

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

September 8, 2025

- I. **CALL TO ORDER** - The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.
- II. **ATTENDANCE** - Board members present were Harry Clarke, Branden Gross, Bob Sturdivant, Linda Tucker, Chad Walker, James Persley and Ross Boggess. Planning Staff members present were Traci Wade, Daniel Crum, Dalton Belcher, James Mill and Patti Haley. Others present were Brittany Smith, Department of Law.

III. APPROVAL OF MINUTES

The Board of Adjustment meeting minutes for April 2025 and May 2025 were put to a vote.

A. April 2025 Minutes

Action – Ms. Tucker made a motion, seconded by James Persley; motion carried 7–0 to approve April 2025 minutes.

B. May 2025 Minutes

Action – Ms. Tucker made a motion, seconded by Mr. Walker; motion carried 7–0 to approve May 2025 minutes.

IV. PUBLIC HEARING ON ZONING APPEALS

- A. **Swearing of Witnesses** - The Chair announced that any applicant or objector, or anyone in the audience who plans to speak to any appeal before the Board, to please stand in order to be sworn in at this time. There was a large group of people who were sworn in.
- B. **Sounding the Agenda** - To expedite the completion of agenda items, the Chair sounded the agenda with regards to any postponements, withdrawals, and items requiring no discussion.
- C. **Abbreviated Hearings**

1. **PLN-BOA-25-00102: EA PARTNERS** – requested a variance to reduce the required vehicular use area perimeter buffer from eight (8) feet to zero (0) feet in a Planned Neighborhood Residential (R-3) zone, on property located at 1870 Old Higbee Mill Road. (Council District 9)

The Staff Recommends: Approval of a lesser variance from eight (8) feet to four (4) feet, for the following reasons:

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

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

- The site shall be developed in accordance with the submitted application materials, a revised site plan, and a minor amended development plan reflecting the lesser variance.
- All necessary permits shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.

Application Representation- Rory Kahley, EA Partners, was present to represent the application. He requested that the applicant not be required to submit an amendment to the Final Development Plan.

Staff Rebuttal – Ms. Wade stated that the Department of Building Inspection utilizes the final development plan to issue permits, this is why the Staff recommends that it get updated so that there is a clean document for

issuing permits.

Board Comments – Chair Sturdivant confirmed with the applicant that this condition was acceptable.

Action – Mr. Gross made a motion, seconded by Ms. Tucker; motion carried 6–0 (Persley absent) to **approve PLN-BOA-25-00102: EA PARTNERS** – requesting a variance to reduce the required vehicular use area perimeter buffer from eight (8) feet to zero (0) feet in a Planned Neighborhood Residential (R-3) zone, on property located at 1870 Old Higbee Mill Road, subject to the conditions recommended by staff.

2. **PLN-BOA-25-00104: GIBSON TAYLOR THOMPSON** – requested variances to reduce the required rear yard for an accessory structure from one-and-a-half (1.5) feet to six (6) inches and increase the allowable driveway width from ten (10) feet to twenty (20) feet within the defined Infill and Redevelopment Area and a Historic District (H-1) Overlay in a Mixed Low Density Residential (R-2) zone, on property located at 137 West Bell Court. (Council District 3)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity. The subject property is within the defined Infill and Redevelopment Area and the existing accessory structure features legally non-conforming setbacks which are in keeping with other structures in the immediate vicinity.
- b. The granting of the variances will not alter the character of the general vicinity, as the proposed design and layout was granted a Certificate of Appropriateness by the Board of Architectural Review.
- c. The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variances as soon as it was determined that they were needed, and prior to beginning construction.

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

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

Application Representation – Darren Taylor, Gibson Taylor Thompson, was present to represent the application. Chair Sturdivant confirmed that the conditions recommended were acceptable to the applicant.

Board Questions and Comments - Ms. Tucker noted that there was one letter of opposition to the proposed plan.

Action – Mr. Gross made a motion, seconded by Harry Clarke; motion passed 6–0 (Persley absent) to **approve PLN-BOA-25-00104: GIBSON TAYLOR THOMPSON** – requesting variances to reduce the required rear yard for an accessory structure from one-and-a-half (1.5) feet to six (6) inches and increase the allowable driveway width from ten (10) feet to twenty (20) feet within the defined Infill and Redevelopment Area and a Historic District (H-1) Overlay in a Mixed Low Density Residential (R-2) zone, on property located at 137 West Bell Court with the conditions recommendations by Staff.

3. **PLN-BOA-25-00101: DENALI TOWING LLC** – requested a conditional use permit to establish a vehicle storage yard in a Light Industrial (I-1) zone, on property located at 682, 684, and 686 Montgomery Avenue. (Council District 1)

The Staff Recommends: Approval, for the following reasons:

- a. The proposed vehicle storage yard in conjunction with a towing business should not have an adverse effect on the subject or surrounding properties. An automobile sales establishment with a display and storage area formerly occupied the site, which is quite similar to the proposed vehicle storage yard, and the adjacent uses are typical of the light industrial zone. With adequate screening it is unlikely that the requested use would create any disturbance.
- b. The incorporation of paved vehicular use areas and stormwater management will reduce any potential impacts to the Royal Springs Aquifer Recharge Area, thereby protecting the drinking water source.
- c. All necessary public services and facilities are or will be available for the proposed use.

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

1. The vehicle storage yard shall be established in accordance with the submitted application materials and site plan.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, Engineering, and Traffic Engineering prior to commencement of the use.
3. No dismantled, or partially dismantled automobiles, may be stored on the lot.
4. No inoperable vehicles may be stored on the lot for longer than sixty (60) days.
5. There shall not be any truck terminal, automobile wrecking, or junk yard uses operating on the property.
6. The portions of the property where vehicles are stored shall be paved with the approval of the Division of Traffic Engineering, and stormwater management (specifically quality) shall be provided with the approval of the Divisions of Engineering and Water Quality.
7. The storage area shall be enclosed on all sides by a 6-foot-tall solid wall or fence. Any existing chain link fence of at least 6 feet in height can be considered "solid" if privacy screening is added.
8. There shall be no storage of vehicles within the public right-of-way.
9. Vehicles shall be parked on the lot in a fashion that permits independent access (by tow trucks) to each vehicle stored on-site.
10. Any outdoor lighting for the parking lot shall meet the requirements of Article 30.

Application Representation – Kevin Winchester was present to represent the application. Chair Sturdivant asked the applicant if he was agreeable to the conditions recommended by the Staff. Mr. Winchester spoke with Building Inspection and Traffic Engineering regarding condition #6, recommended by Staff. Mr. Winchester stated that the only thing changing with the property is the business name and sign. Mr. Winchester stated that the property would continue to function as it has for 30 years. He requested that the BOA not require him to pave existing gravel areas.

Board Questions and Comments – Mr. Gross asked Staff if the Board had the authority to change this condition, based on regulations by other agencies. Ms. Wade stated that there are stormwater requirements because it is in the Royal Springs Aquifer, which may have existed 30 years ago, but it is regulated differently than it was back then. The Light Industrial (I-1) zone now requires that any parking spaces must be paved. Ms. Wade stated that the aquifer is a drinking water source for Scott County, and it is required that the gravel spaces are paved to ensure that there is no impact on their drinking water. Mr. Gross stated that he would not support striking condition #6.

Action – Mr. Gross made a motion, seconded by Ms. Tucker; motion carried 6–0 to **approve PLN-BOA-25-00101: DENALI TOWING LLC** – requesting a conditional use permit to establish a vehicle storage yard in a Light Industrial (I-1) zone, on property located at 682, 684, and 686 Montgomery Avenue, subject to the conditions recommended by Staff.

D. Discussion Items

1. **PLN-BOA-25-00090: TOM SULKOWSKI** – requested variances to 1) reduce the required front yard setback from twenty (20) feet to four (4) inches and to reduce the required side yard setback from three (3) feet to four (4) inches in a Townhouse Residential (R-1T) zone, on property located at 1368 Deer Lake Circle. (Council District 8)

The Staff Recommends: Disapproval, for the following reasons:

- a. The applicant has not provided sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance or KRS 100.243. There do not appear to be special circumstances that are unique to the subject property that do not generally apply to land in the general vicinity, or in the same zone that justify the need for the variance. The property is similar in size, shape, and composition as the other homes in the area.
- b. The applicant has not provided sufficient justification to demonstrate that the prohibition on locating the carport in the front yard is depriving the applicant of the reasonable use of the land.
- c. The granting of this variance could allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant constructed the carport without the necessary permits or approvals.
- d. The granting of this variance would alter the character of the general vicinity as no other property on Deer Lake Circle features a carport in the front yard, and the prohibition on constructing accessory structures within the required front yard is consistent across all residential zones.

Staff Presentation – Mr. Belcher stated that based on the four reasons listed, the applicant did not provide

sufficient reason for an exception to the Zoning Ordinance.

Board Questions and Comments – Mr. Clarke asked for clarification on the suggestion of moving the carport back further, but Mr. Belcher stated that the applicant consulted with a contractor and determined that this was not the best course of action.

Application Representation – Tom Sulkowski (Applicant) was present to represent the application. He stated that one of his sons has severe autism and severe sensory issues. He stated that due to a previous incident where a tree fell on the house, his son does not want to go out to the car or has gotten out of the car immediately after he got into the car. Mr. Sulkowski stated that it has become very difficult, as his son has various counseling and therapy appointments. Mr. Sulkowski stated that he saved up to replace the driveway and install the carport. He said that the carport has made things much easier. He apologized for installing the carport without a permit; he stated that he was unaware that he needed approval. He stated that his son's disability and the size and narrowness of the lot should justify allowing him an exception to the Zoning Ordinance. He referred to wheelchair ramps as a similar circumstance and should be approved. Mr. Sulkowski submitted letters of support of the carport as it existed.

Board Questions and Comments – Mr. Gross stated that he recognized the need for this based on another variance made for other disabilities. Mr. Clarke concurred.

Chair Sturdivant called a recess in order for the Board to consider alternative findings at 2:39 PM.

Meeting reconvened at 2:50 PM.

Action – Mr. Gross made a motion, seconded by Mr. Clarke; motion carried 6–0 (Persley absent) to **approve PLN-BOA-25-00090: TOM SULKOWSKI** – requesting variances to 1) reduce the required front yard setback from twenty (20) feet to four (4) inches and to reduce the required side yard setback from three (3) feet to four (4) inches in a Townhouse Residential (R-1T) zone, on property located at 1368 Deer Lake Circle.

This Approval is based on the following findings:

- a. The variances will not adversely affect the essential character of the neighborhood or negatively impact the public health, safety or welfare or create a nuisance for the residents, because it has adequate distance from neighboring structures and has adequate buffering from the adjoining tree canopy.
- b. The variances are justified by the special circumstances of the land because the configuration and location of the driveway on the side of the house, covered by the tree canopy, limits the feasible locations for a carport.
- c. Lastly, the variance will not unreasonably circumvent the zoning requirements. The requests do not require a fundamental alteration of the zoning ordinance because the special circumstances justify the variance. Further, the Board has heard sufficient evidence to demonstrate why the requested front yard setback is necessary as a reasonable accommodation. The owners have requested a front yard setback (from 20-feet to four inches) in order to construct a carport that blocks their disabled child from exposure to the sunlight and falling branches, and the owner has explained that he cannot locate the carport within the rear yard or any closer to the property line without having the carport roof encroach on neighboring property owners. This owner cannot use the driveway to the equal enjoyment as others without adequate shielding from sunlight.

This approval is made subject to the following conditions:

1. The site shall conform with the submitted application materials and site plan.
2. All necessary permits and approval shall be obtained by division of building inspection before any additional construction is performed.
3. The carport shall not be enclosed in order to ensure continued site visibility.

2. **PLN-BOA-25-00087: BARKER PROPERTIES LLC** – requested a conditional use permit for an un-hosted short term rental in a Planned Neighborhood Residential (R-3) zone, on property located 527 Estrella Drive. (Council District 2)

The Staff Recommends: Disapproval, for the following reasons:

- a. The four factors listed in Article 3-13(g) of the Zoning Ordinance have been evaluated, in addition to the requirements of Article 7 of the Zoning Ordinance and KRS 100.237
- b. The applicant has demonstrated a history of non-compliance, as they have repeatedly violated the rules and regulations set forth in the Code of Ordinances, Chapter 13, Article 5 and its sub-sections.

Staff Presentation – Mr. Belcher stated that there are no other STRs in the 600 foot buffer. However, the Staff recommended disapproval of the application based on a record of non-compliance.

Board Questions and Comments – Mr. Boggess asked the applicant if he was aware that the deed restrictions did not allow STRs in his neighborhood. The applicant stated that he was not.

Citizen Comments – Marie Strausser, representing the Sanders Crossing Homeowners Association, stated that the reason that there were no STRs in the vicinity was due to the fact that they are not allowed under the HOA. She stated that in 2023 and 2024, Barker Properties LLC did not pay their HOA dues.

Application Representation – Jeremy Barker was present to represent this application. Mr. Barker stated that the operation of the STR is handled in the corporate office in Utah. He stated that the corporate office recently relocated and a lot of the mail was not forwarded to the new address. He stated that his properties were grandfathered in but he was unaware that it needed to be renewed for the next year on 01/01/2025. He stated that he has several properties in Lexington and wanted to continue to do business in Lexington. He requested that the Board forgive his non-compliance due to his lack of knowledge of the process.

Board Questions and Comments – Mr. Gross stated that the Board does not take into account HOA restrictions when making their decision. Those issues must be resolved in the court system.

Action – Ms. Tucker made a motion, seconded by Chad Walker; motion carried 5–1 (Gross opposed, Persley absent) to **disapprove PLN-BOA-25-00087: BARKER PROPERTIES LLC** – requesting a conditional use permit for an un-hosted short term rental in a Planned Neighborhood Residential (R-3) zone, on property located 527 Estrella Drive based on the recommendation from the Staff.

V. **BOARD ITEMS** – The Chair will announce that any items a Board member wishes to present will be heard at this time.

A. **CLOSED SESSION** – Ms. Tucker made a motion to enter into a Closed Session to discuss pending litigation pursuant to KRS 61.810; seconded by Mr. Gross; motion carried 6–0 (Persley absent).

Closed Session convened at 3:11 PM.

Closed Session ended at 3:29 PM.

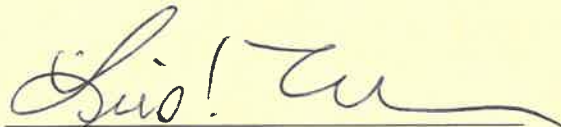
VI. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.

VII. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be October 13, 2025 at 1:30 p.m. in Council Chambers, 2nd Floor, 200 E. Main St., Lexington, KY 40507.

VIII. **ADJOURNMENT** - There was no further business, so the Chair declared the meeting adjourned at 3:31 PM.



Bob Sturdivant, Chair



Linda Tucker, Secretary

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