article 20 of the Zoning Ordinance.
3. The vehicular use area to the rear of the structure be reviewed and approved by the Division of Traffic Engineering.
4. 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 she displayed aerial images of the subject property and its vicinity. She shared text from the Zoning Ordinance which lends guidance to Staff from both the Division of Planning and the Division of Building Inspection on how to review applications related to existing non-conforming structures, such as the subject property. Ms.

Jennings noted that the subject property shares a driveway with the adjoining property along the northwest property line. She added that the subject property was constructed in 1949, prior to the current zoning regulations. Ms. Jennings explained the need for the requested variances in order for the applicant to construct additions to the existing structure. She also displayed a copy of the applicant's site plan. Ms. Jennings explained Staff's reasons for recommending approval of this application, along with the four conditions of approval.

Applicant representation – Mr. Richard Murphy, attorney, was present on behalf of the applicant. He introduced the applicant and owner of 545 Euclid Ave., Mr. Anthony Humphress, LLC, and their designer, Mr. Jace Burrell of JCBarchitects, both present in the audience today. Mr. Murphy noted that Mr. Burrell was an award winning architect, winning awards for the design of Southland Christian Church's Richmond Road property. He explained the applicant's intentions for the subject property. Mr. Murphy pointed out that the applicant was not asking for an expansion of a non-conforming use on the property; they were asking for variances for new construction. He further explained the applicant's intended use for the property.

Public comment

Mr. Phil Latham, 384 Oldham Ave., expressed his objection to the proposed project, citing insufficient parking as one of his reasons. He also expressed objection to the construction of a second floor and the prior removal of a tree and landscaping. Mr. Latham presented images of the subject property and its close proximity to his property.

Ms. Amy Clark, 628 Kastle Rd., distributed a handout to the Board and to Staff for the record. She expressed her concern with Staff's recommendation for approval of this application, citing the size of the lot and the existing configuration of the non-conforming structure on the property.

Applicant rebuttal – Mr. Murphy distributed materials to the Board and to Staff to be added to the record. He asked that it be placed on the record that the applicant had not requested a change in use whatsoever; they had applied for a variance, which is allowable. Mr. Murphy mentioned three cases in the past, in which the Board had granted variances for new construction on a lot where there was an existing non-conforming structure. He added that those applications were for properties located at 500-502 E. Seventh St., 634 Ballard St., and 407 E. Fifth St. Mr. Murphy also addressed Mr. Latham's concerns regarding parking on the subject property.

Board questions – Ms. Carter asked Mr. Murphy if the applicant was comfortable with the four conditions as recommended by Staff. Mr. Murphy indicated that the applicant was comfortable with them.

Mr. Gross asked if the current structure, which is non-conforming, would become a conforming structure if the variances are granted. Ms. Jennings confirmed that to be correct. Mr. Gross asked if the applicant would be required to comply with property perimeter screening. Ms. Jennings replied that screening was not discussed in Staff's review of the application. Mr. Gross asked if that would be addressed when the applicant applies for their building permit. Staff indicated that to be correct. Mr. Gross advised the applicant to be aware of that when they apply for their permit. Mr. Gross asked if the building, as expanded, would comply with the parking requirements. Ms. Jennings explained that there were no longer a minimum number of parking spaces required; however, there are parking design and interior landscaping requirements, but not a specific number of spaces.

Ms. Clark approached the podium; however, Ms. Carter informed her that public comment was closed. Ms. Clark stated that she believed there was rebuttal for objectors. Ms. Carter informed her there was no rebuttal for public comment. Ms. Clark continued to attempt to discuss her desire for rebuttal with Staff.

Ms. Tucker asked the applicant about the size of the proposed footprint. Mr. Murphy confirmed that the footprint would be exactly the same as what is there now, except for a small "notch" in the back which the applicant intends to cover with a cantilever for covered access through the rear door.

Mr. Gross began to make a motion; however, Ms. Clark interrupted stating that she objected to not being regarded as an objector. She opined that an objector has a right to a rebuttal per the Board's bylaws. Ms. Carter stated that Ms. Clark's objection would be noted on the record.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 6-1 (Plumlee opposed), to **approve PLN-BOA-23-00043: 545 EUCLID, LLC** – request for variances to 1) reduce the required front yard setback from twenty feet (20') to ten feet, nine inches (10' 9"), 2) reduce the western side yard setback from twelve feet (12') to ten feet and seven inches (10' 7"), 3) reduce the eastern side yard setback from twelve feet (12') to one foot (1'), and 4) increase the allowable building height to twenty three feet and six inches (23' 6") in order to construct additions to an existing non-conforming structure so that a dwelling unit may be provided on the proposed second floor within the defined Infill and Redevelopment Area in a Professional Office (P-1) zone, on property located at 545 Euclid Ave., based on Staff's recommendation and presentation and the evidence provided today, and subject to the four conditions as listed.

3. **PLN-BOA-23-00042: CHRIS PRATT** – requested a conditional use permit to establish an outdoor recreational facility (riding stable) in a Single Family Residential (R-1B) zone, on property located at 166 Swigert Avenue. (Council District 12)

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 residential and agricultural uses, horses have been present on this property prior to this application, and the applicant is proposing methods to manage waste, dust, and visual nuisances associated with a riding stable and arena.
- b. The proposed use should not have a negative impact on traffic, as the applicant will be managing the transportation of the horses on-site. The applicant is also proposing to expand on-site paving in order to accommodate the parking, and turning around, of horse trailers in order to avoid backing out on to Swigert Avenue.
- 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 riding stable shall be established in accordance with the submitted application materials and amended site plan showing the paved parking area for horse trailers.
2. A paved parking area for horse trailers shall be provided between the garage and stable. The paved driveway shall be extended to this new paved parking area.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to operation.

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 surrounding vicinity. She explained the definition of a riding stable as listed in the Zoning Ordinance. Ms. Jennings noted that Staff had received some public comment regarding the zoning of the property. She clarified that the zoning for the subject property or other nearby properties would not be affected by this application, as the requested use is an allowable conditional use in the R-1B zone. Ms. Jennings explained that conditional uses do not change the zone, and also are not zoning variances. They are allowable uses that require additional review and approval in order to assess their impact on the subject and surrounding properties to ensure that they are compatible and do not create any nuisances.

Ms. Jennings described the principal residence and other structures on the subject property. She explained the applicant's proposed use for the property, including the construction of an unenclosed outdoor riding arena. Ms. Jennings noted that the applicant did not intend to use any lighting at the arena, as the training would only take place during the day. She stated that the applicant intends to provide screening of the arena to buffer the neighboring residential uses visually, and the applicant is proposing to regularly irrigate the sand-based arena in order to mitigate the dust. Ms. Jennings noted that the applicant plans to do all of the transporting of the horses to limit traffic from horse trailers in the area. The applicant intends to pave an area between the detached garage and the six-stall barn for parking the horse trailers. This will eliminate the need for backing out onto Swigert Ave.

Ms. Jennings addressed some concerns over stormwater run-off and sinkholes on the subject property. She stated that according to the LFUCG Environmental GIS data, there are no known sinkholes located on this property. Ms. Jennings explained Staff's reasoning for recommending approval of this application, and the subject conditions.

Board question – Ms. Plumlee asked about lighting of the arena. Ms. Jennings reiterated that the applicant was not proposing any lighting at the arena.

Applicant representation – Mr. Chris Pratt, applicant, was present on behalf of his application. He explained to the Board that he was a trainer for two of the major hunter/jumper stables in the Lexington area; Spy Coast Farm and Long Road Farm. Mr. Pratt added that he and his wife, Jennifer, had stayed in the Swigert Ave. area last summer and are very familiar with it. He said they had been looking for a residence in the area where they can reside in the summer months. That is when they found the subject property and felt it would fit their needs for their own personal horses, and possibly a couple of other horses that they could train for the hunter/jumper circuit. Mr. Pratt noted that the property was lacking a riding arena for the training they are proposing to do.

Board questions – Mr. Clarke asked Mr. Pratt to compare how the property is being used now versus how he intends to use it. Mr. Pratt replied that there are six or seven horses on the property now. He added that the only difference will be the construction of the riding arena to exercise and train the horses.

Ms. Tucker asked if Mr. Pratt and his wife currently owned the subject property. Mr. Pratt replied that they do not own the property; it is currently owned by Mr. Raymond Wheeler and his wife, Mrs. Karen Wheeler, also present in the audience. He added that if the conditional use permit is approved, they will purchase the property and it will become their summer home, or summer base.

Mr. Needham asked if the subject property would be vacant during the months the Pratts were not residing there. Mr. Pratt responded that it would more than likely be vacant, or possibly if there were a couple of horses who were not being trained, they could live there during the winter months. He added that there would not be any training taking place during that time, as the Pratts reside in Wellington, Florida during the winter months. Mr. Needham stated that in gauging the intensity of the use, it appeared that the intensity would be less under the Pratts' ownership than it is currently with six horses staying there year around. Mr. Pratt agreed.

*Note – Ms. Carter stated that each person in the audience who wished to speak would be allotted three minutes to do so.

Public comment

Ms. Catherine Perkins, 258 Swigert Ave., approached the podium to speak. Ms. Amy Clark yielded her three minutes of speaking time to Ms. Perkins. Ms. Perkins stated that she was not opposed to this use, but she did have some concerns of her own, as well as some concerns on behalf of her neighbors. She stressed that the conditions of this use, if approved, should be in writing, and if the property is sold, that the use not be transferable to the next property owner. Ms. Perkins mentioned several other concerns.

Mr. Steve Martion and Mrs. Andrea Martion, 2452 Wanda Ct., approached the podium. Mrs. Martion yielded her three minutes of time to Mr. Martion. Mr. Martion directed the Board's attention to the overhead screen on which aerial images of the subject property and its vicinity were shown. He noted that the current owners had done a lot of improvement to the subject property. Mr. Martion expressed his concerns with the stormwater run-off from the subject property onto properties on Wanda Ct. He displayed images of water flowing on various properties there. Mr. Martion suggested extensive studies be done by the City of Lexington to determine what impact the construction of this arena and the additional paved surfaces would have on the watershed in this area.

Mr. Michael Garrett, 2456 Wanda Ct., expressed his concerns with stormwater run-off on his property, and the properties of others on his street. He agreed with Mr. Martion regarding having studies done on the water drainage issues.

Ms. Kay Holley, 2421 Wanda Way, expressed her desire to have this application continued to another meeting, instead of deciding on the outcome today. She also expressed other concerns regarding the proposed project.

Ms. Deborah Aminoff, 232 Swigert Ave., stated that she was not opposed to this application, but wanted to reiterate what Ms. Perkins had said previously, specifically that the conditions of approval be put in writing so that the use is not made commercial, there is no lighting and no enclosed arena. She allocated the remainder of her time to Ms. Perkins.

Ms. Catherine Perkins stated that she had spoken with Mr. Mark Sanders, with the Division of Environmental Quality and Public Works, and asked him if he was aware of the flooding issues on Wanda

Ct. She said that Mr. Sanders told her he was unaware of the flooding issues, and noted that she was unaware of them herself until recently. Mr. Sanders assured Ms. Perkins that he would look into the problem. She requested that there be a condition requiring a sign-off from the Divisions of Water Quality and Engineering, if this application is approved.

Mr. Raymond (Buck) Wheeler, current property owner, 166 Swigert Ave., stated that the photos and videos that had been previously shown were from 2015. He added that he and his wife, Karen, had put a lot of work into improving the subject property since they have owned it. He directed the Board's attention to the overhead screen on which images of the subject property as it currently looks, with new fencing and other improvements the Wheelers had made to it. Mr. Wheeler remarked that Mr. Pratt is a world class horseman, adding that he, himself had trained horses for forty-five years. He added that what Mr. Pratt is intending to do would be a great asset to the area.

Staff rebuttal – Ms. Jennings addressed Ms. Perkins' requests for adding conditions to the proposed conditional use. She stated that in addition to the standard conditions that are placed on conditional uses, adding conditions concerning lighting, outdoor speakers, a null and void clause for future owners of the property, limiting hours of operation and a condition that a stormwater management plan be approved by the Divisions of Engineering and Water Quality could all be added, if the Board chose to and if the applicant is amenable to that. Ms. Jennings stated that all conditions of approval are subject to inspection by enforcement officers with the Division of Building Inspection, on an annual basis. She explained the original set of conditions listed by Staff, and mentioned that the Law Department had drafted a list of potential conditions, if the Board wished to review them.

Board questions – Mr. Gross asked if the Division of Water Quality is involved in the review of the applicant's request for a land disturbance permit for the proposed arena. Ms. Jennings replied that she was unsure as to whether the Division of Water Quality was involved, as all permits are handled through the Division of Building Inspection. She added that a specific condition stating that a stormwater plan be submitted to the Divisions of Engineering and Water Quality for their review could be added, to ensure that the stormwater plan is reviewed throughout the permitting process.

Mr. Clarke expressed concern with the Board approving a conditional use having to do with a serious water quality situation. He opined that the right people need to hear about the water issue and that the Board of Adjustment was not the right body to hear that kind of problem.

Mr. Gross stated that he agreed with Mr. Clarke and that the problem was bigger than Mr. Pratt's application that was before the Board. He added that involving the Division of Water Quality could prove beneficial in solving those issues.

Ms. Jennings commented that there is no official mapped floodplain in GIS on this property; it is further down in the Joyland neighborhood and on the other side of Paris Pike. She added that now that Mr. Sanders and the Division of Water Quality have been made aware of the existing flooding issues, there are likely other avenues to address the issues on a larger scale. Ms. Jennings continued, saying that for this particular application, the Board is only able to address the stormwater that is happening on the subject property.

Mr. Gross noted that the applicant's proposed project will not be allowed to push water onto another property; he must capture it on his own property. Ms. Jennings confirmed that to be correct as that was the city's standard for all projects and development.

Applicant rebuttal – Mr. Pratt stated that there should not be any additional water. He added that he had obtained three different quotes on building the riding ring, and mentioned that there would be a swell built along the east side of his property to prevent water and debris from entering the riding ring. Mr. Pratt stated that the water coming from the neighbors could easily be diverted to go down to the back of the property and water captured from the arena could be diverted to the back of the property and into the streams that go towards Mary Todd Park and alleviate the congestion of the water by the neighbors' property. He noted that according to all of the images that had been shown, the majority of water is accumulating on the subject property and that could be improved by the addition of the proposed riding ring.

Ms. Tucker asked how much pavement was going to be added to the property regarding condition #2. Mr. Pratt replied that the area to be paved is approximately twenty feet by forty feet. Ms. Tucker asked if rock

could be used instead of paving. Ms. Jennings replied that there are other material options listed in the Zoning Ordinance, such as brick pavers which are more permeable than a solid concrete pad.

*Note – The Board took a short recess at 4:15 p.m. and reconvened at 4:27 p.m.

Board comments – Ms. Carter asked Staff to clarify the requirements for the Water Quality plan that would be put into place. Ms. Jennings replied that per the requirements of submitting a land disturbance permit for an area of land the size of the proposed arena, the Stormwater Manual would be reviewed during that process and the Divisions of Engineering and Water Quality will be involved in the review of the Land Disturbance Permit and review the stormwater issues on the site.

Action – A motion was made by Mr. Needham to **approve PLN-BOA-23-00042: CHRIS PRATT** – request for a conditional use permit to establish an outdoor recreational facility (riding stable) in a Single Family Residential (R-1B) zone, on property located at 166 Swigert Avenue, based on Staff's recommendation and subject to the three conditions outlined in the staff report and on the agenda, plus four additional conditions as follows:

4. No outdoor amplification shall be used on the property.
5. No outdoor lighting shall be used at or on the arena.
6. Hours of operation shall be no earlier than 8:00 a.m., and no later than 3:00 p.m.
7. This conditional use permit shall be null and void if the property is transferred.

Discussion on the motion – Ms. Carter asked the applicant if he was in agreement with the conditions. Mr. Pratt asked if the property was to be sold in the future, with the riding ring already constructed, would the new owners have to apply for a conditional use permit as well. Ms. Carter confirmed that to be true. Ms. Jennings asked if the wording of condition #7 would be problematic, given that the applicant is not the current owner, and the property needs to be sold to him first. She suggested changing it to read, "if the property is not owned by the applicant".

Mr. Gross stated that he would like to make a friendly amendment to Mr. Needham's motion to change the wording of condition #7. Ms. Smith stated that the motion should be seconded before an amendment is made. Mr. Gross asked Mr. Pratt if he was comfortable with the conditions. Mr. Pratt replied that he was concerned with purchasing the property and spending the money to build the arena, then should he decide to sell the property in the future, and the new owner not able to obtain a conditional use permit even if they want to do the same things that Mr. Pratt wants to do. He said that could affect the value of the property and the situation Mr. Pratt would be in. Mr. Gross asked how much it would cost to build the arena. Mr. Pratt estimated between one hundred and fifty thousand dollars, and two hundred thousand dollars.

Mr. Needham asked how consistent had the Board been in the past with adding the null and void condition to other applications. There was discussion about seconding Mr. Needham's motion before continuing with the discussion on amending it.

Action – Ms. Plumlee seconded Mr. Needham's original motion.

Discussion – Mr. Gross commented that he usually votes against the null and void condition because, he opined, if the applicant puts a substantial amount of money into a project, they should be able to sell it and not take a loss. He then addressed the issue of lighting at the arena. Mr. Clarke asked why lighting would be necessary on this property, given the hours of operation. There was further discussion on lighting, the hours of operation, and on the null and void condition.

Action – A motion was made by Mr. Clarke, seconded by Mr. Gross and carried 7-0 to **amend** condition #6 to read:

6. The hours of operation shall be no earlier than 7:00 a.m. or no later than 5:00 p.m.

Action – A motion was made by Mr. Gross, seconded by Mr. Needham and carried 7-0 to **amend** Mr. Needham's original motion by striking condition #7 which read:

7. This conditional use permit shall be null and void if the property is transferred.

Action – The Board voted 7-0 to approve Mr. Needham's amended motion, which was seconded by Ms. Plumlee, and amended with the following six conditions:

1. The riding stable shall be established in accordance with the submitted application materials and amended site plan showing the paved parking area for horse trailers.

2. A paved parking area for horse trailers shall be provided between the garage and stable. The paved driveway shall be extended to this new paved parking area.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to operation.
4. No outdoor amplification shall be used on the property.
5. No outdoor lighting shall be used at or on the arena.
6. Hours of operation shall be no earlier than 7:00 a.m., and no later than 5:00 p.m.

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. Chad Needham had not sought reappointment to the Board of Adjustment and this was his last meeting. Ms. Carter thanked Mr. Needham and he received a round of applause.

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

Ms. Jennings announced that Mr. Daniel Crum has accepted a promotion within the Division of Planning to the position of Planner Senior, Zoning. The Board congratulated Mr. Crum.

VII. NEXT MEETING DATE - Ms. Carter announced that the next meeting date will be July 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 4:45 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