

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky February 8, 2011

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on February 8, 2011 at 5:00 P.M. Present were Mayor Gray in the chair presiding, and the following members of the Council: Council Members Henson, Kay, Lawless, McChord, Stinnett, Beard, Blues, Crosbie, Ellinger, Farmer, Ford and Gorton. Absent were Council Members Lane, Martin, Myers, and Beard.

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An Ordinance changing the zone from a Two-Family Residential (R-2) zone to a Planned Neighborhood Residential (R-3) zone for 0.1722 net (0.2996 gross) acre, for property located at 578 Woodland Ave. and 505 Columbia Ave., subject to certain use restrictions imposed as conditions of granting the zone change, in conjunction with a conditional use permit and a dimensional variance (Phi Gamma Delta House Corp.) was given second reading.

Mayor Gray swore in the witnesses, and then reviewed the procedures for the zone change.

Ms. Rochelle Boland, Dept. of Law, stated that the architectural renderings which had been produced by the applicant and placed in the Council Chamber could not be admitted during the hearing as evidence. She stated that there was a letter from the Bluegrass Trust that contained the renderings, but that it could be redacted from the letter.

Mayor Gray asked questions about the rules. Ms. Boland responded.

Ms. Gorton explained why the Council had made the rule about the presentation of renderings. Ms. Boland expounded on Ms. Gorton's statements.

Ms. Gorton made a motion, seconded by Mr. Farmer, and approved by unanimous vote, to remove the renderings from the Council Chamber and to redact them from the Blue Grass Trust letter to be admitted into evidence.

Mr. Jimmy Emmons, Div. of Planning, gave his presentation and filed the following exhibits: (1) Legal notice; (2) Affidavit of notices mailed; (3) MARCV 2010-12: Final Report and Minutes of the Planning Commission; (4) 2007 Comprehensive Plan; (5) 1983 Zoning Ordinance as amended; (6) Land Subdivision Regulations; (7) MARCV

2010-12 Powerpoint Presentation, on paper and CD; (8) Preliminary Development Plan; (9) Comprehensive Plan Map 2007, portion with subject property; (10) Aerial photos of the subject property (on MARCV 2010-12 Div. of Planning staff presentation CD); and (11) Letter of objection from The Blue Grass Trust.

Mr. Ben Simmons, EOP Architects, representing Phi Gamma Delta House Corp., gave his presentation and filed the following exhibits: (1) Affidavit of signs posted; and (2) Handout with letters of support and Powerpoint Presentation slides, rendering of structure redacted per Council request.

The following representatives of the petitioner spoke in favor of the requested zone change: (1) Mr. Ben Harper, petitioner, Sussex Drive; (2) Mr. Bill Lear, Attorney, on behalf of Touchstone Properties, property owner; (3) Mr. Tom Block, Officer of Phi Gamma Delta Corp., Georgetown, Ky., (4) Mr. Keith Ellis, Assistant Dean of Students, University of Ky., Pinkney Drive; and (5) Mr. William Martin, Executive Director of Phi Gamma Delta Corp., Lookout Circle.

The following citizens spoke against the requested zone change: (1) Ms. Kate Savage, Vice-President, Columbia Heights Neighborhood Association, Columbia Ave., who presented a Powerpoint Presentation of photographs of the subject property area, and filed the following exhibit: (a) Letter to the Council from the Board of Directors of the Columbia Heights Neighborhood Association; (2) Mr. Ted Cowan, Columbia Ave.; (3) Ms. Janet Cowan, Columbia Ave.; (4) Ms. Rose Garden, Tremont Ave.; and (5) Ms. Pat Lawrence, Marquis Ave.

Mr. Emmons stated that he had no rebuttal but would be glad to answer questions.

Mr. Simmons made a rebuttal on behalf of the petitioner.

The Council asked questions of Mr. Emmons, Mr. Ellis, Mr. Simmons, Mr. Martin, and Mr. Andrew Wiethal, Phi Gamma Delta Fraternity member.

Mayor Gray declared the hearing closed at 7:13 p.m.

Mr. Emmons reviewed the rest of the zone change procedure upon request of the Mayor.

Ms. Lawless made a motion to approve the following Findings of Fact for Approval from the Planning Commission:

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
 - a. The subject property is recommended for Medium Density Residential land use, defined as 5-10 dwelling units per net acre. The petitioner proposes essentially one dwelling unit with a maximum of four residents on the subject property. This is considered a reduction in the residential density at this location, and is more consistent with the recommended land use than the existing two residential structures.
 - b. The 2007 Comprehensive Plan's Goals and Objectives support the provision of housing opportunities to meet the needs of all citizens (Goal 13), which includes students and Greek organizations. The proposed redevelopment of the subject property supports this goal by allowing for the construction of a fraternity house adjacent to the University of Kentucky campus.
2. The proposed land use of a fraternity house is appropriate at this location, because it is adjacent to the University of Kentucky campus. It is in close proximity to a significant number of other Greek organizations, which include sororities and fraternities in the Rose Street, Columbia Avenue, Euclid Avenue and East Maxwell Street areas.
3. This recommendation is made subject to approval and certification of ZDP 2010-63: Columbia Heights, Lot 20, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be restricted on the subject property via conditional zoning:
 - a. No more than two residential dwelling units may be permitted on the subject property.
 - b. The use of the property shall be limited to:
 - i. Single-family detached residence.
 - ii. Two-family dwelling unit.
 - iii. Any Conditional Use approved by the Board of Adjustment or Planning Commission.

This restriction is appropriate and necessary for the subject property in order to ensure compatible development; and if a conditional use does not develop on the subject property, then the property shall develop in a manner recommended by the 2007 Comprehensive Plan.

Mr. Kay called for a point of order, and asked questions of Ms. Boland regarding the voting procedure for the Findings of Fact from the Planning Commission, and the ordinance approving the zone change. Ms. Boland responded.

Ms. Lawless withdrew her motion.

Ms. Boland explained the procedure for adopting Findings of Fact for Disapproval, and stated that she had drafted Findings of Fact for Council review, if that was their pleasure.

Mr. Stinnett asked questions of Ms. Boland regarding Findings of Fact as evidence.

Ms. Crosbie asked questions of Mr. Stinnett regarding parliamentary procedure in this case. Mr. Stinnett and Mr. Emmons responded.

Ms. Gorton read a portion of the Council Rules and Procedures for reference.

Ms. Lawless made a motion, seconded by Mr. Blues, to approve the following Findings of Fact for Disapproval from the Dept. of Law:

1. The current R-2 zoning of the subject property in is compliance with the Comprehensive Plan. It lists as principal permitted uses only residential uses of up to 2-family dwellings. Any more intense use, such as those in the R-3 zone which include multi-family, dormitories, community residence, and others would not be appropriate in this residential neighborhood. Although the proposed conditional zoning restrictions address some of those concerns, many of the conditional uses permitted in the R-3 zone would not be appropriate in this location.
2. Granting this zone change would carve a corner out of a large neighborhood which is primarily zoned R-2, and therefore not susceptible to the R-3 larger, more intense conditional uses.
3. The existing parking problems in this area risk being increased by the possible conditional uses available in the proposed R-3 zoning, many of which would generate more traffic and require more parking than the currently proposed use.
4. The petitioner has failed to demonstrate any compelling need for rezoning this property, especially given the proposed conditional zoning restrictions. Clearly the current zoning is appropriate, and the map amendment would only create a possibility that the more intensive conditional uses of the R-3 zone could be allowed on the subject property.

Mayor Gray reviewed the procedure for voting on the motion. Ms. Boland also spoke about the procedure.

The motion **failed to pass** by the following vote (It would have taken 8 votes in favor to override the Planning Commission's Action):

Aye: Henson, Kay, Lawless, Blues, Ford,
Gorton-----6

Nay: McChord, Stinnett, Crosbie, Ellinger, Farmer-- 5

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Ms. Lawless spoke in opposition to the zone change.

Ms. Boland reviewed the rules regarding the majority of votes needed in order for a zone change ordinance to pass or fail.

Upon motion of Mr. Stinnett, seconded by Mr. Ellinger, the ordinance **passed by Operation of Law** by the following vote:

Aye: McChord, Stinnett, Crosbie, Ellinger, Farmer-----5

Nay: Henson, Kay, Lawless, Blues, Ford,
Gorton-----6

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Upon motion of Mr. Blues, seconded by Mr. Kay, and approved by unanimous vote, the meeting adjourned at 7:29 p.m.

Deputy Clerk of the Urban County Council.