

**MINUTES FOR THE BOARD OF
ADJUSTMENT MEETING**

February 12, 2024

- I. **CALL TO ORDER** - Chair Carter called the meeting to order at 1:35 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.
- II. **ATTENDANCE** - Board members present were Raquel Carter, Harry Clarke, Branden Gross, Carolyn Plumlee, Bob Sturdivant, Linda Tucker and Chad Walker. Others present were Tracy Jones, Department of Law; Joseph Edmiston, Division of Traffic Engineering and Josh Dezarn, Division of Engineering. Planning Staff members present were Traci Wade, Autumn Goderwis, James Mills and Donna Lewis.
- III. **APPROVAL OF MINUTES** - Chair Carter asked for a motion to approve the November 2023 and the December 2023 Board of Adjustment meeting minutes.

Staff informed Ms. Carter that the December 2023 minutes were not available for consideration at this time.

Action - A motion was made by Mr. Clarke, seconded by Ms. Tucker and carried 7-0 to **approve** the minutes from the November 13, 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.

Withdrawals

1. **PLN-BOA-24-00005: GIBSON, TAYLOR, THOMPSON ARCHITECTURE AND DESIGN** - requested a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.54 in order to construct a two-story accessory structure within the defined Infill and Redevelopment Planned Area and a Historic District Overlay (H-1) zone in a Planned Neighborhood Residential (R-3) zone, on property located at 148 Woodland Ave. (Council District 3)

Staff comments - Staff advised the Board that the applicant had requested to withdraw their application.

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)

Staff comments - Staff advised the Board that the applicant had requested to withdraw their application.

C. Abbreviated Hearing

1. **PLN-BOA-23-00101: SIDNEY BEAVEN** - 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 Medium Density Residential (R-4) zone, on property located at 467 W. Second St. (Council District 1)

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

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users and there is a mixture of uses in the immediate vicinity that may result in a higher demand for short term rentals. Additionally, the property historically operated as bed and breakfast facility for a number of years.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- c. There is no record of short term rental compliance issues with the property owner.
- 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 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. Sidney Beaven, applicant, was sworn in at this time, due to arriving late to the meeting. Ms. Carter asked Ms. Beaven if she had read Staff's recommendations and conditions of approval. Ms. Beaven replied that she had read them. Ms. Carter asked her if she was in agreement with the conditions. Ms. Beaven stated that she was in agreement with them. Ms. Carter noted that this property had been operating as a Bed and Breakfast, previously. Ms. Beaven confirmed that to be true.

Action – A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 7-0 to **approve PLN-BOA-23-00101: SIDNEY BEAVEN** – 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 Medium Density Residential (R-4) zone, on property located at 467 W. Second St., based on Staff's recommendations and subject to the four conditions as listed.

2. **PLN-BOA-23-00107: MIKE ADAMS** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1D) zone, on property located at 1783 Gleneagles Dr. (Council District 6)

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 not a concentration of short term rentals in the general vicinity.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- c. There is no record of short term rental compliance issues with the applicant.
- d. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 10 individuals.
3. 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 - Mr. Mike Adams, applicant and property owner, was present on behalf of his application for an un-hosted short term rental. Ms. Carter asked Mr. Adams if he had reviewed the four

conditions of approval. Mr. Adams replied that he had read them. Ms. Carter asked Mr. Adams if he was comfortable with the conditions. He stated that he was comfortable with them.

Board comments and questions – Mr. Clarke noted that there was no mention of the number of bathrooms in the home, with a requested occupancy for up to ten people. He asked Mr. Adams how many bathrooms there were. Mr. Adams replied that there was one bathroom. Mr. Clarke expressed concern over the fact there was only one bathroom for up to ten people.

Ms. Plumlee voiced her concern over removing the subject property from the affordable housing inventory. She also expressed concern over how this impacts affordable neighborhoods.

Applicant response – Mr. Adams replied that the subject property had been his grandmother's house and he is now responsible for the upkeep. He added that his intent was to provide a place for a couple of families to stay in one place and experience some of the same things that he experienced growing up on the north side of town. Mr. Adams noted that with Airbnb, an owner has the opportunity to accept or reject an applicant. He elaborated.

Board comment – Ms. Tucker expressed concern over the size of the home regarding the number of guests allowed.

Mr. Clarke asked Mr. Adams if he would be willing to reduce the number of guests to six or eight. Mr. Adams stated that he was not sure about reducing the number of guests. He added that the home's basement is currently unfinished. He asked if he were to agree to a decreased occupancy at this time, and finish the basement later, could he possibly increase the occupancy in the future.

Staff comments – Ms. Goderwis advised Mr. Adams that if that were the case, and he is approved for a lesser number today, he would need to come back before the Board to increase the occupancy, with a new application.

Board questions - Mr. Gross asked the applicant if he would be amenable to reducing the occupancy to eight people. Mr. Adams asked if he would be allowed to decline that. Mr. Gross replied that Mr. Adams could decline. Mr. Adams asked if he did decline to reduce the occupancy to eight, and the Board elected to disapprove his application for an occupancy of ten, would he need to go back to the Board again.

Department of Law comments – Ms. Jones explained that if the Board voted to change the occupancy to eight and the applicant does not agree with that number, the applicant has the right to appeal the Board's decision, but that appeal goes to Circuit Court. Mr. Adams replied that he preferred to remain with an occupancy of ten. Ms. Jones explained that the Board can disapprove the application as it is, with the requested occupancy of ten.

Board comments – Ms. Carter stated that she agreed that an occupancy of ten was a lot of people. She added that this is an example of taking an entry level home in a neighborhood out of the market.

Action – A motion was made by Mr. Clarke to **approve PLN-BOA-23-00107: MIKE ADAMS** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1D) zone, on property located at 1783 Gleneagles Dr., with a change to condition #2 reducing the occupancy to eight individuals, based on Staff's recommendation and subject to the conditions as amended.

Discussion on the motion – Mr. Gross asked Ms. Jones if the Board places a condition that the applicant has rejected, does the Board proceed, or not. Ms. Jones replied that the Board must vote on this motion, as it is the motion being made. There was further discussion. Ms. Carter asked for a second on the motion.

Action – Mr. Gross seconded the motion to **approve**, adding that he would recommend keeping the occupancy at ten, but he would support eight. The motion failed 3-4 (Carter, Plumlee, Sturdivant and Tucker opposed).

Action – An alternate motion was made by Mr. Gross to **approve PLN-BOA-23-00107: MIKE ADAMS** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1D) zone, on property located at 1783 Gleneagles Dr., based upon the applicant's application for up to ten

guests, Staff's recommendation of approval and discussion had today. The motion failed due to lack of a second.

Department of Law comments – Ms. Jones stated that two motions had been made by the Board and both motions had failed. Therefore, the Board would need a different motion with different findings.

Note – The Board took a recess at 1:58 p.m. and reconvened at 2:05 p.m.

Action – An alternate motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 6-1 (Gross opposed), to **disapprove PLN-BOA-23-00107: MIKE ADAMS** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1D) zone, on property located at 1783 Gleneagles Dr., based on the following findings:

1. An occupancy of ten is too high of an occupancy rate due to the square footage of the property and only one bathroom facility.
 2. The short term rental will remove a dwelling unit from moderate income residential availability and introduce a commercial use, therefore causing an adverse use impact to the area.
3. **PLN-BOA-24-00004: AR NICHOLASVILLE RD, 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 Single Family Residential (R-1C) zone, on property located at 1918 and 1922 Nicholasville Rd. (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 guests.
- b. The increased occupancy will not result in overcrowding or create a nuisance as the structure and lot are large enough to accommodate 20 occupants, there is ample existing parking, and the house features eight (8) bedrooms.
- c. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate parking is available on-site.
- d. There is no record of zoning compliance complaints for the existing short term rental use.
- e. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 20 individuals.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the increase in occupancy, 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 – Mr. Paul Rose, applicant, was present on behalf of this application. Ms. Carter asked if this property had already been operating as an Airbnb. Mr. Rose confirmed that it had been for an occupancy of up to 12 persons. There were no other questions from the Board.

Action – A motion was made by Ms. Plumlee and seconded by Mr. Gross to **approve PLN-BOA-24-00004: AR NICHOLASVILLE RD, LLC** – request for 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 Single Family Residential (R-1C) zone, on property located at 1918 and 1922 Nicholasville Rd., based on Staff's recommendations and subject to the four conditions as listed.

Discussion on the motion - Mr. Clarke remarked that the subject property was a large property and asked if only one party of guests would be staying at the property at a time. Mr. Rose confirmed that only one group of people would be staying there at a time.

Ms. Carter asked Mr. Rose if he had reviewed the conditions put forth by Staff. Mr. Rose confirmed that he had.

Ms. Tucker asked if the vote would be for twenty individuals or twelve. Ms. Wade replied that the description was for more than twelve. She added that the legal ad and agenda stated that the applicant had asked for more than twelve, and in this case, Mr. Rose was asking for up to twenty, as he already had a permit to operate with up to twelve.

Mr. Clarke asked if it was the Board's prerogative to add to the occupancy of twelve. Ms. Goderwis confirmed that to be correct, adding that Article 3-13 of the Zoning Ordinance states that the Board may allow additional occupants when there is sufficient evidence that a greater occupancy will not result in overcrowding or create a nuisance.

Action – The motion to **approve** was voted on and carried 7-0.

Applicant comments – Mr. Rose complimented Staff for providing superior customer service and responsiveness, and expressed his appreciation.

D. Discussion Items

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 eight percent (8%), 3) reduce the required Vehicular Use Area tree canopy from thirty percent (30%) to seventeen percent (17%), 4) reduce the required useable open space from ten percent (10%) to five percent (5%), 5) reduce the required minimum dimension for useable open space from ten feet (10') to five feet (5') and 6) reduce the required vegetative open space from ten percent (10%) to eight percent (8%) in order to construct a warehouse/storage facility within the defined Infill and Redevelopment Area in a Light Industrial (I-1) zone, on property located at 1535 Delaware Ave. (Council District 5)

The Staff Recommended: **Approval of Variance #1 to reduce the required Vehicular Use Area perimeter buffer width to zero feet (0')** for the following reasons:

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

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

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

The Staff Recommended: **Disapproval of Variance #2 to reduce the required minimum interior landscape area from ten percent (10%) to eight percent (8%)** for the following reasons:

- a. The applicant has not provided a sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance or KRS 100.243. There do not appear to be special circumstances that are unique to the subject property that do not generally apply to land in the general vicinity, or in the same zone that justify the need for the variance. There is sufficient space on the property to accommodate the required interior landscaping while maintaining a majority of the desired parking spaces and the applicant has already proven that they can meet this requirement within a previously approved landscape plan from June 2023.
- b. The applicant has not provided sufficient information to determine that strict enforcement of the Zoning Ordinance will result in an unnecessary hardship or deprive the applicant of the reasonable use of their land.

The Staff Recommended: **Approval of Variance #3 to reduce the required Vehicular Use Area tree canopy from thirty percent (30%) to seventeen percent (17%)** for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor have a negative impact on the character of the general vicinity as the applicant will be increasing the tree canopy on the subject property.
- b. Granting the variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variances as soon as it was determined that they were needed and prior to construction.

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

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

The Staff Recommended: **Approval of a lesser Variance #4 to reduce the required useable open space to six percent (6%),** for the following reasons:

- a. Granting the lesser variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity, as the variance allows the applicant to develop the site in a manner that provides adequate parking for the proposed use.
- b. Granting the lesser variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variances as soon as it was determined that they were needed and prior to construction.

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

1. The site shall be developed in accordance with the submitted application materials and a revised site plan reflecting the provision of 6% useable open space.
2. All necessary permits shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.

The Staff Recommended: **Disapproval of Variance #5 to reduce the required minimum dimension for useable open space from 10' to 5'** 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.
- c. The proposed variance represents an attempt to circumvent the provisions of the Zoning Ordinance by attempting to artificially inflate their total usable open space by also requesting a variance to the definition of usable open space, especially since the applicant did not provide any justification as to why a space with a minimum dimension of 5' would meet the intent of the definition of usable open space to provide an outdoor area intentionally designed for outdoor living and pedestrian access and to accommodate or support use of such space.

The Staff Recommended: **Disapproval of Variance #6 to reduce the required vegetated open space from ten percent (10%) to eight percent (8%)** 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.

Staff presentation – Ms. Goderwis directed the Board's attention to the overhead screen on which she displayed a description of the applicant's requests for six variances. She explained that the original request for variances had first been heard at the November 13, 2023 meeting, at which time the Board voted to continue the application to the December 11, 2023 meeting so that the applicant could meet with Staff and perhaps make some changes to their plan. Ms. Goderwis stated that Planning Staff did meet with the applicant following the November meeting and at the December meeting, the applicant

requested a one-month postponement in order to modify their requests. She stated that at the January 8, 2024 meeting, the application was postponed again to the February meeting in order to correct some calculations and modify the variance requests. Ms. Goderwis informed the Board that she would go through each request, including the ones that have changed as well as the ones that have not changed.

She then displayed an aerial map of the subject property and its vicinity, showing the subject property outlined in red on the map. Ms. Goderwis explained that there is a mix of zones in the general vicinity and noted that the structure shown on the subject property depicted on the map, has since been demolished. She explained each variance request individually, and listed Staff's recommendations for each request, as well as Staff's reasons for their recommendations. Ms. Goderwis also displayed the site plan which had been submitted by the applicant, on the overhead screen, referring to it as needed throughout her presentation.

Board questions and comments – Mr. Gross asked Ms. Goderwis to list the numbers of the variances in which the position was that the applicant did not provide enough information for Staff to work with. Ms. Goderwis replied that those were variances #2, #5 and #6. Mr. Gross asked if there was nothing of substance in the applicant's justification statement regarding those variances. Ms. Goderwis indicated that was correct. Mr. Gross asked Ms. Goderwis if it was correct that the applicant had provided no justification for some of the requests. Ms. Goderwis replied that there were a few of the variances that were included in the original request for which a justification statement had been submitted in which the applicant did make an effort to explain the desire for the variances. She continued, stating that the variance requests that had been added later on, were just listed with no new justification provided. Ms. Goderwis added that Staff did make several attempts to obtain an updated justification statement, to no avail. Mr. Gross asked if those were for requests #5 and #6. Mr. Goderwis confirmed that to be correct.

Mr. Sturdivant asked if Mr. McCain's letter to Staff was justification for those variances. Ms. Goderwis replied that letter was the only justification that Staff had received.

Applicant representation – Mr. Jihad Hallany, Vision Engineering, was present on behalf of the applicant. He explained the history and purpose of this application. He directed the Board's attention to the overhead screen on which he displayed a site plan and an approved development plan for the subject property. Mr. Hallany expressed concern for the building on the adjacent property, should the applicant be required to install trees as indicated on the development plan. He opined that the justification statement that was submitted applied to all six of the variances requested.

Board questions – Mr. Sturdivant asked Mr. Hallany if it was his professional opinion that the most recent site plan was the most beneficial for that site. Mr. Hallany replied that he believed that it was.

Mr. Clarke asked Mr. Hallany to speak to each of the three variance requests that Staff has recommended disapproval of, and explain why each presents a hardship to the applicant.

Applicant representation comments – Mr. Hallany replied that it was not a hardship for the applicant, but for their neighbor. He proceeded to explain why each of the variance requests was necessary for this project. There was further discussion between the Board members, Staff and Mr. Hallany throughout his explanation of the variance requests.

Staff comments – Ms. Goderwis noted that the applicant still had not given a reason that a variance to reduce the minimum dimension of the open space would actually provide usable open space. She added that there were questions regarding a need for useable open space in the subject area. Ms. Goderwis stated that this is a somewhat new regulation that every applicant is required to adhere to, because of the importance of open space and the desire to provide usable open space to members of our community across all zones.

Board comments – Mr. Clarke remarked that he has been involved with this application since the Landscape Review Committee met to discuss the project. He opined that Staff is correct in their recommendations. He further opined that the Board is at a point where a decision should be made regarding this project.

Mr. Gross stated that he was more sympathetic to the applicant regarding the lot which has some challenges, and will be fenced. He added that he was unsure if that was the type of open space that the regulations were intending.

Mr. Sturdivant indicated that he was in agreement with Mr. Gross, adding that he had visited the site several times. He opined that some of the restrictions appeared to be too much.

Note – The Board took a recess at 2:54 p.m. and reconvened at 3:04 p.m.

Action – A motion was made by Mr. Walker, seconded by Mr. Gross and carried 7-0, to **approve Variance #1 to reduce the required Vehicular Use Area perimeter buffer width to zero feet (0')**, based on Staff's recommendation and subject to the two conditions listed.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and passed 4-3 (Gross, Walker and Sturdivant opposed), to **disapprove Variance #2 to reduce the required minimum interior landscape area from ten percent (10%) to eight percent (8%)**, based on Staff's recommendation and discussion heard today.

Action – A motion was made by Mr. Clarke, seconded by Mr. Gross and carried 7-0 to **approve Variance #3 to reduce the required Vehicular Use Area tree canopy from thirty percent (30%) to seventeen percent (17%)**, based on Staff's recommendation and subject to the two conditions as listed.

Action – A motion was made by Mr. Sturdivant, seconded by Mr. Walker and carried 7-0 to **approve a lesser Variance #4 to reduce the required useable open space to six percent (6%)**, based on Staff's recommendation and subject to the two conditions as listed.

Action – A motion was made by Mr. Clarke, seconded by Ms. Tucker to **disapprove Variance #5 to reduce the required minimum dimension for useable open space from 10' to 5'**, based on Staff's recommendation. The motion failed by a vote of 3-4 (Gross, Walker, Sturdivant and Carter opposed).

Action – An alternate motion was made by Mr. Gross, seconded by Mr. Sturdivant and passed 5-2 (Clarke and Tucker opposed), to **approve Variance #5 to reduce the required minimum dimension for useable open space from 10' to 5'**, based upon the testimony heard today in relation to the difficulties of developing such a small lot size, the lack of more than two employees on site, the fact that the usable area would be fenced off from the general public, the fact that the neighbor's property has structural issues that require additional pavement in that area, and that reduction in the parking spaces to meet this requirement would substantially interfere with the proposed enterprise of the applicant.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and passed 4-3 (Plumlee, Clarke and Tucker opposed), to **approve Variance #6 to reduce the required vegetated open space from ten percent (10%) to eight percent (8%)**, based upon the information provided today, and based upon the same findings that were related to Variance #5 which this Board has just approved. Those findings are: the difficulties of developing such a small lot size, the lack of more than two employees on site, the fact that the usable area would be fenced off from the general public, the fact that the neighbor's property has structural issues that require additional pavement in that area, and that reduction in the parking spaces to meet this requirement would substantially interfere with the proposed enterprise of the applicant.

2. **PLN-BOA-24-00001: LIZ ROGERS** – 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-1D) zone, on property located at 714 Hambrick Ave. (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 guests.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.

- c. There have been no complaints or citations regarding the applicant's other short term rental. The applicant acted immediately to remedy the lack of a license for the other short term rental identified by the staff during this application process.
- d. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 10 individuals.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.
4. The conditional use permit shall become null and void upon change in ownership, or if the applicant's short term rental special fee license (as regulated by the Division of Revenue and Section 13 of the Code of Ordinances) lapses or is revoked.

Staff presentation – Ms. Goderwis stated that as there was objection to this application for a short term rental, she would review the short term rental regulations. She stated that as of February 9, 2024, Planning Staff has processed six hundred and ninety two (692) Zoning Compliance Permits for short term rentals, with the majority of those being the ones that were operating prior to July 11, 2023.

Ms. Goderwis displayed a map from AirDNA, which showed the number of short term rentals in Lexington, based on data provided by Airbnb and Vrbo. She noted that the locations on the map were not the exact locations of the short term rentals, but the data was helpful. She displayed another map on the overhead screen which did display the specific locations of the short term rentals for which Zoning Compliance Permits had been issued.

Ms. Goderwis directed the Board's attention to the overhead screen on which she displayed a street view of the subject property. She gave a brief description of the property and the application. Ms. Goderwis displayed the site plan which had been submitted by the applicant. She stated that Staff was recommending approval of this application for a short term rental and listed the reasons for their recommendation.

Board question – Mr. Sturdivant asked how many bathrooms were in the subject home. Ms. Goderwis replied that Staff does not ask how many bathrooms there are. She added that the way the Zoning Ordinance was written, Staff bases the occupancy on the number of bedrooms. Ms. Goderwis stated that the applicant does not always provide the number of bathrooms on their application, but they could answer that question when they come to the podium.

Applicant representation – Ms. Liz Rogers, applicant and property owner, was present on behalf of her application. She stated that she and her husband, Kenny Rogers, have owned the property since 2012, and that in 2018, they started splitting their time between Lexington and Corbin, where she owns a small business. Ms. Rogers added that last year they decided to complete the renovations that had been ongoing since they bought the property and thought that it would be a good idea for their family to rent the home on a short term basis when they are not using it. She said that they do plan to continue to use the home on a regular basis. Ms. Rogers addressed the concerns regarding monitoring of the property when they are not there and said they do plan to have cameras on the outside of the property to monitor activity and that the property management company they employ uses a background check feature through Safely.com to make sure they are renting to people who are "upstanding citizens". She explained that if a potential renter's application revealed a criminal record, they will be denied approval to stay at the property. Ms. Rogers added that the property management company also does weekly checks of the property, whether there is anyone staying there or not, to make sure everything is in order. She stated that the contact information of the property management company, and that of herself, will be provided to the surrounding neighbors if any issues arise that need to be addressed.

Board question – Mr. Sturdivant asked how many bathrooms were in the home. Ms. Rogers replied there are three full bathrooms in the home.

Public comments

Mr. Tom Eblen, 52 Mentelle Park, President of the Mentelle Neighborhood Association, expressed the opposition on behalf of the association's board of directors to the conversion of another home in the neighborhood, to an un-hosted short term rental.

Mr. Dean Holt, 705 Hambrick Ave., expressed his opposition to another un-hosted short term rental, citing the effects it could have on the sense of community within this neighborhood, and the safety of children walking to school.

Ms. Christine Warner, 727 Hambrick Ave., expressed her opposition to this application, namely because of the potential effects strangers may have on the neighborhood children and the children who attend the nearby elementary school.

Ms. Shannon Sauer-Zavala, 717 Hambrick Ave., expressed her opposition to a short term rental on this street, as it is a one-way street. She added that the applicant's husband, Mr. Kenny Rogers, went door to door in the neighborhood to apprise the neighbors of his family's plans. Ms. Sauer-Zavala stated that she and her husband did not know Mr. Rogers as he has not lived in the neighborhood during the time that they have lived there. She listed several other concerns she had regarding Mr. Rogers' behavior.

Mr. Karl Lindstrom, 718 Hambrick Ave., stated that he rents out the bottom two units of his home to long-term tenants. He added that he is opposed to this application because of the requested ten guest occupancy, opining that it is incompatible with the property's unique surroundings. Mr. Lindstrom also stated that the subject property has a ninety foot driveway that runs the entire length of his property and the edge of the driveway is only three feet from the bedroom windows of the apartment on the first floor. He stated other concerns, such as potential noise issues and the close proximity to the school.

Mr. Jason Zavala, 717 Hambrick Ave., stated that he wished to give his time to Mr. Lindstrom. Mr. Lindstrom read a statement from Mr. Sam Lamb, tenant of 718 Hambrick Ave., who was unable to attend the meeting. Mr. Lamb stated that he has known the applicants for almost ten years and considers them friends. He added that he is concerned about things that would be out of the Rogers' control in this situation, and about noise and safety as his bedroom is so close to the driveway that would be used by guests.

Ms. Susan Dwirkin, 722 Hambrick Ave., stated she has lived there since 1997, and that it was a very welcoming neighborhood. She added that for the past ten years, the subject property has been an abandoned eyesore, with no way to contact the property owners. Ms. Dwirkin told about an instance of when Mr. Rogers came to her door and she felt threatened and told him to leave. She added that the instance was seen by other neighbors and that the police were called. She asked the Board to please deny this application.

Mr. Shane O'Connor, 706 Hambrick Ave., said that he has owned his property since 2012, but he had lived on Hambrick Ave. since 1997, when he was in high school. He expressed his concern with what would happen to the character of the neighborhood if the subject property is converted to a short term rental. Mr. O'Connor also expressed his concern regarding the character of the people who own and will manage 714 Hambrick Ave. He added that Ms. Dwirkin is his mother, and he relayed the events that took place when Mr. Rogers came to her door. Mr. O'Connor asked the Board to deny this permit.

Ms. Tomi Ross, 157 Bassett Ave., spoke on behalf of neighborhoods. She mentioned several of the amenities in her neighborhood of Kenwick, and those of the Mentelle neighborhood. Ms. Ross noted there are several short term rentals that are operating illegally, taking homes off of the market. She also opined that the prices of single family homes have increased due to short term rentals.

Mr. John Grimes, 272 Sherman Ave., expressed his opposition to un-hosted short term rentals. He stated that he is not opposed to hosted short term rentals.

Ms. Sidney Beaven stated that she wanted to speak on the character of Liz and Kenny Rogers. She added that she manages their property that is currently operating as a short term rental, and that she has worked with them for many years. Ms. Beaven stated that the Rogers' care deeply about their guests experience and the experience of the surrounding neighbors.

Mr. Kenny Rogers, spouse of the applicant, stated that he was not sworn in previously. Ms. Carter administered the oath to him at that time. Mr. Rogers stated that he did not wish to speak on the short term rental as his wife took care of that. He added that he wanted to address the personal attacks against him that had been heard during this meeting. Mr. Rogers stated that he was not going to allow people to disrespect him. He added that he had spent his life in the military and is a disabled veteran and he was not going to allow the disrespect he was getting from his neighbors.

Applicant comments – Ms. Rogers addressed some of the concerns that had been expressed by the members of the audience. She stated that the subject property has not been abandoned since they bought it in 2012. Ms. Rogers added that they had lived in the home until 2018, but still spent the majority of their time in Lexington, commuting back and forth to Corbin. She stated that someone was staying in the home to keep an eye on things when they were not there. Ms. Rogers noted that the renovations started last year and they were unable to stay there. She opined that the incident that occurred with the neighbors did not apply to this application. However, when she and her husband arrived at their home to check on the renovations, they were informed by one of the workers that a neighbor was trespassing on their property, even though there is a privacy fence and a “No Trespassing” sign on the gate. She added that this incident occurred after the notification letters were mailed out to nearby property owners. Ms. Rogers commented that there have been issues with traffic and Hambrick Ave. being a one-way street since they have owned the home. She added that there are some neighbors that do have their contact information in the event it was needed. Ms. Rogers mentioned safety measures that they will take to ensure their home is not a nuisance to the neighborhood and that it is well cared for when they are not using it.

Board comments – Ms. Tucker opined that she felt it was important to listen to the concerns of neighbors when they take the time to attend the meeting or send an email concerning their neighborhood stating their concerns and weigh them in the process.

Mr. Clarke opined that the subject neighborhood was a great neighborhood and added that he knew some of the people in that neighborhood. He added that every neighborhood is the same in the sense that they have the same issues and concerns; the safety, the noise, the crime, the impact on the community, etc. Mr. Clarke referred to a comment made by a citizen who stated “enough is enough”. He said that he was very concerned about this ordinance for many reasons.

Mr. Walker stated that he is generally supportive of short term rentals and stays in them on occasion. He added that this particular one is different for the reasons of having six vehicles backing onto a one-way street, it is next to, or very near a school and that it is using a property management company. Mr. Walker opined that there were a lot of “red boxes that were being checked”. He added that for those reasons, and nothing personal against the applicant or anyone who spoke today, he would not be in support of this application.

Ms. Plumlee stated that she looks at the short term rental applications on a case-by-case basis; their merits and the negatives, and in this case, she garnered from the neighbors who spoke, that there will be an adverse influence on the health, safety and welfare of the neighborhood. She added that there would be an adverse influence on residential availability by creating a commercial use in the neighborhood. Ms. Plumlee stated that for those reasons, she would be opposed to this conditional use.

Action – A motion was made by Mr. Gross to **approve PLN-BOA-24-00001: LIZ ROGERS** – 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-1D) zone, on property located at 714 Hambrick Ave., based on the application and Staff’s recommendation of approval and upon the testimony heard today, and subject to the four conditions set forth in the report. The motion failed due to lack of a second.

Board comments – Mr. Gross stated that he wanted to remind his fellow Board members that every neighborhood is special, no one wants these (short term rentals) in their neighborhood, and opined that he has had to vote to approve them in his neighborhood. He added that he did not know what exactly distinguishes this particular house in this particular neighborhood from the other ninety-nine point ninety-nine percent of the neighborhoods in our community that are special. Mr. Gross stated that he was going to register his disappointment that no one was willing to second this particular one because he did not see anything in the testimony or anything today that distinguishes it from any other that the Board has heard today, or that the Board had approved today.

Note – The Board took a short recess at 4:20 p.m. and reconvened at 4:25 p.m.

Action – An alternate motion was made by Ms. Plumlee and seconded by Ms. Tucker to **disapprove PLN-BOA-24-00001: LIZ ROGERS** – 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-1D) zone, on property located at 714 Hambrick Ave., for the following reasons:

1. The proposed use will have an adverse influence on the surrounding area because of its proximity to an elementary school, being located on a one-way street with significant parking being required to back onto the one-way street which poses significant safety concerns in the immediate area.
2. The proposed use will also have an adverse influence on the Kenwick and Mentelle neighborhoods because of existing concentrations of short term rentals in proximity.

Board comment – Mr. Gross stated that he wanted everyone to remember that the Board approved the short term rental at property on Lane Allen Rd. a few months ago in which traffic had to back into the Lane Allen/Rosemont area. He added that there are schools all over the city in which, once again, there are short term rentals next to schools and in his opinion there is no evidence put in the record that said that was an issue. Mr. Gross opined that the number of short term rentals did not reach the level of high concentration and that he is going to be interested to see how this body handles the next application and how they distinguish this one from the next one because, in his opinion, these are just general issues with short term rentals that are in place for every single one. He further opined that he did not see any distinguishing factors, therefore, he was going to vote no on this motion.

Action – The motion for **disapproval** was voted on and carried 4-3 (Carter, Clarke and Gross opposed).

Board comments – Mr. Gross informed the applicant that they could appeal this decision to the Fayette Circuit Court.

3. **PLN-BOA-24-00003: KATELYN YACKEY** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 641 Stratford Dr. (Council District 10)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as 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 4 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. Katelyn Yackey, applicant and property owner, was present on behalf of her application. She stated that she and her husband purchased the subject property in September of last year and that they have been doing some renovations to the property, which are still ongoing.

Public comment – Ms. Beth Hendren, 637 Stratford Dr., stated that she was not opposed to this short term rental, but she was concerned about the quality of people that would be coming in, how the property would be kept up, parties, parking, etc. She added that Stratford Dr. is a dead-end street and there is a school close by.

Applicant comments – Ms. Yackey thanked Ms. Hendren for her comments and concerns and the opportunity to discuss them. She thanked the Board for the opportunity to have these debates. Ms.

Yackey stated that they are limiting the occupancy to only four people, therefore concerns over traffic and parties would be minimized and something that she and her husband would want to respond to if there is an issue. She added that they do plan to monitor the property very closely and that they live nearby and could be there quickly, if needed. Ms. Yackey added that there would be security cameras on the property and that the neighbors would have their contact information if they needed to reach them directly.

Board comments – Ms. Plumlee commented that the subject property was in a neighborhood that has the potential for adverse effect on the welfare of neighborhood, in that it is a short, dead end street. She added that Clays Mill Rd. is somewhat of a school corridor and this property would impress a purchaser as being near a school corridor and would be important as a family situation. Ms. Plumlee opined that there is already another short term rental on this street and the subject property sold for a little more than two hundred and twenty-one thousand dollars, which is within the grasp of certain individuals who need affordable housing. She further opined this would be taking affordable housing off of the market.

Ms. Carter clarified that it was not the Board's intent to violate the Fair Housing Law, so the issue of whether this is a family unit, is not what the Board would be considering, or is allowed to consider.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 4-3 (Plumlee, Sturdivant and Tucker opposed), to **approve PLN-BOA-24-00003: KATELYN YACKEY** – 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 641 Stratford Dr., based on Staff's recommendation, the testimony given today and subject to the four conditions as listed.

V. **BOARD ITEMS** – The Chair asked if there were any Board items a member wished to present.

There were none at this time.

VI. **STAFF ITEMS** - The Chair asked if there were any Staff items to discuss.

There were none at this time.

VII. **NEXT MEETING DATE** -The Chair announced that the next meeting date will be March 11, 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 4:36 p.m.

Raquel Carter, Chair

Linda Tucker, Secretary

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.

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