

**MINUTES FOR THE BOARD OF
ADJUSTMENT MEETING**

October 9, 2023

- I. **CALL TO ORDER** – Chair Raquel Carter called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.

- II. **ATTENDANCE** – Board members present were Raquel Carter, Harry Clarke, Branden Gross, Carolyn Plumlee, Bob Sturdivant, 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, Autumn Goderwis, Meghan Jennings, James Mills and Donna Lewis.

III. **APPROVAL OF MINUTES**

There were no minutes available for consideration at this time.

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. She informed all those present that time limits would be in place to allow everyone who wished to speak, to have an opportunity to do so.

The oath was administered to several members of the audience 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. **Conditional Use Appeals**

1. **PLN-BOA-23-00062: AARON REEDY** – requested 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)

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. 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 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. 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.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which she displayed a list of short term rental-related regulations associated with the Council-adopted ordinances from July 11, 2023. She also displayed a map from the AirDNA website that indicated the locations of current short term rental listings in Lexington. Ms. Jennings noted that this website currently reports approximately one thousand, two hundred (1,200) existing short term rentals, but the Division of Planning has only reviewed one hundred and fifty (150) since July, 2023. She displayed an aerial image of the subject property and the nearby vicinity. Ms. Jennings noted that per the Zoning Ordinance, un-hosted short term rentals are considered a conditional use in the R-1C zone, which the subject property is zoned.

Ms. Jennings explained the particulars of this application and the applicant's intent for the usage of this property as a short term rental. She stated that Staff was recommending approval of this application and listed their reasons for doing so, along with the four conditions of approval.

Board question – Mr. Gross asked if the special license fee as mentioned in condition #4, applied to each short term rental property or each proprietor. He asked if the conditional use permit was null and void in the event of a property transfer. Ms. Jennings replied that the way condition #4 currently reads concerns whether or not the current applicant's special fee license with the Division of Revenue lapses or is revoked per the rules established in the Code of Ordinances. The Division of Revenue is charged with ensuring the applicant is following those rules. If it is determined by the Division of Revenue that the applicant is not, they will consider the special fee license to be lapsed or revoked, and at that time, the Conditional Use becomes null and void. She referred to Ms. Goderwis to further explain what is written in the Code of Ordinances. Ms. Goderwis explained Staff's interpretation of what is written is that an operator in good standing with the Division of Revenue could transfer the property to someone who obtained their special fee license and moved forward with the process. She said that the language could be changed, but at this time, the language in the Code of Ordinances does not include a change in ownership. She added that the special fee license is applied for by the operator who pays a fee and also an additional fee for each property that is using that license. There was further discussion.

Ms. Jennings explained that the wording of condition #4 in the staff report for Mr. Reedy's application differed due to the fact that Mr. Reedy's application was to be heard last month, at the September Board of Adjustment meeting. Mr. Reedy requested that his application be postponed to the October meeting and his request was granted. After that meeting, and reviewing some of the comments, Staff revised the wording of condition #4 on the other staff reports for short term rentals to reflect that the conditional use permit shall become null and void upon change in ownership, or if the applicant's short term rental special fee license lapses or is revoked. However, Mr. Reedy's staff report was not updated.

Mr. Gross requested the page of the agenda that showed the revised wording be shown on the overhead screen so that Mr. Reedy could indicate if he would be in agreement to the wording being added as a fifth condition. The page was shown on the overhead screen and Ms. Jennings explained.

Ms. Plumlee asked the Department of Law for clarification regarding whether a Board member who may own a short term rental should vote on these decisions on short term rentals. Ms. Smith responded that the Board is governed by Chapter 25 of the Code of Ethics, and the Board's by-laws address conflicts of interest as well. She added that whether there would be a conflict of interest if a Board member owned a short term rental would have to be on a case-by-case basis. Ms. Smith gave some examples of when a Board member may want to abstain or recuse themselves from voting, if they owned a short term rental. She added that there is nothing definitive in the Zoning Ordinance regarding this issue.

Applicant presentation – Mr. Aaron Reedy, applicant and property owner, presented his application and noted that he and his wife own two other short term rentals in Lexington for which they have obtained Zoning Compliance Permits. He added that they have never received any complaints from any of the neighbors of the other two short term rentals. Mr. Reedy presented justification for approval of his application.

Board questions – Mr. Sturdivant asked if there was enough room on the western border of the property to plant the Arborvitae which Mr. Reedy had mentioned earlier. Mr. Reedy replied that he had spoken with

the neighboring property owner and he was in agreement with the planting of that shrub or whatever he wanted to plant in that location. Mr. Sturdivant asked the square footage of the house. Mr. Reedy replied that the footprint of the building is eleven hundred square feet, but the actual square footage of the home is roughly fifteen hundred and fifty square feet.

Public comment

Mr. Walt Gaffield, 2001 Bamboo Dr., Fayette County Neighborhood Council President, expressed his concerns regarding short term rentals in general and urged the Board to listen to the neighbors who would be voicing their concerns.

Mr. Kurt Zehnder, 607 Lane Allen Rd., resident of sixteen years, spoke in opposition to short term rentals in this neighborhood, citing there were other short term rentals in the neighborhood. He displayed an aerial image of the vicinity of the subject property which indicated where the short term rental properties and the long term rental properties were located. He asked the Board to deny this application.

Ms. Sarah Zehnder, 607 Lane Allen Rd., expressed her concerns with short term rentals in their neighborhood, based on the safety of children walking in the neighborhood and a potential increase in traffic in the area. She listed other reasons for her concerns.

Ms. Lynne Flynn, 518 Springhill Dr., was present on behalf of the Picadome Neighborhood Association. She stated that there is a large number of short term rentals in her neighborhood, but she was not certain of exactly how many. Ms. Flynn expressed her concerns with short term rentals in general.

Ms. Liz Ruh, 613 Mitchell Ave., spoke in opposition to this application. She stated that the subject property is in very close proximity to her home. Ms. Ruh opined that short term rentals are detrimental to the housing shortage in Lexington.

Ms. Tee Bergman, 646 Mitchell Ave., president of Mitchell Ave. Neighborhood Organization, stated that she has lived in her home for almost forty (40) years. She noted the various changes to the neighborhood that have taken place over the past several years. Ms. Bergman asked the Board to disapprove this request.

Ms. Janet Cabaniss, 704 Cumberland Rd., was sworn in at this time. She asked that the Board consider the number of existing short term rentals in the area that are already established when making their decision on this application.

Applicant rebuttal – Mr. Reedy addressed a comment previously made regarding maintaining a good neighborhood. He stated that it was his desire to maintain the integrity of the neighborhood as well. Mr. Reedy noted that most of the comments and concerns that the Board had heard were general concerns about short term rentals and not specific to him as a host and his application. He asked the Board to consider his application based on the merits of himself and his application.

Staff rebuttal – Ms. Jennings clarified that the Board did not consider this application last month as was earlier stated by an audience member; that the application was on the agenda but the applicant requested postponement. She added that, as she had mentioned previously, Staff had not updated their staff report for this application from last month. However, in the meantime, some of the things that Staff was reporting were changed for the new applications. Ms. Jennings mentioned some of the changes in those staff reports. She added that any complaints against short term rentals, whether existing or new, should be filed with the Division of Building Inspection, Zoning Enforcement Section. They will investigate the complaint. Ms. Jennings noted that parking in the yard and parking in a way that blocks a sidewalk are both violations of the Code of Ordinances and should be filed with the city as well. She also explained some of the particulars regarding the information from AirDNA which Staff uses for their database of short term rentals. Ms. Jennings also reviewed the factors that the Board is to consider when making their decision regarding individual short term rental applications.

Board questions – Mr. Gross asked if it was Staff's recommendation to update the wording of condition #4 on the staff report for Mr. Reedy's application to match the other proposed conditions. Ms. Jennings indicated that Staff would be open to what the Board is comfortable with at this time.

Ms. Carter asked Ms. Jennings if she would display Article 3-13(d) on the overhead screen. Ms. Carter stated that she wanted the Board to be sure they are discussing what is within their purview when they are discussing these applications.

Mr. Clarke commented that he was not present at last month's Board of Adjustment meeting, and he missed hearing a lot of the comments. He opined that the Planning Commission and City Council did not complete their work regarding short term rentals. Mr. Clarke noted that some of the members of the audience who had spoken have some of the same concerns that he does regarding short term rentals. He added that some of those concerns should have been brought to Council and perhaps they were. Mr. Clarke went on to say that it was not this Board's responsibility to more generally say whether short term rentals are good or not. He added that Council had adopted these regulations and this Board was to make a decision based on each individual application.

Ms. Carter thanked Mr. Clarke for his comments and stated that she agreed wholeheartedly. Mr. Gross added that Mr. Clarke said exactly what he was going to say.

Ms. Plumlee opined that there was one glaring fact not mentioned; that fact being that short term rentals are a commercialization of a neighborhood. She added that if the Board was only going to support what Council put into law, there was no need for the Board to hear such cases as conditional use applications in which the neighbors are voicing their concerns. Ms. Plumlee further expressed her concerns regarding affordable housing and the health, safety and welfare of the subject neighborhood. She elaborated further.

Ms. Carter said that she would not characterize this use as commercialization. She added that there are conditional uses in residential areas for quite a few things, most commonly considered are home-based businesses, day cares and those types of things that fall within the Board's purview of conditional uses within a residential neighborhood. Ms. Carter said that none of those uses were attempts to commercialize a neighborhood. She mentioned some of the ways that short term rentals are beneficial to families when traveling. Ms. Carter wanted it noted for the record that she does not own a short term rental. She acknowledged that the situation of affordable housing is real and it is being addressed. Ms. Carter added that the Zoning Ordinance does allow for short term rentals and the Board has the opportunity to listen to the community and make a decision based on that as long as it is within the Board's purview.

Mr. Gross asked Mr. Reedy if he would be agreeable to a motion with amended conditions. Mr. Reedy stated that he would be.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 4-3 (Plumlee, Sturdivant and Tucker opposed), to **approve 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., based on Staff's recommendation, the testimony given herein and subject to the four conditions listed, with the amendment of condition #4 to read as follows:

4. The conditional use permit shall become null and void upon change in ownership or 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.

Board comments - Mr. Gross addressed the members of the audience, stating that the Urban County Council and the Planning Commission have adopted this ordinance and the Board is responsible for implementing it. He stated that the Board was not making decisions as to whether short term rentals were good or bad for the community. Mr. Gross commented that he was not in favor of the Board of Adjustment being in the middle of this by making it a conditional use process, but that is the case.

Note: Mr. Gross asked the Chair's permission to make a change in the order of the agenda, to address one of the Staff Items from the end of the meeting to the present time. Ms. Carter agreed to do so.

VI. STAFF ITEMS

A. Presentation of Resolution to former Board member

Ms. Carter called Mr. Chad J. Needham to the podium and read the resolution which stated that Mr. Needham has fulfilled two terms of service with the Board of Adjustment for a total of eight years, with

his second term ending June 30, 2023. Ms. Carter thanked Mr. Needham for his service to the Board of Adjustment. The Board members and Mr. Needham gathered for a photo and the presentation of the resolution and a gift of appreciation to Mr. Needham.

Mr. Needham stated that it had been an honor to serve with the members of the Board. He added that it was not easy to navigate complex cases and listen to the concerns of neighbors. Mr. Needham opined that everyone works hard and makes good decisions to help shape the City of Lexington. He added that he was confident that this Board would continue to thrive and make the important decisions for the betterment of Lexington. He thanked the Board.

Note: The Board returned to consideration of conditional use applications on the agenda at this time.

C. Conditional Use Appeals (continued)

2. **PLN-BOA-23-00065: DEBORAH BURTON** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 241 E. Lowry Ln. (Council District 3)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-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 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. Occupancy of the short term rental shall be limited to no more than 8 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 upon change in ownership, or 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 displayed an aerial image of the general vicinity of the subject property, with the subject property depicted with a red outline. She gave a brief explanation of the application, describing the property and the structures on it. Ms. Jennings displayed a copy of the applicant's site plan and two photos of the front exterior of the home and the driveway, which depicts the length of the driveway. She stated that Staff was recommending approval for this application and listed the reasons for doing so.

Applicant presentation – Ms. Deborah Burton, applicant and property owner, was present on behalf of her application. She explained her desires for operating a short term rental, noting that she lives nearby in another home that she owns.

Public comment

Ms. Margaret Richey, resident of 233 E. Lowry Lane for thirty-eight years, objected to this request. She cited increased traffic, parking on the street and noise. Ms. Richey asked the Board to listen to the neighbors and their concerns regarding short term rentals.

Mr. Jerry Provence, 236 E. Lowry Lane, stated that he also owns 235 E. Lowry Lane, in which his mother lives. He added that he and his wife have lived in the neighborhood for thirty-three years. Mr. Provence commented that he retired from the Kentucky State Police. He expressed his concerns with certain types of individuals who may utilize short term rentals.

Applicant rebuttal – Ms. Burton stated that she understood the concerns of her neighbors. She added that the comments that had been made were of the worst case scenarios. Ms. Burton stated that the best case scenarios should be considered as well. She explained that it was her intention to rent to families who are visiting Lexington, wanting a nice, peaceful place to stay.

Board comments – Ms. Carter clarified for all present that care must be taken not to speak of restricting properties from being rented to certain types of individuals. She added that there are fair housing laws in place. Mr. Gross mentioned the city's non-discriminatory ordinance which also limits one's ability to restrict who can stay at a property. He added that he did not believe it was the applicant's intent to imply that. Ms. Carter agreed. She added that she wanted this noted for the record.

Staff comments – Ms. Jennings addressed some of the previous comments made by neighbors. She clarified their concerns by referring to the first bullet point of Article 3-13(d), in which the last sentence applies to when the Board is asked to increase the occupancy above the allowable limit. Ms. Jennings added that creating a nuisance is already incorporated in the Board's review of every conditional use permit application.

Action – A motion was made by Mr. Clarke, seconded by Mr. Gross and carried 5-2 (Plumlee and Tucker opposed), to **approve PLN-BOA-23-00065: DEBORAH BURTON** – 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 241 E. Lowry Lane, based on Staff's recommendation and subject to the four conditions as listed.

3. **PLN-BOA-23-00066: DALTON STANLEY** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1D) zone, on property located at 1706 Cameron Ct. (Council District 1)

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.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available and the applicant proposes to closely monitor guest parking on the premises to ensure guests are not creating a nuisance.
- 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 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. 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 upon change in ownership, or 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 displayed an aerial image of the vicinity surrounding the subject property, with that property depicted in red. She explained the character of the neighborhood and the subject property itself, and briefly explained the application. Ms. Jennings noted that the subject property's driveway adjoins the driveway of the property next door, at 1710 Cameron Ct. She stated that Staff was recommending approval for this application and listed their reasons for doing so and the four conditions of approval.

Applicant representation – Mr. Dalton Stanley, applicant and property owner, was present on behalf of his application. He explained that he and his wife feel that this property was a good location for a short term rental, and that they believe their application meets all of the requirements to operate a short term rental in Lexington. Mr. Stanley noted that he currently operates two other short term rentals in Lexington and both of those properties are in compliance.

Board question - Mr. Sturdivant asked Mr. Stanley if the driveway was a shared driveway. Mr. Stanley replied that it is an adjoining driveway. Mr. Sturdivant asked if cars would be parked side by side. Mr. Stanley responded that parking would be limited to the portions of the driveway that are not adjoining. Mr. Sturdivant asked how that parking restriction would be enforced. Mr. Stanley stated that he intended to install a camera system that will alert him of parking violations. There was further discussion.

Ms. Plumlee asked Mr. Stanley if he was the owner of the property. He stated that he was the owner; but the property was in the name of an LLC. She asked him when he purchased the property. He replied that they had purchased it in July of 2023. Ms. Plumlee asked what the purchase price was. Mr. Stanley replied that the purchase price was \$175,000.00. Ms. Plumlee thanked him for his responses. Mr. Stanley noted that if Ms. Plumlee was referring to the issue of affordable housing, this house was in significant disrepair when they purchased it. He added that it was uninhabitable at that time.

Public comment

Mr. Dwight Overstreet, 1710 Cameron Ct., stated that he lives next door to the subject property, with the adjoining driveway. He directed the Board's attention to the overhead screen on which he displayed images of trash and debris at the curb in front of the subject property, contractor's vehicles parked in the driveway and on the yard. Mr. Overstreet expressed his opposition to this application.

Ms. Maria Overstreet, 1710 Cameron Ct., expressed her concerns with having additional cars parking in the adjoining driveway. She stated that she has had issues with some of Mr. Stanley's contractors who have parked in the driveway in such a manner that she was forced to ask them to move their vehicles. Ms. Overstreet requested the Board deny this application.

Ms. Janet McQuire, 1701 Cameron Ct., stated she and her husband have lived there for thirty-four years. She expressed opposition to the application based on the possibility of suspended mail delivery if their mailbox is blocked, or skipped trash collection if the trash receptacles are blocked. Ms. McQuire commented on the trash and debris on the curb, and questioned whether Mr. Stanley has a permit for construction.

Mr. Frank Greene, resident of 1717 Cameron Ct. for thirty-five years, spoke in opposition to this application, based on an increase in traffic and the impact to public services and facilities. He also mentioned the safety of the children who play in the court. Mr. Greene added that he had retired from the fire department and he was concerned that additional vehicles parked in the court will hinder access of the fire department and police in the event of an emergency. He, too, mentioned the trash and debris on the curb from the construction taking place at the subject property.

Applicant rebuttal – Mr. Stanley addressed several of the concerns of the neighbors, explaining that the process of “flipping houses” is new to him; but he is learning. He remarked that operating short term rentals is not new to him and he does it well. Mr. Stanley explained that he fired the contractor that was rude to Ms. Overstreet when she had a problem getting out of the adjoining driveway. There were other concerns he addressed and said that he was agreeable to do whatever Mr. and Mrs. Overstreet wanted him to do to alleviate issues with the adjoining driveway.

Board question – Ms. Carter asked the applicant if he was agreeable to amendments to the conditions, should they arise. Mr. Stanley stated that he was agreeable to amended conditions. He thanked the Board members and Staff for the time spent on his application and the others.

Staff comments – Ms. Jennings addressed the adjoining driveway, stating that an adjoining driveway was wide enough to be two separate driveways; not a shared driveway. She added that any fencing installed could only be four feet tall. Ms. Jennings re-iterated Mr. Stanley's comments about where the parking would be allowed, stating that the short term rental guests would be required to park two of the three allowable cars in the detached garage and the third car in the driveway in the area where the neighboring driveway does not adjoin, so there should not be issues. She commented that if Mr. Stanley is not relocating any walls, a remodel permit may not be required, but Staff will check with the Division of Building Inspection.

Board comments – Ms. Plumlee stated for the record, that since 2020, Lexington has had a documented concern over housing and gentrification which has been addressed by committees, task

forces, etc. She read a statement from the Harvard Law and Policy Review which addressed short term rentals. Ms. Plumlee opined that short term rentals, particularly un-hosted short term rentals, will create a housing problem and compound the existing problem concerning affordable housing within Lexington.

Ms. Tucker stated she was still concerned with the adjoining driveway for several reasons.

Ms. Plumlee opined that the concerns about traffic in the court was sufficient grounds for disapproval of this application.

Note – The Board took a short recess at 4:02 p.m. and reconvened at 4:10 p.m.

Action – A motion was made by Ms. Tucker and seconded by Ms. Plumlee to **disapprove PLN-BOA-23-00066: DALTON STANLEY** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1D) zone, on property located at 1706 Cameron Ct., based on the following finding:

1. The cul-de-sac does not provide sufficient on-street parking and the only off-street parking uses an adjoining driveway, with insufficient screening, which will have an adverse influence on the surrounding neighborhoods. Existing services cannot adequately meet the use.

Discussion on the motion – Prior to the vote, Ms. Smith conferred with Ms. Tucker regarding the wording of the motion. Ms. Tucker withdrew the motion.

Action – A motion was made by Ms. Tucker and seconded by Ms. Plumlee, to **disapprove PLN-BOA-23-00066: DALTON STANLEY** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1D) zone, on property located at 1706 Cameron Ct., based on the following finding:

1. The cul-de-sac does not provide sufficient on-street parking and the only off-street parking uses an adjoining driveway, with insufficient screening, which will have an adverse influence on the surrounding neighborhood.

Discussion on the motion – Ms. Carter remarked that the proposed finding is not what the applicant has said. She added that the applicant stated that he is willing to have parking that is not in the adjoining driveway. Ms. Carter continued, stating that the applicant is willing to limit the parking to inside the garage and in the space that is not adjoining the driveway. She said she wanted to make note of that.

Mr. Gross opined that the issue is that there are two driveways next to each other, which causes the potential for an additional nuisance on the neighbor's property if someone is not adequately using the driveway. He mentioned experiences a family member has had with a dual driveway on their property. There was further discussion.

Action – Following the discussion, the motion was voted on and carried to 4-3 (Clarke, Carter and Walker opposed) to **disapprove PLN-BOA-23-00066: DALTON STANLEY** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1D) zone, on property located at 1706 Cameron Ct.

4. **PLN-BOA-23-00067: KATE WHITE** - requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 333 Henry Clay Blvd. (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. Additionally, the applicant is uniquely suited to manage the property as a short term rental given the immediate proximity of their permanent residence.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-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 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.
5. The conditional use permit shall become null and void if the applicant no longer owns or operates the short term rental, or if the applicant no longer occupies the adjacent property at 337 Henry Clay Boulevard as their primary residence.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which was displayed an aerial image of the vicinity surrounding the subject property, with that property depicted in red. She explained this application, adding that the applicant lives immediately next door to the subject property. Ms. Jennings displayed the site plan submitted by the applicant. She also displayed and explained photos of the front and the rear of the subject property. Ms. Jennings noted that Staff was recommending approval of this application for a short term rental, and listed their reasons for doing so. She also explained the five conditions of approval set forth by Staff.

Applicant presentation – Ms. Kate White, 337 Henry Clay Blvd., applicant and property owner, was present on behalf of her application. She explained to the Board the reasons she and her husband wanted to use this property as a short term rental for part of the year, when their parents or other family members are not staying in the home while visiting. Ms. White read a letter of support from the former neighborhood association president, whose home is on the other side of the subject property.

Public comment

Ms. Mary Reed, 313 Henry Clay Blvd., was present on behalf of the Fairway Neighborhood Board of Directors. She read a letter from the Fairway Neighborhood Board, expressing their opposition to this application for a short term rental.

Mr. John Grimes, 272 Sherman Ave., expressed his concern with short term rentals and the potential problems that could stem from their existence.

Applicant rebuttal – Ms. White thanked the neighbors for their comments and concern regarding her application, and she thanked the Board for their time and consideration. She assured the Board and the audience members of her and her husband's intention to respect their neighbors and the neighborhood while operating this short term rental, if approved.

Board question – Ms. Carter asked Ms. White if she had read Staff's recommendations and the conditions of approval and agreed to abide by them. She indicated that she had read them and was agreeable to them.

Staff comments – Ms. Jennings explained the reason for an increase in comments from Staff regarding the importance of having speakers speak directly into the microphone. She stated that this is a public meeting on live television, so it is important people watching at home can hear the meeting. Ms. Jennings stated that the recording is the official record of the meeting and it is crucial to hear all of the comments in order to have accurate minutes.

Ms. Jennings remarked that due to the concentration of short term rentals in the area, Staff is only comfortable recommending approval of this application because the applicant lives next door and it essentially functions as a hosted short term rental even though they won't be living on the property. She added that Staff included the fifth condition of approval which states that if the applicant moves from 337 Henry Clay Boulevard or no longer considers that property their primary residence, this short term rental conditional use would become null and void.

Action – A motion was made by Mr. Walker, seconded by Mr. Gross and carried 6-1 (Plumlee opposed), to approve **PLN-BOA-23-00067: KATE WHITE** – 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 333 Henry Clay Blvd., based on Staff's recommendation and subject to the five conditions as listed.

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

A. Review of IVCP Athens South LLC conditional use permit

Staff presentation – Ms. Jennings explained that the next item on the agenda was not a public hearing or a rehearing of this case; it was a one year review where Staff has an opportunity to update the Board and also have the applicant update the Board on the development of the property over the past year. She directed the Board's attention to the overhead screen on which she displayed an aerial image of the subject property. Ms. Jennings explained the changes that had taken place on the property, including subdividing the lot, re-zoning the property to allow for a stadium and additional commercial development.

Ms. Jennings summarized the approved development of the Highway Service Business (B-3) Zone, explaining the impact it will have on the access to the soccer fields that were approved last year, in 2022. She also displayed the development plan which was approved through the zone change, and added that the applicant is working with the Planning Commission to update that development plan. Ms. Jennings noted the proposed location of the stadium and also mentioned the roads that have been added to the development plan. She then displayed the site plan that was approved by this Board last year, pointing out that there are three fields (Fields #4, #9 and #10), as well as a parking lot that are not currently being pursued by the applicant. Ms. Jennings displayed recent aerial images of the development site, including a parking lot and soccer fields which are under construction. Referring back to the development plan, she noted the addition of a road which was approved by the Army Corp of Engineers, named Competition Way, which is in the permitting phase with the city. Ms. Jennings commented on additional activity related Athens Boonesboro Road, which has recently been getting a lot of attention. She briefly explained the term "RCUTs" for the Board's behalf and how that project will affect the IVCP Athens South, LLC property.

Ms. Jennings referred back to the aerial images of the soccer fields and parking lot, noting the stormwater detention basin that has been installed on site. She added that the parking lot is in the process of being paved and some lighting has been installed. Ms. Jennings depicted the area of existing landscaping which the applicant was keeping to maintain the fifty foot screening which was required by the Board last year as a condition of approval.

Ms. Jennings displayed a list of the four items that were to be assessed at the one year review, which she had previously mentioned in her presentation.

- Traffic
 - Doe Run Trail roadway connection soon to be paved
 - Temporary installation of full traffic signal at Doe Run Trail and Athens Boonesboro Rd.
 - Competition Dr. approved by Army Corp of Engineers; now working through local permitting process
 - Future full traffic signal at Competition Dr.; once online, right-in, right-out installed at Doe Run Trail
 - State Department of Transportation installing RCUTs along Athens Boonesboro Road
 - Site currently hosting evening practices for youth soccer teams; 5 p.m. – 7 p.m.
- Lighting
 - Field lighting recently installed and connected to utilities; testing angles
 - Complaints earlier in the summer related to construction lights on-site; very tall and on late at night
- Stormwater
 - Stormwater detention installed on-site
 - Septic system approved and installed in accordance with Department of Health
- Temporary Access Road
 - Gravel access road regularly maintained
 - Doe Run Trail soon to be paved and connect fields to Athens Boonesboro Rd.
 - Future connection with Competition Dr. to Athens Boonesboro Rd. and RCUTS

Board comments and questions – Mr. Sturdivant asked for clarification of the proposed location for the stadium. Ms. Jennings displayed the aerial view of the soccer fields and parking lot, noting the location of the stadium. Mr. Sturdivant asked if there were any plans for a future connection of the proposed septic system to the Urban County Government's sanitary sewer system. Ms. Jennings deferred that question to the applicant, as the applicant has been working with the Division of Engineering on that.

Ms. Plumlee asked what the avenue was for a citizen to voice an objection to the fulfillment of the conditions not being met. Ms. Jennings responded that the citizen should contact the Zoning Enforcement section of the Division of Building Inspection and Zoning Enforcement would inspect the property and contact the property owner and applicant if a violation was found. She added that the citizen could also contact Staff with their concerns.

Mr. Gross asked if there were any proposed buildings on the subject property. Ms. Jennings replied that a ten-thousand square foot building was approved last year which included rest room facilities, offices and some storage. Mr. Goss asked if it was still going to be constructed, with the new plan. Ms. Jennings stated that those facilities are still needed. There was further discussion.

Applicant presentation – Ms. Charlotte McCoy, attorney, Stites and Harbison, was present on behalf of the applicant and owner. She introduced Mr. Josh Lewis, representing the owner and developer; Mr. Brad Boaz, with CMW, the engineers for the project. Ms. McCoy stated that she wanted to clarify something that Ms. Jennings stated in her presentation. She added that Ms. Jennings had said there would be a light at Doe Run Trail, but it actually will be at Competition Dr., when that is installed in the spring of 2024. Kentucky Transportation Cabinet has approved the light and it is part of the permitting process. Ms. McCoy also clarified that there was not an actual new subdivision of the property; that was the historic tract lines. She added those were the two historic tracts that divided the land along the Agricultural Rural (A-R) zone boundary. Ms. McCoy deferred to Mr. Boaz to answer any questions regarding the septic system and potential connection to the City's sewer system.

Board questions – Mr. Clarke asked how soon Competition Dr. would be finished. Ms. McCoy replied that the applicant was hoping for spring of 2024 and actively pursuing the permit. Mr. Clarke asked if there were plans to time that light during the busiest times. Mr. Boaz answered the question stating that the light there would be attached to the Lexington-Fayette Urban County Government system and could be programed remotely or have police on site to do it manually. There was further discussion.

Mr. Boaz addressed an earlier question regarding the sanitary sewer system. He stated that it was required by this Board that there be a septic system outside of the Urban Service Area, but if it is possible in the future to tie it into the sewer system, the applicant would prefer that.

Mr. Sturdivant asked if the stadium would also be on the septic system. Mr. Boaz replied that the stadium would be on the City's sanitary sewer system because it is inside of the Bluesky Rural Activity Center.

Ms. Tucker asked if the applicant was still planning to offer assistance to children who wished to play soccer but could not afford to do so. She also asked if they would consider transportation. Mr. Boaz responded that Lextran does not come out as far as the subject property. However, in their Stadium Development Plan, a transit stop has been added to the plan. The applicant hopes that Lextran will come out there once everything is developed. Mr. Boaz added that bicycle lanes are being factored into the new road system, as well as the new transit stop. He asked Mr. Lewis if he had any information on scholarships. Mr. Lewis stated that was a question for the operational side of the project.

Staff comments – Mr. Joseph Edmiston, Division of Traffic Engineering, commented on the monitoring and timing of traffic systems and how that could be done.

Ms. Jennings expressed her apologies for misunderstanding the Doe Run Trail light situation.

Board comments – Ms. Carter expressed her appreciation for the review and the progress the applicant has made with this project. Mr. Gross said that it will great that this will be up and running, hopefully by spring of next year. He congratulated those present on behalf of the applicant.

VI. STAFF ITEMS (continued) – Ms. Carter announced that any items a Staff member wished to present would be heard at this time.

A. Training by the Department of Law

Ms. Brittany Smith, Department of Law, presented information about the training requirements for Board of Adjustment members. Ms. Smith explained the Parliamentary Procedures to be followed by the Board. She showed several samples of motions and also samples of findings of fact, which are recorded in the minutes. There are different findings required for variances and for conditional use permits, per the Zoning Ordinance. She explained that this Board is subject to the Open Meetings Act and gave a brief refresher of what that meant. Ms. Smith explained Conflicts and Ethics per the Board of Adjustment bylaws, and the differences between recusal and abstaining from a vote. Lastly she explained Ex-Parte Communications for the Board's behalf.

Board comments – Ms. Carter thanked Ms. Smith for her presentation.

VII. NEXT MEETING DATE – Ms. Carter announced that the next meeting date would be November 13, 2023 at 1:30 p.m., Council Chambers, 200 East Main Street, Lexington, KY 40507.

VIII. ADJOURNMENT – As there was no further business, Chair Carter declared the meeting adjourned at 5:30 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.