

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

January 26, 2012

- I. **CALL TO ORDER** – The meeting was called to order at 1:31 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Will Berkley; Carla Blanton; Patrick Brewer (arrived at 1:40 p.m.); Marie Copeland; Mike Cravens; Mike Owens; Derek Paulsen, Chair; Frank Penn; and Lynn Roche-Phillips (arrived at 1:34 p.m.). Absent was William Wilson.

Planning staff members present: Chris King, Director; Bill Sallee; Traci Wade; Tom Martin; and Stephanie Cunningham. Other staff members present were: Rochelle Boland, Department of Law; Jeff Neal, Division of Traffic Engineering; Hillard Newman, Division of Engineering; Captain Charles Bowen, Division of Fire and Emergency Services; and Tim Queary, Urban Forester.

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Beatty, seconded by Mr. Owens, and carried 8-0 (Brewer, Roche-Phillips, and Wilson absent) to approve the minutes of the December 8, 2011; December 15, 2011; and January 12, 2012, Planning Commission meetings.

- III. **POSTPONEMENTS AND WITHDRAWALS** – No such items were presented

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, January 5, 2012, at 8:30 a.m. The meeting was attended by Commission members: Frank Penn, Will Berkley, Derek Paulsen, Eunice Beatty, Mike Owens and Marie Copeland. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Chris Taylor, Jimmy Emmons, Barbara Rackers, Traci Wade, David Jarman, Pamela Brown and Denice Bullock, as well as Captain Charles Bowen, Division of Fire & Emergency Services and Rochelle Boland, Law Department. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, January 5, 2012, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Patrick Brewer, Mike Cravens, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

- B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

Note: Ms. Roche-Phillips arrived at this time.

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1. **RML CONSTRUCTION ZONING MAP AMENDMENT & THE GLEN AT LOCHDALE, UNIT 4 (AMD.) ZONING DEVELOPMENT PLAN**

- a. MAR 2012-1: RML CONSTRUCTION (2/19/12)* - petition for a zone map amendment from a Neighborhood Business (B-1) zone to a High Density Apartment (R-4) zone, for 14.78 net (17.47 gross) acres, for property located at 3600 & 3652 Winthrop Drive.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends High Density Residential land use for the entire subject property. The petitioner proposes an apartment complex for 252 dwelling units (444 bedrooms), with an accessory clubhouse and associated off-street parking.

The Zoning Committee Recommended: **Approval**, for the reason provided by staff.

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

1. The requested High Density Apartment (R-4) zoning is in agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The 2007 Comprehensive Plan recommends High Density Residential future land use for the subject property, which is defined by the Plan as 10-25 dwelling units per net acre.
 - b. The applicant proposes to construct multiple apartment buildings for 252 residential units (with 444 bedrooms) at a residential density of 17.05 dwelling units per net acre. The applicant's proposed residential development falls within the density range recommended by the Plan for the subject site.
2. This recommendation is made subject to approval and certification of ZDP 2012-2: The Glen at Lochdale, Unit 4 (Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following buffering restriction is required for the subject property via conditional zoning:
 - a. There shall be planted and maintained along the southern boundary of the retention basin located on the subject property eight-foot (8') evergreen trees, staggered ten feet (10') on center.

This restriction is appropriate and necessary to provide a natural screen of the retention basin for the adjoining less intense residential development, and the applicant has agreed to provide this landscape buffer.

- b. ZDP 2012-2: THE GLEN AT LOCHDALE, UNIT 4 (AMD) (2/19/12)* - located at 3600 and 3652 Winthrop Drive.
(EA Partners)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree protection plan.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Denote the height of building in feet.
10. Denote final record plan information for subject property.
11. Denote: No building permits will be issued unless and until a consolidation plat is recorded to combine Tracts 1 & 2.
12. Complete internal pedestrian system (to sidewalk).
13. Resolve note #13 and compliance with floor area ratio and lot coverage.
14. Resolve tree line along eastern boundary and possible need for tree protection area.

Zoning Presentation: Ms. Wade presented the staff's zoning report, briefly orienting the Commission to the location of the subject property at the southeast corner of Man O' War Boulevard and Winthrop Drive. She said that other uses in the vicinity include Anchor Baptist Church, which is located just to the west of the subject property; single-family residential uses to the southwest and to the north across Man O' War Boulevard; and four-plex and town-house developments to the east and south along Goldon Trophy Trail. She noted that the subject property is approximately 15 acres in size, and is completely surrounded by residential zoning, consisting of mostly R-3 parcels, with some R-1D and R-4 zoning to the north. Other uses in the vicinity include more residential; the Millpond Shopping Center, to the west; and Fayette Mall, to the east and north. Winthrop Drive is a collector street; it extends to Jessamine County to the south and across Man O' War Boulevard to the north.

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Note: Mr. Brewer arrived at this time.

Ms. Wade displayed an aerial photograph of the subject property, explaining that it is currently vacant, with the exception of the existing retention pond on the southern portion of the two properties. The property was rezoned to R-4 in 1996 as part of a larger zone change from A-U to R-4. In 2007, the former owner proposed to rezone the property from the R-4 zone to the B-1 zone in order to construct a mixed-use development. In the four years since that zone change, the subject property has not developed, and it is now owned by a bank.

Ms. Wade said that the petitioner proposes to construct a multi-family housing development on the subject property, with 252 dwelling units comprising a total of 444 bedrooms on the site. The petitioner also proposes to construct a pool and clubhouse to serve the apartment development. The 2007 Comprehensive Plan recommends High Density Residential land use, which is defined as 10 to 25 dwelling units per net acre. The proposed apartment development would result in a residential density of 17.05 dwelling units per net acre, which is within the range recommended by the Comprehensive Plan.

Ms. Wade explained that, currently, the zoning of the subject property includes a conditional zoning restriction to require buffering and screening along a portion of the southern property line, where the retention basin adjoins existing residential development. The staff believes that that conditional zoning would still be appropriate at this location to provide screening from the higher-density apartment development for the existing four-plex units along Goldon Trophy Trail. Ms. Wade said that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda. She noted that the wording of the proposed conditional zoning restriction would be as follows: "There shall be planted and maintained along the southern boundary of the retention basin located on the subject property eight-foot evergreen trees, staggered 10 feet on center."

Commission Questions: Mr. Penn asked if the subject property was rezoned contrary to the recommendation of the Comprehensive Plan in 2007. Ms. Wade answered that the Planning Commission and the staff recommended disapproval of that request, because they found that it was not in agreement with the Comprehensive Plan. The Urban County Council, however, found that the request was in agreement with the Comprehensive Plan. Their decision was based on the Goals and Objectives and Implementation sections of the Comprehensive Plan, rather than just the Land Use map. Mr. Penn asked if the Planning Commission had recommended maintaining the residential zoning at that time. Ms. Wade answered in the affirmative.

Development Plan Presentation: Mr. Martin presented the corollary final development plan, noting that the staff had distributed a list of revised conditions to each of the Commission members prior to the start of this hearing. He explained that the petitioner is proposing to construct nine buildings on the subject property, each three stories in height, with 450 parking spaces to be located in the interior portion of the property. The petitioner also intends to construct a clubhouse and pool to serve the apartment development. The buildings are proposed to be just over 450,000 square feet in size, with 160,000 square feet for the footprints of the buildings. Mr. Martin stated that the staff is recommending approval of this plan, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree protection plan.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Denote the maximum height of the clubhouse building in feet.
- ~~10. Denote final record plan information for subject property.~~
- ~~11. Denote: No building permits will be issued unless and until a consolidation plat is recorded to combine Tract 1 & 2.~~
- ~~12. Complete internal pedestrian system (to sidewalk).~~
- ~~10.13. Discuss note #3 and compliance with floor area ratio and Addition of proposed mail kiosk/canopy into proposed lot coverage site statistics.~~
- ~~11.14. Resolve extent of tree line along southeastern property boundary and possible need for (next to existing basin) to be designated as a tree protection area, prior to plan certification.~~

Mr. Martin stated, with regard to the conditions for approval, that the staff is recommending #9 to correct what they believe is an oversight in the site statistics. Condition #10 refers to the addition of the proposed mail area to the site statistics. The petitioner needs to denote whether or not that area is proposed to be a building, because, if it is, its square footage must count toward the lot coverage. Condition #11 would require the resolution of an existing treed area on the property. The staff believes that there might be some significant trees located there; and, if so, the peti-

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tioner will need to denote that area for tree protection on the plan. Mr. Martin said that the petitioner has been working with the Urban Forester to determine the level of protection necessary for those existing trees.

Commission Questions: Ms. Copeland asked if the existing sidewalk extends past the detention basin. Mr. Martin answered in the affirmative. He explained that Winthrop Drive transitions to a collector street width of 60' near the subject property, and it has full improvements in that area. He added that the petitioner has addressed the Subdivision Committee's concerns about pedestrian connections by depicting that sidewalk on this revised development plan.

Mr. Penn asked if the retention basin is intended to serve only the subject property. Mr. Martin stated that the basin has been constructed for some time and is in use, but he is unsure whether it currently serves other properties. Mr. Penn asked if the retention basin was constructed for the formerly proposed commercial use; and, if so, if the petitioner intends to make the necessary modifications to it. Mr. Martin replied that it is the staff's understanding that some modifications to the basin. Mr. Penn asked, with regard to the utility easement on the property, if it is currently in use. Mr. Martin answered that it is an existing utility easement that has been in use for some time. Mr. Penn asked how the petitioner can rectify that situation, since the easement is located in the area designated for possible tree protection. Mr. Martin responded that the petitioner will need to protect the trees to the best of their ability, but any necessary utility work there will take precedence over the maintenance of the trees.

Mr. Owens asked if the proposed lot coverage on the property is within the allowable limits. Mr. Martin answered that it is within the limits, although it is near the top of the allowable range. Mr. Sallee added that the lot coverage is the key statistic that is closest to the maximum allowable, which is the basis for condition #10 concerning the mail kiosk.

Petitioner Presentation: Rena Wiseman, attorney, was present representing the petitioner. She said that the subject property was rezoned to B-1 in 2007 contrary to the recommendation of the Planning Commission, who found that rezoning to be contrary to the recommendation of the Comprehensive Plan. At that time, the Planning Commission found the R-4 zoning to be appropriate for the subject property. When the property was rezoned to R-4 in 1996, the residential density proposed was close to what is currently proposed by the petitioner.

Ms. Wiseman stated that the subject property is currently owned by a bank, and the petitioner has a contract to purchase it, which includes some time constraints that relate to the filing of the development plan. She said that, normally, the petitioner would not file a final development plan with a rezoning request due to the two-week certification requirement. However, the petitioner's contractual requirements dictated that they finalize the development plan as quickly as possible in order to close on the property. Ms. Wiseman said the petitioner has been working with the staff, and has already satisfied many of the sign-off conditions on the development plan. With regard to the new condition #11, the petitioner would like to request a modification to the language to require that they preserve the existing healthy trees, but not designate a tree preservation area. Ms. Wiseman explained that the petitioner will need to do some clearing of dead trees and brush in order to make the needed modifications to the retention basin, and they will not be able to do so if they are required to designate the entire area for tree preservation. The Urban Forester has reviewed the property, and he does not believe that the area needs to be set aside as a formal tree protection area. The petitioner would like for that condition to denote that the petitioner will maintain large, healthy trees in that location.

Ms. Wiseman said that the petitioner is in agreement with the staff's findings, with the exception of #3, which would maintain the existing conditional zoning restriction to require landscape buffering along the southern boundary of the subject property. The petitioner met with representatives of the Magnolia Run neighborhood, who requested that there be no trees or screening along that boundary in order to maintain their view of the retention basin. To that end, the petitioner would like to request that that conditional zoning restriction be changed to a development plan note requiring the planting of evergreen trees along that boundary. Should the petitioner obtain a formal statement from the neighborhood requesting that no trees be planted there, the plan note could then be amended to reflect that request. If the conditional zoning restriction is maintained, the petitioner would be required to go through the zone change process in order to remove it. Ms. Wiseman said that the Magnolia Run representatives are interested in the petitioner cleaning up the retention basin and maintaining it as an amenity for their neighborhood, as well as the proposed development.

Commission Questions: Mr. Penn asked, with regard to the utility easement on the southern property boundary, what the petitioner proposes to do with the existing trees in the easement. Rory Kahly, EA Partners, answered that the existing boundary between the subject property and the four-plexes on Goldon Trophy Trail has a recorded utility easement, which has precedence. The petitioner's plan is depicting a tree protection area along the longest side of the proposed building nearest that property line. Mr. Kahly explained that the petitioner agrees not to disturb the trees during grading and construction activities on the property, but they cannot prevent the utility company from using the recorded easement.

Mr. Penn asked if the retention pond will need to be expanded or deepened. Mr. Kahly answered that he met with Hillard Newman, Division of Engineering, and learned that the basin was originally designed for detention, rather

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than retention. The Division of Engineering is of the opinion that the petitioner can either: rectify the condition that is causing the basin to retain water all the time, and then use as for detention only; or, submit a new development plan requesting that the basin be maintained for retention, and used as a pond feature for the proposed development. Mr. Kahly added that he does not know at this time the extent of the grading that will be necessary. Mr. Penn asked how much bigger the retention pond would be. Mr. Kahly answered that the petitioner will not know the exact dimensions until the development plan is approved and certified, and construction begins on the property. Ms. Wiseman added that the retention basin was originally designed to accommodate a residential use in the 1990s, rather than the business use that was proposed when the subject property was rezoned in 2007.

Ms. Copeland opined, with regard to the request of the Magnolia Run subdivision residents to not hamper their view of the retention pond, that it would be preferable for them to view the pond through trees. She asked if the petitioner and the Urban Forester would be agreeable to spacing the trees about every 20 feet on center, rather than every 10 feet as required by the existing conditional zoning restriction. Mr. Kahly answered that the conditional zoning restriction currently requires trees planted every 10 feet on center, and the petitioner cannot change that. If the Commission chooses to make that requirement a development plan note, however, the petitioner can plant the trees as Ms. Copeland suggested. Ms. Wade replied that there is currently a long list of conditional zoning restrictions associated with the subject property which relate to B-1 uses. The staff believed that the conditional zoning restriction requiring buffering might be appropriate, but it is not required between two residential zones. The staff would be agreeable, therefore, to removing that restriction, should the Commission members so choose.

Ms. Copeland stated that she would like for some trees to be planted on that boundary to soften the lines of the building. Ms. Wade explained that that could be achieved with a development plan note, which would provide more flexibility than a conditional zoning restriction.

Mr. Owens asked if a conditional zoning restriction or a development plan note would be more appropriate to address the issue of buffering along the southern property boundary. Ms. Wade answered that, if the Planning Commission approved a development plan condition, it would become condition #12. It could read "resolve" the landscaping, which would be very general, or it could require specifics. She noted that a conditional zoning restriction has more enforcement power, and is generally "stronger" than a development plan note, since conditional zoning restrictions require refileing a zone change, notifying surrounding property owners, and forwarding the zone change to the Urban County Council for their action. Mr. Martin stated, with regard to the petitioner's request to modify condition #11, that the staff would be agreeable to changing the language to read: "Resolve the extent of tree protection necessary." That language would allow the petitioner to work with the Urban Forester to determine which trees are worthy of protection.

Ms. Beatty asked if the retention pond could create a safety hazard for the surrounding neighborhoods, and if the residents of those neighborhoods should be notified that there will be a pond on the subject property. Mr. Martin answered that the retention pond currently exists, and has been there for some time, so the nearby residents should be aware of it. He added that the Division of Engineering has estimated the depth of the pond at two to three feet.

Ms. Roche-Phillips asked if the retention pond will hold water temporarily, or have standing water continually. Mr. Kahly answered that detention basins hold water during events, then let it go; retention basins have a permanent pool. If the petitioner decides to use the pond as a retention basin, there will be a permanent pool level, and a flood control level. The water level would still fluctuate somewhat, but there would be a basic depth that would be maintained continually.

Ms. Copeland asked what Tim Queary, Urban Forester, would recommend with regard to whether a conditional zoning restriction or development plan note would be more appropriate. Mr. Queary answered that a development plan note should be sufficient to address the treatment of the wooded area on the subject property. With regard to Ms. Copeland's suggestion to provide more space between the trees in the landscape buffer, Mr. Queary said that it would not be appropriate to require that as part of a conditional zoning restriction, but a development plan note should suffice in that case as well. Ms. Copeland asked if Mr. Queary would recommend wording the development plan condition to include an "evergreen buffer." Mr. Queary responded that zone-to-zone screening in the form of a landscape buffer is not required along that property boundary; rather, the former owner of the property agreed to that conditional zoning restriction at the time of the zone change in 2007. Mr. Queary did not believe that that buffer is required, but the Commission can require evergreens planted 20 feet on center as a development plan condition, if they so choose. Mr. Kahly stated that the petitioner would be agreeable to maintaining the conditional zoning restriction, but they wanted to accommodate the request of the Magnolia Run residents who indicated a preference for an unobstructed view of the retention basin. He added that the petitioner would be agreeable to providing evergreen trees planted 20 feet on center, or in groups of three. Ms. Copeland stated that she does not like to see a natural setting with trees planted in rows. Mr. Kahly suggested that the development condition could read as follows "...evergreen plantings along the southern boundary in groups of three or more, leaving gaps of 20 feet between clusters." The Commission could also word the condition to require evergreen plantings; and, knowing their wishes, Mr. Kahly could ensure that the trees are planted according to Ms. Copeland's suggestion.

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Ms. Wiseman asked for clarification on condition #10, since the petitioner is concerned about the designation of a tree preservation area. Mr. Sallee answered that the proposed language for a condition that could read: "Resolve extent of tree protection, as necessary."

Mr. Penn asked who would be liable if someone drowned in the retention basin. Ms. Wiseman responded that whoever has responsibility for maintaining the retention pond would be subject to liability in that unfortunate event. She added that the petitioner will be required to adhere to the regulations of not only the Lexington-Fayette Urban County Government, but the Army Corps of Engineers as well, and will have to take reasonable measures to protect the public. Mr. Penn asked why a property owner would want a retention basin, since the possibility of such a liability exists. He said that, because there are many residences located near the retention basin, he is concerned about the safety of the residents and the possibility of liability. Ms. Wiseman answered that it is an individual decision for each landowner to weigh the risk of liability against the potential of creating an attractive amenity.

Mr. Owens asked if the staff would be comfortable with requiring a development plan condition, rather than a conditional zoning restriction, to address the issue of a landscape buffer for the southern property boundary. Ms. Wade answered that the staff is comfortable with a development plan note that would provide some flexibility for the petitioner. Mr. Owens asked the staff to provide some language for that note. Mr. Sallee explained that the minutes of this meeting would clearly indicate that the language should be similar to what was mentioned earlier in this hearing. Ms. Wade said that Mr. Kahly had suggested evergreen plantings in groups of three or more spaced at least 20 feet apart along the southern boundary.

Ms. Copeland clarified that the trees should be planted with a group of three, then a 20-foot space, then another group of three.

Citizen Opposition: Lisa Rogers, 3206 Pimlico Parkway, stated that she is a trustee at Anchor Baptist Church. She said that many church members are concerned about the safety of the retention basin, and asked if the petitioner could place signs noting the location of the pond.

Ms. Rogers said that church members are also concerned about traffic in the vicinity of the subject property. There is a great deal of traffic entering and leaving their property for services on Sundays and Wednesdays, in addition to traffic generated by Trinity Christian Academy Middle School, which is housed on their property. The church members are concerned that the proposed development could exacerbate a difficult situation.

Discussion: Ms. Roche-Phillips asked Ms. Rogers to note the location of the church on the rendered development plan. Ms. Rogers did so, noting that the entrance to the church is located in the curve of Winthrop Drive.

Ms. Copeland asked Mr. Sallee to display an aerial photograph of the subject property and the surrounding neighborhood. She said that the existing residential area appeared to be very isolated from Millpond Shopping Center, and that she believed that the Commission should avoid duplicating this type of development pattern in the future.

Mr. Owens stated that he appreciated the concerns of the members of Anchor Baptist Church

Zoning Action: A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 10-0 (Wilson absent) to approve MAR 2012-1, for the reasons provided by staff, deleting finding #3.

Development Plan Action: A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 10-0 (Wilson absent) to approve ZDP 2012-2, subject to the first 10 conditions as listed; changing #11 to read: "Resolve extent of tree protection as necessary prior to certification;" and adding condition #12 to require plantings of three or more evergreen trees spaced at least 20' apart along the southern property boundary.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. ZOTA 2012-1: CANOPY SIGNS IN THE P-1 ZONE (5/1/12)* – a Zoning Ordinance text amendment to Article 17-7(e)(6) to allow canopy signs in the Professional Office (P-1) zone.

REQUESTED BY: Ball & Wright Capital Holding Company, LLC

PROPOSED TEXT: (Note: Text underlined indicates an addition, and text ~~dashed through~~ indicates a deletion to the current Zoning Ordinance.)

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ARTICLE 17: SIGN REGULATIONS

17-3(c)(1) AWNING SIGN - A sign painted on or printed on, or attached flat against, the surface of an awning. As used in this Article, awning shall be defined as a shelter supported entirely from an exterior wall of a building consisting of cloth or other similar non-rigid material supported by a frame.

17-3(c)(3) CANOPY SIGN - A sign painted, printed or attached flat against a surface of a canopy. As used in this Article, canopy shall be defined as a permanently roofed shelter covering a sidewalk, driveway or other similar area, which shelter may be wholly supported by a building or may be wholly or partially supported by columns, poles or braces extended from the ground.

17-4(o) CANOPY SIGNS AS PART OF ALLOWABLE WALL SIGNAGE - Canopy signs shall be counted as a part of and limited to the percentage allowable for wall signs. The height of canopy signs shall not exceed twenty (20) feet. For any case where the vertical dimension of the canopy face exceeds three (3) feet, only three (3) feet of the vertical dimension shall be used for computing the area of such facing, and any sign or sign cabinet permitted shall have a maximum vertical dimension of three (3) feet.

17-7(e) PROFESSIONAL OFFICE ZONE (P-1) AND MIXED USE 1: NEIGHBORHOOD NODE ZONE (MU-1) - Permitted signs may be either free standing or wall mounted, as specifically noted; signs shall be non-illuminated, indirectly illuminated, or internally illuminated unless otherwise specified. No free-standing sign shall exceed ten (10) feet in height.

- (1) Identification or Business signs, limited to one free-standing sign per building and one wall-mounted sign per street frontage, with a maximum of two such wall-mounted signs per building; free-standing sign not to exceed forty (40) square feet in area; wall-mounted sign not to exceed five percent (5%) of the wall area to which it is attached; minimum setback of ten (10) feet for a free-standing identification sign.

(Note: Where a free-standing sign is not utilized on a lot with only one street frontage, a second wall-mounted sign on a different building face shall be permitted as regulated above in place of the permitted free-standing sign.)

...

- (6) Canopy or awning signs, limited to fifteen percent (15%) of the area of the surface to which it is attached, or twenty (20) square feet, whichever is greater.

[Re-number remaining sections]

17-7(f) NEIGHBORHOOD BUSINESS ZONE (B-1) - Permitted signs may be free standing or wall mounted as specified; signs shall be non-illuminated, indirectly illuminated, or internally illuminated unless specified otherwise. No free-standing sign shall exceed twenty (20) feet in height.

- (1) Business signs shall be permitted as follows:
 - (f) Canopy or awning signs (including above-canopy signs) shall be permitted and included in the computation of the maximum permitted sign area and limited to the percentage allowable for wall signs. Under-canopy or under-awning signs shall be permitted and limited to identification signs.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff, and suggested staff meet with the applicant to try to resolve concerns.

The Staff Recommends: **Approval of the Staff Alternative Text** for the following reasons:

1. The proposed text amendment will allow an appropriate addition to the otherwise permitted signage in the Professional Office (P-1) and Mixed Use: 1 Neighborhood Node (MU-1) zones. Canopy and awning signs are typically needed for directional or identification purposes, and allowance of such signage would benefit the customers and businesses within these areas of the community.
2. The community's signage has been regulated in a tiered approach so that the least intensive business zones have the least intensive signage, and the most intensive business zones permit a greater number of signs, and ones that may be taller or larger in size. The alternative text is consistent with the existing tiered approach of *Article 17: Sign Regulations*.

Staff Presentation: Ms. Wade presented the staff report on this request to amend the text of Article 17 of the Zoning Ordinance for canopy signs in the P-1 zone. She said that canopy signs are currently not permitted in the P-1 zone, but they are allowed in all business zones. When Article 17 was rewritten in 1983, it was decided that the P-1 zone should be allowed the least amount of commercial signage, since it is the least intense of the commercial zones. Article 17 takes a tiered approach to signage, with the more intense zones permitted to have larger, taller, or a greater number of signs.

Ms. Wade said that the Zoning Ordinance definition of canopy signs is: "A sign, painted or printed, attached flat against the surface of a canopy." It defines a canopy as, "A shelter covering a sidewalk, driveway, or other similar area," and notes that a

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canopy may or may not be supported by a building. Ms. Wade displayed several photographs with examples of canopy signs, including some such signage located in P-1 zones in other communities, and some canopy signs for bank drive-throughs.

Ms. Wade stated that Article 17-7 regulates signage in the various zones; section (e) regulates signage in the P-1 and MU-1 zones together. Article 17-4 (o), which regulates canopy signs in general, calls for those signs to be a part of wall signage, which are counted and limited as part of the percentage allowable for wall signs. Canopy signs, when attached, can only be 20 feet in height, and, in any case where the vertical dimension of a canopy face exceeds three feet, only three feet can be used to calculate the face area. In addition, the cabinet height of a sign attached to a canopy can only be three feet.

Ms. Wade said that the petitioner requested this text amendment specifically to identify bank drive-through facilities in a P-1 zone. Drive-throughs are conditional uses in the P-1 zone, and require Board of Adjustment approval. The petitioner's primary concern is identifying a drive-through associated with a bank. They indicated in their justification for this request that the limited signage allowed in the P-1 zone has, in some circumstances, not provided enough identification for patrons to identify which bank they were approaching in areas with more than one branch bank located in close proximity to one another. Ms. Wade stated that the petitioner is proposing to allow a small sign to be located on a canopy or awning in the P-1 zone. Specifically, the petitioner is proposing to add section (6) to Article 17-7(e) to allow canopy or awning signs limited to 15% of the area of the surface to which it is attached, or 20 square feet, whichever is greater.

Ms. Wade stated that, when the staff reviewed the petitioner's proposed text, they had two major concerns. First, that the phrase, "or 20 square feet, whichever is greater," could possibly permit a larger sign in a P-1 zone than in the other business zones, because it guarantees at least 20 square feet of signage. The staff believes that adding that phrase could take away from the consistent, tiered approach that Article 17 has with regard to signage.

Ms. Wade stated that, in an attempt to mitigate that concern, the staff proposed the following alternative text:

17-7(e) PROFESSIONAL OFFICE ZONE (P-1) AND MIXED USE 1: NEIGHBORHOOD NODE ZONE (MU-1) -
"(6) Canopy or awning signs limited to 15% of the area of the surface to which they are attached. Such sign area shall be included in the total computation for the maximum sign permitted."

She explained that, if a sign is already permitted on the wall of the building, any canopy sign would have to "borrow" square footage and transfer it from the wall sign to the canopy sign, in order to prevent the permission of wall signs greater than what is already permitted in the P-1 zone. When the staff presented the proposed alternative text to the Zoning Committee, the petitioner was concerned that the 15% limit, combined with the restrictions in Section 17-4(o), would allow them to have a canopy sign, but the sign would not be visible from the street. Ms. Wade stated that, following that meeting, the staff met with the petitioner and agreed that changing the vertical dimension and amount used to calculate the 15% of signage allowable on a canopy sign could be increased. That would result in an increase from three feet to five feet for the vertical dimension of canopy signs.

Ms. Wade stated that the Commission members had received copies of the following proposed staff alternative text, upon which they and the petitioner were able to agree:

17-4(o) CANOPY SIGNS AS PART OF ALLOWABLE WALL SIGNAGE - Canopy signs shall be counted as a part of and limited to the percentage allowable for wall signs. The height of canopy signs shall not exceed twenty (20) feet. For any case where the vertical dimension of the canopy face exceeds ~~three (3)~~ five (5) feet, only ~~three~~ five (5) feet of the vertical dimension shall be used for computing the area of such facing, and any sign or sign cabinet permitted shall have a maximum vertical dimension of three (3) feet.

Ms. Wade said that the Zoning Committee recommended approval of the staff alternative text, with the caveat that the staff meet with the petitioner and resolve their concerns. The staff is recommending approval of the staff alternative text, including the new change to Article 17-4(o), for the reasons as listed on the agenda.

Commission Questions: Mr. Owens asked if the allowable sign dimensions would remain the same or increase if this proposed text amendment is approved. Ms. Wade answered that, in the P-1 zone, signage is limited to 5% of the face of the building. For example, she said, if 4.5% was used for a wall sign, .5% would then be usable for a canopy sign, but 5% would be the overall limit. Signs in the P-1 zone would also be limited to 15% of the face of the canopy to which they are attached. Mr. Owens asked if approving the proposed text amendment would result in an increase in the overall dimensions of signage. Ms. Wade responded that the proposed text amendment would permit the transfer of unused signage to a new type of sign, which is not currently listed in the P-1 zone, rather than increase the overall size.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He displayed a photograph of one of the petitioner's buildings, in which Whitaker Bank is a tenant. Mr. Murphy stated that the petitioner has pioneered the trend of leasing space to branch banks on the ground floors of larger office buildings, which eliminates the need for free-standing bank facilities in suburban areas. They have constructed four such buildings, which were designed by local architect Scott Guyon, with attractive, innovative designs.

Mr. Murphy stated that, since most suburban banks are freestanding, one-story buildings, their drive-through facilities are easily identifiable with signage. When the bank is located in a larger building, however, it becomes more difficult for drivers to identify drive-through facilities from the street. Mr. Murphy displayed a photograph of the petitioner's building on Governors Lane, noting the location of the drive-through. At that location, there are three ways to approach the building; from two of those directions, there is no way to easily identify which drive-through is associated with which bank, since there is no signage on the canopy. The petitioner is requesting the proposed text amendment in order to install a sign on the face of the canopy.

Mr. Murphy stated that the petitioner has worked with the staff to develop the staff alternative text, which should accommodate the petitioner's needs, as well as the staff's concerns. He said that the petitioner contends that encouraging branch banks to locate as tenants in larger buildings, rather than construct small freestanding buildings, is a better use of available land.

Citizen Comments: No other citizens were present for this public hearing.

Commission Questions: Mr. Penn asked if the proposed text amendment would apply only to canopies attached to a building, rather than a stand-alone canopy. Mr. Murphy answered that the Ordinance requires that such a structure be attached to a building in order to be defined as a canopy. Mr. Penn stated that he is concerned about the possibility of stand-alone canopies with signage in the P-1 zone.

Action: A motion was made by Mr. Cravens, seconded by Mr. Brewer, and carried 10-0 (Wilson absent) to approve the staff alternative text for ZOTA 2012-1, for the reasons provided by staff.

2. ZOTA 2012-2: AMENDMENT TO ARTICLE 29 TO UPDATE REFERENCES TO CODES FOR PROPERTIES WITHIN THE ND-1 OVERLAY ZONE – a Zoning Ordinance text amendment to Article 29-6 to update references to codes for properties within the Neighborhood Design Character Overlay (ND-1) zone.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: (Note: Underlined text indicates an addition, ~~text dashed through~~ indicates a deletion to the current Zoning Ordinance.)

ARTICLE 29: NEIGHBORHOOD DESIGN CHARACTER OVERLAY (ND-1) ZONE

29-6 COMPLIANCE WITH OTHER CODES, STATUTES AND REGULATIONS - In order to prevent purposeful neglect of structures within zones protected by neighborhood design character overlays, all properties shall comply with the ~~BOCA, adopted Basic~~ Property Maintenance Code, as well as all other applicable codes, statutes, and regulations. To accomplish this, the Division of Code Enforcement shall, on an ~~annual~~ quarterly basis, compile and forward to the Planning Commission a list of those properties in zones with neighborhood design character overlays that have been found to be in violation of the ~~BOCA Basic International~~ Property Maintenance Code, 1998 Edition.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

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

1. This is a timely and appropriate amendment to Article 29-6 of the Zoning Ordinance in order to update incorrect references, and to alter the frequency of required meetings with code enforcement officials from a quarterly to an annual basis.
2. These changes were suggested by the Divisions of Code Enforcement and Fire and Emergency Services.

Staff Presentation: Ms. Wade presented the staff report, noting that this request is very similar to a text amendment that was presented to the Planning Commission late in 2011. She said that the proposed text amendment would amend references to property maintenance codes in the ND-1 zone. The Zoning Ordinance currently references the BOCA, adopted Basic Property Maintenance Code, although the Division of Code Enforcement is currently using the International Property Maintenance Code, 1998 Edition. Ms. Wade stated that the staff is recommending approval of this change, as well as allowing the Division of Code Enforcement to provide an annual report to the Planning Commission, rather than a quarterly report. She noted that the Planning Commission has not received such a report to date, but the staff is currently working with the Division of Computer Services to establish an automated process to create that report, so that it can be provided to the Planning Commission. She said that the Zoning Committee also recommended approval of this request.

Commission Questions: Mr. Owens asked what type of data the Planning Commission could expect to see on an annual report, and what type of action would be required of them. Ms. Wade answered that the Commission could possibly receive a summary of which properties currently have code violations, and how many violations they've had within a calendar year. The next steps would likely be to research whether the code violations have been corrected; and, if they have not been cor-

* - Denotes date by which Commission must either approve or disapprove request.

rected, what would be necessary to do so. Ms. Wade added that the staff would likely not provide detailed information for each case, but would be able to provide that information if the Commission requested it. Mr. Owens asked if there would be any point in providing a report, if the issues had been in place for most of a year. Ms. Wade responded that the report is intended to be informational in nature only, to let the Planning Commission know what types of issues might be occurring in the ND-1, H-1, and Courthouse Area overlay zones.

Mr. Penn asked if the code violations would be complaint-driven. Ms. Wade answered that some of them would be nuisance complaints, such as weeds or broken windows. She added that one complaint could have a single violation, or several.

Ms. Roche-Phillips asked if any of this type of reporting had been done during Ms. Wade's time with the Division of Planning. Ms. Wade responded that it had not.

Ms. Beatty asked if the Planning Commission would have a role in any follow-up action to the reports. Ms. Wade answered that they would not; the reports would be informational only.

Mr. Berkley asked if the reporting requirement would be different for the H-1 and Courthouse Area overlay zones. Ms. Wade responded that the Planning Commission has already updated the text for the Courthouse Area overlay zone. The H-1 text has not yet been amended, because the Historic Preservation Commission intends to propose some other amendments, and the staff will likely group them together for a single text amendment application. Ms. Wade explained that, when those three text amendments are complete, the reporting requirement will be the same for the three overlay zones.

Mr. Penn asked if this proposed text amendment is the result of the re-aligning of some of the duties of the Division of Planning. Ms. Wade answered that it is not.

Citizen Comments: No other citizens were present for this public hearing.

Action: A motion was made by Ms. Blanton, seconded by Mr. Brewer, and carried 10-0 (Wilson absent) to approve ZOTA 2012-2, for the reasons provided by staff.

- VI. **COMMISSION ITEMS** – Ms. Roche-Phillips asked if all of the Planning Commission members are agreeable to the by-law changes that were discussed at last week's work session, and if a plan for how to make those changes has been decided upon. Mr. Paulsen answered that he had discussed the issue with Mr. King, and he had not yet had time to write a series of possible options for the Commission members' discussion. He said that Mr. King would report that information to the Commission at their next work session, and then possibly address the changes at the public hearing following that work session. Ms. Roche-Phillips asked if the Commission members who were not present at the work session had been made aware of the proposed changes. Mr. Paulsen indicated that they had.

Mr. Owens asked if it would be appropriate to revise the signage Ordinance at some point to reflect the recent technological changes in the sign industry. Mr. Saltee responded that there have been several text amendments to that Article of the Ordinance in the past 30 years, but the most recent re-write took a full two years to accomplish.

- VII. **STAFF ITEMS** – No such items were presented.

- VIII. **AUDIENCE ITEMS** – No such items were presented.

IX. **MEETING DATES FOR FEBRUARY, 2012**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	February 2, 2012
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	February 2, 2012
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	February 9, 2012
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	February 16, 2012
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	February 22, 2012
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	February 23, 2012

- X. **ADJOURNMENT** – There being no further business, Chairman Paulsen declared the meeting adjourned at 2:45 p.m.

TLW/TM/CT/BJR/BS/src

* - Denotes date by which Commission must either approve or disapprove request.