

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky August 13, 2013

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on August 13, 2013 at 5:00 P.M. Present were Mayor Jim Gray in the chair presiding, and the following members of the Council: Council Members Gorton, Henson, Kay, Lawless, Mossotti, Scutchfield, Beard, Clarke, Ellinger, Farmer, and Ford. Absent were Council Members Lane, Myers, Stinnett and Akers.

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*****Please Note: The Meeting was called to order at 6:05 p.m.*****
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The Mayor spoke about expected decorum during the hearing, and explained the procedures for the public hearing. He stated each side had agreed to limit their presentations to forty-five minutes each, and swore in the witnesses present.

An Ordinance changing the zone from a Neighborhood Business (B-1), Professional Office (P-1), Single Family Residential (R-1E) and High Density Apartment (R-4) zone to a Planned Shopping Center (B-6P) zone, for 3.1462 net (3.6588 gross) acres, for properties located at 704 Euclid Avenue; and 408, 412, 416 and 420 Marquis Avenue including dimensional variances (Kroger Limited Partnership 1; Council District 3) was given second reading with a public hearing being held.

Mr. Bill Sallee, Div. of Planning, gave his presentation and filed the following exhibits: (1) Legal Notice; (2) Affidavit of Letters Mailed; (3) MARV 2013-10: Recommendation and Planning Commission Minutes; (4) Land Subdivision Regulations; (5) 1983 Zoning Ordinance with Amendments; (6) 2007 Comprehensive Plan; (7) Design Guidelines for Big Box Retail Establishments; (8) Letters and Emails from Objectors and Supporters; (9) Aerial Photographs of Subject Property; (10) MAR 2013-10 Map; (11) Subject Area Map; (12) Ground Level Photographs of Subject Property; (13) Map of Land Use Element from 2007 Comprehensive Plan for MAR 2013-10; (14) Preliminary Development Plan Map for ZDP 2013-32; and (15) Large Map of MAR 2013-10.

The Mayor asked questions of Mr. Sallee regarding the outcome of the Planning Commission hearing. Mr. Sallee responded.

Ms. Amy Clark, on behalf of the Opponents, asked questions of Mr. Sallee regarding the variances. Mr. Sallee responded.

Mr. Bruce Simpson, Attorney for the Applicant, stated he had filed the following exhibit: (1) Motion to Consider Architectural Renderings re: Kroger Zone Map Amendment Request (Euclid Avenue), and asked the Mayor and Council to consider his request.

Mr. Ellinger made a motion, seconded by Ms. Gorton, to incorporate architectural renderings and to hold them bound and accountable to the zone change.

Mr. Kay asked questions of Ms. Tracy Jones, Dept. of Law, regarding the Applicant's accountability for adherence to architectural renderings once approved by Council. Ms. Jones responded. Mr. Sallee also responded regarding the final development plan review process.

Ms. Gorton asked additional questions of Ms. Jones.

Ms. Lawless asked questions of Mr. Simpson.

The Council continued to discuss the motion, and to ask questions of Mr. Simpson, Ms. Jones, and Mr. Sallee.

Mr. Ellinger's motion passed by unanimous vote.

Mr. Bruce Simpson, Attorney for the Applicant, gave his presentation and filed the following exhibits: (2) Affidavit of Signs Posted; (3) Exhibits on Behalf of Applicant in Support of Zone Change and Variances containing the following: (a) Emphasis on Infill; (b) Adjacent Properties; (c) Existing Kroger Store; (d) House on Marquis; (e) Screening; (f) Existing Sidewalk on Marquis; (g) Access to South Ashland; (h) Pedestrian Connectivity; (i) Staff Recommendation of Approval on Zoning; (j) Staff Recommendation of Approval on Variance Request; (k) Staff Recommendation of Approval on All Variance Requests; (l) Kroger's Substantial Philanthropy Efforts; (m) Neighborhood Business (B-1) Zone; (n) Planning Shopping Center (B-6P) Zone; (o) Supporting Article for Kroger; (p) Latest Changes to Development Plan; and (q) Recommendation of Planning Commission - Unanimous Approval; (4) Architectural Renderings of Proposed Kroger Store; and (5) Landscape Concept Plan.

Ms. Clark asked questions of Mr. Simpson regarding several parts of his presentation. Mr. Simpson responded, as did Mr. Joseph Hamilton, Kroger Co. Mr.

Simpson also asked Mr. Bob Cornett, The Roberts Group, to speak about the preliminary development plan.

Ms. Amy Clark gave her presentation on behalf of the Opponents (Euclid League and Columbia Heights Neighborhood Association), and filed the following exhibits: (1) Witness List; and (2) Photos of subject area and preliminary development plan.

Ms. Clark introduced witness Ms. Virginia Daley, Burley Avenue, to speak about "food deserts". Ms. Daley filed the following exhibit: (1) Map Showing Food Access Points.

Ms. Clark continued to make her presentation. She introduced the following exhibits: (3) Design Guidelines Adopted for Big Box Retail Establishments; (4) Brochure entitled "A New Euclid Kroger"; (5) Proposed Zoning Conditions MARV 2013-10: Kroger Limited Partnership I Petition for Zone Map Amendment; and (6) Findings of Fact for Disapproval of MARV 2013-10: Kroger Limited Partnership I Petition for Zone Map Amendment.

The Council recessed at 8:00 p.m.

The Council returned at 8:07 p.m. with the same members present.

The Mayor asked that the Council hear one citizen's public comment out of order so that the citizen could leave the hearing. The Council agreed.

Ms. Linda Kelley, Marquis Avenue, spoke against the requested zone change and presented several photographs of her property to the Council.

Mr. Sallee made his rebuttal statement and filed the following exhibits: (16) Zoning Ordinance Article 12-6: Locational Standards for Shopping Centers, and (17) Locational Standard Assessment.

Mr. Simpson made his rebuttal and closing statement.

Ms. Clark made her rebuttal and closing statement.

Mr. Simpson asked that he be allowed to make his closing statement following public comments. The Mayor agreed.

The following citizens spoke against the requested zone change: (1) Mr. John Brice, Attorney representing Town and Country Apartments, South Ashland Ave., who filed the following exhibit: (A) Slide Presentation; (2) Dr. Margaret Readdy, Chenault Road; who filed the following exhibits: (A) Zoning Ordinance Article 12; (B) Zoning

Ordinance Section 8-19; (C) Zoning Ordinance Section 8-16; (D) Calculation of Acreage; (3) Ms. LeighAnn Parker-Greathouse, South Ashland Ave.; (4) Ms. Janet Cowen, Columbia Avenue, President of Columbia Heights Neighborhood Association; (5) Ms. Esther Murphy, Clay Avenue; (6) Chuck Mallory, Hollywood Drive, who filed the following exhibit: (A) Photographs of Subject Property on Marquis Avenue; (7) Ms. Nancy Stengel, Arcadia Park; (8) Mr. Daniel Cooper, Transylvania Park, who showed a Graph of Comparison of Estimated Areas of Grocery Locations in Lexington; (9) Ms. Ann Sweeney, Bullock Place; (10) Ms. Kelly Weber, Ashland Terrace Retirement Home, South Ashland Avenue; (11) Ms. Clarissa Spawn, Irvine Road; (12) Ms. Kate Savage, Columbia Avenue, who filed the following exhibits: (A) Petitions with 478 signatures and list of 102 signatures from on-line petition; She also showed a slide presentation; (13) Ms. Pearl James, Tremont Avenue; (14) Mr. Ted Cowen, Columbia Avenue; who filed the following exhibit: (A) Article from the 'North Dallas Gazette;' (15) Ms. Debbie Salyer, Clay Avenue; (16) Mr. Mark Barker, Park Avenue, who filed the following exhibit: (A) Photographs of subject area; (17) Ms. Pauline Rodgers, Tremont Avenue; (18) Ms. Kathy Franklin, Elizabeth Street; (19) Ms. Celeste Lewis, Ashland Terrace; and (20) Mr. Ike Laurence, Clinton Road. President of Aylesford Neighborhood Association.

The following citizens spoke in favor of the requested zone change: (1) Ms. Jeb Emmons, West High Street; who filed the following exhibit: (A) Copy of Ms. Emmons' prepared comments; (2) Mr. Graham Pohl, Fincastle Road; and (3) Mr. Robin Michler, Marquis Avenue.

Ms. Clark gave an additional statement of summation on behalf of the opposition.

Mr. Simpson made his rebuttal and closing statement.

Mr. Beard asked questions regarding the current Kroger structure. Mr. Simpson responded.

Ms. Lawless asked additional questions of Mr. Simpson.

Ms. Gorton asked questions regarding stormwater management of Mr. Sallee. She also asked questions of Mr. Simpson.

Ms. Henson asked questions of Mr. Simpson regarding various aspects of the project. Mr. Joseph Hamilton, Kroger Co., also responded.

Ms. Mossotti asked questions of Mr. Sallee regarding the easement issues around the property. Mr. Simpson also responded to the questions.

Mr. Kay asked questions of Mr. Simpson about the scale of the project.

Mr. Farmer asked questions of Mr. Simpson regarding Mr. Daniel Cooper's bar graph "Comparison of Estimated Areas of Grocery Locations in Lexington". Mr. David Prueter, Director of Real Estate for Kroger Co., also responded to questions.

The Council and the Mayor continued to ask questions of Mr. Simpson, Mr. Hamilton, and Mr. Prueter.

Mr. Farmer asked questions regarding the structure's design. Mr. Simpson responded, as did Mr. Bob Cornett, The Roberts Group. Mr. Prueter answered additional questions.

The Council continued to ask questions of Mr. Prueter.

Ms. Lawless asked about a traffic study for South Ashland Avenue. Mr. Simpson asked Ms. Diane Zimmerman, Jacobs Engineering, to respond.

Ms. Gorton asked questions of Mr. Graham Pohl, Fincastle Road, regarding his volunteer work with the preliminary design of the store. Mr. Pohl responded.

Mr. Ford asked questions of Mr. Simpson and Mr. Prueter regarding the PNC Bank structure near the subject property.

Mr. Kay made comments about the zone change and asked questions of Mr. Simpson.

Mr. Farmer asked questions of Mr. Simpson regarding landscaping on the property. Mr. Prueter also responded.

Ms. Lawless asked Mr. Simpson if the applicant would agree not to have gas pumps on the property. Mr. Simpson agreed on their behalf.

The Mayor closed the public hearing.

The Mayor asked Ms. Tracy Jones, Dept. of Law, to review the process for adopting Findings of Fact and the Ordinance. Ms. Jones reviewed the procedure.

Ms. Lawless made a motion, seconded by Ms. Henson, to adopt the following Findings of Fact for Disapproval:

- 1) There is insufficient evidence in the record to demonstrate that the requirements of KRS 100.213 are met to support a zone map amendment for the subject parcels and following reasons:

- a) The Applicant proposes a re-zoning of five parcels of land with the following parcel identification and current zoning classifications:
 - i) 704 Euclid Avenue - B-1
 - ii) 408 Marquis Avenue - R-4
 - iii) 412 Marquis Avenue - P-1
 - iv) 416-418 Marquis Avenue - R-1 and R-1E
 - v) 420 Marquis Avenue - R-1E
 - b) The proposed B-6P zoning for all parcels is not currently allowed under the approved zoning map.
 - c) The Applicant failed to produce evidence that the proposed zoning changes are in agreement with the 2007 Comprehensive Plan for the four back-lots because:
 - i) The Marquis lots (back lots) do not allow for retail trade and personal services in the 2007 Comprehensive Plan.
 - ii) The existing P-1 zoning allows for an appropriate mix of uses with the existing R-1E and R-4 zones.
 - iii) The parcels' existing zoning can be utilized for future development.
 - iv) There is no transitional zoning between the proposed highly intensive B-6P zone with the existing small low density residential lots immediately adjacent on Ashland Terrace.
 - d) The Applicant failed to produce sufficient evidence that the current zoning is inappropriate and the proposed zoning classification is appropriate because:
 - i) There exist viable uses for the subject parcels under the existing zoning classification.
 - ii) The 420 Marquis lot can be severed from the proposed development which would still allow the Applicant the minimum 3 acre size requirement for the proposed development.
 - iii) The proposed zoning classification and development is too intense.
 - iv) While infill development is a goal and objective adopted by the City, it must be sensitive to the existing character and integrity of the adjacent residential neighborhood(s).
 - v) The proposed development required the grant of five separate variances by the Planning Commission. The need for so many variances calls into question and demonstrates that the underlying proposed zoning classification is inherently inappropriate for the site.
 - e) The Applicant failed to produce sufficient evidence that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the Comprehensive Plan and which would have substantially altered the basic character of the area because:
 - i) The proposed re-zoning and high intensity development is a further incursion into the already stable residential community.
 - ii) The character of the local community would be damaged by the proposed rezoning and development due to the high intensity nature of the proposed use.
 - iii) The noise, light and litter consequences of the high intensity non-residential proposed use will damage the integrity of the stable older residential neighborhood.
 - f) There is no demonstrated compelling need for an enlarged Grocery store at this site.
- 2) The Applicant has the burden of proof to present sufficient evidence to support granting the application to change the zoning classification of the subject parcels.
 - 3) Based on the evidence submitted, the Fayette Urban County Council finds the Record to be insufficient to justify granting a zone map amendment for the subject parcels.

The Mayor asked questions of Ms. Jones regarding the motion.

The Council discussed the motion.

Ms. Henson withdrew her second. The motion died for lack of a second.

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***** Please Note: The meeting went into the next day. *****

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Mr. Farmer made a motion, seconded by Ms. Mossotti, to adopt the following

Findings of Fact for Approval from the Planning Commission:

- 1) The requested Planned Shopping Center (B-6P) zone is in agreement with the 2007 Comprehensive Plan recommended land use of Retail Trade and Personal Services (RT) for the property located at 704 Euclid Avenue (existing Kroger site). The B-6P zone is one of several commercial zones that can implement this land use recommendation, and, in this case, will allow a grocery store to expand, and continue to service an area of the community with limited access to food options.
- 2) The existing High Density Apartment (R-4), Professional Office (P-1), and Single Family Residential (R-1E) zones are collectively inappropriate; and the proposed B-6P zone is appropriate for the four parcels located at 408, 412, 416-418, and 420 Marquis Avenue, for the following reasons:
 - a) Each of the four lots is less than 1/4 of an acre in size, and is currently vacant.
 - b) Including these properties as part of the Kroger site will allow for a more efficient use of the entire property, which will be controlled by a development plan as approved by the Planning Commission. Without these four parcels, the Kroger site would continue to have a stair-step configuration along the rear of the development. By incorporating these vacant parcels, the rear property line becomes uniform.
 - c) The existing zoning configuration of the four parcels is out of the ordinary in that each has a different zoning designation and, except for the property at 420 Marquis Avenue, would be difficult to develop collectively or independently due to the physical space necessary to fulfill parking requirements and zone-to-zone landscaping requirements of the Zoning Ordinance.
 - d) The business zone and proposed redevelopment of these lots with the rest of the Kroger site will result in a streetscape that is more consistent with the existing commercial area along Euclid Avenue. Currently, the Kroger store is developed in a suburban, automobile-oriented manner with parking between the street and the building along both frontages. The proposed development moves the structure to the street and parking internal to the site, similar to the character of the surrounding area.
- 3) The requested B-6P zone is supported by the Goals and Objectives of the 2012 Comprehensive Plan, which were adopted by the Urban County Council in May 2012. Specifically, the proposed zone change supports infill and redevelopment in a context-sensitive way and will provide improved design features that are consistent with the rest of the Chevy Chase commercial area (Goal A.2.a). This development also serves the surrounding neighborhoods in a compact and contiguous manner within the Urban Service Area, which upholds the Urban Service Area concept (Goal E.1.a).
- 4) This recommendation is made subject to approval and certification of ZDP 2013-32: Suburban Properties (Kroger) and South Ashland Land Co., prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval
Note: Variances to wall lengths, setbacks, and Ground Area Building Coverage were approved by the Planning Commission for this property, subject to the rezoning being granted.

Ms. Lawless made a motion to amend Mr. Farmer's motion to exclude 420 Marquis Avenue from the zone change.

Ms. Jones stated Mr. Farmer's motion would have to be voted upon before Ms. Lawless' motion could be made.

Ms. Lawless withdrew her motion.

The motion to approve the Findings of Fact for Approval from the Planning Commission was approved by the following vote:

Aye: Gorton, Henson, Kay, Lawless, Mossotti,
Scutchfield, Beard, Clarke, Ellinger, Farmer,
Ford-----11

Nay: -----0

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Mr. Farmer made a motion, seconded by Ms. Lawless, to approve conditions to be added to the requested zone change:

1. The height of the building shall not exceed 28 feet above the finished floor elevation except in those limited areas (special design features) reflected on the preliminary development plan approved by the Planning Commission and the architectural renderings tendered to the Planning Commission.
2. The building shall be built in substantial conformity with the architectural renderings tendered to the Planning Commission except for complementary and necessary adjustments that might be needed should the final development plan be revised by the Planning Commission. The applicant has voluntarily agreed to this condition.
3. There shall be at least a 6 foot landscape area with a minimum planted tree height of 18 feet along Marquis Avenue between the building and the sidewalk in which appropriate landscaping shall be installed to complement and enhance the architecture.
4. The property shall not be subdivided into commercial out lots.
5. An 8 foot tall privacy fence shall be installed along the rear boundary line of the subject property with supplementary plantings.
6. There shall be no use of loudspeakers on the property except that low level amplification system may be used at the drive-through pharmacy, but no such amplification shall be heard at the property line of the subject property.
7. The owner of the subject property shall inform all delivery trucks to cut their engines once the truck is parked to unload product.
8. The trash compactor shall only be utilized between 8 a.m. and 9 p.m.
9. The final development plan will include the location and installation of a covered bus stop on Euclid Avenue.

Mr. Beard asked questions of Mr. Farmer regarding the height of the trees in the conditions.

The motion **passed** by unanimous vote.

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Ms. Lawless made a motion, seconded by Ms. Gorton, to amend the adopted Findings of Fact from the Planning Commission to exclude 420 Marquis Avenue due to the following:

- 1) There is insufficient evidence in the record to demonstrate that the requirements of KRS 100.213 are met to support a zone map amendment for 420 Marquis Avenue for following reasons:
 - a) The Applicant failed to produce evidence that the proposed zoning change for 420 Marquis Avenue is in agreement with the 2007 Comprehensive Plan because:
 - i) The 420 Marquis Avenue lot does not allow for retail trade and personal services in the 2007 Comprehensive Plan.

- ii) There is no transitional zoning between the proposed highly intensive B-6P zone with the existing small low density residential lots immediately adjacent.
 - b) The Applicant failed to produce sufficient evidence that the current zoning is inappropriate and the proposed zoning classification is appropriate because:
 - i) The 420 Marquis lot can be severed from the proposed development which would still allow the Applicant the minimum 3 acre size requirement for the proposed development.
 - c) The Applicant failed to produce sufficient evidence that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the Comprehensive Plan and which would have substantially altered the basic character of the area because:
 - i) The character of the local community would be damaged by the proposed rezoning and development due to the high intensity nature of the proposed use.
 - ii) The noise, light and litter consequences of the high intensity non-residential proposed use will damage the integrity of the stable older residential neighborhood.
- 2) Based on the evidence submitted, the Fayette Urban County Council finds the Record to be insufficient to justify granting a zone map amendment for the subject parcels.

The Mayor asked what impact this motion would have on the preliminary development plan. Mr. Sallee responded. Mr. Simpson also responded.

The Mayor asked if Ms. Clark could testify on the motion. Ms. Jones responded that she could. Ms. Clark made comments regarding the motion.

The Council continued to discuss the motion.

The motion to approve the amended Findings of Fact for Approval Excluding 420 Marquis Avenue **failed to pass** by the following vote:

Aye: Gorton, Henson, Lawless-----3

Nay: Kay, Mossotti, Scutchfield, Beard, Clarke,
Ellinger, Farmer, Ford-----8

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Mr. Farmer made a motion, seconded by Mr. Ellinger, and approved by unanimous vote, to amend an Ordinance changing the zone from a Neighborhood Business (B-1), Professional Office (P-1), Single Family Residential (R-1E) and High Density Apartment (R-4) zone to a Planned Shopping Center (B-6P) zone, for 3.1462 net (3.6588 gross) acres, for properties located at 704 Euclid Ave.; and 408, 412, 416 and 420 Marquis Ave. including dimensional variances (Kroger Limited Partnership 1; Council District 3) Ordinance to include the conditions that were adopted by the Council.

An Ordinance changing the zone from a Neighborhood Business (B-1), Professional Office (P-1), Single Family Residential (R-1E) and High Density Apartment (R-4) zone to a Planned Shopping Center (B-6P) zone, for 3.1462 net (3.6588 gross) acres, for properties located at 704 Euclid Avenue, and 408, 412, 416 and 420 Marquis

Avenue including dimensional variances, and imposing conditions upon approval as follows: the height of the building shall not exceed 28 feet above the finished floor elevation except in those limited areas (special design features) reflected on the preliminary development plan approved by the Planning Commission and the architectural renderings tendered to the Planning Commission; the building shall be built in substantial conformity with the architectural renderings tendered to the Planning Commission except for complementary and necessary adjustments that might be needed should the final development plan be revised by the Planning Commission; the applicant has voluntarily agreed to this condition; there shall be a 6 foot landscape area with a minimum planted tree height of 18 feet along Marquis Avenue between the building and the sidewalk in which appropriate landscaping shall be installed to complement and enhance the architecture; the property shall not be subdivided into commercial out lots; an 8 foot tall privacy fence shall be installed along the rear boundary line of the subject property with supplemental plantings; there shall be no use of loudspeakers on the property except that a low level amplification system may be used at the drive-through pharmacy, but no such amplification shall be heard at the property line of the subject property; the owner of the subject property shall inform all delivery trucks to cut their engines once the truck is parked to unload product; the trash compactor shall only be utilized between 8 a.m. and 9 p.m.; and the final development plan will include the location and installation of a covered bus stop on Euclid Avenue (Kroger Limited Partnership I; Council District 3) was given first reading as amended.

Upon motion of Mr. Ellinger, seconded by Ms. Henson, the rules were suspended by unanimous vote.

The ordinance was given second reading. Upon motion of Mr. Ellinger, and seconded by Ms. Henson, the ordinance was approved by the following vote:

Aye: Gorton, Henson, Kay, Lawless, Mossotti,
Scutchfield, Beard, Clarke, Ellinger, Farmer,
Ford-----11

Nay: -----0

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Upon motion of Ms. Gorton, seconded by Mr. Kay, and approved by unanimous vote, the meeting adjourned at 12:25 a.m.

Clerk of the Urban County Council