

**MINUTES FOR THE BOARD OF
ADJUSTMENT MEETING**

June 10, 2024

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

II. **ATTENDANCE**

Board members present were Harry Clarke, Branden Gross, Carolyn Plumlee, Bob Sturdivant, Linda Tucker and Chad Walker. Chair Raquel Carter was absent. Others present were Brittany Smith, 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**

The March 2024 and April 2024 Board of Adjustment meeting minutes were considered for approval at this time.

Action – A motion was made by Ms. Tucker, seconded by Mr. Clarke and carried 6-0 (Ms. Carter absent), to **approve** the minutes from the March 2024 and April 2024 Board of Adjustment meetings.

IV. **PUBLIC HEARING ON ZONING APPEALS**

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

Postponements

1. **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 applicant had informed Staff that they wish to postpone their application to the July 8, 2024 meeting.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 6-0 (Ms. Carter absent), to **postpone** the application to the July 8, 2024 Board of Adjustment meeting.

2. **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)

The applicant had informed Staff that they wish to postpone their application to the July 8, 2024 meeting.

Action – A motion was made by Mr. Sturdivant, seconded by Ms. Plumlee and carried 6-0 (Ms. Carter absent), to **postpone** the application to the July 8, 2024 Board of Adjustment meeting.

- B. **Swearing of Witnesses** – Mr. Gross requested 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.

C. Abbreviated Hearing

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)

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

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity as there are several similar vehicular use areas along Spence Alley.
- b. The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variances as soon as it was determined that they were needed, and prior to paving the driveway.

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, subject to modifications during the permitting process.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection and Traffic Engineering prior to construction.
3. The driveway shall be a maximum of 20' wide except for where a flare at the alley to accommodate the apron is necessary, with such dimension to be determined by the Division of Traffic Engineering during the permitting process.

Applicant representation – Mr. Chris Warner, contractor for the applicant, was sworn it at this time. Mr. Warner stated that the applicant had reviewed the recommendations of Staff and was in agreement with the conditions of approval.

Board question – Mr. Sturdivant asked if the garage was already constructed. Mr. Warner stated that the garage was already constructed, and that a building permit had been issued for that construction. Mr. Sturdivant asked Mr. Warner if the applicant had reached an agreement with the Division of Engineering regarding the dimensions for the driveway. Mr. Warner replied that they had applied for a permit through the Division of Building Inspection, to increase the width of the driveway to wider than ten feet, because the opening of the garage is twenty feet. He explained that this request for a wider driveway to the permitted garage is the reason they are before the Board of Adjustment.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 6-0 (Ms. Carter absent), to **approve 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, based on Staff's recommendation and subject to the three conditions as listed.

2. **PLN-BOA-24-00063: BARBARA AND HENRY HINKLE** – requested a variance to reduce the side street side yard setback for an accessory structure from 30' to 6' in a Historic District Overlay (H-1) zone and Mixed Low Density Residential (R-2) zone, on property located at 141 S. Hanover Ave. (Council District 5)

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

- a. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. There are varying setbacks along this portion of Fincastle Road and a carport in this location will not have much, if any, impact on the appearance of the house from S. Hanover Avenue. Additionally, the architectural design of the structure is subject to review and approval by the Board of Architectural Review to ensure compatibility with the Historic District Design Guidelines.
- b. The variance request is generally reasonable, as the location of the proposed carport is already used for parking vehicles and there is no other feasible location to place such a structure on the subject property.

- c. The granting of the variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it were needed.

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, Planning, and the Historic Preservation Office prior to construction and occupancy.

Applicant representation – Mr. Thomas Wilmes, Wilmes and Associates Architects, was present on behalf of the applicant.

Board question – Mr. Gross asked Mr. Wilmes if the owner of the property was in agreement with Staff's recommendation and the conditions of approval. Mr. Wilmes indicated that the applicant was in agreement.

Action – A motion was made by Mr. Clarke, seconded by Mr. Walker and carried 6-0 (Ms. Carter absent), to **approve PLN-BOA-24-00063: BARBARA AND HENRY HINKLE** – request for a variance to reduce the side street side yard setback for an accessory structure from 30' to 6' in a Historic District Overlay (H-1) zone and Mixed Low Density Residential (R-2) zone, on property located at 141 S. Hanover Ave., based on Staff's recommendation and subject to the two conditions as listed.

3. **PLN-BOA-24-00071: JESSICA SUCIK AND TARA STANFIELD** – requested a variance to reduce the required side yard setback from 8' to 5' in order to construct an addition in a Single Family Residential (R-1C) zone, on property located at 575 Longview Dr. (Council District 10)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity. The applicant's proposal is similar to existing setbacks in the surrounding area and the addition will be set back the same distance as the closest portion of the existing residence that has occupied this site since 1949.
- b. The granting of the variance will not alter the essential character of the general vicinity as the addition will be located in the rear portion of the property where it will be adequately screened from view.
- 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.

Applicant representation – Ms. Brandee Smith, contractor, was present on behalf of the applicants.

Board question – Mr. Gross asked Ms. Smith if she and the applicants had reviewed Staff's recommendation and the conditions of approval, and if they were in agreement with them. Ms. Smith stated that they had reviewed the recommendation of Staff and the conditions of approval and were in agreement with all.

Action – A motion was made by Mr. Sturdivant, seconded by Ms. Plumlee and carried 6-0 (Ms. Carter absent), to **approve PLN-BOA-24-00071: JESSICA SUCIK AND TARA STANFIELD** – request for a variance to reduce the required side yard setback from 8' to 5' in order to construct an addition in a Single Family Residential (R-1C) zone, on property located at 575 Longview Dr., based on Staff's recommendation and subject to the two conditions as listed.

4. **PLN-BOA-24-00074: LOPEZ CONSTRUCTION** - requested 1) a variance to reduce the required rear yard setback from 31' to 30', 2) a variance to reduce the required side yard from 8' to 5' and 3) a variance to increase the allowable driveway width from 10' to 20' in order to construct an addition with an attached garage within the defined Infill and Redevelopment Area in a Single Family Residential (R-1C) zone, on property located at 1319 N. Limestone. (Council District 1)

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

- Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity. The applicant's proposal is similar to existing setbacks in the surrounding area and the addition will be set back the same distance as the closest portion of the existing residence that has occupied this site since 1924. A wider driveway is generally reasonable in this location as there is not sufficient space for a 10-foot driveway to flare to a wider width in order to access a two-car garage.
- The granting of the variance will not alter the essential character of the general vicinity as the addition will allow for an increase in usable area for the resident and will not result in a structure that is significantly larger than other houses in the area.
- 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:

- Construction shall be in accordance with the submitted application materials and an amended site plan.
- The attached garage shall be located at the same side yard setback as the remaining portion of the house (5 feet) and the depth of the garage shall be reduced to allow for an 18-foot deep driveway.
- The existing curb cut and paving located near the rear lot line shall be removed.
- All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

Applicant representation – Mr. Mark Arnold, project designer, was present on behalf of the property owner/contractor, Mr. Lopez.

Board question – Mr. Gross asked Mr. Arnold if he and Mr. Lopez had reviewed Staff's recommendation and the conditions of approval. Mr. Arnold confirmed that he and Mr. Lopez had reviewed Staff's recommendation and the conditions of approval and that they were in agreement with them.

Action – A motion was made by Mr. Walker, seconded by Ms. Tucker and carried 6-0 (Ms. Carter absent), to **approve PLN-BOA-24-00074: LOPEZ CONSTRUCTION** – requests for 1) a variance to reduce the required rear yard setback from 31' to 30', 2) a variance to reduce the required side yard from 8' to 5' and 3) a variance to increase the allowable driveway width from 10' to 20' in order to construct an addition with an attached garage within the defined Infill and Redevelopment Area in a Single Family Residential (R-1C) zone, on property located at 1319 N. Limestone, based on Staff's recommendation and subject to the four conditions as listed.

5. **PLN-BOA-24-00064: POPPYS FLOWER BAR** – requested a conditional use permit to establish a cocktail lounge and a variance to reduce the required setback between a cocktail lounge and a residential zone from 100' to 0' in a Neighborhood Business (B-1) zone, on property located at 210 Old Mt. Tabor Rd. (Council District 5)

The Staff Recommended: **Approval of the conditional use**, for the following reasons:

- The proposed cocktail lounge should not adversely affect the subject or surrounding properties, as the subject property is a significant distance away from residential dwelling units and will not be the sole use of the property.
- The proposed use should not have a negative impact on traffic in the general vicinity as the hours of operation do not coincide with the existing high traffic times for the adjoining and nearby places of religious assembly.
- All necessary public facilities and services are available and adequate for the proposed use.

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

- Granting the variance should not adversely affect the subject or surrounding properties, nor alter the

character of the general vicinity, as the area features a mix of commercial, residential, and religious assembly uses.

- b. The portion of the residentially-zoned property within 100 feet of the subject property, functions as a religious assembly use and is a unique circumstance as the closest residentially-zoned dwelling unit is over 100 feet away.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it was needed and prior to occupying the space.

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

1. The cocktail lounge shall be operated in accordance with the submitted application materials and site plan.
2. The hours of operation shall occur in accordance to the submitted application material, except that the hours of operation may be increased to allow for operation Monday through Saturday, from 10:00 a.m. to 8:00 p.m.
3. All necessary permits including a Zoning Compliance Permit shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the use.
4. The conditional use shall become null and void should the applicant no longer operate at this address.

Applicant representation – Ms. Shelby White, applicant and owner of the proposed business, was present on behalf of her application.

Board question – Ms. Plumlee asked Ms. White if a liquor license was needed and if she had one. Ms. White stated that she is in the process of obtaining a liquor license but found that she needed a conditional use permit in order to obtain a liquor license for the proposed business.

Action – A motion was made by Mr. Clarke, seconded by Mr. Walker and carried 6-0 (Ms. Carter absent), to **approve PLN-BOA-24-00064: POPPYS FLOWER BAR** – request for a conditional use permit to establish a cocktail lounge and a variance to reduce the required setback between a cocktail lounge and a residential zone from 100' to 0' in a Neighborhood Business (B-1) zone, on property located at 210 Old Mt. Tabor Rd., based on Staff's recommendation and subject to the four conditions as listed.

D. Discussion Items

1. **PLN-BOA-24-00067: DEMARCUS LEWIS** – requested 1) a variance to reduce the required side street side yard setback from 30' to 23', 2) a variance to increase the maximum height of an accessory structure from 14' to 18', 3) a variance to increase the total allowable size of all buildings accessory to the dwelling unit from 841 square feet to 3,135 square-feet, and 4) a variance to increase the allowable lot coverage (building footprint) for accessory buildings from 1,682 square feet to 3,135 square feet in order to allow existing accessory structures to remain as constructed in a Single Family Residential (R-1B) zone, on property located at 2376 Liberty Rd. (Council District 6)

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

- a. The applicant has not provided 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. The subject property is of a regular shape and its size is substantially similar to other lots in the immediate vicinity.
- b. Granting the requested variance would alter the character of the general vicinity as the size, height, and number of accessory structures are significantly greater than that of other accessory structures in the area.
- c. The granting of these variances would allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant constructed the two metal buildings without the necessary permits.

Staff presentation

Ms. Goderwis directed the Board's attention to the overhead screen on which she displayed an aerial image of the vicinity surrounding the subject property. She then displayed an aerial image focusing on just the subject property, which depicted several accessory structures in the back yard of the residence. She highlighted the two accessory structures that were the subjects of the appeal before the Board. Ms. Goderwis displayed excerpts from the Zoning Ordinance, pertaining to the requirements for accessory buildings in residential zones. She then displayed a copy of the applicant's site plan and explained that the applicant had constructed two large metal buildings and a small metal shed, since purchasing the property in September of 2020. Ms. Goderwis stated that permits were required for the two large metal buildings, but the applicant had not obtained those permits prior to construction. She added that the smaller metal shed did not require a permit.

Ms. Goderwis also noted that there were two existing structures, permitted historically, which already exceeded the fifty percent in lot coverage for this particular property and they are considered to be legally non-conforming, based on the permitting history Staff found. She added that the addition of the two metal buildings, along with the metal shed, had significantly increased the non-conformity of both the footprint and the total size of accessory structures. Ms. Goderwis further explained the variances requested by the applicant, noting that the applicant did not provide significant information regarding the need for the accessory structures or a justification for the variance requests. She directed the Board's attention to the overhead screen on which she displayed images of the subject property which had been taken by the Zoning Enforcement Officers in the Division of Building Inspection, based on complaints from neighbors regarding those two large structures. Ms. Goderwis stated that Staff was recommending disapproval of this appeal and she explained their reasons for this recommendation.

Board questions – Mr. Gross asked if the three older buildings were going to be allowed to remain as non-conforming. Ms. Goderwis confirmed that to be correct. Mr. Gross noted that those three older buildings also affect the overall square footage that the applicant is requesting. Ms. Goderwis said that was correct. She added that the buildings marked "block" and "vinyl" were legally non-conforming as they were permitted. Ms. Goderwis also stated that the smaller metal shed also increased the non-conformity but would not have required a permit due to its small size, though technically it should not have been added.

Applicant representation – Mr. DeMarcus Lewis, 2376 Liberty Rd., applicant and property owner, was present on behalf of his application. He stated his reasons for constructing the accessory structures.

Board questions – Mr. Sturdivant asked the applicant what the primary use of the metal building was. Mr. Lewis replied that the primary use would eventually be to store his vehicles and sometimes his children play in the buildings instead of the front yard.

Mr. Clarke asked the applicant when he learned that his buildings were not in compliance. Mr. Lewis replied that he was made aware of that in September or October of 2023. He added that he began to attempt to comply by hiring a surveyor and an engineer. Mr. Clarke asked Mr. Lewis if he was given any options of what his next step might be. Mr. Lewis replied that his option was to make sure he got his permit, his survey and site plan together to be able to present it to the Board.

Ms. Tucker asked Mr. Lewis what the other metal structure on the other side of the home was for. She asked if it was a garage. Mr. Lewis replied that he just uses it as a gym. She opined that he has a lot of buildings on this property. Mr. Lewis agreed, stating he needed somewhere to put his vehicles.

Public comment

Ms. Katie McCormick, 737 Woodward Ln, expressed her opposition to this appeal, stating that her property is directly behind the applicant's. Ms. McCormick said that the applicant is running a volleyball training club on this property, having told her previously that he had been run off of other properties where he had wanted to do this. She added that she hears a lot of loud music and noise from the private training sessions that he conducts on his property in the smaller building to the right. Ms. McCormick stated that the noise from the volleyball club that Mr. Lewis coaches can also be heard inside her home when the team is on his property practicing. She also expressed concern with the gravel parking he had installed for his customers and clients to park in, opining that it caused parking issues on Woodward Lane and Liberty Road.

Mr. Charles Logan, 2416 Liberty Rd., also expressed his opposition to this appeal, stating the neighborhood was peaceful when he moved in, but opined it has become noisier and there is more traffic since Mr. Lewis moved there and began the subject construction on his property. Mr. Logan stated that construction vehicles have parked on his property and damaged his yard. He commented that he can no longer enjoy his property due to these changes.

Ms. Amber Bishop, did not sign in previously and did not offer her address, was sworn in at this time. She stated that there have been complaints from neighbors since Mr. Lewis purchased this property and they moved in there together, although she no longer lives there. Ms. Bishop opined that these complaints seem to be racially based. She said there is no illegal activity taking place on the property and she disputed and disagreed with all of the allegations that she had heard this afternoon.

Mr. Arthur Sullivan, 600 Freeman Dr., stated he was a retired electrical contractor in construction and that any building built requires a permit, an electrical inspection and a plumbing inspection if there is water in the building. He opined that as the applicant did not have all of the permits, this is a "case closed".

Board comments – Mr. Gross informed Mr. Lewis that it appeared he could potentially be operating a commercial enterprise in a residential zone, without the appropriate permit; however, that was not the issue before the Board today. He continued, stating that what was before the Board today was the issue of the un-permitted buildings on Mr. Lewis's property. Mr. Gross stated that the Board has voted in disapproval of applications in the past, resulting in the applicant having to remove floors, driveways and other things because they did not have the permits before they constructed them. He informed Mr. Lewis that this was his opportunity to address his neighbors' concerns and then it will be up to the Board's decision as to whether that building must come down.

Applicant rebuttal – Mr. Lewis addressed the public comments, stating that since he had purchased the property in approximately October of 2023, the complaints have been overwhelming, eluding to the complaints being harassing and racial in nature. He stated that he has five daughters and that four of them play volleyball and they are allowed to play at their home. Mr. Lewis continued to state his reasons for there being unpermitted structures on his property.

Board questions – Ms. Tucker asked if there had been a traffic study conducted on Woodward Lane, opining it is a very narrow lane. She expressed her concern over the potential water runoff issues on the property due to there being so many buildings. Mr. Lewis agreed that Woodward Lane is a very narrow lane and several neighbors park along it when they have family visit. Ms. Tucker stated that she was referring to whether LFUCG Staff had been on site to look at those issues.

Staff comments – Ms. Goderwis stated that those inspections would likely occur during the Division of Building Inspection process and the permitting process, which have not occurred yet because the applicant needs a variance approved before the Division of Building Inspection will issue him a building permit. Therefore, those inspections have most likely not been done at this time.

Board comments – Mr. Gross stated that it is the intention of this Board to "rule without fear or favor", to be fair and treat everyone equally. He added that he realized that sometimes neighbors may have disputes or underlying issues amongst themselves, but those have no place before this Board, and even if certain things have been said, the Board does not take them into account. Mr. Gross stated that he had concerns with this application in that there had not been any justification for a building of that size which exceeds the City's zoning limitations so greatly.

Mr. Clarke opined that the work Mr. Lewis had done with youth is very important and he should have credit for that. He added that there have been a number of complaints from neighbors and while those issues are important to the neighbors, they have no bearing on the issues at hand, which is whether the subject buildings are legal and whether it is appropriate for them to be on the subject property.

Action – A motion was made by Mr. Clarke, seconded by Mr. Sturdivant and carried 6-0 (Ms. Carter absent), to **disapprove PLN-BOA-24-00067: DEMARCUS LEWIS** – requests for 1) a variance to reduce the required side street side yard setback from 30' to 23', 2) a variance to increase the maximum height of an accessory structure from 14' to 18', 3) a variance to increase the total allowable size of all buildings accessory to the dwelling unit from 841 square feet to 3,135 square-feet, and 4) a

variance to increase the allowable lot coverage (building footprint) for accessory buildings from 1,682 square feet to 3,135 square feet in order to allow existing accessory structures to remain as constructed in a Single Family Residential (R-1B) zone, on property located at 2376 Liberty Rd., based on Staff's recommendation of disapproval.

Comments after the vote – Mr. Gross informed the applicant that his application was disapproved and he should work with Staff and the Division of Building Inspection regarding his steps going forward. Mr. Lewis asked how he should do that. Ms. Goderwis suggested he work with Lauren Wood in the Division of Building Inspection to work out what his next steps are. She added that in the event he chose to file an appeal with Circuit Court within the thirty-day time period, Staff would be unable to assist him with that.

2. **PLN-BOA-24-00075: LEONA GREER ESTATE** - requested 1) a variance to reduce the required side yard setback from 5' to 0' on the eastern side of the property, 2) a variance to reduce the required side yard setback from 30' to 3' on the western side of the property, and 3) a variance to increase the allowable height from 0' to 28' in order to construct a new multi-family residential building within the defined Infill and Redevelopment Area in a Medium Density Residential (R-4) zone, on property located 522 Merino St. (Council District 11)

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

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity. The applicant's proposal features side yard setbacks to those in the surrounding area. The height variance will allow for construction of a two-story structure with is generally in keeping with the character of the area.
- b. The size of the lot is a special circumstance that justifies the need for the variances. Without any variances, the maximum width of the building would be only eight (8) feet. Granting the variances will allow the applicant to utilize a currently vacant lot within the defined Infill and Redevelopment Area for needed housing.
- c. The granting of the requested variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variances as soon as it was determined that they were needed and prior to construction. Additionally, the intent of the Infill and Redevelopment Area regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. The Zoning Ordinance specifically states that BOA action may sometimes be required 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 a revised site plan providing access to the second floor unit from the front or back of the structure rather than the side.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

Applicant representation – Mr. Darren Taylor, Gibson Taylor Thompson Architecture and Design, was present, representing the owner of the property. He briefly explained the proposed project, directing the Board's attention to the site plan on the overhead screen, depicting a very narrow site. Mr. Taylor stated that there were no formal designs at this point, as they needed approval from this Board prior to proposing their project to the property owner.

Board questions – Mr. Gross commented that the property to the south of the subject property appeared to have similar dimensions. Mr. Taylor concurred, and added that the other adjacent lot also had similar dimensions and had been that way for many years. Mr. Gross asked how narrow the subject lot was. Mr. Taylor replied that it was 18.94' wide.

Mr. Clarke noted that Staff had some concerns regarding the side entrance the applicant requested. He asked Mr. Taylor how he planned to fix that to be in agreement with Staff's condition. Mr. Taylor replied that it is not required to have onsite parking for this particular site; however, there is rear access parking from the street or alley behind, so that the owner could park there and there could also be

street parking. He added that they would adhere to the front yard setbacks, but parking is not allowed in the front yard. Mr. Clarke stated again that Staff's request was for a front or back entrance versus the side entrance as designed. Mr. Taylor replied that the first floor unit would have a front entrance as required, and the stairs would be moved back in order to access the units above and there would likely be an access in the rear for the rear unit. Mr. Clarke asked Mr. Taylor if he accepted the condition as imposed by Staff. Mr. Taylor stated that he did and was in agreement with the condition.

Mr. Sturdivant asked what the length of the lot was. Mr. Taylor replied that the overall length was approximately 160'-8" long.

Public comment

Mr. Michael Edelen, property owner 520 Merino St., expressed his concerns over having a structure built so close to his home. He cited stormwater runoff issues that may occur without adequate side yards. Mr. Edelen noted that several improvements have been made to his property and he opined that its value may decrease with having another home so close. He had several photographs for the Board's review which were distributed to the Board.

Mr. Thomas Santos, property owner 520 Merino St., expressed his concerns with the way the previous home on the subject property was demolished, noting that a brick fell onto his car and damaged it. He added that a worker inside the home during demolition was gravely injured, and he gave other examples of damage done on the surrounding properties. Mr. Santos mentioned the solar panels that he and Mr. Edelen had added to their home and the landscaping that they have added. He stated that he and Mr. Edelen have taken care of the vacant lot for the past three years by mowing and tending to it, in an attempt to protect their own property.

Applicant representation comments – Mr. Taylor noted that he and his firm have a lot of experience working with such narrow lots and he extended his sympathy to Mr. Edelen and Mr. Santos for the circumstances they had experienced with the demolition of the previous home next to theirs. He added that his firm would want to work with the adjacent property owners as much as possible during the design and construction process to ensure there would be little, if any, impact on them.

Board comments and questions - Ms. Tucker asked Mr. Taylor to depict where the stairs would be located and the directions the residents would access the stairs from. Mr. Taylor directed the Board's attention to the site plan on the overhead screen and explained where the stairs would likely be placed. There was discussion on the possibility of moving the structure further back on the property line and any potential effect the prospective structure may have on the solar panels of Mr. Edelen and Mr. Santos's home.

Mr. Gross brought it to the Board's attention at this time that he realized the property on the other side of the subject property is owned by The Lexington Housing Authority, who is represented by his law firm. He recused himself from hearing the remainder of this application and stated that he would abstain from voting. He relinquished the position of acting chair to Mr. Clarke to complete the hearing of this application and the vote.

Action – A motion was made by Ms. Plumlee to **approve PLN-BOA-24-00075: LEONA GREER ESTATE** – request for 1) a variance to reduce the required side yard setback from 5' to 0' on the eastern side of the property, 2) a variance to reduce the required side yard setback from 30' to 3' on the western side of the property, and 3) a variance to increase the allowable height from 0' to 28' in order to construct a new multi-family residential building within the defined Infill and Redevelopment Area in a Medium Density Residential (R-4) zone, on property located 522 Merino St., based on Staff's recommendation and subject to the two conditions as listed.

Discussion on the motion – Mr. Walker addressed Mr. Taylor, stating that with the pressure that is on developing in the Infill and Redevelopment Area, he hoped that the applicant would stay true to their word, concerning working with the neighbors. He added that Mr. Edelen and Mr. Santos had already had bad experiences with the demolition of the previous structure.

Action – Mr. Walker seconded the motion and the Board voted 6-0 (Carter absent; Gross abstained) to **approve** the motion that was made by Ms. Plumlee.

Note – Mr. Gross recused himself from hearing the following application due to a possible direct or indirect issue with the result. The position of acting chair remained with Mr. Clarke.

3. **PLN-BOA-24-00076: BOOKER GROUP INVESTMENTS LLC** – requested 1) a variance to reduce the required front yard setback from 30' to 10', 2) a variance to reduce the required side yard setbacks from 6' to 5', and 3) a variance to reduce the required rear yard setback from 10' to 7' in order to construct a new two-family dwelling within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, on property located at 348 Campsie Ct. (Council District 1)

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

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity. The applicant's proposal features similar front and side yard setbacks to those in the surrounding area.
- b. The size of the lot is a special circumstance that justifies the need for the variances. Without any variances, the maximum building footprint would be only 296 square feet. Granting the variances will allow the applicant to utilize a currently vacant lot within the defined Infill and Redevelopment Area for needed housing.
- c. The granting of the requested variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variances as soon as it was determined that they were needed and prior to construction. Additionally, the intent of the Infill and Redevelopment Area regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. The Zoning Ordinance specifically states that BOA action may sometimes be required 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 a revised site plan removing the proposed driveway.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.
3. An administrative action minor subdivision plan shall be submitted and recorded denoting the reduced front yard setback.

Applicant representative – Mr. Herb Booker, applicant, was present on behalf of this application and briefly explained the proposed project.

Public comment

Mr. Steve Kay, 250 Campsie Pl., spoke in opposition to the extent of the variance for the front yard setback, adding that he had some questions about two of the conclusions in the Staff Report. He directed the Board's attention to the overhead screen on which he displayed a street view image taken from the corner of Campsie Pl. and Campsie Ct. and pointed out that the line of structures was consistent from one end to the other. Mr. Kay displayed another image which depicted the two properties adjacent to the subject property, pointing out that the property on the left was a corner property. He opined using the setback of the side yard of that corner property as a part of the consideration was inappropriate, and he suggested a setback of 17' instead of a 10' setback.

Mr. Jeffrey Lutz, 251 Campsie Pl., expressed his opposition to the proposed projected based on the fact that a water runoff study had not been done. He said he did his own study, but he would like to see a study done by someone more qualified than he was.

Mr. Joseph Clements, 832 Mason Headley Rd., stated that he owned the property next door to the subject property and he is concerned about how rainfall will affect his property.

Applicant rebuttal – Mr. Booker addressed Mr. Kay's comment regarding a setback of seventeen feet, stating that distance would not allow for sufficient square footage. Regarding a water runoff study, he opined that one was likely done when the previous structure was built.

Board questions and comments - Mr. Sturdivant asked if the proposed structure was going to be built on a slab or have a basement. Mr. Booker replied that it would be built on a slab.

Mr. Walker opined that a front yard setback of 17' seemed to be consistent with the façade of the other properties on the street, including their porches. Mr. Booker replied that increasing the front yard setback would significantly impact the square footage of the developable area of the property.

Mr. Walker stated that he was opposed to this request for a variance to reduce the required front yard setback from 30' to 10'. He added that this is an established neighborhood and while he agreed with the need for infill, he didn't agree with it at the expense of the aesthetics of the neighborhood.

Staff comments – Ms. Goderwis commented that Staff had some concerns with this application; one being that the driveway shown on the site plan would require additional variances. Another concern was that the proposed front balconies on the second floor would also require variances. She added that Mr. Booker had indicated that he would be agreeable to removing the driveway and eliminating those front balconies, so those variances would not be necessary. Ms. Goderwis stated that Staff is comfortable with recommending approval of the variances. She added that the applicant is currently proposing a 930 square foot footprint, but with a 17' front yard setback, that would take them down to 713 square feet. Ms. Goderwis further explained Staff's reasoning for recommending approval of the 10' front yard setback. There was further discussion.

Action – A motion was made by Mr. Walker, seconded by Ms. Tucker and carried 5-0 (Gross recused; Carter absent), to **continue PLN-BOA-24-00076: BOOKER GROUP INVESTMENTS LLC** – request for 1) a variance to reduce the required front yard setback from 30' to 10', 2) a variance to reduce the required side yard setbacks from 6' to 5', and 3) a variance to reduce the required rear yard setback from 10' to 7' in order to construct a new two-family dwelling within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, on property located at 348 Campsie Ct. to the July 8, 2024 Board of Adjustment meeting.

Note – Mr. Gross returned to the meeting and resumed the position of acting chair.

E. Short Term Rental Applications

Staff presentation - Prior to hearing the following applications for short term rentals, Ms. Goderwis reviewed the short term rental regulations and requirements which had been adopted by Council on July 11, 2023. She also summarized the resources Staff uses related to short term rentals, which Staff has been doing since September of 2023. She directed the Board's attention to the overhead screen on which she displayed her presentation.

Board questions – Mr. Sturdivant asked Ms. Goderwis how often the Neighborhoods in Transition Report that she displayed on the overhead screen is updated. Ms. Goderwis replied that she believed that report to be a couple of years old at this time. Mr. Sturdivant asked if there was a scheduled to update the report. Ms. Goderwis replied that she was not involved with the task force that had published the report and she was not aware a timeline to update the report.

Ms. Plumlee stated that she would like to ask the Department of Law a question. She asked Ms. Smith if it was permissible for the Board to vote on an application for a short term rental on property within their neighborhood. Ms. Plumlee said that she would like to know where the Board stands on this issue. Ms. Smith replied that the guide for that that question could be found in the Code of Ethics. She said that if the property in question was simply in the member's neighborhood, it would depend on how close it is to the Board member's property. Ms. Smith added that if the subject property was within 1,000 feet of the member's property, or if they own a short term rental within 1,000 feet of the subject property, she would suggest they recuse. She stated that a Board member could abstain from voting on a particular application if they felt they could not give a fair ruling on the application.

Mr. Gross opined that each Board member should use their own discretion on whether or not a property is too close for that member to make a fair ruling.

Ms. Plumlee stated that it was her hope that each Board member could remain just in each item that comes before the Board.

Ms. Smith stated that she agreed with Mr. Gross's comments and in the event that an application was that of one of the members or if their business or a family member had an interest in, the Board member would need to recuse.

Mr. Gross reminded everyone in the audience that the Board of Adjustment did not adopt the ordinance for short term rentals; the Urban County Council did. He added that the Council did not ask the Board members their personal opinions about it. Mr. Gross stated that the Board deals with the law as written, not as they would like it to have been written.

Note – At this time, the Board took a brief recess from 3:32 p.m. to 3:39 p.m.

1. **PLN-BOA-24-00065: ARMENTEROS PROPERTY GROUP LLC** - requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 639 Cecil Way. (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.
- 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 in Lexington.
- 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. Carlos Armenteros, owner, Armenteros Property Group, LLC, was present on behalf of his application. He stated that he had been in business for ten years and that he owns thirty-two other short term rentals throughout Kentucky, but the subject property would be the first one in Lexington.

Board questions and comments – Ms. Tucker asked Mr. Armenteros to explain what was going on with the ditch on the property. Mr. Armenteros replied that the sewer line broke when they purchased the house, so the entire sewer line was being replaced. She added that there were several citizen comments against this application. Mr. Gross asked Ms. Tucker if there were any specific comments made by citizens that she would like the applicant to respond to. She replied that there were not, as she didn't make the comments.

Ms. Plumlee asked the applicant where his other thirty-two short time rentals were located. Mr. Armenteros replied and stated that his company also has some long-term rental properties.

Mr. Sturdivant asked about the hot tub located on the side of the driveway of the subject property, and asked if it was going to be moved to the back. Mr. Armenteros replied that it was going to be moved to the back and placed on a concrete pad in the back yard. He added that the plan for this short term rental is to target renting to medical professionals.

Mr. Walker asked Mr. Armenteros why he reduced the maximum occupancy from ten to four. Mr. Armenteros replied that he had been talking to the neighbors and he wanted to be sure that he didn't disrupt the community. He added that the neighbors were concerned with parking and if the occupancy is limited to four people, two cars could easily fit in the driveway.

Action – A motion was made by Mr. Clarke and seconded by Mr. Walker to **approve PLN-BOA-24-00065: ARMENTEROS PROPERTY GROUP LLC** – 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 639 Cecil Way, based on Staff's recommendation and subject to the four conditions as listed.

Discussion on the motion – Ms. Plumlee opined that short term rentals are a business use in a residential zone. She opined that this particular home falls within a category that is a need for a permanent residence or a permanent rental.

The motion was voted on and failed due to a tie vote (Tucker, Plumlee and Sturdivant opposed; Carter absent).

Ms. Smith stated that this Board could not take action without a majority vote and since there were only six members present today, four would have to vote Aye or Nay.

2. **PLN-BOA-24-00070: PURPLE DOOR MANAGEMENT LLC** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 102 Glass Ave. (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.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate 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.

Application representation – Mr. Nicholas Hudson, owner of Purple Door Management LLC, was present and was sworn in at this time. Mr. Gross asked him if he had seen the conditions of approval set forth by Staff and if he was agreeable to them. Mr. Hudson replied that he had seen them and was in agreement with them. He briefly explained the proposed project.

Action – A motion was made by Mr. Walker, seconded by Mr. Clarke and carried 6-0 (Carter absent), to **approve PLN-BOA-24-00070: PURPLE DOOR MANAGEMENT LLC** – 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 102 Glass Ave., based on Staff's recommendation and subject to the four conditions as listed.

3. **PLN-BOA-24-00072: BLAKE HENDRICKS** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1D) zone, on property located at 3532 Camelot Dr. (Council District 4)

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.

- 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 in Lexington 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.

Application representation – Mr. Blake Hendricks was present on behalf of his application. Mr. Gross asked him if he had reviewed the conditions of approval and if he was in agreement with them. Mr. Hendricks stated that he had seen them and was in agreement with them. He briefly explained the proposed project.

Board questions and comments – Ms. Plumlee asked Mr. Hendricks how long he had owned the house. He replied that he had owned it for almost two years.

Ms. Tucker commented that a petition in opposition had been submitted to the Board with several neighbors' signatures, as well as a couple of statements in opposition that had been submitted. She asked Mr. Hendricks if he was aware of that opposition. He replied that he was not aware.

Mr. Clarke opined that he was concerned that those in opposition were not present at the meeting.

Mr. Gross opined that the Board may want to address the issue of ensuring that the applicant receives copies of communications that the Staff has received. Ms. Goderwis stated that Staff does not have a practice of sharing such correspondence with the applicant unless the applicant requests it. She added that Staff accepts correspondence up to 10:00 a.m. the day of the hearing and provides the correspondence to the Board members in their packet on Granicus. Mr. Gross stated that could be a discussion item for the Board at a later time. Ms. Tucker opined that it may be difficult for people to come to the meeting during the day if they work full-time and further opined that they should be heard if they attend the meeting or submit their concerns another way. Mr. Walker noted that the petition did not say what it was for, other than a conditional use.

Action – A motion was made by Mr. Clarke and seconded by Mr. Sturdivant to **approve PLN-BOA-24-00072: BLAKE HENDRICKS** – 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 3532 Camelot Dr., based on Staff's recommendation and subject to the four conditions as listed.

Discussion on the motion - Ms. Plumlee opined that short term rentals are a business use in a residential zone. She further opined that the value of this particular home is approximately \$300,000 or less and would be a home for a permanent residence or a long term rental, and it is being removed from the availability of affordable housing. Ms. Plumlee stated that for that reason she is opposed to approving this application.

Action – The motion of **approval** was voted on and carried 4-2 (Plumlee and Tucker opposed; Carter absent).

- 4. **PLN-BOA-24-00069: LEITHA PASH-LEWIS** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 253 Hill N Dale Rd. (Council District 10)

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

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

Application representation - Ms. Leitha Pash-Lewis, property owner and applicant, was present on behalf of her application. Ms. Brittany-Shey Tilley, granddaughter of the applicant was also present. Mr. Gross asked the applicant if she had seen the conditions of approval and if she was in agreement with them. Mr. Pash-Lewis stated that she had seen the conditions and was in agreement with them. She explained her application and stated that she had used this property as a long-term rental for the past ten years and that she was vested in the property and the community.

Ms. Tilley explained that she owned two companies that are specialized in Airbnb's and that they are very well-focused on short term rentals and that she does this for a living. She stated that it is easier to maintain a short term rental than a long term rental as the property owner can access the property more easily.

Ms. Pash-Lewis stated that the neighbors on either side of the subject property are in agreement with the proposed project and currently watch the property for her. She added that there is ample parking with no need to park on the street and there are also security cameras on site. There was further discussion.

Board questions – Mr. Sturdivant asked if the subject property shared a driveway. Ms. Pash-Lewis replied that it is not a shared driveway, but it is connected and she explained why it is paved together.

Public comment

Mr. John Straley, 258 Hill N Dale Rd., expressed his opposition to this application for a short term rental at this address. He opined there is an oversaturation of short term rentals in this neighborhood and listed five separate properties operating as short term rentals. Mr. Straley commented that noise is an issue in this neighborhood due to the amount of short term rentals there and also expressed concern over traffic

Board question – Mr. Sturdivant asked Staff if some of the short term rental properties Mr. Straley mentioned may be operating illegally. Ms. Goderwis replied that one of the properties Mr. Straley mentioned does have a Zoning Compliance Permit and that Staff is aware of two others that are operating illegally and the Divisions of Revenue and Building Inspection are currently investigating and sending letters to address those issues. She added that Staff will investigate the other properties mentioned further. Mr. Sturdivant thanked those who have reported illegal short term rentals, adding that the City needs this information.

Public comment (continued)

Ms. Jennifer Bailey, 2489 Eastway Dr. was sworn in at this time. She stated that she was there on behalf of two neighbors who are 93 and 98 years old, Mr. Roy K. Bowman and Mrs. Golda Bowman, whose property at 257 Hill N Dale Rd. is between the property operating a short term rental illegally

and the subject property. Ms. Bailey read a letter of opposition to this application hand-written by Mrs. Bowman. She also read a letter from Ms. Terry Steele, 266 Hill N Dale Rd., who expressed her concerns with another short term rental operating in this neighborhood, citing noise and parking issues.

Ms. Gail Lightner, 279 Clearview Dr., Hill N Dale Neighborhood Association president, distributed a map of the neighborhood, which depicted the short term rentals currently in operation, both legal and illegal. She expressed concerns with a potential increase in traffic if this application for a short term rental is approved, short term rentals in the area operating illegally and guests parking along the street.

Staff comments – Ms. Goderwis indicated that Staff had received a copy of the map distributed by Ms. Lightner and she will share that map with Staff from the Division of Revenue and Zoning Enforcement Staff to determine if those are in fact operating as short term rentals and to pursue those coming into compliance which would involve them applying for Conditional Use Permits.

Board question – Mr. Sturdivant asked whether the owners of short term rentals that are being operated illegally are allowed to apply for a Conditional Use Permit in order to operate legally. Ms. Goderwis replied that those property owners would be given the opportunity and the time to come into compliance as long as they can show evidence that they are working with Staff to do so.

Applicant comments – Ms. Tilley stated that it is unfortunate that there are short term rentals that are being operated illegally and that the neighbors have experienced the negative effect of such. She added that there are precautions that can be implemented to alleviate these issues.

Board comments – Ms. Plumlee opined that even though there may be short term rentals in the neighborhood that are not operating legally, they are still there.

Action – A motion was made by Mr. Walker and seconded by Mr. Clarke to **approve PLN-BOA-24-00069: LEITHA PASH-LEWIS** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 253 Hill N Dale Rd., 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 (Tucker, Plumlee and Sturdivant opposed; Carter absent).

5. **PLN-BOA-24-00077: CHRISTIAN PERRY** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 786 Bravington Way. (Council District 9)

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 will be utilized as the applicant's primary residence and the short term rental operation will be limited to only 90 days per year.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate 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 90 days per calendar year.
3. Occupancy of the short term rental shall be limited to no more than 9 individuals.
4. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.

5. The 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.
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 – Mr. Christian Perry, applicant and property owner, was present on behalf of his application and gave a brief explanation of it.

Public comment

Mr. Neal Conrad, 3352 Grasmere Dr., was sworn in at this time, along with others in the audience who were late to the meeting. He expressed his concerns with Mr. Perry closing off the downstairs of the house to guests, which would eliminate one of the egress points. Mr. Conrad also expressed concern with this prompting guests to park along the street for easier access to the front door for entry into the house.

Mr. Phillip Johnson, 3356 Grasmere Dr., commented on condition #4 in the staff report which stated that Mr. Perry must obtain the necessary permits and approvals prior to commencement of the use. He opined that Mr. Perry is already renting the house as a short term rental, stating that he had witnessed people coming in to the house approximately ten days ago. Mr. Johnson also mentioned that the Conditional Use sign which Staff had placed in Mr. Perry's yard had been moved several times. He also expressed concern with parking issues if guests are not allowed to use the garage for parking.

Ms. Amy Chappell Hamlin, 3416 Grasmere Dr., expressed concerns with parking along the street and an increase in traffic if this application is approved.

Ms. Leah Atkinson Brand, 3175 Roxburg Dr., stated that she was going to read a statement written by Ms. Janet Cabaniss, which she agreed with. Ms. Cabaniss could not stay for the entire meeting. She expressed opposition to this application for another short term rental in this neighborhood. Ms. Brand read a list of conditions, should the application be approved.

Ms. Betsy Lucky, 3365 Grasmere Dr., stated that the subject property has already been rented as a short term rental and guests are already parking on the streets. She expressed concerns with neighborhoods being used for investments.

Ms. Amelia Burnett, stated that she was a friend of Mr. Perry's and a contact for guests if they should need anything. She added that she is an Airbnb owner with several properties in Lexington.

Ms. Kimberly Justus, 3453 Lannette Lane, was sworn in at this time. She stated that she was present on behalf of the Stonewall Neighborhood Association and expressed opposition to this application. Ms. Justus opined that the subject property may not be Mr. Perry's primary property and she would like that to be confirmed.

Staff comments – Ms. Goderwis addressed the comments made regarding the applicant already hosting as an Airbnb, and stated that Staff had received notice that Mr. Perry did have a live listing for his property, and had contacted him on May 22, 2024 informing him that he could not operate as an Airbnb while going through the application process. She continued, stating that Mr. Perry informed Staff that he had blocked his calendar and was not accepting any reservations. Ms. Goderwis stated that Mr. Perry had been informed that he should either take his listing down or note on the listing that it could only be rented for 30 days or longer. At this point, Mr. Perry stated that he would take the listing down. She noted that Staff had received a call on May 28, 2024 that the Conditional Use sign was not in place, so Staff went out and replaced the sign.

Ms. Goderwis addressed the comments about life safety issues, stating that the Board of Adjustment process is the first step in a two-part approval process, and that to be fully licensed, a property owner must have approval from the Division of Planning and then obtain a business license from the Division of Revenue.

Board questions and comments – Mr. Sturdivant questioned Mr. Perry about his primary residence. Mr. Perry responded that 786 Bravington Way is his primary residence.

Ms. Plumlee asked Mr. Perry if he had rented this property before and if so, how many times. Mr. Perry replied that he had rented the property before approximately five times before learning that he was not in compliance with the rules and regulations for operating a short term rental in Lexington. He added that at that time, he shut his business down and started the application process for a conditional use for a short term rental. There was further discussion.

Mr. Gross asked Mr. Perry to address the issues of parking, the garage and the RV parked in the driveway as depicted on Google Maps. Mr. Perry replied that he owns an RV and had parked it in his driveway at one point but he has since moved it from the driveway. Mr. Perry addressed the concerns regarding the access to his home, stating that there is a path from the driveway to the back deck, leading one into the home. He added that this is the way he would suggest that guests enter the home, and also restrict guest parking to the driveway with no on-street parking.

Mr. Walker asked Staff to explain the term “hosted”. Ms. Goderwis explained that “hosted” meant that the applicant would be staying on the property during the time that it was rented out. She then explained that the term “primary residence” meant that the applicant must reside at the property 275 days per year.

Mr. Clarke opined that he understood the concerns that had been expressed by the neighbors, but he saw nothing with this request that would prevent him from voting in approval of the request, even though he understood the concerns and they are the same concerns that neighbors from other neighborhoods had expressed.

Ms. Plumlee stated that although the Board hears the same concerns regarding short term rentals again and again, it does not mean that those concerns are any less important.

Action – A motion was made by Mr. Walker, seconded by Mr. Clarke and carried 4-2 (Tucker and Plumlee opposed; Carter absent), to **approve PLN-BOA-24-00077: CHRISTIAN PERRY** – 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 786 Bravington Way, based on Staff’s recommendation and subject to the six conditions as listed.

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

Mr. Gross stated that the possibility of forwarding letters of opposition to applicants prior to each meeting had been mentioned earlier in the meeting, and that suggestion may warrant discussion by the Board at some point. He recommended mentioning it to Chair Carter prior to the next meeting.

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

A. Audience Comments

Ms. Goderwis informed the Board that Ms. Lisa Gannoe was present in the audience and had informed Staff that she wished to speak on a conditional use on property located at 7524 Old Richmond Rd. that was approved by the Board several years ago. She added that there was a long history with that property.

Mr. Gross asked if there were any recent, formal complaints regarding this property. Ms. Goderwis replied that there have been several complaints by Ms. Gannoe and that there is a meeting scheduled for the following Wednesday between Ms. Gannoe and Staff from the Division of Building Inspection to discuss those complaints. Ms. Goderwis gave a brief update on the status of the subject property.

Citizen comments – Dr. Lisa Gannoe, 7525 Old Richmond Rd., expressed her displeasure with the activities taking place on the property at 7524 Old Richmond Rd. She further stated that she wished to have the item placed on the agenda to be heard at the July 8, 2024 Board of Adjustment meeting for the purpose of revocation.

Note – Mr. Walker excused himself from the remainder of the meeting at this time.

Board questions - Mr. Gross asked Staff to explain the process that would follow Dr. Gannoe's meeting with the Division of Building Inspection. Ms. Goderwis explained the steps that would take place should the Zoning Enforcement Section find that the property owners at 7524 Old Richmond Rd. are not in compliance with the current conditional use approved by the Board.

B. Discussion on the Board of Adjustment Work Session held on June 3, 2024.

Mr. Gross stated that he appreciated Staff holding the previous Work Session and asked if another Work Session had been scheduled. Ms. Wade stated that another Work Session had been scheduled for Monday, August 19th, at 1:30 p.m.

VII. NEXT MEETING DATE – Mr. Gross announced that the next meeting date would be July 8, 2024 at 1:30 p.m., Council Chambers, 200 East Main Street, Lexington, KY 40507.

VIII. ADJOURNMENT - As there was no further business, the meeting was adjourned at 5:14 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://lfucg.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.