Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky March 9, 2015

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on March 9, 2015 at 5:00 P.M. Present were Vice-Mayor Steve Kay in the chair presiding, in the absence of Mayor Gray, and the following members of the Council: Council Members Ford, Gibbs, Henson, Lamb, Lane, Moloney, Mossotti, Scutchfield, Bledsoe, Brown, Evans, and Farmer. Absent were Council Members Stinnett and Akers.

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Ms. Evans announced that it was necessary to recuse herself from the hearing due to a conflict. She left the meeting at 5:05 p.m.

An Ordinance changing the zone from a Single Family Residential (R-1C) zone to a Mixed Use 2: Neighborhood Corridor (MU-2) zone, for 1.21 net (1.723 gross) acres; from a Neighborhood Business (B-1) zone to a Mixed Use 2: Neighborhood Corridor (MU-2) zone, for 0.420 net (0.652 gross) acre; and from a Wholesale & Warehouse Business (B-4) zone to a Mixed Use 2: Neighborhood Corridor (MU-2) zone, for 0.880 net and gross acre, for property located at 1001, 1003, 1011, 1015 and 1021 North Limestone St. (Nicol Development Co., LLC; Council District 1) was given second reading.

Mr. Kay opened the public hearing, and reviewed the procedures for the hearing. He swore in the witnesses.

Ms. Scutchfield arrived at 5:17 p.m.

Mr. Bill Sallee, Div. of Planning, gave his presentation and filed the following exhibits: (1) Legal Notice of hearing to be held; (2) Affidavit of Notices Mailed; (3) MAR 2014-19: Recommendation of the Urban County Planning Commission; (4) 1983 LFUCG Land Subdivision Regulations as Amended; (5) 1983 LFUCG Zoning Ordinance as Amended; (6) Correspondence Received by Div. of Planning Staff regarding MAR 2014-19; (7) 2013 Comprehensive Plan with Goals and Objectives; (8) 2009 Lexington Central Sector Small Area Plan; (9) Zoning Atlas Map of Subject Area MAR 2014-19; (10) Aerial Photos of the Subject Area; and (11) Preliminary Development Plan Map for MAR 2019-14.

Mr. Sallee responded to questions from Mr. Roy Cornett, Glen Place, regarding the preliminary development plan, Mr. Joe Goler, North Broadway Park, regarding the scale of the church spire, Mr. Donnie House, North Broadway Park, regarding access to North Broadway Park, and Mr. Donald Bolton, North Broadway Park, regarding the number of units included in the project.

Mr. Kay asked a follow-up question of Mr. Sallee to Mr. Bolton's question.

Mr. Farmer asked questions of Ms. Tracy Jones, Dept. of Law, regarding whether Council Members who are absent from a portion of a hearing should participate in the meeting. Ms. Jones responded that it would depend on how much of the hearing was missed, and if the Member was present for the majority of the hearing, they could probably be included.

Mr. Farmer also asked if the parties at the hearing had agreed to a time limit for presentations. Mr. Kay responded that he believed the petitioner had stated they needed approximately 1.5 hours. Ms. Chris Westover, Attorney for the Petitioner, responded that they still anticipated their presentation to last 1.5 hours.

Ms. Henson asked questions of Mr. Sallee regarding the preliminary development plan. Mr. Sallee responded.

Ms. Mossotti asked additional questions of Mr. Sallee regarding the development plan.

Ms. Westover presented a witness list to Mr. Kay, and gave her presentation on behalf of the Petitioner, filing the following exhibits: (1) Affidavit of Signs Posted; (2) Witness List; (3) Exhibit binder containing: (a) Aerial Photos of Property; (b) Comp Plan Excerpts, including the Central Sector Small Area Plan; (c) NoLi Sustainability Plan Excerpts; (d) Census Data; (e) Affordable Housing Trust Fund Report; (f) LFUCG Housing Market Survey excerpts; (g) Human Rights Commission State of Fair and Affordable Housing Report; (h) Commonwealth Economics Report: Lexington Fayette Affordable Housing Trust Fund Fiscal, Economic and Social Impact Study; (i) Transit Data; (j) Mixed Income Zoning Regulations; and (k) Embrace Church Programs.

The following witnesses spoke on behalf of the petitioner: (1) Mr. Bruce Nicol, Bon Air Drive, Developer of the project; (2) Mr. Jihad Hallany, Vision Engineering, spoke about stormwater and other factors, and presented the following exhibits: (a) Map of the

subject area with proposed stormwater detention basins; (b) Map of the subject area with proposed curb and gutter additions; (3) Mr. Johan Graham, AU Associates, Dixiana Drive; (4) Mr. Chuck Gutenson, Rock Ledge Lane, Embrace Church, who spoke in support of the project; and (5) Mr. Gordy Hoagland, Block + Lot Real Estate, who spoke about a market analysis of the area conducted by his firm, and filed the following exhibit: (a) Market Analysis Arlington Studios Vacant Commercial Space.

Ms. Westover filed the following exhibit: (4) Vision Engineering Traffic Study of the Subject Area.

Pastor John Gallagher, Churchill Drive, Lead Pastor of Embrace Church, spoke as a witness in support of the project. Mr. Kay asked that Mr. Gallagher frame his comments to the relevance of the zone change. Mr. Gallagher explained the relevance, and proceeded with his comments. Ms. Westover also spoke to the question.

Mr. Kay asked questions of Ms. Jones regarding process for continuing with the hearing. Ms. Jones responded.

Ms. Drew Shackleford, North Limestone Street, President of North Limestone Neighborhood Association, gave a presentation in opposition to the zone change, and filed the following exhibit: (1) Petition from property owners and residents of the North Limestone Neighborhood and surrounding area expressing opposition to the requested MU-2 zone change.

At 7:04 p.m., Mr. Kay called a recess.

At 7:10 p.m., the Council returned with the same members present.

Mr. Kay reviewed additional procedures for the hearing.

The following citizens spoke against the requested zone change: (1) Mr. Roy Cornett, Glenn Place; (2) Mr. Don Bolton, North Broadway Park; and (3) Mr. Joe Goebeler, North Broadway Park.

Mr. David Singleton, North Broadway Park, spoke in opposition to the zone change, and stated he had a video exhibit to show to the Council. Mr. Kay asked about the relevance of the video. Mr. Singleton spoke about the nature of the video. Mr. Kay ruled that the video was inadmissible due to irrelevance to the proceeding.

The following additional citizens spoke against the requested zone change: (5) Ms. Carmen Norris, North Broadway Park; (6) Mr. Ron Bradley, North Broadway Park;

(7) Mr. Donnie House, North Broadway Park, Secretary of the North Lime Neighborhood Association; and (8) Ms. Jane Linville, North Broadway Park.

The following citizens spoke in favor of the zone change: (1) Mr. Ryan Cook, Idlewild Court; (2) Mr. Chip Singleton, Carducci Street, Trustee of Embrace Church; (3) Griffin Van Meter, North Limestone Street; (4) Mr. Mark Davis, North Market Street, Pastor of First Presbyterian Church.

Mr. Sallee stated he had no rebuttal.

Ms. Westover made her rebuttal, and filed the following exhibit: (5) Map of elevations of buildings in the subject area.

Mr. Cornett made a closing statement on behalf of the opposition.

Ms. Westover made her closing statement.

Mr. Kay opened the floor to the Council to ask questions.

Mr. Moloney asked questions of Ms. Westover regarding income requirements for the housing, and whether students would be allowed to apply for housing. Ms. Westover replied that there were income requirements, and that certain groups would have precedence over other applicants for housing. Mr. Nicol also responded. Ms. Westover explained the covenants that would be agreed upon with the church. Mr. Singleton responded on behalf of the church.

Ms. Lamb asked questions of Mr. Sallee regarding the definition of the Mixed Use zone, and the percentages of use in the zone for commercial and residential. She also asked questions of Mr. Hallany about his cooperation with the Div. of Water Quality. Mr. Hallany responded. She also asked questions of Ms. Jones regarding the time line for the final stormwater planning portion of the project. Ms. Jones responded, as did Mr. Sallee. She asked additional questions of Ms. Westover regarding the elevations of the buildings in the project.

The Council continued to ask questions of Mr. Sallee, Ms. Westover, Mr. Hallany, and Mr. Graham.

No additional rebuttal was offered.

Mr. Kay closed the public hearing.

Mr. Ford spoke about the issues brought forth by the Neighborhood Association regarding the project. He requested a recess to consult with Ms. Jones regarding legal language for a motion.

At 9:18 p.m., Mr. Kay called a recess.

At 9:30 p.m., the Council returned with the same members present.

Mr. Ford made a motion, seconded by Ms. Mossotti, to amend the ordinance and Findings of Fact from the Planning Commission to add an additional Finding of Fact: that based on the testimony offered at the hearing, there was a need to restrict the proposed uses to further compliance with the Central Sector Small Area Plan, and added the following conditions: (1) That Building B be restricted to three (3) stories in height, and (2) That the use of the parking lot for Building B shall not connect to the parking lot behind the Church.

Mr. Lane stated removing a story from the development would limit the project's economic viability. Mr. Ford responded.

Mr. Farmer requested a point of order regarding separating the two conditions for voting purposes.

Mr. Farmer made a motion, seconded by Mr. Moloney, and approved by unanimous vote, to separate the question into two separate conditions for voting purposes.

Mr. Brown asked questions of Ms. Westover regarding how many units would be eliminated if the building height was restricted. Ms. Westover responded.

The Council continued to ask questions of Ms. Westover, Mr. Nicol, and Mr. Ford regarding the impact of Mr. Ford's motion on the project, and to discuss Mr. Ford's motion.

Mr. Kay called the question, and put the first part of Mr. Ford's motion forward for a vote - that Building B be restricted to three (3) stories in height.

The motion **failed to pass** by a vote of 2-10 (Gibbs, Henson, Kay, Lamb, Lane, Moloney, Scutchfield, Bledsoe, Brown, and Farmer voted **no,** Evans was absent when the vote was taken).

Mr. Ford spoke about the second part of the motion - that the use of the parking lot for Building B shall not connect to the parking lot behind the Church. He explained his reasons for making the motion.

Ms. Westover stated she did not believe the Council could weigh in on the parking lot issue, but that the decision would have to come from the Planning Commission. Mr. Kay asked Ms. Jones for a ruling on whether the Council could go forward with this motion. Ms. Jones stated the petitioner could potentially later make an argument that the Council could not weigh in on access issues.

Mr. Ford reframed his motion to state 'that the use of the parking lot for Building B shall not connect to the parking lot behind the church used for the intent of parking behind the church for the apartments.' He stated it was not an issue of access to the building, but of the use of the lot. Ms. Westover responded to this argument.

The Council discussed the motion on the floor, and asked questions of Mr. Ford.

Mr. Kay called the question, and put forth the second part of Mr. Ford's motion for a vote - that the use of the parking lot for Building B shall not connect to the parking lot behind the Church.

The motion **passed** by a majority vote of 10-2 (Lane and Scutchfield voted **no**, Evans was absent when the vote was taken).

Mr. Farmer made a motion, seconded by Mr. Ford to adopt the following Findings of Fact for Approval from the Planning Commission, with the added condition that the use of the parking lot for Building B shall not connect to the parking lot behind the church:

1) The requested Mixed Use-2: Neighborhood Corridor (MU-2) zone is in agreement with the 2013 Comprehensive Plan, and the Central Sector Small Area Plan (CSSAP), for the following reasons:
    a) The petitioner proposes a mixed-income, mixed-use development that maintains a cultural and historic church along the North Limestone corridor. Redevelopment plans include construction of two new structures with 80 dwelling units, 74% of which will be income-verified affordable units, and neighborhood-oriented land uses, such as a community center, coin-operated laundry and offices.
    b) The subject property is located within Sub-Area D of the Central Sector Small Area Plan, and North Limestone has been designed as a 'neighborhood connector' corridor within this particular area and a 'focus area.'
    c) One priority of the Sub-Area is to 'retain unique character of North Limestone as a traditional neighborhood retail corridor; and also indicates a need to upgrade the North Limestone streetscape and building façades.
    d) Associated with the redevelopment, the petitioner proposes significant stormwater improvements to alleviate existing drainage issues in the vicinity.

e) The petitioner's proposed development will be a more efficient use of underutilized and vacant properties within the North Limestone corridor, and will be oriented to that minor arterial roadway.
f) Many of the Comprehensive Plan's Goals and Objectives are met by the petitioner's proposed rezoning and redevelopment of the subject property, including: to expand housing choices (Theme A, Goal #1); to support infill and redevelopment (Theme A, Goal #2); to encourage green infrastructure (Theme B, Goal #3); to support creation of a variety of jobs (Theme C, Goal #1); to encourage an entrepreneurial spirit and embrace a diverse and inclusive community (Theme C, Goal #2); to build a multi-modal and comprehensive transportation system (Theme D, Goal #1); to enhance and protect cultural and historic resources (Theme D, Goal #3); and to uphold the Urban Services Area concept (Theme E, Goal #1).
g) The Central Sector Small Area Plan encourages providing affordable housing, utilizing Best Management Practices for stormwater improvements, preservation of structures with historical and cultural value, and offering goods and services for local residents.

2) This recommendation is made subject to the approval and certification of ZDP 2014-94: Headley Subdivision, North Broadway Park Addition, Carr Builders (Embrace United Methodist Church), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

Ms. Lamb stated she believed the Findings of Fact should be read into the record. Ms. Jones stated because the Council was adopting the Findings of Fact for Approval as presented by the Planning Commission, it was not necessary. She added that it would be necessary to amend the ordinance to add the new condition, and to give it a new first reading. It was necessary to read the new Finding of Fact added by Mr. Ford's motion into record.

The motion was approved by the following vote:

Aye: Ford, Gibbs, Henson, Kay, Lamb,
Lane, Moloney, Mossotti, Scutchfield, Bledsoe,
Brown, Farmer----------12

Nay: ----------0
(Ms. Evans was absent when the vote was taken.)

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Upon motion of Ms. Lamb, seconded by Mr. Lane, and approved by majority vote (Ms. Evans was absent when the vote was taken), an Ordinance changing the zone from a Single Family Residential (R-1C) zone to a Mixed Use 2: Neighborhood Corridor (MU-2) zone, for 1.21 net (1.723 gross) acres; from a Neighborhood Business (B-1) zone to a Mixed Use 2: Neighborhood Corridor (MU-2) zone, for 0.420 net (0.652 gross) acre; and from a Wholesale & Warehouse Business (B-4) zone to a Mixed Use 2: Neighborhood Corridor (MU-2) zone, for 0.880 net and gross acre, for property located at 1001, 1003, 1011, 1015 and 1021 North Limestone St. (Nicol Development Co., LLC;

Council District 1) was amended to add the condition that the use of the parking lot for Building B shall not connect to the parking lot behind the church.

An Ordinance changing the zone from a Single Family Residential (R-1C) zone to a Mixed Use 2: Neighborhood Corridor (MU-2) zone, for 1.21 net (1.723 gross) acres; from a Neighborhood Business (B-1) zone to a Mixed Use 2: Neighborhood Corridor (MU-2) zone, for 0.420 net (0.652 gross) acre; and from a Wholesale & Warehouse Business (B-4) zone to a Mixed Use 2: Neighborhood Corridor (MU-2) zone, for 0.880 net and gross acre, for property located at 1001, 1003, 1011, 1015 and 1021 North Limestone St. with conditional use restriction that the use of the parking lot for Building B shall not connect to the parking lot behind the church (Nicol Development Co., LLC; Council District 1) was given first reading as amended.

Upon motion of Ms. Lamb, seconded by Ms. Henson, the rules were suspended by majority vote (Ms. Evans was absent when the vote was taken).

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

Aye: Ford, Gibbs, Henson, Kay, Lamb,
Lane, Moloney, Mossotti, Scutchfield, Bledsoe,
Brown, Farmer----------12

Nay: ----------0
(Ms. Evans was absent when the vote was taken.)

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Upon motion of Mr. Farmer, seconded by Ms. Bledsoe, and approved by majority vote (Ms. Evans was absent when the vote was taken), the meeting adjourned at 10:13 p.m.

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Clerk of the Urban County Council