

**MINUTES FOR THE BOARD OF
ADJUSTMENT MEETING**

September 9, 2024

- I. **CALL TO ORDER** – Chair Carter 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 Raquel Carter, Harry Clarke, Branden Gross, Carolyn Plumlee, Bob Sturdivant, Linda Tucker and Chad Walker. 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, Daniel Crum, Dalton Belcher, James Mills and Donna Lewis.

III. **APPROVAL OF MINUTES**

The June 2024 Board of Adjustment meeting minutes were considered at this time.

Action – A motion was made by Ms. Plumlee, seconded by Ms. Tucker and carried 7-0 to **approve** the minutes from the June 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-24-00036: 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)

Note – At the August 12, 2024 Board of Adjustment meeting, the Board approved the applicant's request for postponement of their application to the November 4, 2024 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)

Note – The applicant had informed Staff that they wish to postpone their application to the October 14, 2024 meeting.

Action – A motion was made by Mr. Gross, seconded by Ms. Tucker and carried 7-0 to **approve** the applicant's request for a postponement to the October 14, 2024 Board of Adjustment meeting.

3. **PLN-BOA-24-00095: CIRENIA MOLINA** - requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 259 Malabu Dr. (Council District 3)

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

- a. There is a record of short term rental compliance issues with the applicant for a dwelling unit within Lexington-Fayette County. The compliance issues have not been resolved and create a health and safety concern. Until the compliance issues are resolved, additional units should not be approved for the applicant.

Note – The applicant had informed Staff that they wish to postpone their application to the October 14, 2024 meeting.

Action – A motion was made by Mr. Gross, seconded by Ms. Plumlee and carried 7-0 to **approve** the applicant's request for a postponement to the October 14, 2024 Board of Adjustment meeting.

C. Abbreviated Hearing

1. **PLN-BOA-24-00084: MADDEN FAMILY LLC NO 21** – requested a variance to increase the maximum allowable parking from 28 spaces to 50 spaces and reduce the perimeter landscape buffer along the northern boundary of the property from eight feet (8') to five feet (5') in a Commercial Center (B-6P) zone, on property located at 1863 Plaudit Pl. (Council District 6)

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

- a. The request will not negatively impact the health, safety or welfare of the general area. The request will allow for the same amount of parking as the current layout, and improves the safety of the overall system by reconfiguring the parking to have fewer conflicts with the drive-through component of the use. While the overall width of the landscaping buffer for the drive-through use is decreasing, all other planting requirements will still be met, which should be sufficient to screen the vehicular use area from the adjoining property.
- b. The difference in topography between the properties along the northern property line is a special circumstance that further contributes to the effectiveness of the property perimeter buffer.
- c. The requested landscaping variance was reviewed by the Landscape Review Committee and was unanimously recommended for approval.

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

1. The subject property shall be developed in accordance with the submitted application materials and site plan, or as modified by the amended Final Development Plan.
2. Action of the Board shall be reflected on the Final Development Plan for the property.
3. All necessary permits from the Divisions of Planning and Building Inspection shall be obtained prior to construction.

Application representation – Mr. Richard Scott was present on behalf of the application. Ms. Carter asked him if he had read the Staff's recommendations and conditions of approval. He indicated that he had read them. She asked him if he was in agreement with those conditions and he stated that he was.

Action - A motion was made by Mr. Walker, seconded by Mr. Clarke and carried 7-0 to **approve PLN-BOA-24-00084: MADDEN FAMILY LLC NO 21** – request for a variance to increase the maximum allowable parking from 28 spaces to 50 spaces and reduce the perimeter landscape buffer along the northern boundary of the property from eight feet (8') to five feet (5') in a Commercial Center (B-6P) zone, on property located at 1863 Plaudit Pl., based on Staff's recommendations and subject to the three conditions as listed.

2. **PLN-BOA-24-00109: LEON HINES** – requested a variance to the required rear yard setback of a through lot from twenty feet (20') to ten feet (10') in order to expand a rear yard deck in a Planned Neighborhood Residential (R-3) zone, on property located at 2112 Maura Trace. (Council District 9)

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, nor alter the character of the general vicinity. The applicant's request is consistent with other

rear deck construction in the vicinity and will not encroach into the existing utility easement at the rear of the property.

- b. The irregular shape of the lot, including the curvature of Lyon Drive along the rear of the property, is a special circumstance that justifies the need for the variance.

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 Division of Building Inspection.

Application representative – Mr. Leon Hines, applicant and property owner, was sworn in at this time, having arrived late to the meeting. Ms. Carter asked him if he had read the Staff's recommendations and the conditions of approval. Mr. Hines replied that he had briefly looked at them. Staff provided a copy of the conditions for Mr. Hines to review. He stated that he was in agreement with those conditions.

Action – A motion was made by Ms. Plumlee, seconded by Mr. Sturdivant and carried 7-0 to **approve PLN-BOA-24-00109: LEON HINES** – request for a variance to the required rear yard setback of a through lot from twenty feet (20') to ten feet (10') in order to expand a rear yard deck in a Planned Neighborhood Residential (R-3) zone, on property located at 2112 Maura Trace, based on Staff's recommendation and subject to the two conditions as listed.

Note – prior to hearing the next application, Mr. Gross recused himself due to a possible conflict of interest.

3. **PLN-BOA-24-00122: KENTUCKY TRANSPORTATION CABINET** – requested variances to 1) increase the maximum front yard from twenty feet (20') to seventy-five feet (75'); 2) reduce the perimeter landscape buffer for a double frontage lot from ten feet (10') to zero feet (0'); 3) reduce the usable open space area from ten percent (10%) to zero percent (0%) and 4) reduce the open space vegetative area from ten percent (10%) to zero percent (0%), in a Neighborhood Business (B-1) zone, on property located at 1419, 1425, 1433 and 1445 Newtown Center Way. (Council District 1)

The Staff Recommended: Approval of the requested variances, for the following reasons:

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity, as the variances allow for Newtown Springs to continue to development in the manner it was originally master planned, will preserve existing site access and circulation for vehicular and pedestrian users of the subject properties and surrounding properties, and will improve the enjoyment and safety of the Legacy Trail.
- b. Granting the variances should not alter the character of the general vicinity as the existing character will be preserved and carry forward along this portion of Newtown Pike to ensure compatible development and coordinated access. Additionally, the Kentucky Transportation Cabinet will work to restore the impacted landscaping and maintain the open space.
- c. Granting the 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 construction.

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

1. The subject property shall be developed in accordance with the submitted application materials and site plan or as modified by the amended Final Development Plan.
2. Action of the Board shall be reflected on the Final Development Plan for the property.
3. All necessary permits from the Divisions of Planning and Building Inspection shall be obtained prior to construction.

Application representation – Mr. Kyle Ray, attorney for the Kentucky Transportation Cabinet, was present on behalf of the application. Ms. Carter asked Mr. Ray if he had read the recommendations and the conditions of approval. He indicated that he had read them. She asked him if he was in agreement with the conditions of approval and he stated that he was in agreement with them.

Action – A motion was made by Mr. Clarke, seconded by Mr. Sturdivant and carried 6-0 (Gross recused), to **approve PLN-BOA-24-00122: KENTUCKY TRANSPORTATION CABINET** – requested variances to 1) increase the maximum front yard from twenty feet (20') to seventy-five feet (75'); 2) reduce the perimeter landscape buffer for a double frontage lot from ten feet (10') to zero feet (0'); 3) reduce the usable open space area from ten percent (10%) to zero percent (0%) and 4) reduce the

open space vegetative area from ten percent (10%) to zero percent (0%), in a Neighborhood Business (B-1) zone, on property located at 1419, 1425, 1433 and 1445 Newtown Center Way, based on Staff's recommendation and subject to the three conditions as listed.

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

4. **PLN-BOA-24-00114: THE LEXINGTON SCHOOL** – requested to amend an existing conditional use permit for a school for academic instruction in order to construct an outdoor theater in a Single Family Residential (R-1D) zone, on property located at 1050 Lane Allen Rd. and 2092 Lansill Rd. (Council District 10)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This is a well-established school, which has operated on this property for more than 40 years. The outdoor amphitheater will be designed in a way to hinder sound trespass into the adjoining residential neighborhood.
- b. The building of a new amphitheater should not negatively impact the FEMA special flood hazard area (floodplain) and any other waterways, so long as the site plan and stormwater management plan is approved by the Division of Engineering (to address floodplain protection and storm water management issues).
- c. All necessary public and private services are available and adequate for the proposed use.

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

1. Construction of the outdoor amphitheater shall take place in accordance with the submitted application and site plan, or as amended due to the requirements of the Divisions of Traffic Engineering, Engineering, or Building Inspection.
2. All necessary permits shall be obtained from the Divisions of Building Inspection, Engineering, and Planning.
3. An updated storm water management plan shall be implemented in accordance with the requirements of the Engineering Manuals and accepted by the Urban County Engineer. This plan shall be designed and implemented to ensure that flooding problems are in no way worsened due to construction activity taking place on the school property.

Application representation - Ms. Luna McCarthy was present on behalf of The Lexington School. Ms. Carter asked Ms. McCarthy if she had read the recommendations and the conditions of approval. She indicated that he had read them. Ms. Carter asked her if she was in agreement with the conditions of approval and she stated that she was in agreement with them.

Board question – Mr. Clarke asked if loudspeakers were involved with the subject project. Ms. McCarthy replied that there would be no loudspeakers involved at all.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Sturdivant and carried 7-0 to **approve PLN-BOA-24-00114: THE LEXINGTON SCHOOL** – request to amend an existing conditional use permit for a school for academic instruction in order to construct an outdoor theater in a Single Family Residential (R-1D) zone, on property located at 1050 Lane Allen Rd. and 2092 Lansill Rd., based on Staff's recommendation and subject to the three conditions as listed.

5. **PLN-BOA-24-00115: MICHAEL TUTTLE** – requested a conditional use to extend the regulations of the R-4 zoned portion of the lot fifty feet (50') into the remaining R-2 zoned portion of the lot and a variance to the group residential project design standards to reduce the required project exterior yard from twenty feet (20') to zero feet (0') within the defined Infill and Redevelopment Area and an Historic District Overlay (H-1) zone in Medium Density Residential (R-4) and Mixed Low Density Residential (R-2) zones, on property located at 247 N. Broadway/202 Morrow Place. (Council District 1)

The Staff Recommended: Approval, for the following reasons:

- a. Extending the R-4 zoning regulations approximately 45' to the rear lot line is generally reasonable in this location and should not have adverse impacts on the subject or surrounding properties. The majority of the general vicinity is characterized by residential uses with development of various densities and types.
- b. Extending the R-4 zoning regulations will allow the entire lot to function more cohesively and will allow the applicant to seek approval from the Board of Architectural Review (BOAR) and the Planning

Commission to increase the density of use of the rear portion of the lot. The Planning Commission will be able to address the layout of the site in relation to the requirements established for group residential projects and the BOAR will review the site in accordance with the adopted Historic District Design Guidelines.

- c. All necessary public services and facilities are or will be available and adequate for the proposed use.
- d. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. The subject property is within the defined Infill and Redevelopment Area and the existing structure features legally non-conforming setbacks which are in keeping with other structures in the immediate vicinity.
- e. 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 variances as soon as it was determined that they were needed, and prior to beginning construction.

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

1. Construction shall be in accordance with the submitted application materials and site plan, or as amended by the Board of Architectural Review or the Planning Commission.
2. The final design of the parking area, including any grading plans, shall be reviewed and approved by the Division of Traffic Engineering.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection and Traffic Engineering prior to construction.

Application representation – Mr. Michael Tuttle, applicant and property owner, was present on behalf of his application. Ms. Jessica Winters, attorney, was also present. Ms. Winters stated that she had prepared a brief presentation, if the Board members would like to hear more information about Mr. Tuttle's application.

Ms. Carter stated that the application had been recommended for approval and she asked Mr. Tuttle if he had seen the conditions of approval and if he was in agreement with them. He stated that he was in agreement with the conditions.

Action – A motion was made by Mr. Gross, seconded by Mr. Sturdivant and carried 7-0 to **approve PLN-BOA-24-00115: MICHAEL TUTTLE** – request for a conditional use to extend the regulations of the R-4 zoned portion of the lot fifty feet (50') into the remaining R-2 zoned portion of the lot and a variance to the group residential project design standards to reduce the required project exterior yard from twenty feet (20') to zero feet (0') within the defined Infill and Redevelopment Area and an Historic District Overlay (H-1) zone in Medium Density Residential (R-4) and Mixed Low Density Residential (R-2) zones, on property located at 247 N. Broadway/202 Morrow Place, based on Staff's recommendation and subject to the three conditions as listed.

6. **PLN-BOA-24-00119: THE CHURCH IN LEXINGTON INC** – requested a conditional use permit to establish a place of religious assembly in an Agricultural Urban (A-U) and Single Family Residential (R-1C) zone, on property located at 1136, 1220 and 1250 Higbee Mill Rd. (Council District 9)

The Staff Recommended: Approval, for the following reasons:

- a. Approval of the proposed conditional use should not adversely affect the subject or adjoining/nearby properties, provided that all necessary permits and approvals, including a stormwater management plan are secured prior to construction and occupancy.
- b. The new structure is approximately 2,000 square feet larger than was previously approved by the Board of Adjustment in 2021, thus it is unlikely that the church expansion would create traffic issues in the neighborhood.
- c. All necessary public services and facilities are or will be available and adequate for the proposed use.

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

1. The property shall be developed and operated in accordance with the submitted application materials and site plan, subject to any alterations required throughout the permitting process.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering, as well as necessary state and federal agencies, prior to construction and occupancy.

3. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
4. The final configuration of the parking areas shall be subject to approval by the Division of Traffic Engineering.
5. Any outdoor lighting for the parking lot shall meet the requirements of Article 30.
6. All three properties shall be consolidated with a minor subdivision plat prior to construction.
7. The existing unused bridge on 1220 Higbee Mill Road shall be removed prior to occupancy of the new structure.
8. The bridge access point currently on 1136 Higbee Mill Road shall be widened to the approval of the Division of Engineering and obtain any state and federal permits necessary for approval.
9. The parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Article 16 and 18 of the Zoning Ordinance.

Application representation – Mr. Charlie Hall, Thoroughbred Engineering, was present on behalf of the application. Ms. Carter asked him if the applicant had read the Staff's recommendations and the conditions of approval. Mr. Hall stated that they had. Ms. Carter asked him if the applicant was comfortable with all nine of the conditions. He stated that the applicant was comfortable with all of the conditions with the exception of condition #8. Ms. Carter asked Mr. Hall to explain the applicants' issues with condition #8. Mr. Hall stated that widening the bridge would be costly for a church.

Staff presentation – Mr. Belcher directed the Board's attention to the overhead screen on which he displayed an aerial image of the subject property, while he gave a brief explanation of the proposed project. He also displayed the site plan that had been submitted by the applicant and noted that in 2021 a conditional use permit had been granted to the applicant for the properties at 1220 and 1250 Higbee Mill Rd. Mr. Belcher stated that the applicant has now acquired a third parcel at 1136 Higbee Mill Rd. He explained Staff's reasons for recommending approval of this application with the conditions of approval as listed.

Board questions and comments – Mr. Gross asked that the aerial image be shown on the overhead screen again. There was discussion regarding the existing bridge referred to in condition #8. Mr. Belcher displayed the site plan again and explained the restrictions involved with a narrow one-lane bridge.

Public comment

Ms. Michelle Harr, 3701 Higbee Woods Ct., President, Higbee Mill Neighborhood Association stated that the neighborhood has always had a good relationship with the church and would like to support them in this project. She mentioned that the neighbors had a concern over lighting from that church that may intrude onto some of the neighbors' properties. Ms. Harr requested that lighting be directed so that it is not directed onto the neighbors' homes. She also mentioned concerns with flooding. Ms. Carter noted that flooding and stormwater were addressed in the conditions of approval. She also added that lighting was also mentioned in the conditions.

Mr. Matthew White, 1260 Higbee Mill Rd., expressed concerns with the application, citing a possible increase in traffic. He also mentioned occasional activities and festivals held at the church. Mr. White commented on water issues the neighborhood has experienced when the Elkhorn Creek rises, and he asked that it be considered.

Applicant response – Mr. Hall displayed additional photos of the subject bridge on the overhead screen and explained that it was not the church's intent to add more people to the site, but to have a larger building and more parking for the people that are already attending. He addressed some of the comments from the neighbors and explained that the church did not intend to have any events that they were not having currently. Ms. Carter stated that the Division of Engineering and the Division of Fire and Emergency Services were requiring that the bridge be widened. There was further discussion regarding the bridge.

Board question – Mr. Gross asked Mr. Hall if he was an engineer with Thoroughbred Engineering. Mr. Hall replied that he was a designer. Mr. Gross asked if the fire captains had met with anyone from Thoroughbred Engineering at the site. Mr. Hall stated that he did not think they had. Mr. Gross suggested continuing this application to the next month's meeting to work through this issue.

Mr. George Natour, 4904 Idlewood Circle, was sworn in at this time, on behalf of The Church in Lexington Inc. He stated that it would be possible to meet with staff from the Division of Fire and the engineers at the bridge, but to tear the bridge down and rebuild it would take several months which would prevent the members from going to church during this time.

Action – A motion was made by Mr. Gross to **continue PLN-BOA-24-00119: THE CHURCH IN LEXINGTON INC** – request for a conditional use permit to establish a place of religious assembly in an Agricultural Urban (A-U) and Single Family Residential (R-1C) zone, on property located at 1136, 1220 and 1250 Higbee Mill Rd. to the October 14, 2024 Board of Adjustment meeting.

Discussion on the motion – Ms. Tucker asked Staff if a statement in the staff report pertaining to a special flood hazard area associated with the South Elkhorn Creek should be looked at. Ms. Wade explained that the applicant is trying to avoid any development in the floodplain, and it was Staff's opinion that the applicant is honoring the edge of the floodplain in terms of their parking lot and their proposed structure.

Action – The motion to **continue** was seconded by Ms. Plumlee carried 7-0.

Mr. Gross recommended that the applicant talk with Mr. White, who had previously spoken, to address his concerns.

D. Items for Discussion

1. **PLN-BOA-24-00120: CRAIG HARDIN** – requested a variance to reduce the required front yard setback from five feet (5') to zero feet (0') within the defined Infill and Redevelopment Area in a Mixed Low Density Residential (R-2) zone, on property located at 512 and 514 Oldham Ct. (Council District 3)

The Staff Recommended: Disapproval, for the following reasons:

- a. The applicant has not provided a sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance or KRS 100.243. There do not appear to be special circumstances that are unique to the subject property that do not generally apply to land in the general vicinity, or in the same zone that justify the need for the variance.
- b. The applicant has not provided sufficient information to determine that strict enforcement of the Zoning Ordinance will result in an unnecessary hardship or deprive the applicant of the reasonable use of their land. The Zoning Ordinance provisions for a projection for residential development in the defined Infill and Redevelopment Area established by Article 15-7 does not have to be a porch and there are other options for projections that would not require a variance. The applicant is providing parking that is also not required by the Zoning Ordinance in the rear yard which is resulting in the primary structure and front porch needing a variance.

Staff presentation – Mr. Belcher directed the Board's attention to the overhead screen on which he displayed an aerial view and a street view of the two subject properties. He briefly explained the particulars of this application and why the Staff had recommended disapproval.

Application representation – Mr. Richard Murphy, attorney, was present on behalf of the applicant. He introduced Mr. Craig Hardin, who distributed a handout to the Board for their review. Mr. Murphy directed the Board's attention to the overhead screen on which he displayed a copy of this handout and explained the contents. He also displayed images of homes in the vicinity and noted that there were porches on many of them. Mr. Murphy then displayed an image of the proposed project without covered porches and another image of the proposed project with covered porches, which requires the variance. He explained the special circumstances surrounding this application and the applicant's justification for requesting this variance.

Board questions – Mr. Clarke asked Mr. Murphy why the building could not be moved back five feet and take some of the parking space. Mr. Murphy replied that to move the building back five feet, they would lose one or two more parking spaces.

Mr. Gross asked Mr. Murphy if Mr. Hardin was committed to build the project with the porches that had been displayed on the overhead screen, if approved. Mr. Hardin confirmed that he was committed to build the project as depicted.

Ms. Tucker asked if the street had permitted parking. She also asked how many students would be in the duplex. Mr. Hardin replied that there would be four students per side, so eight students per building. Ms. Tucker asked if there would be seven parking spaces per building or seven for both building. Mr. Hardin replied there would be seven for both; four on one side and three on the other side. Ms. Tucker asked if there would be a total of sixteen students in the two buildings and Mr. Hardin stated that was correct, adding that the new requirement for parking was zero. Ms. Tucker asked if the proposed project aligned with the other properties on that street, as far as the setback. Mr. Hardin replied that as you face it to the left there were no other properties and the property on the right had an original setback of twenty feet. He added that Mr. Lowenthal, the owner of the property on the right had submitted a letter of support of this application.

Public comment

Ms. Catherine Savage, 619 Columbia Ave., expressed her opposition to the proposed project, citing her anticipation that the porches will be used for parties and there will be cars parked in the yards because of so few parking spaces being proposed.

Mr. Charles Hite, 929 Aurora Ave., expressed his support for the proposed project.

Applicant rebuttal – Mr. Murphy addressed some of the points made in the public comments.

Board comments – Mr. Gross expressed concern with there being fewer parking spaces if the structure is moved back further, causing the loss of parking spaces. He opined that seven parking spaces would not be enough. Mr. Gross remarked that in order to provide the number of housing units needed in Lexington, there will be more examples of this type of housing built on small lots in the Infill and Redevelopment Area.

Mr. Clarke opined that all of the housing needed was student housing. He further opined that seven parking spaces was not enough but added that there was enough reason to approve this application.

Ms. Carter added that she agreed with moving forward with this application.

Note – The Board took a brief recess at 3:07 pm and reconvened at 3:21 pm.

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 5-2 (Plumlee and Tucker opposed), to **approve PLN-BOA-24-00120: CRAIG HARDIN** – request for a variance to reduce the required front yard setback from five feet (5') to zero feet (0') within the defined Infill and Redevelopment Area in a Mixed Low Density Residential (R-2) zone, on property located at 512 and 514 Oldham Ct.

The Board recommended approval, based on the following findings of fact:

- a. The variance request will not adversely affect the essential character of the neighborhood because many of the surrounding residential properties contain front porches as a dominant architectural feature, so the proposed porch will be consistent with the character of the neighborhood. Further, the proposed porch will help activate the neighboring streetscape.
- b. The variance will not negatively impact the public health, safety or welfare or otherwise create a nuisance, because the porch will have over two feet of landscape buffer between the edge of the porch and the closest sidewalk, which will lessen the impact on pedestrians.
- c. The variance is also justified by the special circumstances of the land and will not unreasonably circumvent the zoning requirements because these two lots on which the variance will apply are shallower than many of the neighboring lots, because at the time this subdivision was platted, half lots were allowed. The half lot size greatly reduces the available space for building a front porch without needing a variance.

This approval is made subject to the following conditions:

1. The site shall be developed in accordance with the submitted application materials and site plan and renderings presented to the Board on September 9, 2024.

2. All necessary permits and approval shall be obtained by Division of Building Inspection prior to completion of construction.
 3. The applicant shall install a six-foot privacy fence along any neighboring property lines to screen the parking area.
2. **PLN-BOA-24-00091: FIRST ALLIANCE CHURCH OF THE CHRISTIAN AND MISSIONARY** - requested a conditional use permit to expand the parking lot for an existing place of religious assembly in an Agricultural Urban (A-U) zone, on property located at 2201 Old Higbee Mill Rd. (Council District 9)

Note – This application was continued from the August 12, 2024 Board of Adjustment meeting.

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not adversely affect the subject or surrounding properties. The parking lot will provide needed parking spaces for the church within their existing site. The parking lot will be required by the Zoning Ordinance to provide landscaping and screening to create a buffer between the vehicular use area and the public street, as well as the residential neighborhoods.
- b. 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 project shall be completed in accordance with the submitted application materials and an amended site plan, depicting the requirements below and subject to any alterations required throughout the permitting process.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, Environmental Services and Engineering prior to construction.
3. The final configuration of the parking lot, including any changes to the church's existing parking layout, shall be subject to approval by the Division of Traffic Engineering.
4. The parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Article 16 and 18 of the Zoning Ordinance.
5. A 6-foot wide sidewalk shall be provided along the subject property's Old Higbee Mill Road frontage.
6. An internal pedestrian walkway, at least 5 feet in width, shall be provided parallel to the new vehicular access point in order to connect the sidewalk in the public right-of-way to the building entrance.
7. A stormwater management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
8. Any new outdoor lighting shall comply with the requirements of Article 30 of the Zoning Ordinance.

Staff presentation – Ms. Wade informed the Board that the applicant had submitted a copy of a revised site plan late last week and a copy of it was at each of their places on the dais. She added that Staff had not had an opportunity to meet again to review the revised plan prior to today's meeting. Ms. Wade stated that the applicant had expressed their concern over constructing a sidewalk adjacent to the right-of-way or within the right-of-way of Old Higbee Mill Road and that is addressed in condition #5. She explained that the church has made a number of improvements over the years and that it was the opinion of Staff that this is the right time for the church to connect the sidewalks in this vicinity to allow for people to come to the church and also connect with other sidewalks in this vicinity to get to other places that are nearby. Ms. Wade added that the applicant had met with the neighborhood association and neighbors to discuss their concerns. She directed the Board's attention to an aerial image of the subject property which depicted the existing parking and the location of the future parking as well as a new entrance, and also displayed a copy of the revised site plan.

Application representation - Mr. Daniel Rehner, civil engineer, Thoroughbred Engineers, was present on behalf of the applicant. He stated that the applicant was in agreement with the recommendations, but he wanted to discuss the sidewalk. Mr. Rehner added that they did meet with some of the neighbors to discuss their concerns regarding stormwater, construction and screening and the applicant is taking those concerns into consideration. He displayed slides and photos of the subject property, some of which depicted where the proposed sidewalk would be and listed several concerns that the applicant had concerning the construction of the sidewalk.

Board questions – Mr. Clarke asked Mr. Rehner to explain the differences between the previous site plan and the revised one shown today. Mr. Rehner explained that on the previous one, they did not show a sidewalk but on the revised one, it was shown in gray. He added that there was a note on the revised plan

stating that the sidewalk would be developed once the adjoining property is developed. Mr. Rehner explained other differences with the screening, stating that the main differences were with the sidewalk and screening.

Mr. Gross asked Mr. Rehner if there was a reason there was no sidewalk on the south side of the new entrance driveway. Mr. Rehner opined that it would not be a problem to switch the sidewalk to the other side.

Public comment

Mr. Charles Lane, 3897 Forsythe Dr., displayed an image of a map which depicting where his property was in relation to the subject property, on the overhead screen. He stated that at the meeting he had proposed that the church move the proposed entrance down Higbee Mill Rd., which would eliminate approximately seventeen parking spaces, but it would increase the distance between the entrance and his property from twenty-five feet to seventy-five feet. He depicted another location on the map where the parking spaces could possibly be relocated to. Mr. Lane also displayed other photos of the surrounding properties on the overhead screen.

Mr. Ray Waits, 2200 Old Higbee Mill Rd., expressed his concerns with the proposed project regarding stormwater and several other issues.

Mr. Craig Wilson, 3893 Forsythe Dr., stated that the neighbors met with the applicant approximately one week prior to the BOA meeting. He opined that the applicant did not seem to consider the suggestions made by the neighbors asking for a little more greenspace.

Applicant rebuttal – Mr. Rehner stated that he was not at the neighborhood meeting but that he had received notes from someone who had been in attendance. He added that the concerns expressed by neighbors were being taken into consideration. Mr. Rehner addressed the comments concerning the entrances and stated that the church did not want to have the entrances too close together. He commented that the church had added additional service times due to the shortage of parking spaces. Mr. Rehner also addressed the comments concerning drainage issues.

Board questions and comments – Ms. Plumlee asked if Staff from the Division of Engineering could speak to any of the issues that had been brought up. Ms. Wade stated that Mr. Josh Dezarn from the Division of Engineering was present at last month's meeting, which this application was continued from, but he was not present at this meeting.

Mr. Clark expressed his disappointment that the concerns of the neighbors regarding the extension was not taken into consideration and the extension towards the homes was not corrected. He stated that he was concerned about the stormwater also.

Ms. Tucker asked about a culvert that was previously mentioned. Ms. Wade replied that was a question for the Division of Engineering and that the applicant would have to meet the requirements in the Division of Engineering's manuals regarding management of stormwater.

Mr. Studivant asked Mr. Rehner if the applicant had developed their stormwater management plan. Mr. Rehner replied that they had not. There was further discussion.

Mr. Walker expressed his agreement with Mr. Clarke's comments, adding that he would have liked to have seen more compromise on the applicant's part.

Action – A motion was made by Mr. Clarke, seconded by Mr. Walker to **approve PLN-BOA-24-00091: FIRST ALLIANCE CHURCH OF THE CHRISTIAN AND MISSIONARY** – request for a conditional use permit to expand the parking lot for an existing place of religious assembly in an Agricultural Urban (A-U) zone, on property located at 2201 Old Higbee Mill Rd., based on the conditions as set forth and an additional condition that the church will adjust the site plan to eliminate the new parking spaces that move the parking lot closer to the residences.

Amendment to the motion – Mr. Gross made a friendly amendment to the motion so that the additional condition would state that “The applicant shall submit a revised site plan to the Planning Staff to approve the relocation of the entrance.” Ms. Wade stated that it should be noted how far the Board wanted the entrance shifted. Mr. Clarke concurred and stated that the condition should state “The proposed plan would be to move the entrance that would be an extension of the original parking area that borders the residential areas.” There was further discussion.

Amendment to the amended motion – Mr. Clarke made a motion to amend the amendment to the motion, adding condition #9, Remove parking spaces that are closest to the residential area no closer than fifty feet from the property line. There was further discussion. Mr. Gross opined that it was the vehicular use area that would need to be a minimum of fifty feet from the property line. Mr. Clarke concurred. Mr. Sturdivant agreed. There was further discussion.

Board comments - Ms. Tucker suggested that the applicant check with the neighbors during construction. Mr. Rehner agreed that the applicant would do so.

Ms. Carter stated that there was a motion for approval to keep conditions #1 through #8 as listed and an additional condition #9 as stated: The vehicular use area will be a minimum of fifty feet from the property line, and there was a second.

Mr. Gross asked Ms. Wade if she was comfortable with this. She stated that to be clear, Staff is already asking for a revised site plan in condition #1 to address the changes in the rest of the conditions. Ms. Wade stated that what the Board needed to do was to add the ninth condition. She suggested that condition #9 state: “The new vehicular use area entrance shall be a minimum of fifty feet from the eastern property line, to the approval of the Division of Traffic Engineering to ensure that the entrance is a safe location.” Mr. Clarke agreed to that, and Mr. Walker agreed to maintain his second on that amendment.

Discussion – There was discussion on condition #5.

Action – A motion was made by Mr. Gross to **amend** the previous motion made by Mr. Clarke, to strike condition #5. The motion to amend was seconded by Ms. Carter, voted on and passed unanimously.

Action – The original motion to **approve**, made by Mr. Clarke and seconded by Mr. Walker, was voted on and carried unanimously, with the following conditions:

1. The project shall be completed in accordance with the submitted application materials and an amended site plan, depicting the requirements below and subject to any alterations required throughout the permitting process.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, Environmental Services and Engineering prior to construction.
3. The final configuration of the parking lot, including any changes to the church’s existing parking layout, shall be subject to approval by the Division of Traffic Engineering.
4. The parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Article 16 and 18 of the Zoning Ordinance.
5. ~~A 6-foot wide sidewalk shall be provided along the subject property’s Old Higbee Mill Road frontage.~~
6. An internal pedestrian walkway, at least 5 feet in width, shall be provided parallel to the new vehicular access point in order to connect the sidewalk in the public right-of-way to the building entrance.
7. A stormwater management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
8. Any new outdoor lighting shall comply with the requirements of Article 30 of the Zoning Ordinance.
9. **The new vehicular use area entrance shall be a minimum of fifty feet from the eastern property line, to the approval of the Division of Traffic Engineering, to ensure that the entrance is a safe location.**

3. **PLN-BOA-24-00100: BOOKER GROUP INVESTMENTS LLC** – requested a conditional use permit to establish a community center within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 285 E. Sixth St. (Council District 1)

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

- a. Approval of the proposed conditional use should not adversely affect the subject or adjoining/nearby properties, provided that all necessary permits and approvals are made. Proposed activities on the site are similar to the activities which have occurred on the site since the 1970s as either non-conforming service businesses or as a childcare center, the previously approved conditional use. Additionally, such activities will occur during normal business hours throughout the week and daytime hours on the weekends.
- b. All necessary public services and facilities are or will be available and adequate for the proposed use. Minimal parking is available on the subject property, however on-street parking is available in the immediate vicinity. The community center will serve the surrounding neighborhood, thereby decreasing the demand for off-street parking in this location.

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

1. The property shall be developed and operated in accordance with the submitted application materials and site plan, subject to any alterations required throughout the permitting process.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering, as well as necessary state and federal agencies, prior to construction (if necessary) and occupancy.
3. The applicant must provide the Planning staff with documentation of 501(c)(3)/non-profit organization status within one (1) year of approval of this conditional use.

Application representation – Mr. Herbie Booker, applicant and property owner, was present on behalf of his application. Ms. Carter asked him if he had read the conditions of approval for his application and if he was in agreement with the conditions, including condition #3, which referred to 501(c)(3) documentation. Mr. Booker stated that he was in agreement with all conditions.

Public comment

Ms. Deborah Tudor, 605 Chestnut St., expressed concern with this application for a community center, stating there were already several community centers in this area. She cited concerns over the lack of parking, and children walking to and from those centers. Ms. Tudor was concerned with the type of community center that was proposed.

Mr. Charles Stewart, 540 Elm Tree Lane, spoke in opposition of this application, stating that there were several community centers in the area and opined that there was a lot of foot traffic in the area.

Mr. Caleb Evans, 414 Chestnut St., stated that he was present on behalf of his own interests and those of two other families who live on Elm Tree Lane and Ohio St., who were not present. He expressed interest in the types of services that the proposed community center would offer, adding that he wanted to ensure that they were fostering good neighbors in this community.

Mr. Terry Dumphord, 345 Furlongview Ct., explained his own experiences in managing community centers and he was in support of this proposed community center.

Mr. Doyle Lee, 1145 Newtown Center Way, spoke in support of this application for a community center.

Mr. Ian Colton, 527 Elm Tree Ln., expressed concern with what is currently transpiring at this location. He added that he would like to see this use be a positive force for the community and not a detriment as it is currently.

Mr. Robert Hodge, 123 Georgetown St., expressed his support of this application, with conditions, and that it is not used as a sober living center.

Mr. Percy Thomas, 533 Elm Tree Ln., expressed his concern with the activities that are currently taking place on the subject property. He stated that he did not want those activities, particularly drug activities, taking place if this application is approved. Mr. Thomas stated that more details were needed.

Applicant rebuttal – Mr. Booker gave a brief explanation of the proposed activities for this community center if approved. He listed several positive activities that he had already organized.

Board questions and comments – Ms. Carter asked for clarification of the 501(c)(3) status. Mr. Booker explained. Ms. Smith suggested that the Board condition this application, if approved, to state that operations would not begin until the applicant acquires the 501(c)(3) status whenever that occurs.

Mr. Gross opined that operations have already been established. Mr. Booker stated that he had owned the subject property for twenty years and they have been doing different activities until they received complaints from the neighbors. Mr. Gross asked if anyone was living in the building. Mr. Booker stated that no one was living there. There was further discussion.

Ms. Tucker asked if there was any type of security in place for the safety of the youth coming to the building. Mr. Booker replied that he has staff at his facility 24 hours a day and security cameras on site. There was further discussion.

Mr. Sturdivant asked about the adopted missions that were mentioned in the staff report. Mr. Booker distributed letters of support to the Board. Mr. Belcher stated that Staff had not seen the letters Mr. Booker distributed. Therefore, those letters will be added to the record.

Ms. Plumlee asked if there was a fee for participants in the programs Mr. Booker proposed to offer. He replied that they would accept donations, but everything was free to anyone who wished to participate.

Mr. Gross asked if Mr. Booker would be willing to continue this application for one month so that he could have a neighborhood meeting as there was opposition to this application at this time. Mr. Walker expressed agreement to this suggestion. Mr. Clarke opined that there was more of a lack of information about the proposed project, rather than opposition to it. He agreed that a group meeting may be beneficial.

Ms. Carter asked Mr. Booker if he would like for the Board to make a motion to continue his application to the following month's meeting. Mr. Booker indicated that he would rather have the Board vote on his application at this meeting. There was further discussion between the Board and the applicant and again. Ms. Carter stated that even if the Board voted to approve the application, Mr. Booker should have a neighborhood meeting to engage with the community. Mr. Booker agreed.

Audience question – A member of the audience asked what could be done if it was determined that the proposed community center was not being used for children or what the applicant stated it would be used for. Mr. Gross replied that a community center was not limited to only children, that a community center was for the community, for GED classes, for literacy and other things. He added that what the applicant stated that it would not be used as a rehabilitation home, or a sober living facility, and no one would live there. Mr. Booker confirmed that what Mr. Gross stated was correct. Mr. Gross added that it would essentially be an office, and people would come there and participate in the activities. He opined that he was comfortable with the application as presented.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 7-0, to **approve PLN-BOA-24-00100: BOOKER GROUP INVESTMENTS LLC** – request for a conditional use permit to establish a community center within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 285 E. Sixth St., based upon the application, Staff's recommendation of approval, the testimony here, the affirmations that the applicant made and subject to the three conditions set forth by Staff.

Board comment – Mr. Gross suggested to Mr. Booker that he have a meeting with the neighbors. Mr. Book confirmed that he would have the meeting.

Note – Mr. Gross excused himself from the remainder of the meeting.

E. Short Term Rentals

Staff presentation – Mr. Mills gave an overview of the regulations adopted by the Urban County Council on July 11, 2023 for short term rentals. He also summarized Article 1-11 and Article 3-13 of the Zoning Ordinance

and a graphic showing the criteria used by Staff in their findings for approval of an application for a conditional use permit for a short term rental. Mr. Mills displayed a map indicating the approximate areas where Zoning Compliance Permits for short term rentals have been issued by the Division of Planning. Mr. Mills displayed and briefly reviewed the Task Force on Neighborhoods in Transition Report from the mayor's office. He also displayed a graphic showing the percentage of concentration of Short Term Rentals in proximity to the subject properties that would be considered for conditional use permits for short term rentals today.

1. **PLN-BOA-24-00094: 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 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. Ethan Johnson, attorney, 200 Southland Dr., was present on behalf of the applicant. The applicant, Mr. Carlos Armenteros, was also present. Mr. Johnson gave a brief background of this application. Mr. Armenteros went into further detail about his application and explained his reasons for wanting to retain the property and operate it as a short term rental.

Mr. Armenteros introduced Mr. Mark Tubbesing, 203 Summertree Dr., Nicholasville, KY, who is his father-in-law. Mr. Tubbesing spoke on behalf of the improvements Mr. Armenteros has made to the subject property, which had originally belonged to Mr. Tubbesing.

Board comments – Ms. Carter noted that this application had been recommend for approval by Staff and she asked Mr. Armenteros if he had read the recommendations and the conditions of approval and if he was in agreement with the conditions.

Ms. Tucker mentioned that there were some letters of opposition to this application.

Action – A motion was made by Mr. Walker, seconded by Mr. Clarke and carried 3-2 (Plumlee and Tucker opposed; Gross absent; Sturdivant abstained), to **approve PLN-BOA-24-00094: 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.

2. **PLN-BOA-24-00106: KATHY WALLER (K2 VENTURES 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 3326 Grasmere Dr. (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.

- 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 area.
- d. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is 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.

Application representation – Ms. Kathy Waller, applicant and property owner, was present on behalf of her application. She acknowledged that one of the letters from neighbors was from the neighbor next door who helps Ms. Waller keep an eye on the property. Ms. Waller stated that she has not had any issues from anyone that she had rented her property to in the past.

Action – A motion was made by Mr. Clarke, seconded by Mr. Walker and carried 6-0 (Gross absent), to **approve PLN-BOA-24-00106: KATHY WALLER (K2 VENTURES 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 3326 Grasmere Dr., based on Staff's recommendation and subject to the four conditions as listed.

3. **PLN-BOA-24-00108: BRENNAN AND SUZANNE FERAN** – requested a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 553 Jefferson St. (Council District 1)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users.
- 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 area.
- d. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 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. Brennan Feran, applicant and property owner, was present on behalf of this application. Ms. Carter asked him if he had read staff's recommendations and the conditions of approval. He stated that he had read them and that he understood.

Public comment – Ms. Amy Clark, 628 Kastle Rd., distributed information to the Board for their review and asked that it be also displayed on the overhead screen. She spoke in opposition to this application.

Board comments – Ms. Plumlee opined that the subject property could provide housing for someone who is in the workforce. She further opined that the proposed use would discourage permanent residence

downtown. Ms. Plumlee added that there were nine other short term rentals in a one thousand foot radius of the subject property and for those reasons, she would oppose this application.

Applicant rebuttal – Mr. Feran stated that he and his wife would like to retain this property for the use of their children when they are of age.

Public comment – Ms. Clark stated that she “wanted to register a formal objection that the objectors have not had equal opportunity to speak, as the applicant”. Ms. Carter stated that would be noted.

Note – The Board took a recess from 5:24 pm to 5:35 pm.

Action – A motion was made by Ms. Plumlee and seconded by Ms. Tucker to **disapprove PLN-BOA-24-00108: BRENNAN AND SUZANNE FERAN** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 553 Jefferson St.

The Board recommended disapproval, based on the following findings of fact:

1. The evidence shows that the actual concentration of short-term rentals within 1,000 feet is close to 4.4%, which reflects a high number in the area and could result in an adverse influence on the surrounding neighborhood.
2. The property owner received two notices of violation for this property prior to submitting this application for a conditional use permit. The Zoning Ordinance specifically states that the Board shall take into account the applicant’s demonstrated compliance record, and this record shows the applicant failed to act in a timely manner by submitting an application for a conditional use permit.

Applicant comment – Mr. Feran asked what the dates of the notices of violation were. Ms. Wade asked him if he had received two letters. He stated that he had not, to his knowledge. Ms. Wade stated that the letters came from the Division of Revenue. She asked him how he found out about the violation. Mr. Feran stated that a friend told them that they needed to apply for a permit for an Airbnb and once they found out about the \$500.00 per day fine, they took their listing off of the Airbnb platform. There was further discussion.

Staff comment – Mr. Mills stated that on August 13, 2024, Staff from the Division of Revenue had informed Planning Staff that two notices of violation were sent to the applicants and the listing was pulled after the second notice, before a citation was issued for 553 Jefferson St. There was further discussion.

Action of Amend – A motion was made by Ms. Tucker to amend the previous motion, by striking finding b. from the motion. The amendment was seconded by Mr. Sturdivant and carried 5-1 (Walker opposed; Gross absent).

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

Action – A motion was made by Mr. Walker, seconded by Mr. Clarke to **approve PLN-BOA-24-00108: BRENNAN AND SUZANNE FERAN** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 553 Jefferson St., based on Staff’s recommendation and subject to the four conditions as listed.

Discussion on the motion – There was discussion on the motion.

Action – The motion to **approve** was voted on and failed due to a tie vote (Plumlee, Tucker and Sturdivant opposed; Gross absent).

Applicant comment – Mr. Feran asked what his next step would be. Staff informed him that as no decision had been made, there was no decision to appeal. However, he could reapply without waiting a year.

4. **PLN-BOA-24-00111: ELLEN V. HARSHMAN** – requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1E) zone, on property located at 257 Gateway Park Circle. (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 is not a high concentration of short-term rentals in the area.
- d. There is no record of short term rental compliance issues with the applicant.
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.

Application representation – Ms. Ellen Harshman, applicant and property owner, was present on behalf of her application. Ms. Carter noted that this application had been recommended for approval by staff and that there were four conditions of approval. She asked Ms. Harshman if she had read the conditions of approval. Ms. Harshman stated that she had read them. Ms. Carter commented that one of the conditions stated that this approval was limited to no more than 8 individuals, and she asked Ms. Harshman if she was agreeable to that. Ms. Harshman stated that she was agreeable. Ms. Harshman explained her application.

Public comment – Ms. Susan Brown, 232 Gateway Park Circle, spoke in opposition to this application, based on currently having a short term rental next to her and not having long term renters that she could get to know. She also commented that renters at this short term rental who have been loud and leave trash lying around and that the police also responded to this home because of drug trafficking.

Applicant rebuttal – Ms. Harshman clarified that the property Ms. Brown referred to was not her property.

Action – A motion was made by Mr. Clarke, seconded by Mr. Walker and carried 5-1 (Gross absent; Plumlee opposed), to **approve PLN-BOA-24-00111: ELLEN V. HARSHMAN** – request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1E) zone, on property located at 257 Gateway Park Circle, based on Staff's recommendation and subject to the four conditions as listed.

5. **PLN-BOA-24-00116: SHARON NEWCOMB** – requested a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Medium Density Residential (R-4) zone, on property located at 752 Pine St. (Council District 11)

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

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users and there is a mixture of uses in the immediate vicinity that may result in a higher demand for short term rentals.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate parking is available.
- c. There is no record of short term rental compliance issues with the applicant.
- d. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 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.

Application representation – Ms. Sharon Newcomb, applicant and property owner, was present on behalf of her application. Ms. Carter noted that this application had been recommended for approval by staff and that there were four conditions of approval. She asked Ms. Newcomb if she had read the conditions of approval. Ms. Newcomb stated that she had read them and that she was in agreement with the conditions.

Board comments – Ms. Tucker remarked that she was concerned about the concentration of short term rentals operating within a one-thousand foot radius of this property. There was further discussion.

Action – A motion was made by Ms. Tucker, seconded by Mr. Walker and carried 5-1 (Carter opposed; Gross absent), to **disapprove PLN-BOA-24-00116: SHARON NEWCOMB** – request for a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Medium Density Residential (R-4) zone, on property located at 752 Pine St.

The Board recommended disapproval, based on the following finding of fact:

1. The evidence shows that the actual concentration of short-term rentals within 1,000 feet is close to 17.1%, which reflects a high number in the area and could result in an adverse influence on the surrounding neighborhood.

Applicant comment – Ms. Newcomb asked if she could appeal the Board's decision. Ms. Smith explained that there is an appeal process under KRS 100 to appeal to circuit court. There was further discussion.

Note – Ms. Tucker recused herself from hearing the following application due to a possible conflict of interest. Mr. Walker also recused himself from hearing the following application.

6. **PLN-BOA-24-00112: JOHN WORKMAN** – 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 129 Bassett Ave. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of users.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate 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 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 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. John Workman, applicant and property owner, was present on behalf of his application. He read a statement explaining the reasons he wished to operate this residence as a short term rental.

Public comment

Ms. Tomi Ross, 157 Bassett Ave., distributed information and a signed petition from the neighborhood to the Board for their review. She expressed her opposition to the process that citizens go through to attend these monthly meetings. Ms. Ross expressed her concern over the saturation of short term rentals in the Kenwick Neighborhood. She requested a moratorium be placed on the Kenwick Neighborhood and also the Mentelle Neighborhood regarding short term rentals.

Ms. Judith Humble, 144 Lincoln Ave. spoke in opposition of this application in the Kenwick Neighborhood. She stated that the Kenwick neighbors who are concerned about short term rentals put together a research team to study the impact of short term rentals across the country and they did not find any research that stated that they are good for communities; they found the opposite. Ms. Humble mentioned some of the factors that the neighborhood's research team found, as well as other issues that she was aware of. She asked the Board to disapprove Mr. Workman's application for a short term rental.

Mr. Charles Hite, 929 Aurora Ave., thanked Mr. Workman for his military service, referring to Mr. Workman's application statement made earlier. He spoke in opposition of allowing more short term rentals in the Kenwick Neighborhood, opining there was an oversaturation already. Mr. Hite asked the Board to disapprove this application.

Ms. Kay Myers, 1511 Richmond Rd., spoke in opposition of this application for another short term rental in the Kenwick Neighborhood, citing an oversaturation of short term rental in this neighborhood.

Ms. Carol Myers, 133 Lincoln Ave., spoke in opposition of this application and requested the Board vote disapproval of this application.

Applicant rebuttal – Mr. Workman stated that no matter the decision by the Board today, he was not going to sell this home as it is a family home. He added that he may rent it out to travel nurses, if it is not approved for a short term rental.

Action – A motion was made by Ms. Plumlee, seconded by Mr. Sturdivant and carried 4-0 (Gross absent; Tucker and Walker recused) to **disapprove PLN-BOA-24-00112: JOHN WORKMAN** – 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 129 Bassett Ave.

The Board recommended **disapproval**, based on the following finding of fact:

1. The evidence shows that possibly over 40 short term rentals already exist within this neighborhood, with possibly four operating on Bassett Avenue, which reflects a high concentration in the area and allowing more short term rentals could result in an adverse influence on the surrounding neighborhood.

Note – Ms. Tucker and Mr. Walker both returned to their places on the dais prior to the hearing of the following application.

7. **PLN-BOA-24-00121: PATRICK PERRYMAN** – requested a conditional use permit for an un-hosted short term rental with an occupancy greater than 12 in a Single Family Residential (R-1D) zone, on property located at 1037 Juniper Dr. (Council District 10)

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

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the twelve (12) individuals.
- 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 area.
- d. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The short term rental use shall be established in accordance with the submitted application materials

- and site plan.
2. Occupancy of the short term rental shall be limited to no more than 12 individuals.
 3. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.
 4. The conditional use permit shall become null and void upon change in ownership, or if the applicant's short term rental special fee license (as regulated by the Division of Revenue and Section 13 of the Code of Ordinances) lapses or is revoked.

Application representation – Mr. Patrick Perryman, applicant and property owner, was present on behalf of his application. Ms. Carter noted that this application had been recommended for approval by staff and that there were four conditions of approval. She asked Mr. Perryman if he had read the conditions of approval. Mr. Perryman stated that he had read them and that he had a question about the number of occupants. He stated that he had operated this property as a short term rental since 2022 with an occupancy greater than 12 individuals and questioned whether he was being considered for 14 as well or if the approval was only up to 12. Mr. Mills stated that Mr. Perryman had not provided sufficient justification for an occupancy greater than 12, therefore, he was only being considered for up to 12. There was further discussion.

Mr. Perryman gave an explanation of his application for a short term rental, stating that he had sleeping space for up to 14 individuals. He also mentioned the various safety measures and noise control measures that are in place at his property.

Public comment – Ms. Una McCarthy was present on behalf of The Lexington School, which is close to the subject property. She expressed concern with the high occupancy of people who may rent the home as it is close to two schools.

Applicant rebuttal – Mr. Perryman stated that he understood Ms. McCarthy's concerns and that he takes that concern seriously and is cautious about who rents his home and for how long. He added that the majority of his renters are families or a couple of families with children so that they can all be together and not in separate hotel rooms.

Board questions – Ms. Tucker noted that according to the PVA website, several people own this home. Mr. Perryman explained that they were members of his family; he and his wife, her parents, and her brother and sister. There was discussion about the number of occupants.

Action – A motion was made by Mr. Clarke, seconded by Mr. Walker to **approve PLN-BOA-24-00121: PATRICK PERRYMAN** – request for a conditional use permit for an un-hosted short term rental with an occupancy of no greater than 12 in a Single Family Residential (R-1D) zone, on property located at 1037 Juniper Dr., based on Staff's recommendation and subject to the four conditions as listed.

Discussion on the motion – Ms. Plumlee expressed opposition to this application, opining that this home would provide a long term home for someone in the workforce. She also noted that the proximity to two schools would make it appealing for long term residents.

Mr. Mills asked whether the motion made was for an occupancy of no more than twelve. Ms. Carter confirmed that the motion was for no more than twelve.

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

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

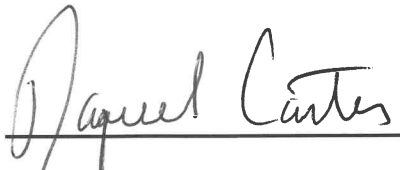
There were no Board items to discuss at this time.

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

There were no Staff items to discuss at this time.

VII. NEXT MEETING DATE - Ms. Carter announced that the next meeting date will be October 14, 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 adjourned at 6:58 pm.


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.

