

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

April 13, 2026

- I. **CALL TO ORDER** – The Chair called the meeting to order at 1:35 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, and Ross Boggess (James Persley was absent). Planning Staff members present in attendance were James Duncan, Traci Wade, Daniel Crum, Dalton Belcher, Ryelle Browning and Patti Haley. Brittany Smith, Department of Law, was also present.
- III. **APPROVAL OF MINUTES**
The Board of Adjustment meeting minutes for August 2025 and September 2025 were put to a vote.

A. **August 2025 Minutes**

Action – Ms. Tucker made a motion, seconded by Harry Clarke; motion carried 6–0 (Persley absent) to approve August 2025 minutes.

B. **September 2025 Minutes**

Action – Mr. Boggess made a motion, seconded by Ms. Tucker; motion carried 6–0 (Persley absent) to approve September 2025 minutes.

BOARD ITEMS The Chair moved this portion of the meeting, as it was pertinent to the April meeting.

- A. **DISCUSSION ABOUT MOTION PROCEDURES** – At this time, the staff of the Law Department briefly discussed the appropriate procedures for motions of the Board of Adjustment. Ms. Smith (Legal Department) reminded the Board that when they draft findings to change the conditions of an application, that they are making a motion and they must make it clear that the conditions have been modified.

V. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Swearing of Witnesses** – The Chair requested that any applicant or objector, or anyone in the audience who plans to make any appeal before the Board, stand to be sworn in at this time. There was a large group of people who were sworn in at this time, including individuals in the mezzanine area outside of the Council Chambers.
- 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.

Postponements

PLN-BOA-26-00009: LEXINGTON UNIVERSAL ACADEMY – requested to amend an existing conditional use permit for a school for academic instruction in order to construct a parking area in the Agricultural Urban (A-U) zone, on property located at 4590 Nicholasville Road (aka 4580 Nicholasville Road).

Mr. Belcher stated that the applicant did not agree with Staff's proposed plan, so even though the Staff recommended approval, he felt that their case needed to be heard. Mr. Gross called the applicant to the podium (Joe Elder, Thoroughbred Engineering) and asked if he would like to wait

until late in the meeting to be heard or postpone the case until the May 11, 2026 meeting. Mr. Elder stated that he would like to postpone their case until the May 11, 2026 BOA meeting.

Action – Mr. Gross made a motion, seconded by Mr. Walker; motion carried 6-0 (Persley absent) to **postpone PLN-BOA-26-00009: LEXINGTON UNIVERSAL ACADEMY** – requesting to amend an existing conditional use permit for a school for academic instruction in order to construct a parking area in the Agricultural Urban (A-U) zone, on property located at 4590 Nicholasville Road (aka 4580 Nicholasville Road) until .

PLN-BOA-26-00016: TINASHE AND CLAUDETTE CHIGEDE - requests a conditional use permit for an un-hosted short term rental in an Expansion Area Residential (EAR-2) zone, on property located at 3037 Polo Club Boulevard. (Council District 12)

Chair Sturdivant asked if there was any opposition to this case present at the hearing. There was opposition present at the meeting. Chair Sturdivant stated that the case would be on heard docket. Mr. Gross suggested that the applicants come up to the podium to decide if they wanted to wait for their case to be heard or postpone it until the May 11, 2026 meeting. Chair Sturdivant asked the applicants what they would like to do. The applicants stated that they would like to request a postponement until the May 11, 2026 hearing.

Action – Mr. Gross made a motion, seconded by Mr. Clarke; motion carried 6-0 (Persley absent) to **postpone PLN-BOA-26-00016: TINASHE AND CLAUDETTE CHIGEDE** – requesting a conditional use permit for an un-hosted short term rental in an Expansion Area Residential (EAR-2) zone, on property located at 3037 Polo Club Boulevard. Mr. Gross recommended that the applicants talk to those in objection to their application to see if they can come to some sort of resolution.

C. Abbreviated Hearings

1. **PLN-BOA-26-00004: EYE 4 GROUP** – requested a variance to reduce the required setback for a free-standing sign from 10' to 3' in a University Research Campus (P-2) zone, on property located at 1565 McGrathiana Parkway. (Council District 2)

The Staff Recommends: Approval, for the following reasons:

- a. The change in elevation of eight to ten feet along much of the property's frontage is a special circumstance that is unique to the subject property and justifies the need for the variance.
- b. The strict application of the Zoning Ordinance would create an unnecessary hardship for the applicant because a sign for a commercial use is a common request and the visibility of the sign would be significantly limited due to the change in elevation at the 10-foot setback.
- c. Granting the variance should not adversely affect the public health, safety, or welfare, as the sign will be located outside of the required sight-distance triangle and should not have an effect on traffic visibility. The placement of the sign should not alter the character of the general vicinity, as the requested signage is not out of scale or overwhelming in this location.

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

1. The sign shall be installed in accordance with the submitted application and site plan.
2. A revised permit application for the signage shall be submitted to the Division of Building Inspection in order to obtain a corrected permit from the Division of Building Inspection.

Application Representation – Brock Roberts was present to represent the application. He stated that the current sign on the property is located three (3) feet back from the right-of-way, because the 10-foot setback requirement for the sign would put the sign on an area with steep slope. Mr. Roberts stated that they were requesting a variance to be allowed to keep the sign three (3) feet from the right-of-way. Chair Sturdivant confirmed that the applicant was aware of and in agreement with the Staff's conditions as listed.

Action – Mr. Clarke made a motion, seconded by Mr. Gross; motion carried 6-0 (Persely absent) to **approve PLN-BOA-26-00004: EYE 4 GROUP** – requesting a variance to reduce the required setback for a free-standing sign from 10' to 3' in a University Research Campus (P-2) zone, on property located at 1565 McGrathiana Parkway, as recommended by staff and subject to the conditions listed.

2. **PLN-BOA-26-00011: BRENNAN MULLINS** - requested a variance to reduce the required rear yard setback from twenty (20') feet to fifteen (15') feet and to increase the maximum driveway width from ten (10') feet to twenty (20') feet within the Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 644 Chestnut Street. (Council District 1)

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, nor cause a hazard or nuisance to the public. The subject property is within the defined Infill and Redevelopment Area and the proposed structure would feature a setback from Pemberton Lane that is in keeping with other structures in the immediate vicinity.
- b. Granting the variances will not result in construction that is out of character with the general vicinity. Nearby properties that are through lots also have rear parking areas that are accessed on Pemberton Lane.
- c. The request does not attempt to circumvent the provisions of the Zoning Ordinance. The intent of the Infill and Redevelopment Area regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. The Zoning Ordinance specifically states that Board of Adjustment action may sometimes be required in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood. Additionally, the applicant has applied for the variances as soon as it was determined that they were needed, prior to starting 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 – Brennan Mullins was present to represent the application. Chair Sturdivant confirmed that Mr. Mullins had read and agreed with Staff's conditions as listed. Mr. Mullins responded affirmatively.

Action – Mr. Walker made a motion, seconded by Mr. Boggess; motion carried 6-0 (Persley absent) to **approve PLN-BOA-26-00011: BRENNAN MULLINS** – requesting a variance to reduce the required rear yard setback from twenty (20') feet to fifteen (15') feet and to increase the maximum driveway width from ten (10') feet to twenty (20') feet within the Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 644 Chestnut Street, as recommended by Staff and subject to the conditions listed.

3. **PLN-BOA-26-00012: GREG BRUMAGEN** – requested a variance to reduce the required side street side yard setback for accessory structures from fifty feet (50') to twenty-two feet, eight inches (22' 8") in an Agricultural Rural (A-R) zone, on property located at 6970 Grimes Mill Road. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor cause a hazard or nuisance to the public. Screening will be provided in the form of vegetation along McCalls Mill Road, a retaining wall between the pool area and Grimes

- Mill Road, and an aluminum fence and vegetation surrounding the pool area.
- b. Granting the variances will not result in construction that is out of character with the general vicinity. While the property located at 963 McCalls Mill Road is larger than the subject property, it also has an accessory structure in the side street side yard less than fifty feet from the right-of-way. The proposed screening will limit the proposed structures from affecting the character of the vicinity as well.
 - c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The proposed location of the accessory structures is the only feasible spot on the property, given the size of the parcel, the current layout of the principal structure and the septic system, and the sloping topography. Additionally, the applicant applied for the variance as soon as it was determined that it was needed, prior to starting 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 prior to construction.
3. The existing 293 square-foot non-conforming shed located in the northeast corner of the property will be removed prior to construction of the proposed accessory structures.

Application Representation – Greg Brumagen was present to represent the application. Chair Sturdivant asked the Mr. Brumagen if he understood and agreed to the conditions listed. Mr. Brumagen asked if he could get the permits before the current structure was removed. Mr. Belcher told him that he would have to remove the existing shed prior to getting the permits, as it was listed as one of the conditions recommended by Staff. Mr. Brumagen agreed.

Action – Mr. Gross made a motion, seconded by Mr. Clarke; motion carried 6-0 (Persley absent) to **approve PLN-BOA-26-00012: GREG BRUMAGEN** – requesting a variance to reduce the required side street side yard setback for accessory structures from fifty feet (50') to twenty-two feet, eight inches (22' 8") in an Agricultural Rural (A-R) zone, on property located at 6970 Grimes Mill Road, as recommended by Staff and subject to the conditions listed.

4. **PLN-BOA-26-00013: 1711 LAKEWOOD LANE LLC** – requested a variance to reduce the required front yard setback from forty (40) feet to zero (0) feet to modify a circular driveway in the front yard in a Single Family Residential (R-1A) zone, on property located at 1711 Lakewood Lane. (Council District 5)

The Staff Recommends: 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 as this property already features an existing circular driveway and large front yard parking area and the surrounding area features multiple properties that have similarly designed front yard parking areas.
- b. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it was needed and prior to construction.

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

1. Construction shall be in accordance with the submitted application materials and revised site plan depicting the alternative driveway and turn-around design as provided by Staff.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection, Engineering, and Traffic Engineering prior to paving.
3. No water may be diverted from this property onto any other nearby property.

Application Representation – Tom Wilmes, Wilmes & Associates Architecture, was present to represent the application. He stated that he understood and agreed to Staff's conditions as listed.

Action – Mr. Gross made a motion, seconded by Mr. Walker; motion carried 6-0 (Persley absent) to **approve PLN-BOA-26-00013: 1711 LAKEWOOD LANE LLC** – requesting a variance to reduce the required front yard setback from forty (40) feet to zero (0) feet to modify a circular driveway in the front yard in a Single Family Residential (R-1A) zone, on property located at 1711 Lakewood Lane, as recommended by Staff and subject to the conditions listed.

5. **PLN-BOA-26-00017: HOLD THE DOOR PROPERTIES LLC** – requested a variance to increase the allowable height of a fence within the front yard from four (4) feet to six (6) feet in a Corridor Business (B-3) zone, on property located at 4050 Georgetown Road. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

- a. Granting a variance to allow a six-foot tall fence in the front yard of this property should not have a negative impact on the character of the general vicinity, as six-foot tall fencing is permitted in the front yard in the Agricultural Rural (A-R) zones located near the property. The applicant plans to install the fence 80 feet from the roadway and will install landscape screening. The fence will also be located at a setback consistent with front plane of the structure on the parcel to the immediate north of the subject property.
- b. There are special circumstances that justify the need for a variance because the property is somewhat irregular in shape, narrowing significantly from one end to the other and having a relatively shallow rear yard. Due to this shape and the location of the building, parking area, and stormwater detention basin to the rear of the property, the majority of the open space is located in the front yard. These circumstances result in available outdoor space for storage use by the applicant being significantly limited.

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

1. The fencing shall be installed in accordance with the submitted application materials and site plan.
2. A fence permit shall be obtained from the Division of Building Inspection, prior to construction.

Application Representation – Brandee Smith was present to represent the application. Chair Sturdivant confirmed that Ms. Smith understood and agreed to the conditions listed.

Board Questions and Comments – Ms. Tucker asked Ms. Smith what type of fence she was proposing. Ms. Smith stated that it was a "slatted" fence and referenced a photo on the overhead. Ms. Tucker asked what the proposed use was for the property. Ms. Smith stated that it was a construction company, and they were going to be storing materials there as there was no room behind the building to place materials and fence. Chair Sturdivant asked what would be stored in the fenced area. Ms. Smith stated that they would be storing some wood and pieces of siding that were too big to fit inside the storage building. Ms. Tucker asked Ms. Smith if it was a chain link fence. She stated that it was a slatted fence which was heavier than chain link. Mr. Belcher confirmed with Ms. Smith that she would not be storing vehicles or equipment in this outside area behind the fence.

Action – Mr. Clarke made a motion, seconded Mr. Walker; motion carried 6-0 (Persley absent) to **approve PLN-BOA-26-00017: HOLD THE DOOR PROPERTIES LLC** – requesting a variance to increase the allowable height of a fence within the front yard from four (4) feet to six (6) feet in a Corridor Business (B-3) zone, on property located at 4050 Georgetown Road, as recommended by Staff and subject to the conditions listed.

6. **PLN-BOA-26-00020: GIBSON TAYLOR THOMPSON** – requested a variance to reduce the required side street side yard setback for a corner lot from thirty feet (30') to fifteen feet (15') within the Infill and Redevelopment Area and an H-1 Overlay District in order to construct a swimming

pool in a Planned Neighborhood Residential (R-3) zone, on property located at 702 Central Avenue. (Council District 5)

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

- a. Granting the variance should not adversely affect the public health, safety, or welfare nor alter the character of the general vicinity. The in-ground pool will be screened and not visible to the public, and a pool is a common feature in the general vicinity and residential zones.
- b. The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the side street side yard setback for the proposed pool will be greater than that of the primary residence, so it will not increase the non-conformity. Additionally, the applicant has applied for the variance as soon as it was determined that one was needed during the permit process, 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 Division of Building Inspection prior to construction.

Application Representation – Darren Taylor, Gibson Taylor Thompson, was present to represent the application. Chair Sturdivant confirmed that he understood and agreed to the conditions listed. Ms. Tucker let the applicant know that there were some opposition letters regarding the setback.

Action – Mr. Walker made a motion, seconded by Mr. Clarke; motion carried 6-0 (Persley absent) to **approve PLN-BOA-26-00020: GIBSON TAYLOR THOMPSON** – requesting a variance to reduce the required side street side yard setback for a corner lot from thirty feet (30') to fifteen feet (15') within the Infill and Redevelopment Area and an H-1 Overlay District in order to construct a swimming pool in a Planned Neighborhood Residential (R-3) zone, on property located at 702 Central Avenue, as recommended by Staff and subject to the conditions listed.

7. **PLN-BOA-26-00008: FAITHPOINTE MINISTRIES INC** – requested to amend an existing a conditional use permit for a place of religious assembly in order to construct an addition in a Single Family Residential (R-1C) zone, on property located at 549 Parkside Drive. (Council District 6)

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

- a. Approval of the proposed modifications to the existing conditional use should not adversely affect the subject or adjoining/nearby properties, provided that all necessary permits and approvals are made. The new addition will be a space for the church to continue their current operations on site and will not result in an increase in traffic. The improvements will not change the capacity of the church building, the hours of operation or the days of activity on-site.
- b. All necessary public services and facilities are or will be available and adequate for the proposed use.

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

1. The property shall be developed and operated in accordance with the submitted application materials and revised site plan.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering, prior to construction and occupancy.
Any new outdoor lighting shall comply with the requirements of Article 30 of the Zoning

Application Representation – Casey Mather was present to represent the application. Chair Sturdivant confirmed that Ms. Mather understood and agreed to the conditions listed.

Action – Mr. Gross made a motion, seconded by Mr. Clarke; motion carried 6-0 (Persley absent) to **approve PLN-BOA-26-00008: FAITHPOINTE MINISTRIES INC** – requesting to amend an existing a conditional use permit for a place of religious assembly in order to construct an addition

in a Single Family Residential (R-1C) zone, on property located at 549 Parkside Drive, based on Staff recommendation and subject to the conditions listed.

8. **PLN-BOA-26-00018: SCJL V LLC** - requested a conditional use permit for an un-hosted short term rental in a Townhouse Residential (R-1T) zone, on property located at 1590 Higbee Mill Road. (Council District 9).

The Staff Recommends: **Approval of a lesser occupancy of six (6) occupants**, 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 for the lesser number of occupants.
- c. No short term rentals in the area have been cited as a nuisance.
- d. There are no other short-term rentals within the required 600-foot buffer and the concentration of short-term rentals in 1,000 feet of the subject property is less than 2%.
- e. There is no record of short term rental compliance issues with the applicant.
- f. 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 six (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 – Michael Norris was present to represent the application. Mr. Clarke asked if Mr. Norris accepted the reduced occupancy of six (6) persons, as recommended by Staff. He stated that he did. Chair Sturdivant confirmed that Mr. Norris understood and agreed to the conditions listed.

Action – Mr. Clarke made a motion, seconded by Mr. Gross; motion carried 5-1 (Persley absent, Tucker opposed) to **approve PLN-BOA-26-00018: SCJL V LLC** - requesting a conditional use permit for an un-hosted short term rental in a Townhouse Residential (R-1T) zone, on property located at 1590 Higbee Mill Road, as recommended by Staff and subject to the conditions listed.

D. Discussion Items

1. **PLN-BOA-26-00014: WILLIAM WOOD (THE DRAFTING BOARD, INC.)** - requested a variance to reduce the vehicular use area perimeter buffer from eight feet (8') to zero feet (0') and reduce the width of the required zone-to-zone screening from fifteen feet (15') to zero feet (0') within the Infill and Redevelopment Area in a Light Industrial (I-1) zone, on property located at 419 Chair Ave. (Council District 11)

The Staff Recommends: **Approval of a lesser variance to reduce the required vehicular use area perimeter buffer from eight feet (8') to five feet (5') along the northwestern property boundary**, 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, as the variance allows the applicant

to develop the site in a manner that provides adequate parking and pedestrian access for the proposed use while also providing screening from adjacent properties.

- b. Granting 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 construction.

The Staff Recommends: Approval of reducing the width of the required property perimeter (zone-to-zone) screening from fifteen feet (15') to zero feet (0') along the southeastern property boundary, 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, as the variance allows the applicant to develop the site in a manner that provides adequate parking and pedestrian access for the proposed use.
- b. Granting 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 construction.

These recommendations for approval are made subject to the following conditions:

1. The site shall be developed in accordance with the submitted application materials and a revised site plan.
2. The applicant shall receive approval of a final development plan before any work may begin.
3. All necessary permits shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.

Staff Presentation – Mr. Belcher stated that the applicant and opposition met in the hallway to discuss the application. As a result, they were in agreement with the lesser variance proposed by Staff, and they had also come to an agreement that the applicant would change the perimeter screening variance from zero (0) feet to four (4) feet. Due to this, Mr. Belcher asked Chair Sturdivant if he would like to forego the Staff presentation. After some discussion between Chair Sturdivant and Mr. Gross, Chair Sturdivant stated that they should move to the applicant presentation.

Application Representation – William Wood was present to represent the application. He stated that the opposition wanted at least a four (4) foot landscape buffer.

Opposition – Bill Allen stated that the applicant and opposition share a property halfway down the slope. He stated that if the buffer was reduced to zero (0) feet, there would potentially be a need for a retaining wall. By changing the perimeter proposed by Staff to four (4) feet, and the applicant committing to not parking cars on the driveway, he felt that it would be reasonable for the opposition to accept this application. He stated that he did not have legal authority to approve the change.

Board Questions and Comments – Mr. Sturdivant asked Staff what changes would need to be made to amend the findings to the lesser variance. Mr. Gross stated that he did not think the Board needed to revise findings but instead update the variance with what was discussed with the applicant and opposition. Mr. Wade stated that a revised site plan would need to be submitted with 1) the reduced variance of the vehicular use perimeter buffer proposed by Staff and 2) the revised property perimeter screening agreed to by the applicant and opposition. Mr. Gross said he would incorporate the language to refer to an amended site plan if that was acceptable to Staff. Ms. Wade stated that it would be sufficient.

Action – Mr. Gross made a motion, seconded by Mr. Clarke; motion carried 6-0 (Persley absent) to **approve PLN-BOA-26-00014: WILLIAM WOOD (THE DRAFTING BOARD, INC.)** – requesting a reduced variance for the vehicular use area perimeter buffer along the northwestern property boundary and a reduced width of the required zone-to-zone screening within the Infill

and Redevelopment Area in a Light Industrial (I-1) zone, at 419 Chair Ave, with the Staff's recommendation of a reduced perimeter buffer from eight feet (8') to five feet (5') and reduced zone-to-zone screening from fifteen feet (15') to four feet (4') as agreed to by the applicant today. Mr. Gross stated that the second variance condition #1 should reference an updated site plan, which would be submitted to Staff.

- 2. PLN-BOA-26-00019: SPEEDWAY LLC** – requested a variance to increase the required maximum front yard setback from twenty (20) feet to forty-one (41) feet in a Neighborhood Business (B-1) zone, on property located at 1318 Versailles Road. (Council District 11)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the variance will not adversely affect the subject property or surrounding properties; it will not pose a hazard or nuisance to the public, nor will it alter the character of the vicinity. Several other automobile service centers exist in the immediate vicinity and the site will be developed consistent with existing setbacks in the immediate area.
- b. The request features elements that reduce the impact of an increased maximum front-yard setback on the pedestrian experience, including installation of pedestrian improvements (wider sidewalks) and enhanced landscaping along an arterial corridor, which are consistent with the adopted Cardinal Valley Small Area Plan.
- c. Strict application of the Zoning Ordinance would have required the canopy to be located twenty feet closer to Red Mile Road, but that location would have impacted on an existing storm runoff easement and the area necessary to install a public art project. Additionally, the site circulation for fuel delivery would have been impacted. Strict application of the Ordinance would now require that it be moved, which is not logical, nor is it reasonable.
- d. The requested variance is not the result of a willful violation of the requirements of the Zoning Ordinance on the part of the applicant. They sought advice from the Division of Planning earlier in the process and were advised to wait to adjust the final development plan. Then a subsequent review did not identify the change in the canopy location, and the building permit was issued based upon the submitted construction plans. An error by the Division of Planning should not be held against the applicant as they proceeded with construction with the understanding that the plan met the Zoning Ordinance requirements.

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

1. The applicant shall obtain approval of an amended Final Development Plan consistent with the submitted application materials. The Final Development Plan shall denote the approval of the variance.
2. All other necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection, Engineering, or Planning.

Application Representation – John Woodall, attorney with McBrayer, was present to represent the application. He requested that the Board allow the opposition to be heard first, as he was unaware that there were any objectors. Chair Sturdivant agreed to this.

Citizen Comments – Muhammad Afzal, 641 Red Mile Road, stated that he was a neighbor to the Speedway property and their request for the 41 foot front yard setback affected him.

Rebuttal – Mr. Woodall asked Mr. Afzal if he was the owner of the fuel store next door to the property. He confirmed that he was. Mr. Woodall stated that he brought this issue to the Planning Commission in 2020, and there were several commissioners who were concerned about the number of bays (8) and dispensers (16). The plan was approved after several modifications were made. In the meantime, 7/11 Corporation purchased the property, and they supported the lesser concentration of the approved plan, reducing the number of dispensers. He stated that during construction, Ms. Wade caught a discrepancy between the planned front yard setback and the allowable setback, which is why they were requesting a larger setback. He stated that there were improvements made to the intersection where the property is located. Mr. Woodall stated that he

understood and accepted the conditions recommended by Staff.

Action – Mr. Walker made a motion, seconded by Ms. Tucker; motion carried 6-0 (Persley absent) to **approve PLN-BOA-26-00019: SPEEDWAY LLC** – requesting a variance to increase the required maximum front yard setback from twenty (20) feet to forty-one (41) feet in a Neighborhood Business (B-1) zone, on property located at 1318 Versailles Road, as recommended by the Staff and subject to the conditions listed.

NOTE: Chair Sturdivant called a recess at 2:43 PM. The meeting was reconvened at 2:54 PM.

3. **PLN-BOA-26-00006: BEHAVIORAL HEALTH REAL ESTATE ASSOCIATES** – requested a conditional use permit for a rehabilitation home within a Neighborhood Design (ND-1) Overlay zone in a Planned Neighborhood Residential (R-3) zone, on property located at 319 Duke Road. (Council District 5)

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the proposed rehabilitation home use will utilize the existing building and will be similar in terms of hours and patterns of operation as the personal care facility that was previously approved at this location.
- b. All public facilities and services continue to be available and adequate for the facility.

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

1. The property shall be operated in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection, as well as necessary state agencies, prior to occupancy.

Instructions from Chair Sturdivant – Chair Sturdivant reminded those in attendance that he expected proper decorum for this case, and if the crowd began to get loud, he had the authority to clear the room.

Chair Sturdivant stated that Mr. Bruce Simpson, attorney representing the applicant, had requested 45 minutes to present the case. Chair Sturdivant stated that the Board would be granting that request to Mr. Simpson and Ms. Winters, attorney representing opposition, but he instructed that 45 minutes was the limit. He stated that if either side started getting redundant, the Board reserved the right to limit repetitive testimony. He stated that every person who wanted to speak would be given three (3) minutes to speak.

Staff Presentation – Mr. Belcher stated that some of the last citizen comments received did not make it into Granicus. He provided a hard copy of these for the Board to review. Mr. Belcher displayed an overhead view of the property, a Google street view image, and a view of the driveway leading to the back of the property where additional parking exists. He stated that the applicants were not requesting any external changes to the building, just a use change. Mr. Belcher shared a section of the Zoning Ordinance containing a list of conditional uses for the R-3 zone. He noted that the list included boarding houses, assisted living facilities and rehabilitation homes. He clarified the difference between assisted living and a nursing home. He also stated that, in the Zoning Ordinance, rehabilitation homes are defined as "a building or group of buildings providing a supervised residence for persons recovering from the effects of drug or alcohol abuse, psychiatric disorders, or as a condition of their parole or probation. Such houses may provide counseling and educational, vocational or other areas by paid or voluntary staff, and are generally under 24 hour supervision." Mr. Belcher reviewed the Staff's reasons for approval and the conditions that must be met by the applicant. He stated that the Staff, Building Inspection, and Legal Counsel had received a long list of conditions that the applicant proposed. He stated it was

quite unusual to get such specific conditions. He stated that the Staff, Building Inspection, and Legal Counsel had reviewed these conditions to determine which could be enforced and have created a list for the Board which could be incorporated into the conditions, if the Board chooses to do so. Mr. Belcher stated that these would probably be discussed later in the hearing.

Application Representation – Mr. Bruce Simpson, attorney, was present to represent the application. He stated that the case was filed in January and it was postponed. He stated that the applicants held three meetings with Chevy Chase homeowners and hosted two open houses at the proposed facility, which was a fairly new facility – only seven or eight years old.

Mr. Simpson described the previous uses of the facility in more detail. He stated that it started out as an assisted living facility, then a personal care facility and neither use went well. It was then approved as a personal care home; later it was proposed as a hospice facility, which did not open. He stated that the facility had been struggling for years. He stated that each of these prior uses was recommended for approval by the Staff. The personal care home received approval by the Board of Adjustment's for a conditional use permit. He noted that an application for a hospice use was withdrawn before it came before the Board.

He noted that the applicants voluntarily came up with 33 specific conditions they agreed to be bound by, regardless of whether they were enforceable. He stated that, should the application be approved, the applicants wanted to be held accountable. Mr. Simpson stated that they had met with neighbors, and based the proposed conditions on feedback they received, and further expanded on them voluntarily. He stated that he read Ms. Winters' letter that was submitted the day of the hearing and said that she had stated in that letter that the applicants "baited and switched" the conditions. He stated that he disagreed; that the applicants had considered feedback at meetings and in writing. He stated that the number one concern of the opposition is that there would be a drug abuse treatment center. Mr. Simpson stated that it was considered something that may work, but when the applicants received so much objection to this, they eliminated any patients with a primary diagnosis of substance abuse. He stated that they decided to require a primary diagnosis of mental illness. He stated that there was a license for this, as well as a license for a primary diagnosis of substance abuse. He clarified that they would not be applying for the license for a facility admitting those with a primary diagnosis of substance abuse treatment. He said that there may be some people with a *secondary* diagnosis of eating disorders, alcoholism or substance abuse admitted. He stated that there are medical criteria that must be evaluated by the insurance company and the licensure board review these criteria to ensure that the patients admitted have a primary diagnosis of mental illness. He reiterated that they would not be providing care to those with a primary diagnosis of substance abuse, while there was a need for that in Kentucky. Mr. Simpson stated that the applicant decided to pair up with Rolling Brook Care and Treatment Center in a joint venture due to the level of treatment provided, stating that there would be several people who had received care from Rolling Brook and would be speaking in support of the application.

Mr. Simpson introduced Matt Douglas with ZLD Partners (ownership entity of the application) who stated that he and Michelle Lubbert worked for a behavioral health company for about eight years. He stated that during that time, they helped develop, build and title about 800 treatment beds across the U.S. He stated that during that time, the operators were not honoring their commitments. He stated that there were ethical failures and problems with the way they were providing treatment. He stated that he and Ms. Lubbert decided to start their own business providing the services they were providing for their former employer. He stated that he was a fourth generation Lexingtonian and stated that he would never want to hinder or harm Lexington. He stated that he met with Victor Rivera when they consulted with him on market analysis in Kentucky. He stated that he consulted with Mr. Rivera regarding his brother, who suffered from mental illness. He stated that they got him into one of Mr. Riveras' facilities and now his brother is a site manager for his building side of the business in Denver, Colorado. He stated that he and

Mr. Rivera shared a desire to assist others with these issues. He stated that the property on Duke Road would provide the space that they needed – security throughout, along with cameras throughout the facility. He stated that one of the conditions they submitted was that staff could not come and go from the facility during hours of drop off and pick up from Christ the King School. He committed that patients would not be admitted or released on site. He also stated that they created a condition providing an employee of the facility who would serve as a liaison to the community. He stated that one thing that he could not do was fight emotion with logic. He mentioned a website that was created. He stated that he felt devoted to opening this facility because there was nowhere to go outside of institutional or outpatient facilities for many mental illnesses and there were no facilities at all to treat eating disorders. He stated that this proposed facility was not a temporary facility that would leave within a short time, and that the facility/program would be regulated by federal, state and third-party joint commission oversight.

Victor Rivera, Co-founder and CEO of Roaring Brook, stated that he was pursuing this project because he needed mental health care about eight (8) years ago. He stated that at the time, the only care available was institutional with an outpatient component. He stated that people are currently traveling to other states to get the type of care that the clinic will be offering. He stated that the people who needed help were friends, neighbors and community members who deserve this kind of care. He stated that this clinic would not pose a threat to the community.

Bruce Simpson explained that he was going to review information that was submitted to the Board and the for the record (Applicant Exhibit binder). He stated that he reviewed literature in Kentucky and Fayette County. The information he reviewed was the (1) 2023 Lexington Fayette-County Health Assessment, and (2) a national study of all the states and the State Health Implementation Plan 2024 – 2028. He stated that around 15 – 20% of the population suffer from mental health issues which require treatment. In Lexington, that is equivalent to about 45,000 people. Mr. Simpson stated that over the past three years he had learned a lot about mental health and mental illness, stating that he has suffered from mental illness most of his life. He stated that since he received help, he has been functioning much better as a human being and a lawyer. He stated that he has spoken to many people suffering from mental health issues over the past three years. He stated that many suffer in silence due to shame, humiliation and the stigma associated with mental health issues, which prevents many from seeking the help they need. He stated that he understood the opposition because they fear what they do not understand.

He pointed out that in the binder there were a list of 33 conditions that the applicant was committed to meeting. He stated that it was a voluntary program – no one who was court-appointed or had to get help as a condition of probation would be admitted. He stated that Medicaid patients would not be allowed. He stated that it was a private pay program, including those with commercial insurance. There would be no walk-in admission, no one admitted with a substance abuse primary diagnosis. The applicant would not apply for substance abuse treatment licensing. The license obtained will allow them to treat mental health problems only. Mr. Simpson stated that, in addition to getting approval from the State of Kentucky, the applicant was committed to applying for approval from the Joint Commission. The facility would provide a residential program that provides therapy and treatment, and ongoing supervision for mental health and eating disorder needs. There would 24-hour onsite staffing, and a minimum staff ratio of one (1) staff member per five (5) patients. There would be security that restricted coming and going.

Mr. Simpson referenced a letter he submitted to Planning detailing the 33 conditions the applicants committed to being bound to if the application was approved. He referenced opposing counsel's letter that claimed these conditions to be disingenuous. He referenced several of the concerns stated by opposition and stated that the conditions came about after meeting with the community to hear their concerns. He referred to the definition of rehabilitation facility and laid out the issues that would not apply to this application. He referenced data that showed how some of the most affluent areas in the United States with rehabilitation facilities like the one being proposed were affected. He referenced a Traffic Study to review. He opined that the facility would come

nowhere close to the limits allowed for traffic in this area.

Board Questions and Comments – Mr. Gross asked Mr. Simpson if those with substance abuse as a secondary diagnosis would be required to attend a detox program prior to being admitted into the applicant's program. Mr. Rivera stated that the patient would have to go somewhere else for this, as the program is for sub-acute issues, while substance abuse requires acute care to stabilize these issues prior to admission to their program.

Mr. Walker stated that he appreciated Mr. Simpson's candor and asked what voluntary admission entails. Mr. Rivera stated that they meet with the patients and ensure that the patient is committed to the program.

Ms. Tucker asked why there was a need for such high security from the applicant. Mr. Rivera stated that it was partly to reassure the community that things would take place off site and comings and goings could be scheduled and controlled, to have the least amount of impact on the neighborhood. Ms. Tucker asked Mr. Rivera how long the stay would be. He stated that it was ideally 45–60 days. He stated that some of that was determined by what insurance would pay.

Mr. Clarke asked Mr. Rivera to clarify the difference between addiction and mental health care from Roaring Brook. Mr. Rivera stated that the outpatient clinic handles addiction and outpatient mental health issues, while the proposed facility will provide inpatient care for mental health issues.

Mr. Walker clarified with Mr. Rivera that while the application erroneously stated that there would be no off-street parking, when in fact, there would be no on-street parking.

Chair Sturdivant verified the number of parking spaces with Mr. Rivera – there were 24 parking spaces. Mr. Sturdivant stated that during school hours, parking is very difficult, almost impossible. Mr. Rivera stated that he could schedule coming and goings so that it would not interfere with or add to the traffic.

Opposition Presentation – Ms. Jessica Winters, attorney representing the "The Friends of Chevy Chase", requested that the Board deny the application; she provided handouts to the Board and for the record. Ms. Winters stated that twenty members have formed the group "Friends of Chevy Chase" and have aided in procuring legal representation, spoken with neighbors and held meetings to inform neighbors. She stated that they circulated a petition with 128 (in addition to the other petition) signatures. This list includes others outside of Chevy Chase neighborhood and parents of children attending Christ the King School, Cassidy Elementary School, and Morton Middle School. She stated that the applicant bears the burden of proof that the application is authorized, will not adversely affect safety or public welfare, will not alter the essential character of the neighborhood, and is compatible with surrounding land uses. She opined that in this case, the burden has not been met.

Ms. Winter stated that the location within an R-3 zone is inappropriate for a rehabilitation home. She recited the intent of an R-3 zone. She stated the property was also located within an ND-1 Overlay zone, which was intended to preserve neighborhood character and prevent out-of-scale or incompatible infill development. She stated that the property was surrounded on three sides with residential uses, including apartments. She stated that a rehabilitation home is only allowed as a conditional use if it is located more than 500 feet from a residential use, according to the Zoning Ordinance. She said that the Board can reduce spacing only if the reduction will not have an adverse effect on the surrounding neighborhood. Ms. Winters stated that the applicant's property is also touching the neighboring property lines, requesting that the 500 foot spacing required be eliminated.

She stated that in the press, people have been claiming that Chevy Chase residents have been

asking for special treatment, while she says that instead they are asking the Board to follow the mandates of the Zoning Ordinance and make a rational decision. She stated that the only one that benefits from this conditional use is ZLD, a real estate investment firm, who now claims to have the subject property under contract. She stated that the Accela citizen portal listed ZLD Partners as the applicant, who, by their own definition, purchases properties and makes quick, profitable turnarounds. She stated that ZLD Partners was a Tennessee-based business that would be "here today and gone tomorrow". She opined that this was "predatory development" – economic development that benefits economic and political elites by extracting wealth and resources from communities in the name of progress. She discussed adverse impacts and stated that neighbors are concerned about safety and disruption from this proposed use. Ms. Winters said that there were concerns about decreased property values and the proposed use was much higher in intensity than the current use. She stated that the Staff assumed that the proposed use was similar to the personal care facility that was approved for this and she said that this was not true. She states that the 60 beds proposed is significantly more intense compared to the current use approved by the Board. One manner in which it was more intense was that 18–20 staff members would be on-site with around the clock presence. She stated that their staff would be coming and going and that residents of the facility would include people who have substance and alcohol abuse and may be living there as a condition of parole or mandated treatment. Ms. Winters stated that there was a significant increase in the number of crimes in neighborhoods with rehabilitation homes in them. She referenced Resurrection Clinic, an outpatient substance abuse clinic on Alexandria Drive, and showed an overhead denoting all of the crime around the clinic. She stated that substance abuse treatment would be taking place at the proposed facility which is close to three schools.

Ms. Winters referenced condition #1 recommended by Staff. She stated that it is unclear what constitutes "application materials", and that changes to those materials have occurred during the process without transparency. She further stated that if the conditions are not written into the approval, they are not enforceable.

She stated that the current operators (not the ones applying for the conditional use permit) were violating their conditional use permit. Ms. Winters said that there was no action taken to enforce the conditions, other than a cease and desist order that had a deadline. A day after the deadline, she stated that the facility (not the applicant's) was still operating.

She stated that the opposition was told by ZLD that Rolling Brook, a local company, will be the operator of the facility. She commented that she was glad to hear during the hearing that was still the case. Ms. Winters went on to state that Rolling Brook was not mentioned in the last two letters submitted by Mr. Simpson. She went on to suggest that it was unclear whether the facility would be operated by Rolling Brook, or "an out-of-state company with no vested interest in the protection of the neighborhood". She then went on to read the description on Rolling Brook's website listing all of the outpatient services they offer currently for substance abuse at their existing outpatient clinic. She stated that there was no mention of residential care or eating disorders.

Ms. Winters expressed numerous concerns about the proposed list of 33 conditions. She stated that the applicant had made numerous verbal and written promises regarding who will be admitted, security, number of residents, staffing ratios and more. She stated that a week after the last meeting, there was nothing in writing, so she contacted Mr. Simpson. She stated that the conditions agreed to informally were attached to the materials she submitted to the record, and states that many of the written ones submitted by the applicant were different from those. She stated that the conditions were not enforceable and that there were changes. Specifically, she stated that the conditional use permit would be tied to Rolling Brook and would be null and void if Rolling Brook ceased to operate the facility. She then stated that there was no mention of Rolling Brook in recent communications. She stated that the conditional use permit would run with the land, unless the conditions were specifically tied to the applicant. Ms. Winters then stated that the applicant had promised in the meeting that there would be no substance use disorder or drug

treatment at the facility. She said that was later changed to say that *substance abuse* would only be admitted as secondary disorder. She stated that this would be impossible to enforce due to HIPAA concerns. She mentioned that it was promised that there would be 24/7 security cameras recording all outside spaces and those recordings would be kept for 30 days. She stated that the submitted materials did not reflect a plan to retain video or have cameras in all outdoor places. She stated that the applicant had promised that they would obtain a license for mental health disorders, but written materials stated that they would not obtain a substance abuse treatment permit. She stated that the applicant has continued to promise that the facility would only operate as a sub-acute, step-down facility, but it is not included as a proposed condition. According to Ms. Winters, the applicant promised that there would be a 24/7 RN present on the site, but this was not included in the conditions they proposed. She then stated that the applicant had proposed that a chain link fence enclose the parking lot, but this was not included in the conditions. She noted that most importantly, there was no provision for onsite security in any of the applicants' materials. She went on to state that the 33 conditions the applicant proposed were not meaningful protection and were written in medical terms that the Board could not enforce. She also stated that the terms were vague and impossible to enforce. She then suggested that if there was a need for 33 conditions to make this application more acceptable to the community, she questioned whether it was appropriate for this location.

She stated that this application did not serve an unmet need in the community and that there were already 46 substance abuse treatment centers in the area. She stated that the conditional use was not justified. She also stated that the application and public notice were procedurally deficient because the name of the application name changed without a new letter going out to the neighbors or an update notice to the public. Ms. Winters stated that Mr. Simpson's reference material had no bearing on what was being considered by the Board. She gave her justification for this statement based on other drug treatment facilities. She further stated that the applicant's view was based on a macro-level analysis – whether this was good for the area, as opposed to the issue before the Board, which is at a micro level – is this good for the surrounding neighborhood. She reviewed (on the overhead) the findings for disapproval of the conditional use permit that the opposition submitted. Ms. Winters requested that Mr. Billings share her time. Chair Sturdivant denied this request.

Board Questions and Comments – Mr. Gross referenced finding of fact #1 in the opposition's submitted statement related to Article 8-12(d). He stated that he interpreted this differently from Ms. Winters and that, as he understood it, the 500-foot distance was between rehabilitation homes and not all other uses in R-3 zone. She stated that the opposition understood it to mean 500 feet from other residential properties. Ms. Wade stated that that was counter to the actual ordinance. Ms. Winters stated that their legal position was that it could not be within 500 feet of residential uses. Mr. Gross suggested she review the Zoning Ordinance during the break.

Mr. Clarke asked Ms. Winters to explain how specifically she categorized "significantly more intense". Ms. Winters referenced the current occupancy and the current conditional use which is for a personal care facility. She stated that it was not being used for this purpose, so it should be revoked. She further stated that since the property was never used as a personal care facility, the permit should have been null and void one year after it was issued. She stated that the personal care facility was approved for 24 beds and the applicant was requesting approval of 52 beds. She said just the number of beds alone made it more intense. Mr. Clarke clarified that the intensity refers to how it impacts the neighborhood, not the setup of the building itself. Ms. Winters cited changing shifts, 24-hour staff onsite, number of employees coming to and from the site, possible buses "busing patient's in and out". Mr. Clarke stated that he had heard nothing about busing and asked Ms. Winters to clarify. She stated that patients would be allowed to walk around the streets of the neighborhood, which she stated should not be so close to schools and daycares and where children are walking. She asked the Board to decide on a "context basis". Mr. Clarke questioned how an increase in crime is related to a facility. She stated that they researched other neighborhoods with these facilities and typed it into a program that showed crimes in the area.

She stated that she could not prove the increase in crime was due to mental illness, but "these are the numbers". Mr. Gross then asked Ms. Winters if did any analysis of the applicant's facility on Perimeter Road or randomly chose the facility on Alexandria Drive. She stated that she had researched others but used Alexandria Drive for her example.

Chair Sturdivant addressed the decision not to allow Ms. Winters to yield her remaining time to Mr. Nathan Billings. He asked Mr. Billings if he was representing anyone other than himself. Mr. Simpson interjected that Mr. Billings had stated he was representing himself and never made mention of representing anyone else. Mr. Billings stated that he could answer for himself and stated that he respected the decision of the Board to deny Ms. Winters request to yield time for him. He then stated that in addition to Ms. Winters requesting to yield time, others had indicated that they would yield their time to him. He stated that the Chair was "taking time from the opposition" and he wanted it noted for the record. He stated that he disagreed with Chair Sturdivant's decision but would use the allotted time that all citizens are allowed for public comment later in the hearing. Chair Sturdivant again stated that legal representatives from both sides were given 45 minutes to present. The Chair stated that there was no penalty for using less time. He referred to the bylaws for the Board stating that the Board sets the time allotted to each citizen for comment. Chair stated that in this case that allotted time was three (3) minutes. Mr. Gross asked Chair Sturdivant for a brief recess.

NOTE: Chair Sturdivant called a recess at 4:50 PM. The meeting was reconvened at 4:59 PM.

Chair Sturdivant announced that the Fire Marshall had asked him to let everyone know that everyone who did not have a seat would need to go out in the hallway. He explained that everyone who wanted to would have the opportunity to speak. He asked speakers to avoid being too redundant in the interest time and the number of speakers who intended to speak.

Citizen Comments - Alana Cottrill, 705 Clayvis Ct., re-read a letter she submitted to the Division of Planning prior to the meeting.

Shawn Milburn, 2113 Hunters Wood Ln, stated that he was a physician and had a concern about the number of beds proposed. He stated that inpatient treatment is considered equivalent to inpatient care in a hospital setting. He stated that another hospital in Berea had proposed a new critical care unit with 24 beds, while the applicant proposed a 52-bed inpatient facility. He referred to an acute situation that was shared as an example but was not an example of sub-acute care. He stated that patients in acute mental crisis do not belong close to children.

Shauna Elko, 2116 Broadhead Place, stated that she lost several family members due to suicide. She stated she saw the value of rehabilitation centers, but not near schools. She suggested there are other locations suitable for this rehabilitation home.

Mariss Elko Bray, 4866 Wyndhurst Road, stated that four of her five children attend Christ the King School, and she is a parish member at Christ the King Church. She stated that there were too many unanswered questions. She opined that the applicant cares more about profit than safety.

Leah Bachmeyer Killie, 1000 Trevey Pt, stated that her mother and uncle own a five (5) plex apartment building next door to 319 Duke Rd. She stated that she felt blindsided by this application, as this is not the originally approved use and it "feels different" and the tenants are not happy. She stated that the neighbors want long term neighbors. She then stated that her tenants may not renew their leases.

Elizabeth Maggio, 1242 Lakewood Dr., stated that she was a 30 year resident. She asked if the

Board represented the community or special interests. She questioned what would happen if a patient had a psychotic episode. She stated that these patients are "sick and highly susceptible to relapses". She agreed that these patients need care, but not near children. She asked if the Board members would hold themselves accountable when there was an incident.

Leigh Ann McLaughlin, 413 Culpepper Road, stated that she is retired educator. She stated that she agreed that there was a need for care, but not at this location. She stated that patients can recover, but that does not mean that dangerous situations are eliminated. She stated that there were no studies introduced in the application showing how neighborhoods with low crime rates are affected when rehabilitation facilities are newly introduced to these neighborhoods which may lack support systems and emergency services.

Cassidy Rosenthal, 1091 Indian Mound Road, stated that she has reviewed regulations and requirements and wanted to know what licensure the applicant would be applying for – she said that she searched and could not find this information. She stated that they lack quick emergency services. She referenced the LFUCG Zoning Ordinance where in the EAR-1 zone, these facilities must be connected to an arterial road, and the P-1 zone, which stated that no rehabilitation center should be located within 500-feet of residences.

Ryan Haller, 1509 Romany Road, stated that he was a commercial developer with children that attend Christ the King School. He stated that his children's safety trumps all other considerations. He stated that he has developed rehabilitation centers and felt qualified to give an opinion. He stated that of the 33 conditions the applicant committed to meeting, there were only four conditions that were enforceable by the Board. This includes privacy fences, alarm exit doors, camera coverage in common areas, and parking restrictions. He referenced other conditions that were not enforceable – it would require self-reporting by the operator.

Stephen Graham, 1225 Providence Lane, reiterated concerns about the traffic and risks for children.

Anne Graham, 1225 Providence Lane, stated that Romany Road served as a main corridor for children going to school and she was concerned about violence in this area. Also, she stated that the staff/patient ratio would be high, and patients would be able to leave unsupervised. She stated that there was easy access to guns, which she felt could lead to dangerous situations.

Christian Polen, 1004 Turkey Foot Road, stated that he was a pharmacist and referenced supplemental information from the applicant; he reviewed the cases that were submitted indicating that rehabilitation facilities were not unsafe in neighborhoods. He stated that the studies covered larger areas (cities) and did not study the effects in a densely populated neighborhood like Chevy Chase.

Joe Hollock, 315 Garden Road, asked the Board how they would feel if they had a facility like the applicants in their neighborhood or other public places.

Amanda Buchanan, 532 Culpepper Road, stated she was a Pediatric Urologist with a child that attends Cassidy Elementary. Her concerns were community safety, inconsistencies by the applicant, and institutional creep.

Alison Krift, 1304 Sweetbay Drive, stated that she wanted to speak on behalf of 100 neighbors that had to leave to pick up their children, stating that they were opposed to this application.

Megan Thompson, 352 Lincoln Avenue, stated that the Board was there to serve the community, and the community does not want this.

At this time, applause broke out loudly and Chair Sturdivant stated that this was inappropriate

behavior for a public meeting and he would clear the room the next time it happened.

Walt Bachmeyer, 2036 Fontaine Road, stated that he and his sister own a property adjacent to the applicant's. He stated that Google told him that his property value would drop.

Michael McLaughlin, 406 Queensway Dr., stated that the issue at hand is the character of the neighborhoods in Lexington.

Ann Tramontin Bruggeman, 3266 Pepperhill Rd, stated that she was the principal of Christ the King School. She referred to staff and student numbers who entrusted her with their safety. She said that she worried about the risks that those suffering from mental illness pose to the population. She stated that she did not worry about the people in her care, but the one person with mental illness that has a bad day and leaves the rehabilitation facility. She said that she does not care about grades or test scores, her only concern is safety.

John N (Nathan) Billings, 664 Teakwood Drive, asked for a minute to pass out exhibits, which he proceeded to introduce. Mr. Simpson objected, stating that he was already using his three minutes during this time. Mr. Billings stated that 18 minutes was taken away from the opposition, and he was only introducing information into the record in the event of an appeal. Chair Sturdivant stated that Mr. Billings could introduce his documents and would then have three minutes to speak in total, as he was not legally representing the opposition. Mr. Billings spent over five minutes introducing documents and was then given three additional minutes. Mr. Billings introduced the following documents or information into the record:

1. PowerPoint Presentation
2. Copy of all of the applicant's documents
3. History of land use applications for 319 Duke Road that exist in Accela from 2013 to present
4. Binder of public comments submitted via email to Mr. Billings (source: LFUCG open records request from the Friday before the hearing and emails he was sent by other people the weekend before the hearing)
5. Chart of all the residential facilities that do OED or behavioral mental health treatment in Lexington as well as the hospitals and the corresponding maps of where they are located.
6. Available records for rehabilitation homes that have applied to the Board of Adjustment in Lexington since 1982.
7. KRS 100.237 regarding conditional use permits
8. Article 7 of the LFUCG Zoning Ordinance regarding the Board of Adjustment
9. BOA Bylaws
10. Kentucky Administrative Regulations (KAR) regarding the licensing of residential medical care facilities
11. "Not in My Back Yard: The Effect of Substance Treatment Centers on Property Values" by Claire L Roche, Bennie Waller & Scott Wentland
12. Open records request sent to the Office of the Inspector General for the Kentucky Cabinet for Health and Family Services on the current owner of the property
13. Personal Op-Ed that was submitted to the Lexington Herald Leader

He stated that he was asked to represent the opposition but declined and referred the case to Ms. Winters. He stated that his wife later informed him that a friend's mother-in-law lived across the street from the applicant's property. He stated that he spent 60 hours (pro bono) researching this case. He stated that this was a case of land use that would negatively impact the neighborhood.

Michelle Lubbert, 1129 Parklawn Dr., Tennessee, stated that she was there in support of the application. She stated that a lot of the opposition talked about were things that the applicant would not be doing. Mr. Billings objected and stated that she was the applicant. Chair Sturdivant stated that this was the time for citizen comments, and as the applicant, she would have time to speak during the rebuttal.

Erin Scussel, 1161 Turkey Foor Rd, Apt 17, stated that she supported the proposed facility due to her personal experience with mental health issues. She stated that she eventually hit bottom, got treatment in an inpatient facility and resolved her issues. She reviewed her accomplishments that followed the resolution of her issues. She felt a facility like this would be a great asset to those who needed care.

Kian Johnson, 3828 Merridew Way, stated that he has suffered from an eating disorder since age 12. He states that at age 26, he is still suffering from this and there has never been any treatment in Lexington. He stated that he attended an inpatient program out-of-state and started improving. When he returned to Kentucky, he relapsed due to the lack of any support program for eating disorders in the state. He stated that he was urging the Board to approve the application so that he could get his life back.

Hacky Kantar, 1229 Providence Lane, stated that he lived near 319 Duke Road and had received care from Roaring Brook. He stated that while he understood the opposition's position, he respectfully disagreed. He felt like opposition was asking "what ifs" if the application was approved, while he asked what would happen if Roaring Brook was not established. He stated that he supported the application.

Ana Diaz, 668 Graviss Court, stated that there seemed to be a lot of self-interest in the hearing. She stated that the Board had already approved this based on the Ordinance.

Sarah Pope, 1713 Huntsman Court, stated that Roaring Brook helped her to enter recovery for her alcoholism. She stated that the city needed the support offered by the applicant.

Kelly Gunning, 776 Muddy Creek Road, stated that she was the Advocacy Director of the Alliance for Mental Health in Fayette County. She stated that the Board had been given an impossible task of "either/or". She stated that the opposition is demanding safety from the Board when those in the actual role of providing public safety cannot ensure this. She stated that child abuse occurs quite often in the schools and church settings that the opposition is trying to protect.

Ann Baxter, Andover Drive, stated that she was opposed to the application and wanted to know what safety measures the applicant would be employing for safety.

David Leone, 3591 Niagra Drive, stated that he shares an office with the applicants and said he personally vouched for them, and the help and integrity they exemplify every day. He stated that there has never been any violence in the facility or drug paraphernalia found.

Carl Quick, 1750 Yorktown Rd, stated that he is an employee of Roaring Brook and said that no one has mentioned what they stand for – integrity, honesty and transparency. He stated that he was able to finish college while working for Roaring Brook. He mentioned the boards they work with that hold them accountable.

Hilary Nolar, 305 Rosemont Garden, stated that she was a Board Certified Psychiatric Nurse Practitioner at Roaring Brook. She has experience at all levels of care and said that she loves to help others by assisting in the placement of patients, so they receive the proper care. She stated that she did not want to put anyone at risk.

Daniel Fulton, 1720 Abbingtion Hill, stated that he was worried about the risk of someone like himself ending up at the proposed facility. He stated that he was diagnosed as Major Depressive, with Intermittent Explosive Disorder. He stated that he spent time institutionalized and in prison. He stated that he has been suicidal, homicidal, and beaten people to a pulp, and acknowledged that he has created risk. He stated that all it would take was someone like him to walk out of the proposed facility and walk 300 feet to the north. He stated that the business model poses a risk,

which will rely on the Board to enforce 33 conditions, which, if violated, could close this business down.

Krista Haddad, 1127 Richmond Rd, stated that she has lived in Chevy Chase for 25 years. She has worked in Behavioral Health (Psychiatric) and stated that Mr. Rivera was an excellent leader who does the right thing. She stated that he mentored her as she started up her own business.

Matt Otto, 761 Dawson Springs Way, stated that he worked as the Program Coordinator at Rolling Brook. He has suffered from various mental health and substance abuse disorders and has been in recovery for 14 years. He stated that he could identify how things are done the right way and the wrong way. He stated that while there are a lot of rehabilitation facilities in the state, there is currently nothing in Kentucky like what the applicant is proposing. There is no residential care for those who need it. He stated that he fully supported the plan.

Chad Sirk, 508 Field Crest Court, Richmond, Kentucky, began to speak. Mr. Billings and Ms. Winters objected to his speaking, because they stated that he was a witness for the applicant, and should have spoken during the opposition's 45 minutes as an expert witness. Mr. Sirk stated that he was a recipient of Roaring Brook care and was able to continue in his career because of the help he received from Roaring Brook.

Mary Henson, 562 Stratford Dr., read her letter which was added to citizen comments in support of the application.

Alicia Kazee, 1620 Richmond Road, stated that she grew up less than a block away from the proposed facility, and had recently moved back to the area. She asked if the size is appropriate for a 52-bed facility and is it being used for what it was initially approved for, and can the Board enforce the proposed conditions. She questioned if this use would be passed on to another facility if this one closed.

Frazier Juddstone, 505 Hart Rd, stated that he supports all of the arguments of Ms. Winters and Mr. Billings and his neighbors. He stated that he felt that the applicants' arguments were vague and ambiguous. He asked the Board to pump the brakes on this plan.

Mr. Belcher referred to the Bylaws of the Board of Adjustment, noting that there was no requirement that you had to be from the area or state of a case to express an opinion.

Keith Wright (not from Lexington) stated that he works for Roaring Brook, and he also suffers from PTSD from 9/11 and this type of care was not available at that time. He stated that he would respond better to a facility in a neighborhood setting like Rolling Brook much better than one in an industrial setting.

NOTE: Chair Sturdivant called a recess at 6:43 PM. The meeting was reconvened at 6:50 PM.

Chair Sturdivant referred to the bylaws stating that the applicant is entitled to 10 minutes for a rebuttal. Chair Sturdivant noted that while Ms. Winter requested time as well, he was not going to allow it, as it was not required by the bylaws.

Mr. Simpson called up Michelle Lubbert, General Counsel for the applicant, to explain the reasoning behind Mr. Billings' objection to Ms. Lubbert testifying on behalf of the applicant during citizen comments. She stated for the record that Mr. Billings had been setting this case up for appeal prior to the case being filed. She stated that he threatened protracted litigation to persuade the applicant not to pursue this case. She submitted an affidavit detailing this, that was provided as part of the record. She stated that it included details of the call and what was said.

Mr. Simpson stated that the Board was faced with a difficult case, involving many who were familiar to the Board. Mr. Simpson stated that the case is about land use, yet very little evidence was provided on land use. He stated that there were no arguments made by Ms. Winters and Mr. Billings about land use. Mr. Simpson noted that there was no evidence of land use violations against Roaring Brook. He referred to his documents submitted did refer to land use. He referenced several commercial uses surrounding this property. He stated that the Planning Staff have always been the experts in land use. He asked the Board to support the recommendations of Planning Staff.

Mr. Clarke asked the applicant to describe the conditions and circumstances of the residents in the facility. Mr. Douglas stated that the patients that will be admitted with mental health diagnosis, with (possibly) of substance abuse disorder as a secondary disorder, but they are not requesting a licensure that allows Substance Abuse Disorder as a primary diagnosis. Mr. Clarke asked what type of staff would be employed at Roaring Brook. Mr. Rivera stated that they interview applicants as a group, look for the candidates with the highest designations, and encourage and support training and education. Mr. Clarke asked about the access the patients have to the neighborhood. Mr. Rivera stated that there would be no access for the patients. He stated that they will be moved to and from facilities through organized transport.

Ms. Tucker asked if the facility would be using medications to treat patients. Mr. Rivera stated that they may use medications, but often they find that medications need to be changed or reduced to help patients, and they look outside of medication to help their patients for the most part. Ms. Tucker asked Mr. Rivera if patients tended to self-medicate, leading patients with mental health disorders to develop substance abuse issues as well. Mr. Rivera said that while this was not a given, but it does happen sometimes. Ms. Tucker asked Staff if the approval of the application for a rehabilitation home would create a larger umbrella of uses, and if the applicants' position would be difficult to police. Mr. Gross stated that based on the conditions provided by the Staff, it was not clear how the applicant would be policed. Mr. Belcher stated that it would be difficult for Building Inspection to do more than a yearly inspection. Ms. Tucker stated that her concern was that many of applicants' proposed conditions were out of the jurisdiction of Building Inspection, which meant that the use under 'rehabilitation home' could lead to broader uses in the future. Mr. Belcher stated that the conditions could be added in a legal sense, but it would be difficult to tailor conditions to only allow certain people to be allowed to receive care.

Mr. Walker asked about the status of the current occupant's situation. Mr. Belcher clarified that it was an ongoing situation between Building Inspection and the current occupant, not the applicant being discussed at the hearing.

Ms. Wade referenced the changes mentioned by the opposition regarding the applicants and parties involved, stating the only changes made were in contact information. Ms. Lubbert was added as a contact after the previous legal counsel separated from the case. Mr. Simpson was added as a contact when he was retained as current legal counsel.

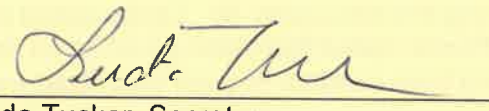
Mr. Belch stated that Mr. Billings had introduced documents into the record that were never submitted to Planning Staff by the applicant or opposition. He identified these documents as those being handed out at neighborhood meetings.

Action – Mr. Gross made a motion, seconded by Mr. Clarke; motion carried 4-2 (Sturdivant and Tucker opposed, Persley absent) to **approve PLN-BOA-26-00006: BEHAVIORAL HEALTH REAL ESTATE ASSOCIATES** – requesting a conditional use permit for a rehabilitation home within a Neighborhood Design (ND-1) Overlay zone in a Planned Neighborhood Residential (R-3) zone, on property located at 319 Duke Road, based on Staff recommendations, testimony heard and subject to the two conditions as listed.

- VI. **BOARD ITEMS** – There were no Board items to discuss at this time.
- VII. **STAFF ITEMS** – There were no Staff items to discuss at this time.
- VIII. **NEXT MEETING DATE** - The Chair announced that the next meeting date will be on May 11, 2026 at 1:30 p.m. in Council Chambers, 2nd Floor, 200 E. Main St., Lexington, KY 40507.
- IX. **ADJOURNMENT** - There was no further business, so the Chair declared the meeting adjourned at 7:08 PM.



Bob Sturdivant, 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.