

**MINUTES FOR THE BOARD OF
ADJUSTMENT MEETING**

December 11, 2023

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

- II. **ATTENDANCE** - Board members present were Raquel Carter, Carolyn Plumlee, Bob Sturdivant, Linda Tucker and Chad Walker. Branden Gross (arrived 1:55 p.m.) Harry Clarke was absent. 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**

The September 2023 Board of Adjustment minutes were considered for approval at this time.

Action - A motion was made by Ms. Tucker, seconded by Ms. Plumlee and carried 5-0 (Clarke absent; Gross late), to **approve** the minutes from the September 11, 2023 Board of Adjustment meeting.

The October 2023 Board of Adjustment minutes were not 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. Ms. Carter 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 the completion of agenda items, Ms. Carter sounded the agenda with regard to any postponements, withdrawals, and items requiring no discussion.

Postponements

1. **PLN-BOA-23-00045: 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)

Note: The Board voted to continue this item at the November 13, 2023 meeting.

Applicant representation – Mr. Mark McCain, Vision Engineering, was present on behalf of the applicant. Mr. McCain stated that the applicant was requesting postponement of this application to the January 8, 2024 meeting.

Board question – Ms. Carter asked for clarification as to whether postponement was the correct term, due to the applicant's request for an additional variance. Ms. Jennings stated that the applicant had filed an amended application that included a new variance. Therefore, the applicant did need to postpone in order for the Board to hear that additional variance. She confirmed that postponement was the correct term; not continuance.

Action – A motion was made by Mr. Sturdivant, seconded by Ms. Plumlee and carried 5-0 (Clarke and Gross absent), to **approve** the applicant's request for a one-month postponement of to the January 8, 2024 Board of Adjustment meeting.

C. Abbreviated Hearing

1. **PLN-BOA-23-00068: MATTHEW DELUCA** – requested a variance to reduce the required rear yard setback of a through lot from twenty feet (20') to twelve feet (12') in order to construct an addition in a Planned Neighborhood Residential (R-3) zone, on property located at 2116 Maura Trace. (Council District 9)

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 applicant's proposal is consistent with other structures in the vicinity and the applicant plans for the addition to be designed in compliance with the subject property's deed restrictions.
- b. The irregular shape of the lot, including the curvature of Lyon Drive along the rear of the property, is a special circumstance that justifies the need for the variance.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variance as soon as it was determined that it was needed and prior to construction.

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

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

Applicant representation – Mr. Matthew Deluca, applicant, was present on behalf of this application. There were no questions from the Board regarding the application.

Action – A motion was made by Mr. Walker, seconded by Mr. Sturdivant and carried 5-0 (Clarke and Gross absent), to **approve PLN-BOA-23-00068: MATTHEW DELUCA** – request for a variance to reduce the required rear yard setback of a through lot from twenty feet (20') to twelve feet (12') in order to construct an addition in a Planned Neighborhood Residential (R-3) zone, on property located at 2116 Maura Trace, based on Staff's recommendation subject to the two conditions as listed.

2. **PLN-BOA-23-00085: GIBSON, TAYLOR, THOMPSON ARCHITECTURE AND DESIGN** – requested a variance to reduce the required side yard for a deep building from eight feet and five inches (8'5") to five feet and six inches (5'6") in order to construct an addition within a Neighborhood Design Character Overlay (ND-1) zone in a Single Family Residential (R-1C) zone, on property located at 477 Hart Road. (Council District 5)

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

- a. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity. The applicant's proposal is similar to existing setbacks in the surrounding area and the addition will be set back the same distance as the closest portion of the existing residence that has occupied this property since 1939.
- b. The granting of the variance will not alter the character of the general vicinity as the addition will meet the Chevy Chase Neighborhood Character Design (ND-1) standards and is located in the rear portion of the property where it will be adequately screened from view.
- c. The existing legally non-conforming side yard setback is a special circumstance that justifies the need for the variance.
- d. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variance as soon as it was determined that it was needed and prior to construction.

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

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

Applicant representation – Mr. Baron Gibson, applicant, was present on behalf of this application. Ms. Carter asked Mr. Gibson if he had reviewed the conditions of approval as recommended by Staff and if the applicant was in agreement with them. Mr. Gibson indicated that the applicant was in agreement with the conditions. There were no questions from the Board.

Action – A motion was made by Mr. Walker, seconded by Mr. Sturdivant and carried 5-0, (Clarke and Gross absent), to **approve PLN-BOA-23-00085: GIBSON, TAYLOR, THOMPSON ARCHITECTURE AND DESIGN** – request for a variance to reduce the required side yard for a deep building from eight feet and five inches (8'5") to five feet and six inches (5'6") in order to construct an addition within a Neighborhood Design Character Overlay (ND-1) zone in a Single Family Residential (R-1C) zone, on property located at 477 Hart Road, based on Staff's recommendation and subject to the two conditions as listed.

3. **PLN-BOA-23-00092: RAMON HERNANDEZ** – requested a variance to reduce the required side yard setback for an accessory structure (carport) that projects between the principal structure and the side lot line from six feet (6') to one-and-one-half feet (1½') in order to construct a detached accessory structure (carport) in a Mixed Low Density Residential (R-2) zone, on property located at 321 Peachtree Road. (Council District 7)

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 carport will improve the character of the property and will feature a setback typical of that of other detached accessory structures.
- b. The restrictive developable area of the lot is a special circumstance that justifies the need for the variance to the side yard requirement.
- 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. The carport shall not be enclosed.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

Applicant representation – Angel Velasco, applicant, was present on behalf of this application. Ms. Carter asked Mr. Velasco if the applicant had read the conditions of approval and was in agreement with them, including that the carport would not be enclosed. Mr. Velasco confirmed that the applicant was agreeable to the conditions, and that the carport would not be enclosed; it would only be covered.

Action – A motion was made by Mr. Sturdivant, seconded by Ms. Plumlee and carried 5-0 (Clarke and Gross absent), to **approve PLN-BOA-23-00092: RAMON HERNANDEZ** – request for a variance to reduce the required side yard setback for an accessory structure (carport) that projects between the principal structure and the side lot line from six feet (6') to one-and-one-half feet (1½') in order to construct a detached accessory structure (carport) in a Mixed Low Density Residential (R-2) zone, on property located at 321 Peachtree Road, based on Staff's recommendations and subject to the three conditions as listed.

4. **PLN-BOA-23-00094: JOSEPH COSTA** – requested a variance to increase the allowable size of accessory structures from 50% to 53% in order to construct an accessory structure 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 461 N. Limestone. (Council District 1)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. The proposed garage should have little visual impact on the surrounding properties, as it is sufficiently screened from the Fifth Street right-of-way, and the principal structure on the immediately adjoining lot is located over 60 feet from the proposed garage.

- b. The historic nature of the property, and existing historic accessory structures, are special circumstances that justify the need for the requested variance.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it was needed and prior to construction.

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

1. The accessory structure shall be constructed in accordance with the submitted application materials and site plan.
2. The accessory structure shall not be utilized by the legally non-conforming secondary residence (carriage house).
3. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

Applicant representation – Mr. Joseph William Costa, applicant and property owner, was present on behalf of his application. Ms. Carter asked Mr. Costa if he had read Staff's recommendations and the conditions of approval and if he was comfortable with them. Mr. Costa confirmed that he had read them and that he was comfortable with them.

Board questions – Ms. Plumlee asked the applicant if the accessory structure would have heat and electricity. Mr. Costa confirmed that there would be electricity, but he was not certain as to whether there would be heat in the structure.

Action – A motion was made by Mr. Sturdivant, seconded by Ms. Plumlee and carried 5-0 (Clarke and Gross absent), to **approve PLN-BOA-23-00094: JOSEPH COSTA** – request for a variance to increase the allowable size of accessory structures from 50% to 53% in order to construct an accessory structure 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 461 N. Limestone, based on Staff's recommendation and subject to the three conditions as listed.

5. **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)

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

- a. Approving the requested conditional use should not adversely affect the subject or surrounding properties, as the proposed bank and drive-through facilities significantly improve access and circulation into and throughout the site.
- b. The proposed drive-through facilities should not negatively impact the subject or surrounding properties as the expected volume of traffic is low, and the orientation of the drive-through lanes directs headlights away from residential uses, and towards commercial uses across Southport Drive.
- c. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The subject property shall be developed in accordance with the submitted application materials and site plan.
2. All necessary permits and approvals shall be obtained from the Divisions Building Inspection and Traffic Engineering prior to construction.

Applicant representation – Mr. Zach Cato, attorney for the applicant, was present on behalf of this application. Ms. Carter asked Mr. Cato if the applicant had read the conditions of approval and was in agreement with them. Mr. Cato confirmed that the applicant read, and was in agreement with those two conditions.

Board comment – Mr. Sturdivant opined that this project will make a vast improvement upon the corner in front of the Co-op on Southland Dr. Mr. Cato agreed.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 5-0 (Clarke and Gross absent), to **approve PLN-BOA-23-00073: TRADITIONAL BANK** – request for 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., based on Staff's recommendation and subject to the two conditions as listed.

6. **PLN-BOA-23-00088: MARYLAND AVENUE GETAWAY, LLC** – requested a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Single Family Residential (R-1E) zone, on property located at 554 Maryland Avenue. (Council District 11)

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 parking is available on Maryland Avenue.
- 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 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.

Applicant representation – Ms. Amy Chambers, applicant and property owner, was present on behalf of her application.

Board comments – Ms. Plumlee stated that she had concerns regarding this application due to there being other short term rental properties in the area. She opined that this area could be getting close to being saturated at this point.

Note – Mr. Gross arrived to the meeting at 1:55 p.m.

Action – A motion was made by Ms. Plumlee for **disapproval of PLN-BOA-23-00088: MARYLAND AVENUE GETAWAY, LLC** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Single Family Residential (R-1E) zone, on property located at 554 Maryland Avenue, because the staff report project description stated that there are a couple dozen short term rentals within one thousand feet of the subject property and according to that number, there would be a short term rental every forty or fifty feet and that is reaching the saturation point.

Law comments – Prior to there being a second on the motion, Ms. Smith asked Ms. Plumlee if she was basing her motion to disapprove on her finding that there would be an adverse impact by allowing this use in this area. Ms. Plumlee asked if she should consult with Ms. Smith to draft findings. Ms. Smith replied that if Ms. Plumlee wished to make a motion for disapproval, a short recess may be needed. She added that it may be appropriate for the Board to hear the applicant's responses to the points that were raised, but she would leave that decision to the Chair.

Board comments - Ms. Carter responded that she thought the applicant should have an opportunity to respond and asked that the motion be suspended to allow the applicant to address some of the concerns that had been raised.

Applicant comments – Ms. Chambers explained that her property is in close proximity of The Apiary, which is a large event venue. She opined that it would be beneficial for downtown Lexington for her property to be used as a short term rental. Ms. Chambers added that she had used a local designer and that she will have a twenty-four hour property manager. She mentioned that the subject property has its own driveway, a sound detection system will be installed and a security system with cameras had already been installed. Ms. Chambers listed other amenities of her property.

Board comments – Ms. Plumlee stated that she still stood by her motion. There was further discussion. Ms. Carter asked Staff if they would like to present information regarding this application and their

recommendation of approval of it. Ms. Carter noted that as Staff had recommended approval of the application, and there was no opposition present in the audience, this application was moved to the Abbreviated Hearing portion of the agenda.

Staff comments – Ms. Jennings directed the Board's attention to the overhead screen on which she displayed a screenshot from the AirDNA website in order to address the saturation concern Ms. Plumlee expressed. This screenshot depicted the approximate locations of current short term rentals in the subject area. Ms. Jennings explained how Staff uses this information to determine the approximate one thousand foot distance. She then displayed an exhibit of the vicinity map of the subject property which depicted the locations of the short term rentals that have been issued Zoning Compliance Permits as of December 8, 2023. Ms. Jennings noted that it is up to the Board to determine what a concentration of short term rentals is. There was further discussion.

Board questions and comments – Ms. Carter commented that there was a motion on the floor and asked if the Board could return to that motion or if a new motion was necessary. Ms. Smith replied that if the Board wanted to proceed with the original motion, it may be appropriate to have a short recess, because she wanted to discuss how the original motion may need to include some language from KRS 100. Ms. Carter mentioned that there was not yet a second to the original motion. Ms. Smith acknowledged that there was not a second and that a motion fails without a second. She also stated that the motion could be withdrawn and made again.

Ms. Tucker stated that she would second the motion. Ms. Carter called for a recess.

Note – The Board took a recess at 3:18 p.m. and reconvened at 3:23 p.m.

Action – A motion was made by Ms. Plumlee for **disapproval** of **PLN-BOA-23-00088: MARYLAND AVENUE GETAWAY, LLC** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Single Family Residential (R-1E) zone, on property located at 554 Maryland Avenue, on the grounds that the subject property is surrounded by a high concentration of short term rentals, thus an additional short term rental would have an adverse impact on the surrounding neighborhood by further increasing the volume of traffic. The motion was seconded by Ms. Tucker.

Discussion on the motion – Mr. Gross stated that he planned to vote against this motion for disapproval. He opined that he did not feel the record showed there was a saturation of short term rentals in the subject area. Mr. Gross added that there was a lot examples of mixed-use housing in the area and opined that short term rentals allow people to get closer to the tourism amenities in the city.

Ms. Carter stated that agreed with what Mr. Gross said and added that the subject area appeared to be an ideal area for this type of use, with it being a commercial area with a high level of walkability.

Action – The motion for **disapproval** was voted on and **failed** 2-4 (Carter, Gross, Sturdivant and Walker opposed; Clarke absent).

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 4-2 (Clarke absent), to **approve** **PLN-BOA-23-00088: MARYLAND AVENUE GETAWAY, LLC** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Single Family Residential (R-1E) zone, on property located at 554 Maryland Avenue, based on Staff's recommendation, the testimony by the applicant and subject to the four conditions as listed.

7. **PLN-BOA-23-00093: JESSICA JUSTICE** – requested a conditional use permit in order to operate a home-based beauty salon business in an Agricultural Rural (A-R) zone, on property located at 3750 Combs Ferry Road. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as it should not create disturbing levels of traffic, noise, or odors. The property is of a sufficient size to serve the limited number of clients to the home on a daily and weekly basis.
- b. 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 home-based beauty salon business shall be operated in accordance with the submitted application materials and site plan, with appointments only on an individual basis.
2. The use shall operate in accordance with the requirements of the Kentucky Board of Cosmetology.
3. All necessary permits including a Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the use.
4. All necessary approvals for the septic system shall be obtained from the Health Department prior to initiation of the use.
5. The conditional use shall become null and void should the applicant no longer reside at this address.

Applicant representation – Ms. Jessica Justice, applicant and property owner, was present on behalf of her application. Ms. Carter asked her if she had reviewed the five conditions of approval as listed by Staff and if she was in agreement with them. Ms. Justice indicated that she had read them and that she was in agreement with them.

Board questions – Ms. Plumlee asked the applicant if this was her personal residence and if she lived at the property. Ms. Justice acknowledged that she did.

Ms. Tucker asked the applicant how many clients she intended to have in and out of the residence on a daily basis. Ms. Justice stated that she works while her children are in school. She added that she planned to see approximately three people each day; Tuesday through Friday.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 4-2 (Plumlee and Tucker opposed; Clarke absent), to **approve PLN-BOA-23-00093: JESSICA JUSTICE** – request for a conditional use permit in order to operate a home-based beauty salon business in an Agricultural Rural (A-R) zone, on property located at 3750 Combs Ferry Road, based on Staff's recommendation and subject to the five conditions as listed.

D. Conditional Use Appeals

1. **PLN-BOA-23-00083: 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)

The Staff Recommended: Disapproval, for the following reasons:

- a. The applicant has not provided a sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance or KRS 100.243. There do not appear to be special circumstances that are unique to the subject property that do not generally apply to land in the general vicinity, or in the same zone that justify the need for the variance.
- b. The applicant has not provided sufficient information to determine that strict enforcement of the Zoning Ordinance will result in an unnecessary hardship or deprive the applicant of the reasonable use of their land, since the property already has 8 gasoline pumps.
- c. Approval of the requested variance could have a negative impact on the safety of pedestrians, as the property is located at a transition point between the residential and industrial uses in the immediate area.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which she displayed an aerial image of the subject property and its vicinity, with the subject property outlined in blue. She also displayed a zoning map of the surrounding areas, noting there was a mix of zoning categories within the vicinity. Ms. Jennings described the subject property itself. She added that in October of 2022, a development plan was certified for this property, which approved the addition of two gasoline pumps. Along with the additional gasoline pumps, the applicant is constructing an addition to the existing building, which will add an additional fifteen hundred square feet to that building.

Ms. Jennings displayed a copy of the development plan for the subject property on the overhead screen and noted some of its specifications. She also displayed a copy of the applicant's site plan on the overhead screen, noting where the subject gasoline pumps were to be located. Ms. Jennings explained the applicant's justification for requesting this variance. She stated that Staff could not support this request and listed Staff's reasons for their recommendation of disapproval.

Board questions and comments – Mr. Gross asked if the applicant had provided their proposed hours of operation. Ms. Jennings responded that the applicant had not provided that information in their justification statement or in their application online. Mr. Gross asked if Staff knew why the issue was not resolved at the Planning Commission. Ms. Jennings replied that the applicant needed a variance to amend the development plan to add an additional gasoline pump.

Mr. Sturdivant asked if there would be an additional underground gasoline tank, or if all of the gasoline pumps would be fed from the same tank. Ms. Jennings confirmed that there would be no additional tanks. Mr. Sturdivant asked if there would be additional construction associated with digging up the rest of the area in order to feed the new pumps. Ms. Jennings replied that it was her understanding that the proposed construction is only the additional canopy and gasoline pump, but the applicant could better answer that question. Mr. Sturdivant commented that with the subject property was a popular lunch location, and that additional gas pumps could cause additional traffic congestion. Ms. Jennings confirmed that Staff was in agreement with that statement.

Mr. Gross asked if Staff and the applicant had discussed adding pedestrian access points. Ms. Jennings replied that it was her understanding that the applicant had spoken with Staff from the Division of Engineering regarding constructing a crossing from Contract St. Ms. Jennings stated that it was her understanding that the applicant had spoken with the Division of Traffic Engineering about a curb crossing from Contract St. She added that as the western boundary was in a Highway Service Business (B-3) Zone, zone-to-zone screening was a requirement, and that it was addressed on the development plan. Ms. Jennings stated that the applicant had previously stated in a meeting that they had installed a sidewalk along that property boundary, but that Staff is concerned that the sidewalk would interfere with the required zone-to-zone screening. She added that the applicant had not submitted an updated site plan to reflect that. There was further discussion regarding the sidewalk and buffer.

Applicant representation – Mr. Richard Murphy, attorney, was present on behalf of the applicant. He introduced Mr. Joe Rayyan, applicant and property owner, as well as Mr. Bruce Nicol, a longtime neighbor and customer of the Rayyan's market. Mr. Murphy explained the history of the Rayyan's market and the expansion that the applicant was planning. He displayed a copy of the applicant's site plan on the overhead screen and explained the locations of the existing gasoline pumps, as well as the location of the proposed pump.

Mr. Murphy informed Ms. Carter that he, Mr. Rayyan, Mr. Nichol and a neighbor, Ms. Glenna Baker, 180 Devonia Ave., had been in the lobby discussing this application, while others present in the audience were sworn in. Ms. Carter asked those who had not been sworn in previously to stand and be sworn in at this time. The oath was administered to those individuals at that time.

Mr. Murphy continued his presentation. He mentioned that there had been conversations with Staff from the Division of Traffic Engineering regarding pedestrian access. Mr. Murphy displayed images of the parking lot on the subject property and images of the parking lot belonging to the apartment building next door at 800 Meadow Lane. He mentioned that the owner of that property had requested that the applicant build a wall between those two properties. Mr. Murphy also stated that the applicant agreed to construct a six-foot wall on the property to the rear, which belonged to Ms. Baker.

Board questions – Mr. Gross asked Mr. Murphy about the requirement for zone-to-zone screening that Staff had mentioned. Mr. Murphy confirmed that Staff had mentioned that requirement. Mr. Gross stated that a variance request would be necessary for that screening and suggested that this application be continued to the January 8, 2024, meeting in order for the applicant to properly submit their request for this additional variance. Mr. Murphy asked to continue with his presentation to determine if an additional variance was needed.

Applicant presentation (continued) - Mr. Murphy continued with his presentation, explaining why the applicant had not requested the variance for zone-to-zone screening earlier in their application process.

Board questions - Ms. Carter asked what the distance from the sidewalk to the proposed carport was. Mr. Murphy responded that it would be approximately nineteen feet from the gas pump to the edge of the sidewalk. He added that the Division of Traffic Engineering had indicated that was sufficient for traffic movement.

Mr. Gross asked what the hours of operation of the business are. Mr. Murphy replied that the hours of operation were 6:30 a.m. to approximately 8:00 p.m., adding there would not be any televisions on the gas pumps, nor would an additional underground tank be added.

Mr. Sturdivant asked if the hours of operation were only for the gas pumps or the restaurant. Mr. Murphy replied that those hours would be for both uses. Mr. Rayyan interjected that the gas pumps could be operated twenty-four hours per day. Mr. Sturdivant asked what the reasoning was for the four foot tall wall on the back of the property that borders with the apartment building, versus the six foot tall wall on the other side. He opined that a six foot wall all of the way down would reduce noise and lighting on both locations. On the site plan shown on the overhead screen, Mr. Murphy indicated the location of Ms. Baker's property on which where he had previously mentioned the proposed six foot tall wall, and Mr. Melody's property, where the four foot tall wall had previously been mentioned. He stated that the applicant would be amenable to making the entire wall six feet tall, and added that Mr. Thomas Melody, the owner of the apartment building, had verbally agreed to a six foot tall wall on his side of the property line as well.

Mr. Gross asked about the entrances to the restaurant, pedestrian access, parking and parking lot markings. There was some discussion regarding these topics. Mr. Gross stated that he would want to see a condition that there not be televisions on the new pump. He added that he was concerned about not having everything approved in one full package.

Staff comments - Ms. Wade remarked that to her knowledge, the sidewalk was not designated on the development plan, so that would have been constructed outside of the approval of the development plan. She asked Ms. Jennings to display the development plan on the overhead screen again. There was further discussion

Board questions – Ms. Carter asked if the wall itself could be used to satisfy the requirements on the proposed project, even though the wall is not on the subject property. Ms. Wade replied that landscaping requirements are typically between a residential zone and a business zone, a width of fifteen feet with trees and shrubs and no fence is required. She added that per the Zoning Ordinance, one can reduce that width to five feet and construct a six foot fence. A minimum of five feet of landscaping is required in all cases. There was further discussion.

Ms. Tucker expressed her concerns for pedestrian traffic. Mr. Murphy stated that the applicant will work with the Division of Traffic Engineering to get a defined pedestrian access from Contract St.

Public comment

Mr. Bruce Nicol, 1604 Bon Air Dr., spoke in support of the Rayyan family, stating that he has known the family for approximately five years and visits this business almost daily. He spoke in support of the proposed project, opining that the community benefits from Mr. Rayyan's business in many ways. Mr. Nicol remarked that this business serves an underserved community.

Ms. Glenna Baker, 804 Meadow Lane, expressed her concern over the traffic that is cutting through her yard, following the destruction of the fence between her property and the subject property. She added that she was requesting that the applicant construct a six foot tall fence to prevent individuals from jumping over the fence.

Board comments – Mr. Gross opined that the issues Ms. Baker is experiencing could be solved with the construction of the fence that is being proposed.

Action – A motion was made by Mr. Gross, seconded by Mr. Sturdivant and carried 6-0 (Clarke absent), to **continue PLN-BOA-23-00083: JOE RAYYAN** – request for 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., to the January 8, 2024 Board of Adjustment, in order to allow the applicant time to work with Staff to resolve the issues that were discovered at today's meeting.

2. **PLN-BOA-23-00090: ANNE RAMIREZ** – requested a variance to reduce the required setback from the side and rear lot lines from two feet (2') to zero feet (0') in order to pave a driveway within the defined Infill and Redevelopment Area in a Medium Density Residential (R-4) zone, on property located at 141 E. Fourth Street. (Council District 1)

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

- a. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity as a non-conforming gravel driveway has existed in this same location for over 20 years.
- b. The narrow width of the portion of the property accessed from Johnson Avenue, and lack of sufficient side yard width to accommodate a driveway extending from the property's Fourth Street frontage, are special circumstances that justify the need for the variance.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as it will allow an existing non-conforming driveway to be brought into compliance.

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 Divisions of Building Inspection and Traffic Engineering prior to construction.

Staff presentation – Ms. Jennings Directed the Board's attention to the overhead screen on which she displayed a brief description of the applicant's request for a variance. She also displayed an aerial image of the subject property and its vicinity, with the subject property outlined in red. Ms. Jennings described the subject property and some of the other properties in the vicinity. She explained the necessity for the applicant's request for this variance to allow for paved parking. Ms. Jennings also displayed the applicant's site plan which depicted the proposed driveway. She noted that Staff recommended approval of this application and listed their reasons for this recommendation, along with conditions of approval.

Applicant representative – Ms. Anne Ramirez and Mr. Michael Brewster, applicants and owners of the property were present on behalf of their application. Ms. Ramirez explained that they had purchased the property approximately one year ago and since that time they have been making improvements to the property.

Public comment – Mr. Boyd Shearer, 412 Johnson Ave., presented a graphic which depicted the elevation contours of his property, the subject property and the property next to it. Copies were distributed to the members of the Board. Mr. Shearer expressed concerns he and his wife had, regarding problems they have had with stormwater runoff. He gave an example of an instance when the owner of a nearby apartment complex attempted to pave an extension of their parking lot without a permit, causing flooding to occur on the Shearer's property at 412 Johnson Ave., 414 Johnson Ave. and 416 Johnson Ave. during a heavy rain event. Mr. Shearer listed other concerns he and his wife had.

Board question – Mr. Sturdivant asked Staff if Mr. Shearer's concerns regarding stormwater runoff had been addressed with the Division of Engineering. Ms. Jennings replied that if the area meets the minimum requirements, when the applicant applies for their paving permit, the Division of Engineering would have an opportunity to review the paving permit. There was further discussion.

Ms. Carter asked the applicants if they were amenable to working with the Division of Engineering if an additional condition is added to their application to ensure the stormwater runoff is not a problem. The applicants indicated they were amenable to doing so. Mr. Brewster added that they had discussed the curb with their contractor and it will be added. He stated that he did not know how to properly draw it on the site plan.

Note – The Board took a short break at 3:12 p.m. to discuss the addition of a third condition. The Board reconvened at 3:17 p.m.

Action – A motion was made by Mr. Sturdivant, seconded by Mr. Gross and carried 6-0 (Clarke absent) to **approve PLN-BOA-23-00090: ANNE RAMIREZ** – request for a variance to reduce the required setback from the side and rear lot lines from two feet (2') to zero feet (0') in order to pave a driveway within the defined Infill and Redevelopment Area in a Medium Density Residential (R-4) zone, on property located at 141 E. Fourth St., based on Staff's recommendation and subject to the two conditions as listed, and the addition of a third condition which states:

3. All construction plans shall be reviewed and accepted by the Division of Engineering so as to prevent stormwater impact to adjoining properties.

Note – Prior to hearing the following application, Mr. Walker recused himself from hearing this application due to a conflict of interest. The Board took a short recess at 3:18 p.m. and reconvened at 3:23 p.m.

3. **PLN-BOA-23-00086: PHILLIP PETRIE** – requested a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 316 Nelson Avenue. (Council District 1)

The Staff Recommended: Disapproval, for the following reason:

- a. The proposed use will have an adverse influence on the subject property and the surrounding neighborhood, by removing an existing housing unit from the market that could otherwise be utilized as a primary residence for an owner occupant or long-term tenant within one of the top 10 Census Block Groups identified as a Priority Area, as mapped within the Task Force on Neighborhoods in Transition Report. These priority areas are vulnerable to involuntary displacement, and the proposed use would heighten existing issues with gentrification and displacement.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which she displayed an aerial image of the subject property and the surrounding vicinity. The subject property was outlined in red. She explained that there was a variety of zoning categories in the immediate vicinity. Ms. Jennings explained the definitions of short term rentals, according to the Zoning Ordinance, as well as the regulations for operating a short term rental per the Zoning Ordinance.

Ms. Jennings displayed the site plan that was submitted by the applicant, as well as a screenshot from the AirDNA website which depicted the approximate locations of other short term rentals in the vicinity. She then displayed an aerial image of the short term rentals in the area that have received their Zoning Compliance Permits to operate. She noted that this particular short term rental application is the first application for which Staff had recommended disapproval. Ms. Jennings added that disapproval was recommended based its location in the census block group; one of the top ten in the area that is identified within the Neighborhoods in Transition Task Force Report. She displayed an image of that report with areas mapped according to data from that report. Ms. Jennings said that she would explain the other maps that were mentioned in the Staff Report. She displayed the maps on the overhead screen as she explained them. Ms. Jennings repeated that Staff could not support this application for a short term rental, and gave Staff's reasons for their recommendation.

Applicant representation – Mr. Phillip Petrie, 1208 Colonial Dr., was present on behalf of his application. He thanked Staff for all of their hard work. Mr. Petrie explained his application and reasons for wanting to operate a short term rental at this location. He emphasized their desire for helping their current tenants in other rental properties that the applicant owns.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 5-0 (Walker recused; Clarke absent), to **disapprove PLN-BOA-23-00086: PHILLIP PETRIE** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 316 Nelson Avenue, based on Staff's recommendation and the reasons listed in the staff report.

Note – Mr. Walker returned to the meeting.

4. **PLN-BOA-23-00091: NICOLLE GIRVES** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 1109 McClain Dr. (Council District 1)

The Staff Recommends: Approval, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate parking is available along McClain Drive.
- 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 is made subject to the following conditions:

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.

2. Occupancy of the short term rental shall be limited to no more than 6 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.

Applicant presentation – Ms. Nicolle Girves, applicant and property owner, was present on behalf of her application.

Citizen comments – Mr. David Burdette, 1104 McClain Dr., expressed his opposition to a short term rental operating at this address. He noted that he had seen a lot of activity at the property with people coming and going and that concerned him due to its close proximity to a school bus stop.

Applicant comments – Ms. Girves stated that she purchased the subject property in August or September of 2022 and she had been spending a lot of time there, adding that would explain the activity Mr. Burdette had seen. She stated that she had installed a security system with several cameras around the property and that she is also researching noise level monitoring that she has heard about.

Board question - Ms. Carter asked Ms. Girves how often she intended to rent the home. Ms. Girves replied that she planned to rent it out approximately fifty percent of the time. She added that there is on-street parking available as well as a garage for parking.

Ms. Tucker asked if it was known how many short term rentals were in the subject area. Ms. Jennings displayed a screen shot from AirDNA which depicted three short term rentals within the one thousand foot vicinity.

Ms. Plumlee opined that she empathized with Mr. Burdette and that she appreciated him being present.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 5-0 (Plumlee abstained; Clarke absent), to **approve PLN-BOA-23-00091: NICOLLE GIRVES** – 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 1109 McClain Dr., based upon Staff's recommendation, the testimony heard today and subject to the four conditions as listed.

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

There were no Board items to be heard.

- 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 to be heard.

- VII. **NEXT MEETING DATE** – Ms. Carter announced that the next meeting date will be January 8, 2024 at 1:30 p.m., Council Chambers, 200 East Main Street, Lexington, KY 40507.

- VIII. **ADJOURNMENT** – As there was no further business, the Ms. Carter declared the meeting adjourned at 3:52 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.