

**MINUTES FOR THE BOARD OF
ADJUSTMENT MEETING**

September 11, 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, Chad Walker, Carolyn Plumlee, Bob Sturdivant and Linda Tucker. Board members absent were Harry Clarke and Branden Gross. Others present were: Brittany Smith, Department of Law; Josh Dezarn, Division of Engineering and Joseph Edmiston, Division of Traffic Engineering. Planning staff members present were: Traci Wade, Autumn Goderwis, Meghan Jennings, and Donna Lewis.

- III. **APPROVAL OF MINUTES** – Ms. Carter announced that the minutes from the June 12, 2023 and the July 10, 2023 Board of Adjustment meetings would be considered at this time.

Action – A motion was made by Ms. Tucker, seconded by Ms. Plumlee and carried 5-0 (Clarke and Gross absent), to **approve** the minutes from the June 12, 2023 Board of Adjustment meeting.

Action – A motion was made by Ms. Tucker, seconded by Ms. Plumlee and carried 5-0 (Clarke and Gross absent), to **approve** the minutes from the July 10, 2023 Board of Adjustment meeting.

IV. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Swearing of Witnesses** – Ms. Carter asked that any applicant or objector, or anyone in the audience or in the overflow area who planned to speak to any appeal before the Board, please stand in order to be sworn in at this time. She informed all those present that time limits would be in place to allow everyone who wished to do, an opportunity to speak.

The oath was administered to several members of the audience and in the overflow area who planned to speak. Ms. Carter reminded everyone to please sign in, and to state their name and address for the record when they came to the podium 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 Hearings**

1. **PLN-BOA-23-00048: GIBSON, TAYLOR, THOMPSON ARCHITECTURE & DESIGN** – requested a variance to reduce the required side yard for a deep building from eight feet and eleven inches (8' 11") to five feet (5') in order to build additions to an existing single-family residence within a Neighborhood Design Character Overlay (ND-1) zone in a Single Family Residential (R-1C) zone, on property located at 226 Chenault Road. (Council District 5)

The Staff Recommended: Approval for the following reasons:

- Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity. The applicant's proposal is similar to existing setbacks in the surrounding area and the addition will be set back the same distance as the closest portion of the existing residence that has occupied this site since 1942.
- 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 and is located in the rear portion of the property where it will be adequately screened from view.

- c. The existing non-conforming side yard setback is a special circumstance that justifies the need for the variance.
- d. 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.

Representation – Mr. Baron Gibson, applicant, was present on behalf of this application. Ms. Carter asked Mr. Gibson if he had read the Staff's recommendations and the two conditions of approval as set forth and agreed them. Mr. Gibson confirmed that he had read them and was in agreement with the conditions. There were no questions from the Board.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 5-0 (Clarke and Gross absent, to **approve PLN-BOA-23-00048: GIBSON, TAYLOR, THOMPSON ARCHITECTURE & DESIGN** – request for a variance to reduce the required side yard for a deep building from eight feet and eleven inches (8' 11") to five feet (5') in order to build additions to an existing single-family residence within a Neighborhood Design Character Overlay (ND-1) zone in a Single Family Residential (R-1C) zone, on property located at 226 Chenault Road, based on Staff's requirements and subject to the two conditions as listed.

- 2. **PLN-BOA-23-00053: ESTEPP ENERGY** – requested a variance to increase the required front yard setback from twenty feet (20') to forty feet (40') in order to construct a canopy for gasoline pumps in a Neighborhood Business (B-1) zone, on property located at 1445 Newtown Center Way. (Council District 1)

The Staff Recommended: Approval for the following reasons:

- a. Granting the variance should not alter the character of the general vicinity. The applicant's proposal is in keeping with the larger commercial character of the general vicinity, and the second canopy has been previously approved on development plans.
- b. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, as the safety concerns related to circulation and maneuverability of the site for fleet vehicles and large trucks and trailers 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 site plan, or as modified by the amended Final Development Plan.
- 2. Action of the Board shall be reflected on the Final Development Plan for the property.
- 3. The parking lot shall be paved, with spaces delineated, and landscaped/screened according to the provisions of Articles 16 and 18 of the Zoning Ordinance.
- 4. All necessary permits and approvals shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.

Representation – Mr. Steve Estep, applicant, was present on behalf of this variance. Ms. Carter asked Mr. Estep if he had read the Staff's recommendations and the conditions of approval, and if he was comfortable with them. Mr. Estep replied that he was. There were no questions from the Board.

Action – A motion was made by Ms. Tucker, seconded by Ms. Plumlee and carried 5-0 (Clarke and Gross absent, to **approve PLN-BOA-23-00053: ESTEPP ENERGY** – request for a variance to increase the required front yard setback from twenty feet (20') to forty feet (40') in order to construct a canopy for gasoline pumps in a Neighborhood Business (B-1) zone, on property located at 1445 Newtown Center Way, based on Staff's recommendation and subject to the four conditions of approval.

3. **PLN-BOA-23-00051: THE MISSION CHURCH OF LEXINGTON** – requested a conditional use permit to expand an existing place of religious assembly in a Single Family Residential (R-1D) zone, on property located at 3288 Beaver Creek Drive. (Council District 7)

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

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. The size of the subject property is large enough to support the proposed sanctuary, and the use will be sufficiently landscaped and screened from neighboring residential uses, as well as Man O War Boulevard.
- b. The requested conditional use should not have a negative impact on traffic in the general vicinity, as adequate parking will be provided to accommodate the expanded use.
- 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 use shall be operated in accordance with the submitted application materials and site plan.
2. The vehicular use area shall be landscaped and screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
3. The vehicular use area shall be designed in accordance with the locational and connection standards outlined in Article 16-6(a) of the Zoning Ordinance.
4. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction of the use.

Representation – Mr. Chris Howard, Carman Landscape Architecture, was present on behalf of this application. Ms. Carter asked Mr. Howard if the applicant had read the Staff's recommendations and the four conditions set forth and if the applicant was agreeable to them. Mr. Howard stated that the applicant was in agreement with the conditions. There were no questions from the Board.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 5-0 (Clarke and Gross absent) to **approve PLN-BOA-23-00051: THE MISSION CHURCH OF LEXINGTON** – request for a conditional use permit to expand an existing place of religious assembly in a Single Family Residential (R-1D) zone, on property located at 3288 Beaver Creek Drive, based on Staff's recommendation and subject to the four conditions as listed.

4. **PLN-BOA-23-00049: SHADELAND INVESTMENTS, LLC** – requested an administrative appeal to change one non-conforming use (retail) to another non-conforming use (office) within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 185 Eastern Avenue. (Council District 1).

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

- a. The requested change in non-conforming use from retail to office should not adversely affect the subject or surrounding properties, as the proposed office use should have a lesser impact on the subject and surrounding properties due to a decrease in visitors throughout the day.
- b. There should not be adverse impacts on traffic as sufficient parking is available on site.
- c. No expansion of the building's footprint is proposed, and the change in non-conforming uses should not negatively impact the neighborhood or alter the character of the subject or surrounding properties. Additionally, removal of the installed outdoor refrigeration unit will return the site to its previous condition.
- 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. The office use shall operate in accordance with the submitted site plan and application materials.
2. The illegally installed structure (outdoor refrigeration unit) to the rear of the building shall be removed.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy.

Representation – Mr. Chad Bowman was present on behalf of this application. Ms. Carter asked Mr. Bowman if the applicant had reviewed the Staff's recommendations and the conditions of approval set forth. He indicated that they had read them and were in agreement with the conditions. There were no questions from the Board.

Action – A motion was made by Mr. Sturdivant, seconded by Ms. Tucker and carried 5-0 (Clarke and Gross absent), to **approve PLN-BOA-23-00049: SHADELAND INVESTMENTS, LLC** – request for an administrative appeal to change one non-conforming use (retail) to another non-conforming use (office) within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 185 Eastern Avenue, based on Staff's recommendation and subject to the three conditions as listed.

D. Discussion Items

1. **PLN-BOA-23-00055: JORDAN YEISER** – requested a variance to reduce the required side yard for a deep building from eleven feet and one inch (11' 1") to nine feet (9') in order to construct an addition (covered deck) in a Single Family Residential (R-1B) zone, on property located at 2108 Bridgeport Dr. (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. The property is of an appropriate size and configuration to allow an addition of the same square footage without a 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, since an addition only 2 feet and 1 inch narrower would still be adequate to meet the desires of the applicant.
- c. Existing homes along Bridgeport Drive and within the Lakeview Estates subdivision generally meet the required 10' side yard setback without averaging and there have been no side yard variances granted on this street.

Staff presentation – Ms. Jennings explained this application for a variance and directed the Board's attention to the overhead screen on which she displayed aerial views of the subject property and the properties surrounding it. She also explained why a variance would be necessary for the proposed project to be completed. Ms. Jennings displayed and explained the site plan submitted by the applicant and listed Staff's reasons for their recommendation of disapproval of this application.

Representation – Mr. Jordan Yeiser, applicant and property owner, was present on behalf of his application. He directed the Board's attention to his presentation on the overhead screen. Mr. Yeiser explained the details of his plans for the proposed project, along with several additional architectural renderings of it. He displayed a set of plans that the Division of Building Inspection had approved along with a set of plans that were not approved. Mr. Yeiser explained the differences between the two sets of plans. He displayed a list of reasons for his justification in the need for this variance.

Board question – Ms. Carter asked Mr. Yeiser to clarify the portion of his presentation in which he referred to a "plank". Mr. Yeiser explained that it pertained to side yard averaging and displayed an image of the plans on the overhead screen again and further explained.

Staff comments – Ms. Jennings noted that side yard averaging can be confusing and explained that there is a provision in Article 15 of the Zoning Ordinance which covers side yard averaging. It allows for the side yard of a structure that is not perfectly parallel to a property line to average the overall width of that side yard. She gave an example of side yard averaging and explained that it was a standard calculation used by the Division of Building Inspection when issuing building permits for new construction or additions. Ms. Jennings further explained the circumstances of Mr. Yeiser's yard that necessitate the need for a variance. There was further discussion.

*Note - The Board took a brief recess at 2:14 p.m. and reconvened at 2:20 p.m.

Action – A motion was made by Mr. Walker, seconded by Mr. Sturdivant and carried 5-0 (Clarke and Gross absent), to **approve PLN-BOA-23-00055: JORDAN YEISER** – request for a variance to reduce the required side yard for a deep building from eleven feet and one inch (11' 1") to nine feet (9') in order to construct an addition (covered deck) in a Single Family Residential (R-1B) zone, on property located at 2108 Bridgeport Dr.

The Board voted to approve this application based on the following findings:

1. Allowing the construction of an addition that extends into the side yard beyond the limitation of Article 15-2(b)(2) will not adversely affect the essential character of the neighborhood, nor will it negatively impact the public health, safety or welfare or create a nuisance for the residents, because the addition will not block surrounding neighbor's views of the neighborhood's characteristic features.
2. The variance to permit construction of an addition in the side yard is also justified by the special circumstances of the land and will not unreasonably circumvent the zoning requirements, because the side yard is on average, twenty-two (22) feet narrower than surrounding lots for the R-1B zone;; and enforcing the deep building provision would require reducing the size of the addition to the point of uselessness.

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

1. Construction shall be completed 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 completion of construction.

Board comment – Ms. Carter asked the applicant if he was agreeable to the conditions. Mr. Yeiser stated that he was in agreement with the conditions as listed.

2. **PLN-BOA-23-00057: JOHN STOCKER** – requested a variance to reduce the required side street side yard setback from thirty feet (30') to zero feet (0') in order to provide a circular driveway and additional paving in the side street side yard in a Single-Family Residential (R-1C) zone, on property located at 2994 Montavesta 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. The applicant is able to expand the existing driveway to 24 feet wide and provide space to park approximately six (6) vehicles in the existing garage and expanded driveway. With approval from Traffic Engineering, the applicant is also able to pave a second driveway in order to provide an off-street parking area for their boat. Additionally, on-street parking is suitable to meet the applicant's needs.

Staff presentation – Ms. Jennings presented an explanation of the application, directing the Board's attention to the overhead screen on which she displayed aerial images of the subject property and the nearby vicinity. She also displayed the site plan which had been submitted by the applicant and listed the applicant's justifications for their request. Ms. Jennings stated that Staff was recommending disapproval of this application and explained the reasons for their recommendation.

Representation – Mr. John Stocker and Mrs. Melissa Stocker, applicants and property owners, were both present on behalf of their application. Mrs. Stocker presented the application and explained their justification for wanting a circular driveway on their property, mentioning the safety of drivers, pedestrians, bikers and the children of the neighborhood. She also noted that the circular driveway would allow for parking in said driveway, versus parking on the street. Mrs. Stocker noted that they are constructing an addition to their home and now would be the best time to add this circular driveway. Mr. Stocker distributed additional photos of their property and nearby property to the Board for their review. Mrs. Stocker explained the photos.

Board questions – Mr. Sturdivant asked if the applicants were planning to put the back driveway in the rear of their property and park their boat. Mr. Stocker responded that it was actually on the side of their addition and not all the way in the back. There was further discussion.

Public comment - Ms. Pat Hill, 3002 Montavesta Rd., stated that she is the applicants' neighbor and spoke in support of the applicants' and their request for this variance.

Staff rebuttal – Ms. Jennings stated that there are new parking regulations in Article 16 of the Zoning Ordinance which apply to all zones. She noted that Council had adopted these regulations because the communities desired to reduce the amount of paving between the building and the street, especially in residential settings. Ms. Jennings stated that if there were concerns about the road being too narrow for on street parking on both sides, the appropriate protocol is to contact the Divisions of Fire and Emergency Management and request an investigation. She further explained Staff's reasoning for recommending disapproval of this request for a variance to allow for a circular driveway.

Board comment – Ms. Carter commented that a lot had been said about parking, but the issue is really that the applicant will no longer have the side yard which is required. Ms. Jennings stated that was correct and explained why.

Applicant rebuttal – Mr. Stocker stated that they intend to landscape the side yard and that it will be beautiful. He requested that the aerial view of the vicinity be shown on the overhead screen again in order to show the property across the street which has an existing circular driveway. Mr. Stocker explained that he and Mrs. Stocker intend to do the same with their property as it works so well for their neighbors.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 4-1 (Walker opposed to the motion; Clarke and Gross absent), to **disapprove PLN-BOA-23-00057: JOHN STOCKER** – request for a variance to reduce the required side street side yard setback from thirty feet (30') to zero feet (0') in order to provide a circular driveway and additional paving in the side street side yard in a Single-Family Residential (R-1C) zone, on property located at 2994 Montavesta Rd., based on Staff's recommendation, including the two reasons for disapproval as listed above.

3. **PLN-BOA-23-00050: LEXINGTON HISPANIC ADVENTIST CHURCH** – requested to amend a conditional use permit in order to construct a building addition to an existing place of religious assembly in a Single Family Residential (R-1C) zone, on property located at 125 Garrett Ave. (Council District 11)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. The size of the subject property is large enough to support the proposed addition, and will be sufficiently landscaped and screened from neighboring residential uses.
- b. The requested conditional use should not have a negative impact on traffic in the general vicinity, as adequate parking will be provided to accommodate the expanded use.
- 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 use shall be operated in accordance with the submitted application materials and site plan.
2. The vehicular use area shall be paved, landscaped, and screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
3. The vehicular use area shall be designed in accordance with the locational and connection standards outlined in Article 16-6(a) of the Zoning Ordinance.
4. All necessary permits, including a paving permit, shall be obtained from the Divisions of Planning and Building Inspection prior to construction of the use.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which she displayed aerial images of the vicinity in which the subject property is located. She explained that the property had been before the Board two other times in the past and briefly explained those two occurrences. Ms. Jennings explained the details of the current application as submitted. She stated that Staff had received some concerns from neighbors regarding stormwater on the property. Ms. Jennings explained that stormwater issues will be assessed when the church moves forward with their application for a land disturbance permit. She mentioned that some of the other concerns from neighbors would be addressed by the applicant. Ms. Jennings explained Staff's reasons for their recommendation of approval of this application and listed the four conditions of approval, should the Board approve it.

Board questions – Ms. Carter asked if the combined square footage of the project falls within all of the requirements. Ms. Jennings confirmed that to be true and added that the church did not need any other setback variances as there were no Floor Area Ratio requirements for this property.

Mr. Sturdivant asked when the height of the building would be established. Ms. Carter noted that the applicant would need to answer that question. Ms. Jennings added that the applicant had not stated how tall the addition would be.

Applicant representation – 4th District Councilwoman Brenda Monarrez stated that she was present to assist the applicant with translation. Pastor David Corro Rodriguez and Mr. Mauricio Gauchoa, both introduced themselves. Mr. Gauchoa stated that he would also assist Pastor Rodriguez with translation.

Mr. Gauchoa explained this application to the Board, on behalf of the applicant. He described the various services the church intended to provide for the youth of the community.

Board question – Ms. Carter asked how tall the addition was going to be. Mr. Gauchoa, translating for Pastor Rodriguez, replied that the addition was planned to be the same height as the original building. Councilwoman Monarrez added that Pastor Rodriguez said he did not have the exact measurements, but the new building is going to be the exact same height as the existing structure.

Ms. Carter stated that public comment would be heard now and that each individual who wished to speak would have three minutes to speak and that a timer would be used.

Public comment

Ms. Paula Singer, 110 Hamilton Park, respectfully asked the Board to postpone rendering a decision on this conditional use appeal until several items the neighbors are concerned with have been addressed. She elaborated on those concerns.

Ms. Peggy Henson, 143 Garrett Ave., requested this application be postponed, so that neighbors could sit down with members of the church and discuss the church's plans.

Ms. Jan Hellebusch, 134 Hamilton Park, expressed concerns about not having enough information about the application, including potential outdoor activities that may result in noise from the church.

Ms. Linda West, 135 Hamilton Park, expressed concerns over the noise from outdoor music at the church currently. She also stated she would like more information on the impact this could have on the neighborhood. Ms. West also requested a postponement of a decision on this application.

Ms. Bonnie Jacobs, 135 Hamilton Park, seconded the comments of concern that had previously been made by her neighbors.

Applicant rebuttal – Councilwoman Monarrez spoke on behalf of Pastor Rodriguez, stating that he was happy to learn the concerns of the citizens and that he is willing to address any concerns that anyone may have. He also stated that he looks forward to serving the community in any greater capacity that this approval may allow. Councilwoman Monarrez translated again for Pastor Rodriguez, stating that there were many things that he was unaware of that were existing and he is thankful to be at this session so that he is now aware that these concerns exist and can address them. Councilwoman Monarrez again translated on behalf of Pastor Rodriguez that first and foremost this space will allow for indoor activities especially in the wintertime when there was limited availability for creating programs for youth during the winter. She added that other activities that they plan will be much smaller and should not create a concern for noise, but if they do, he will address them as they come to his attention.

Staff comments – Ms. Jennings stated that, in reference to some of Ms. Singer's concerns, the notification mailing that was sent out was done in compliance with due process. She added that the request for the appeal is included in the notification letter, which in this case was a conditional use permit in order to construct a building addition. Ms. Jennings stated that all additional information about the application is available on line, and citizens can call the Division of Planning office and request copies of that information. She added that for the record, the mailing was done correctly. Ms. Jennings clarified that members of the church's congregation were the ones who submitted the application materials and due to the language barrier, a lot of the information may have been missing because they were a representative of the church, not the pastor himself. She added that site plans for Board of Adjustment applications often have to go through additional permit reviews in order to finalize details. Stormwater issues and further permitting reviews, as well as the vehicular screening and design will be addressed during the permitting process.

Board comments and questions – Mr. Walker commented that many of the concerns from neighbors were regarding the days of the week and times of operation. He asked Pastor Rodriguez if he could clarify those for the neighbors. Pastor Rodriguez replied, and Councilwoman Monarrez translated on his behalf, stating the hours for Saturdays would be approximately 8:00 a.m. to 10:00 p.m. and on Sunday from 11:00 a.m. to 5:00 p.m. Mr. Walker asked about the hours on weekdays. Pastor Rodriguez replied and Councilwoman Monarrez translated, stating that there is nothing regularly scheduled on weekdays.

Ms. Plumlee asked if the applicant would be willing to meet with the neighbors and talk things over. Pastor Rodriguez replied, and Councilwoman Monarrez translated, stating that he would be agreeable to making an official appointment to meet with the neighbors to address any concerns. There was further discussion.

Action – A motion was made by Mr. Walker and seconded by Mr. Sturdivant to **approve PLN-BOA-23-00050: LEXINGTON HISPANIC ADVENTIST CHURCH** – request to amend a conditional use permit in order to construct a building addition to an existing place of religious assembly in a Single Family Residential (R-1C) zone, on property located at 125 Garrett Ave., based on Staff's recommendation and subject to the four conditions as listed.

Staff comment – Ms. Wade asked Councilwoman Monarrez to ask Pastor Rodriguez if he understood that they would be required to build a sidewalk from the structure out to the street. Pastor Rodriguez was asked and indicated that he understood that requirement.

Action – The motion was voted on and carried 4-1 (Plumlee opposed; Clarke and Gross absent).

*Note – The Board took a break at 3:40 p.m. and reconvened at 3:53 p.m.

4. **PLN-BOA-23-00052: SHEPHERD'S HOUSE** – requested a conditional use permit to establish a rehabilitation home within 500 feet of a residential zone in a Professional Office (P-1) zone, on property located at 2141 Executive Drive. (Council District 6)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed rehabilitation home should not adversely affect the subject or nearby properties. The proposed rehabilitation home will utilize existing facilities and is screened from adjacent residential uses by significant vegetation located within the floodplain.
- b. The proposed use should not create adverse traffic impacts as there will be limitations on visitors to the facility. There is adequate parking available on the property and the proposed use should not generate more traffic than the previously approved assisted living facility.
- c. The proposed use will allow the applicant to utilize existing development in order to provide services that will promote the health and welfare of the community by providing a resource to address alcohol and drug addiction and dependency. The existing structure is uniquely suited to this type of use due to the previous use as an assisted living facility.
- d. 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 use shall be operated in accordance with the submitted application materials and site plan.
2. Board approval shall be denoted on the Final Development Plan for the property.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection, as well as state agencies, prior to occupancy.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which she displayed aerial images of the vicinity near the subject property. She noted that some of the neighbors had voiced concern that not all of the residents had received the notification mailing. Ms. Jennings explained that for conditional use applications, all property owners within a five hundred foot (500') radius of the subject property receive a notice letter. She displayed the notice area map on the screen, with the properties that were notified by mail, outlined in blue.

Ms. Jennings explained the articles of the Zoning Ordinance that defined a rehabilitation home, and that a rehabilitation home located closer than five hundred feet from a residential zone requires a conditional use permit. She also displayed an aerial view of the subject property and explained that the building itself had historically operated as an assisted living facility and was approved by the Board in 2013 and along with

the conditional use permit for the assisted living facility, they also received a variance to reduce the required setback from a floodplain to ten feet. Ms. Jennings explained the zoning of the nearby properties. She also displayed the site plan as submitted by the applicant and continued to explain this application for a rehabilitation home. Ms. Jennings explained Staff's reasons for their recommendation of approval and the conditions set forth.

Board questions and comments – Mr. Sturdivant asked if there was a bridge over the creek that separates the commercial zone from the residential zone. Ms. Jennings replied that the bridge was part of the road, not a pedestrian bridge.

Applicant representation – Mr. Shawn Spalding, attorney, was present on behalf of the applicant and submitted a copy of his presentation for the record. He stated that there were several members from Shepherd's House who were in attendance and would be available to answer any questions specific to the facility. Mr. Spalding explained the background of Shepherd's House and an overview of their program.

Board comment – Ms. Carter opened the floor to public comment and noted that speakers would be limited to three minutes.

Public comment

Mr. Bill Fish, 2084 Call Dr., presented documents for the record and asked that they be displayed on the overhead screen. He expressed concerns with the proposed project and mentioned that he had a petition signed by one hundred and fifty-five (155) residents of his neighborhood who were in opposition to this application.

Mr. Rob Perez, 405 Ridgeway Rd., spoke in support of this application, stating that he had employed seventy-five (75) individuals from Shepherd's House over the years to work for him in his business. He mentioned the rules the residents of Shepherd's House must follow in order to remain in the program.

Mrs. Tracey Javid and Mr. Vahid Javid, 1281 Angus Trail, were sworn in at this time. Mrs. Javid stated that they are the owners of the assisted living facility and they are very excited about selling the property to Shepherd's House. She added that they were surprised by there being any opposition, but felt that it was due to neighbors not fully understanding the operation of Shepherd's House. Ms. Javid displayed a photo of the dense vegetation between the subject property and the nearest residential neighbors.

Mr. Jerod Thomas, 2541 Flying Ebony Dr., stated that he is the President and CEO of Shepherd's House. He added that he had also been a member of the homeless community approximately fifteen years ago and was homeless in Lexington, Kentucky for nine years before he became sober. Mr. Thomas said that he had actually slept in the area near Shepherd's House while he was homeless. He added that he now owns a home, is married and has a child as well as being president of a company. Mr. Thomas stressed the importance of facilities like Shepherd's House.

Guy Huguelet, Chair of the Board of Shepherd's House stated that he lives in Paris, Kentucky but is a lifelong Lexingtonian. He spoke in support of this application. Mr. Huguelet stated he had worked with Shepherd's House for thirty years.

Applicant rebuttal – Mr. Spalding reminded the Board of the serious and aggressive vetting process for the individuals before they are admitted and given the opportunity to be part of Shepherd's House.

Board question – Ms. Carter asked the applicant if they were agreeable to the conditions placed on the application, if it is approved. Mr. Spalding indicated that the applicant was in agreement with the conditions.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 5-0 to **approve PLN-BOA-23-00052: SHEPHERD'S HOUSE** – request for a conditional use permit to establish a rehabilitation home within 500 feet of a residential zone in a Professional Office (P-1) zone, on property located at 2141 Executive Drive, based on Staff's recommendation and subject to the three conditions as listed.

5. **PLN-BOA-23-00059: JANCY BONEWITS AND CASEY WESLEY** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 2497 Eastway Dr. (Council District 10)

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, as the structure is large enough to accommodate the proposed number of users (guests), and has a screened back yard.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street and on-street parking is available.
- c. The subject property is not located in, or within 1,000 feet of, a Federally Designated Area of Persistent Poverty and Historically Disadvantaged Communities.
- d. The proposed use is not located in an area of concentrated short-term rentals, and no short-term rentals in the area have been cited as a nuisance.
- e. There is no record of short-term rental compliance issues with the applicant.
- f. 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 short term rental use shall be established in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.
3. Occupancy of the short-term rental shall be limited to 12 individuals.
4. The conditional use permit shall become null and void if the applicant's short-term rental special fee license (as regulated by the Division of Revenue and Section 13 of the Code of Ordinances) lapses or is revoked.

Staff presentation – Ms. Jennings stated that this application is the first application for a short term rental to be reviewed by the Board since the regulations were officially adopted by Council on July 11, 2023. She added that she would review the general regulations for short term rentals as this is a new process, and directed the Board's attention to the overhead screen. Ms. Jennings displayed the list of regulations for short term rentals and explained each one. She also displayed a map from a service called AirDNA which generally depicted where the existing short term rentals in Lexington are located.

Ms. Jennings then displayed an aerial image of the vicinity of the subject property. She also displayed the notice area map which showed the properties that notification letters had been mailed to and mentioned there had been some concern from neighbors who had said they had not received the notification mailing. Ms. Jennings explained that owners of properties within a five hundred foot (500') radius of the subject property were sent the notification letters as required.

Ms. Jennings explained the Zoning Ordinance regulations that pertain to short term rentals. She displayed the site plan that was submitted by the applicant and also an aerial image of future road connections in the vicinity. Ms. Jennings explained Staff's reasons for their recommendation of approval of this application and the four conditions of approval should this application be approved by the Board.

Board question – Ms. Carter asked about using data based on the short term rentals that are already registered to determine their concentration in certain areas. Ms. Jennings responded that because this is such a new process, the tracking only shows that there are one hundred out of potentially twelve hundred short term rentals in the community. She added that Staff will continue to look at the AirDNA data as well as those that are registered to continue to build the database.

Mr. Walker stated that he sat on the short term rental committee, along with members of City Council, and he was glad to see applications come from that. He asked about one of the findings of approval listed on the staff report. Ms. Jennings explained.

Applicant presentation – Mr. Casey Wesley and Ms. Jancy Bonewits, applicants and property owners, were both present on behalf of their application. Mr. Wesley explained their reasons for purchasing the subject property and their desires to operate a short term rental there.

Board comment – Ms. Carter opened the floor to public comment and informed those present in the audience that there would be a three minute time limit on speaking and asked that those speakers not be repetitive in their comments.

Public comment

Mr. Walter Gaffield, 2001 Bamboo Dr., Fayette County Neighborhood Council president, distributed a handout to the Board members for their review. He said that he did not believe the Board would have a lot of information on which to make their decision today. Mr. Gaffield expressed his concerns with the idea of short term rentals in general.

Ms. Janet Gabaniss, 704 Cumberland Rd., stated that she would like to know how many short term rentals are already in the area. She mentioned that she had done research regarding short term rental concentration and distributed copies of that research to the Board. Ms. Gabaniss explained her research for the Board's behalf.

Ms. Gail Lightner, 279 Clearview Dr., Hill 'n Dale Neighborhood Association president, spoke on behalf of the neighborhood association and expressed their concerns and opposition to this application. She read a list of conditions requested by the neighborhood association, should this application be approved against their wishes.

Mr. John Hayes, 2322 Southview Dr., member of Hill 'n Dale Neighborhood Association, spoke in opposition to this application.

Ms. Jennifer Bailey, 2489 Eastway Dr., was sworn in at this time. She expressed her concerns with this application and also read statements from two other neighbors who were in opposition. Those neighbors were Terry Steele, 266 Hill 'n Dale Rd. and John Straley, 258 Hill 'n Dale Rd. Mr. Steele's statement stated he lives next door to a property used as a short term rental and has frequent problems with noise issues from the guests that stay there. Mr. Straley's statement referred to five short term rentals within two hundred and fifty feet (250') of his home. He also mentioned a hosted AirBnB across the street from his property with three different rentals available at one property. Mr. Straley's statement mentioned noise problems and disturbances coming from that property at all hours. Ms. Bailey expressed her concerns with Lexington's Noise Ordinance and its enforcement problems.

Mr. Kelly Wooten, 2496 Eastway Dr., voiced his concerns with the safety of the young children in the area, traffic congestion from additional cars parked along the street and City vehicles not being able to navigate in an emergency due to the additional traffic.

Ms. Alden Harover, 254 Clearview Dr., Hill 'n Dale Neighborhood Association board member, was sworn in at this time. She expressed her concerns with this application for a short term rental. Ms. Harover requested the conditional use permit be postponed until the negative impact on the Eastway Infill Neighborhood is further explored.

Applicant response – Ms. Bonewits responded to several of the comments made by neighbors.

Staff response – Ms. Jennings addressed the on-street parking concerns mentioned by the neighbors and stated that there is a process where the Division of Fire and Emergency Services can investigate the existing facilities on Eastway Dr. and determine whether restricting on-street parking to one side is needed in order to allow for safe access for their vehicles and other City vehicles. She also addressed the issue of blocking of driveways by vehicles on the street. Ms. Jennings stated that issue is covered by other ordinances and the Lexington Police Department will address those violations. She noted that short term rentals are not allowed to be rented solely for the use of parties and if an occupant does host a party, it cannot exceed the maximum occupancy of that short term rental. Ms. Jennings explained the enforcement process of violations by property used as short term rentals.

Action – A motion was made by Mr. Walker to **approve PLN-BOA-23-00059: JANCY BONEWITS AND CASEY WESLEY** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 2497 Eastway Dr., based on Staff's recommendation and subject to the four conditions as listed. There was no second, therefore, the motion failed.

Discussion on the motion – Ms. Plumlee opined that the Board should have a discussion. She added that it appeared that the neighbors did not want this un-hosted short term rental in their neighborhood. Ms.

Carter stated that she disagreed slightly, as the Ordinance has passed to allow short term rentals in residential zones so that they can be regulated. She added that short term rentals have been operated in the past, without regulation and now that the regulation has been passed by Council, the Board must consider the applications. Ms. Tucker expressed her concern with Staff's reason for approval that stated the proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street and on-street parking is available. She opined traffic in the general vicinity would be adversely impacted. Ms. Carter suggested the Board take a recess, if the Board was going to go against Staff's recommendation of approval and the Zoning Ordinance.

*Note – The Board recessed at 5:39 p.m. and reconvened at 5:50 p.m.

Ms. Carter noted that as Mr. Walker's motion failed due to no second, another motion would be considered at this time.

Action – A motion was made by Ms. Tucker and seconded by Ms. Plumlee to **disapprove PLN-BOA-23-00059: JANCY BONEWITS AND CASEY WESLEY** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 2497 Eastway Dr., on the grounds that Eastway Dr. is a narrow stub-street with inadequate connections for the roadway system to support this commercial use, and the increased parking and traffic will have an adverse effect on the surrounding neighborhood. Further, there is a high concentration of short term rentals in the area which will contribute to the traffic.

Discussion on the motion – Ms. Carter commented that it should be noted that this is the first short term rental application the Board has heard, and a very specific path forward has been put on the people in this industry. She added that short term rental is an industry that is around and hard work has gone into putting the framework around it to try to regulate it. Ms. Carter stated that she would vote against the motion for disapproval specifically because the motion goes against what Council and others have worked for years to put in place as a protection to give homeowners a path forward in this particular area.

Mr. Walker stated that he shared Ms. Carter's sentiment and that he appreciated the neighbors that came out, but also to Ms. Plumlee's point, the Board had just approved a treatment center which was opposed by several neighbors. He added that Ms. Bonewits inviting the neighbors into their home and offering her cellular phone number was quite neighborly. Mr. Walker stated that the current regulations are the best available and the Board will have to "weed through them." He added that this application is the first and all of the other short term rentals in its vicinity are operating illegally. Mr. Walker opined that the applicants should not be penalized for being the first applicant for an un-hosted short term rental.

Action – The motion to **disapprove PLN-BOA-23-00059: JANCY BONEWITS AND CASEY WESLEY** was voted on and carried 3-2 (Plumlee, Sturdivant and Tucker in favor of disapproval; Carter and Walker opposed; Clarke and Gross absent).

6. **PLN-BOA-23-00060: ANCHOR BAPTIST CHURCH** - requested to amend an existing conditional use permit for a school for academic instruction in order to construct new buildings in a Planned Neighborhood Residential (R-3) zone, on property located at 3601 Winthrop Dr. (Council District 9)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the conditional use should not adversely affect the subject or surrounding properties. The modular building is located in the same area which was previously approved by the Board for construction of a main sanctuary building and the modular structure will be temporary in nature, to be removed by September 30, 2024.
- b. The requested conditional use should not have a negative impact on traffic in the general vicinity, as the school's enrollment will not be increased, and the day-to-day operations will not change.
- 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 use shall be operated in accordance with the submitted application materials and site plan.
2. The modular structure shall be removed by September 30, 2024.
3. Upon removal of the modular structure, the site shall be re-seeded and restored to its previous condition.

4. Enrollment shall not exceed 200 students.
5. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy of the modular building.

Staff Presentation – Ms. Jennings directed the Board's attention to the overhead screen on which was displayed an aerial image of the general vicinity of the subject property. She briefly explained the history of the subject property and the details of the application. Ms. Jennings also displayed the site plan which had been submitted by the applicant. She noted where the modular building the applicant is requesting permission for is located on the site plan. Ms. Jennings explained the details of the building and the applicant's justification for its use. She stated that Staff recommended approval of this application and had included a condition of removal of the modular building (temporary structure) by the end of September, 2024.

Applicant representation – Mr. Bruce Simpson, attorney, was present on behalf of the applicant. He indicated that the applicant endorsed Staff's recommendation of approval and agreed to the conditions. Mr. Simpson gave a brief explanation of the history of the property and explained why the applicant needed a conditional use permit now. He stated that Mr. Peter Hansen would speak on behalf of the applicant.

Mr. Peter Hansen, 2212 Cascade Way, Trinity Christian Academy, Head of School, spoke on behalf of the applicant. He gave an explanation of the school's mission and explained their justification for needing the modular building on the property of Anchor Baptist Church.

Public comment

Mr. Mark Hopp, 3855 Lochdale Terrace, was sworn in at this time. He opined that the modular building was ugly, and that it has been his experience in other cities that when churches do this, the temporary structures remain. Mr. Hopp asked that the temporary structure be relocated so that it isn't seen from the highway.

Ms. Jackie Newman, 503 S. Homestead Ln., Lancaster, KY, stated that she doesn't live in Lexington, but she has a sixth grader that goes to the Upper School at this location. She expressed her appreciation for all that Trinity Christian Academy offers and stressed the need for the temporary modular building. She asked that the Board approve this application.

Ms. Katie Willie, 503 W. Brannon Rd., Nicholasville, KY, said that although she is not a resident of Lexington, she has been a part of the Trinity Christian Academy family for six years and that she has a child in the sixth grade and a child in the third grade. She echoed what Ms. Newman said. Ms. Willie stressed the importance of the school and listed several positive ways the students help out in the community. She asked the Board to approve the application as proposed.

Mr. Brooks Ward, 4629 Longbridge Lane, stated that he is the principal for the third through eighth grades at Trinity Christian Academy. He read a letter from one of the eighth grade students who expressed reasons to keep the modular building in place. Mr. Ward cited research that showed the need for children to have adequate classroom space for learning, and the modular building would provide that space. He asked the Board to approve this application.

Mr. Luke McAnally, 884 Overview Dr., stated he is the high school principal at Trinity Christian Academy, and has been for the past ten years. He read two statements from students who expressed their desires to keep the modular building on the property.

Mr. Andy Waters, 4804 Pleasant Lawn Way, Trinity Christian Academy Board President, noted that Trinity Christian Academy placed the modular building on the property, not Anchor Baptist Church.

Mr. Brian Evans, stated that he has two children who attend Trinity Christian Academy and expressed his appreciation for the school. He asked the Board to approve this application.

Mr. Barry Cooper, 2341 Old Hickory Lane, stated that he has three children who attend Trinity Christian Academy and he really loves the school and what it does for the children. He added that having the additional space provided by the modular building will benefit the children until the school's new building has been completed.

Action – A motion was made by Mr. Sturdivant, seconded by Ms. Plumlee and carried 5-0 (Clarke and Gross absent), to **approve PLN-BOA-23-00060: ANCHOR BAPTIST CHURCH** – request to amend an existing conditional use permit for a school for academic instruction in order to construct new buildings in a Planned Neighborhood Residential (R-3) zone, on property located at 3601 Winthrop Dr., based on Staff's recommendation and subject to the five conditions as listed.

7. **PLN-BOA-23-00061: BETHESDA PENTECOSTAL TABERNACLE, INC.** – requested conditional use permits for a place of religious assembly and a childcare center for eight (8) children in a Single Family Residential (R-1D) zone, on property located at 125 E. Tiverton Way. (Council District 4)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional uses should not adversely affect the subject or surrounding
- b. properties. The proposed uses' will utilize existing structures and will be screened from adjacent uses by 6-foot privacy fencing.
- c. The requested conditional uses should not have a negative impact on traffic in the general vicinity, as adequate parking will be provided to accommodate the uses.
- d. The proposed uses will allow the applicant to utilize existing structures in order to provide services that will address a need for available beds within the foster care system. The existing structure is a single family dwelling unit and is well suited to this type of use.
- e. All necessary public facilities and services are available and adequate for the proposed uses.

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

1. The uses shall be operated in accordance with the submitted application materials and site plan.
2. The parking area to the rear of the structure shall be repaved.
3. Religious assembly services shall not occur when the childcare center is operating.
4. All necessary permits, including a paving permit shall be obtained from the Divisions of Planning and Building Inspection prior to commencement of the use.
5. The applicant shall comply with all requirements of the State of Kentucky's Cabinet for Health and Family Services.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which she displayed aerial images of the general vicinity of the subject property and the subject property itself. She explained the details of the application and the intended uses of the property in conjunction with the church across the street. Ms. Jennings explained Staff's reasons for recommending approval of this application, as well as the conditions of approval.

Board questions – Ms. Tucker asked for clarity on condition #3. Ms. Jennings explained that if there are no children under their care, as an emergency shelter, the church would be allowed to use the subject property for religious assembly. The separation of Church and State must be maintained.

Applicant presentation – Mr. Jason Morgan, Volunteer Chairman, Bethesda Pentecostal Tabernacle, stated there is a need for additional resources for children and teens who have been displaced from their homes and families. He explained the goal of the proposed application and the safety measures that would be in place.

Public comment

Ms. Sheila Hobson, 121 E. Tiverton Way, expressed her opposition to this application based upon problems she has had with the church across the street and the noise they make. She also listed the amount and the speed of the traffic going up and down the street. Ms. Hobson addressed the crime in the area, specifically drug crimes.

Ms. Brenda Monarrez, 4th District Councilwoman, distributed information to the Board members for their review. She spoke in opposition to this application based on speeding and the traffic on E. Tiverton Way. Councilwoman Monarrez mentioned several complaints her office has received of drug use, drug transactions and transient individuals on the church property. She asked that displaced children not be placed at this location at this time.

Applicant rebuttal – Mr. Morgan stated that a full-time kitchen is not being run out of the basement of the church. He added that when they have their own dinners, that is when they use their kitchen. Mr. Morgan stated that in terms of safety, the church has installed twenty-four hour surveillance around the church and he has seen no evidence of drug transactions occurring. He added that it may have occurred prior to the applicant taking ownership of the property. Mr. Morgan continued to explain the goals of this request.

Staff comments – Ms. Jennings clarified that the Zoning Ordinance only requires property owners be notified of these applications. She stated that the term “childcare center” was used in Staff’s statement of the applicant’s request because it is the term most in line with what they are requesting. There is no explicit definition of an “emergency shelter” in the Zoning Ordinance like the proposed use being requested. Ms. Jennings stated that when the church has some of the religious services there, rather than operating the shelter, the maximum occupancy will be established by the Fire Marshall based upon the fire code.

Board comments – Ms. Plumlee expressed her concerns over the issues raised by Councilwoman Monarrez. Mr. Walker stated that he was torn over this application. He noted that what the Board was to

approve was the use for the house across the street from the church, and that house would not double the traffic count. Mr. Walker noted that possibly the church was a bad operator. Ms. Carter said that she did not see the evidence that the church was a bad operator. There was further discussion.

*Note – The Board took a brief recess at 7:06 p.m. and reconvened at 7:18 p.m.

Action – A motion was made by Mr. Sturdivant, seconded by Ms. Tucker to **disapprove PLN-BOA-23-00061: BETHESDA PENTECOSTAL TABERNACLE, INC.** – request for conditional use permits for a place of religious assembly and a childcare center for eight (8) children in a Single Family Residential (R-1D) zone, on property located at 125 E. Tiverton Way, on the grounds that the adjoining collector streets at a higher rate of speed and collisions and the introduction of the childcare center will have an adverse impact on the traffic flow. Further, the evidence shows that there are other shelters in the area and public facilities may be inadequate to serve both the existing facility and a childcare center. The conditional use is not appropriate in this location because there are not adequate pedestrian facilities to allow the safe crossing of the street by the resident children to access the existing church facility or the school bus stop.

Comments on the motion – Ms. Carter stated that she would vote against the motion to disapprove and that she disagreed with practically every item on the list of findings.

Action – The motion to **disapprove** was voted on and carried 3-2 (Plumlee, Sturdivant and Tucker in favor of disapproval; Carter and Walker opposed; Clarke and Gross absent).

8. **PLN-BOA-23-00062: AARON REEDY** – requests a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 621 Lane Allen Rd. (Council District 10)

Staff Recommends: Approval. for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users, and has a screened back yard.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street and on-street parking is available.
- c. No short-term rentals in the area have been cited as a nuisance.
- d. There is no record of short-term rental compliance issues with the applicant.
- e. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 12 individuals.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.

4. The conditional use permit shall become null and void if the applicant's short-term rental special fee license (as regulated by the Division of Revenue and Section 13 of the Code of Ordinances) lapses or is revoked.

Applicant representation – Mr. Aaron Reedy, applicant and property owner, requested the Board grant him a one month **postponement** of his application to allow more time to finish his project and to better address concerns that have been raised today.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 5-0 (Clarke and Gross absent), to **postpone PLN-BOA-23-00062: AARON REEDY** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 621 Lane Allen Rd., for one month to the October 9, 2023 Board of Adjustment meeting.

9. **PLN-BOA-23-00063: MATTHEW AND TAMARA ROBINSON** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1B) zone, on property located at 775 Chinoe Rd. (Council District 5)

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, as the structure is large enough to accommodate the proposed number of users, and has a screened back yard.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street and on-street parking is available.
- c. The subject property is not located in, or within 1,000 feet of, a Federally Designated Area of Persistent Poverty and Historically Disadvantaged Communities.
- d. The proposed use is not located in an area of concentrated short-term rentals, and no short-term rentals in the area have been cited as a nuisance.
- e. There is no record of short-term rental compliance issues with the applicant.
- f. 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 short term rental use shall be established in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.
3. Occupancy of the short term rental shall be limited to 10 individuals.
4. The conditional use permit shall become null and void if the applicant's short-term rental special fee license (as regulated by the Division of Revenue and Section 13 of the Code of Ordinances) lapses or is revoked.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which she again displayed the list of regulations for short term rentals. She displayed the map from AirDNA which depicted all of the short term rentals in Lexington, as well as aerial images showing the general vicinity of the subject property, and the subject property itself. Ms. Jennings explained the articles in the Zoning Ordinance that relate to short term rentals. She then displayed the site plan as submitted by the applicant and briefly explained the details of this application. Ms. Jennings also displayed a map of the short term rentals in the area of the subject property. She stated that Staff recommended approval of this application and explained their reasons for doing so, along with the four conditions of approval.

Applicant presentation – Mr. Matthew Robinson and Mrs. Tamara Robinson, 775 Chinoe Rd., were sworn in at this time. Mrs. Robinson explained their reasons for filing this application to have the option of using this property as a short term rental on occasion.

Public comment

Mr. Brian Chafin, 739 Chinoe Rd., expressed his opposition to this application.

Mr. Kyle Ray, 1404 Hampshire Pl., expressed his opposition to this application citing that it would have an adverse influence on the neighborhood. He noted there were several others in the neighborhood who were present that were also in opposition.

Ms. Barbara Crandall, 1413 Hampshire Pl., expressed her opposition to this application. She cited not knowing the people who would be residing in the subject property as one of her reasons for opposition.

Mr. Chuck Adams, 779 Chinoe Rd., distributed information to the Board members for their review, as well as a copy for the record. Mr. Adams introduced his wife, Laura, and stated they have lived in their home for twenty years. He explained the information that he had previously distributed and expressed his opposition to this application. Mr. Adams asked for more time and it was allotted. He directed the Board's attention to the overhead screen on which were displayed photos of one side of the subject property. He noted that the applicant has done nothing to bring the property up to the standards of the other properties in the neighborhood.

Mr. Tommy Puckett, 1009 Turkey Foot Rd., stated he was a retired police officer with the Lexington Police Department. He expressed his opposition to this application, citing existing traffic on Chinoe Rd. Mr. Puckett also noted the shortage of police in Lexington and how that would affect police response time in the event of potential noise complaints from short term rentals in the City.

Mr. Joe Brumley, 1021 Turkey Foot Rd., expressed his opposition to this application, citing the housing shortage currently in Lexington. He noted that approximately fifty percent of the property owners who received notification letters regarding this application, were opposed to it. Mr. Brumley requested the Board not approve this request.

Applicant rebuttal – Mr. Robinson addressed the derogatory comments made about the landscaping and apologized for not keeping the property in better condition. Mrs. Robinson stated that they had not purchased the property to make it a rental, as had been previously stated. Mr. Robinson stated that their honest intent is to follow the rules.

Staff comments – Ms. Jennings clarified that the ordinance as adopted by Council, allows single family homes to be rented as short term rentals. She added that a hosted single family home with an occupancy of twelve or fewer, in all residential zones, is considered an accessory use. Ms. Jennings noted that with an occupancy greater than twelve, a conditional use is required, and un-hosted homes also require a conditional use.

Board comments – Ms. Plumlee stated that this is a similar situation as the case heard earlier. She added that the neighbors find the whole idea disagreeable, listing effects to their property values, backing out onto a busy street, their lifestyle being threatened, to name a few.

Mr. Walker stated that both properties on either side of him are short term rentals and he has not had any issues with them. He added that a short term rental does not always equate to a party house and gave some examples of beneficial uses of short term rentals that he is aware of. Mr. Walker explained to the audience that legal short term rentals come with a recourse of having the permit revoked if there were complaints lodged about the activities taking place on the property. He added that there is more accountability with a short term rental. Mr. Walker encouraged the neighbors to allow for these and if short term rentals are problematic, they have a greater recourse now that the regulations are in place. He re-iterated that it is a legal use.

Ms. Carter thanked Mr. Walker for his comments and noted that she has stayed in AirBNBs in several locations and it has not been her experience that they are party houses.

Ms. Plumlee added that the neighbors will be the ones reporting any violations, should that happen.

Ms. Goderwis stated that there are provisions in the Code of Ordinances in which the license can be revoked based on substantiated complaints or if there is any false information on the application that is made. She added that the conditional use can be revoked if there are complaints lodged with the

Zoning Enforcement section, that are substantiated. Ms. Goderwis stated that if it is found that the applicant is not meeting the conditions of approval laid out by the Board in their potential approval, or if it is found they are operating outside of those conditions, they would be given an opportunity to come back into compliance. If they did not, the Board can hold a revocation hearing to revoke the conditional use permit. She added that the quicker way would be that the special license fee would be revoked and upon that revocation, the conditional use would automatically be revoked at well.

Action – A motion was made by Mr. Walker to **approve PLN-BOA-23-00063: MATTHEW AND TAMARA ROBINSON** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1B) zone, on property located at 775 Chinoe Rd., based on Staff's recommendation and subject to the four conditions as listed. That motion failed due to not having a second.

*Note – The Board recessed at 7:50 p.m. and reconvened at 7:55 p.m.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 3-2 (Plumlee, Sturdivant and Tucker in favor of this motion; Carter and Walker opposed; Clarke and Gross absent), to **disapprove PLN-BOA-23-00063: MATTHEW AND TAMARA ROBINSON** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1B) zone, on property located at 775 Chinoe Rd., based on the grounds that Chinoe Rd. does allow for on-street parking, so allowing a short term rental for up to ten individuals could increase traffic and have an adverse impact on the surrounding neighborhood.

- V. **BOARD ITEMS** – The Chair announced that any items a Board member wished to present will be heard at this time.

A. Recognize new and newly appointed members of the Board.

Ms. Carter welcomed newly appointment Board member, Mr. Bob Sturdivant to the Board of Adjustment. She also noted that Mr. Branden Gross had been reappointed, but was absent today due to illness.

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

- VII. **NEXT MEETING DATE** – Ms. Carter announced that the next meeting date is October 9, 2023 at 1:30 p.m., Council Chambers, 200 East Main Street, Lexington, KY 40507.

- VIII. **ADJOURNMENT** – As there was no further business, Ms. Carter declared the meeting adjourned at 8:15 p.m.

Raquel Carter, Chair

Linda Tucker, Secretary

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

For further information on these matters, or for persons with a disability who may need assistance in order to participate in the above meeting, please contact the Division of Planning, 101 E. Vine St., Lexington, KY, at 859-258-3160.