

MINUTES FOR THE BOARD OF ADJUSTMENT
MEETING

April 8, 2024

- I. **CALL TO ORDER** - Chair Carter called the meeting to order at 1:31 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 and Linda Tucker. Chad Walker was absent. Others present were Brittany Smith, Department of Law and David Filiatreau, Division of Traffic Engineering. Planning Staff members present were Jim Duncan, Autumn Goderwis, James Mills, Stephanie Cunningham and Donna Lewis.

III. **APPROVAL OF MINUTES**

The February 2024 Board of Adjustment meeting minutes were considered for approval at this time.

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 6-0 (Walker absent), to **approve** the February 2024 Board of Adjustment meeting minutes.

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-24-00012: JEROMIE R. KIRK** – requested a variance to increase the allowable width of a driveway from 10' to 20' within the defined Infill and Redevelopment area in a Historic District Overlay (H-1) zone in a Planned Neighborhood Residential (R-3) zone, on property located at 612 N. Broadway. (Council District 1)

Staff comments – Ms. Goderwis informed the Board that the applicant had notified Staff that they would not be able to attend this meeting. She stated that the Board could vote to postpone this application to the following month, or hear it today.

Board question – Ms. Tucker had a question about the garage. Ms. Goderwis responded that the garage had already been built, but it was not discovered at that time that a variance was needed, and that variance was what the Board would be reviewing. There was further discussion.

Action – A motion was made by Ms. Plumlee, seconded by Mr. Sturdivant and carried 6-0 (Walker absent), to **postpone PLN-BOA-24-00012: JEROMIE R. KIRK** – request for a variance to increase the allowable width of a driveway from 10' to 20' within the defined Infill and Redevelopment area in a Historic District Overlay (H-1) zone in a Planned Neighborhood Residential (R-3) zone, on property located at 612 N. Broadway, to the May 13, 2024 Board of Adjustment meeting.

2. **PLN-BOA-24-00028: NEW LIFE BAPTIST CHURCH** – requested a conditional use permit to amend an existing conditional use for a place of religious assembly in order to construct a new accessory structure in a Single Family Residential (R-1C) zone, on property located at 333 Redding Rd. (Council District 4)

Applicant representation - Pastor Steven Wainright was present on behalf of this application. Ms. Carter asked him if he was comfortable with Staff's recommendation for a one-month postponement. Pastor Wainright confirmed that he was.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 6-0 (Walker absent), for a one-month **postponement** of **PLN-BOA-24-00028: NEW LIFE BAPTIST CHURCH** – request for a conditional use permit to amend an existing conditional use for a place of religious assembly in order to construct a new accessory structure in a Single Family Residential (R-1C) zone, based on Staff's recommendation.

3. **PLN-BOA-24-00036: DUSTIN AND LAUREN GAGE** – requested a conditional use permit for a bed and breakfast in an Agricultural Rural (A-R) zone, on property located at 875 S. Cleveland Rd. (Council District 12)

The Staff Recommended: Postponement, for the following reasons:

1. The application materials do not appear to describe a use that meets the definition of a bed and breakfast facility. The applicant should submit additional materials, including updated plans and an operational plan indicating how the proposed use is for a bed and breakfast facility and not an un-hosted short term rental.

Staff comments – Ms. Goderwis informed the Board that the applicant had indicated via email that they were agreeable to a one-month postponement of their application, based on Staff's request for additional materials. She added that they may not have realized that they should attend the meeting, however.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 6-0 (Walker absent), for a one-month **postponement** of **PLN-BOA-24-00036: DUSTIN AND LAUREN GAGE** – request for a conditional use permit for a bed and breakfast in an Agricultural Rural (A-R) zone, on property located at 875 S. Cleveland Rd., to the May 13, 2024 Board of Adjustment meeting..

4. **PLN-BOA-24-00039: LEXINGTON ISLAMIC CENTER, INC.** – requested a conditional use permit to amend an existing conditional use for a place of religious assembly in order to construct an addition and new parking areas in an Agricultural Urban (A-U) zone, on property located at 1240 Armstrong Mill Rd. (Council District 8)

Applicant representation – Mr. Matt Carter, Vision Engineering, was present on behalf of this application. He stated that the applicant wished to request a one month postponement of this application as they were considering a new layout, and will likely need to submit a new site plan.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 6-0 (Walker absent), to **postpone** **PLN-BOA-24-00039: LEXINGTON ISLAMIC CENTER, INC.** – request for a conditional use permit to amend an existing conditional use for a place of religious assembly in order to construct an addition and new parking areas in an Agricultural Urban (A-U) zone, on property located at 1240 Armstrong Mill Rd., for one month to the May 13, 2024 Board of Adjustment meeting.

C. **Abbreviated Items**

1. **PLN-BOA-24-00032: ERIC SHOCKEY AND CHRISTA BURROWS** – requested variances to 1) reduce the required setback along an alley from 15' to 7' and 2) to increase the allowable floor area ratio from 0.35 to 0.7 in order to construct additions to the principal structure and the detached accessory structure within the defined Infill and Redevelopment area in a Mixed Low Density Residential (R-2) zone, on property located at 505 W. Third St. (Council District 11)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variances will not represent an attempt to circumvent the Zoning Ordinance, but will meet the intent of the provisions of the Ordinance that allow for variances to FAR, as it will not create an opportunity for more units on the subject property than would be allowed by right.

- b. Granting the variances should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. A two-story garage located at the rear of the property along Dixon Alley will not have much, if any, impact on the appearance of the house from West Third Street and should not negatively impact the neighbors. Adjacent properties are configured similarly with detached garages close to the rear lot lines along Dixon Alley.
- c. The variances are generally reasonable, as the subject property is somewhat larger than many within the defined Infill and Redevelopment area and allowing some additional floor area on this particular lot will not result in construction that is out of character with the general vicinity. The Zoning Ordinance specifically states that BOA action may sometimes be required within the defined Infill and Redevelopment Area in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood.

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

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

Applicant representation – Mr. Eric Shockey, applicant and property owner, was present on behalf of this application. Ms. Carter noted that there were two letters of concern regarding this application. One of the concerns was regarding the proposed bamboo planter and the other involved the sewer hookup. Mr. Shockey stated that they intend to install a liner in the bamboo planter, as they know that it can spread quickly. He added that they chose bamboo as it does grow quickly and would hide the weeds that grow up to ten feet tall in the adjacent alley. Mr. Shockey stated that when they met with Staff initially, they did not believe they would be able to connect to the sewer because there was no hook-up in Dixon Alley on the map. There was further discussion about the bamboo planter and parking for residents in the area.

Ms. Carter asked Mr. Shockey if he was agreeable to the two conditions of approval set forth. He indicated that he was in agreement.

Action – A motion was made by Mr. Gross, seconded by Mr. Sturdivant and carried 4-2 (Plumlee and Tucker opposed; Walker absent), to **approve PLN-BOA-24-00032: ERIC SHOCKEY AND CHRISTA BURROWS** – request for variances to 1) reduce the required setback along an alley from 15' to 7' and 2) to increase the allowable floor area ratio from 0.35 to 0.7 in order to construct additions to the principal structure and the detached accessory structure within the defined Infill and Redevelopment area in a Mixed Low Density Residential (R-2) zone, on property located at 505 W. Third St., based on Staff's recommendation, the testimony herein and subject to the two conditions as listed.

2. **PLN-BOA-24-00033: THE DOG STOP** – requested a variance to reduce the required setback for a kennel from a residential zone, from 100' to 21' in a split-zoned Highway Service Business (B-3) zone and Single Family Residential (R-1D) zone, on property located at 3120 Richmond Rd. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties. The outdoor pet relief areas are located over 170 feet from the nearest residential structure on Grayson Lake Drive, and will be screened with fencing, earth mound, and dense vegetation present on the property line.
- b. Restrictions on hours of operation for the outdoor pet relief area and requiring active supervision of the dogs while outside should ensure that the use does not become a nuisance to the surrounding area.
- c. The location of the existing split-zoning on the lot and configuration of the residential properties to the southeast are special circumstances that contribute to justifying the requested reduction.
- d. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variance as soon as it was determined that it was needed and prior to construction.

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

1. Dogs shall be supervised by staff while utilizing the outdoor pet relief areas,
2. The outdoor areas shall not be utilized during quiet hours of 11:00 PM to 7:00 A.M.

3. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
4. A Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to opening the facility.

Applicant representation – Mr. Blake Hendricks was present on behalf of this application. Ms. Carter asked him if he had read and was comfortable with the four conditions of approval of this application. He indicated that he had read them and was in agreement with them. Ms. Carter asked Mr. Hendricks if the requested use was for a kennel. Mr. Hendricks replied that it would be used as a kennel, a daycare, for grooming, training and retail.

Action – A motion was made by Mr. Clarke, seconded by Ms. Tucker and carried 6-0 (Walker absent) to **approve PLN-BOA-24-00033: THE DOG STOP** – request for a variance to reduce the required setback for a kennel from a residential zone, from 100' to 21' in a split-zoned Highway Service Business (B-3) zone and Single Family Residential (R-1D) zone, on property located at 3120 Richmond Rd., based on Staff's recommendation and subject to the four conditions as listed.

3. **PLN-BOA-24-00035: QUALITY LOGISTICS, LLC** – requested a variance to reduce the required side yard setback from 12' to 7' in order to construct an accessory solar canopy in a parking lot in a Professional Office (P-1) zone, on property located at 2376 Sir Barton Way. (Council District 6)

The Staff Recommended: Approval for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, as the solar canopy and charging stations will be established to cover 15 existing parking spaces along the side property line, but will not extend into the front yard. The solar canopy will be between two structures and less visible from the roadway.
- b. The special circumstances unique to the subject property and the side yard are that the solar canopy needs to be faced due south in order to achieve maximum exposure and thus maximum energy production. This constraint and the location of the existing building and parking configuration have led to the proposed solar canopy in the side yard.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variance as soon as it was determined that it was needed and prior to construction.

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

1. Construction shall be in accordance with the submitted application materials and site plan.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.
3. Encroachment agreement(s) shall be obtained from the utility companies that occupy the established utility easement prior to construction.
4. The associated final development plan shall be amended to document the increased lot coverage associated with the planned solar canopy.

Applicant representation – Mr. Greg Smorstad, Banks Engineering, was present on behalf of this application. Ms. Carter asked Mr. Smorstad if he had read the four conditions of approval and if he was in agreement with them. Mr. Smorstad stated that he was comfortable with the conditions.

Board question – Mr. Clarke asked if the applicant was actually going to use the electricity from the canopy and if so, how they were going to use it. Mr. Smorstad replied that there will be some electronic vehicle chargers under the canopy, which will use some of the electricity and anything extra will be put back into the building usage. There was further discussion.

Action – A motion was made by Mr. Gross, seconded by Mr. Sturdivant and carried 6-0 (Walker absent), to **approve PLN-BOA-24-00035: QUALITY LOGISTICS, LLC** – request for a variance to reduce the required side yard setback from 12' to 7' in order to construct an accessory solar canopy in a parking lot in a Professional Office (P-1) zone, on property located at 2376 Sir Barton Way, based on Staff's recommendation, the testimony herein and subject to the four conditions as listed.

5. **PLN-BOA-23-00056: LEXINGTON COUNTRY CLUB** – requested to expand an existing conditional use permit for an outdoor recreational facility (private club) in order to construct a building addition in a Single-Family Residential (R-1B) zone, on property located at 2550 Paris Pike. (Council District 12)

The Staff Recommended: **Postponement**, for the following reason:

- a. Review by the Paris Pike Corridor Commission, which is scheduled to meet on April 8, is warranted for the proposed conditional use expansion. The staff will be prepared to make a recommendation to the Board, in consideration of the Commission's review on April 8th.

Note - This application was discussed earlier in the day at the Paris Pike Corridor Commission meeting. As a result of that meeting, Staff revised their recommendation to that of approval of this application and distributed a Supplemental Staff Report reflecting that recommendation to the Board members prior to the meeting.

Applicant representation – Mr. Eric Eaton, attorney for the applicant, was present. Ms. Carter asked Mr. Eaton if he had read the three conditions of approval. Mr. Eaton indicated that the applicant had read them and was agreeable to them. Ms. Carter noted that as Staff had recently submitted a Supplemental Staff Report for this application, she would like for Mr. Eaton to briefly explain the project.

Mr. Eaton gave a brief explanation of the proposed project, noting that the Paris Pike Corridor Commission had unanimously recommended approval of the project earlier that day.

Action – A motion was made by Mr. Sturdivant, seconded by Ms. Plumlee and carried 6-0 (Walker absent), to **approve PLN-BOA-23-00056: LEXINGTON COUNTRY CLUB** – request to expand an existing conditional use permit for an outdoor recreational facility (private club) in order to construct a building addition in a Single-Family Residential (R-1B) zone, on property located at 2550 Paris Pike, based on the recommendations of the Paris Pike Corridor Commission and Staff, and subject to the following three conditions as listed in the Supplemental Staff Report:

1. The addition shall be built in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. If warranted, an updated storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

6. **PLN-BOA-24-00023: FAIRHAVEN BAPTIST CHURCH** – requested to amend a conditional use permit in order to construct a second structure at an existing place of religious assembly in an Agricultural Urban (A-U) zone, on property located at 2265 Liberty Rd. (Council District 6)

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

- a. The proposed structure is well within the size limitation for such structures, will meet all setback requirements, and will be located outside of utility easements.
- b. Approval of the request will not result in an increase in traffic on the site and adequate parking exists.
- c. All necessary public services and facilities are or will be available and adequate for the proposed use.

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

1. The structure shall be constructed and operated in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to construction and use of the pavilion.

Applicant representation – Mr. Jonathan East, applicant, was present on behalf of this application. Ms. Carter asked Mr. East if he had read the conditions of approval. He indicated that he had read them and that he was agreeable to them. Ms. Carter noted that there was one letter of opposition to the application and the Board would review it.

Action – A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 6-0 (Walker absent) to **approve PLN-BOA-24-00023: FAIRHAVEN BAPTIST CHURCH** – request to amend a conditional use permit in order to construct a second structure at an existing place of religious assembly in an Agricultural Urban (A-U) zone, on property located at 2265 Liberty Rd., based on Staff's recommendation and subject to the two conditions set forth.

7. **PLN-BOA-24-00026: KRISTIN NELSON** - requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1E) zone, on property located at 1205 Aspen St. (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.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate parking is available in front of the home, as well as on-street on Aspen Street.
- c. No short term rentals in the area have been cited as a nuisance and there is not a high concentration of short term rentals in the vicinity.
- d. There is no record of short term rental compliance issues with the applicant.
- e. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 6 individuals.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.
4. The conditional use permit shall become null and void upon change in ownership, or if the applicant's short term rental special fee license (as regulated by the Division of Revenue and Section 13 of the Code of Ordinances) lapses or is revoked.

Applicant representation – Ms. Kristin Nelson, applicant and property owner, was present on behalf of her application. Ms. Carter noted that there were four conditions of approval placed on this application and she asked Ms. Nelson if she had reviewed them. Ms. Nelson replied that she had reviewed them.

Board questions – Ms. Plumlee asked Ms. Nelson how long she had owned this property. Ms. Nelson replied that they had purchased it at the first of August, 2023. Ms. Carter stated that there were letters of objection from neighbors and that the Board would review them.

Mr. Clarke asked about parking in front of the unit and asked Ms. Nelson to explain. Ms. Nelson explained that there is a driveway that would accommodate one vehicle and there is also on-street parking. She added that with only being six people allowed, there should not be a parking issue. There was further discussion

Action – A motion was made by Mr. Clark and seconded by Mr. Gross to **approve PLN-BOA-24-00026: KRISTIN NELSON** - request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1E) zone, on property located at 1205 Aspen St., based on Staff's recommendation and subject to the four conditions as listed.

Discussion on the motion – Ms. Plumlee commented that this home sold for two hundred and eighty thousand dollars and opined that this is a house that could be used for a permanent residence in Lexington.

Action - The motion to **approve PLN-BOA-24-00026: KRISTIN NELSON** was voted on and passed 4-2 (Plumlee and Tucker opposed; Walker absent).

8. **PLN-BOA-24-00027: FINCASTLE LLC** – requested a conditional use permit for an un-hosted short term rental in a Historic District Overlay (H-1) zone in a Townhouse Residential (R-1T) zone, on property located at 853 W. Maxwell 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, has operated as a short term rental under the previous owner, 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 adequate

parking is available in front of the home, and additional permitted parking will be provided on Maxwell Street.

- c. No short term rentals in the area have been cited as a nuisance.
- d. There is no record of short term rental compliance issues with the applicant.
- e. All necessary public services and facilities are available and adequate for the proposed use.

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

- 1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
- 2. Occupancy of the short term rental shall be limited to no more than 8 individuals.
- 3. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.
- 4. The conditional use permit shall become null and void upon change in ownership, or if the applicant's short term rental special fee license (as regulated by the Division of Revenue and Section 13 of the Code of Ordinances) lapses or is revoked.

Applicant representation – Mr. Ben Franzini, applicant and property owner, was present on behalf of his application. Ms. Carter asked Mr. Franzini if he had read the four conditions of approval. He replied that he had read them and that he was agreeable to them.

Board question – Mr. Sturdivant asked a question about parking for the unit. Mr. Franzini replied that there are two dedicated parking spaces in front of the townhouse unit, and per the Maxwell Parking Ordinance, the applicant is eligible to get parking passes for visitors to park on Maxwell St. He added that they have not done that yet, but do plan to do so.

Ms. Tucker commented on the occupancy of eight individuals in a residence of twelve hundred square feet. Mr. Franzini stated that the request for eight individuals was based on the formula in the short term rental license application. Ms. Tucker commented that there appeared to be thirty nine short term rentals currently operating within one thousand feet of Mr. Franzini's property; therefore, she most likely would not be in favor of this one based on the concentration.

Ms. Plumlee asked where eight people would sleep. Mr. Franzini replied that there were two queen beds in the bedrooms and there was an air bed as well as a pull-out sofa in the living room.

Ms. Carter asked Staff to review the calculation to determine the number of individuals allowed in a short term rental. Ms. Goderwis replied that the calculation was two individuals per bedroom plus four, up to twelve. Mr. Franzini stated that on the listing, they state a maximum of six individuals, but the calculation does allow for eight.

Ms. Carter opined that there would likely be a higher density of tourists in the downtown area, or the university corridor; therefore, a higher density of short term rentals in that area would make sense.

Ms. Tucker said that she would like to make a motion for disapproval and asked if she should confer with Ms. Smith. Ms. Smith suggested the Board take a short recess to discuss findings for disapproval.

Note – The Board took a brief recess at 2:24 p.m. and reconvened at 2:31 p.m.

Action – A motion was made by Ms. Tucker and seconded by Ms. Plumlee to **disapprove PLN-BOA-24-00027: FINCASTLE LLC** – request for a conditional use permit for an un-hosted short term rental in a Historic District Overlay (H-1) zone in a Townhouse Residential (R-1T) zone, on property located at 853 W. Maxwell St., based on the following:

- 1. The vicinity has a high concentration of short term rentals (20.2% of the properties used for residential purposes within one thousand feet of the property).
- 2. The area has a high volume of traffic and limited on-street parking, thus the requested use would have an adverse influence on the surrounding neighborhood.

The motion was voted on and **failed** due to a tie vote (Carter, Clarke and Gross opposed; Walker absent).

Applicant comments – Mr. Franzini stated that he would be agreeable to reduce the allowable occupancy to six individuals if that would impact the Board's decision. The Board indicated that they were not inclined to move for approval of a reduced occupancy.

9. **PLN-BOA-24-00029: DAVID AND CHERYL LASHEEN** – requested a conditional use permit for an un-hosted short term rental in a Mixed Low Density Residential (R-2) zone, on property located at 1039 Chinoe Rd. (Council District 5)

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

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- c. No short term rentals in the area have been cited as a nuisance and there is not a high concentration of short term rentals in the vicinity.
- d. There is no record of short term rental compliance issues with the applicant.
- e. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 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 – Mr. and Mrs. Lasheen were both present on behalf of their application. Ms. Carter asked them if they had read Staff's four conditions of approval. Mrs. Lasheen stated that they had read the conditions and were agreeable to them. She stated that they purchased the property in April of 2016 when their son went to college, so that he could live there. Mrs. Lasheen added that their son had recently moved, and now that Mr. Lasheen is retiring, they would like to keep the property and manage the rental of it themselves. She stated that they do not want to have more than four individuals and that they have adequate parking.

Board questions – Mr. Sturdivant asked the Lasheens if they owned both sides of the duplex. Mrs. Lasheen stated that they do not. Mr. Sturdivant asked if the neighbor on the other side had been notified. Mrs. Lasheen confirmed that the neighbor had been notified. There was further discussion.

Ms. Plumlee commented on a statement in the applicant's justification statement wherein the applicant stated that a short term rental at this location would have a positive economic impact to the neighborhood as guests would generate additional revenue for local businesses. She opined that a permanent resident would support Lexington year round. Ms. Plumlee further opined that affordable housing is being taken away from permanent residents. There was further discussion.

Action – A motion was made by Mr. Clarke, seconded by Mr. Gross and carried 4-2 (Plumlee and Tucker opposed; Walker absent), to **approve PLN-BOA-24-00029: DAVID AND CHERYL LASHEEN** – request for a conditional use permit for an un-hosted short term rental in a Mixed Low Density Residential (R-2) zone, on property located at 1039 Chinoe Rd., based on Staff's recommendation and subject to the four conditions as listed.

10. **PLN-BOA-24-00031: JENNIFER KRIMM** – requested a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 229 E. Sixth 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, provided the conditions of approval are met. The structure is large enough to

accommodate the proposed number of users. Additionally, the subject property will be primarily utilized as the applicant's primary residence (65% of the time) and the short term rental operation will be limited (35% of the time).

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

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

- 1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
- 2. The property shall be rented on a short term basis for a maximum of 127 days per calendar year.
- 3. The applicant shall provide documentation that the dwelling is their primary residence, as defined in Chapter 13 of the Code of Ordinances annually at the time of renewal of their special fee license.
- 4. Occupancy of the short term rental shall be limited to no more than 10 individuals.
- 5. 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.
- 6. The conditional use permit shall become null and void upon change in ownership, if the property is no longer the applicant's primary residence, 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. Jennifer Krimm, applicant and property owner was present on behalf of her application. Ms. Carter remarked that there were six conditions of approval for this application and she asked Ms. Krimm if she had read those conditions. Ms. Krimm confirmed that she had read them. She added that this is her permanent residence, but due to the type of work that she does, she travels quite a bit. Ms. Krimm stated that they do not like to leave their property vacant when they are gone, citing an attempted break-in and some maintenance issues that had previously occurred when they were away. She said they are considering renting their home on a short term basis for approximately thirty-five percent of the time.

Board questions – Mr. Sturdivant asked Ms. Krimm who owned the vacant lot next to her property. She replied that she was not sure. Mr. Sturdivant asked if the vacant lot was well-maintained and mowed. Ms. Krimm indicated that the lot was mowed on a regular basis.

Ms. Plumlee asked if there was a letter of opposition to this application. Ms. Carter replied that there was one letter of opposition that the Board could review.

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 6-0 (Plumlee abstained; Walker absent), to **approve PLN-BOA-24-00031: JENNIFER KRIMM** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 229 E. Sixth St., based on Staff's recommendation, the testimony given herein and subject to the six conditions set forth.

- 11. **PLN-BOA-24-00034: REWA GARDNER** - requested a conditional use permit for a home-based business (cosmetology) in a Medium Density Residential (R-4) zone, on property located at 556 Douglas Ave. (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 it should not create disturbing levels of traffic, noise, or odors. The property and proposed addition is of a sufficient size to serve the limited number of clients to the home on a daily and weekly basis.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

- 1. The home-based cosmetology business shall be operated in accordance with the submitted application materials and site plan, with appointments only on an individual basis.

2. The proposed addition shall be designed to include an interior connection to the residence and so as to not alter the residential appearance of the building.
3. The use shall operate in accordance with the requirements of the Kentucky Board of Cosmetology.
4. All necessary permits including a Zoning Compliance Permit, Building Permit, and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the use.
5. The conditional use shall become null and void should the applicant no longer reside at this address.

Applicant representation – Ms. Rewa Gardner was present on behalf of her application. Ms. Carter stated that her application had been recommended for approval by Staff with five conditions of approval. She asked Ms. Garner if she had reviewed those conditions and if she was comfortable with them. Ms. Gardner confirmed that she had read them and was comfortable with them.

Action – A motion was made by Mr. Sturdivant, seconded by Mr. Gross and carried 6-0 (Walker absent), to **approve PLN-BOA-24-00034: REWA GARDNER** – request for a conditional use permit for a home-based business (cosmetology) in a Medium Density Residential (R-4) zone, on property located at 556 Douglas Ave., based on Staff's recommendation and subject to the five conditions of approval.

12. **PLN-BOA-24-00038: ALEX FROST** – requested a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Mixed Low Density Residential (R-2) zone, on property located at 346 S. Mill St. (Council District 3)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users. Additionally, the subject property is located generally between the University of Kentucky and downtown, near attractions including the Lexington Center, and the area features a mixture of zoning categories and uses.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- c. No short term rentals in the area have been cited as a nuisance.
- d. There is no record of short term rental compliance issues with the applicant.
- e. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 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. Alexander Frost, applicant and property owner, was present on behalf of his application. Ms. Carter stated that this application had been recommended for approval with four conditions of approval. She asked Mr. Frost if he had reviewed the four conditions. Mr. Frost indicated that he had reviewed them. He noted that although his application referred to ten individuals, per the formula for calculating occupancy, he preferred to only have six individuals at one time.

Board questions – Mr. Sturdivant asked if it was difficult to open the doors of a vehicle parked in the driveway due to the closeness of the subject building and the one next to it. Mr. Frost agreed that it was a narrow driveway, but that if you let the passengers out of the car at the sidewalk and then back your vehicle in, the driver can exit the vehicle on the driver's side. Mr. Sturdivant asked if there was room to turn around in the back of the property. Mr. Frost stated that he would not recommend that if the driveway was completely full.

Ms. Carter asked Staff if it was correct that there were no longer parking requirements in Lexington. Ms. Goderwis confirmed that to be true.

Ms. Tucker stated that there were already thirty short term rentals in operation within one thousand feet of the property. She opined that the subject property would be a good long term property for someone as it is close to public transportation.

Action – A motion was made by Mr. Gross and seconded by Mr. Clarke to **approve PLN-BOA-24-00038: ALEX FROST** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Mixed Low Density Residential (R-2) zone, on property located at 346 S. Mill St., based on Staff's recommendation, the testimony herein and subject to the four conditions set forth.

Discussion on the motion – Prior to the vote, Mr. Clarke commented that this application was very similar to the Fincastle, LLC application, heard earlier by the Board and that he agreed with Ms. Tucker that thirty-nine short term rentals in an area were too many, as was thirty. However, the Zoning Ordinance does not give the Board the figures to base their decisions on. He added that when the Zoning Ordinance is modified to give the Board some limitations for how many short term rentals are in a specific area, it is going to be really important to how the Board proceeds. Mr. Clarke stated that he would vote in favor of this application, and he voted to oppose Ms. Tucker's motion to disapprove the Fincastle, LLC application, although he agreed with her. He added that he had no basis to vote for disapproval. Mr. Clarke opined that until the Board gets to the point where they have some limitations on how many short term rentals there are in a specific area, the Board is "handicapped" in terms of voting and making sound decisions based on the applicants that have come before the Board and the applications that the Board is reviewing and making decisions about. He said that he feels like he is voting for something that he doesn't agree with, but what he doesn't agree with is the Zoning Ordinance itself.

Action – The motion to **approve PLN-BOA-24-00038: ALEX FROST** was voted on and carried 5-1 (Tucker opposed; Walker absent).

D. Discussion Items

1. **PLN-BOA-24-00008: MUVURATI MAPIGANO AND NOELA ANANIA** - Requested a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, on property located at 160 Alabama Ave. (Council District 1)

The Staff Recommended: Disapproval, for the following reasons:

- a. The proposed use will have an adverse influence on the subject property and the surrounding neighborhood, by removing an existing housing unit from the market that could otherwise be utilized as a primary residence for an owner occupant or long-term tenant within one of the top 10 Census Block Groups identified as a Priority Area, as mapped within the Task Force on Neighborhoods in Transition Report. These priority areas are vulnerable to involuntary displacement, and the proposed use would heighten existing issues with gentrification and involuntary displacement in a location that is in the top 10 Census Block Groups for three of the four mapped attributes. Approximately 3% of the housing stock within the priority area is already being utilized for this use.
- b. There are already 20 short term rentals, representing approximately 3.7% of the housing stock within 1,000 feet of the subject property, that are available for those interested in utilizing the proposed use.

Staff presentation – Ms. Goderwis directed the Board's attention to the overhead screen on which a copy of the applicant's site plan was displayed. She briefly explained the location of the subject property, then displayed a street view image of the property. Ms. Goderwis explained some background information pertaining to the subject property, noting that the application originated from a neighbor's complaint to the Division of Building Inspection, who then notified the applicant of the requirement to file an application for a conditional use permit for a short term rental. She noted that there are currently no short term rentals in the vicinity that have been cited for nuisance complaints within the past year. Ms. Goderwis stated that, according to the Division of Planning's Zoning Compliance Permit data, there are twenty short term rentals operating within one thousand feet of the subject property. She referred to an image on the screen which depicted the subject property and the one thousand foot radius, with short term rental properties identified with a green star, noting those properties have been issued Zoning Compliance Permits. Ms. Goderwis further explained how Staff determines the concentration of short term rentals in a particular vicinity. Referring to the orange portion of the map on the screen, she explained that the subject property is located in Census Tract 3, Block Group 1, adding that in the past there was discussion regarding "neighborhoods

in transition task force and report” which stemmed from the Mayor’s Commission for Racial Justice and Equality Report in 2020. Ms. Goderwis further explained the data from that report and the fact that the subject property is within the top ten census block groups that were identified as priority areas where gentrification and involuntary displacement may be a higher threat, and is actually one of the top three census block groups within that greater top ten. She stated that Staff had recommended disapproval of this application, and explained their reasons for doing so.

Board comments – Ms. Carter opined that the information provided by Staff regarding this application made it easier for the Board to make their decision, by giving the Board clear direction, using the information from the task force on the areas that needed to be protected.

Applicant representation – Mr. Muvurati David Mapigano, applicant and property owner, was present on behalf of his application. He stated that he did not understand why Staff had recommended disapproval of his application for a short term rental, because there were already twenty short term rentals in the area. Mr. Mapigano explained that he had lived in the house for twelve years and that it was paid for. He said that he had rented the house to an individual for two years and that person had destroyed it. Mr. Mapigano said that he decided to remodel the house and use it as a short term rental because he felt that it would be taken care of better. He stated that if he was forced to rent the home on a long term basis, it would be hard on him. Mr. Mapigano said that he wondered if the disapproval was because of his African name.

Board comment – Ms. Carter asked Staff if they could explain the reasons for their decision to Mr. Mapigano again, to help him understand why his application was recommended for disapproval.

Staff comments – Ms. Goderwis explained that the twenty short term rentals in the vicinity of the subject property had all been operating prior to July 11, 2023, which is when Council adopted the current regulations for short term rentals. She added that Council had included in their regulations, a six month “grandfathering in” period, allowing anyone who had been operating a short term rental prior to July 11, 2023, to continue to do so and take advantage of some of the more relaxed aspects of the new rules, but continue to operate in a location that would, from there on out, require a conditional use without having to go through this process. Ms. Goderwis stated that should those properties sell to a new owner who wanted to continue the short term rental use, they would be required to come back before the Board. She reiterated that the twenty short term rentals previously mentioned were all ones that were brought in under that six month period because they were already in operation when the regulations took effect.

Ms. Carter asked Mr. Mapigano if that was helpful. He indicated that he understood what Ms. Goderwis had just explained, but he seemed confused about the meanings of short term rentals and conditional uses and the approval process. Ms. Carter explained that the Board of Adjustment was the approval process, reiterating that before July 11, 2023, a short term rental use did not have to get approval from the Board. She asked Mr. Mapigano if that was helpful. He stated that it was.

Department of Law comments – Ms. Smith stated that if the Board chose to go along with Staff’s recommendation of disapproval of this application, she would like to propose some minor changes to the findings for disapproval.

Action – A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 6-0 (Walker absent), for **disapproval of PLN-BOA-24-00008: MUVURATI MAPIGANO AND NOELA ANANIA** - request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, on property located at 160 Alabama Ave., based on Staff’s recommendation, and with the modifications from the Department of Law to read:

1. The proposed use, **as an un-hosted rental**, will have an adverse influence on the subject property and the surrounding neighborhood, by removing an existing housing unit from the market that could otherwise be utilized as a primary residence for an owner occupant or long-term tenant within one of the top 10 Census Block Groups identified as a Priority Area, as mapped within the Task Force on Neighborhoods in Transition Report. These priority areas are vulnerable to involuntary displacement, **a large number of residential properties that are not occupied by the owner**, and the proposed use would heighten existing issues with gentrification and involuntary displacement in a location that is in the top 10 Census Block Groups for three of the four mapped attributes. Approximately 3% of the housing stock within the priority area is already being utilized for this use.

2. **PLN-BOA-24-00025: ETHAN AND LINDSAY JACKSON** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 141 Clyde 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.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- c. No short term rentals in the area have been cited as a nuisance and there is not a high concentration of short term rentals in the vicinity.
- d. There is no record of short term rental compliance issues with the applicant.
- e. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 6 individuals
3. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.
4. The conditional use permit shall become null and void upon change in ownership, or if the applicant's short term rental special fee license (as regulated by the Division of Revenue and Section 13 of the Code of Ordinances) lapses or is revoked.

Applicant representation – Ms. Lindsay Jackson, applicant and property owner, was present on behalf of this application. Ms. Carter stated that this application had been recommended for approval with four conditions of approval. Ms. Carter asked Ms. Jackson if she had reviewed those conditions. Ms. Jackson confirmed that she had reviewed them. Ms. Carter asked Ms. Jackson to explain her application. Ms. Jackson stated that she and her husband purchased the property in November of 2023 with a three-pronged hope for it. She said that they both went to school here in Lexington and their parents still live in the area so they are in town a lot to visit them, and they wanted a place to stay when they were visiting. Ms. Jackson also said that her mother could stay in the house at times when it was convenient for her work schedule and the third reason was to use the property as a short term rental when they were not using it.

Citizen comments - Ms. Rebecca Kuntz, 2508 Windsor Ct., said that she did not necessarily disapprove of this application but she had some questions and concerns about short term rentals in general and she wished that she knew more about them. She also had questions about how many bedrooms were in the subject property, how many people would be staying there, the parking and how many short term rentals were already in this vicinity. Ms. Kuntz noted that she has rental property in the area.

Ms. Frances Hisle, 2841 Southview Dr., stated that she does not live in the area, but that she does have a long term rental property in the area. She said that she has heard some of the same concerns as those expressed by Ms. Kuntz. Ms. Hisle expressed concerns with taking property off of the market for potential buyers or long term renters.

Applicant comments – Ms. Jackson addressed some of the citizen concerns that had been expressed, stating that the occupancy would be six individuals. She added that the driveway was very long and able to accommodate three cars. Ms. Jackson also said there is a garage which they use for storage that could be cleaned out and used for additional parking if needed. She commented that the neighbors on both sides of her property have been very complimentary about how well they have maintained the yard and seem to have no concerns about the home being used as a short term rental.

Board questions and comments – Mr. Sturdivant asked Ms. Jackson how close the subject property is to the Montessori School that is nearby. Ms. Jackson replied that it was within walking distance, but she was not certain of the exact distance.

Ms. Plumlee asked Ms. Jackson if she resides in Louisville. Ms. Jackson replied that she does live in Louisville.

Ms. Carter commented that, while there has been some criticism as to how the Zoning Ordinance is written, short term rentals had been operating in the past with no, or minimal regulations. She opined that the adoption of these regulations was an attempt by Council to track and regulate their usage.

Mr. Clarke remarked that in his conversations with councilmembers, he has been told that Council will look into the issue of short term rentals again; possibly as soon as May of this year.

Ms. Plumlee thanked her colleagues for their comments. She opined that the subject property could be considered as affordable for a home buyer or a long-term renter.

Ms. Carter asked if the subject property had been renovated. Ms. Jackson stated that the home had been renovated prior to them buying it.

Action – A motion was made by Mr. Clarke, seconded by Mr. Gross and carried 4-2 (Plumlee and Tucker opposed; Walker absent), to **approve PLN-BOA-24-00025: ETHAN AND LINDSAY JACKSON** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 141 Clyde St., based on Staff's recommendation and subject to the four conditions as listed.

3. **PLN-BOA-24-00037: JAMES RAYNOLDS** – Requested a conditional use permit for an un-hosted short term rental in a Planned Neighborhood Residential (R-3) zone, on property located at 2669 Trailwood Ln. (Council District 2)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- c. No short term rentals in the area have been cited as a nuisance and there is not a high concentration of short term rentals in the vicinity.
- d. There is no record of short term rental compliance issues with the applicant.
- e. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 5 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. James Raynolds, applicant and property owner, was present on behalf of his application. Ms. Carter stated that Staff had recommended this application for approval, with four conditions of approval set forth. She asked Mr. Raynolds if he had reviewed those conditions. He replied that he had reviewed them and that he was in agreement with them. Ms. Carter asked Mr. Raynolds to tell everyone about his plans for the subject property.

Mr. Raynolds explained that they have two children on the Autistic Spectrum, with one of them close to graduating from college. He stated that their intention is for that child to live in the home once he finds a job and becomes independent enough to do so. Mr. Raynolds added that in the meantime, their intent is to earn some income by renting the home until that time.

Citizen comment - Ms. Whitney Dostart, 2704 Silver Mare Court, Marehaven Homeowners Association President, spoke in opposition to this application, stating that theirs is a deed restricted community.

She stated that the association's attorney had sent a letter on the association's behalf regarding their concerns. The Board acknowledged receipt of that letter. Ms. Dostart added that rentals are allowed in

their neighborhood, but only for longer than thirty days. She listed other concerns of the neighbors such as the narrowness of the streets in the neighborhood.

Applicant response – Mr. Raynolds stated that he utilizes a company called Evolve that hosts his rental property. He added that they have a minimum two night stay requirement, background checks are done and the renter's credit card is on file for any damages that may occur. Mr. Raynolds also said that they use a management company that is available 24/7 if there are any problems. He said that he has spoken with the neighbors on both sides of this property and they have his cell phone number to call if there are any problems or concerns. He opined that there should not be any problems with the parking or too many cars, based on the garage that is available for parking, as well as the driveway. Mr. Raynolds also said that they have security cameras and a security system that will allow them to see how many people are coming and going. He also mentioned rules and regulations in the contract that renters will be required to sign. Mr. Raynolds added that they have mostly five star reviews on the other short term rental that they own.

Board questions and comments - Ms. Carter asked Mr. Raynolds if he had reviewed the letter that was sent by the attorney on behalf of the HOA. He stated that he had not seen it. A copy of the letter was given to Mr. Raynolds by Staff. Ms. Carter stated that decisions made by the Board do not apply to any interaction an applicant would have with the HOA.

Mr. Sturdivant asked whether the covenants of the deed restriction would cover this issue. Mr. Gross clarified that if the Board issued the conditional use permit to the applicant, the private agreement with the neighborhood may outweigh the Board's decision. He added that historically, the Board has not denied a conditional use permit based upon a private agreement. Mr. Sturdivant questioned how the Board could approve a conditional use permit, if the private agreement does not allow that use.

Ms. Smith stated that this Board does not have any jurisdiction to issue any findings or judgement related to the validity or the interpretation of a deed restriction, adding that it is purely a matter on that property, according to what the attorney said, and would have to be enforced in a circuit court. She added that if the Board issued a conditional use permit and the applicant used it in violation of that deed restriction that would be a civil matter and have nothing to do with the Board of Adjustment.

Mr. Sturdivant asked whether that matter should be taken care of prior to the request coming to the Board. Ms. Smith replied that would be a matter for the applicant to consider, not the Board, because the Board cannot do anything about that. Ms. Carter remarked that, on the reverse side, a private agreement cannot put restrictions on what the Board is allowed to do, as that is a separate agreement as to what is in the Board's purview. Mr. Sturdivant stated that he understood, but opined that it would have a bearing on the Board's approval of something that was not approvable.

Ms. Smith stated that what the Board had were the assertions of an attorney who objects to this application, stating that it is in violation of the deed restrictions. She added that if there were a lawsuit, he would have the right to defend that and the Board does not know what the outcome would be.

Applicant remarks – Mr. Raynolds asked if what the attorney was alleging was that a short term rental was not allowed on this property by law. He added that he was blind-sided by the attorney's letter. Ms. Smith replied that the Board cannot advise on what might be a legal matter. There was further discussion.

Board comment – Ms. Plumlee opined that this home could possibly be a home for a permanent resident. Mr. Raynolds stated that as he had said earlier, this home was intended to be used by his son in a few years, as a permanent resident.

Action – A motion was made by Mr. Clarke and seconded by Mr. Gross to **approve PLN-BOA-24-00037: JAMES RAYNOLDS** – request for a conditional use permit for an un-hosted short term rental in a Planned Neighborhood Residential (R-3) zone, on property located at 2669 Trailwood Ln., based on Staff's recommendation and subject to the four conditions as listed. The motion was voted on and **failed** due to a tie vote (Plumlee, Sturdivant and Tucker opposed; Walker absent).

Note – The Board took a brief recess at 3:41 p.m. and reconvened at 3:49 p.m.

4. **PLN-BOA-24-00030: CHRIS JOHNSON** – requested an administrative appeal to contest the Division of Planning's refusal to issue Zoning Compliance Permits for five un-hosted short term rentals on property within the defined Infill and Redevelopment Area in a Single Family Residential (R-1C) zone, on property located at 908-910 N. Limestone. (Council District 1)

The Staff will present the details of the appeal at the public hearing without recommendation.

Staff presentation - Ms. Goderwis explained the purpose of this administrative appeal, noting that as it was an appeal to contest a decision made by the Division of Planning, Staff would not make a recommendation to the Board, but would present the timeline and how Staff reached their decision. She stated that the applicant would be given an opportunity to speak on their behalf and explain why they believe Staff is incorrect in their decision. It would then be up to the Board to decide whether to approve or disapprove the appeal.

Ms. Goderwis directed the Board's attention to the overhead screen on which she displayed a PowerPoint presentation, which included an aerial image of the subject property and its vicinity. She reviewed the circumstances that occurred concerning the subject property, noting the research conducted by Staff in an attempt to determine whether the five units in operation were legal, permitted units. Ms. Goderwis explained that permits for five units could not be found and that Staff was concerned with the life safety issues of the units operating without proper permitting.

Board questions and comments – Mr. Gross asked if the primary issue was that no evidence was found that proved five units would have been permitted by law to become non-conforming when the law changed. Ms. Goderwis indicated that to be correct and added that neither has Staff found any indication that something was approved that should not have been approved. She stated that there was no point in time when five units should have been allowed at this property. Mr. Gross asked Ms. Smith if what the Board should be looking at is that there cannot be a non-conforming use if there has never been a conforming use. Ms. Smith replied that she would agree with that.

Mr. Sturdivant asked if it was incumbent on Planning Staff to verify that there were five units, or if it was incumbent on the applicant to show documentation of that. Ms. Goderwis replied that with non-conforming uses, the burden of proof has historically been put onto the applicant. She added that Staff realized that they have more resources available to them than the applicant may have, so Staff went through records and conferred with the Division of Building Inspection, and having the ability to research their historic records as well, neither Planning Staff nor Building Inspection Staff were able to find anything in those records either.

Ms. Tucker asked if the applicant currently has occupancy permits. Ms. Goderwis replied that they did not.

Applicant presentation – Mr. Zachary Cato, attorney, was present on behalf of the applicant. He introduced, Mr. Chris Johnson, the applicant and property owner, who was also present. Mr. Cato acknowledged that there was a member of the audience who wished to speak on Mr. Johnson's behalf as well. He directed the Board's attention to the overhead screen on which he shared aerial images of the subject property over a twenty year time span. Mr. Cato gave an account of the chain of events that led the applicant to file this appeal.

Board questions – Mr. Gross asked Mr. Cato on what date he contended that this was a legal use on this property. Mr. Cato replied that at some point after 1991, it appeared that these units were subdivided in some manner by that time. Mr. Gross asked whether the Zoning of the subject property at that time prohibited five units on this lot. Mr. Cato opined that was an open question, with no proof that it was "A" or that it was "B"; it was somewhere in between the two. Mr. Gross stated that he saw no evidence that this was a legal use. He referred to Mr. Cato's comment regarding Mr. Johnson having made an "honest mistake", and asked where the permit or the government action that Mr. Johnson relied upon was. Mr. Cato opined that in this situation, it is a little bit different in the sense that it was about a commercial permit that was being issued in a residential zone; someone read the zoning map incorrectly and issued a building permit. He further opined that there were several opportunities for this issue to have been resolved over thirty years and it has not come up until now. The discussion continued with Mr. Gross stating that when a property is purchased, the purchaser should check to

ensure the zoning is in compliance before buying it. He added that so far, he did not see anything that that was done by government employees for Mr. Johnson to rely upon what appears to be a non-conforming use that was not pre-existing a change in the Zoning Ordinance.

Applicant comments - Mr. Chris Johnson, applicant and property owner, spoke on behalf of his appeal.

Board questions – Mr. Sturdivant asked Mr. Johnson if he received documentation in writing or an email when he got a response on his remodeling permit. Mr. Johnson stated that he did not. Mr. Sturdivant stated that what the Board is looking for is proof that the five units were legally approved. He asked Mr. Gross for confirmation of that. Mr. Gross agreed with that, unless the applicant was relying on it being an honest mistake. He opined that what the Board was looking for was whether this use was ever a conforming use.

Ms. Carter opined that there seemed to be several actions that a consumer would take as government approval, such as the listing with Property Valuation Administrator (PVA), listing it as five units, five people receiving mail, five garbage cans being delivered by the city, etc. She further opined that she could see how that could happen.

Applicant comments – Mr. Cato opined that the circumstances surrounding this application are somewhat unusual in that there does not seem to be a clear answer as to what happened and when it happened. He asked the Board to consider that Mr. Johnson acted in good faith, tried to comply with the regulations and has done so at his other properties. Mr. Cato further opined that disapproval of Mr. Johnson's request may lead other property owners in the future to not make the efforts that Mr. Johnson has to do things the right way.

Board questions – Ms. Carter asked if there was a path that would allow approval of the Zoning Compliance Permit, giving the applicant time to pursue the appropriate process for a zone change. Ms. Goderwis replied that the applicant could go through the zone change process to a zone that would allow for multiple dwelling units; however, she was unsure about including them in the grandfathering provision if they have to go through that process. Ms. Carter stated that, in considering Staff's concerns whether these five units are structurally sound, she was looking for a path that would allow satisfaction of each of those issues.

Applicant comments – Mr. Cato stated that to the extent that there is a life safety issue about whether these units have safety issues, and there is no proof that they have ever been reviewed, and after conferring with the applicant, he stated that Mr. Johnson was agreeable to having the approval of his appeal be contingent on the subject property passing such a review. He added that the applicant was more than willing to do that.

Staff comments – Ms. Goderwis indicated that if the Board were to vote in favor of the applicant, finding that Staff had erred in their decision to not issue the Zoning Compliance Permits, Staff would request that it be a requirement that the Fire Marshal inspect the units, or something to that effect. She added that, again, that is if the Board found that those were legal units.

Board questions and comments - Ms. Carter asked if the Board would need to make a statement, or would it be that it was grandfathered in use. Ms. Goderwis replied that it would depend on if the Board found that Staff erred incorrectly, then the Board would be finding that Staff was wrong and the units could be grandfathered in. She asked if Ms. Carter's question was what the applicant's next steps would be to move forward with making this a legal use, should the Board find that Staff was correct and should not have approved these Zoning Compliance Permits. Ms. Carter replied that the word "error" was subjective to her, adding that the applicant did provide information, but Staff decided that it was not sufficient. She continued, asking if the Board felt more comfortable with the information that was provided, is there a path.

Ms. Goderwis stated that if the Board found in favor of the applicant, that would mean that the Board found Staff's refusal to be incorrect and the next steps would be to issue the Zoning Compliance Permits, because the Board would have found that Staff should have issued them.

Mr. Sturdivant asked if the subject property would then be classified as a non-conforming use. Ms. Goderwis replied that it would be in the category of legal non-conforming. Ms. Smith replied that the

purpose of this appeal process is the matter of grandfathering in, so yes, that is what the Board would be saying.

Applicant comments - Mr. Cato commented that the approval of this appeal is a way for the applicant to move forward with the rules in place, and the property will be subject to the same rules that every other property is. He added that all protections in the Zoning Ordinance will still apply, but the “question mark” in the history of this property will be cleared up. Mr. Johnson will be allowed to move forward in the way he has been the last few years, and the City and the public will have protection as far as future use, future compliance, everything that is in the Zoning Ordinance.

Board questions and comments - Ms. Tucker asked if these units are already being rented. Mr. Cato replied that they have been since 2020.

Mr. Clarke opined that he did not like the idea of Staff “erring” and that it bothered him. He added that Staff did exactly what they were supposed to do, but on the other hand, there was a lot of evidence that the applicant did what he thought was the right thing to do. Mr. Clarke stated that he was right in the middle of this difficult decision.

Applicant comments – Mr. Cato stated that from the applicant’s perspective, this was not about “dumping on Staff” or that they did anything wrong, it was not that at all. He added that it was just a question of, “How do you interpret this information?” Mr. Cato continued, saying that there was more than one reasonable interpretation here. He added that Staff had done their due diligence; the applicant just disagreed.

Public comments – Ms. Sidney Beaven, 136 Glenn Place, was sworn in at this time, having arrived late to the meeting. She stated that she and her husband have lived in the area of the subject property, since 2018 and that they manage the subject property. Ms. Beaven added that they can regulate how many occupants are staying in these small units on a short term rental basis, whereas they may not be able to if the units were used as long term rentals.

Note – The Board took a recess at 4:35 p.m. and reconvened at 4:42 p.m.

Action – A motion was made by Ms. Plumlee to **approve PLN-BOA-24-00030: CHRIS JOHNSON** – request for an administrative appeal to contest the Division of Planning’s refusal to issue Zoning Compliance Permits for five un-hosted short term rentals on property within the defined Infill and Redevelopment Area in a Single Family Residential (R-1C) zone, on property located at 908-910 N. Limestone., based on the following findings:

- a. The applicant has provided sufficient evidence to determine that five units exist on the property and have existed for at least the past three years; and,
- b. The applicant has also provided sufficient evidence to determine that these five units were used continuously for this use, prior to the change in the Zoning Ordinance requiring conditional, use permits.

The staff is herein directed to issue the Zoning Compliance permits, which shall include the following conditions:

1. All units shall be inspected by the local Fire Marshal and all changes requested by the Fire Marshal shall be made.
2. The applicant shall obtain a Certificate of Occupancy.
3. Each unit shall have no more than two (2) occupants.

Mr. Sturdivant seconded the motion. Prior to the vote, Ms. Carter asked Mr. Johnson if he was agreeable to these conditions. Mr. Johnson confirmed that he was in agreement with them.

Action – The motion to **approve** was voted on and passed 6-0 (Walker absent).

5. **PLN-BOA-23-00107: MIKE ADAMS** – requested an Early Rehearing of a 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. (Council District 6)

The Staff Recommended: **Approval of an Early Rehearing**, for the following reasons:

- a. The new information provided by the applicant substantially alters the character of the original appeal. The applicant's proposed modifications to the basement would result in significant changes directly related to the Board's finding that an occupancy of 10 individuals is too high for a short term rental on the subject property due to the size of the structure and number of bathrooms.

Applicant representation – Mr. Mike Adams and Mr. Matthew Jones were both present on behalf of their application.

Board comments – Ms. Carter noted that this was an application for an early rehearing instead of the twelve month period. She asked the applicants if they would like to explain their request to the Board.

Applicant comments – Mr. Adams stated that their original application for a short term rental of a three bedroom home with a single bathroom and an occupancy of ten, based on the manner in which the Zoning Ordinance had been written. He added that their application was rejected on the grounds that the occupancy was too high and that the short term rental would remove a dwelling unit from moderate income residential availability and introduce a commercial use and therefore cause an adverse use impact to the area. Mr. Adams stated that during the timeframe of their original application, they were enhancing the basement of the house and were not finished with the construction of that. Since then, they have finished the construction and there is an additional seven hundred square feet, including an additional bedroom, an additional bathroom and living space. Mr. Adams opined that they have satisfied the original concerns of the Board.

Board comments – Ms. Carter stated that those were substantial changes and noted that Staff had recommended approval of this request for an early rehearing.

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 6-0 (Walker absent), to **approve PLN-BOA-23-00107: MIKE ADAMS** – request for an Early Rehearing of a 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 Staff's recommendation and the testimony of the applicant.

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

There were no Board items to consider at this time.

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

There were no Staff items to consider at this time.

- VII. **NEXT MEETING DATE** –Ms. Carter announced that the next meeting date is May 13, 2024 at 1:30 p.m., Council Chambers, 200 East Main Street, Lexington, KY 40507.

- VIII. **ADJOURNMENT** - As there was no further business, Ms. Carter declared the meeting adjourned at 4:50 p.m.

Raquel Carter, Chair

Linda Tucker, Secretary

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

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