

**MINUTES FOR THE BOARD OF
ADJUSTMENT MEETING**

November 13, 2023

- I. **CALL TO ORDER** - Chair Carter called the meeting to order at 1:35 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, Linda Tucker and Chad Walker. Bob Sturdivant was absent. Others present were Brittany Smith, Department of Law; Josh Dezarn, Division of Engineering; Ben Cornett, Division of Environmental Quality 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.

The oath was administered to several members of the audience at this time. She informed all those present that time limits would be in place to allow everyone who wished to do so, an opportunity to speak.

- B. **Sounding the Agenda** - In order to expedite completion of agenda items, Ms. Carter sounded the agenda with regard to any postponements, withdrawals, and items requiring no discussion.

Postponements

1. **PLN-BOA-23-00069: JOE RAYYAN** – requested a variance to reduce the required setback of a gasoline pump to a residential zone from fifty feet (50') to twenty-five feet (25') in order to provide an additional gasoline pump in a Highway Service Business (B-3) zone, on property located at 705 E. Loudon Ave. (Council District 1)

Applicant representation – Mr. Richard Murphy, attorney, was present on behalf of the applicant. He stated that the applicant was requesting a one-month postponement to the December 11, 2023 meeting to allow them more time to work on their site plan.

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 6-0 (Mr. Sturdivant absent), to **approve** the applicant's request for a one-month postponement to the December 11, 2023 meeting.

2. **PLN-BOA-23-00073: TRADITIONAL BANK** – requested a conditional use permit for drive-through facilities for a proposed bank in a Neighborhood Business (B-1) zone, on property located at 457 Southland Dr. (Council District 10)

Applicant representation – Mr. Zach Cato, attorney, was present on behalf of the applicant. He requested a one-month postponement of this application to the December 11, 2023 meeting to allow the applicant more time to address some of Staff's concerns with their site plan.

Action – A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 6-0 (Sturdivant absent), to **approve** the applicant's request for a one-month postponement to December 11, 2023.

Withdrawals

1. **PLN-BOA-23-00072: STEWART AND JUDY PERRY** – requested a conditional use permit for an un-hosted short term rental in a Mixed Low Density Residential (R-2) zone, on property located at 822 Raven Rd. (Council District 3)

Staff informed the Board that the applicants had contacted Staff to request that their application be withdrawn, as they no longer wish to pursue the operation of a short term rental at this address.

2. **PLN-BOA-23-00074: DAVID DAUER** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 3374 Snaffle Rd. (Council District 10)

Staff advised the Board that the applicant had reached out to Staff requesting that their application be withdrawn, as they no longer wish to pursue the operation of a short term rental at this address.

C. Abbreviated Hearing

1. **PLN-BOA-23-00064: SHELBY MARLETTA** – requested a variance to increase the maximum number of parking spaces from two (2) to four (4) in order to pave additional parking within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Planned Neighborhood Residential (R-3) zone, on property located at 324 Aylesford Pl. (Council District 3)

The Staff Recommended: Approval for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. The proposed paved parking area should have little visual impact on the surrounding properties as it is similar to other rear parking areas in the general vicinity.
- b. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it was needed and prior to construction.

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

1. Construction shall be in accordance with the submitted application materials and revised site plan depicting a landscape buffer along the rear perimeter of the “grass back yard” to provide separation between the yard and parking area.
2. All necessary permits and approvals shall be obtained from the Divisions of Building Inspection and the Board of Architectural Review prior to paving.

Applicant representation – Ms. Shelby Marletta was present on behalf of her application. Ms. Carter asked her if she had read the recommendations and conditions of approval. Ms. Marletta indicated that she had.

Staff comments – Ms. Jennings remarked that the subject property is located in a Historic District Overlay zone, and the applicant is already working with the Board of Architectural Review. She added that this application will be heard at their meeting on Wednesday, November 15th. Ms. Jennings noted that the Board of Architectural Review had shared with Staff that they will likely add some material requirements and some other design elements. She added that the Board of Architectural Review’s recommendations and approval will be enforceable in addition to Board of Adjustment approval. Ms. Jennings offered to read an email from the Division of Historic Preservation, if the Board would like more information.

Board question – Ms. Tucker asked how many people currently reside at the subject property. Ms. Marletta responded that there are five people living there.

Ms. Plumlee asked Staff if increasing the number of parking spaces permits more beds in the house. Ms. Jennings replied that parking is not required, so parking does not limit the number of occupants. She added that the Zoning Ordinance has a definition for a family unit, which states that there may be no more than four unrelated people living in one home together.

Ms. Tucker asked if the five current occupants were college students. Ms. Marletta replied that they were. Ms. Tucker asked if they are related. Ms. Marletta replied that they are not.

Ms. Wade clarified that it was possible that five unrelated people were living in the house prior to the change in the definition of a family unit in the Zoning Ordinance. That would make it a non-conforming use, meaning the house can continue to be rented by five unrelated people if it existed prior to the definition change.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 6-0 (Sturdivant absent), to **approve PLN-BOA-23-00064: SHELBY MARLETTA** – request for a variance to increase the maximum number of parking spaces from two (2) to four (4) in order to pave additional parking within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Planned Neighborhood Residential (R-3) zone, on property located at 324 Aylesford Pl., based on Staff's recommendation, the testimony heard today and subject to the two conditions as listed.

2. **PLN-BOA-23-00075: RICKY POPE** – requested a variance to reduce the required front yard setback from ten feet (10') to zero feet (0') in order to construct an addition (enclosed patio) to an existing restaurant within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 159-161 Jefferson St. (Council District 11)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variance should not alter the character of the general vicinity. The subject property is within the defined Infill and Redevelopment Area and the proposed addition features a front yard setback that is in keeping with other structures in the immediate vicinity.
- b. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity as the enclosure of the patio should not negatively impact the walkability of the area. The subject property has featured a covered patio in the same location as the proposed addition since 2011, and the design of the proposed addition includes multiple windows which create a welcoming environment for pedestrians.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it was needed, and prior to beginning construction.

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

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

Applicant representation – Mr. Ryan Clark, Back Construction, Inc., was present on behalf of this application. Ms. Carter asked Mr. Clark if he had seen the conditions of approval set forth by Staff. He indicated that he had.

Board question – Ms. Plumlee asked how close the proposed enclosed patio will be to the sidewalk when the project is finished. Mr. Clark responded that it would be roughly sixteen inches, which is what it is currently.

Action – A motion was made by Mr. Clarke, seconded by Mr. Gross and carried 6-0 (Sturdivant absent), to **approve PLN-BOA-23-00075: RICKY POPE** – request for a variance to reduce the required front yard setback from ten feet (10') to zero feet (0') in order to construct an addition (enclosed patio) to an existing restaurant within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 159 -161 Jefferson St., based on Staff's recommendation and subject to the two conditions as listed.

3. **PLN-BOA-23-00069: NICOLE SEALS** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1D) zone, on property located at 3104 Leestown Rd. (Council District 2)

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. There is no record of short term rental compliance issues with the applicant.
- 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 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 10 individuals.
3. The existing driveway accessed from Leestown Road shall be removed. The proposed driveway shall be paved.
4. 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.
5. 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.

Applicant representation – Ms. Nicole Seals, applicant and property owner, was present on behalf of her application. Ms. Carter asked her if she had read the conditions of approval and was agreeable to them. Ms. Seals stated that she had read the conditions and that she was in agreement with them.

Board questions – Ms. Plumlee asked the applicant if the subject property was in the Bracktown community. Ms. Seals replied that it was. Ms. Plumlee remarked that that particular area was a rural, African-American hamlet, to which Ms. Seals agreed. Ms. Plumlee added that Council Member Plomin has been championing those hamlets lately and they have been in the news. She added that it concerned her that the proposed use is a commercial use in a residential area, and that use might destroy the character of what would be desirable in a hamlet; what they are trying to protect. Ms. Seals responded that she grew up in Bracktown from the time she was three years old until she left to go to college. She added that when she returned to Lexington, her goal was to invest in her community, specifically in the Bracktown area. There was further discussion.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 6-0 (Sturdivant absent), to **approve PLN-BOA-23-00069: NICOLE SEALS** – 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 3104 Leestown Rd., based on Staff's recommendation and subject to the five conditions as listed.

4. **PLN-BOA-23-00070: JESSICA VOIGT** – requested a conditional use permit to operate an accessory dwelling unit (ADU) as a hosted short term rental within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone, in a Single Family Residential (R-1C) zone, on property located at 1859 Nicholasville 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 applicant occupies the principal dwelling unit on the subject property as their primary 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. There is no record of short-term rental compliance issues with the applicant.
- 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 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 2 persons, plus any children related to either of them or under their care through a duly authorized custodial relationship.
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 principal dwelling unit on the subject property as their primary residence.

Applicant representation – Ms. Jessica Voigt, 1859 Nicholasville Rd., applicant and property owner, was present on behalf of her application. Ms. Carter asked Ms. Voigt if she had read Staff's recommendations and conditions of approval and if she was comfortable with them. Ms. Voigt indicated that she had read them and was comfortable with them.

Board questions – Ms. Tucker had a question about guest parking. Ms. Voigt responded, stating there is a dedicated parking space for the short term rental. She directed the Board to the overhead screen, on which a copy of the site plan was displayed. Ms. Voigt explained that they do not use any of the neighborhood streets, as their property is directly off of Nicholasville Rd. She added that their short term rental only allows for two people, so there will only be one car parked there.

Ms. Carter explained that the short term rental is hosted and typically the Board would not have heard this application except for the fact that an Accessory Dwelling Unit (ADU) is involved. Ms. Jennings confirmed that to be correct, adding that any time a property owner wishes to use an Accessory Dwelling Unit as a short term rental, even if it is hosted; a conditional use permit is required.

Ms. Plumlee asked if there was room to turn around and exit without backing out onto Nicholasville Rd. Ms. Voigt confirmed that to be true.

Action - A motion was made by Mr. Clarke, seconded by Mr. Gross and carried 6-0 (Sturdivant absent), to **approve PLN-BOA-23-00070: JESSICA VOIGT** – request for a conditional use permit to operate an accessory dwelling unit (ADU) as a hosted short term rental within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone, in a Single Family Residential (R-1C) zone, on property located at 1859 Nicholasville Rd., based on Staff's recommendation and subject to the five conditions as listed.

5. **PLN-BOA-23-00076: GLOCK NICHOLASVILLE, LLC** – requested a conditional use permit for an un-hosted short term rental and a variance to increase the maximum number of parking spaces from two (2) to four (4) in order to pave additional parking within the defined Infill and Redevelopment Area in a Single-Family Residential (R-1C) zone, on property located at 103 Westwood Dr. (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 will be 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 will be available.
- c. There is no known record of short term rental compliance issues with the applicant.
- d. All necessary public services and facilities are available and adequate for the proposed use.
- e. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. The proposed paved parking area should have little visual impact on the surrounding properties as it is similar to other rear parking areas in the general vicinity and is located in the rear of the property.
- f. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it was needed and prior to construction.

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

1. The 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.
5. Paving shall be in accordance with the submitted application materials and revised site plan depicting the removal of the gravel area and a landscape buffer along the rear perimeter of the new parking area to provide separation between the yard and parking area and prevent the continued use of the informal gravel parking area.

6. All necessary permits and approvals shall be obtained from the Divisions of Building Inspection prior to paving and prior to obtaining a Zoning Compliance permit for the short term rental use.

Applicant representation – Mr. Jason Taylor was present on behalf of the applicant. Ms. Carter asked him if he had read staff's recommendations and conditions of approval. He indicated that he had read them and that the applicant was in agreement with them.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 4-2 (Plumlee and Tucker opposed; Sturdivant absent), to **approve PLN-BOA-23-00076: GLOCK NICHOLASVILLE, LLC** – request for a conditional use permit for an un-hosted short term rental and a variance to increase the maximum number of parking spaces from two (2) to four (4) in order to pave additional parking within the defined Infill and Redevelopment Area in a Single-Family Residential (R-1C) zone, on property located at 103 Westwood Dr., based on Staff's recommendation and subject to the six conditions as listed.

6. **PLN-BOA-23-00077: DAVID HAUGE** – requested a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Mixed Low Density Residential (R-2) zone, on property located at 361 - 363 S. Upper St. (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. A short term rental operated successfully on the subject property for years under prior ownership.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- c. There is no record of short term rental compliance issues with the applicant.
- 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 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 4 individuals.
3. The gravel parking area shall be paved in compliance with Article 16 of the Zoning Ordinance.
4. 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.
5. 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.

Applicant representation – Mr. David Hauge, applicant and property owner, was present on behalf of his application. Ms. Carter asked Mr. Hauge if he had read Staff's recommendations and conditions of approval and if he was in agreement with them. Mr. Hauge stated that he had read them, and that he was in agreement with them.

Action – A motion was made by Mr. Walker, seconded by Mr. Gross and carried 6-0 (Sturdivant absent), to **approve PLN-BOA-23-00077: DAVID HAUGE** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Mixed Low Density Residential (R-2) zone, on property located at 361-363 S. Upper St., based on Staff's recommendations and subject to the five conditions as listed.

7. **PLN-BOA-23-00078: HARMONY HB, LLC** – requested to amend an existing conditional use permit for a place of religious assembly in order to construct a detached accessory structure (garage) in an Agricultural Urban (A-U) zone, on property located at 3330 Todds Rd. (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 structure is located to the rear of the subject property and the accessory garage will be sufficiently screened from nearby residential uses, as well as Todds Road.

- b. The requested conditional use should not have a negative impact on traffic in the general vicinity, as adequate parking will remain to accommodate the existing church's operation.
- 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. Action of the Board shall be denoted on an amended final development plan, depicting the proposed structure and changes to the site layout.
- 3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction of the structure.

Applicant representation – Mr. Jon Strom, attorney, was present on behalf of the applicant. Ms. Carter asked Mr. Strom if the applicant had read the conditions of approval. Mr. Strom stated that the applicant had read the conditions and was comfortable with them.

Action – A motion was made by Mr. Clarke, seconded by Ms. Tucker and carried 6-0 (Sturdivant absent), to **approve PLN-BOA-23-00078: HARMONY HB, LLC** – request to amend an existing conditional use permit for a place of religious assembly in order to construct a detached accessory structure (garage) in an Agricultural Urban (A-U) zone, on property located at 3330 Todds Rd., based on Staff's recommendation and subject to the three conditions as listed.

- 8. **PLN-BOA-23-00081: KEENELAND ASSOCIATION** – requested to amend an existing conditional use permit for a horse race track with accessory facilities, and a variance to increase the allowable height of a building from thirty-five feet (35') to fifty-five feet (55'), in order to provide additional square footage for administrative space, dining facilities, and visitors' center in the Agricultural Rural (A-R) zone, on property located at 3801-4081 and 4251 Versailles Rd. (Council District 12)

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

- a. Granting the requested conditional use permit and variance should not adversely affect the subject or surrounding properties. There are no uses on adjoining or nearby properties that might be adversely impacted by the proposed improvements, and these changes will enable Keeneland to provide better service to its patrons and clientele.
- b. Granting the requested variance should not alter the character of the general vicinity as existing structures feature greater heights than what are being proposed.
- c. The proposed buildings will be screened from view from the public right of way by existing trees and landscaping.
- d. All necessary public and private services are available and adequate for the proposed use.

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

- 1. The project shall be completed in accordance with the submitted application materials and site plan.
- 2. New parking areas shall be designed in accordance with Articles 16 and 18 of the Zoning Ordinance.
- 3. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.

Applicant representation – Mr. Nick Nicholson, attorney, was present on behalf of this application. He stated that the applicant had read Staff's recommendation and conditions of approval and were in complete support of them.

Board question – Mr. Clarke asked if any of the trees on the property were going to be removed during construction. Mr. Nicholson replied that a total of thirty-two (32) trees were going to be removed; nine (9) of which will be relocated onto other parts of the parking area. He stated that seventy-four (74) new trees were to be added, for a net gain of approximately forty (40) trees being added to the property.

Action – A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 6-0 (Sturdivant absent), to **approve PLN-BOA-23-00081: KEENELAND ASSOCIATION** – request to amend an existing conditional use permit for a horse race track with accessory facilities, and a variance to increase the allowable height of a building from thirty-five feet (35') to fifty-five feet (55'), in order to provide additional square footage for administrative space, dining facilities, and visitors' center in the Agricultural Rural (A-R) zone, on property located at 3801-4081 and 4251 Versailles Rd., based on Staff's recommendation and subject to the three conditions as listed.

D. Discussion Items

1. **PLN-BOA-23-00045: RED DRAW DELAWARE, LLC** – requested variances to 1) reduce the required Vehicular Use Area perimeter buffer width from eight feet (8') to zero feet (0'), 2) reduce the required minimum interior landscape area from ten percent (10%) to four percent (4%), 3) reduce the required Vehicular Use Area tree canopy from thirty percent (30%) to zero percent (0%), and 4) reduce the required useable open space from ten percent (10%) to one percent (1%) in order to construct a warehouse/storage facility within the defined Infill and Redevelopment Area in a Light Industrial (I-1) zone, on property located at 1535 Delaware Ave. (Council District 5)

The Staff Recommended: Approval of the variances to reduce the required Vehicular Use Area perimeter buffer width to zero feet (0') and reduce the required Vehicular Use Area tree canopy to zero percent (0%), for the following reasons:

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity, as the variances allow for the applicant to develop the site in a manner that does not threaten the structural integrity of the adjoining structure.
- b. Granting the variances should not alter the character of the general vicinity as the proposed vehicular use area should have little visual impact on the surrounding properties as the adjoining structure is immediately on the property line and sufficiently screens adjacent properties.
- c. Granting the variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variances as soon as it was determined that they were needed and prior to construction.

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

1. The site shall be developed in accordance with the submitted application materials and site plan reflecting the conditions herein.
2. The applicant shall work with the Division of Environmental Services to determine species and locations of trees to be provided in alternative locations on-site.
3. All necessary permits shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.

The Staff Recommended: Disapproval of the variances to reduce the required minimum interior landscape area to four percent (4%) and reduce the required useable open space to one percent (1%), 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. There is sufficient space on the property to accommodate the required interior landscaping and useable open space while maintaining a majority of the desired parking spaces.
- 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.

Staff presentation - Ms. Jennings directed the Board's attention to the overhead screen on which she displayed a brief explanation of the applicant's request for four (4) variances. She also displayed an aerial image of the subject property and its general vicinity. Ms. Jennings explained that the subject property has been cleared and is now vacant. She added that the applicant opines that the requested variances are necessary in order to minimize potential issues with developing on this property and affecting the adjoining structure at 1555 Delaware Ave. Ms. Jennings explained further. She also displayed images of the exterior of that adjoining structure, which showed signs of potential stability issues.

Ms. Jennings reviewed what the Zoning Ordinance states regarding vehicular use perimeter buffer and interior vehicular use area. She displayed a copy of the applicant's site plan and explained how the requested variances pertain to the proposed site plan. Ms. Jennings stated that since these variances are related to Article 18 of the Zoning Ordinance, they are required to be reviewed by the Landscape Review Committee. She added that they did meet on October 24, 2023 in order to review the three Article 18 variances. Ms. Jennings stated that the Landscape Review Committee discussed the first variance, which was to reduce the required Vehicular Use Area perimeter buffer, and determined that request was

reasonable, given the proximity of the adjoining structure at 1555 Delaware Ave., and they also agreed that the intent of the buffer to screen the vehicular use areas from the adjoining properties is not needed due to the fact that the adjoining structure is windowless and directly on the property line. She explained that the second variance, to reduce the required minimum interior landscape area, was also reviewed by the Landscape Review Committee and they determined that they could not support this request, as the applicant has already proven that they meet this requirement through an approved landscape plan in association with the current building permit. She explained further.

Ms. Jennings referred to the third variance, to reduce the required Vehicular Use Area tree canopy, noting that the Landscape Review Committee discussed this request and expressed a desire for the applicant to work with the Division of Environmental Services to determine what trees could be planted within those interior landscape areas in order to provide some tree canopy for the site. She added that Staff was recommending approval for that variance, with the inclusion of a condition that they work with the Division of Environmental Services to determine species and locations of trees to be provided and alternative locations on site.

Ms. Jennings stated that the Landscape Review Committee did not review the fourth variance request, which was to reduce the required open space, because it is related to Article 20. She added that Staff cannot support this request, because it was possible for the applicant to lose another parking space or two in order to meet the requirement. Staff feels that the applicant has ample parking for the use; therefore, they could lose a parking space. She reviewed Staff's recommendations and the conditions of approval for the Board's behalf.

Applicant representation – Mr. Jihad Hallany, Vision Engineering, was present on behalf of the applicant. He stated that the applicant was in agreement with Staff on the first three items, including working with the Division of Environmental Services. Mr. Hallany explained the applicant's concerns with the settling of the property on the adjacent property. He gave a brief history of the property, mentioning a pond that had existed in the past.

Board questions – Mr. Gross asked Mr. Hallany to explain the project overall. Mr. Hallany gave a brief description of the uses for the proposed project. He opined that the interior parking was very necessary for the project and the applicant wished to keep it as private and as secure as possible.

Mr. Gross asked what was meant by the term "proposed central trash", which was noted on the site plan. Mr. Hallany explained that it referred to trash containers that would be in a storage area. Mr. Gross asked how many employees would be on site. Mr. Hallany replied that there would be two employees on site. Mr. Gross asked if the units under roof would have cars as well as cars in the parking area. Mr. Hallany confirmed that to be correct. Mr. Hallany added that there would be a wall around the entire site; the entire site would be enclosed. There was further discussion.

Staff comments – Ms. Jennings remarked that a quick calculation revealed that the required open space that is not being met on the site is a total of seventeen hundred square feet. With the total site being just under nineteen thousand square feet, the required open space is just under nineteen hundred square feet. As the applicant is already supplying one percent of that figure, the missing nine percent is a total of seventeen hundred square feet.

Board questions – Mr. Gross asked Mr. Hallany where the project was in the construction timeline. Mr. Hallany replied that he was not certain. There was further discussion. Mr. Hallany stated that he wished to request to continue this application to next month's meeting.

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 6-0 (Sturdivant absent), to **continue PLN-BOA-23-00045: RED DRAW DELAWARE, LLC** – request for variances to 1) reduce the required Vehicular Use Area perimeter buffer width from eight feet (8') to zero feet (0'), 2) reduce the required minimum interior landscape area from ten percent (10%) to four percent (4%), 3) reduce the required Vehicular Use Area tree canopy from thirty percent (30%) to zero percent (0%), and 4) reduce the required useable open space from ten percent (10%) to one percent (1%) in order to construct a warehouse/storage facility within the defined Infill and Redevelopment Area in a Light Industrial (I-1) zone, on property located at 1535 Delaware Ave., to the December 11, 2023 Board of Adjustment meeting, to give the engineers time to work with Staff to present a revised site plan.

2. **PLN-BOA-23-00071: CHRIS FIELDER** – requested a variance to reduce the required front yard setback from thirty feet (30') to zero feet (0') in order to provide a circular driveway in the front yard in a Single Family Residential (R-1C) zone, on property located at 1929 Alexandria Dr. (Council District 11)

The Staff Recommended: **Approval of a lesser variance of thirteen feet (13')**, for the following reasons:

- a. Granting the lesser variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. The recommended widened driveway with turnaround area is similar to other parking areas in the general vicinity, and does not create a second access point on the property.
- b. The location of the subject property along a high-traffic road creates safety concerns for the applicant when backing out of, or backing into, their driveway. The alternative design allows for the applicant to utilize a turnaround area in order to pull out onto Alexandria Drive.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it was needed and prior to construction.

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

1. Construction shall be in accordance with the submitted application materials and revised site plan depicting the alternative driveway design as provided by Staff.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to paving.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen and briefly explained this application for a variance to reduce the required front yard setback in order to provide a circular driveway in the front yard. She displayed aerial images of the subject property and the surrounding vicinity. Ms. Jennings referred to the Zoning Ordinance, which states that any paving in the front yard is not allowed without the granting of a variance to reduce the front yard to zero feet. She displayed the site plan which had been submitted by the applicant and added that the applicant opined that backing out onto Alexandria Dr. is difficult due to the amount of traffic there. Ms. Jennings stated that the regulations regarding circular driveways were re-written in the fall of 2022, requiring a variance application if an applicant wants to pursue a circular driveway.

Ms. Jennings explained that Staff cannot support this request for a variance for a full circular driveway as the applicant has not provided sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance or Kentucky Revised Statutes. She added that there do not appear to be any special circumstances that are unique to the subject property. Ms. Jennings stated that Staff is not in favor of creating another access point along this corridor. She added that Staff from the Division of Traffic Engineering created an alternative design for a wider driveway, which would eliminate the need for backing out onto Alexandria Dr. Ms. Jennings displayed a copy of that alternative design on the overhead screen, and explained that Staff is recommending approval of a lesser variance to permit this alternative design and their reasons for doing so.

Applicant presentation – Mr. Chris Fielder, applicant, and owner of Kentucky Outdoor Living, was present on behalf of the property owner. He stated that his client, the property owner, had practiced maneuvering their car in accordance with the alternate design, and they found it quite difficult. Mr. Fielder stated that the property owner wished to continue with the circular driveway, based on there being four other houses on Alexandria Dr. that have circular driveways. He added that he had photos depicting examples of those driveways.

Ms. Tracy Pitt, property owner, asked if she could speak. She directed the Board's attention to the overhead screen on which she displayed photos of her property and photos of other properties with circular driveways, and driveways that had been widened. Ms. Pitt explained her reasons for wanting to construct a circular driveway, and her reasons for not wanting to use the alternative design.

Staff comments – Ms. Jennings introduced Mr. Joseph Edmiston, Division of Traffic Engineering, who was also present. He noted that the alternate design was not perfect, but it was usable and similar to some in her neighborhood. Mr. Edmiston stated that the Division of Traffic Engineering tries to limit the number of curb cuts in bike lanes for safety reasons.

Ms. Jennings stated that the Zoning Ordinance allows for the applicant to widen her existing driveway to twenty-four feet total width, without needing a variance. Mr. Edmiston concurred.

Action – A motion was made by Ms. Plumlee to **approve PLN-BOA-23-00071: CHRIS FIELDER** – for a **lesser variance** as recommended by Staff, to reduce the required front yard setback from thirty feet (30') to thirteen feet (13'), subject to two conditions.

Discussion on the motion – Mr. Gross commented that the changes to the Zoning Ordinance regarding circular driveways was a policy decision which was adopted by the city. He added that special circumstances that do not otherwise apply throughout the entire city, must be shown by the applicant when applying for a circular driveway. Mr. Gross opined that the Board had not approved an application for a circular driveway since the new regulations went into place. He added that whether the Board members personally agree with the regulations; they cannot change them. Mr. Gross suggested the applicant speak with their elected representatives if they disagree with these new regulations.

Action – Mr. Gross seconded Ms. Plumlee's motion, while making a friendly amendment to clarify that the motion was based upon Staff's report, the testimony given today and subject to the two conditions as listed. As there was no further discussion, the amended motion to **approve a lesser variance to reduce the front yard to 13'** was voted on and carried 6-0 (Sturdivant absent).

3. **PLN-BOA-23-00084: LSC FACILITIES HOLDING COMPANY, LLC** – requested to amend a conditional use permit for outdoor recreational facilities (soccer fields) with outdoor lighting and variances to 1) increase the allowable height of free-standing lighting in a parking lot from twelve feet (12') to twenty-eight feet (28') and 2) increase the maximum spacing between interior landscape areas from ninety feet (90') to one hundred and seventeen feet (117') in an Agricultural Rural (A-R) zone, on property located at 250 Doe Run Trail. (Council District 12)

The Staff Recommended: **Approval of the conditional use and the variance to increase the allowable height of free-standing lighting in a parking lot to twenty-eight feet (28')**, for the following reasons:

- a. Granting the requested conditional use permit and variance should not adversely affect the subject or surrounding properties, provided the activities are in accordance with the recommended conditions herein. The preservation of existing vegetative screening, prohibitions against restaurants or food service, loudspeakers and substantially similar uses, and limitations of on-site operations and durations should minimize the impact of the use on properties within the general vicinity.
- b. The proposed buildings will be screened from view from adjoining properties by existing trees and landscaping.
- c. All necessary public and private 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 conducted in accordance with the submitted application materials and site plan reflecting the conditions herein.
2. All necessary permits shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.
3. A stormwater management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
4. A sewage treatment system shall be installed in accordance with the requirements of the Department of Health.
5. The applicant shall submit a landscape plan for review and approval by the Division of Environmental Services reflecting the landscaping required in condition #8.
6. The design of the off-street parking, internal circulation, and access to the site shall be subject to review and approval by the Division of Traffic Engineering.
7. The parking lot shall be screened in accordance with the requirements of Article 18 of the Zoning Ordinance.
8. Existing vegetative areas in the south and southwestern portions of the site shall be preserved to maintain screening for the adjacent properties.
9. Loudspeakers and restaurants or food service are prohibited.
10. The proposed outdoor recreational facilities shall be limited to use for athletic-related activities only and shall not be used for non-athletic commercial events or gatherings, including concerts, festivals, fireworks, off-site parking and substantially similar uses.
11. Hours of operation shall be limited to 7 A.M. to 10 P.M., daily.

12. The use shall be developed and operate in accordance with the requirements of the United States Fish and Wildlife Service (USFWS).
13. Coordination with the Division of Environmental Services and/or the US Corps of Engineers shall occur prior to construction within fifty (50) feet of an identified sinkhole or wetland on the property.

The Staff Recommended: **Postponement of the variance to increase the allowable distance between interior landscape islands to one hundred and seventeen feet (117')**, for the following reason:

- a. The requested variance is related to Article 18 standards and the applicant should have an opportunity to have their request be reviewed by the Landscape Review Committee.

Staff presentation – Ms. Jennings informed the Board that prior to the meeting, the applicant had withdrawn their request for the second variance, which was to increase the maximum spacing between interior landscape areas from ninety feet (90') to one hundred and seventeen feet (117') in an Agricultural Rural (A-R) zone. She directed the Board's attention to the overhead screen on which was displayed an aerial image of the subject property from one year ago and gave a brief update of the construction that has taken place since that time. Ms. Jennings then displayed another aerial image of how the property currently looks, depicting seven of the ten soccer fields that were approved last year, now developed. She also mentioned that field lighting has been installed, and four hundred and forty of the seven hundred and fifty parking spaces that were approved last year have been paved and lighting installed there.

Ms. Jennings explained additional progress that has been made to the property since last year. She displayed an updated site plan which the applicant had submitted, on the overhead screen. This updated plan reflected the changes impacted on the site by withdrawing that variance request. Ms. Jennings explained other changes reflected in the updated site plan, compared to the site plan from last year. She noted that Staff was recommending approval of this application and explained their reasons for doing so.

Applicant representation – Ms. Charlotte McCoy, attorney, was present as counsel for the applicant. She introduced Mr. Brad Boaz, CMW Architects and Engineers, and Mr. Josh Lewis, representing the applicant. Ms. McCoy stated that they are in agreement with the Staff report and mentioned that they have refined their design somewhat to make the property more functional for the users. She added that the applicant wishes to have the lighting in the parking lot match the lighting that has already been installed.

Board questions – Ms. Carter asked Ms. McCoy if the applicant was able to address Staff's concern regarding the placement of the soccer field. Ms. McCoy deferred that question to Mr. Boaz to respond to. Mr. Boaz replied that the fourth field has not been installed yet, but if and when the developer elects to construct it, they would do so in conjunction with the Division of Engineering. He added that if the detention basin needed to be modified to accommodate it; that would be done as well. Mr. Boaz commented that if anything needed to be done to the leach field that has been installed, they would work with the Health Department.

Mr. Clarke asked if the lighting that is being requested was all part of the parking. Mr. Boaz confirmed that to be correct, adding that the lighting being requested would match what is already in the existing parking lot.

Public comment

Mr. Charles Wisdom, 195 Ashley Woods Rd., expressed his objection to the subject project based on the glare coming from the existing lights on the parking lot. He presented an image, taken at night, of the current lighting on the property. Mr. Wisdom opined that the applicant has not provided enough vegetation to prevent the lighting from disturbing the neighbors, and asked the Board to postpone their decision on this application until they had more information.

Ms. Linda Pearson, 111 Ashley Woods Rd., expressed her concerns over the adverse effects of the lighting from the subject property on her property. She also added her concerns with the elevation of the soccer fields, the lack of vegetation, the noise, the parking and traffic and asked the Board to consider revoking the applicant's conditional use permit.

Board questions – Mr. Clarke asked the applicant to clarify the origin of the lighting that was displayed in the pictures previously shown by the citizens. He asked if that lighting was coming from the soccer fields

and not the lighting that was to be considered by the Board at this time. Mr. Clarke asked Mr. Boaz what the applicant can do about the issues with the lighting.

Mr. Boaz responded to the comments about the vegetation, the elevation of the soccer fields and the sports field lighting. He added that the construction is still on-going and the details are being finalized. Mr. Boaz stated that the applicant is working to eliminate any measurable lighting going into the adjacent properties.

Board question – Ms. Tucker asked if the applicant had spoken with the owners of any of the nearby horse farms. She added that she had been in the area a week or so ago and noticed that lighting from the soccer fields could be seen approximately a mile away. Mr. Boaz replied that the applicant has been in contact with the neighbors who had reached out to them with their concerns. He mentioned that the applicant is in communication with the McCoy family during the excavation and construction that is taking place near their home.

Ms. Carter asked Ms. Smith to explain the complaint process regarding violations of a conditional use permit. Ms. Smith explained that there is a formal process in statute for a revocation of a conditional use permit which would start with the Division of Building Inspection.

Staff comments – Ms. Jennings addressed the comments made regarding the vegetation on the subject property. She displayed the aerial image of the newly constructed soccer fields on the overhead screen, stating it was a recent photo, noting the vegetation shown in that photo still exists on the property. Ms. Jennings then displayed an aerial image of the vicinity map, noting where the properties on Ashley Woods Rd. were located and how it was possible that those properties were impacted by the lighting. She added that the lighting that has been installed on the soccer fields was done so in accordance with the previous Board of Adjustment approval.

Action – A motion was made by Mr. Gross to **approve PLN-BOA-23-00084: LSC FACILITIES HOLDING COMPANY, LLC** – request to amend a conditional use permit for outdoor recreational facilities (soccer fields) with outdoor lighting and a variance to increase the allowable height of free-standing lighting in a parking lot from twelve feet (12') to twenty-eight feet (28') in an Agricultural Rural (A-R) zone, on property located at 250 Doe Run Trail, based on Staff's recommendation, the testimony today and subject to the thirteen (13) conditions set forth.

Discussion on the motion – Prior to a second on the motion, Mr. Gross remarked that the applicant already has the lights; they are only asking to relocate some of the parking. He opined their request was reasonable. Ms. Tucker stated that the taller a light is, the more it illuminates down. There was further discussion.

Action – After discussion, the motion was seconded by Mr. Clarke and carried 4-2 (Sturdivant absent; Plumlee and Tucker opposed).

Note – The Board took a recess from 3:38 p.m. to 3:48 p.m. prior to hearing the following applications.

4. **PLN-BOA-23-00079: 341 SHERMAN AVE, LLC** – requested a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Mixed Low Density Residential (R-2) zone, on property located at 341 Sherman Ave. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

- 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.
- The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- There is no known record of short term rental compliance issues with the applicant.
- 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:

- The short term rental use shall be established in accordance with the submitted application materials and site plan.
- 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 a review of the short term rental regulations and resources in Lexington. She reviewed the short term rental regulations which were adopted by Council on July 11, 2023. Ms. Jennings also referred to the AirDNA platform, which maps the current short term rentals operating in Lexington, which is currently twelve hundred. She added that the Division of Planning has processed over two hundred Zoning Compliance Permits for short term rentals since the regulations were passed in July of 2023. Ms. Jennings explained that those short term rentals were legally operating prior to the passing of the new regulations and were not renting to greater than twelve occupants, therefore they could be grandfathered in by obtaining a Zoning Compliance Permit. She also noted that the Code of Ordinances has additional regulations for short term rentals, relating to business licensing and permitting, with the Division of Revenue being the main point of contact for those regulations.

Ms. Jennings referred to Article 3 of the Zoning Ordinance, which listed the restrictions and prohibitions placed on short term rentals. On the overhead screen, she displayed a map from AirDNA which depicted the short term rentals currently operating in Lexington, noting that the specific addresses of those properties were not listed, just the general area. Ms. Jennings referred to Article 1 of the Zoning Ordinance which defined short term rentals; both hosted and un-hosted. She displayed a table of the types of short term rentals and their levels of approval by zone and gave a brief explanation of it.

Board questions – Mr. Gross asked if anything was being done to advertise that the grandfather clause is going to expire on January 11, 2024. Ms. Jennings replied that a Staff had been working on a press release and other social media posts to help inform operators of existing short term rentals that they are coming close to the six-month deadline to be grandfathered in. There was further discussion.

Mr. Clarke asked if Staff knew exactly where the short term rentals currently in operation are. Ms. Jennings responded that Staff does not currently know. She explained how Staff uses mapping tools along with the AirDNA map to determine where the one thousand foot buffer boundary of the current short term rentals is. Mr. Clarke asked if Staff would ever have that information. Ms. Jennings replied that as operators register with the Division of Planning, Staff would then have that official address. She added that as that database grows; Staff will be able to rely more on that database. Mr. Clarke asked what would happen if neighbors complain about a short term rental. Ms. Jennings stated that complaints regarding short term rentals are filed with the Division of Building Inspection's Zoning Enforcement Section, who will enter the complaint and have inspectors that will go out and investigate the property. There was further discussion.

Applicant presentation – Mr. Seth Hillenmeyer, applicant and property owner was present on behalf of his application. He explained that he has been operating short term rentals for the past seven years and is experienced in operating short term rentals in a professional manner. Mr. Hillenmeyer expressed his desires for operating a short term rental at this property and listed the measures he takes in providing a safe and secure place for his occupants to stay.

Public comment

Mr. John Grimes, 272 Sherman Ave., expressed his opposition to short term rentals, listing his reasons for his opposition.

Ms. Barbara Rackers, 361 Sherman Ave., distributed information and a petition signed by forty-two property owners in the neighborhood to the Board and to Staff for the record. She stated that she was present on behalf of herself and other residents of the 300 block of Sherman Ave. Ms. Rackers voiced her opposition to this short term rental, based on it being a commercial use in a residential zone and short term rentals having an adverse effect on the housing market.

Mr. George Huestis, 709 Lynn Rd., stated he is a short term rental owner and expressed his support of a short term rental at this location. He opined that short term rentals are an economic benefit to the city and

that any hindrances to them should be stopped, and bullying should be stopped. Mr. Huestis elaborated further.

Applicant response – Mr. Hillenmeyer addressed some of the comments that had been made by members of the audience. He reiterated the safety measures that he takes to screen prospective applicants prior to renting his property.

Staff comments – Ms. Jennings addressed comments made regarding information that Staff uses to determine the number of short term rentals and their locations and the development of Staff's own database. She also clarified how short term rentals legally operated prior to the current regulations being adopted.

Board questions – Ms. Carter asked for clarification in the consideration of proximity and not saturation in some areas. She asked if Staff was looking at it on a "first in, first out basis". Ms. Jennings explained how Staff uses the AirDNA website, to determine the number of short term rentals in a one thousand foot area of the subject property. There was further discussion.

Ms. Plumlee opined that short term rentals are a commercial use in a residential area and that re-zoning is occurring one house at a time. She also expressed concerns over affordable housing. Ms. Plumlee opined that she is opposed to this application for a short term rental.

Ms. Carter addressed some of Ms. Plumlee's concerns and statements, clarifying that short term rentals are an allowable conditional use in a residential area, as are daycares, hair salons and other uses. She added that it is not the Board of Adjustment's role to rezone property.

Mr. Clarke stated that this process is not bullying, referring to a comment Mr. Huestis made earlier. He added that the people who spoke were neighbors and they have every right to express themselves regarding their neighborhoods. Mr. Clarke stated that the Zoning Ordinance has been written in such a way that it prevents the Board from having specific reasons to make a decision. He opined that it was a very poorly written Ordinance, and that he has spoken with his councilmember extensively. Mr. Clarke stated that there may be opportunities in the future to speak with other councilmembers about the weaknesses that the Zoning Ordinance contains. He further opined that the Zoning Ordinance is not going to serve the Board well. Mr. Clarke stated that he wanted it known that he was not biased one way or the other, nor was he trying to take this particular instance and make it one way or the other. He explained that if the Board chose to determine something was unacceptable; they must find legitimate reasons for doing so, and those reasons must be something other than the Board's own bias. The findings must be based on Law. Mr. Clarke elaborated further.

Action – A motion was made by Mr. Clarke, seconded by Mr. Gross and carried 4-2 (Plumlee and Tucker opposed; Sturdivant absent), to **approve PLN-BOA-23-00079: 341 SHERMAN AVE, LLC** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Mixed Low Density Residential (R-2) zone, on property located at 341 Sherman Ave., based on Staff's discussions and recommendation and subject to the four conditions as listed.

5. **PLN-BOA-23-00080: CALVIN ANDRIES** – requested a conditional use permit for an un-hosted short term rental in a Townhouse Residential (R-1T) zone, on property located at 640 Declaration Ct. (Council District 6)

The Staff Recommended: Approval, for the following reasons:

- 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.
- The proposed use should not have an adverse impact on traffic in the general vicinity, since the applicant is proposing to restrict parking to the garage and driveway.
- There is no record of short term rental compliance issues with the applicant.
- 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:

- The short term rental use shall be established in accordance with the submitted application materials and site plan.
- Occupancy of the short term rental shall be limited to no more than 5 individuals.

3. Parking for the short term rental shall be restricted to the attached garage and driveway; no on-street parking will be permitted.
4. 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.
5. 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.

Applicant representation – Mr. Calvin Andries, applicant and property owner, was present along with his wife, Ms. Samantha Davis. He explained their application for a short term rental, noting that they only plan to rent their home out approximately thirty percent of the time, when they are out of town. Mr. Andries explained that the subject property is their home and they plan to continue to live there. He also explained some of the measures they plan to take to ensure this property is not a nuisance to the neighborhood.

Board questions – Mr. Gross asked Mr. Andries where he and his wife stay when they are renting their property out. Mr. Andries replied that they will be staying with their parents, whom they frequently visit. He added that his parents live in Winchester, KY and his wife's parents live in Paris, KY.

Ms. Tucker asked Mr. Andries about his request to rent to up to five individuals. He explained that their house has two bedrooms that will accommodate five people.

Ms. Plumlee questioned the parking at the subject property. Mr. Andries replied that they intend to have guests park in the driveway and that there is enough room for two cars park there without blocking the sidewalk.

Public comment - Mr. Van Bickers, 748 Liberty Hill Dr., stated that he had a petition with signatures from forty-seven people in the neighborhood who are opposed to the operation of a short-term rental at the subject property. He read a statement from some of the residents in the Liberty Hill subdivision who are opposed.

Applicant comments – Mr. Andries addressed some of the comments made by Mr. Bickers, stating that he and his wife plan to enforce the restrictions they place on their short term rental guests. He added that there are other short term rentals in their neighborhood and in his personal experiences walking the neighborhood or driving around, he has not seen any of the concerns brought forward. Mr. Andries also noted that he has spoken with their next door neighbors and given them their phone numbers in the event there is a problem with any of their guests.

Board questions – Ms. Carter asked Mr. Andries to clarify that they plan to only rent their home out about thirty percent of the time. Mr. Andries confirmed that to be correct.

Mr. Clarke asked if the applicant would consider requiring the guests to park in the driveway. Mr. Andries stated that would be one of their rules.

Ms. Tucker asked Staff if there was an image from AirDNA of the existing short term rentals in the area of the subject property. Ms. Jennings displayed a screenshot from AirDNA on the overhead screen, noting that the red star shown in the image depicted the subject property and the three purple dots indicated the other short term rentals in the area. Ms. Jennings commented that with Staff's recommendation of approval, they include condition number three which does prohibit on-street parking and limits parking to the driveway and attached garage. She added that if this application is approved with an occupancy of five, any more than five people during a short term rental would be in violation of their approval.

Action – A motion was made by Mr. Clarke, seconded by Mr. Gross to **approve PLN-BOA-23-00080: CALVIN ANDRIES** – request for a conditional use permit for an un-hosted short term rental in a Townhouse Residential (R-1T) zone, on property located at 640 Declaration Ct., based on Staff's recommendation and subject to the five conditions as listed.

Discussion on the motion – Prior to the Board voting, Ms. Plumlee requested a discussion on the motion. Ms. Plumlee opined that the Zoning Ordinance seemed to be fairly iron-clad regarding short term rentals, in that the Board had no real say in what comes forth. She opined that it may be up to the Board members to come up with something that the Staff may welcome.

Action – The motion was voted on and carried 5-1 (Plumlee opposed; Sturdivant absent).

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

Ms. Jennings stated that there was an addendum to the agenda; the consideration of the 2024 Board of Adjustment meeting and Filing Schedule. Ms. Wade noted that Veteran's Day is now a holiday for the city, and as the second Monday of November falls on the day that the city observes Veteran's Day, this will cause the November meeting to occur on the first Monday of the month instead of the second Monday as it normally does.

Action – A motion was made by Mr. Gross, seconded by Ms. Tucker and carried 6-0 (Sturdivant absent), to **approve** the 2024 Board of Adjustment meeting and Filing Schedule as presented by Staff.

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

There were no Staff items at this time.

- VII. **NEXT MEETING DATE** – Ms. Carter announced that the next meeting date is December 11, 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 4:45 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://fucg.granicus.com/MediaPlayer.php?publish_id=12

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