

**MINUTES FOR THE BOARD OF
ADJUSTMENT MEETING**

July 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, Branden Gross, Carolyn Plumlee, Bob Sturdivant, Linda Tucker and Chad Walker. Harry Clarke 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 May 2024 Board of Adjustment meeting minutes were considered for approval at this time.

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

IV. **PUBLIC HEARING ON ZONING APPEALS**

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

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

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

Postponements

1. **PLN-BOA-24-00084: MADDEN FAMILY LLC NO 21** – requested a variance to increase the maximum allowable parking from 28 spaces to 56 spaces in a Commercial Center (B-6P) zone, on property located at 1863 Plaudit Pl. (Council District 6)

Ms. Goderwis informed the Board that the applicant was unable to attend the meeting today. However, they are agreeable to Staff's recommendation for a one-month postponement and asked Staff to request that on their behalf.

Action – A motion was made by Mr. Gross, seconded by Ms. Tucker and carried 6-0 (Clarke absent), to **approve** a one-month postponement of this application to the August 12, 2024 Board of Adjustment meeting.

2. **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 wished to postpone their application to the August 12, 2024 meeting.

Ms. Goderwis informed the Board that Staff had been working with the applicant and that they had informed Staff that they plan to submit additional materials for their application prior to the next meeting and they are requesting to postpone to the August 12, 2024 meeting.

Action – A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 6-0 (Clarke absent), to **approve** a one-month postponement of this application to the August 12, 2024 Board of Adjustment meeting.

3. **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 wished to postpone their application to the August 12, 2024 meeting.

Action – A motion was made by Mr. Sturdivant, seconded by Mr. Gross and carried 6-0 (Clarke absent), to **approve** a one-month postponement of this application to the August 12, 2024 Board of Adjustment meeting.

Withdrawals

1. **PLN-BOA-24-00085: ROBERT MILAM** – requested variances to 1) increase the allowable height of an accessory structure from 17' to 20'; 2) increase the allowable lot coverage of an accessory structure from 1,034 square feet to 1,100 square feet; and 3) increase the allowable size of an accessory structure from 650 square feet to 1,870 square feet in order to bring an existing non-conforming structure into compliance to allow for the conversion of existing finished space into an accessory dwelling unit in a Single Family Residential (R-1C) zone, on property located at 655 Graviss Ct. (Council District 9)

Note – This application was withdrawn by the applicant prior to the meeting.

C. Abbreviated Hearing

1. **PLN-BOA-24-00082: JAMES BAKER** – requested a variance to reduce the required side yard setback from 25' to 3' in order to construct a dwelling unit on each of the referenced properties in a Planned Neighborhood Residential (R-3) zone, on properties located at 753 Lucille Dr., 2731 and 2738 Rockaway Pl. and 2556 Spring Leaf Ct. (Council District 2)

The Staff Recommended: **Approval for three lots, and a lesser variance to 7.5' for the fourth lot,** for the following reasons:

- a. Granting the variances should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity by allowing four non-buildable lots to be developed as single family dwellings.
- b. The development of the adjoining property as a public school, which will allow for urban development of a property with Agricultural Urban (A-U) zoning without necessitating a zone change is a special circumstance that is unique to the subject properties and justifies the need for side yard variances.

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

1. Construction shall be in accordance with the submitted application materials.
2. No wall, air-conditioning unit, structure, or other obstruction shall be located within the 3-foot side yard. Any fence located in the 3-foot side yard must be entirely to the rear of the principal structure on the lot.
3. The townhome constructed at 2556 Spring Leaf Court shall maintain a 7.5' setback to avoid a conflict with an existing stormwater easement along the side property line.
4. A minor subdivision plat shall be submitted and recorded to document the modified building line and remove the restrictive note in accordance with the Land Subdivision Regulations.
5. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

Applicant representation – Mr. Rory Kahly, EA Partners, was present on behalf of the property owner. He stated that the applicant had read the conditions set forth by Staff and was in support of those conditions.

Action – A motion was made by Mr. Gross, seconded by Mr. Sturdivant and carried 6-0 (Clarke absent), to **approve PLN-BOA-24-00082: JAMES BAKER** – request for a variance to reduce the required side yard setback from 25' to 3' on the three properties located at 753 Lucille Dr., 2731 and 2738 Rockaway Pl., and a lesser variance from 25' to 7.5' for the fourth lot on property located at 2556 Spring Leaf Ct., in order to construct a dwelling unit on each of the referenced properties in a Planned Neighborhood Residential (R-3) zone, based on Staff's recommendation and subject to the five conditions as listed.

2. **PLN-BOA-24-00083: SHAWN AND TAMI WILLHITE** – requested a variance to reduce the front yard setback from 20' to 16' in order to construct a new detached garage in a Planned Neighborhood Residential (R-3) zone, on property located at 2652 Kearney Creek Ln. (Council District 2)

The Staff Recommended: Approval for the following reasons:

- Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, provided that the driveway leading into the proposed garage does not obstruct the stormwater curb inlet on the northwest portion of the property.
- The unique shape of the lot and the orientation of the existing house are special circumstances that justifies the need for the variance, as they limit the areas in which an accessory structure can be constructed. Granting the variance will allow the applicant to more fully utilize their property.
- The granting of the requested variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the variance is generally reasonable as only a portion of the structure will encroach into the 20-foot front yard.

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

- All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to finishing construction.
- The driveway for the new garage shall not interfere with or obstruct the stormwater curb inlet.
- A minor subdivision plat shall be submitted and recorded to document the modified building line in accordance with the Land Subdivision Regulations.

Applicant representation – Mr. Bruce Simpson, attorney, stated he was present on behalf of the applicants, who were also present. He stated that the applicants had read the conditions set forth by Staff and were in agreement with those conditions, and that they were requesting the Board's approval of their application.

Board question – Ms. Tucker asked if there was another street on the side of the Willhite property, which would cause drivers to look in three directions. Mr. Willhite responded that was correct.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 6-0 (Clarke absent), to **approve PLN-BOA-24-00083: SHAWN AND TAMI WILLHITE** – request for a variance to reduce the front yard setback from 20' to 16' in order to construct a new detached garage in a Planned Neighborhood Residential (R-3) zone, on property located at 2652 Kearney Creek Ln., based on Staff's recommendation and subject to the three conditions as listed.

3. **PLN-BOA-24-00088: IAN COLE** – requested a variance to increase the allowable width of a driveway from 10' to 12.5' within the defined Infill and Redevelopment Area in a Single Family Residential (R-1C) zone, on property located at 114 Paris Ave. (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 as the driveway is an appropriate width to allow appropriate access to the attached one-car garage.
- The granting of the variance will not alter the essential character of the general vicinity. A slightly wider driveway is generally reasonable in this location as there are other similar driveways in the immediate vicinity.

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

- The driveway shall be permitted 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.

Applicant representation – Ms. Christa Joynt, 1908 Bryant Rd., was present on behalf of the applicant. She stated that Mr. Cole was not available to attend today meeting. Ms. Carter asked Ms. Joynt if Mr. Cole was in agreement with the conditions of approval. Ms. Joynt stated that she was not sure. Staff provided a copy of the conditions for Ms. Joynt to review. She stated that Mr. Cole had seen the conditions and was in agreement.

Action – A motion was made by Mr. Sturdivant, seconded by Ms. Plumlee and carried 6-0 (Clarke absent), to **approve PLN-BOA-24-00088: IAN COLE** – request for a variance to increase the allowable width of a driveway from 10' to 12.5' within the defined Infill and Redevelopment Area in a Single Family Residential (R-1C) zone, on property located at 114 Paris Ave., based on Staff's recommendation and subject to the two conditions as listed.

D. Items for Discussion

Note – Mr. Gross recused himself prior to hearing this application, based on a possible conflict of interest.

1. **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)

Note – The Board voted to continue this item from the June 10, 2024 Board of Adjustment meeting.

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 representation – Mr. Herbert Booker, applicant, was present on behalf of this application. Ms. Carter asked him if he had made any modifications to his site plan since the continuance from last month. He explained that he had not made any modifications to his site plan, but three of his six neighbors had told him that they were in agreement with his plans to build.

Public comment - Mr. Steve Kay, 250 Campsie Pl., expressed his concerns with, and opposition to the subject application. He asked to Board to reject this proposal on the basis that a ten foot setback is incompatible with all of the other houses on Campsie Ct. and Campsie Pl.

Applicant rebuttal – Mr. Booker remarked that the average setback on Campsie Pl., including Mr. Kay's property, is ten feet. There was further discussion.

Action – A motion was made by Mr. Sturdivant to **approve 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. The motion failed due to there being no second.

The site plan was displayed on the overhead screen. Mr. Walker expressed concern with the lack of a special condition associated with the proposed project other than that it does assist with infill development. Mr. Booker noted that years ago, LFUCG built a house that took up part of the subject lot, causing the subject lot to be smaller. There was further discussion.

Action – A motion was made by Mr. Sturdivant, seconded by Ms. Plumlee and carried 4-1 (Tucker opposed; Gross recused; Clarke absent), to **approve 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., based on Staff's recommendation and subject to the three conditions as listed.

Note – Following the vote, Mr. Gross returned to the meeting and resumed his position on the Board.

2. **PLN-BOA-24-00080: INNOCENT GAMA** – requested a conditional use permit to establish a Type II childcare center in a Planned Neighborhood Residential (R-3) zone, on property located at 2684 Rockaway Pl. (Council District 2)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. The applicant's proposed hours of operation should be compatible with the residential neighborhood.
- b. The applicant has already been operating a Family Childcare Home in the neighborhood, so the expansion of the use from a maximum of ten (10) children to a maximum of twelve (12) children should not have an adverse influence the residential structure or the existing neighborhood.
- c. All necessary public facilities and services are available and adequate for the proposed use.

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

1. Childcare for up to 12 children, including children related to the licensee, shall be provided in accordance with the submitted application materials and site plan.
2. The total number of employees on the property shall be limited to two (2) in accordance with the submitted application materials.
3. During hours of operation, visitors to the property shall be limited to residents of the dwelling, employees, and individuals picking up or dropping off children.
4. The outdoor play area will be fully fenced and contain at least 300 square feet.
5. All necessary permits, including a Zoning Compliance Permit and a fence permit, shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the childcare use.
6. The use shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
7. The conditional use shall become null and void should the applicant no longer reside at this location.

Applicant representation – Mr. Innocent Gama, applicant and property owner, was present on behalf of his application.

Board questions and comments – Ms. Plumlee commented on the amount of time that the children attending the daycare would be outside. She also asked about the number of stairs and how the children would maneuver them. Mr. Gama explained the ages of the children and noted that they use gates to block the stairs to prevent the children from being on them.

Ms. Tucker asked about the slope of the back yard and asked if any of the back yard was flat so that the children can play. Mr. Gama explained that it was a gentle slope.

Public comment – Mr. Jim Baker, developer, opined that the back yard of this property was very small. He added that there is no turn around at the end of the street. Mr. Baker expressed concern that there may be increased traffic if this use is allowed. He further opined that the requested use is not appropriate on this street.

Applicant rebuttal – Mr. Gama clarified that the daycare operating at this address is not new, but has been operating since January and is approved and certified. He added that they have had no complaints whatsoever concerning their daycare. Mr. Gama explained that they are requesting to allow three more children in the existing daycare. Mr. Gama stated that they are in agreement with the conditions of approval for this application.

Board comments – Ms. Plumlee opined that Lexington is in need of daycare centers, but adding more children to this particular daycare may not be appropriate.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 5-1 (Plumlee opposed; Clarke absent) to **approve PLN-BOA-24-00080: INNOCENT GAMA** – request for a conditional use permit to establish a Type II childcare center in a Planned Neighborhood Residential (R-3) zone, on property located at 2684 Rockaway Pl., based on Staff's recommendation and the testimony heard today and subject to the seven conditions as listed.

3. **PLN-BOA-24-00087: CLAYS MILL RD BAPTIST CHURCH BOARD OF TRUSTEES** – requested a conditional use for a childcare center accessory to a place of religious assembly in a Single Family Residential (R-1B) zone, on property located at 3000 Clays Mill Rd. (Council District 10)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional uses should not adversely affect the subject or surrounding properties. The proposed childcare and preschool will utilize an existing structure and the new playground will be fully fenced and screened in addition to the six (6') foot wood privacy fence that surrounds much of the property.
- b. The applicant is proposing to construct a new playground of 3,150 square feet in size, which will exceed the minimum square footage by 100 square feet.
- c. The requested conditional uses should not have a negative impact on traffic in the general vicinity, as adequate parking is present to accommodate the uses.
- d. All necessary public facilities and services are available and adequate for the proposed uses.

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

1. The uses shall be operated in accordance with the submitted application materials and the amended site plan dated June 26, 2024.
2. All necessary permits, including a zoning compliance permit and a fence permit shall be obtained from the Divisions of Planning and Building Inspection prior to commencement of the use.
3. The applicant shall comply with all requirements of the State of Kentucky's Cabinet for Health and Family Services.

Applicant representation – Mr. Todd Osterloh, attorney, was present on behalf of the applicant. He explained this application for a conditional use permit. He noted that the applicant has reviewed the Staff's conditions of approval and are in agreement with them.

Public comment

Mr. Dana Horowitz, 3000 Neal Dr., spoke in opposition to the proposed application, citing a possible increase in traffic, big trees that the church planted outside the fence, the elimination of some other existing trees, his dislike of the fence, the storage of buses in the church parking lot and children playing outside.

Mrs. Priscilla Brooks, 3012 Neal Dr., expressed her opposition to the proposed project. She stated that the site plan submitted by the applicant is in reverse. She opined that another daycare in the subject area was not necessary. Mrs. Brooks also expressed her objection to the buses parked in the parking lot, as well as the noise that the children make when they are outside. She stated that when activities are going on, it causes a lot of excess noise.

Mr. Tom Brooks, 3012 Neal Dr., expressed his opposition to the proposed project, citing a potential increase in noise, if approved. He suggested the applicant install a smaller version of barriers similar to ones used along highways as a barrier to the noise. Mr. Brooks also mentioned that the existing privacy fences have been paid for by the property owners, not the church.

Mr. Theodore Pacholik, 3008 Neal Dr., commented that there is a lot of noise coming from the current day care, specifically when they are playing music and the doors are open, adding that it can be heard loudly throughout his house. He also mentioned that the buses are loud and seem to frequently be in disrepair.

Applicant rebuttal – Mr. Osterloh addressed some of the comments from the public, stating that the school would be for preschool age children only, and that grades K-12 would no longer be at the subject location. He stated that the church wants to be a good neighbor to the surrounding property owners. Mr. Osterloh stated that there is a defined playground area for the children and that area will be smaller than what is currently in use and it will be fenced in. He stated that the buses that were mentioned previously are on the property lawfully and are not what is before the Board today.

Board questions and comments – Mr. Sturdivant asked Mr. Osterloh to indicate on the site plan where the proposed playground will be. He indicated an area of approximately thirty-five feet by seventy feet on the site plan that is where the playground will be located. There was further discussion about the busses on the property and existing privacy fences between the church's property and the property owners.

Action - A motion was made by Mr. Walker, seconded by Ms. Tucker and carried 6-0 (Clarke absent), to **approve PLN-BOA-24-00087: CLAYS MILL RD BAPTIST CHURCH BOARD OF TRUSTEES** – request for a conditional use for a childcare center accessory to a place of religious assembly in a Single Family Residential (R-1B) zone, on property located at 3000 Clays Mill Rd., based on Staff's recommendation and subject to the three conditions as listed.

E. Short Term Rental Applications

Staff presentation – Ms. Goderwis gave a presentation explaining the regulations adopted by Urban County Council on July 11, 2023 for short term rentals. She also summarized Article 3-13 of the Zoning Ordinance and displayed a map indicating the approximate areas where Zoning Compliance Permits for short term rentals have been issued. Ms. Goderwis indicated on this map, the areas of the two applications for short term rentals which the Board will consider today. She then displayed and explained data showing the concentration of STRs in proximity to the subject property, and briefly reviewed the Task Force on Neighborhoods in Transition Report from the mayor's office.

1. **PLN-BOA-24-00073: FRANCOIS MUNYAKAZI** – requested a conditional use permit for an un-hosted short term rental in a Planned Neighborhood Residential (R-3) zone, on property located at 613 Skyview 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 parking is available.
- c. No short term rentals in the area have been cited as a nuisance and there are no other short-term rentals in the area.
- 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. Francois Munyakazi, property owner and applicant, was present on behalf of his application and gave a brief explanation of his intentions for the proposed use.

Public comment - Ms. Lois Kirkland, 1201 Colter Pass, expressed her opposition to a short term rental at this location. She cited a lack of parking in the area and opined that emergency vehicles have difficulty getting into the subdivision due to cars parked along Sandersville Rd. Ms. Kirkland expressed concern with a potential decrease in property values in the subdivision and whether the potential renters would be checked out.

Applicant rebuttal – Mr. Munyakazi addressed some of the concerns expressed by Ms. Kirkland and stated that he was surprised by what she said and her opposition to his application. He stated that operating a short term rental at his home will not increase traffic because he has sufficient parking on the property. Mr. Munyakazi said that he will have designated parking for his guests, and he will conduct background checks on them.

Board comments – Ms. Plumlee opined that operating a short term rental in a residential neighborhood is a commercial use and it also removes a house from the housing market.

Ms. Tucker noted that Mr. Munyakazi listed the subject address as his address and that his brother and nephew live close by and can address emergencies. She asked him where he lives. He replied that he has another property in Iowa.

Action – A motion was made by Mr. Walker, and seconded by Mr. Gross to **approve PLN-BOA-24-00073: FRANCOIS MUNYAKAZI** – 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 613 Skyview Ln., based on Staff's recommendation and subject to the four conditions as listed.

Discussion on the motion – Mr. Gross commented that Ms. Kirkland's comments and Ms. Plumlee's comments were all related to policy adopted by the Urban County Council and it was not this Board's position to make policy, but to enact the policy that has been adopted by the elected officials. He stated that he would second the motion based on the fact that he had not heard anything today that would be anything other than just a general policy concern and disagreement over the short term rentals in general.

Action – The motion was voted on and carried 4-2 (Plumlee and Tucker opposed; Clarke absent), to **approve PLN-BOA-24-00073: FRANCOIS MUNYAKAZI**.

Note – Mr. Walker excused himself from the remainder of the hearing.

2. **PLN-BOA-24-00079: DIANE JAMES** - requested a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Mixed Low Density Residential (R-2) zone, on property located at 912 Cramer Ave. (Council District 3)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users. Additionally, the applicant is uniquely suited to manage the property as a short term rental given the immediate proximity of their permanent residence.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate parking is available.
- c. Staff is unaware of any 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. While the applicant had begun operation of the short term rental without appropriate approvals, they have applied for the necessary approvals in a timely manner following notice from the Division of Revenue.
- 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.
5. The conditional use permit shall become null and void if the applicant no longer occupies the property at 55 Mentelle Park as their primary residence.

Applicant representation – Ms. Diane James, 55 Mentelle Park, applicant and property owner, was present on behalf of her application. She explained that she lives next door to the subject property and that she had been using the property as a short term rental since 2021 and didn't realize that there were regulations for operating a short term rental until recently. Ms. James was unaware that her property could have been grandfathered in as a legal short term rental if she had applied before the deadline of January 11, 2024.

Public comment

Mr. Charles Hite, 929 Aurora Ave., expressed his opposition to short term rentals. He opined that the Kenwick neighborhood has been overrun with short term rentals. He directed the Board's attention to the overhead screen on which he displayed a map depicting the number of short term rentals in the Kenwick area.

Mr. Mark Kleckner, 115 Owsley Ave., expressed his opposition to short term rentals. He listed reasons such as a shortage in affordable housing, increases in property values and in property taxes.

Ms. Betsy Kephart, 6134 Ware Rd., Paris, KY, stated that she and her husband own property on Hanover Ave. that they rent out to long term renters. She expressed opposition to short term rentals, citing parking and noise issues, and asked the Board to deny this application.

Board comments and questions – Mr. Gross asked to have Mr. Hite's exhibit which displayed the short term rentals in the Kenwick neighborhood shown on the overhead screen again, and also the exhibit depicting the one thousand foot buffer. Ms. Goderwis suggested displaying Staff's Power Point presentation which displayed an image of the one-thousand foot buffer around the subject property. She explained that this image did not show the short term rentals that were operating without a permit, as Staff had no way of calculating those that were not registered. Ms. Goderwis stated that Staff felt it best to not penalize those going through the appropriate process because there are others in the neighborhood who have not done so. She added that when those who are operating illegally are identified, that will be taken into consideration when their application is being heard, rather than someone who is coming in and trying to do the right thing.

Mr. Sturdivant asked Planning Staff if the short term rentals which were identified by the neighborhood had been investigated. Ms. Goderwis replied that this was the first time Staff had seen this particular exhibit. Mr. Sturdivant asked if those short term rentals would be added to the database to be looked at. Ms. Goderwis replied that the exhibit did not list the exact addresses of the short term rentals shown, but she would share this document with Zoning Enforcement and the Division of Revenue to see if they can do some research into these short term rentals. Mr. Hite opined that Mr. John Grimes, who could not be at this meeting, likely has the addresses of those short term rentals mentioned. There was further discussion.

Ms. Carter stated that there was some concern over using the properties that are operating improperly, while the Board is working to approve people who are going through the right process.

Applicant rebuttal – Ms. James stated that she understood some of the fears that some the neighbors had expressed and that she also understood the issue of affordable housing. She questioned condition #5 which stated that the conditional use permit shall become null and void if the applicant no longer occupied the property at 55 Mentelle Park as their primary residence. Ms. Goderwis stated that when an applicant includes in their application that they are a neighbor to the property or live close, the short term rental that they are wanting to operate, it is generally more comforting to neighbors and Staff that the operator will be readily available, so Staff includes that in their conditions. She added that Ms. James could request that the Board take that condition off, or if approved with the condition and she wanted it removed at a later time, she could go back to the Board of Adjustment and ask that the condition be modified.

Board comments – Ms. Carter opined that she felt more comfortable approving an application for an un-hosted short term rental if the owner or operator lived nearby.

Action – A motion was made by Mr. Gross to **approve PLN-BOA-24-00079: DIANE JAMES** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Mixed Low Density Residential (R-2) zone, on property located at 912 Cramer Ave., based on Staff's recommendation, the testimony heard today and subject to the five conditions as listed.

Discussion on the motion – Ms. Tucker stated that she appreciated the comments Mr. Gross had made previously about policy, but she opined that the Board had been given the task of considering each short term rental on a case-by-case basis. She further opined that the subject neighborhood has been overrun with short term rentals and that she could not support this application.

Note – The motion failed as there was no second. The Board took a brief recess at 3:25 p.m. and reconvened at 3:29 p.m.

Action – A motion was made by Ms. Tucker to **disapprove PLN-BOA-24-00079: DIANE JAMES** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Mixed Low Density Residential (R-2) zone, on property located at 912 Cramer Ave., based on the following findings of fact:

1. Evidence at the hearing showed that thirteen permitted short term rentals exist within one-thousand feet of the proposed short term rental.
2. Evidence also showed that the proposed short term rental is on a street with insufficient on-street parking to handle the additional traffic that this high concentration of short term rentals will create. Thus, the subject property is surrounded by a high concentration of short term rentals for nearby single family homes, 3.3% and allowing another short term rental would have an adverse influence on the surrounding neighborhood by further increasing the volume of traffic.

Action - The motion for **disapproval** was seconded by Ms. Plumlee and carried 3-2 (Carter and Gross opposed; Walker recused; Clarke absent)

Board comments – Ms. Carter commented that some of the people present have investment property in the area and opined that the subject use is a common mixed use in any residential area. She added that although some properties are rentals and do make money, as long as they are used as residential in nature, they are not completely converted to a commercial use.

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

A. Appointment of new member to the Landscape Review Committee

The Lexington Tree Board had recommended their newly appointed chair, Mr. Michael Potapov, for appointment to the Landscape Review Committee, to fill the position vacated by Mr. Dan Stever.

Action – A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 5-0 (Clarke and Walker absent), to **approve** the appointment of Mr. Potapov to the Landscape Review Committee, as the Tree Board Representative.

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

Ms. Goderwis advised the Board that Ms. Lisa Gannoe, who was present at last month's meeting to express her concerns with the conditional use for a plant nursery at 7524 Old Richmond Rd., was present in the audience today as well. Ms. Goderwis gave a brief overview of what Zoning Enforcement Staff, within the Division of Building Inspection, had found regarding that property. She explained that Planning Staff had met with Zoning Enforcement Staff last week and had learned that they were communicating with the new owner of the property who indicated that he does plan to use the conditional use permit to operate a plant nursery. Building Inspection Staff had determined that there was no need for the Board to hold a revocation hearing at

this time. Ms. Goderwis added that Planning Staff and Building Inspection Staff had provided the owner with the full history of the property and the conditional use permit approved by this Board and that if he planned to make any changes to the way that the business is operated or any physical changes to the property, such as paving or fencing, that would need to come back before the Board. She stated that the annual inspection for the conditional use on that property is scheduled for September, therefore Zoning Enforcement Staff will perform another inspection in September and if it is determined that the conditional use is not being operated properly, that will be reported to the Board and request that a revocation hearing be scheduled at that time.

At this time, Ms. Goderwis received a note from the property owner, who was also present in the audience. The note stated that they are still working on a plan for the property and in the meantime, they are gradually cleaning it up. She distributed the note, with photos, to the Board for their review and mentioned that the property owner had been contacted to let them know that their property was being discussed at today's meeting; however, no decisions would be made today.

Audience comments – Ms. Lisa Gannoe, 7525 Old Richmond Rd., shared her concerns regarding the subject property with the Board. She opined that a revocation hearing was needed.

Staff comments – Ms. Wade remarked that the property had been in litigation since 2020, until September of 2023, when the Kentucky Supreme Court said that they were not going to hear the case, making that the end of the litigation. She stated that the property owner cannot be expected to exercise a conditional use during litigation. There was further discussion.

Ms. Smith clarified that unless there is some kind of condition added to a use that the Board approves, the Board is not required to revoke a conditional use permit because it has not been operated in a year.

Board question – Ms. Plumlee inquired as to what the conditions that were placed on the conditional use were. Ms. Goderwis explained that this property had a very long history and that she did not have all of the information in front of her. There was further discussion.

Staff item – Ms. Wade announced that Ms. Goderwis will be leaving the Division of Planning to work for Franklin County, Kentucky as the Director of Planning. She also announced that Mr. Dalton Belcher would be joining the Division of Planning in August, as a Senior Planner, working with the Board of Adjustment.

VII. NEXT MEETING DATE – Ms. Carter announced that the next meeting date will be August 12, 2024 at 1:30 p.m., Council Chambers, 200 East Main Street, Lexington, KY 40507.

VIII. ADJOURNMENT – As there was no further business, Chair Carter declared the meeting adjourned at 3:48 p.m.

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.