

# Board of Adjustment Meeting

Observer name: Max Puchalsky

Agency: Board of Adjustment, Division of Planning, Lexington-Fayette Urban County Government

Date: Oct. 9, 2023 | 1:30 - 5:30 p.m.

See more about this meeting at:

<https://www.lexingtonky.gov/meeting-notice/19245/board-adjustment-meeting>

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- **The Scene**

- The Board of Adjustment Meeting took place on Monday, October 9, 2023. It began at 1:31 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky 40507.
- **Board members in attendance:** Raquel Carter, Harry Clarke, Chad Walker, Bob Sturdivant, Carolyn Plumlee, Phillip Branden Gross, and Linda Tucker.
- **Planning staff members present were:** Traci Wade, Autumn Goderwis, Meghan Jennings, and Donna Lewis.
- There was a notable din in the room as the meeting began. The Board, Planning staff, and members of the public all seemed to anticipate what was to be a long and at times contentious meeting. The four conditional use appeal cases were indeed controversial, with each garnering impassioned public statements and sustained Board debate.

- **Community Perspective** | *Public comments and concerns. Was there any public comment? If so, summarize what was said.*

- Approximately 25 members of the public were in attendance.
- The majority of public comment was in opposition to the Conditional Use Appeals and their intended use of Short Term Rentals (STRs). Public concerns ranged from the lack of affordable housing and the commercialization of neighborhoods, to parking and various safety issues.

- **Goals**

- [AGENDA](#)
- The [Board of Adjustment](#) is established to grant variances, conditional use permits, allow changes in non-conforming uses, and to hear appeals from Building Inspection and Planning.

- **Policies & Outcomes**

- Conditional Use Appeals
  - Meghan Jennings, a LFCUCG Senior Planner, provided background information on Short Term Rentals (STRs) in Lexington.

- STRs legally operating before July 11, 2023 can be grand-fathered in and may not require a conditional use permit; they only need to get a Zoning Compliance Permit (ZCP) from the Division of Planning. Existing STRs only have 6 months since these regulations were adopted to be considered grand-fathered in.
- STRs with occupancies greater than 12 (existing or new) require a conditional use permit.
- According to [AirDNA](#), there are 1,200 short-term rentals currently operating in Lexington.
- Since July 11, 2023, The Division of Planning has processed 100+ ZCPs for STRs.
- [Section 13](#) of the Code of Ordinances includes additional regulations for STRs related to business licensing and permitting.
- Zoning Ordinance [Article 3-13\(f\)](#) states that Short Term Rentals shall not be utilized for private events, such as weddings or parties, in which the number of participants exceeds the maximum occupancy limit. No private events shall occur between the hours of 11:00 p.m. and 7:00 a.m. Special events for commercial purposes shall be prohibited at all times.
- [Article 8-7\(d\)\(1\)](#) by reference to [Article 8-5\(d\)\(15\)](#) lists un-hosted short term rentals as a conditional use in the R-1C zone.
- [Article 1-11](#) defines a short term rental (STR) as the commercial use of a dwelling unit that is rented in whole or in part, for temporary occupancy by transient guests for a tenancy of less than thirty (30) consecutive days in duration; where no meals are served. This term does not include hotel or motel rooms, extended stay hotels, bed and breakfast facilities, boarding or lodging facilities, or farm employee dwelling units. Transient guests are those who have an established primary residence elsewhere, and this term shall not be construed to include individuals who rent a primary residence on a weekly basis.
- [Article 1-11](#) defines un-hosted short term rentals as a short term rental in which a primary resident (as defined in [Section 13-76](#) of the Code of Ordinances) does not occupy the property during the short term rental period.
- [Article 3-13\(d\)](#) by reference to Article 3-13(c) states that the Board shall establish a maximum occupancy for the short term rental of a maximum of two (2) individuals per bedroom, plus an additional four (4) individuals; or a total of 12 individuals, whichever is less, except that the Board may allow additional occupants when there is sufficient evidence that a greater occupancy will not result in overcrowding or create a nuisance.

- [Article 3-13\(g\)](#) states that for short term rentals regulated as conditional uses, the Board of Adjustment shall take into consideration:
  - The number of STRs, if any, in proximity of the property being considered for such use.
  - The demonstrated compliance record of the applicant, if they operate other STRs in Lexington.
  - The occupancy rate of other STRs in the general vicinity, including those operated by the applicant.
  - Whether other STRs in the general vicinity have been cited as a nuisance, including those operated by the applicant.
- PLN-BOA-23-00062: AARON REEDY
  - In the first Conditional Use Appeal case, Aaron Reedy requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 621 Lane Allen Rd. (Council District 10). The maximum occupancy would be 12 or less, and Mr. Reedy anticipates renting out the property 60% of the year to a primary market of traveling families.
  - Planning staff was supportive of application, determining that Mr. Reedy's application meets the conditions in [Article 3-13\(g\)](#) and recommended approval, noting that there are four (4) other STRs within a 1000 sq. ft. boundary.
  - Board member Phillip Branden Gross sought to clarify, "If the applicant were to sell this property, is this null and void on transfer of title?" (19:55)
    - Staff explained the current ordinance does not cover transfer of ownership, so the Board added this as a condition for STR use.
  - Board member Carolyn Plumlee asked if a member of the Board of Adjustment owns a STR, would this be a conflict of interest? (26:12)
    - Planning staff recommended, if the board member's STR is in the vicinity of the subject property, they should consider recusing. However, general STR ownership not addressed in bylaws, and so any decision to recuse is up to board member.
  - Aaron Reedy spoke in favor of his application, citing his longtime residence in Lexington, his fully fenced backyard, and belief that nearby noise complaints were "outliers." (28:00)
    - To prevent noise issues, Mr. Reedy has promised to establish quiet hours (10 pm - 9 am) and installed [NoiseAware](#), a noise detection surveillance system, on site. (38:55)
  - 6 members of the public spoke

- The first speaker was concerned about the “affordable housing crisis” (44:30) and worried, “Lexington’s headed in the wrong direction.”
- Kurt Zehnder, the second speaker, said, “It’s a great little neighborhood, let’s keep it that way...we don’t need more STRs” (47:43)
- Sarah Zehnder commented, “having up to 12 strangers makes me a little nervous for [my child] to be walking past this house regularly.” (49:06)
- Lynne Flynn, speaking on behalf of the Picadome Neighborhood Association, cited [Imagine Lexington](#) and the Comprehensive Plan’s section on the characteristics of successful neighborhoods arguing, “by their very nature, STRs cannot contribute to these characteristics.” (53:14)
- Liz Ruh believed Mr. Reedy’s STR will have a negative impact on the neighborhood by diminishing the supply of available housing.
- Tee Bergman, President of Mitchell Avenue Neighborhood Organization, questioned, “Is there a need for another STR in this area in our city? What impacts is this going to have on our immediate neighborhood and this section of our town? Negative or positive? Do we really want to endanger the lives of our schoolchildren walking that street? It’s one thing for the people who live there on a regular basis, it’s another to have strangers, not familiar with walking paths. You can put 5-6 cars in the driveway. You cannot turn them around. **Who benefits from converting this from a residential home to a STR? The owner, the neighbors, the Lexington community? Creating more rental opportunities for out-of-town visitors but taking it off the market for a couple, for a first-time homebuyer, taking that house off the market when we are trying to expand the urban service area doesn’t make sense...I hope you will vote to disapprove this application.**” (59:36)
- Sixth speaker: the Board of Adjustment needs to consider the existing density.
  - Mr. Reedy responded by dismissing public concerns as “general, not specific to my application” and claiming he has “every interest in being a good neighbor, and conscientious of everyone around me.” (1:01:39)
  - Board Chair Raquel Carter clarified, “We aren’t changing the ordinance, we are making a decision whether this meets the requirements of the existing ordinance” (1:09:00)

- Board member Harry Clarke responded to public concerns by saying, “Those are questions that should have come up with the Planning Commission and the Council...I use AirBnb all of the time...**we aren’t here to say whether STRs are good or not...the law is the law...it’s our job to decide how the law applies to each of these applications**” (1:11:17)
- Board member Phillip Branden Gross added, “This body does not set policy, we are here to implement policy.” (1:12:30)
- Carolyn Plumlee countered, “**There is still one glaring fact, that this is the commercialization of a neighborhood.**” (1:14:40) She disapproved of the Board “making a commercial zone out of a neighborhood that has demonstrated stability” and worried, “here we are taking affordable housing off the market” (1:16:21)
- Raquel Carter disagreed, arguing, she “would not characterize it as commercialization. We see conditional uses within a residential neighborhood” (1:18:10) and adding, she does not personally own any STRs.
- ACTION:
  - There was a motion for approval by Phillip Branden Gross, with an amendment to the fourth condition stipulating the conditional use permit “shall become null and void upon change in ownership.” (1: 21:44)
  - Harry Clarke seconded
  - AYE - Gross, Clarke, Walker, Carter
  - NAY - Tucker, Sturdivant, Plumlee
  - Motion passes (4-3)
- PLN-BOA-23-00065: DEBORAH BURTON
  - For the second Conditional Use Appeal case, Deborah Burton requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 241 E. Lowry Ln. (Council District 3).
  - Staff recommended approval, citing Ms. Burton’s status as a first-time applicant and her maximum requested approval of up to 8 individual guests, under the maximum of 12, at her 1500 st. ft. four bedroom residence.
  - Deborah Burton explained she doesn’t want to sell the property because she wants to bequeath the house to her children, but needs to generate income to offset the mortgage, insurance, and other expenses. (1:34:32)
  - Two members of the public spoke in opposition:

- Margaret Richey, who has lived in the neighborhood for 38 years, argued the relevant ordinance 3-13 (g) says the Board of Adjustment “shall take [the four conditions] into consideration, it does not say *only* [those four conditions].” She cited concerns about traffic, street parking, and code enforcement, pointing out how code enforcement doesn’t respond on Fridays and Saturdays (i.e. likely rental days) and by the time they do follow up, the renter will have come and gone and a new renter may be on site. (1:40:49)
- Jerry Provence, a retired Kentucky State Police officer and member of the “very good neighborhood” (1:42:50) warned the Board, “I’m going to be a little crude” before preceding to worry Ms. Burton’s STR could be used to house “Refugees and immigrants? Homeless? Students? Migrant workers? Quarantine facilities? Alcohol or drug rehab? Halfway houses?...Sex offenders?” (1:42:50)
- Ms. Burton responded that she doesn’t intend for any of the uses Mr. Provence is concerned about. “Everyone is always talking about the worst-case scenarios on everything, but what about the best-case scenarios?” (1:45:53)
- Planning staff cautioned the Board to not discuss the types of people who may rent the property
- ACTION:
  - Harry Clarke moved to approve
  - Phillip Branden Gross seconded
  - AYE - Clarke, Carter, Gross, Walker, Sturdivant
  - NAY Tucker, Plumlee
  - Motion passes (5-2)
- PLN-BOA-23-00066: DALTON STANLEY
  - The third Conditional Use Appeal case concerned Dalton Stanley’s request for a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1D) zone, on property located at 1706 Cameron Ct. (Council District 1).
  - Staff recommended approval for Mr. Stanley’s requested maximum occupancy of 12 individual guests.
  - Dalton Stanley spoke in favor of his application, citing his existing two STR properties with no history of compliance issues. (1:58:05)
  - Four members of the public spoke in opposition:
    - Dwight Overstreet (2:07:33) said that Mr. Stanley initially seemed nice, but since purchasing the property, he has been negligent

regarding construction materials and trash that have been sitting on the curb for 30 days. Mr. Overstreet also cited concerns about contractor trucks coming and going at late hour of the night and blocking neighbor access to the adjoining driveway.

- Maria Overstreet explained the driveway is a shared, tight space. She wants to be able to host guests but there isn't enough parking space. She also feared higher transience will bring crime.
  - Kate White was concerned about accessing the curb mailboxes and garbage. (2:13:49) She shared Mr. Overstreet's concerns about the construction materials left on the curb.
  - Frank Greene (2:16:55 ) disagreed with Planning staff's assessment to recommend approval. Mr. Greene was concerned about increased traffic and its impact on kids who play in the street. Mr. Greene, a retired firefighter, also believed the limited parking in the court will hinder emergency fire and EMS access. Mr. Greene also provided photo documentation of garbage left out on Mr. Stanley's curb for a month.
  - Mr. Stanley responded, **“flipping houses is new for me”** and **“it's been a learning process to learn how to dispose of that properly”** promising, the problems with garbage wouldn't be an issue moving forward. (2:22:25)
  - Planning staff clarified Mr. Stanley and the neighboring unit have “adjoining” not “shared” driveways.
  - Board member Plumlee (2:29:22): cited Lexington's housing problem and lack of affordable housing.
  - Board member Tucker raised concerns about the adjoining driveway.
  - Plumlee thought the parking issue was sufficient cause for the Board to disapprove.
  - After a brief recess to formulate a new motion, the Board resumed session (2:40:18)
  - ACTION:
    - Tucker moved for disapproval citing insufficient parking and transience creating a negative influence on the surrounding neighborhood
    - Seconded by Plumlee
    - AYE Gross, Plumlee, Tucker, Sturdivant
    - NAY Clarke, Carter, Walker
    - Motion to disapprove passes (4-3). Mr. Stanley's application is denied.
- PLN-BOA-23-00067: KATE WHITE

- In the fourth Conditional Use Appeal case, Kate White requested a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 333 Henry Clay Blvd. (Council District 5).
  - Ms. White, another first-time applicant, lives next door to the subject property and requested approval for occupancy of up to 10 individuals.
  - Staff recommended approval with the additional condition that the conditional use permit will become null and void if the applicant no longer occupies the adjacent property. This was due to the high density of approximately 12 STRs in the neighborhood within a 1000 st. ft. vicinity.
  - Ms. White spoke in favor of her application, explaining how she purchased the adjacent home so her children’s grandparents could live next to their family and help with childcare. With 5 kids, she has a vested interest in who is on the property. (2:55:05)
  - Two members of the public spoke in opposition:
    - Mary Reed, Representing the Fairway Neighborhood Board of Directors, cited concerns about parking, safety, and neighborhood character. (3:01:53)
    - John Grimes was concerned by the commercialization of the neighborhood. He said renters are afraid of being priced out and is worried STRs will attract predatory investors. He also raised concerns about accessibility for people with disabilities. (3:06:43)
  - Ms. White responded by stating she shares concerns about the proliferation of SRTs, noting, “we are a family of very conservative values.” (3:11:45)
  - Planning staff clarified, due to the high density of SRTs in the neighborhood, staff is only comfortable recommending approval given the applicant lives next door.
  - ACTION:
    - Motion to approve by Walker
    - Seconded by Gross
    - AYE Clark, Carter, Gross, Tucker, Walker, Sturdivant
    - NAY Plumlee
    - Motion passes (6-1)
- BOARD ITEMS
- Review of IVCP Athens South LLC conditional use permit
    - This was not a public hearing, but rather, a report on the development of the site. The site was approved last year for the construction of soccer fields with outdoor lighting.



- After going through a 2022 Zoning change to allow for a stadium and accessories, the soccer stadium development plan is being developed. Seven fields are currently constructed and the applicant has been approved to build up to ten. However, two fields and a parking lot have been removed from a previous version of the plan in order to meet the 50 ft. landscape buffer the Board of Adjustment required last year.
    - Charlotte Turner McCoy, a lawyer for IVCP Athens South, spoke on behalf of the applicant. Josh Lewis, IVCP owner, and Brad Boaz, lead engineer, were also in attendance.
    - Members of the Board voiced informal approval of the progress indicating they were pleased with the results of the development so far.
  - STAFF ITEMS
    - Presentation of Resolution to former Board member
      - The Board of Adjustment recognized Mr. Chad Needham who has fulfilled two terms of service with the Board of Adjustment for a total of eight years, with his second term ending June 30, 2023.
      - This item was moved up in the meeting agenda (1:25:03)
    - Training by the Department of Law
      - Brittany Griffin Smith, Attorney Sr., presented a mandatory training on legal issues relevant to the Board, including parliamentary procedures, findings of fact, open meetings, conflicts of interest and other ethics issues, and ex-parte communications.
  - The next meeting of the Board of Adjustment will take place November 13 at 1:30 p.m. in the same location.
  - Unanimous approval to adjourn at 5:30 p.m.
- **Follow-Up Questions**
  - Given the ongoing [housing crisis](#) in Lexington, and the City's [move to expand](#) the Urban Service Boundary in part to address the crisis, why is the City approving the conversion of affordable homes into rental properties, taking these homes off the market for potential residents?
  - Why did the report on the soccer complex development not mention environmental impact, which was a primary concern of those who spoke out against the rezoning [earlier this year](#)?