

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

August 28, 2014

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Will Berkley; Patrick Brewer; Mike Cravens; David Drake; Karen Mundy; Mike Owens, Chair; Frank Penn; Carolyn Plumlee; Carolyn Richardson; and Joseph Smith. Absent was William Wilson.

Planning Staff members present: Chris King, Director; Bill Sallee; Jimmy Emmons; Traci Wade; Tom Martin; Cheryl Gallt; Kelly Hunter; and Stephanie Cunningham. Other staff members present were Tracy Jones, Department of Law; Casey Kaucher, Division of Traffic Engineering; and Greg Lengal, Division of Fire and Emergency Services.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Brewer, seconded by Ms. Plumlee, and carried 10-0 (Wilson absent) to approve the minutes of the July 24, 2014, meeting.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **PLAN 2014-49F: PINEHURST SUBDIVISION, LOT 33 (AMD) (10/5/14)*** - located at 153 Beverly Avenue.
(Council District 6) **(Foster-Roland)**

Note: This plan was continued from the August 14, 2014, Planning Commission meeting. The purpose of this amendment is to subdivide one lot into two lots.

The Subdivision Committee Recommended: **Postponement.** There were some questions regarding the sanitary sewer connection and the adequacy of the existing 50' access easement.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
8. Addition of tree protection information.
9. Addition of the purpose of amendment note.
10. Increase font size for notes and certifications.
11. Addition of name and address of property owner and developer.
12. Addition of adjacent property information.
13. Identify adjacent property lines with dashed lines.
14. Addition of private access easement maintenance note.
15. Correct length of street (lot frontage) in site statistics.
16. Identify street trees required for each lot.
17. Resolve proposed widening on all street frontages or dedication of right-of-way.
18. Discuss access to property and adequacy of existing easement to provide public service.
19. Discuss sanitary sewer connection locations.

Staff Comments: Mr. Martin stated that staff had received a request from the applicant to postpone this item, which was continued from the Commission's August 14th meeting, to the September 11th meeting.

Action: A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 10-0 (Wilson absent) to postpone PLAN 2014-49F to the September 11, 2014, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, August 7, 2014, at 8:30 a.m. The meeting was attended by Commission members: Will Berkley, Karen Mundy, Joe Smith and Mike Owens. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Dave Jarman, Denice Bullock, Barbara Rackers, Traci Wade, Cheryl Gallt and Kelly Hunter, as well as Tracy Jones, Department of Law; and Greg Lengal and Joshua Thiel, Division of Fire and Emergency Services. The Committee made recommendations on plans as noted.

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

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, August 7, 2014, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Mike Cravens, David Drake, Carolyn Richardson, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS

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 – 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.

1. HAYMAKER DEVELOPMENT CO., LLC, ZONING MAP AMENDMENT & BEAUMONT FARM (AMD.) ZONING DEVELOPMENT PLAN

- a. MAR 2014-15: HAYMAKER DEVELOPMENT CO., LLC (10/5/14)* – petition for a zone map amendment from a Highway Service Business (B-3) zone with conditional zoning restrictions, to a Highway Service Business (B-3) zone with modified conditional zoning restrictions, for 9.92 net (13.62 gross) acres, for properties located at 950, 960, 961, 973 & 980 Midnight Pass; 3101 Wall Street; and 3052 & 3084 Beaumont Centre Circle.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World. The petitioner proposes alteration of the existing conditional zoning restrictions on the eight subject lots, to lessen the overall restrictions and prohibited uses on them.

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

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

1. In accordance with Article 6-7(c) of the Zoning Ordinance, there have been unanticipated changes of an economic, physical, and social nature in the immediate area since the time the conditional zoning restrictions were imposed in 2005 and 2008 that have substantially changed the basic character of the area of the subject property; in particular:
 - a. The subject property remains vacant almost 25 years after it was originally zoned P-1, and more importantly, for almost a decade after an approved rezoning to a highly restricted B-3 zone for most of these lots.
 - b. The Great Recession of the last decade, unanticipated at the time the existing zoning restrictions were adopted in 2005, has slowed the demand for commercial development in Beaumont Farm, as it has throughout the country.

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- c. More recently, Kroger has expanded its Beaumont store to be one of the largest sized facilities in its chain.
2. This recommendation is made subject to approval and certification of ZDP 2014-67: Beaumont Farm, 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 subject property shall now be restricted with the following restrictions via conditional zoning:

PROHIBITED USES:

- a. Establishments and lots for the display, rental, sale, service, and minor repair of farm equipment; contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes, or supplies for such items.
- b. Indoor amusements, such as billiard or pool halls, dancing halls, skating rinks, miniature golf or putting courses, theatres, or bowling alleys.
- c. Self-service laundry.
- d. Shoe repair, clothing alteration, tailoring services and tattoo parlors.
- e. Carnivals, even on a temporary basis.
- f. Taxidermy establishments.
- g. Pawnshops.
- h. Parking lots and structures.
- i. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers.
- j. Advertising signs (and billboards) as defined in Article 17- 7(3)(b)(1) of the Zoning Ordinance.
- k. Free-standing signs taller than 10' in height.

These use restrictions are appropriate in that they have been offered by the applicant. The signage restrictions are similar, but significantly relaxed, from those originally approved for these properties, and will ensure consistency with other signage restrictions already in place for adjacent P-1 and B-3 zoned properties in Beaumont Farm.

- b. ZDP 2014-67: BEAUMONT FARM (10/5/14)* - located at 950, 960, 961, 973 & 980 Midnight Pass and 3101 Wall Street.
(EA Partners)

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

1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Clarify the heights (# of stories) of proposed restaurants.

Zoning Presentation: Mr. Sallee presented the staff report, explaining that the petitioner is requesting to modify the existing conditional zoning restrictions on eight vacant lots in the existing Beaumont Centre development. Referring to an aerial photograph of the subject property, he noted that, with the exception of the one lot which has a Wall Street address, all of the subject parcels are located inside Beaumont Centre Circle. All of the subject parcels are zoned B-3. The subject properties are surrounded by B-3 zoning to the south and east, with B-6P zoning for the shopping center to the northwest.

Mr. Sallee stated that the petitioner is proposing to significantly reduce the number of prohibited uses on the eight subject lots; the uses that are proposed to remain prohibited are listed in the staff report and on the agenda. In their review of this application, the staff considered the changes that have taken place in the vicinity since the conditional zoning restrictions were imposed, the most recent of which were imposed about eight years ago. The staff noted that there has been a change in the business climate in the community, in addition to the recent national recession.

Mr. Sallee said that the staff believes, therefore, that the proposed relaxation of the conditional zoning restrictions is justified. The staff is recommending that two restrictions be retained, both of which deal with signage: 1) advertising signs and billboards; and 2) free-standing signs taller than 10' in height should remain prohibited. The 10' height limit would match most of the existing signage in the surrounding P-1 area, and would be consistent with the signage in the other business zones in the general vicinity. Mr. Sallee stated that the staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Ms. Gallt presented the corollary zoning development plan, noting that it depicts proposed uses on the eight vacant subject lots, including a mix of restaurants and convenience stores, as well as a hotel.

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Ms. Gallt said that the Subdivision Committee recommended approval of this plan, with a small and fairly standard list of conditions. The one exception is condition #7, which refers to the heights of the proposed buildings. That condition was recommended because the staff is required to verify that the appropriate height-to-yard ratio is being met for each of the proposed buildings; and, in order to do so, the building heights must be included on the face of the plan.

Petitioner Representation: Rory Kahly, EA Partners, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations.

Citizen Comment: There were no citizens present to comment on this request.

Zoning Action: A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 10-0 (Wilson absent) to approve MAR 2014-15, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 10-0 (Wilson absent) to approve ZDP 2014-67, subject to the seven conditions as listed by the Subdivision Committee.

2. **A & M HAMBURG, LLC, ZONING MAP AMENDMENT & HAMBURG EAST, LOT 2, ZONING DEVELOPMENT PLAN**

- a. **MARV 2014-13: A & M HAMBURG, LLC (10/5/14)*** – petition for a zone map amendment from an Expansion Area Residential-3/Transition Area (EAR-3/TA) zone to a Community Center (CC) zone, for 14.82 net (16.49 gross) acres, for property located at 2500 Polo Club Boulevard (a portion of). A height variance is also requested with this zone change.

COMPREHENSIVE PLAN AND PROPOSED USE

The adopted Expansion Area Master Plan (Expansion Area 2a) recommends Expansion Area Residential-3 (EAR-3) future land use, which is defined as 6-18 dwelling units per gross acre (and up to 24 dwelling units per gross acre with transferable development rights) for the subject property.

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World. In addition, the Plan encourages a mixture of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; and provision of land for a diverse workforce.

The petitioner proposes a Community Center (CC) zone in order to expand the existing CC zoning and development on the western side of Polo Club Boulevard, which will permit additional commercial land uses, such as restaurants, retail establishments and offices. A companion text amendment has also been filed by the petitioner, which hopes to expand the size limitations of the CC zone.

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

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

1. The requested Community Center (CC) zone is appropriate, and the existing Expansion Area Residential-3 with a Transition Area Overlay (EAR-3/TA) zone is inappropriate, for the following reasons:
 - a. As currently configured, the EAR-3/TA overlay zone is located between a Community Center (CC) zone and an Economic Development (ED) zone, which is inconsistent with what was originally planned for in the EAMP in 1996. The land use relationship desired by utilizing the TA overlay, creating a sense of place that transitions from a more intense zone to a less intense zone, cannot be accomplished when located between two more intense zoning categories.
 - b. The proposed CC zone will still allow for the mix of uses anticipated in both the CC and TA zones, including civic and community uses, churches, nursing homes, schools and child care establishments, and residential uses.
 - c. Expanding the CC zone at this location will allow for the required residential component (40% of the gross floor area within the CC zone) to be more appropriately located along the greenway, rather than adjacent to the interstate corridor as currently approved.
 - d. Several basic elements of the proposed land use change are consistent with the land use policies of the 2013 Comprehensive Plan. It is acknowledged that large retail establishments do contribute employment opportunities to the community (over 200 jobs are anticipated for the Cabela's store alone); the proposed land use enhances and is more compatible with the surrounding land uses; the proposed land use will not impair environmental conditions of the site; the existing utility and transportation networks can accommodate the proposed land use category; and the proposed development will provide for a more appropriate mix of land uses than previously planned.

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2. This recommendation is made subject to approval and certification of ZDP 2014-68: Hamburg East, Lot 2 prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED VARIANCES

1. Increase the maximum allowable height from 48 feet to 56 feet.

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested height variance will not adversely affect the public health, safety or welfare. Furthermore, it will not alter the character of the general vicinity, which is primarily vacant and will be commercial in nature, once developed.
- b. Granting the requested height variance will not result in an unreasonable circumvention of the Zoning Ordinance because the CC zone promotes the use of mixed-use buildings, and tall buildings are anticipated to be developed northeast of this location in the future.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is the location of the mixed-use building near the greenway, constructed on the slope and overlooking a stream and into an area of Economic Development zoning, which allows buildings up to 90 feet tall.
- d. Strict application of the Zoning Ordinance would likely result in the loss of commercial space or dwelling units in the mixed-use building and require a re-design of the preliminary development plan to provide the lost residential square footage elsewhere on the property. It would not necessarily result in a more desirable development outcome for this area.
- e. Although associated with the proposed zone change, the height variance is requested in an effort to accomplish an efficient design and place the tallest building(s) in the most appropriate location on the subject property.

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

1. Provided the Urban County Council rezones the property CC; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan; or as amended by a future Development Plan approved by the Commission.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].

- c. ZDP 2014-68: HAMBURG EAST, LOT 2 (10/5/14)* - located at 2500 Polo Club Boulevard.

(Vision Engineering)

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

1. Provided the Urban County Council rezones the property CC; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Provided the Planning Commission grants the requested height variance to the mixed-use building.
7. Denote that compliance with Art. 23A-2(1) shall be determined at the final development plan.
8. Resolve parking orientation to Polo Club Boulevard.
9. Resolve pedestrian connection and vehicular access across Polo Club Boulevard.
10. Resolve compliance with open space requirements, per Article 23A-(k)(1) of the Zoning Ordinance.

Zoning Presentation: Ms. Wade presented the staff report on this requested rezoning, briefly orienting the Commission to the location of the subject property on Polo Club Boulevard, north of Man O' War Boulevard. To the north of the subject property is a large tract that is zoned ED and planned and approved for a regional medical campus; to the east is property owned by the applicant and zoned EAR-3, which is planned for High Density Residential development; to the south, across Man O' War Boulevard, is the Gleneagles neighborhood; and, on the opposite side of the interstate, is the Hamburg Pavilion shopping area. The subject property for this zone change is a portion of a larger tract, which is currently split-zoned CC and EAR-3/TA, and is currently vacant.

Ms. Wade displayed the following photographs of the subject property and surrounding area: 1) a view from Polo Club Boulevard toward the existing adjacent Costco store; 2) a view toward the greenway, which shares a property line with the ED-zoned property; 3) a view toward the greenway and Interstate 75; 4) the existing development within the CC area at the intersection of Man O' War Boulevard and the interstate; and 5) a view from the end of Fitzgerald Court toward Polo Club Boulevard.

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Ms. Wade stated that the petitioner is proposing an expansion of the existing CC zone in order to develop a big-box retail establishment, a mixed-use building, and several outlots for commercial and civic uses. The proposal includes 161,400 square feet of non-residential development, and 222,000 square feet of residential floor area for 150 dwelling units. The existing Costco development, with its gas station and two outlots, totals another 171,656 square feet of retail use, for a combined total of over 600,000 square feet in this entire CC development. Ms. Wade explained that the current text of the Zoning Ordinance does not permit a second large retail establishment at this location, unless it is a grocery store; but the applicant has filed a companion text amendment along with this rezoning request in order to make modifications to that section of the Ordinance. The petitioner has also requested a height variance in conjunction with this rezoning request.

Ms. Wade said that the staff had distributed to the Commission members an exhibit from the Expansion Area Master Plan (EAMP), depicting Expansion Area 2A, within which the subject property is located. The EAMP, which was completed in 1996, recommended EAR-3 zoning for the subject property, with the CC zoning and TA overlay on the opposite side of Polo Club Boulevard. In 2009, a zone change was requested that “swapped” those land uses, which resulted in the current zoning of the existing CC area. That zone change, along with a text amendment that allowed larger retail establishments, resulted in the Costco development as it exists today.

Ms. Wade stated that, although the subject property is located in the Expansion Area, it is still appropriate to focus on the general land use policies emphasized by the 2013 Comprehensive Plan, including: land use compatibility; well-designed neighborhoods; improving a desirable community; and making the best use of land inside the Urban Service Area boundary in order to protect the surrounding rural areas. In the 2009 zone change, although a “swap” of uses took place, the size of each zone proposed was kept consistent with the recommendations of the EAMP. The EAMP recommends that transition areas (TA) be located next to CC zoning, but also adjacent to residential uses, in order to serve as a transition between more intense and less intense uses. In this case, there is no EAR-3 land directly adjacent, so the subject property is located between two higher-intensity zones.

Ms. Wade said that the petitioner contends that the proposed rezoning is appropriate, in part because the land use relationships originally planned for the area no longer exist. Although the intent of the TA zone can no longer be met at this location, the petitioner opined that the proposed CC zone would allow for a mix of uses, similar to the provisions of the EAR-3 and TA zones, including community and civic uses; churches; nursing homes; schools; and child care establishments, as well as residential uses. Ms. Wade noted that the petitioner emphasized that residential uses will remain part of the proposed development, in the mixed-use building. She said that the staff found that increasing the CC zone on the subject property would not be detrimental to the “community of place” that is being established in the area. Reducing the residential density and providing spaces for cultural and civic institutions on the west side of Polo Club Boulevard could make way for a better shopping center development. The staff would like for the petitioner to consider increasing the residential density proposed on the east side of Polo Club Boulevard to the highest degree possible, in order to offset the density lost in the CC area on the west side.

Ms. Wade stated that the staff found that the proposed zone change was in agreement with the recommendations of the 2013 Comprehensive Plan, specifically with regard to providing employment opportunities to the community. The staff believes that the proposed land use is compatible with the existing land uses; that it will not impair the floodplain and environmental conditions of the site; and that the proposed development will provide a more appropriate mix of land uses on the subject property than previously planned. The staff and the Zoning Committee recommended approval of this rezoning request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, referring to a rendered copy of the plan. He explained that the petitioner is proposing to construct a 73,000 square-foot building with associated parking; and three outlots, with one 15,000 square-foot building and two 8,200 square-foot structures, respectively. The petitioner is proposing to accommodate a civic use in one of the structures, in order to accommodate the requirements of the CC zone. Accesses are proposed to the subject property from Fitzgerald Court, Polo Club Boulevard, and a service area is proposed at the rear of the property. Residential units are proposed to be located in a new mixed-use building, with associated parking on the lower level, in order to satisfy the required residential component of the CC zone. In addition, the petitioner is proposing a large amount of greenspace adjacent to and in the existing floodplain area on the edge of the subject property.

Mr. Martin stated that the Subdivision Committee recommended approval of this development plan, subject to several standard sign-off conditions. Condition #6 addresses the need for the Planning Commission to grant a variance to the height of the proposed large structure, since it exceeds the height limit of the CC zone. Condition #7 requires the inclusion of the lot requirements on the Final Development Plan for the property, since the Expansion Area was designed for flexibility, with no set lot requirements.

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Mr. Martin said that the petitioner will also need to resolve the parking that is oriented toward Polo Club Boulevard in the outlot areas. That parking configuration was also of concern to staff at the time of the development of the adjacent Costco store, and it was resolved to their satisfaction at that time by orienting the front façade of the building to Polo Club Boulevard. The staff does not believe there is a need to orient parking or vehicular use areas to Polo Club Boulevard, preferring instead that the roadway be bordered by landscaped areas or a building façade. Mr. Martin noted that it should be simple for the petitioner to amend that area and adjust the parking, since they have a large surplus of proposed parking spaces for the property. He said that the petitioner will also need to document that they have resolved compliance with the 25% open space requirement of the zone. The staff's preferred configuration would have the open space oriented toward the proposed residential area.

With regard to condition #9, Mr. Martin noted the access points along Polo Club Boulevard were established on their own Final Development Plan for the boulevard. That plan indicated that Fitzgerald Court was to be located 800' from the Man O' War Boulevard/Polo Club Boulevard intersection, with subsequent access points set at distances of 500'. This development plan was revised in order to meet that standard; it originally depicted access points located 450' apart. While the plan now meets the standard, the staff of the Division of Traffic Engineering has concerns about the proposed intersection configuration and how it might relate to the long-term residential development across Polo Club Boulevard from the subject property. Mr. Martin stated that funds have been deposited to make the Polo Club Boulevard/Fitzgerald Court intersection signalized at some point in the future, but the staff and the Division of Traffic Engineering do not believe that that configuration would provide for optimal spacing of traffic signals. The staff is also concerned about pedestrian access to the proposed development, again in consideration of future residential development across Polo Club Boulevard.

Commission Questions: Mr. Owens asked if the proposed residential building will meet the residential requirements for the portion of the property occupied by the Costco store as well. Mr. Martin answered affirmatively.

Mr. Penn asked if the proposed retail area in the mixed-use building will be limited to the first floor, with residential units in the remaining four floors. Mr. Martin answered affirmatively, explaining that the lowest level of the building is proposed to be used for parking, with commercial uses on the first floor, and all residential units above.

Variance Presentation: Mr. Emmons presented the staff report on the requested height variance, explaining that the CC zone has a maximum height limit of 48'. The petitioner has requested a height variance to allow the construction of a 56', five-story, mixed-use building. The building is proposed to be constructed adjacent to the greenway to the north of the subject property.

Mr. Emmons stated that the primary consideration in any variance request is the existence of some unique circumstances that would justify the granting of a variance. He noted that there is approximately a 15' grade change from the proposed location of the new mixed-use building to the existing creek in the greenway area. In their consideration of this request, the staff determined that there were two unique circumstances that supported the granting of the height variance: 1) the change in topography; and 2) the ED-zoned area located just across the greenway, which has a maximum height limit of 90'. The staff does not believe that granting the requested 8' height variance would be opposed to the intent of the Zoning Ordinance regulations. Mr. Emmons stated that the staff is recommending approval of the height variance, for the reasons as listed in the staff report and on the agenda, and subject to the three conditions as listed.

Commission Questions: Mr. Penn stated that the conditions for approval did not appear to be contingent upon the approval of the requested Zoning Ordinance text amendment. Mr. Sallee answered that condition #10, plus a note on the plan indicating that the issue will be resolved at the Final Development Plan stage, should address that concern.

Petitioner Representation: Bill Lear, attorney, was present representing the petitioner. He said that this rezoning request, along with the proposed text amendment, represent "a coordinated set of development approvals" that will allow the petitioner to bring a Cabela's retail store to Lexington-Fayette County.

Mr. Lear stated that the petitioner contends that the proposed development will not be detrimental to any of the surrounding areas. He said that the Cabela's store design is not typical of big-box retailers; rather, the store will be constructed to resemble a hunting or fishing lodge. The proposed layout of the property will allow for the retail portion of the property to back up to the existing wooded area, near the interstate, while the residential component is located further from the highway.

With regard to the staff's concerns about the proposed parking lot entrance at Polo Club Boulevard, Mr. Lear said that that entrance is critical for the success of the proposed development. The petitioner was advised by

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the Cabela's company that the location of such an entrance on the property is absolutely necessary for the location of their store. Polo Club Boulevard was constructed by the petitioner, all the way to Winchester Road, at significant cost. That construction process included a great deal of negotiation about the spacing of proposed intersections, which is referenced on more than one Final Development Plan for the area. The petitioner contends that that access configuration was agreed upon some time ago; it was reaffirmed during the development of the Costco store; and it meets the requirements of the Zoning Ordinance.

Mr. Lear displayed a rendering of a "residential over retail" development that is located near the University of Cincinnati, which the petitioner considers to be a good model for the type of development anticipated for the subject property. The proposed five-story building height would not be atypical for the style of development, and the petitioner contends that it would be a good example of the "building up instead of out" philosophy that Lexington-Fayette County has embraced in recent years. Mr. Lear reiterated that the adjacent ED property could have structures that are significantly taller than the proposed five story mixed-use building.

Mr. Lear opined that the CC zone at this location already has, in effect, stores that sell groceries, electronics, hardware, liquor, and pet supplies, all under one roof in Costco. The addition of the proposed Cabela's store would add fishing; hunting; hiking; camping; and outdoor recreation wear; as well as a small café, while still providing outlot areas for restaurants; pubs; small shops; and space for a church or other civic use. The petitioner will be able to accommodate many of the uses that are anticipated for the TA zone, without being forced to "shoehorn" a TA zone into an area not anticipated by the EAMP.

Mr. Lear stated that the petitioner is in agreement with most of the staff's recommendations, with the slight disagreement about the front access to the property on Polo Club Boulevard. He added that the petitioner contends that they should be able to construct a full, signalized intersection at that location, with no negative impact to the existing development or any future residential uses on the east side of Polo Club Boulevard. Mr. Lear concluded by requesting approval of the zone change, variance, and development plan as submitted.

Citizen Comment: There were no citizens present to comment on this request.

Commission Questions: Mr. Penn asked what the proposed timing would be for construction of the residential portion of the proposed development. Patrick Madden, petitioner, responded that it would take some time to put together the plans for the development, because it was a new style of development for him and he was seeking a partner who had experience with similar developments. Mr. Penn stated that there are no existing CC zones with residential uses. Mr. Madden said that he was aware of that, and that he was trying to determine the best way to provide the residential development.

Ms. Plumlee asked for an example of a possible civic use. Mr. Lear answered that civic uses could include libraries and fire stations, or any one of a number of non-profit entities. He added that, as the surrounding area develops further, there will be more of a demand for civic uses.

Ms. Mundy asked if the full access at the entrance to the Cabela's store on Polo Club Boulevard is proposed to be signalized. Mr. Lear answered that it was not currently proposed for a traffic signal, and noted that the decision to do so would likely be based on the evolving situation on the site as the proposed development is constructed. He said it would depend largely on how the property on the east side of Polo Club Boulevard is developed, and what the traffic counts for that proposed development would be. Ms. Mundy stated that it would likely be wiser to construct the intersection as right-in/right-out, as suggested by the Division of Traffic Engineering staff. Mr. Lear responded that it could be more appropriate, but, if so, the rest of the development would not take place, since the Cabela's company has indicated that it would not construct a store with a right-in/right-out intersection in front.

Ms. Mundy asked how many jobs would be provided by the Cabela's store, to which Mr. Lear responded that the number would be over 400.

Mr. Owens asked the staff of the Division of Traffic Engineering to weigh in on the proposed development plan. Ms. Kaucher stated that there had been a great deal of discussion about the access points on the subject property. She said that, given the proximity of the proposed new access to Fitzgerald Court, the Division of Traffic Engineering would prefer a right-in/right-out intersection, although there had been some more recent discussions about restricting only the left-hand turns out of the subject property, as well as straight movements through the new intersection. Mr. Owens asked if the issue could be resolved at the Final Development Plan stage. Ms. Kaucher responded that she would defer that answer to the petitioner, because she believed that it was their desire for the Planning Commission to approve the intersection as depicted. Nick Nicholson, attorney, stated that the petitioner would like to resolve the issue at this time, since Cabela's made it very clear that they would not proceed without a full intersection at that location. The petitioner contends that the intersection has been depicted in this configuration since before the construction of Polo Club Boulevard, on the first development plan for the property. There have since been three additional development plans, each of which

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depicts a full intersection at that location. Mr. Nicholson said that the petitioner spent a great deal of money to construct Polo Club Boulevard in its current configuration, and every conversation he had with a potential tenant on the property included the knowledge that the Planning Commission had approved three different development plans that included a full intersection at that location. He stated that the petitioner needs to resolve the issue today, since any alternate configuration for that intersection would likely negate the need for a Final Development Plan. Mr. Owens opined that he "hated being held hostage over a situation like this."

Mr. Lear noted that the Zoning Ordinance contains spacing standards; the spacing proposed on Polo Club Boulevard was not at the request of any particular retailer. The applicable standard in this instance is either 400 feet or 500 feet, or a specific formula used for calculating spacing on nonresidential streets. According to either methodology, the proposed access meets the requirements. Mr. Lear stated that the petitioner has been candid about Cabela's intent for the property, because he did not want Commission members to have questions at some point in the future if they approved a different access and Cabela's withdrew from the project.

Mr. Penn stated that future development of the petitioner's property across Polo Club Boulevard would be "held hostage" if the subject property were developed with a full intersection, since any street proposed on that property would need to line up with the intersection. Mr. Lear responded that, in a typical development, the roads would need to line up, but there would be considerable leeway in developing that access. Mr. Penn stated that he wanted the proposed development to work, and did not want to hamper future development on the residential property across Polo Club Boulevard. Mr. Lear reiterated that a full intersection has been proposed at this location since the initial development plan for Polo Club Boulevard. Ms. Kaucher stated that Polo Club Boulevard functions more as a minor arterial than a collector street, which is its actual classification. She said that the required spacing, therefore, might not be adequate for the function of the roadway. The Division of Traffic Engineering staff is not suggesting the removal of that access point, but merely restricting its functionality.

Ms. Richardson asked what the timetable would be for the signalization of Fitzgerald Court. Mr. Nicholson answered that there was a note included on the plan for that property requiring that the signal be installed within three years; or the funds that were deposited by the developer must be returned.

Mr. Cravens asked if there was any guarantee that future residential development across Polo Club Boulevard would need to use the same access point as Cabela's; it could use the signalized intersection at Fitzgerald Court. Mr. Lear answered that the petitioner would be willing to commit to restricting the intersection at the time of the development of the residential property across Polo Club Boulevard. Ms. Kaucher stated that the Division of Traffic Engineering would feel more comfortable if that restriction was placed on the adjacent residential property at this time. She added that their concern is that future development of the residential property will generate sufficient traffic to merit a second signalized intersection at a spacing that does not meet local regulations.

Ms. Mundy asked if it was possible to restrict a property that was not being proposed for development at this time. Mr. Lear answered that the petitioner was willing to agree that, should a full access be provided for Cabela's, no connection would be necessary for the residential development across Polo Club Boulevard.

Mr. Penn stated that his reason for bringing up the issue of the access to the residential development was to ensure that it became part of the record of the discussion. Mr. Lear responded that the residential property across Polo Club Boulevard could not be developed without a development plan, which would be required to depict any proposed access points, and which would be approved by the Planning Commission.

Mr. Brewer stated that the situation was not perfect, but he believed that the proposed development would be a "solid addition to the local economy."

Zoning Motion: A motion was made by Mr. Brewer and seconded by Ms. Richardson to approve MAR 2014-13, for the reasons provided by staff.

Discussion of Motion: Mr. Owens stated that he did not want to stop a successful business from locating in Lexington-Fayette County, but he did not believe that the area around the subject property was envisioned to be developed with two such large retail stores. He said that he had concerns about the future traffic in the area, particularly once the residential development is built out.

Mr. Brewer agreed that the current development on the subject property was not originally envisioned there, but opined that it was a better option for two retail stores to back up to the interstate, rather than a large residential development. He said that he understood the traffic concerns, but the Commission had no control over the development of that property at this point, and he believed that this was a good plan.

Mr. Brewer's motion carried, 9-1 (Owens opposed; Wilson absent.)

Variance Action: A motion was made by Mr. Brewer, seconded by Ms. Richardson, and carried 10-0 (Wilson absent) to approve the requested height variance, as recommended by staff.

Development Plan Motion: A motion was made by Mr. Brewer and seconded by Ms. Richardson to approve ZDP 2014-68, subject to the conditions as listed on the agenda.

Petitioner Comment: Mr. Lear asked that the Commission remove the words "and vehicular" from condition #9 in order to allow for a full access to Polo Club Boulevard at the front of the proposed development.

Development Plan Action: Mr. Brewer amended his motion to reflect the deletion of the words "and vehicular" from condition #9, which was agreed to by Ms. Richardson. The motion carried 10-0 (Wilson absent).

Note: Chairman Owens declared a brief recess at 2:47 p.m. The meeting reconvened at 2:53 p.m.

2. ANDOVER TOWNHOUSE PARTNERS, PLLC, c/o DOUG CHARLES ZONING MAP AMENDMENT & WILLIAMS PROPERTY, LOT 1, ZONING DEVELOPMENT PLAN

- a. MAR 2014-14: ANDOVER TOWNHOUSE PARTNERS, PLLC, c/o DOUG CHARLES (10/5/14)* – petition for a zone map amendment from a Single Family Residential (R-1D) zone to a High Density Apartment (R-4) zone, for 3.66 net (4.54 gross) acres, for property located at 3400 Todds Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's Goals and Objectives recommend growing successful neighborhoods through expanded housing choices that address the market needs for all residents (Theme A, Goal #1, Obj. b.); encouraging infill development throughout the Urban Services Area as a strategic component of growth (Theme A, Goal #2); providing well-designed neighborhoods that are connected for all modes of transportation (Theme A, Goal #3, Obj. b.); and working to achieve an effective and comprehensive transportation system for the community (Theme D, Goal #1). The above Goals and Objectives are applicable to the requested zone change and should guide the development of the subject property.

The petitioner proposes to develop 20 attached single family residences (a combination of townhouses and duplexes) on the property, which would yield a density of 5.46 dwelling units per acre.

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

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

1. The requested High Density Apartment (R-4) zone is found to be in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. The Goals and Objectives recommend growing successful neighborhoods through expanded housing choices that address the market needs for all residents (Theme A, Goal #1, Obj. b.). The petitioner proposes a townhouse style development of 20 dwelling units, which creates a variety of housing types in the immediate area that complement the existing neighborhood.
 - b. The Goals and Objectives encourage infill development throughout the Urban Services Area as a strategic component of growth for our community (Theme A, Goal #2). The petitioner proposes to increase the density of this portion of the Williams Property, from less than one unit per acre to 5.46 dwelling units per acre.
 - c. The Goals and Objectives recommend providing well-designed neighborhoods that are connected for all modes of transportation (Theme A, Goal #3, Obj. b.), and working to achieve an effective and comprehensive transportation system for the community (Theme D, Goal #1). With some slight modifications to the petitioner's development plan, these goals can also be met by the petitioner if the stub street, Andover Green, is utilized rather than providing access to Todds Road.
 - d. Chapter 3 of the Comprehensive Plan (Growing Successful Neighborhoods) emphasizes the importance of safe, secure, well-designed neighborhoods that create a sense of place and identity, which can occur with the incorporation of the subject property into the Andover neighborhood.
 2. This recommendation is made subject to approval and certification of ZDP 2014-66: Williams Property (Lot 1), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2014-66: WILLIAMS PROPERTY, LOT 1 (10/5/14)* - located at 3400 Todds Road.
(EA Partners)

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

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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, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote the number of bedrooms proposed in the site statistics.
8. Denote type of tree species in tree inventory.
9. Addition of parking space location and size.
10. Addition of existing and proposed easements.
11. Discuss access to Andover Green.
12. Discuss proposed driveway dimensions.
13. Discuss proposed access to Todds Road.
14. Discuss the need for storm water detention improvements.
15. Discuss compliance with Article 9 duplex setback, parking and open space requirements.

Zoning Presentation: Ms. Wade presented the staff report, and began by noting that the staff had received one letter of objection to this proposed zone change, and distributed it to the Commission members for their review. She briefly oriented the Commission to the location of the subject property on the south side of Todds Road, outside of Man O' War Boulevard. The property is approximately 3.7 acres in size, and is located between the Andover Baptist Church to the northwest, and the Andover Golf & Country Club to the southeast. The rest of the area is developed as single-family residences, with Andover Woods, which was originally also part of the Williams property, located directly to the southwest. Andover Green is a local street in that subdivision, which stubs into the rear of the subject property. The area is characterized predominantly by R-1D zoning, with R-1E and R-3 zoning located across Todds Road. There are also a few remaining tracts with A-U zoning in the area, associated with the adjacent church and the golf course.

Ms. Wade displayed an aerial photograph of the street system in the vicinity of the subject property, noting the location of Forest Hill Drive, which creates a loop, intersecting with Todds Road near the subject property, and then again further to the south. She displayed the following photographs of the subject property and surrounding area: 1) a view of the subject property from the existing Andover neighborhood, noting the Andover Green stub street; 2) a view toward Todds Road; 3) a view from Todds Road, noting the existing single-family residence on the subject property; and 4) the existing Todds Road corridor, from McFarland Lane, which is proposed to be closed at some point in the future. Ms. Wade noted that Todds Road is a two-lane, rural section near its intersection with McFarland Lane and along the subject property's frontage, but it is in the process of being widened and improved, with curbs, gutters, and sidewalks. The vertical and horizontal curves are also being reduced as part of the widening project.

Ms. Wade stated that the petitioner is proposing to rezone the subject property in order to develop a combination of 20 townhouses and duplexes, for a density of 5.46 dwelling units per acre. The corollary development plan filed with this request does not depict a connection to the existing Andover Green stub street. The petitioner is instead proposing a direct connection to Todds Road.

Ms. Wade said that the Williams property was rezoned from A-U to R-1D in 1997. At that time, the property was 12 acres in size; the corollary development plan proposed 33 lots, with the existing single-family residence (now the subject property) depicted as Lot 34. Future access to Todds Road was restricted on that development plan, with the following note:

"At the time of further subdivision of Lot 34, access to Todds Road shall cease, and access shall be provided by a local street stub provided to this property."

As the majority of the Williams' property developed, that stub street was constructed and named Andover Green.

Ms. Wade stated that the 2013 Comprehensive Plan has several Goals & Objectives that are applicable to the proposed zone change, specifically four that the staff mentioned in their report. Theme A recommends:

- "1) Growing successful neighborhoods through expanding housing choices that address market needs for all residents;
- 2) encourage infill development throughout the Urban Service Area boundary as a strategic component of growth;
- 3) providing well-designed neighborhoods that are connected for all modes of transportation; and
- 4) working to achieve an effective and comprehensive transportation system for the community."

The staff reviewed the proposed zone change with those Goals & Objectives in mind. It was clear that the petitioner met at least two of the goals, by providing a variety of housing types (townhouses) in an area that is currently

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developed as single-family, and providing a development at a higher density than the adjoining neighborhood. That provision helps to support infill and balance urban/rural demands in order to protect the Rural Service Area. Ms. Wade said that the petitioner contended in their justification that the proposed zone change is in agreement with the Goals & Objectives of the 2013 Comprehensive Plan, and that the existing R-1D zone is inappropriate and the proposed R-4 zone is appropriate. While the staff does agree that this proposal is in substantial compliance with the 2013 Comprehensive Plan, they did not believe that the justification regarding appropriateness was true in this case. The existing R-1D zoning could accommodate development of the subject property in a manner that is compatible with the adjoining neighborhood, as it was originally planned in 1997.

Ms. Wade stated that one aspect of the proposal that does not meet the Comprehensive Plan Goals & Objectives involves the lack of connectivity to the existing stub street. The proposal is contrary to the previous planning process, which established a local street network that was designed to connect to the adjoining subdivision. The staff believes that the Todds Road widening project will help mitigate some of the traffic issues in the vicinity of the subject property by removing some of the existing curves and providing sidewalks, curbs, and gutters; however, it is also likely to increase traffic speeds. That potential increase in overall traffic speed could make ingress and egress to the subject property more difficult than it is currently. Ms. Wade said that the staff believes that the proposed development could fully meet the Goals & Objectives, if modifications are made to the development plan related to connectivity to the adjoining neighborhood through the existing street stub. The staff believes that utilizing the existing neighborhood street system would be safer; would promote more social interaction among neighbors; and would create a sense of place and security, as recommended by the Comprehensive Plan in Chapter 3, which is titled "Growing Successful Neighborhoods."

Ms. Wade stated that, since the petitioner's development plan did not include a stub street connection to Andover Green as recommended by the Comprehensive Plan, and as required by the Subdivision Regulations, the staff prepared for the Planning Commission an exhibit listing references in the Comprehensive Plan related to connectivity. Since the Comprehensive Plan no longer includes a land use element or specific density recommendation, the staff contends that the land use policies become much more important.

Ms. Wade said that the staff and the Zoning Committee recommended approval of this request, subject to the four findings as listed in the staff report and on the agenda. Contingent upon the upcoming discussion about the development plan, some of those findings could possibly need to be reworked or deleted in order to move this proposal forward to the Urban County Council.

Commission Questions: Ms. Plumlee asked Ms. Wade to note the location of McFarland Lane, and advise if that roadway was proposed to be closed. Ms. Wade noted the location of McFarland Lane, just across from the southeast corner of the subject property. She explained that McFarland Lane had, in the past, provided access for several small farm tracts and the Forker property, which is currently being developed. That development will connect to Autumn Ridge subdivision, so the McFarland Lane access to Todds Road is no longer needed.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, noting that the staff had prepared revised conditions for the approval of this plan, which were distributed to the Commission members. He stated that the subject property is a remnant tract, with frontage along Todds Road.

Mr. Martin stated that the petitioner is proposing to construct 20, two-bedroom dwelling units, to be subdivided and sold as fee-simple lots, on the subject property. Primary access to the development is proposed on Todds Road, with a gated access to the Andover Golf and Country Club parking lot. Mr. Martin said that the plan was recommended for approval by the staff and the Subdivision Committee, as listed on the agenda, and now is subject to the following revised conditions recommended by the staff:

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, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
- ~~7. Denote the number of bedrooms proposed in the site statistics.~~
- ~~8. Denote type of tree species in tree inventory.~~
- ~~9. Addition of parking space location and size.~~
- ~~10. Addition of existing and proposed easements.~~
- 7.11. Discuss access to Andover Green.
- ~~12. Discuss proposed driveway dimensions.~~
- ~~8.13. Discuss proposed access to Todds Road.~~
- 9.14. Discuss the need for storm water detention improvements Addition of cul-de-sac at termination of Andover Green.

~~15.—Discuss compliance with Article 9 duplex setback, parking and open space requirements.~~

Mr. Martin said, as the revised conditions indicate, that the revised plan had resolved several of the original conditions, including the need to meet the setback, parking, and open space requirements for the R-2 zone. Several of the new units proposed along the property boundary bordering the A-U zone will also need to be shifted slightly in order to accommodate the more restrictive setback along the agricultural zone.

Mr. Martin stated that the revised conditions also include two discussion items. With regard to condition #8, the staff was originally concerned about the vertical sight distance along Todds Road, and its effect on the proposed access. The issue is significant enough that the proposed access would not be permitted to be constructed at this time, but the staff has been reassured that the planned Todds Road improvements will remedy that situation. The staff of the Division of Traffic Engineering have indicated that they would like to be able to amend their recommendation somewhat, based on the specifics of the redesigned right-of-way.

Mr. Martin said that the more important issue of concern, and subject of an associated waiver request, is the proposed termination of Andover Green. The staff believes that connectivity is very important to the function of the community, and the connection of Andover Green has been planned for many years. The petitioner has requested a waiver of the Subdivision Regulations in order to allow Andover Green to remain as a stub street into the subject property. The petitioner did not, however, offer any justification for granting the waiver under Article 1-5 of the Subdivision Regulations, which states that, in order to grant a waiver for a hardship, the situation requires an "exceptionally unique topographic or other natural or man-made physical condition encountered on the particular land." Mr. Martin stated that the petitioner's justification for the waiver request was neighborhood opposition to the zone change and the proposed connection of Andover Green, which does not constitute a unique situation. In addition to the lack of an appropriate justification, the petitioner has offered no proposal for an acceptable termination for Andover Green, even though all stubbed streets are intended to be connected, or terminated with a cul-de-sac. The Planning Commission has approved several similar requests to terminate a stub street with a modified access, such as pavement and a gate. That solution allows access to the property by emergency or service vehicles, and any residents who have permission to use the gate. Mr. Martin stated that, based on the lack of a termination and appropriate justification, the staff is recommending disapproval of the requested waiver of the Subdivision Regulations. In addition, the staff is recommending the inclusion of condition #9, which would require a cul-de-sac as a termination to Andover Green.

Mr. Martin said that the staff had also distributed to the Commission members findings for approval of an access easement. Since the petitioner intends to subdivide the subject property and sell the units, they are proposing to construct the interior circulation on the property as an access easement to provide primary access and lot frontages for the properties. The staff is recommending approval of the necessary finding by the Planning Commission to determine that the proposed access easement is appropriate to serve these new duplex and townhouse units in this circumstance.

Mr. Martin reiterated that the staff is also recommending approval of the development plan, subject to the revised conditions as listed, including condition #9, which would require the termination of Andover Green in a cul-de-sac.

Commission Questions: Mr. Brewer asked, with regard to condition #9, how terminating Andover Green in a cul-de-sac would increase connectivity. Mr. Martin answered that the petitioner would have to relocate two of the proposed dwelling units, and the cul-de-sac would then provide a connection to Andover Green. He added that the petitioner could also modify the cul-de-sac, which has been done in some locations in Lexington-Fayette County, particularly in multi-family developments.

Mr. Berkley asked, with regard to the waiver request, if there was a significant elevation change between Andover Green and the subject property. Mr. Martin answered that there was an elevation difference between the termination of Andover Green and the subject property, but the staff anticipates that the petitioner would perform significant grading on the property as part of the development's infrastructure construction. He added that a modified termination design could also help to address the issue related to topography. Mr. Berkley asked if the elevation difference could be considered as a justification for the waiver request. Mr. Martin answered that the petitioner could have used that elevation difference as a justification, but they did not.

Mr. Penn asked if the petitioner was proposing an emergency entrance to the property through the Andover Golf and Country Club property. Mr. Martin responded that he would not consider it to be an emergency access, but the petitioner was proposing a gated access into the country club parking area. He said that the access is proposed to be 20 feet wide, which could accommodate emergency vehicles; but the trucks would have to wind through the country club's parking area in order to reach the new dwelling units.

Mr. Cravens asked if the Todds Road frontage of the subject property would have to have curb, gutter, and sidewalk. Mr. Martin answered that the frontage would have to meet the Kentucky Transportation Cabinet's (KYTC) design for

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the right-of-way of Todds Road, but he was not sure if that would include curb, gutter, and sidewalks. Ms. Wade added that the proposed cross-sections do include curb, gutter, and sidewalks, as a continuation of the improvements that were made at the intersection of Man O' War Boulevard and Todds Road. Mr. Cravens asked if the petitioner would be responsible for constructing those improvements. Ms. Wade responded that KYTC would construct the improvements as part of their project. Mr. King added that Todds Road is a state route. He said that, during all of the development along Todds Road, improvements were required at the intersections, but not along full property frontages; but the necessary right-of-way was obtained. Mr. King explained that, when an active project is in process, provision of improvements is always deferred to the active public road project.

Mr. Owens asked if the staff's requested cul-de-sac termination of Andover Green would include a connection to the internal circulation on the subject property. Mr. Martin answered that it could, and the staff would hope that the petitioner would take advantage of the ability to provide connectivity to that access. Mr. Owens opined that it appeared to be a "long way back through the subdivision" along Andover Green, as opposed to using a direct connection to Todds Road. Mr. Martin noted that that is not an unusual circumstance in large subdivisions.

Petitioner Representation: Rory Kahly, EA Partners, was present representing the petitioner. He said that he had not prepared to discuss the waiver request at this hearing, since the staff indicated at the Subdivision Committee meeting three weeks ago that waivers were not typically discussed along with zone changes. He noted that, if he had known that was not the case, he would have submitted the information that the staff had not received to go along with their waiver request.

With regard to the conditions for approval, Mr. Kahly stated that most of the remaining conditions refer to access to Andover Green. He said that, in many cases, he represents petitioners whose projects face a great deal of neighborhood opposition. In this case, however, the petitioner met with the neighborhood early in the process, and found that the 33 residents of Andover Woods and Andover Green were opposed to the connection of Andover Green to the subject property. The petitioner is aware that that configuration might not meet the requirements of the Subdivision Regulations, but it is in keeping with the wishes of the area residents.

Mr. Kahly said that the petitioner has offered conditional zoning restrictions as another way to help put neighbors' minds at ease about the possible uses of the subject property. There were some concerns about the allowable density in the proposed R-4 zone, so the petitioner added conditional zoning restrictions to limit the development to single-family detached homes; duplexes; townhomes; or condominiums, and that apartments would not be permitted. The plan currently depicts townhomes and duplexes, but that configuration could change somewhat as the plan goes through the review process.

Mr. Kahly stated that the proposed access to Todds Road is based on the information provided by KYTC as part of their improvement project. The petitioner contends that the access will have adequate sight distance in both directions, and adequate spacing from the nearest access points. The improved Todds Road is proposed to be three lanes at this location, with a center turn lane; and the petitioner believes that the intersection will be safe for ingress and egress.

Mr. Kahly said that the Division of Fire and Emergency Services initially had some concerns about the access easement that is proposed to serve the interior of the property, but they are now satisfied with the revisions provided on the plan. The petitioner removed most of the medians that were proposed on the interior of the property in order to allow space for emergency vehicles to operate, and has agreed to provide an additional emergency access gate to the Andover Golf and Country Club property.

With regard to the concerns about the Andover Green connection, Mr. Kahly noted that there is an approximately five or six-foot difference in the elevation between the street and the subject property. He said that the note on the previous development plan for the property, indicating that Andover Green would be continued, was placed on the plan by a previous property owner and developer, who are no longer involved with the property. The petitioner has removed that note on the current plan, because they contend that that connection does not apply to the current proposal. Mr. Kahly said that the existing Andover Green residents have lived on a quiet circle for at least 10 years, and they do not want the street to be connected.

Mr. Kahly displayed an aerial photograph of the subject property and surrounding area, noting that it depicted several different neighborhoods that are typically known collectively as Andover. He said that having access to the clubhouse is important, because the proposed development will be marketed primarily to club members who desire to live nearby. The access to Todds Road is important for the visibility of the proposed development, and to provide an adequate means to move residents into and out of the property. The petitioner contends that the other neighborhoods in the area have ample connectivity, for residents and emergency vehicles. Mr. Kahly stated that the petitioner does not believe that a small, 2-unit development of townhomes is necessary for the area, and the existing Andover Green residents do not want the proposed connection.

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Commission Questions: Mr. Drake asked how many units would be lost from the proposed development if the cul-de-sac was constructed. Mr. Kahly answered that he had not calculated how many units would be lost. He added that he was concerned that he could be required to rework the plan to include a cul-de-sac in just two weeks, since the plan must be certified within that timeframe in order for the rezoning request to proceed to the Urban County Council. Mr. Kahly opined that a typical cul-de-sac configuration would result in the loss of four dwelling units, out of the 20 proposed.

Ms. Mundy asked how solid waste and emergency vehicles currently access the area near the Andover Green stub. Mr. Kahly answered that Andover Green is a loop, so solid waste vehicles should only be required to back up the width of one lot in order to pick up trash.

Mr. Owens asked, with regard to the photo of the Andover Green stub, where the petitioner's property line is located. Mr. Kahly responded that the property line corresponds with the location of the four-plank fence in the photo, past the actual end of the stub.

Citizen Comments: Ryan Finnell, president of the Andover Hills Neighborhood Association, stated that he and his neighbors were not necessarily opposed to the proposal, but they were offended by the staff's assertion that existing residents' opinions were not significant regarding the waiver. He asked that the Commission respect the opinions of the residents, rather than just the "numbers."

Mr. Finnell stated that there are existing traffic problems in the neighborhood, for which the residents have sought assistance from the Divisions of Police and Traffic Engineering. They have not received any assistance, and now they are concerned that the additional traffic from the proposed development could exacerbate the situation.

Mr. Finnell said that the developer and the residents have requested an access to Todds Road, rather than a connection to Andover Green, while the staff is recommending the connection. He opined that the staff's recommendation was based on the fact that the staff members do not live in the area, so they are not fully aware of the traffic difficulties. The residents of his neighborhood believe that, since the proposed development will affect them, they should have some say in how it is constructed. Mr. Finnell added that, if Andover Green is connected, the proposed development "will be absorbed into the neighborhood, but will not actually be part of it" since it will not be regulated by the same HOA or held to the same deed restrictions.

Commission Questions: Mr. Owens asked if Mr. Finnell was opposed to the proposed development in general, or just to the connection of Andover Green. Mr. Finnell answered that he and his neighbors were opposed to the connection, not to the development in general. He added that the neighbors appreciated the petitioner's willingness to include them in early discussions about the proposed development, and he believed it would be a good addition to the area. Mr. Owens noted that the staff and the Commission believe that the neighborhood residents' opinions are significant.

Citizen Opposition: Ryan Gold, 945 Andover Woods Lane, stated that his property directly adjoins the subject property, so the proposed development would have a huge effect on his property values and where his children play. He said that Forest Hill Drive is heavily traveled, and he would not have bought a home there; he and his wife purposely chose to purchase their home because it was located at the stub end of Andover Green. Mr. Gold noted that the HOA had sought to construct speed bumps on Forest Hill Drive for years in an attempt to slow down the traffic.

Mr. Gold stated that he would like to submit a petition with more than 100 signatures, including those of more than one HOA president; some of those residents are opposed to the R-4 zoning, some to the proposed development, and some to the connection of Andover Green. Mr. Gold asked that, if the Planning Commission chooses to approve this request, they place restrictions on the property to prohibit high-density developments and Section 8 housing.

Richard Ward stated that he and his wife had lived in the Andover area for more than 17 years. He said that, when they first moved in, there were only two entrances to the subdivision; there are now four or five entrances. Mr. Ward said that much of the traffic in the area avoids Todds Road in favor of using the Andover neighborhood streets to access the Dabney and Mapleleaf Drive areas. He added that each new access brings with it more traffic.

Elmer Craig, 3516 Hunters Green Way, stated that there are several areas of luxury townhomes located throughout the Andover subdivision, and he was initially in favor of the proposed development. Once he heard about the proposed connection to Andover Green, however, he became concerned about the additional traffic and higher-density R-4 zoning. Mr. Craig opined that high-density zoning should not be necessary for the construction of luxury townhouses.

Mr. Craig stated that he was also concerned that additional traffic on Andover Green could endanger the school busses that travel through the area every day.

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

James Sutton, 3520 Hunters Green Way, stated that he was opposed to the proposed R-4 zoning, since he was aware of the possible ramifications of it. He said that he was also opposed to the connection of Andover Green, since it and the nearby streets are narrow and were never intended to carry additional traffic.

Mr. Sutton stated that, several years ago, the subject property was proposed for development as a daycare center. The petitioner in that case was denied an access to Todds Road, so he did not believe that the proposed access would be allowed in this case.

Clay Waller, 936 Andover Green, stated that he was the developer of many properties in Lexington-Fayette County. He believes that the townhouse market has been overbuilt, as there are many vacant units around the city already. Mr. Waller suggested that the petitioner consider retaining the existing R-1D zoning on the subject property, and developing it with single-family homes that would complement the existing neighborhood. He said that he and his neighbors are opposed to the R-4 zoning and the proposed connection of Andover Green.

Scott Martin, 928 Andover Green, stated that he was concerned that the subject property could be developed as apartments at some point under the proposed R-4 zoning. He said that the current zoning would accommodate townhomes, so he did not believe the zone change was necessary in order to develop the property.

Commission Question: Mr. Berkley asked if the petitioner had offered to add a note restricting the development of apartments. Mr. Kahly responded affirmatively.

Citizen Rebuttal: Mr. Gold stated that he appreciated the petitioner's offer to restrict the development of apartments on the property, but he was concerned that the property could be sold at some point in the future and asked if the next owner could construct apartments. Ms. Wade replied that, when a property is rezoned, it can include conditional zoning restrictions. Those restrictions can limit the land use, including density and the type of residential units. She stated that the petitioner's proposed conditional zoning restrictions would limit the use of the subject property to only single-family homes, either detached or attached, as townhomes or duplexes. The petitioner has also suggested the addition of condominiums; but that is a means of conveying property, rather than a land use, so it cannot be considered as a conditional zoning restriction. Ms. Wade stated that the petitioner is also proposing a conditional zoning restriction to prohibit apartments on the property. She explained that, when a conditional zoning restriction is attached to a property, it cannot be changed unless it goes through another zone change process, even if the property is conveyed. Conditional zoning restrictions are similar to deed restrictions, in that they run with the property, and can only be changed through a significant effort on the part of the property owner.

Ms. Wade stated, with regard to Mr. Kahly's assertion that terminating Andover Green in a cul-de-sac would cause the loss of some units from the proposed development, that the staff had prepared an exhibit. She displayed the graphic on the overhead, noting that, if the cul-de-sac is provided, the staff believes that the proposed density can be maintained, as well as the access easements for internal circulation and access to the Andover club. Ms. Wade stated that, in meeting with the petitioner, they indicated that they were not opposed to the type of configuration depicted, but they were attempting to appease the neighbors by not connecting Andover Green. The staff believes that, if a cul-de-sac is provided, the residents of the proposed development could use the gated access to the club to access Todds Road, which would provide some connectivity. Ms. Wade said that the staff simply cannot support the termination of a stub street with a fence, since it is contrary to the Subdivision Regulations and does not uphold the intent of the Comprehensive Plan. She added that the six-foot grade change between Andover Green and the subject property is nominal in terms of the grading that would need to be done on the property prior to construction.

Commission Questions: Mr. Penn asked what kinds of restrictions could be placed on the deeds for the townhouse units to ensure that they do not become rental units. Mr. Kahly answered that private deed restrictions could require that the units be owner-occupied. Mr. Penn asked if the petitioner would be agreeable to provide such a deed restriction. Mr. Kahly responded that the petitioner would be agreeable to that, but such a provision is not part of the Planning Commission's review process.

Petitioner Rebuttal: Mr. Kahly stated, with regard to some of the residents' concerns about the proposed R-4 zone, that the petitioner chose that zone because it provides more flexibility in terms of lot coverage and floor area ratio. Other zones allow the construction of townhomes, but the petitioner wanted to take advantage of the maximum allowable lot coverage and floor area ratio.

Mr. Kahly said, with regard to the staff's proposed layout for the subject property, that the petitioner would request that that issue be deferred until the Final Development Plan stage, since he would be required to redesign the layout of the development and get the plan certified within two weeks. He reiterated that this was a zoning development plan, not a detailed layout of the property, and its purpose was to secure the rezoning; the final configuration of the property could be determined at a later stage in the process. Mr. Kahly said that the petitioner's proposed development has the support of the area residents, as depicted without a connection to Andover Green, and he requested approval.

Staff Rebuttal: Mr. Martin stated that he wanted to be very clear that about the staff's belief that the petitioner could maintain the density on the subject property with an access to Andover Green. The staff also believes that the petitioner could have offered a modified entrance with controls into this location, which would maintain connectivity for public safety and service vehicles, as well as for residents. The staff is no longer opposed to the petitioner's proposed access to Todds Road, since roadway improvements will permit the access and they believe that many residents would choose to use that as the primary access. Mr. Martin stated that the staff would welcome the opportunity to evaluate a proposal for a modified, gated entrance to the property that would provide the desired connectivity.

Commission Questions: Mr. Owens said that he remembered an instance in which a terminated hammerhead-type cul-de-sac, that did not provide the connectivity, was constructed as part of another development. He asked if that would be a possibility in this situation. Mr. Martin that that type of modified design could be a possibility, although the subject property presents a very different circumstance from the case to which Mr. Owens was referring.

Mr. Cravens stated that, in his time on the Planning Commission, they had not allowed any streets to remain dead-ended without some type of termination. He said that the petitioner could terminate the street with a hammerhead, but without providing connectivity. Mr. Martin agreed that that would be a means to provide a termination to the street, while still restricting access. He added that the Subdivision Regulations require either the termination of the street, or the granting of a waiver of such.

Mr. Brewer asked if the Commission was considering the construction of some type of hammerhead on Andover Green. Mr. Martin reiterated that the Subdivision Regulations require either the termination of the street, or the granting of a waiver of such. Mr. Brewer said that the subject property is not located on Andover Green. Mr. Martin answered that the Andover Green right-of-way continues up to the subject property line, so it has to be terminated in conformance with the Subdivision Regulations. Mr. Brewer asked if the hammerhead could be constructed without connectivity, in order to address the staff's concerns, and then allay some of the concerns of the constituents. Mr. Martin responded affirmatively.

Mr. Drake asked on whose property the hammerhead would be constructed. Mr. Martin responded that it would be constructed on the subject property. Mr. Drake asked if that construction would have to be at the expense of the current applicant. Mr. Martin answered that the current applicant would have to build an approved termination on their property, as do all developers in this situation.

Mr. Brewer asked if the petitioner would be willing to construct such a hammerhead, without a connection to Andover Green. Mr. Kahly answered that any improvements that the Planning Commission was considering imposing would take up a portion of the petitioner's land from the proposed development. He added that it would be very onerous to have to rework the entire plan within the next two weeks.

Mr. Owens asked if the petitioner would be willing to resolve the termination of the cul-de-sac with a hammerhead at the Final Development Plan stage. Mr. Kahly answered that, according to the staff, the waiver was in the Commission's hands today, to make a decision about the termination. He said that delaying resolution of the termination until the Final Development Plan left the residents and the petitioner "up in the air."

Steve Snowden, petitioner, stated that he understood the staff's concerns about termination of the street, but none of the residents wanted the connectivity. He said that Andover Country Club had agreed to allow access to the subject property through their parking area, which would provide for emergency vehicles to access the property. With regard to the termination of Andover Green, Mr. Snowden stated that residents on the subject property would be unlikely to use Andover Green, rather than a direct access to Todds Road, because they would be required to travel through the entire neighborhood to get back to Todds Road.

Mr. Snowden stated that there was a strong demand from members of the country club for the proposed development, particularly because most of the dwelling units were proposed to be one level. He said that construction of a hammerhead termination of Andover Green would affect the proposed development, because the subject property is only 3.6 acres in size, and the proposed units are 50 feet by 60 feet. The petitioner's intent was not to crowd as many units as possible into the development, but to create a nice development, of which the future residents, himself included, could be proud. Mr. Snowden stated that he was aware that the connectivity situation was awkward, but he believed that this was a situation in which the Commission needed to decide on the right thing to do, which should be an obvious choice.

Mr. Penn asked if Mr. Snowden agreed that the Subdivision Regulations require a termination to a public street. Mr. Snowden answered in the affirmative. Mr. Penn asked how Mr. Snowden would propose to resolve the situation. Mr. Snowden answered that the street connection does not fit any of the three determinations outlined by Mr. Martin, so believed that the Commission should determine the right thing to do. He said that the neighbors did not want connectivity to Andover Green, and he did not believe that it would serve any purpose, particularly since it was not

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needed for emergency vehicle access. Mr. Penn stated that it would serve the purpose of following the Subdivision Regulations.

Mr. Owens asked if the conditional zoning restriction to which Mr. Kahly referred was included on the development plan. Ms. Wade answered that the conditional zoning restriction is not included on the face of the plan. She explained that Mr. Kahly's proposed restriction should not include condominiums; that restriction would not be appropriate, since it is a means of conveying property rather than a land use. Ms. Wade stated that the language did not need to specifically list apartments as a prohibited use, since it notes that the use of the property would be limited to single-family detached, single-family attached (townhouse), or duplex dwelling units. She added that, if the Planning Commission chooses to approve the development plan without a connection to Andover Green, they would need to strike findings "c" and "d," which specifically refer to connectivity for all modes of transportation.

Mr. Owens stated that the hearing was closed, and opened the floor to the Commission for discussion or a motion.

Ms. Mundy stated that she was pleased to see that the petitioner met with neighborhood representatives prior to this hearing, and she thanked the residents for their diligence in acquiring signatures for their petition and attending today's hearing. She said that there are certain restrictions that bind the Commission, which may not be in accordance with the residents' wishes, but noted that the Commission members appreciate their input.

Ms. Plumlee stated that she appreciated the residents' attendance and comments, and noted that it's rare to see "neighbors and an applicant waltzing in holding hands." She reiterated Ms. Mundy's comments that the Commission members listen to residents, and added that she was hopeful that, in this case, the Commission could come to some agreement that would be acceptable for both parties.

Mr. Drake asked how much property would be used to construct a hammerhead to terminate Andover Green. Mr. Kahly answered that the right-of-way depicted on the exhibit displayed on the overhead was 50 feet wide, and 100 feet long, with a utility strip and sidewalk outside of that area. Mr. Drake said that it appeared that it would require a minimum of 10,000 square feet of property, or a quarter of an acre.

Mr. Brewer stated that he was "struggling with the balance" between the requirements of the regulations, and a desire for a connection that "does not make sense." He said that, if he lived on the subject property, he would probably prefer to use a direct access to Todds Road, rather traveling back through the neighborhood. He noted, however, that he believed that losing a small percentage of the property, in order to address the neighbors' concerns and meet the requirements of the regulations, seemed like a relatively small concession to make.

Mr. Drake asked what would happen if the Commission ignored the regulation that requires the termination of streets. Ms. Jones answered that "ignoring regulations is never a good idea." She said that, whatever decision the Commission chooses to make, they will be required to have findings to support their reasons.

Zoning Motion: A motion was made by Mr. Cravens to approve MAR 2014-14, for the reasons provided by staff.

Discussion of Motion: Ms. Wade asked if it was Mr. Cravens' intent to include the proposed conditional zoning restriction, and to strike through the findings that refer to connectivity. She said that, if the intent was to provide a termination of Andover Green according to the Subdivision Regulations, it would be appropriate to allow those findings to remain. He responded affirmatively.

Motion Second: Mr. Cravens' motion was seconded by Ms. Mundy.

Discussion of Motion: Mr. Brewer asked if Mr. Cravens would need to provide another set of findings, if the intent was to require the petitioner to provide some termination to Andover Green. Ms. Jones answered that no additional findings would be necessary, because the Ordinance refers to connectivity or providing an appropriate termination. She noted that there would need to be slightly different conditions for the development plan approval if that was Mr. Cravens' intent. Mr. Brewer said that he thought Ms. Jones had indicated clearly that there would need to be findings, no matter which decision the Commission chose to make. Ms. Jones answered that there would need to be findings; but she believed that the current findings would be acceptable, because of the regulation that references either having connectivity or the proper termination of a street, as opposed to just a dead-end street. Mr. Sallee added that "c" and "d" would not be appropriate findings if the Commission chose to approve the development plan as proposed, with no termination of Andover Green. Mr. Brewer asked if "c" and "d" would be appropriate if the Commission chose to require the termination of the street in a hammerhead, to which Mr. Sallee responded in the affirmative.

Mr. Drake asked if the petitioner would have a process by which to alter any decision the Commission makes today, since he was not prepared to address the waiver request. Mr. Sallee answered that the petitioner could request additional waivers at the time of a Final Development Plan for the property.

Zoning Action: Mr. Cravens' motion carried, 9-1. (Brewer opposed, Wilson absent)

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Development Plan Motion: A motion was made by Mr. Cravens and seconded by Ms. Mundy to approve ZDP 2014-66, subject to the first eight conditions as listed in the revised staff recommendation, and adding a new #9 for addition of a cul-de-sac or hammerhead on Andover Green.

Discussion of Motion: Mr. Penn asked if there was any way to include a condition that the units would be sold fee-simple, rather than rented. Mr. King answered that a government agency could not restrict that, because of fair housing laws. He added that the petitioner could enforce private deed restrictions to that effect.

Mr. Kahly stated that the petitioner would prefer that condition #9 not include the word "cul-de-sac," but would prefer to use "termination," as there were several different possibilities for terminating Andover Green. Mr. Cravens offered to change condition #9 to require resolution of the termination at the time of the Final Development Plan, to which Mr. Kahly agreed. Mr. Martin noted that the petitioner might file a preliminary subdivision plan, following this preliminary development plan, in order to subdivide fee-simple lots, so the issue must be addressed on the proper plan. Mr. Penn stated that he would like to provide the neighborhood some reassurance that the issue will be resolved on the Final Development Plan. Mr. Saltee added that Mr. Cravens' motion would not necessarily require the cul-de-sac to connect, but rather that it be provided on the property to finish the street. Mr. Cravens stated that it was not his intent for the petitioner to connect through to their development, but rather an appropriate termination to the street. Mr. Brewer stated that he did not understand; he said that, if the intent is to comply with the regulations on the termination of Andover Green, without connectivity, it should be clearly stated that way. Mr. Cravens reiterated that his intent was to provide an appropriate termination to the street, and allow the petitioner to decide whether to use a cul-de-sac, hammerhead, or some other means to do so.

Mr. Kahly asked if Mr. Cravens' intent was to require the petitioner to construct a cul-de-sac, but have no access to it, to which Mr. Cravens responded that the petitioner indicated that they did not want access. Mr. Kahly stated that, if the intent was to restrict access, the Commission should grant the requested waiver, and allow the stub street to remain as it currently exists. Mr. Cravens responded that the Commission has not let one person, in the eight years he has served on the Planning Commission, get by without properly terminating a street.

Mr. Owens noted that there was a motion on the floor, and asked Mr. Cravens to restate condition #9. Mr. Cravens responded that condition #9 should read: "Resolve the termination of Andover Green."

Ms. Mundy indicated that she was in agreement with that condition.

Development Plan Action: Mr. Cravens' motion carried, 9-1. (Brewer opposed, Wilson absent.)

Waiver Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 10-0 to disapprove the requested waiver of the Land Subdivision Regulations.

3. **CALLER PROPERTIES, LLC, ZONING MAP AMENDMENT & CHEVY CHASE SHOPPES ZONING DEVELOPMENT PLAN**

- a. MAR 2014-16: CALLER PROPERTIES, LLC (10/5/14)* – petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.588 net (0.852 gross) acre, for property located at 626-634 Euclid Avenue.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World. The petitioner proposes removing the three structures and replacing them with a 20,000 square-foot mixed-use building. The petitioner proposes retail sales establishments on the first floor, and seven 2-bedroom dwelling units on the second floor of a new structure, with associated off-street parking.

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

The Staff Recommends: **Postponement**, for the following reason:

1. The proposed redevelopment of the subject property does not meet all the requirements of the Neighborhood Business (B-1) zone, and the proposed development would be out of character with the surrounding area. The petitioner should revise the corollary zoning development plan in order to meet the requirements of the proposed zone.

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- b. ZDP 2014-65: CHEVY CHASE SHOPPES (10/5/14)* - located at 626, 630 and 634 Euclid Avenue.
(Barrett Partners)

The Subdivision Committee Recommended: Postponement. There are questions regarding the proposed access to the site and with the building's orientation to Euclid Avenue.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Discuss proposed dumpster location.
8. Discuss proposed access to Marquis Avenue.
9. Discuss building fenestration along Euclid Avenue.
10. Discuss width of proposed drive-through lane.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property, which is comprised of three parcels. The property is located northwest of the intersection of Euclid and Marquis Avenues, just across Marquis Avenue from the recently rezoned Kroger. Across Euclid Avenue are two P-1 lots; and P-1 zoning continues along much of Euclid Avenue, with B-1 zoning located near the Euclid Avenue/Tates Creek Road intersection. The Columbia Heights and Hollywood subdivisions are located to the southwest of the subject property, with the Aylesford neighborhood, which has historic overlay zoning, across Euclid Avenue from the property. Ms. Wade stated that the petitioner is requesting a rezoning in order to redevelop the three lots, which are currently occupied by three single-family residential buildings. The structure on the corner parcel is home to an accounting firm, while the other two existing structures are non-conforming multi-family residential uses.

Ms. Wade displayed the following photographs of the subject property: 1) a view of the corner parcel, with the existing accounting firm; 2) the two existing residential structures; 3) offices located further down Euclid Avenue; 4) a view toward the northwest, noting the current setbacks of the residential structures; 5) a view of the parking lot across the street from the subject property, noting the location of an Art-in-Motion transit stop; 6) a view down Euclid Avenue toward the Kroger shopping center and Tates Creek Road; 7) a view looking down Marquis Avenue along the property frontage; 8) a professional office building on Marquis Avenue; and 9) a view down McCaws Alley, which runs along the rear of the subject property, noting that it is only approximately 12' in width.

Ms. Wade said that the petitioner originally proposed to construct a building that was not in keeping with the character of the existing Euclid Avenue corridor, so the staff recommended postponement of this change at the Zoning Committee meeting three weeks ago. The petitioner revised their plan just prior to that meeting, and they are now proposing a 10,000 square-foot building, to include restaurant and retail uses, as well as an accessory drive-through and associated off-street parking.

Ms. Wade stated that the petitioner contended in their justification that the proposed zone change met at least one Goal & Objective of the 2013 Comprehensive Plan, related to "compact, contiguous, and sustainable development within the Urban Service Area, which would accommodate future growth needs in order to uphold the Urban Service Area concept." The petitioner also noted in their justification that the proposed zoning is compatible with the immediately adjoining zoning, and with the 1991 Aylesford East University Small Area Plan, as it related to non-residential development and providing accessible development in the university area. Ms. Wade said that, in reviewing the petitioner's justification, the staff did not use the Aylesford East University SAP as an applicable finding, since they believed that it was now somewhat dated. The staff does agree, however, that the redevelopment proposed is more in keeping with the character of the Euclid Avenue corridor, and it now meets the new B-1 zone requirements. The staff cites the 2013 Comprehensive Plan's support of Infill & Redevelopment, which, in some cases, might lead to an intensification of land uses. The Plan notes, however, that Infill & Redevelopment should be context-sensitive to the surrounding environment whenever possible.

Ms. Wade stated that the petitioner has indicated a desire for this request to go forward, rather than pursue another postponement in order to resolve more of the staff's concerns. Therefore, the staff is recommending approval of the zone change, for the following reasons:

1. The proposed Neighborhood Business (B-1) zone is in agreement with the 2013 Comprehensive Plan, for the following reasons:

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- a. The Plan recommends compact, contiguous, and/or mixed-use sustainable development within the Urban Service Area to accommodate future growth needs in order to uphold the Urban Service Area concept (Theme E, Goal #1, Obj. b.). The petitioner's development will be in keeping with the character of the Euclid Avenue corridor, which is a near-downtown commercial area that is pedestrian-friendly.
- b. The Plan recommends identifying opportunities for infill, redevelopment and adaptive reuse that respect the area's context and design features whenever possible (Theme A, Goal #2, Obj. a.). The petitioner desires to redevelop the subject property, which is comprised of three parcels that are considered underutilized along this commercial corridor. The petitioner now proposes a redevelopment that is sensitive to the surrounding properties and will improve the commercial corridor.
- c. The proposed B-1 zone is compatible with the immediately adjoining B-6P and P-1 zoning.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be restricted with the following restrictions via conditional zoning:

Prohibited Uses

- a. Schools for academic instruction.
- b. Funeral parlors.
- c. Medical and dental offices, clinics and laboratories.
- d. Liquor stores.
- e. Automobile services stations.
- f. Banquet facilities.
- g. Cocktail lounges, nightclubs or bars.
- h. Live entertainment.

These restrictions are necessary and appropriate in order to restrict the most intense land uses on the subject property. Such uses could have a negative impact on the nearby neighborhoods related to noise and/or traffic congestion.

Ms. Wade stated that the staff believes that the petitioner has addressed the major point of conflict as it relates to the zone change application, the petitioner's failure to meet all the B-1 requirements, and the proposal of a development that was out of character with the Euclid Avenue corridor.

Commission Question: Mr. Berkley asked why the staff was recommending live entertainment as a prohibited use. Ms. Wade answered that the "congregation" of people that goes along with live entertainment could have a negative impact on the surrounding neighborhood, especially with regard to noise.

Ms. Wade added that the staff had received several emails concerning the proposed rezoning, which she distributed to the Commission members at this time.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, further orienting the Commission to the location of the subject property. He said that the petitioner proposes to construct a 10,000 square-foot building on the site, with 26 required and provided parking spaces and two-way access to the parking area from Euclid Avenue. The petitioner is also proposing a drive-through facility, with access via McCaws Alley to Marquis Avenue.

Mr. Martin stated that this current version is the third iteration of this plan, which was submitted in response to concerns about the original orientation of the building toward Marquis Avenue, as well as the proposed access points. On one version of the plan, the drive-through was depicted side-by-side with Marquis Avenue, which was of particular concern to the staff and the Division of Traffic Engineering. In response to those concerns, the proposed drive-through access was relocated to McCaws Alley, which would be contingent upon the provision of improvements to the alley. The staff believes that there are still potential conflict points with the stacking for the drive-through, but the petitioner contends that they have addressed those concerns to the best of their ability.

Mr. Martin said that the staff had distributed revised conditions for approval to the Commission members. He stated that the staff is now recommending approval of this plan, subject to the following conditions:

The Staff Recommends Approval, subject to the following revised requirements:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. ~~Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.~~
7. ~~Discuss proposed dumpster location.~~

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- ~~8. Discuss proposed access to Marquis Avenue.~~
- ~~6.9. Discuss Denote: Building fenestration along Euclid Avenue will be resolved at the time of the Final Development Plan.~~
- ~~10. Discuss width of proposed drive-through lane.~~
7. Increase building setback to Euclid Avenue to 20'.

Mr. Martin said that condition #6 arose out of a series of design discussions between the staff and the petitioner, and the staff's concern about the provision of window openings to avoid a "typical suburban" glass and block building. The petitioner has indicated that they are willing to address that issue on the Final Development Plan for the property.

Mr. Martin stated that condition #7 was the result of a several weeks of staff review and discussions on the possible interpretation of the Zoning Ordinance. He noted that the staff had distributed an exhibit to help explain the issue. Initially, the plan depicted a building that was set back 20' from Euclid Avenue, and closer to Marquis Avenue. The staff was concerned about that building orientation and setback, since the B-1 zone requires a minimum building line of 10', with a maximum of 20'. In this instance, the petitioner also has to meet side street side yard setbacks, as well as Infill & Redevelopment requirements. Mr. Martin explained that the Zoning Ordinance allows a developer of a corner lot to select their front yard and side street side yard, and the property is regulated accordingly.

Mr. Martin presented the staff exhibit that includes Article 15-6, which addresses side street side yards, which in this case would affect Marquis Avenue. The staff met on several occasions, and met with the staff of the Law Department, to discuss this issue. It was determined through those meetings that the proposed building configuration meets all of the necessary setback requirements, and that the side orientation toward Marquis Avenue is appropriate. Mr. Martin said that the front yard setback along Euclid Avenue, however, was more problematic. The Zoning Ordinance states that, in this situation, determination of the setback must be based on averaging the setbacks of the two lots adjoining the property. Since the subject property is a corner lot, it has only one adjoining principal structure. Following a great deal of discussion among the staff, it was determined that the intent of the Infill & Redevelopment requirement was to ensure comparable and compatible setbacks; therefore, averaging for the front setback would be appropriate in this situation. Mr. Martin stated that the standard is within 5' of the average setback. The staff determined that the setback on the one lot adjoining the subject property is approximately 24', so they believed that a 20' setback would satisfy both the underlying B-1 zoning requirements, and the intent of Article 15-2(a)(6), which governs business zones in in-fill areas.

Mr. Martin said that the staff is recommending approval of this request, subject to the seven conditions as listed.

Commission Question: Ms. Mundy asked if the setback for the building on the adjoining property was 20'. Mr. Martin answered that the staff measured that building setback using GIS software and determined it to be approximately 23-24' from Euclid.

Petitioner Representation: John Talbott, attorney, was present representing the petitioner. He stated that the petitioner owns the nearby Chevy Chase Plaza, Saratoga Center, and Ashland Plaza developments, as well as the Main & Rose condominium development. All of the petitioner's properties are attractive, successful, and at least 90% occupied, and they believe the subject property can be equally successful, particularly given its location near the new Kroger store. The petitioner believes that the subject property would be a good location for a fitness center, video game store, restaurant, or takeout pizza location. Their desire is to construct a walkable center that will help to serve the needs of the nearby residents.

Mr. Talbott said that the petitioner is in agreement with the staff's recommendations, with the exception of the prohibition of medical and dental offices, and liquor stores. The petitioner contends that there are several other liquor stores in the area, and they believe that "isolating one spot with no liquor" will serve no real purpose. Mr. Talbott said that the petitioner is in agreement with the other proposed prohibited uses. They would like to propose a compromise setback of 15', rather than the 10' as depicted on the plan, or the 20' recommended by staff.

Tony Barrett, landscape architect with Barrett Partners, stated, with regard to the recommended 20' setback, that the petitioner would prefer a 15' setback, since the Zoning Ordinance allows a 5' variance. The petitioner contends that a 15' setback would allow them to develop the building to go along with their leasing prospects.

With regard to the concerns of the Division of Traffic Engineering staff, Mr. Barrett stated that the petitioner had re-configured the drive-through lane to their satisfaction. The petitioner also agreed to eliminate two parking spaces in order to widen the visibility of the Euclid entrance to the parking lot, at the recommendation of Traffic Engineering.

Mr. Barrett stated that the revised development plan depicts a landscape buffer easement along the Ashland building. He said that the parking for that building is located to the rear, so the petitioner has agreed to shift the easement slightly in order to allow the entire landscape buffer to be on the subject property, which could affect approximately three parking spaces on that side of the property.

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Mr. Barrett said that the petitioner is in agreement with the staff's recommendations, with the exception of condition #7. He stated that the petitioner contends that allowing a 15' setback would be consistent with the language in Article 15-2(a)(6).

Commission Question: Mr. Owens asked if the landscape area was a buffer or easement. Mr. Barrett answered that it is a landscape easement.

Ms. Plumlee asked if the petitioner had fulfilled the requirements of the Capacity Assurance Program for the subject site. Mr. Talbott answered that the petitioner had ascertained that sewer capacity was available and reserved to serve the subject property.

Citizen Opposition: Ethan Buell, co-owner of the 620 Ashland building, stated that he was concerned about the proposed drive-through on the subject property. He said that one of his employees was injured in an accident while exiting McCaws Alley, and he believes that the subject property should be developed in such a way so as to increase the safety of the alley area. Mr. Buell said that he believed that eliminating parking along the west side of Marquis Avenue could help to provide better visibility for cars exiting the alley.

Mr. Buell stated that he would prefer that the proposed building be set back as far as possible, since he believes that it will restrict his view if constructed closer to the street than 15' to Euclid Avenue.

Mark Barker, 439 Park Avenue, stated that he is the president of the Columbia Heights Neighborhood Association. He said that he believed that any proposed setback less than 18' on the subject property would require a variance, and the area residents had not been properly notified of a variance request.

Mr. Barker displayed the following photographs: 1) a view of a structure similar to those located on the subject property, noting that it had been renovated for use as a veterinarian's office, which would be a more desirable use than the proposed development; 2) a view of the corner of Marquis Avenue and Euclid Avenue, opining that the narrow width of Marquis and the on-street parking there could create a hazardous situation if the proposed development generates additional traffic; 3) a view of McCaws Alley, noting that there are existing residences located very nearby which could be disturbed by restaurant or live entertainment uses on the subject property; and 4) a view of the other side of the alley, opining that cars backing out into the alley, along with the proposed drive-through, would be a "disaster."

Mr. Barker stated that the area residents would like to propose a different set of restrictions from those set forth by the staff, adding extended-stay hotels and refueling stations to the list of prohibited uses, along with any use that would create activity late at night. He said that residents are also concerned about freestanding signs on the property, since they do not want a "fast-food looking development" in their neighborhood. Residents would also like consideration to be given to the Marquis Avenue façade of the proposed building, since it could negatively affect the street-scape.

Mr. Barker displayed a photograph of the apartment building located directly adjacent to the subject property, explaining that he was concerned that vehicle lights from cars in the proposed drive-through could shine directly into the windows of the residences.

Amy Clark, 628 Kastle Road, read the following letter into the record of the meeting:

"Dear Members of the Lexington-Fayette Planning Commission:

Please do not recommend approval for the zone change MAR 2014-16 (P-1 to B-1) requested for Chevy Chase Shoppes and for its accompanying ZDP 2014-65. It is not in accord with the 2013 Comprehensive Plan. The present zoning is not inappropriate, and the major changes taking place in the area are by no means unanticipated by the 2013 and prior Plans. To grant a zone change for this land at this location is to give incentive to exactly the kind of development our constrained growth environment can no longer afford: a single-story structure on an automobile-centric lot, without sensitivity to context and neighborhood needs, offering no housing density and little high-wage employment, without affordability, and lacking in every environmental benefit. Our land is precious, and our neighborhood uses and traditions deserve your support and protection here.

The proposed development is surrounded by P-1 zoning on three of its four sides, and would break up a solid block front of professional offices housing high-skilled, high-wage employment including engineering, design, veterinary medicine, finance, and our signature equine industry. This is "jobs land" well suited to the University and those who settle near it, and should be maintained. It sites work where people live, and fosters collaboration between the University and its hospitals, our entrepreneurs, and our highly-educated workforce. It builds the payroll tax base, some 80% of all our

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urban county revenue. It provides a buffer from the higher-intensity uses of a business zone, and contributes to the all-too-precious stability of the surrounding neighborhoods.

Both the immediate vicinity and the larger business and residential districts are characterized by a balanced mix of use: high and low-density residential, office, shopping, restaurant and entertainment. It is critical that Planning protect the professional land on Euclid from the commercial pressures of the immediately adjoining Urban Activity Center at the intersections of Euclid with South Ashland and with High. As long ago as 1991, the Aylesford Small Area Plan adopted by this Commission—and followed closely in the subsequent “right-zoning” of the surrounding residential neighborhoods, and in historic designation and zoning overlays for several districts over the following two decades—advised drawing the line for business development exactly along Marquis. It advised intensifying the use to Professional zoning for the properties fronting Euclid, but containing Business and Professional uses within those established boundaries with the greatest possible vigilance. Today’s 2013 Comprehensive Plan for the entire urban county seconds and supports those clear-sighted and practical goals established a generation ago: foster density, intensity and a judicious mix of uses along the corridors, but promote development that is sensitive to context, preserving and enhancing neighborhood character.

With the proposed B-1 use, the applicant would seek to assimilate the site to a shopping center to which it does not belong: it cannot share parking, traffic circulation or landscape buffering with the B-6P grocery store across the street. Nor is the proposed development filling an unmet need for the neighborhood here: about half its floorspace is dedicated to a restaurant with drive-through window and seating for 72, and the applicant has mentioned Raisin’ Cane’s chicken to the neighbors as a possible tenant. But the grocery store just opposite already incorporates a deli/food court offering sandwiches, soups, salads, pizza, chicken and the like with seating for 77. Fast-food is abundant in the area, much of it offered by well-loved local businesses existing on B-1 sites. Retail locations along the intersections of Euclid with South Ashland and High—an area long designated an Urban Activity Center—support a great variety of restaurants, shopping, and personal services with properties in a range of sizes, designs and rents.

It cannot be denied that these properties have been in some degree neglected and underutilized for a number of years. By contrast, a row of properties zoned P-1 along Walton where it intersects with Main are well-tended and thriving. They provide a range of needed professional services, mostly during daytime hours, without offering noise and nuisance to the adjoining neighborhood. Their architecture and front landscaping—identical in places to our early 20th-century row along Euclid—preserve the context of the adjoining Bell Court National Register historic district even though they do not share in its H-1 overlay. Likewise the veterinarian on the Euclid block front at the Oldham end made a substantial investment in preserving the historic character of his property while adapting it for modern use, and this property has at present among the highest assessments per square foot of any in the row. The deplorable practice of hoarding and degrading land for eventual up-zoning can only be stimulated by an ill-considered zone change on Euclid that neither respects the immediate context nor furthers the planning goals of the larger community.

The proposed development replaces structures extending to two stories with a box of one story, eliminating at least four dwelling units and a professional office. The enormous elimination of greenspace—building out not up—gives pause. In the recent citywide Canopy study/survey, this site is given the highest priority (code red) for tree planting—both because a shade canopy is badly needed along the streets here and because the present site is almost uniquely hospitable to trees. But the proposed development removes all 22 trees, half of them large, several significant and all of mature growth. It reduces the present greenspace comprising some of that 83% of the lot to minimal strips along the perimeter on three sides, the remainder impervious surface.

The structure and design lack all sensitivity to the immediate context, both professional and residential. The building setbacks and drive-through window are particularly hostile to neighborhood safety and character. The planned building extends far beyond the traditional setbacks on Euclid (20’-29’) and on Marquis (30’), marring the prospect for all the homes along Marquis and leaving little margin for sidewalk (4’) and shade trees along these heavy pedestrian and cyclist corridors. The saplings to be planted back for “large” perimeter tress are crowded behind the sidewalk against the building wall. Site circulation is very constrained; cars waiting to turn in from Euclid cannot but block cyclists in the bike lane, especially as cars pulling out of parking spaces on the lot obstruct access. Vehicles stacking behind the drive-through window and menu board threaten to bottle up site ingress and egress for all vehicles. The confusing rear access and drive-through usurps the public right-of-way for circulation, widening the alley to two lanes exclusively for the use and convenience of its own patrons.

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It is hard to see progress here. It is hard to see elements that accord with our 2013 Comprehensive Plan, and merit a zone change. We have hard choices to make in the constrained growth environment today. We have chosen to protect that endangered and vanishing resource, our bluegrass landscape. Equally endangered is our historic streetscape at the city center, and equally deserving of protection. Our bluegrass, our turn-of-the-century streets and neighborhoods, are more than physical resources: they are a way of life uniquely our own. These Eastlake Victorians on Euclid and Walton, the gardens and walking neighborhoods they surround and support, have the print of Lexington. Zoned and adapted for modern professional use, they are exactly the sort of valuable land we can least afford to cheapen and degrade with careless planning.

Please do not recommend approval of the proposed zone change. I thank you for your consideration for my concerns and those of my fellow citizens and neighbors.

Amy Clark
628 Kastle Road, Lexington"

Sally Warfield, legislative aide for Councilmember Diane Lawless, stated that they believed that the staff's recommendation was an "eleventh hour update," and they would have appreciated more time to notify their constituents of the situation. She said that she believed that more residents would have attended this meeting if they had been informed of the most recent revisions to the development plan.

Ms. Warfield stated that the Division of Planning is currently conducting a commercial corridor study of the Limestone Street/Euclid Avenue corridors to consider the use of the corridors and how best to connect the university to the rest of the city. She opined that it would be premature to approve a rezoning before that study is complete.

Ms. Warfield added, with regard to Ms. Plumlee's question about sewer capacity, that she is aware of at least one property on Marquis Avenue that suffers damage on a yearly basis from overflows, and she believes that the proposed development could exacerbate the situation.

Graham Pohl, 977 Fincastle, stated that he was the managing partner of the Ashland building. He stated that he did not believe that the proposed plan was "sprung on" anyone at the last minute, since it has been through at least eight revisions. He opined that the current version of the plan is the best that has been presented, although he shares some of Mr. Barker's concerns about the safety of ingress and egress to McCaws Alley. Mr. Pohl said that he believed that, in order to develop the subject property safely, parking on Marquis Avenue must be restricted in order to provide better visibility for drivers leaving the alley.

Mr. Pohl said that the front setback of the building could be resolved easily by requiring that it be within five feet of the setback of the Ashland building. He stated that there was some confusion between his estimates and the staff's about the setback of that building, but he believed that it could be resolved.

Commission Questions: Mr. Owens asked his opinion of the setback of the Ashland building. Mr. Pohl replied that he believed that it was 20', but the staff estimated it at 23-24'. He added that, either way, the setbacks of all the buildings along that portion of Euclid Avenue are very consistent, so setting the proposed structure back within five feet should be more than adequate.

Mr. Brewer asked if it would be possible to restrict parking on Marquis Avenue. Mr. King answered that restricting parking is not part of the Commission's purview, but it could be addressed by the Division of Traffic Engineering. Ms. Kaucher stated that Marquis Avenue is a public street, and parking on it cannot be restricted with this development plan. Mr. Barrett added that the petitioner would agree to facilitate the restriction of parking on their side of Marquis Avenue between Euclid Avenue and the alley.

Capt. Lengal stated that the Division of Fire and Emergency Services could work with the Division of Traffic Engineering to restrict parking in that location based on public safety issues.

Mr. King clarified that the Division of Planning is not conducting the study of Euclid Avenue to which Ms. Warfield referred. He explained that such a study is being done by Commissioner Paulsen's office, in conjunction with the Downtown Development Authority, but it pertains to economic development, rather than land use.

Discussion: Ms. Plumlee stated that she was opposed to this plan because it does not support the Comprehensive Plan's Goals & Objectives to reinforce the fabric of the neighborhood or meet neighborhood need, and it is not consistent with the character of the neighborhood. She said that she believed that the area was too congested to allow a drive-through on the subject property, and that it "just would not fit."

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Mr. Berkley stated that he does not believe that rezoning the subject property would eliminate typical P-1 uses, since many of those are also allowed in the B-1 zone. He said that the property could be used for office space if a tenant so desired.

With regard to the issue of the front setback, Mr. Berkley said that the building directly across the street is oriented toward Lafayette Park, with the side of the building facing Euclid Avenue at little or no setback. Mr. Berkley said that he lives in the neighborhood, and he believes that the proposed development would be a good addition.

Mr. Brewer agreed with the petitioner's contention that liquor stores and medical and dental offices should not be prohibited via conditional zoning on the subject property, since many other examples of those types of uses are located nearby. He added that he would not support the drive-through, however, since he does not believe that it would be a good addition to the neighborhood.

Mr. Owens agreed with Mr. Brewer's opinion that the proposed drive-through could create problems for the neighborhood.

Staff Rebuttal: With regard to the proposed conditional zoning restrictions, Ms. Wade stated that the Planning Commission could restrict the drive-through as a use, if they so chose.

Mr. Saltee stated that the staff would like to offer a revision to the last recommended development plan condition. It would eliminate the 20' dimension listed in condition #7, and replace it with the language that was suggested by Mr. Pohl during his comments. It would require the front setback to be within 5' of that of the Ashland building. He placed this draft on the overhead for all to see.

Ms. Plumlee stated that the Commission should add a conditional zoning restriction for drive-throughs, but added that she was not prepared to make a motion.

Zoning Motion: A motion was made by Mr. Berkley and seconded by Mr. Drake to approve MAR 2014-16, for the reasons provided by staff, eliminating items "c" and "d" from the list of proposed conditional zoning restrictions.

Discussion of Motion: Mr. Brewer stated that, if Mr. Berkley's motion passed, it would not prohibit drive-throughs.

Mr. Penn stated that he could not vote for the drive-through.

Action: Mr. Berkley's motion failed, 4-5 (Cravens and Wilson absent; Brewer, Mundy, Owens, Penn and Plumlee opposed).

Motion: A motion was made by Mr. Brewer to approve MAR 2014-16, for the reasons provided by staff, eliminating items "c" and "d" from the list of prohibited uses, and adding a drive-through as a prohibited use.

Discussion of Motion: Mr. Talbott stated that the petitioner had worked with the Division of Traffic Engineering to address many of the concerns about the proposed drive-through, and the petitioner believed that it would be an asset to the neighborhood.

Mr. Brewer withdrew his motion.

Mr. Barrett stated that the petitioner's solution for the concerns about the drive-through includes a proposal to widen McCaws Alley from 12' to 18' across the length of the drive-through, in order to mitigate the congestion from the drive-through. He said that the alley would taper back to 12' near the petitioner's rear property line. The widened area will be designed such that traffic will be encouraged out onto Marquis Avenue, instead of into the adjacent residential area. Mr. Barrett said that the petitioner has also agreed to eliminate parking on Marquis Avenue, in order to improve the sight lines for drivers exiting the alley. The new Kroger access point will be located much further from the alley than the former Kroger access, which should also help to improve the traffic situation over its past configuration.

Ms. Plumlee stated that "a drive-through is still a drive-through," and she did not believe it would be appropriate for the neighborhood, no matter how it is configured. She added that she would not be comfortable taking part in any decision that approved a drive-through on the subject property.

Mr. Berkley stated that the Planning Commission did approve a drive-through for the new Kroger store.

Motion: A motion was made by Mr. Penn and seconded by Ms. Plumlee to approve MAR 2014-16, for the reasons provided by staff, with the conditional zoning restrictions as recommended by staff, adding drive-throughs to the list of uses prohibited via conditional zoning. Mr. Penn's motion failed, 4-5 (Cravens and Wilson absent; Berkley, Brewer, Drake, Richardson, and Smith opposed.)

Action: A motion was made by Ms. Mundy, seconded by Ms. Plumlee, and carried 9-0 (Cravens and Wilson absent) to continue MAR 2014-16 to the September 11, 2014, Planning Commission meeting, in order to allow some of the outstanding issues to be resolved.

Note: Mr. Berkley left the meeting at this time.

B. PUBLIC HEARING ON ZONING ORDINANCE TEXT AMENDMENT

1. **ZOTA 2014-5: AMENDMENT TO THE SPECIAL PROVISIONS OF THE COMMUNITY CENTER (CC) ZONE** – petition for a Zoning Ordinance text amendment to Article 23A to allow a second building exceeding 50,000 square feet in size in the Community Center (CC) zone.

REQUESTED BY: A & M Hamburg, LLC

PROPOSED TEXT: (Note: Text underlined is an addition to the current Zoning Ordinance.)

ARTICLE 23A – EXPANSION AREAS ZONING CATEGORIES AND RESTRICTIONS

23A-9 COMMUNITY CENTER (CC) ZONE

23A-9(k) SPECIAL PROVISIONS

1. At least 25% of the net developable acreage of any development within a CC zone shall be open space.
2. At least 40% of the aggregated floor area of buildings within a development in a CC zone shall be devoted to residential uses as permitted in EAR-3 and schools, churches and their accessory structures, and public buildings.
3. No building shall exceed 15,000 square feet in floor area unless:
 - a. the building contains a mix of residential and non-residential uses; or
 - b. the building is designed and intended to be used for a school, church or public building; or
 - c. the building is designed and intended to be used principally as a store selling food, produce and other grocery items (not primarily general merchandise) and, does not exceeding 50,000 square feet, and no building previously permitted and constructed pursuant to subsection d. of this section contains a food, produce and grocery component in excess of 30,000 square feet; and
 - d. ~~one~~ two additional buildings exceeding 50,000 square feet which ~~is~~ are designed and intended to be used primarily as a store selling general merchandise, which may include ~~ing~~ food, produce and other grocery items, but only under the following conditions:
 1. the proposed building shall be located within a CC zone containing at least 30 net contiguous acres, and that has frontage on an interstate interchange;
 2. the building shall be part of an integrated development governed for all contiguously zoned CC land (excluding right-of-way) by a single development plan; ~~and~~
 3. any building exceeding 80,000 square feet in size shall also adhere to the "Design Guidelines for 'Big-Box' Establishments," excluding guideline numbers 6 and 14, which are contrary to other provisions of the CC zone. Such design guidelines shall be met unless waived by the Planning Commission through its approval of a final development plan; and
 4. the maximum number of buildings permitted by subsections c. and d. collectively shall be two.
4. Parking areas shall be designed so as to minimize the placement of parking between the buildings and the adjoining streets.
5. Each development within a CC zone shall have access to a pedestrian accessway.
6. Each development shall provide suitable facilities for the parking of bicycles.
7. The development shall be screened from adjoining zones as for a business zone under Article 18-3(a)(1).
8. Structures shall be sited to avoid the rear of the building facing a street (other than an alley) to the greatest extent practicable.

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

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

1. The proposed text amendment to the special provisions of the Community Center (CC) zone might need to be simplified from its current form. The staff hopes to meet with the applicant in this regard.
2. After 18 years, there may be a need to re-examine the base square footage restrictions in the CC zone, so that these areas will still be able to meet the needs of the surrounding neighborhoods.

Staff Presentation: Mr. Sallee presented the staff report on this Zoning Ordinance text amendment request, explaining that the special conditions of the CC zone have existed since shortly after the Expansion Area Master Plan (EAMP) was approved in 1996. They were most recently amended in 2012. At this time, the petitioner is seeking this amendment to allow two stores that are larger than 50,000 square feet in a CC zone.

Mr. Sallee displayed a map, indicating the five locations in the Expansion Area that currently have CC zoning. Two of those areas are over 30 acres in size; only one is both over 30 acres and adjacent to an interstate interchange. The special provisions of this text amendment would apply only to the one location that meets both of those criteria.

Mr. Sallee stated that, at the Zoning Committee meeting, the staff reported that they were in agreement with this proposed text amendment in principle, but not with the details, since they believed the proposed text was too complex and needed to be simplified. The staff recommended postponement at that time, in order to provide the opportunity to meet with the petitioner. In the three weeks since the Zoning Committee meeting, the staff and the petitioner have exchanged several drafts of the proposed text. The staff presented a draft alternative text last week at the Commission's work session, proposing a much more simplified version. Mr. Sallee said that, today, the staff is presenting the most recent modification, which was emailed to the Commission members yesterday. He stated that the staff is recommending an update to the square footage changes from 15,000 to 20,000, primarily because drugstores have increased in size. The staff is also recommending an increase in grocery store square footage in the CC zone from 50,000 square feet to 80,000 square feet, to accommodate larger modern grocery stores, such as the one recently approved by the Commission on Leestown Road. The most significant change recommended from the text presented at the work session includes the addition of a phrase to allow a maximum of only two buildings that can be larger than 20,000 square feet in any of the qualifying CC areas. The staff sensed, when they presented the proposed text at the work session, that there was some concern about the number of large buildings allowable under this text, so they returned some of the language from the applicant's original proposal to this one, in an attempt to address that concern. Mr. Sallee stated that the staff is now recommending approval of the revised staff alternative text, for the following reasons:

1. The proposed text amendment to the special provisions of the Community Center (CC) zone has been simplified from its original form. The staff and applicant are agreeable with the revisions to the proposal that have been crafted and refined over the past few weeks, for CC zones adjacent to an interstate highway.
2. After 18 years, there is a need to alter the base square footage restrictions in the CC zone, so that these areas will still be able to meet the commercial shopping needs of the surrounding neighborhoods.

Petitioner Representation: Nick Nicholson, attorney, was present representing the petitioner. He stated that the petitioner was in agreement with the staff's recommendations, and he requested approval.

Citizen Comments: There were no citizens present to comment on this request.

Action: A motion was made by Mr. Brewer, seconded by Ms. Richardson, and carried 8-0 (Berkley, Cravens, and Wilson absent) to approve the staff alternative text of ZOTA 2014-5, for the reasons provided by staff.

VI. **COMMISSION ITEMS** – No such items were presented.

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

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

IX. **MEETING DATES FOR September, 2014**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	September 4, 2014
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	September 4, 2014
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	September 11, 2014
Planning Commission Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	September 18, 2014
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	September 24, 2014
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	September 25, 2014

X. **ADJOURNMENT**

TLW/TM/CT/BJR/BS/src

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