

MINUTES FOR THE BOARD OF ADJUSTMENT
MEETING

January 8, 2024

- I. **CALL TO ORDER** – Chair Carter called the meeting to order at 1:38 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.
- II. **ATTENDANCE** - Board members present were Raquel Carter, Harry Clarke, Branden Gross, Carolyn Plumlee, Bob Sturdivant, Linda Tucker and Chad Walker. Others present were Brittany Smith, Department of Law and Joseph Edmiston, Division of Traffic Engineering. Planning Staff members present were Traci Wade, Autumn Goderwis, Meghan Jennings, James Mills and Donna Lewis.

III. **APPROVAL OF MINUTES**

The October 2023 Board of Adjustment minutes were considered at this time.

Action – A motion was made by Ms. Tucker, seconded by Ms. Plumlee, and carried 7-0, to **approve** the minutes from the October 9, 2023 Board of Adjustment meeting.

IV. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Swearing of Witnesses** – Ms. Carter announced that any applicant or objector, or anyone in the audience who planned to speak to any appeal before the Board, please stand in order to be sworn in at this time.

The oath was administered to several members of the audience at this time.

- 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-23-00045: RED DRAW DELAWARE, LLC** – requested variances to) 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 six percent (6%), 3) reduce the required Vehicular Use Area tree canopy from thirty percent (30%) to twenty-three percent (23%), 4) reduce the required useable open space from ten percent (10%) to five percent (5%), and 5) reduce the required minimum dimension for useable open space from ten feet (10') to five feet (5') 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)

Applicant representation – Mr. Mark McCain, Vision Engineering, was present on behalf of the applicant. He stated that the applicant was requesting a one-month postponement of this application, due to having to notify neighboring property owners of the need for an additional variance request.

Action – A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 7-0 to **approve** the applicant's request for a one-month postponement to the February 12, 2024 Board of Adjustment meeting.

2. **PLN-BOA-23-00106: SOUTH CENTRAL BANK, INC.** – requested a conditional use to establish drive-through facilities accessory to a bank within the defined Infill and Redevelopment Area in a Downtown Frame Business (B-2A) zone, on property located at 473 E. Main St. (Council District 3)

Applicant representation – Mr. Nick Nicholson, attorney, was present on behalf of the applicant. He stated that the applicant was requesting a one-month postponement to the February 12, 2024 Board of Adjustment meeting, to allow them time to update their site plan to comply with the Zoning Ordinance.

Action – A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 7-0, to **approve** the applicant's request for a one-month postponement to the February 12, 2024 Board of Adjustment meeting.

Withdrawals

1. **PLN-BOA-23-00100: 300 SHERMAN AVE., LLC** – requested a conditional use permit for an un-hosted short term rental with an occupancy greater than 12 within the defined Infill and Redevelopment Area in a Mixed Low Density Residential (R-2) zone, on property located at 300 Sherman Ave. (Council District 5)

Board comments – Ms. Carter announced that this application had been withdrawn by the applicant. She asked if there was anyone present in the audience who wished to speak, regarding the application. There was no one present wishing to speak.

C. Abbreviated Hearing

1. **PLN-BOA-23-00105: TURNER PROPERTIES 4, LLC** – requested variances to reduce the required property perimeter landscaping adjoining a railroad from fifteen feet (15') to zero feet (0') and reduce the required vehicular use area perimeter buffer from eight feet (8') to zero feet (0') in order to construct a mixed-use development in an Industrial Redevelopment Planned Unit Development (PUD-3) zone, on property located at 125 Turner Commons Way. (Council District 11)

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

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity as the elimination of the property perimeter and VUA buffers will allow the existing slab and retaining wall to remain in place.
- b. The subject property's potential structural issues facing the retaining wall constitute a special circumstance that does not apply to land in the general vicinity or in the same zone. Additionally, denial of the variances could create an unreasonable hardship on the applicant if the retaining wall and concrete slab were to fail.
- c. The granting of these 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 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 an amended Final Development Plan, including buffering for residential uses as specified in Condition #4 below.
2. Action of the Board shall be reflected on the Final Development Plan for the property, including any requirements or conditions related to buffering and landscaping.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection, and Engineering prior to construction.
4. A minimum five-foot (5') buffer area containing a double row of six-foot high hedge located on either side of an adjoining parking area shall be installed between any residential structures and the railroad; or a substantially similar buffer specified by the Division of Environmental Services shall be located between any residential structures and the railroad.

Applicant representation – Mr. Zach Cato, attorney, was present on behalf of the applicant. Ms. Carter asked Mr. Cato if the applicant had reviewed the four conditions of approval, as listed by Staff. Mr. Cato replied that the applicant had reviewed the conditions, and that he had discussed a clarification with Staff regarding some of the language in condition #4. He opined that the applicant was in agreement with the meaning of the language in condition #4, but perhaps the Board may want to amend the language of the condition. Mr. Cato stated that it was his understanding after speaking with Staff, that condition #4 would relate only to purely residential buildings and not mixed-use or commercial buildings in this zone. He added that the applicant was amenable to condition #4 on that basis.

Board comments and questions – Mr. Gross asked if Staff felt any language should be added or if clarification on the record was sufficient. Ms. Goderwis stated that Staff did not believe it was necessary to add any language, unless the Board and the applicant would be more comfortable with further clarification. She added that the intent was that it be only for residential structures, not mixed-use.

Mr. Gross asked Mr. Cato if the applicant was in agreement with the amended language being disclosed on the record. Mr. Cato replied that for purposes of permitting and having a single document to show the Staff who review the permits, he would prefer to have the amended language stated in the Certificate of Land Use Restriction. Mr. Gross asked if Mr. Cato had language that he had proposed to Staff or would propose to the Board. Mr. Cato replied that he would ask that the language state, "for any non-residential building, or any mixed-use or commercial building". He added that it, the five-foot buffer, be only required for a purely residential building. Mr. Gross asked Staff if that language was something that could be added to the condition. Ms. Goderwis suggested adding the word "solely" before the word "residential" in the second line of condition #4. Mr. Gross asked Mr. Cato if that was acceptable to the applicant. Mr. Cato confirmed that would be acceptable to the applicant.

Public comment

A member of the audience raised her hand and stated that she had not been able to hear the discussion and that she had a question. Ms. Carter granted her permission to ask her question from the podium. Ms. Ellie Wahlberg stated that she owned property near the project, but did not give the address. She asked if the required property perimeter landscaping were to be reduced from fifteen feet (15') to zero feet (0'), would that eliminate the buffer.

Ms. Carter deferred the question to Staff or the applicant. Ms. Goderwis stated that the applicant could provide better clarification as they are requesting a reduction in the buffer, for the intent of not having a buffer between their structures and the railroad. She added that the Zoning Ordinance requires a fifteen foot (15') buffer measured from their property line that they share with the railroad. Ms. Goderwis explained the circumstances of the subject property having a concrete pad adjacent to a retaining wall that abuts the railroad. She added that the applicant had requested to reduce that down to zero feet (0') to allow the paving to remain as it is. Mr. Cato said Ms. Goderwis had given a fair summary and clarified that the subject plan had been previously approved by the Planning Commission as part of Planned Unit Development (PUD-3) zone plan which had these exact site conditions and nothing will be changed. He added that the buffer was questioned after the approval was granted that needed to be addressed at some point and that is the purpose of these requests for variances. Mr. Cato stated that granting these variances will allow the applicant to build the improvements that have already been approved by the Planning Commission and the Zone Change as approved by Council. He confirmed that there would not be any buffer adjacent to the railroad and that there has never been any buffer shown on this plan that was approved during the process either.

Board question – Ms. Carter stated, as clarification, if the variance is approved, there would be a buffer behind any residential properties. Mr. Cato replied that if there are any purely residential structures, the applicant would be required to build that buffer as recommended by Staff.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 7-0, to **approve PLN-BOA-23-00105: TURNER PROPERTIES 4, LLC** – requests for variances to reduce the required property perimeter landscaping adjoining a railroad from fifteen feet (15') to zero feet (0') and reduce the required vehicular use area perimeter buffer from eight feet (8') to zero feet (0') in order to construct a mixed-use development in an Industrial Redevelopment Planned Unit Development (PUD-3) zone, on property located at 125 Turner Commons Way, including the four conditions as listed with the revised language in condition #4 to state:

4. A minimum five-foot (5') buffer area containing a double row of six-foot high hedge located on either side of an adjoining parking area shall be installed between any solely residential structures and the railroad; or a substantially similar buffer specified by the Division of Environmental Services shall be located between any solely residential structures and the railroad.
2. **PLN-BOA-23-00087: CENTRAL KY INVESTMENTS** – requested a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Historic District Overlay (H-1) zone in a Mixed Low Density Residential (R-2) zone, on property located at 724 W. High St. (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 and there is a mixture of uses in the immediate vicinity that may result in a higher demand for short term rentals.

- b. The proposed use should not have an adverse impact on traffic in the general vicinity as more than adequate parking is available, both on-site and to the rear of the dwelling unit in a shared parking court.
- 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 2 individuals.
- 3. Parking in front of the garage doors along W. High Street is prohibited.
- 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. Drew Baldinger was present on behalf of this application. Ms. Carter asked Mr. Baldinger if he had reviewed the five conditions of approval as listed by Staff. Mr. Baldinger indicated that he had. Ms. Carter asked him if he was comfortable with the conditions. Mr. Baldinger stated that he was.

Board question – Mr. Clarke asked where the parking would be, as one of the conditions stated that parking would not be in front of the garage. Mr. Baldinger answered, stating that there were two individual garages for parking and a parking lot behind the building itself. He added that parking would be shared with both properties. Mr. Clarke asked if that parking arrangement had been cleared with the people who own the lot. Mr. Baldinger stated that he owns both of the properties.

Action – A motion was made by Ms. Plumlee, seconded by Mr. Clarke and carried 7-0 to **approve PLN-BOA-23-00087: CENTRAL KY INVESTMENTS** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Historic District Overlay (H-1) zone in a Mixed Low Density Residential (R-2) zone, on property located at 724 W. High St., based on Staff's recommendations and subject to the five conditions as listed.

- 3. **PLN-BOA-23-00097: NOODLES & COMPANY** – requested a conditional use permit to establish drive-through facilities accessory to a restaurant in a Neighborhood Business (B-1) zone, on property located at 2468 Nicholasville Rd. (Council District 3)

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 sufficiently meets the required five car stacking for drive-through facilities.
- 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 drive-through shall be operated in accordance with the submitted application materials and site plan, with changes as required by the Division of Traffic Engineering.
- 2. The drive through facilities shall not include a menu board, amplified speaker or microphone devices.
- 3. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and initiation of the drive-through facility.

Applicant representation – Mr. Tyler West was present on behalf of the applicant. Ms. Carter asked Mr. West if the applicant had reviewed the three conditions of approval as listed by Staff. Mr. West stated that the applicant had reviewed the conditions and was amenable to them.

Action - A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 7-0, to **approve PLN-BOA-23-00097: NOODLES & COMPANY** – request for a conditional use permit to establish drive-through facilities accessory to a restaurant in a Neighborhood Business (B-1) zone, on property located at 2468 Nicholasville Rd., based on Staff's recommendation and subject to the three conditions as listed.

4. **PLN-BOA-23-00098: DISCOUNT TOBACCO ZONE NUMBER 1, LLC** – requested a conditional use to establish drive-through facilities accessory to a retail use within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 717 N. Broadway. (Council District 1)

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

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as drive-through facilities have existed on the site for many years, and should not increase levels of traffic, noise, or odors.
- b. Through the redesign of the property, the applicant will provide the required five car stacking required for drive-through facilities and eliminate an existing non-conformity.
- 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 drive-through shall be operated in accordance with the submitted application materials and site plan.
2. The Morrison Avenue curb cut closest to North Broadway shall be removed and replaced with curb, sidewalk, and planting strip.
3. The drive through facilities shall not include a menu board, amplified speaker or microphone devices.
4. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and initiation of the drive-through facility.

Applicant representation – Ms. Kimberly Bragg, architect, was present on behalf of the applicant. Ms. Carter asked Ms. Bragg if the applicant had reviewed the four conditions of approval as listed by Staff and if they were in agreement with them. Ms. Bragg stated that the applicant had read, and was in agreement with the four conditions. Ms. Carter specifically mentioned condition #2 which would require a curb cut on Morrison Avenue to be removed and replaced with curb, sidewalk and a planting strip. Ms. Bragg confirmed that the applicant was amenable to that condition, as well.

Action – A motion was made by Mr. Sturdivant, seconded by Mr. Gross and carried 7-0 to **approve PLN-BOA-23-00098: DISCOUNT TOBACCO ZONE NUMBER 1, LLC** – request for a conditional use to establish drive-through facilities accessory to a retail use within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 717 N. Broadway, based on Staff's recommendation and subject to the four conditions as listed.

D. Discussion Items

1. **PLN-BOA-23-00083: JOE RAYYAN (AMD)** – an amended application to request variances 1) to reduce the required setback of a gasoline pump to a residential zone from fifty feet (50') to twenty-five feet (25'), 2) reduce the minimum required property perimeter landscaping buffer for a business zone adjoining a residential zone from fifteen feet (15') to zero feet (0'), and 3) reduce the minimum required vehicular use area perimeter buffer from eight feet (8') to zero feet (0') 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 of the required setback of a gasoline pump (#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.
- 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.

The Staff Recommended: **Disapproval of the landscape and screening variances (#2 and #3)**, 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 variances.

- 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.
- c. Approval of the requested variances 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. The requested variances could also lead to nuisances for the adjoining residential properties as any nuisance mitigation implementation methods would be eliminated.

Staff presentation – Ms. Jennings explained that this application had been continued from last month's meeting, when it was discovered that additional variances were necessary. This required the applicant to re-notify the owners of nearby properties, and the application be heard at today's meeting. Ms. Jennings reviewed the requested variances for the benefit of the Board and the public. She noted that the applicant had obtained an approved development plan in October of 2023, and that the applicant was certified to add an additional fueling station, or two pumps, and to extend the existing canopy. Ms. Jennings added that those additions had been approved, but have not been constructed yet and are not subject to the variance application. She displayed an aerial image of the subject property and its vicinity, with the subject property outlined in blue on the overhead screen, indicating where the gas pumps and canopy would be installed. Ms. Jennings then displayed an updated site plan, submitted by the applicant, indicating where the newest variances were needed, specifically, the sidewalk that the applicant had constructed without a permit, which was not in compliance with the development plan that the Planning Commission had approved. She added that the variances the applicant has requested are to allow that sidewalk to remain and to permit the willful violation of the Zoning Ordinance in which the sidewalk was installed.

Ms. Jennings further explained the two newest variances requested by the applicant, while the site plan was displayed on the overhead screen. She then reviewed what is stated in the Zoning Ordinance with regard to those two new variance requests. Ms. Jennings referred to the site plan once more, noting that the applicant did not include the location of a fence that is indicated to be provided. Therefore, Staff was unable to assess whether that proposed fence is in compliance with the Zoning Ordinance. She added that the applicant may be able to clarify the location of the proposed fence during their presentation.

Board question – Mr. Gross asked if the proposed fence would be required to be no taller than four feet. Ms. Jennings replied that the fence could be no taller than four feet due to sight triangle issues.

Staff presentation continued – Ms. Jennings noted that the applicant stated they had spoken with the neighboring residential property owners and that they have an agreement to construct a fence or a wall along that common property line, although Staff has not been informed of the location or the height of the proposed wall. She stated that the applicant proposes the wall to be a visual and sound screen for the gasoline pumps and the lights often associated with heavy vehicular use sites, as well as screening the residential properties from the proposed expansion of the convenience store and the gasoline pumps. Ms. Jennings remarked that in addition to the proposed wall, the applicant states that they can provide that required landscaping or at least some of it, to the rear of the property even though it is required along the side of the property where the sidewalk was constructed. She added that Staff is not in favor of this relocated landscaping as the intent of it is to provide additional screening in addition with either a distance requirement or a fence requirement to the immediately adjoining residential uses. Relocating the landscaping to the rear of the site does not satisfy the intent of the Zoning Ordinance; therefore, Staff is not in favor of this particular proposal from the applicant. Ms. Jennings stated that Staff cannot support the request for the two additional variances, nor for the very first variance. She explained Staff's reasons for recommending disapproval of the requested variances.

Applicant representation – Mr. Richard Murphy, attorney, was present on behalf of the applicant, who was also present in the audience. He also introduced Mr. Bruce Nicol, a longtime neighbor and customer of the applicant's business. Mr. Murphy briefly reviewed the history of business and the applicant's proposed expansion. He directed the Board's attention to the overhead screen on which the applicant's newest revised site plan was displayed, and indicated the location of the proposed wall, noting that it would be along the edge where the sidewalk is. Mr. Murphy also indicated the location of the adjoining properties of Mr. Thomas Melody and Ms. Glenna Baker. He added that both property

owners wanted the wall to be six feet tall for the reasons of visual screening, sound screening and lastly, as a pedestrian barrier. Mr. Murphy stated that the applicant had agreed to build the wall on the neighboring properties, where it was permitted to be six feet tall, as it was in the rear of those two properties, versus being in the front yard of the applicant's property, and limited in height to four feet. He added that the easement would be recorded at the County Clerk's office. Mr. Murphy stated that the wall would be a solid masonry wall and would be maintained by the applicant, at their expense. He spoke further on the issues of the landscape screening and the applicant's construction of the sidewalk, displaying the development plan which was approved by the Planning Commission in 2022, on the overhead screen. Mr. Murphy opined that the construction of the sidewalk was not a willful violation by the applicant, but was due to confusion caused by some of the illustrations on the development plan, which he displayed on the overhead screen. When he completed his presentation, he distributed a list of proposed findings to the Board. He stated that the findings were based upon the reasons he set forth in the original application and in the supplemental application filed by the applicant, after this application was postponed last month.

Board questions – Ms. Plumlee asked Mr. Murphy how high the proposed wall would be. Mr. Murphy replied that it would be six feet tall, upon agreement with the two neighbors. Ms. Plumlee asked what the applicant planned to enhance the landscaping with, with regard to condition #2. Mr. Murphy replied that the applicant had anticipated using additional trees along the boundary line, in addition to what was required.

Ms. Carter asked whether a six foot wall would be permitted between the applicant's property and the first residential property, as it was a corner lot. Ms. Jennings replied that she would demonstrate on the aerial image where the wall would be restricted to four feet tall when she returned to the podium. Ms. Carter asked who created the development plan, regarding the confusion over it. Mr. Murphy replied that Barrett Partners created the development plan for the Planning Commission's approval. Ms. Carter clarified that the development plan was created at Mr. Rayyan's direction. Mr. Murphy acknowledged that to be true.

Mr. Sturdivant had a question about the distance between the actual foot of the wall and the sidewalk. Mr. Murphy replied that the sidewalk on the Rayyan's property would be up to the wall. Mr. Sturdivant asked if the sidewalk would be the same elevation against the wall as it would be when it curves back around the actual building. Mr. Murphy replied that the sidewalk would be the same elevation.

Public comment

Mr. Thomas Melody, 800 Meadow Lane, expressed his frustration over the changes to the agreements that were made with the applicant in November, specifically the six foot masonry wall, the landscaping buffer and the fact that the gas pump is now proposed within twenty-five feet of his property line. He expressed concern for the tenants of his apartment building, whose bedrooms are in the back of the building. This building backs up to Mr. Rayyan's property, resulting in the tenants being exposed to the noise and light from the traffic on the applicant's property. Mr. Melody commented that he would like to see these burdens and burdens that are being placed on other neighbors be resolved before he will be amenable to this application.

Board question – Mr. Gross asked Mr. Melody if he was currently opposed to the proposed plan. Mr. Melody confirmed that he was in opposition to the current plan. Mr. Melody added that the site plan does not show the additional gas pumps that are within twenty-five feet of his and Ms. Baker's properties. He stated that the light for those pumps should be pointed down, and not spill over the proposed wall. Mr. Gross referred to Staff for clarification. Ms. Wade responded that the Zoning Ordinance states that for parking lot lighting, the lighting must be pointed down. However, in this case, the canopy can be lit and oftentimes there is a minimum height of thirteen to fourteen feet for the canopy to allow for trucks to go underneath it. With the proposed wall being only six feet tall, there will be spillage of light. She added that the lighting issue was of concern to Staff. There was further discussion.

Public comment (continued)

Ms. Glenna Baker, property owner, 804 Meadow Lane, expressed her concerns over the cut-through traffic that has increased since the original fence was removed. She stated that Mr. Rayyan now said that he does not want to pay for a six foot fence to replace the one that was removed. Ms. Baker opined that individuals will jump a four foot fence and travel on her property as they do now. Ms. Carter asked

Ms. Baker if she was in opposition to the current plan. Ms. Baker replied that she is willing to release twelve inches of her property in order for Mr. Rayyan to construct and maintain a six foot fence. She added that as of today, Mr. Rayyan stated that he will not do that.

Ms. Carmen Calvin, 801 Meadow Lane, stated that she lives across the street from Mr. Melody's apartment building. She said that she is opposed to the proposed plan. Ms. Calvin addressed a previous comment made regarding the neighborhood being in a "food dessert". She opined that the neighborhood was not in a food dessert, as it is two blocks from New Circle Rd., where there are many restaurants. Ms. Calvin noted that she has lived in her home there for thirty-five years and further opined that there is not a need for more gasoline pumps in her neighborhood. She expressed concerns of the business not being in compliance with the neighborhood, adding that the neighbors are of the opinion that Mr. Rayyan does not take the neighborhood into consideration at all. Ms. Calvin stated that she is not in opposition to the Rayyan's selling food, but she is opposed to the addition of more gasoline pumps, adding that there is too much light at night on the corner where Mr. Rayyan's business is located. She added that she is in support of a six foot tall fence there.

Mr. Bruce Nicol, 1604 Bon Air Dr., stated that he was present in support Mr. Rayyan's proposed extension of his grocery store because he is a customer and that he has seen the good that it has done for the community. He added that the original development plan for additional pumps had been approved by the Planning Commission. Mr. Nicol noted that when the request to add a pump was discussed, the recommendation was that the applicant speak with the neighbors, and try to come to a conclusion on how to meet the neighbors' needs. He said that it was his understanding that the neighbors' need was the construction of a six foot tall fence, and that it had been agreed upon, adding that he didn't know what had actually been agreed upon. Mr. Nicol repeated that he was in support of the application due to various benefits to the community.

Applicant rebuttal

Mr. Murphy clarified that there had been a discussion in the hallway with Mr. Melody and Ms. Baker prior to the meeting, to determine whether they were in favor of a four foot tall wall on the Rayyan property, or a six foot tall wall on the properties belonging to Mr. Melody and Ms. Baker, as discussed before. He added that either way, the Rayyan's will pay for it. Mr. Murphy stated that Mr. Melody and Ms. Baker both confirmed that they wanted and needed a six foot wall. He confirmed that it will be a solid six foot masonry wall, which he opined would be more permanent than the previous fence, and should also provide a better lighting buffer and sound buffer and prevent pedestrians from coming through. Mr. Murphy stated that Mr. Rayyan was agreeable to just having the interior lights inside the canopy pointing down on that portion of the canopy, which is the new portion of the canopy, to meet the requirement. He stated that it was his understanding that the applicant and the neighbors were in agreement with a six foot tall, solid masonry wall, built on the neighbors' properties, at the cost of the Rayyan's. Mr. Murphy noted that there may be a three foot long section of the wall, adjacent to Loudon Ave., which can only be four feet tall due to the fact that a six foot wall is not allowed within three feet of the right of way.

Board questions – Mr. Sturdivant asked Mr. Murphy if the wall would be a poured concrete wall or a concrete block wall. Mr. Murphy replied that it would be poured concrete. Mr. Sturdivant asked if the wall would be reinforced with rebar. Mr. Murphy indicated that it would be reinforced with rebar.

Mr. Clarke stated that he spent some time on site, across the street from the business, in order to see the business and "get a feel" for it. He asked Mr. Murphy to share his opinion on the proposed project. Mr. Murphy shared his thoughts on the safer pedestrian access points and more organized vehicular access areas on the property as well. Mr. Clarke stated that he was amazed at the business and traffic on the property.

Ms. Carter referred back to the sidewalk, and asked Ms. Smith if it was before the Board to approve that sidewalk. Ms. Smith replied that the approval of the sidewalk was not before the Board, but it is necessitating their request for the variance. There was further discussion.

Staff comments – Mr. Joseph Edmiston, Division of Traffic Engineering, opined that the sidewalk is likely in the best location for a sidewalk connection to the building. He added that the issue is that it is in violation of the Zoning Ordinance. Mr. Edmiston further opined that if the applicant had gone through

proper channels and gotten approval beforehand and applied for the variances first, the Division of Traffic Engineering would likely have approved the sidewalk where it is.

Board comments - Ms. Tucker stated she was concerned with the safety of the pedestrians on the sidewalk, if the lighting is removed from the pump that is closest to the sidewalk. She added that she was concerned for the neighbors if the lighting remains.

Staff comments - Ms. Jennings opined that Ms. Tucker's observations regarding the sidewalk were accurate. She clarified that there are staff members from several divisions that discuss the applications and decide on their recommendations for those applications. Ms. Jennings stated that she would address Staff's willful violation assessment of the subject property. She directed the Board's attention to the overhead screen on which the development plan that was approved by the Planning Commission for the subject property was displayed, noting that Mr. Rayyan had signed the plan in July of 2022 and also that the plan was prepared by Barrett Partners. Ms. Jennings stated that note #7 states: Screening and landscaping shall be as required by Article 18 of the Zoning Ordinance. She added that it was unfortunate that the applicant signed this plan and that it was certified when he was not aware that that note was approved and that he understood, or that it was not clearly communicated by the engineers. Ms. Jennings stated that, as it had been addressed by members of the Board and also Staff; a permit was not pulled for this sidewalk and Mr. Rayyan was aware of what was approved on the development plan, or may not have been aware. However, the plan has been certified and approved.

She continued, stating that was Staff's interpretation of this willful violation of the Zoning Ordinance by installing a sidewalk where there was required landscape buffer area for zone to zone screening. Ms. Jennings noted that the Zoning Ordinance Text Amendment for Article 18 of the Zoning Ordinance, which established the Vehicular Use Area perimeter requirements, was not a part of their approval when this plan was certified in 2022 and the applicant was not held to those requirements and their development plan did not have to meet that eight foot Vehicular Use Area perimeter buffer. However, now that the applicant wishes to add an additional canopy and change the parking lot; they are now required to meet those standards that are now in the Zoning Ordinance. She continued, stating that if the applicant did not provide an additional pump, Staff is of the opinion that there is sufficient space for the applicant to meet all of their requirements including the zone to zone perimeter landscaping buffer, the Vehicular Use Area perimeter buffer and potentially provide a sidewalk.

Applicant comments – Mr. Murphy stated on behalf of the applicant, that the applicant is agreeable to removing the sidewalk, if that is important.

Board comments and questions – Ms. Carter stated that she would like to see some of the greenery there, adding that the zone to zone buffering is important. She continued, stating that without the sidewalk already being in place, it appeared that there was a simpler path, such as installing the six foot fence and reducing the landscaping buffer to five feet, having both the fence and the landscaping buffer.

Ms. Plumlee stated that she is in support of Staff's recommendation, in that it is a violation of the Zoning Ordinance per Article 7.

Mr. Gross asked Mr. Clarke if he would care to share his thoughts on this application. Mr. Clarke replied that he had sympathy for neighborhood businesses like this, but that was his personal opinion. He further opined that the proposed improvements would seem to make this business a better place, adding that when he made a site visit he saw how busy the business was.

Mr. Sturdivant opined that, like Mr. Clarke stated, the proposed improvements would make the area better than it is currently. He added that although he realized there were some technical issues with the proposed project, the improvements would make the general population as well as the land owner more appropriate. There was further discussion.

Mr. Gross stated that he was disappointed in the fact that there was not a fully detailed agreement with the neighbors. He mentioned, for example, evidence having been provided to Staff that the wall could be built in the proposed location, a landscape colored rendition of the development plan that clearly depicted the green area and not a sidewalk. Mr. Gross added that he would consider supporting this plan with the right conditions. He stated that he had hoped for a more definitive plan, due to its continuance from the previous month.

Action – A motion was made by Ms. Plumlee and seconded by Ms. Tucker, for **disapproval of PLN-BOA-23-00083: JOE RAYYAN (AMD)** – an amended application to request variances 1) to reduce the required setback of a gasoline pump to a residential zone from fifty feet (50') to twenty-five feet (25'), 2) reduce the minimum required property perimeter landscaping buffer for a business zone adjoining a residential zone from fifteen feet (15') to zero feet (0'), and 3) reduce the minimum required vehicular use area perimeter buffer from eight feet (8') to zero feet (0') in order to provide an additional gasoline pump in a Highway Service Business (B-3) zone, on property located at 705 E. Loudon Ave., based on Staff's recommendation and the reasons listed.

Discussion on the motion – Prior to voting on the motion, Ms. Carter asked Ms. Plumlee if she intended to move for disapproval of all three of the variances in one motion. Ms. Plumlee said she could do the landscape and screening variances separately if necessary. Ms. Carter informed her that it was allowable to have all three variances in the same motion if she wished. Ms. Plumlee agreed to group all three variances together in one motion, adding for the three reasons cited by Staff for the disapproval of the last two variances. Ms. Tucker indicated that her second to the motion stood.

Mr. Sturdivant commented that the overall plan seems to be an improvement of what is there now; he opined there were too many moving parts that have not been solidified at this time, making voting for it difficult.

Action – As there was no further discussion, the motion was voted on and carried 4-3 (Clarke, Gross and Walker opposed to the motion), for **disapproval of PLN-BOA-23-00083: JOE RAYYAN (AMD)**.

Note – The Board took a brief recess at 3:09 p.m. and reconvened at 3:18 p.m.

Note – Prior to hearing the next application, Ms. Carter stated that Staff would review the short term rental regulations and resources in Lexington, Kentucky, as both of the last two applications were requests for conditional use permit for un-hosted short term rentals.

Staff presentation - Ms. Jennings directed the Board's attention to the overhead screen on which those regulations were displayed. She stated that as of this date, five hundred and sixty-six (566) Zoning Compliance Permits had been issued by the Division of Planning for pre-existing short term rentals. She explained that the six month deadline for pre-existing short term rentals to be "grandfathered in", would end on January 11. After that deadline passed, anyone who wished to operate a short term rental would need a conditional use permit, if their zoning required it.

Board question – Mr. Sturdivant asked if the AirDNA data Ms. Jennings presented was up to date. Ms. Jennings indicated that the data was up to date.

Ms. Jennings continued with her review of the short term rental regulations. She clarified the definition of short term rentals as defined by the Zoning Ordinance. Ms. Jennings gave a brief explanation of the breakdown by zones and the level of approval needed for short term rentals by their zone, referring to a copy of the zoning breakdown which she displayed on the overhead screen.

Board questions – Mr. Gross asked about the maximum percentage of short term rentals allowed on a single property in the B-1, P-1, and Mixed-Use zones. Staff explained.

Mr. Sturdivant asked what the verification process was for a host in a hosted short term rental. Ms. Jennings replied that when an applicant registers their short term rental with the Division of Revenue, they are required to sign documentation stating that the property will be hosted and then register a primary residence, or have a primary residence on record.

2. **PLN-BOA-23-00099: BOWMAN'S TRAVELLER** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1B) zone, on property located at 1650 Traveller Rd. (Council District 10)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as more than adequate parking is available on-site.

- 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 presentation – Mr. Timothy J. Rice, applicant and property owner was present on behalf of his application. He explained that the subject property had belonged to his mother-in-law, who recently passed away. Mr. Rice added that he and his wife live in Naples, FL and their original plan was to use the subject property as their summer house. He added that they had updated the home and were considering using it as a short term rental when he and his wife or other family members were not using it themselves. Mr. Rice stated that his intention is to rent the home to their family, friends and people he knows who are in the horse industry.

Public comment

Ms. Meredith Cave, attorney, 301 E. Main St., was present on behalf of Ms. Margaret Edwards. Ms. Cave opined that there were discrepancies in the application specifically that the application was made in the name of Jayne Rice; however, she does not own the property. She added that the property was conveyed to Jayne Rice and her husband, Timothy Rice, to the name of Bowman's Traveller, LLC out of Florida. Ms. Cave further opined that due to this fact, the application did not meet the definition of an un-hosted short term rental. She stated that there were several other procedural issues that should be considered by the Board. Ms. Cave mentioned that a neighbor would also be speaking in opposition to this application and he would be presenting a letter from Ms. Trig Bowman to Mayor Gorton, in which she outlined objections from the neighborhood association and also a petition signed by some of the neighbors who were in objection.

Board comment – Ms. Carter stated that the Board members had previously been given a copy of Ms. Bowman's letter to the mayor.

Mr. Paul Horrall, 1621 Traveller Rd., was present in opposition to this application. He stated that he had canvassed the neighbors in close proximity to the subject property and obtained the signatures of twelve neighbors who were opposed. Mr. Horrall cited various reasons for his opposition, including the possibility of too many people staying in the short term rental, who to call if there were problems with the renters, the rental being un-hosted and not knowing who would be staying there.

Applicant rebuttal – Mr. Rice addressed some of the comments previously made. He stated that he planned to use a leasing company to manage the property for rental purposes. Mr. Rice added that he would be very particular about who he rented the property to, as he had spent a lot of money to update the property and did not want it destroyed.

Staff comments – Ms. Jennings clarified that, regarding Ms. Cave's comment about the defined requirement of a primary resident, that requirement only applied to hosted short term rentals and this application before the Board is for an un-hosted short term rental.

She then clarified that Staff has a copy of the deed for the subject property with Bowman's Traveller, LLC listed as the current owner of the property. Ms. Jennings stated that registering as a business will happen in conjunction with the short term rental registration because the applicant will register as a business in association with that short term rental. She stated that complaints regarding noise should be called in to the police and complaints concerning occupancy should be reported to the Division of Building Inspection.

Board comments – Ms. Plumlee opined that a lack of affordable housing is a common problem in Lexington and around the country. She further opined that in this instance a viable house was being removed from the inventory of affordable housing and putting it into a business. Ms. Plumlee stated that she was opposed to this application.

Mr. Clarke remarked that he was in agreement with Mr. Horrall's statements; however, there were twelve hundred short term rentals in town that have been approved in some way or another. He added that he had been engaged in deep discussion with council members and he realized there are problems. Mr. Clarke opined that he would not want a short term rental beside him. He stated that on the other hand, the law does not prevent this, the law gives the Board the opportunity to approve short term rentals, and in fact invites the Board to do so. Mr. Clarke further opined that was the problem with the law as it has been adopted. He added that at times, it was difficult to approve these applications, knowing how the neighbors feel. Mr. Clarke further opined that the law was not written quite right. He added that the Board has been given a lot of flexibility and Council has admitted that. Mr. Clarke stated that he was not convinced that the Board of Adjustment has the right to make those kinds of decisions based on a flexibility with nothing in writing which stated the Board can deny an application for specified reasons. He said that he felt as though he should follow the Zoning Ordinance, and that he has done so on a pretty consistent basis, even when at times he felt bad about doing so.

Ms. Carter stated that she has some pause with this particular application, because this is the first application where the owner was not local. She added that with regard to having a leasing company or real estate company represent the applicant, most of the successful short term rental owners have a good relationship with the neighbors and contact with the neighbors, the neighbors have the phone numbers of the owners, there are noise and motion detectors, as well as cameras in place. Mr. Rice replied that all of those measures are in place.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker to **disapprove PLN-BOA-23-00099: BOWMAN'S TRAVELLER** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1B) zone, on property located at 1650 Traveller Rd., because of the adverse impact on Lexington's affordable housing situation in this particular neighborhood.

Discussion on the motion – Ms. Carter stated that she agreed with the housing unit being taken out of the housing inventory, but she disagreed with the affordability option of it, as she opined this house would be well over the affordable description if it does go on the market.

Action – The motion for disapproval was voted on and failed 2-5 (Carter, Clarke, Gross, Sturdivant and Walker opposed to the motion).

Action – A motion was made by Mr. Clarke, seconded by Mr. Walker and carried 6-1 (Tucker opposed), to **approve PLN-BOA-23-00099: BOWMAN'S TRAVELLER** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1B) zone, on property located at 1650 Traveller Rd., based on Staff's recommendation and subject to the four conditions as listed.

3. **PLN-BOA-23-00102: KHOUDOUD AND SOUAD ABUL** – requested a conditional use permit for an un-hosted short term rental in a Neighborhood Design Character Overlay (ND-1) zone in a Single Family Residential (R-1C) zone, on property located at 1242 Scoville Road. (Council District 3)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as more than adequate parking is available on-site.
- 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 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.

Applicant presentation – Ms. Souad Ghalayini, applicant and property owner, was present on behalf of her application. She explained that she and her husband had purchased this home for their children to live in while attending the University of Kentucky, and they wish to keep the home and use it as a short term rental to offset the mortgage. Ms. Ghalayini added that there are cameras on the property and she will be adding a noise monitoring system as well.

Public comment

Mr. James Bean, 1248 Eldemere Rd., expressed his opposition to this application for a short term rental. He cited concern over a recent incident at a short term rental a mile away from his home. Mr. Bean also expressed concern over the possibility of more short term rentals coming to his neighborhood. He asked the Board to consider rejecting this application.

Mr. Thomas Badgett, 1258 Scoville Rd., shared various reasons he is opposed to short term rentals in residential neighborhoods.

Ms. Ellen Gish, 1229 Scoville Rd., expressed opposition to this application, citing that there are already five short term rentals within a quarter of a mile of the subject property. She added that she and her neighbors are concerned about the increase in short term rentals in their area.

Ms. Dabney Parker, 1225 Scoville Rd., shared her concerns with a short term rental operating at this address. She stated that she did not think short term rentals were healthy for a neighborhood.

Mr. Mike Federspiel, 1219 Kastle Rd., stated that he is a former police officer with the Lexington Police Department and he shared examples of incidents involving a short term rental in which the police have been called to investigate. He also mentioned that the property has a shared driveway which may cause parking issues.

Ms. Caroline Federspiel, 2016 Lakeside Dr., expressed concern with having a short term rental whose owner/operator lives out of town. She also mentioned that parking may be of concern.

Applicant comments – Ms. Ghalayini addressed the comments that had been made regarding parking on the property. She displayed photos of her property on the overhead screen, indicating the parking areas in the back of the house as well as the two-car garage. Ms. Ghalayini added that there is a six-foot wooden privacy fence all around the property in the back. She also mentioned that she and the neighbors have an agreement regarding the shared driveway and that they have never had any issues. Ms. Ghalayini noted that there are cameras in the front and the back of the property as well as an alarm system and noise monitoring devices. She added that there will be rules for the renters to abide by as it is her intention to protect her property.

Staff comments – Ms. Jennings clarified that the Code of Ordinances has protections in place to address violations at a short term rental. In the event of substantiated violations, the owner's license may be revoked by the Division of Revenue. She displayed a screenshot from AirDNA showing the approximate location of the subject property, adding there are an estimated seven short term rentals in the one thousand foot distance. Ms. Jennings also displayed a map of the general area, showing the short term rentals that the Division of Planning had issued Zoning Compliance Permits for.

Board comments – Mr. Clarke stated that he shared the neighbors' concerns. Ms. Tucker stated that she is concerned with the parking situation, adding that when she went to the subject property to observe it, she was involved in a "stacking" situation with cars backing out of a driveway, to let another car out, expecting her to back up. She added that she could see where it could cause a problem. Ms. Plumlee thanked the neighbors for voicing their concerns. She added that the Board was somewhat restricted by rules set forth by Council.

Action – A motion was made by Mr. Clarke, seconded by Mr. Walker and carried 4-3 (Tucker, Plumlee and Sturdivant opposed), to **approve PLN-BOA-23-00102: KHOUDOU AND SOUAD ABUL** –

request for a conditional use permit for an un-hosted short term rental in a Neighborhood Design Character Overlay (ND-1) zone in a Single Family Residential (R-1C) zone, on property located at 1242 Scoville Road, based on Staff's recommendation and subject to the four conditions as listed.

- V. **BOARD ITEMS** – The Chair announced that any items a Board member wished to present would be heard at this time.
- VI. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time.
- VII. **NEXT MEETING DATE** - The Chair announced that the next meeting date will be February 12, 2024 at 1:30 p.m., Council Chambers, 200 East Main Street, Lexington, KY 40507.
- VIII. **ADJOURNMENT** - As there was no further business, the Chair declared the meeting adjourned at 4:37p.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.