

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

March 26, 2015

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

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

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; and Stephanie Cunningham. Other staff members present were Tracy Jones, Department of Law; Hillard Newman, Division of Engineering; Casey Kaucher, Division of Traffic Engineering; and Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services.

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 11-0 to approve the minutes of the February 12, 2015, and February 26, 2015, Planning Commission meetings.

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

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee was scheduled to meet on Thursday, March 5, 2015, at 8:30 a.m. to review plans considered by the Technical Committee at their meeting on Wednesday, February 25, 2015. However, the March Subdivision Committee meeting was cancelled due to the weather emergency that closed the LFUCG Phoenix Building that day. The Committee last met on Thursday, February 5, 2015, at 8:30 a.m., and was attended by Commission members: Karen Mundy, Joe Smith, Carolyn Plumlee, Will Berkley 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, Cheryl Galt, Dave Jarman, Denice Bullock, Scott Thompson and Kelly Hunter, as well as Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services; C.D. Schnelle, Division of Police; and Stephen Shelman, Mayor's Office, representing the Department of Law. The Committee made a recommendation on one listed plan below, as noted.

General Notes

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

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

Note: The Planning Commission postponed this item at their March 12, 2015, meeting.

- A. **DP 2015-18: FRITZ FARM, LLC & DMK DEVELOPMENT GROUP (5/3/15)*** - located at 4210 Nicholasville Road.
(Council District 4) **(HDR)**

Note: This plan was postponed by the Planning Commission at their March 12, 2015, meeting.

The Subdivision Committee made no recommendation.

The Technical Committee and Staff Recommended: **Postponement**. There were some questions regarding the proposed access and the landscaping adjacent to the residential properties.

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 and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Denote building height in feet.
12. Denote existing and proposed easements on plan.
13. Denote BOA approval of conditional use permit for this use.
14. Denote final record plat information in title block.

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

15. Discuss proposed access to Man o' War Boulevard and possible waiver.
16. Discuss access restrictions per final record plat(s).
17. Discuss existing access easement to Nicholasville Road.
18. Discuss dumpster location adjacent to residential zone.
19. Discuss the extent of excess parking.
20. Discuss proposed landscaping adjacent to Man o' War Boulevard and Nicholasville Road.
21. Discuss timing of improvements to Nicholasville Road.
22. Discuss the need for an internal pedestrian connection to Man o' War Boulevard.
23. Discuss landscaping adjacent to the homes in the R-1D zone.
24. Discuss height of any proposed retaining wall near detention basin.

Staff Presentation: Mr. Martin presented this development plan, explaining that the subject property is located at the corner of Man O' War Boulevard and Nicholasville Road. It is near Toronto Road and Victoria Way, and across Man O' War Boulevard from the planned Summit development, which was recently approved by the Planning Commission. Referring to the rendered development plan, he said that the applicant is proposing to construct an assisted living facility on the property, with two buildings totaling over 213,000 square feet in size. One building is proposed to be three stories tall, and the other one story, with a total of 255 beds requested.

Mr. Martin stated that access is proposed to the property via a new right-in/right-out on Man O' War Boulevard, as well as an access easement through the adjoining Pax Christi Church property. There is an existing access easement along Nicholasville Road, which is in conflict with the building as depicted on the plan. The petitioner will have to resolve that conflict prior to construction of building #1. That access easement is shared with the adjoining property, so some new type of access will need to be provided to that site. Mr. Martin noted the location of the proposed stormwater detention basin on the site, indicating that it would drain toward the Summit property, across Man O' War Boulevard.

With regard to the conditions recommended for approval, Mr. Martin said that this plan was originally recommended for postponement by the Technical Committee. Following that meeting, the staff received a revised plan, which addressed several of the issues and conditions. The staff is now recommending approval, subject to the following conditions:

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 and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Denote building height in feet.
12. Denote ~~existing and~~ proposed easements on plan.
13. Denote BOA approval of conditional use permit for this use.
- ~~14. Denote final record plat information in title block.~~
- ~~14.15. Discuss proposed access to Man o' War Boulevard and possible~~ Provided the Planning Commission grants a waiver to Article 6-8 of the Land Subdivision Regulations.
- ~~15.16. Discuss access restrictions per final record plat(s).~~
- ~~16.17. Discuss Resolve~~ existing access easement to Nicholasville Road and building conflicts prior to plan certification, including approval by the District 7 Office of the Kentucky Transportation Cabinet.
- ~~18. Discuss dumpster location adjacent to residential zone.~~
- ~~17.19. Discuss Resolve~~ the extent of excess parking.
- ~~18.20. Discuss Denote~~ proposed landscaping adjacent to Man o' War Boulevard and Nicholasville Road.
- ~~21. Discuss timing of improvements to Nicholasville Road.~~
- ~~22. Discuss the need for an internal pedestrian connection to Man o' War Boulevard.~~
- ~~23. Discuss landscaping adjacent to the homes in the R-1D zone.~~
- ~~19.24. Discuss Denote~~ height of any proposed retaining wall near detention basin.

Mr. Martin noted that this is a final development plan; and, as such, there are several standard "clean-up" conditions that must be met. In addition, the applicant will need to denote the building height in feet; any proposed easements on the property; and Board of Adjustment approval of the requested conditional use. Condition #16 refers to the existing access easement to Nicholasville Road, which Mr. Martin mentioned earlier in his presentation. Mr. Martin stated that the plan currently depicts 86 parking spaces in excess of the Zoning Ordinance requirement; the staff recommended condition #17 to address that concern. The applicant has met with staff to discuss this issue, and has indicated that they intend to reduce parking over the whole property, rather than in any one area; they have also agreed to work with the Division of Traf-

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fic Engineering to determine the best parking configuration. Condition #18 was recommended to address the staff's concerns about the presentation of the subject property to Man O' War Boulevard and Nicholasville Road, which are major arterial roadways.

Mr. Martin said that the staff researched all of the existing LFUCG major corridor landscaping ordinances, and determined that they shared several key recommended elements: mature trees, planted 40' on center; a berm, planted with smaller trees; and a four-plank horse farm fence. The staff would like to see similar landscaping along the frontages of both Man O' War Boulevard and Nicholasville Road. Mr. Martin stated that condition #19 refers to the need to document the height of the retaining wall that is depicted on the plan near the detention basin. He said that the detention basins are constricted by their proximity to Man O' War Boulevard, and will likely be deep; the height of the retaining wall around the basins needs to be included on the development plan, since anything over 4' in height must be an engineered structure.

Waiver Report Presentation: Mr. Martin stated that the petitioner had requested a waiver of the Land Subdivision Regulations in order to construct a right-in/right-out access to Man O' War Boulevard. The petitioner also requested and received a waiver for a right-in/right-out on the Summit development property, across Man O' War Boulevard from the subject property.

Mr. Martin explained that the spacing of the proposed access from the Man O' War Boulevard/Nicholasville Road intersection is just over 1,100 feet; from the proposed access to Victoria Way is approximately 1,075 feet. The normal spacing standard in the Land Subdivision Regulations is 1,400 feet. There has been a long-standing spacing standard on Man O' War Boulevard of approximately 1,200 feet, but that has been reduced in some instances. The staff believes that the key to a functioning right-in/right-out intersection is to have a median control. The original plan called for a new right-in/right-out on Nicholasville Road, using the existing access easement, but the spacing was inadequate at that location and there are no median controls in place.

Mr. Martin stated that the staff is recommending approval of the requested waiver, for the following reasons:

1. The waiver will have no negative impact on vehicular public safety, which is consistent with the basic intent of the Land Subdivision Regulations.
2. Strict enforcement of the access spacing regulations would constitute a hardship for the applicant and potentially could have a negative impact on public safety by increasing traffic pressures on the existing collector street system and the adjoining residential neighborhoods.

This recommendation is made subject to the following additional requirement:

- a. The proposed deceleration lane for the right in entrance must be designed to the approval of the Division of Traffic Engineering.

Mr. Martin noted that the Division of Engineering wants to ensure that the deceleration lane for the right-in/right-out entrance not only meets the required standards, but also functions appropriately for the amount of traffic typically expected at this location.

Commission Questions: Mr. Wilson asked if an emergency vehicle using the proposed right-in/right-out would be allowed to make a U-turn at Victoria Way, if necessary. Mr. Martin responded that that would be allowable.

Ms. Mundy asked if emergency vehicles could also use the rear access through the church parking lot. Mr. Martin answered that access was available there as well.

Petitioner Representation: Nick Nicholson, attorney, was present representing the petitioner. He stated that the petitioner postponed this request in February in order to resolve some issues with the neighboring Pax Christi Church, which have since been resolved. The petitioner is now in agreement with the staff's recommendations, and is requesting approval.

Mr. Nicholson said that the adjacent church intends to file an amended development plan that will propose access to Toronto Road, which the proposed assisted living facility would use as well. That plan would eliminate the access across the church parking lot, and any traffic from the subject property would then exit onto Victoria Way.

Commission Questions: Mr. Penn asked if the church intends to purchase the two houses that would need to be removed in order to construct an access to Victoria Way. Mr. Nicholson responded that the church is proposing to buy those houses.

Discussion: Captain Greg Lengal stated that the Division of Fire and Emergency Services had not had the opportunity to review this revised development plan. He said that their staff would be in support of the proposed access to Toronto Road, but would be concerned about the possible loss of access across the church parking lot. Mr. Nicholson indicated that that access would still be available to emergency vehicles.

Mr. Owens asked how condition #15 would need to be addressed. Mr. Martin answered that, when Man O' War Boulevard was platted, all of the access points were fixed. He said that approval of any changes to those access points fall within the Planning Commission's purview. The request to relocate a previously platted access point is inherent in the applicant's waiver request, so the Commission's action of approval would approve that access as well. Mr. Owens asked if condition #15 would be needed if the waiver was approved. Mr. Martin responded that it could be deleted, provided the waiver is approved. Mr. Sallee added that the Commission should consider replacing condition #15 with the condition outlined by Mr. Martin in the staff's waiver report, which would then incorporate it into the development plan action.

Development Plan Action: A motion was made by Ms. Mundy, seconded by Ms. Plumlee, and carried 11-0 to approve DP 2015-18, subject to the 19 conditions as listed; deleting condition #15; and replacing it with the following: "The proposed deceleration lane for the right-in entrance must be designed to the approval of the Division of Traffic Engineering."

Waiver Request Action: A motion was made by Ms. Mundy, seconded by Mr. Cravens, and carried to approve the findings for the requested waiver of the Land Subdivision Regulations, for the reasons provided by staff.

- V. **ZONING ITEMS** - The Zoning Committee was scheduled to meet on Thursday, March 5, 2015, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. However, the March Zoning Committee meeting was cancelled due to the weather emergency that closed the LFUCG Phoenix Building that day. The Committee last met on Thursday, February 6, 2015; the meeting was attended by Commission members Mike Cravens, David Drake, Carolyn Richardson, and Bill Wilson. The Committee reviewed applications, and made a recommendation on one listed zoning item below, as noted.

A. PUBLIC HEARING ON ZONING MAP AMENDMENT

1. JAKE RIORDAN & MARK A. JETER ZONING MAP AMENDMENT & LIBERTY HEIGHTS SUBDIVISION, LOTS 4-10 & 44-47 ZONING DEVELOPMENT PLAN

- a. MARV 2015-4: JAKE RIORDAN & MARK A. JETER (5/3/15)* – petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a Highway Service Business (B-3) zone, for 0.47 net (0.69 gross) acre; and from a Two-Family Residential (R-2) zone to a Highway Service Business (B-3) zone, for 0.55 net (0.62 gross) acre, for property located at 836 & 840 Winchester Road; 912, 916, 920 & 922 Detroit Avenue; and a portion of 915, 917, 919 & 921 Dayton Avenue. A dimensional variance has also been requested.

The Zoning Committee made no recommendation.

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

1. The applicant's proposed redevelopment is not sensitive and respectful to the adjacent residential neighborhood as a proposed infill and redevelopment site, as recommended by the 2013 Comprehensive Plan and cited by the applicant (Theme A, Goal 2a.).
 2. The applicant has not proposed any conditional zoning restrictions to reduce the intensity of the proposed B-3 zone adjacent to an established single-family residential neighborhood.
- b. REQUESTED VARIANCE
1. Increase the maximum allowable front yard from an average setback of 26 feet to an average setback of 42 feet
- c. ZDP 2015-20: LIBERTY HEIGHTS SUBDIVISION, BLOCK C, LOTS 4-10 & 44-47 (5/3/15)*- located at 836 & 840 Winchester Road, 912-922 Detroit Avenue and 915-921 Dayton Avenue. (Vision Engineering)

The Technical Committee and Staff Recommended: **Postponement**. There were some questions regarding the proposed parking, landscape buffers, and stormwater detention.

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

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. Urban Forester's approval of tree inventory map.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Denote building height in feet.
8. Addition of a note about location of required grease trap.

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9. Addition of direct pedestrian access to Detroit Avenue.
10. Addition of required tree inventory information.
11. Discuss proposed landscape buffer and dumpster location adjacent to residential zone.
12. Discuss the excessive amount of parking proposed.
13. Discuss access to adjoining street system.
14. Discuss the need for stormwater detention.
15. Discuss compliance with Art. 15-2(a)(6) of the Zoning Ordinance.
16. Discuss site lighting and exterior noise reductions needed for menu board.

Zoning Presentation: Ms. Wade presented the staff report on this requested zone change for property located at the intersection of Winchester Road and Detroit Avenue. She said that the two parcels that front onto Winchester Road are zoned B-4; four parcels that front onto Detroit Avenue are zoned R-2; and the rear portion of four parcels with Dayton Avenue frontage are also zoned R-2. Zoning in the immediate vicinity includes R-2, to the south; and B-1, B-3, and B-4 along Winchester Road, as well as I-1 to the north. A Speedway store and gas station is located across Detroit Avenue from the subject property, with several small businesses across Winchester Road, and the former location of the Big Ass Fan company a short distance to the west.

Displaying an aerial photograph of the subject property, Ms. Wade noted that several existing structures are still in place, including three residential buildings and two commercial structures with frontage on Winchester Road. The petitioner is proposing to demolish those structures in order to construct a fast food restaurant with a drive-through facility. Ms. Wade displayed the following additional aerial photographs: 1) a view of the subject property looking toward the south, noting that the existing buildings with Winchester Road frontage are located close to the roadway; 2) a view toward the downtown area, including the three existing houses that face Detroit Avenue; and 3) a view to the east.

Ms. Wade said that the petitioner contends that the B-3 zone is appropriate at this location, and the combination of B-4 and R-2 zoning is inappropriate. The B-3 zone specifically provides intent language, which includes, "providing for retail and other uses which are necessary to the economic vitality of the community, but may be inappropriate in other zones. Special consideration should be given to the relationship of such uses in the zone to the surrounding land uses, and to the adequacy of the street system that it serves." One of the staff's concerns about the proposed B-3 zone was the provision of buffering to the adjoining residential properties. Winchester Road is a primary arterial, so the staff believes that a sufficient street system is in place to serve the proposed use of the property. Ms. Wade added that the petitioner cited some issues with the current zoning that the staff believes are particularly applicable, noting that the B-4 lots are situated at an angle on Winchester Road, and they are smaller than typical B-4 lots, which are intended for Wholesale & Warehouse use. In addition, B-4 zoning adjacent to residential uses can also be of concern.

Ms. Wade said that, prior to the scheduled Zoning Committee meeting (which was cancelled due to a snow emergency), the staff recommended postponement of this request. The staff's primary concerns were how the property would transition to the adjacent residential area; and how the residential uses would be protected, since the petitioner had not proposed any conditional zoning restrictions. Since that time, the petitioner met with the staff, and provided a revised development plan and proposed conditional zoning restrictions. The revised development plan included reduced parking; the original plan had included nearly double the number of parking spaces required by the Zoning Ordinance, which was of concern to the staff. Also included on the revised plan was a more substantial buffer to the neighborhood than would normally be required. Ms. Wade stated that the petitioner proposed conditional zoning restrictions that would permit only Neighborhood Business (B-1) uses on the subject property; however, since the intent and uses of the B-1 and B-3 zones are quite different, the staff believed that it might be more appropriate to recommend a list of prohibited B-3 zone uses, which would not be appropriate adjacent to a residential area. The staff also believed it would be appropriate to prohibit billboards at this location, and to require a buffer to provide a transition between the commercial and residential zones. The staff is now recommending approval of this request, for the following reasons:

1. The restricted Highway Service Business (B-3) zone is appropriate, and the combined Wholesale and Warehouse Business (B-4) and Two-Family Residential (R-2) zoning is inappropriate, for the following reasons:
 - a. The restricted B-3 zone is compatible with the existing zoning along a majority of the Winchester Road corridor inside New Circle Road. The subject site is primarily surrounded by business zoning (B-1, B-3 and B-4).
 - b. The existing B-4 zoning is not generally appropriate for these small lots along an urban arterial corridor along Winchester Road. The possible land uses for these vacant properties in a B-4 zone are not appropriate immediately adjacent to the existing residential neighborhood.
 - c. The existing R-2 zoning is not appropriate, as it is located directly across Detroit Avenue from a business zone, which is currently occupied by an automobile service station with 24-hour lighting and high traffic generation.
 - d. The depth of business zoning along Detroit Avenue will be consistent along both sides of the street at approximately 250' feet from the intersection of Winchester Road.

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- e. The proposed landscape buffer will provide an appropriate transition between the proposed B-3 zone and the adjacent residential neighborhood.
2. This recommendation is made subject to approval and certification of ZDP 2015-20: Liberty Heights Subdivision, Block C, Lots 4-10 & 44-47, 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 be restricted in the following manner, via conditional zoning:

Prohibited Uses

1. 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.
2. Cocktail lounges and nightclubs.
3. Motel or hotel.
4. Indoor amusements, such as billiard or pool halls; dancing halls; skating rinks; miniature golf or putting courses; theaters or bowling alleys.
5. Drive-in restaurants.
6. Carnivals, even on a temporary basis.
7. Business colleges, technical or trade schools or institutions.
8. Pawnshops.
9. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers.
10. Advertising signs, also known as billboards, as regulated by Article 17.

Landscape & Buffering Restrictions

1. A 15-foot wide landscape buffer shall be provided along the southwest (rear of 916, 920 and 922 Detroit Avenue parcels) and southeast property boundaries (side of 922 Detroit Avenue parcel). The landscape buffer shall contain a 6-foot privacy fence, shrubs located between the fence and parking areas, and a tree every forty (40) feet on center, selected from Group A or B in the Planting Manual.

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

Ms. Wade stated that four properties along the southwest property line are owned by the petitioner, and are planned for future redevelopment. The petitioner is proposing to include five feet of landscaping on the subject property, and a 10' landscape easement on the residential properties, in order to maintain the 15' landscape buffer along the entire boundary. The staff is recommending that the petitioner install a fence, as well as trees and shrubs, in order to buffer the residential uses from the lighting and noise of the proposed drive-through restaurant.

Commission Questions: Ms. Mundy asked if the four lots on Dayton Avenue were proposed for residential use, which Ms. Wade answered affirmatively. She added that the lots currently contain three single-family residences; the petitioner proposes to redevelop the properties with either duplexes or new single-family units. Ms. Mundy asked if the 5' landscape buffer would be adequate to protect the residences. Ms. Wade responded that there would be an additional 10' easement on the residential properties. The petitioner indicated intent to install the required fence and shrubs on the commercial property, and the trees on the residential lots. She added that the petitioner is proposing parking on that side of the building because it is a "squeeze point" on the property. If the property is not developed with the proposed drive-through restaurant, the Planning Commission could require that the entire 15' landscape buffer be installed entirely on the subject property. Mr. Sallee added that there is a constraint on the residential lots; because they are located in the Infill & Redevelopment area, the rear yard is required to be 20% of the lot depth. For that reason, the petitioner cannot place the entire 15' buffer on the residential lots, and maintain that standard.

Mr. Owens asked if trees and shrubs would provide an adequate buffer from the proposed restaurant's parking area. Ms. Wade answered that the conditional zoning restrictions would require a fence, shrubs, and trees; the current development plan depicts the location of a fence, as well.

Development Plan Presentation: Mr. Martin presented the preliminary zoning development plan, noting that the Commission had received a revised staff recommendation prior to the start of the hearing. Referring to a rendered copy of the plan, he noted the surrounding area and the specific areas proposed for the location of the landscape easement.

Mr. Martin stated that the petitioner proposes to construct a 3,652 square-foot restaurant building, 22' in height, with 70 seats. The rendering is a revised submission plan; the staff believed that the original submittal included too much excess parking, so the petitioner reduced the parking to not quite double the number of spaces required on this version of the plan. The staff believes that the proposed drive-through stacking will be more than adequate. Access to the restaurant is proposed to both Winchester Road and Detroit Avenue. Mr. Martin noted that the entire layout on the property is driven by the proposed fast food restaurant use.

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Mr. Martin said that the Subdivision Committee did not review this plan, due to a cancellation of the meeting because of a snow emergency. He said that the staff is recommending approval of this plan, 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. Urban Forester's approval of tree inventory map.
5. ~~Department of Environmental Quality's approval of environmentally sensitive areas.~~
6. ~~Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.~~
7. ~~Denote building height in feet.~~
8. Addition of a note about the general location of the required grease trap.
9. ~~Addition of direct pedestrian access to Detroit Avenue.~~
10. ~~Addition of required tree inventory information.~~
11. ~~Discuss proposed landscape buffer and dumpster location adjacent to residential zone.~~
12. ~~Discuss the excessive amount of parking proposed.~~
13. ~~Discuss access to adjoining street system.~~
14. ~~Discuss Denote: The need for on-site stormwater detention shall be resolved at time of the final development plan.~~
15. ~~Discuss compliance with Provided the Planning Commission grants a variance to Art. 15-2(a)(6) of the Zoning Ordinance.~~
16. ~~Discuss Denote: Site lighting and exterior noise reductions needed for menu board shall be resolved at time of the final development plan.~~

Mr. Martin said that condition #6 refers to the need to resolve the issue of on-site detention at the time of the Final Development Plan, since the property is over an acre in size. Condition #8 refers to the staff's concern about lighting and noise reduction in situations where drive-through menu boards are located near residential areas.

Commission Questions: Mr. Drake asked if a drive-through restaurant is the same as a drive-in. Mr. Sallee answered that "drive-in restaurant" is a throwback term in the Zoning Ordinance from the 1950s, referring to establishments where carhops serve food from a building to customers in parked cars. That feature distinguishes a drive-in from a restaurant with an accessory drive-through window. Mr. Drake asked if the Parkette Restaurant would meet the definition of a "drive-in restaurant." Mr. Sallee replied affirmatively.

Variance Presentation: Mr. Emmons presented the staff report on the requested dimensional variance to Article 15-2(a)(6), which is a compatibility standard for business setbacks within the Infill & Redevelopment Area. That standard requires a "build-to" area, wherein a new structure must be constructed to within 5' (front or back) of the setback of the adjacent buildings in the same block.

Mr. Emmons said that, in this instance, there is one building on the subject property that has an average setback of 21', because of the skewed lotting pattern along Winchester Road. The petitioner would be required a maximum setback of 26'. The original development plan depicted five to six parking spaces along the frontage of Winchester Road, with a drive aisle, and the building pushed further back into the property. In response to the staff's concerns about the extent of the requested variance, the petitioner moved the building forward as far as they felt was feasible in order to maintain an operable drive-through lane. Mr. Emmons explained that the lot has a unique geometry, which, without a variance, would not permit the drive-through lane to circle completely around the building. Rather, the drive-through lane would have to circle into the property and exit much closer to the Detroit Avenue/Winchester Road intersection, which would not be safe.

Mr. Emmons said that, when the staff was considering the compatibility issues with the surrounding neighborhood, they noted that the subject property has two existing businesses along Winchester Road, which do comply with the Zoning Ordinance standards. They found, however, that there are several gaps in that setback distance along this portion of Winchester Road, as well as the auto-oriented gas station and convenience store across Detroit Avenue. There are many other lots along the south side of Winchester Road that share the same obtuse geometry as the subject property, and approximately half of the businesses are set further back from the roadway, with parking lots in front. Mr. Emmons stated that the staff ultimately found that granting the requested variance would not negatively or positively affect the character of the area. When they considered whether unique circumstances were present on the subject property, they determined that the unique geometry of the property created such a circumstance, since the drive-through could not safely be constructed without the requested variance.

The staff is recommending approval of the requested variance, for the following reasons:

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

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; nor will it negatively alter the essential character of the general vicinity because Winchester Road has other properties with similar setbacks as requested.
- b. There is a special circumstance regarding this property (a skewed geometry) that makes standard development more difficult. It applies to this property (and others in this vicinity) but does not generally apply to most commercial properties, which are generally much more rectangular in shape.
- c. According to the applicant, strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship for the applicant because an allowable use (restaurant with an accessory drive-through) cannot be safely developed due to the skewed lot geometry without approval of a setback increase.
- d. The requested variance is not an unreasonable circumvention of the Zoning Ordinance, because a restaurant with a drive-through is an allowable B-3 use; but the drive-through cannot be safely constructed on the subject property without the requested variance. Developing this use with the building closer to Winchester Road would require that the drive-through exit be on Detroit Avenue at a distance that is much too close to the existing intersection.
- e. The circumstances surrounding the requested variance are not the result of prior actions taken by this applicant, as no construction (or even building demolition) has yet occurred on the subject site.

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

1. Provided the Urban County Council rezones the property B-3; 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, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
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).
4. This dimensional setback variance is conditioned upon the proposed use having a drive-through facility; otherwise, construction shall comply with the requirements of Article 15-2(a)(6).

Mr. Emmons stated that the staff is conditioning their approval on the construction of the requested drive-through facility. Should the property be developed without a drive-through, all of the typical requirements must be considered.

Petitioner Representation: Matt Carter, Vision Engineering, was present representing the petitioners. He stated that the petitioners are in agreement with the staff's recommendations, and he requested approval.

Citizen Opposition: Judy Pugh, owner of 924 Detroit Avenue, stated that she and her husband plan to redevelop that parcel and two adjoining properties, which are zoned R-2. She said that she would like some reassurance that the proposed fast food restaurant on the subject property will not conflict with the planned multi-family dwellings on her property. Ms. Pugh said that she was primarily concerned about traffic flow; the dumpster location on the property; the need for adequate buffering; and potential truck traffic.

Commission Comment: Mr. Owens stated that he believed that the 15' buffer, with a fence, will be adequate to buffer the property. Ms. Pugh asked if the fencing would be made of chain link or a privacy fence. Mr. Sallee answered that the fencing is required by the Zoning Ordinance to be a solid privacy fence; chain link fencing is not compliant with the Ordinance for screening.

Ms. Pugh asked how the proposed restaurant would affect the traffic flow on Detroit Avenue. Mr. Martin responded that the petitioner is proposing an access to Detroit Avenue. He said that the staff believes that the access will function appropriately, and the traffic to and from the site should not interfere with any future redevelopment on the adjacent properties. Mr. Martin noted the proposed dumpster location on the rendered development plan. He added that a condition is recommended to discuss lighting and noise (menu board restrictions) at the time of a Final Development Plan for the property, to ensure that the adjoining residential properties are properly buffered. Mr. Owens added that Ms. Pugh could request to be notified of the filing of a Final Development Plan for the property. Mr. Martin noted that, if the Final Development Plan is significantly different from the plan before the Commission today, the staff will want a thorough explanation as to why the plan was changed.

Zoning Action: A motion was made by Mr. Brewer, seconded by Mr. Wilson, and carried 11-0 to approve MARV 2015-4, for the reasons provided by staff, including the conditional zoning restrictions as proposed.

Variance Action: A motion was made by Mr. Brewer, seconded by Ms. Richardson, and carried 11-0, to approve the requested variance, for the reasons provided by staff, subject to the conditions as recommended by staff.

Development Plan Action: A motion was made by Mr. Brewer, seconded by Mr. Wilson, and carried 11-0 to approve DP 2015-20, subject to the nine conditions as listed in the revised staff recommendation.

Note: Chairman Owens declared a brief recess at 2:28 p.m. The meeting reconvened at 2:36 p.m.

B. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENTS

Note: This item was continued from the Planning Commission's January 29, 2015, meeting.

1. **ZOTA 2014-4: RECREATION AND TOURISM LAND USES** – petition for a Zoning Ordinance text amendment to address recreation and tourism land uses in all zones, in order to implement the recommendations of the Recreation ZOTA Work Group.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: *(Available upon request, and for viewing at:
<http://www.lexingtonky.gov/Modules/ShowDocument.aspx?documentid=28457>)*

The Zoning Committee **made no recommendation** on this request.

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

1. The 2013 Comprehensive Plan recommends “strengthening regulations and policies that propel the agricultural economy; including, but not limited to, local food production and distribution, agritourism, and the equine industry that showcase Lexington-Fayette County as the Horse Capital of the World” (Theme C, Goal #1, Obj. B); “encouraging the development of appropriate attractions and supporting uses that promote and enhance tourism” (Theme C, Goal #1, Obj. E); and “providing entertainment and other quality of life opportunities that attract young professionals and a workforce of all ages and talents to Lexington” (Theme C, Goal #2, Obj. D). The proposed text amendment improves the opportunities for recreation and tourism-related land uses throughout Fayette County, to the benefit of all residents.
2. The *Rural Land Management Plan* (1999) acknowledged that “the best preservation tools for the rural service area are those that keep the agricultural economy viable and strong” (page I-4), and called for greenways, staging areas and trails, as well as public access to the community’s unique resources. This all suggests some level of access for recreational enjoyment and possibly tourism.
3. The proposed changes and additions to the definitions in Article 1 of the Zoning Ordinance will provide guidance and clarification to the Board of Adjustment and the Planning Commission in reviewing development applications. This text amendment adds or modifies 38 definitions related to recreation and tourism-related uses.
4. The proposed changes and additions to land use regulations in Articles 8, 11, and 23 will implement the recommendations of the 2013 Comprehensive Plan related to tourism and improving the community’s overall quality of life.

Chairman Comments: Mr. Owens commended the Commission and the staff for their hard work on this text amendment, noting that Ms. Wade, Mr. King, and Mr. Saltee, in particular, had done a great deal of work to get the draft to this point in the process.

Staff Presentation: Ms. Wade stated that the Planning Commission held a public hearing on this Zoning Ordinance text amendment request in October of 2014. At that time, the staff did a presentation about the proposal, and the Commission heard public comments. Since that time, the Commission held three work sessions to discuss the comments that were presented at the public hearing, and those that were submitted in writing. The Planning Commission’s next step will be to take action on the proposed text, after which the staff would forward the Commission’s recommendation to the Urban County Council for their consideration.

Ms. Wade displayed a timeline of the Commission’s consideration, noting that the staff had made changes to the draft text that was presented to the Commission in October based on their discussion at their recent work sessions. She said that the Commission members had received copies of the revised text. The new draft includes additions, deletions, and modifications to the definition section, and additions and modifications to the land use regulations.

With regard to the definition changes, Ms. Wade explained that the Commission added definitions for “cultural tourism” and “farm gift shop;” and deleted the definitions for “gift shop” and “homegrown restaurant.” Modifications were made to the definitions of “recreation vehicle and trailer campground;” “primitive campground;” “children’s rides;” “country inn;” “ecotourism;” “commercial farm market;” “festival;” “nature preserve;” “recreational outfitter;” “seasonal activities;” “sportsmen’s farm;” “tree canopy tour;” and “value-added product sales.”

Ms. Wade stated, with regard to changes to the land use portion of the Ordinance, that farm gift shop would become a new conditional use that would be accessory to a permitted agricultural use, and limited to 500 square feet in size. Zoological gardens were removed from all the residential zones. Hiking and biking were allowed as accessory with other non-commercial recreation, but added as commercial if they were conditional or prohibited; this change was intended to separate non-commercial and commercial hiking and biking activities. Homegrown restaurants were removed from any zone where they appeared. Commercial farm market, such as the downtown Farmers Market, were removed from the A-

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R zone, and allowed in the business zones. Kayaking and canoeing were modified to reflect “launch sites” rather than “operators.” Ms. Wade added that, where value-added products appear also as an accessory use in the agricultural zones, they were moved from general agricultural accessory uses to be grouped with roadside stands. Botanical gardens were incorporated into the land use regulations, similar to nature preserves. The B-1 zone was modified to include the sale of sporting goods and recreational equipment. In any instance in which automobile racetracks appeared, the text was modified to reflect all types of racetracks, such as motocross and ATV tracks. Some language was added to the Light Industrial zone to clarify recreational uses, and equine trails were moved from a conditional use to a prohibited use in that zone to avoid conflicts. The word “agritourism” was removed from all the non-agricultural zones, and bird-watching was removed from all the zones, because the Commission felt that use should not be regulated.

Ms. Wade stated that the staff is recommending approval of this text amendment, for the reasons as listed in the staff report and on the agenda.

Staff Alternative Text Presentation: Mr. King stated that the staff would like to thank and commend everyone who has been involved in this process, opining that it has been a thoughtful, in-depth clarification of some provisions of the Zoning Ordinance in the A-R and A-N zones. He reiterated that the staff is recommending approval of this request, because they believe that it is much-improved legislation that will provide guidance to the Board of Adjustment and the community in the future.

Mr. King said that, prior to the October 2014 hearing on this request, the staff submitted an alternative text for the Commission’s consideration; however, after some discussion with the Commission, the staff withdrew that text in favor of having the public hearing. Following the Commission’s last work session, there are now very few changes between the text as currently proposed by the Commission, and the things the staff would like for them to consider.

Mr. King stated that the staff believes that a very small number of limited and heavily restricted conditional uses should be considered by the Planning Commission for inclusion in the allowable group for the A-R zone. Those uses would not be principal; and, as conditional uses, would be subject to Board of Adjustment approval and special review. Because of the nature of the A-R zone, the staff is recommending that, before any of the new A-R uses are permitted, the Board of Adjustment should consider several items as pre-conditions. Those pre-conditions include an assurance that the proposed activity would not harm agricultural; would not cause a loss of prime soil; would meet a local need; would provide access to a natural landscape feature; and would be consistent with the major, adopted plans that guide such uses. Also required would be an operational plan; traffic management plan; environmental assessment, if necessary; and other certifications, if required by outside organizations. Mr. King noted that the Board of Adjustment has the right to consider those types of conditions, and the staff felt that it would be good to identify them specifically in the Zoning Ordinance.

Mr. King said that there are currently a few uses in the A-R zone that the BOA has the authority to review, that the Planning Commission has opted to direct to the A-N zone. He explained that most of the agricultural area in Lexington-Fayette County is zoned A-R, while the area recommended by the Rural Land Management Plan (RLMP) for A-N zoning is mostly in the southeastern portion of the county. The staff believes that a few additional uses could be added to the A-R zone, including: primitive camping; rock climbing; launch sites for canoeing and kayaking, since those sites are functionally dependent on locations of streams and waterways; tree canopy tours; bicycle and hiking trails; and recreational outfitting. Rock climbing, in particular, is not currently included in the A-R or A-N zones, and the staff believes that it could be appropriate in either of those zones, with proper regulation by the BOA. With regard to recreational outfitters, Mr. King said that the staff sees that use in conjunction with other types of recreational uses, similar to the manner in which the Planning Commission’s draft proposes to address gift shops as accessory to agricultural uses. He noted that this list of uses comprises the only differences between the Planning Commission’s draft proposal, and the text proposed for inclusion by the staff. He said that that the staff believes that the proposed text will result in “a better piece of legislation than that under which we are currently operating.”

Discussion: Mr. Owens stated that the public comment portion of this hearing was held in October, and the hearing will not be reopened for public comments at this time. He opened the floor for questions or comments from Commission members.

Mr. Brewer asked, with regard to commercial equine activities, how a use is determined to be commercial, as opposed to non-commercial. Mr. King responded that, if a business license is obtained and a fee charged, then the use is commercial. He said that, as Zoning Administrator, he had to make the determination on a case-by-case basis. Mr. Brewer asked why commercial use is referred to specifically in this instance, but not in others. Mr. King answered that it is referenced specifically in this instance to clarify that these uses are not something that property owners have an inherent right to do on their property as a business operation. Ms. Wade added that the commercial aspect would apply to all of the uses. She said that, earlier in their consideration of this text amendment, the Commission decided that non-commercial hiking and biking could be accessory uses, but commercial would be prohibited.

Mr. Brewer asked what would determine “local need” for a particular use. Mr. King answered that the staff thought it would be good to establish that there is a need for a facility locally, rather than having to travel somewhere else to find a similar

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facility. Mr. Brewer asked how that local need would be determined. Mr. King responded that that determination would fall to the BOA. Mr. Brewer asked if there are guidelines in place to assist with that determination, to which Mr. King responded that there are no guidelines at this time. He added that, currently, no guidelines of this type are in place, and the BOA functions without them. The staff believes that the proposed text will provide additional guidance and direction to the BOA.

Mr. Penn stated that he was concerned about letting the BOA decide where commercial uses can be located in the A-R zone. He said that the Commission is "trying to drive our commercial uses to the B-1 sites" in the agricultural area, because that is where they believe commercial uses should be located.

Mr. Owens said that the primary issue of this text amendment is commercial vs. non-commercial activities in the agricultural area. He said that, during the public hearing, the Commission received only one letter from a member of the bicycling community, and the writer was not concerned about commercial cycling in the rural area, since she could cycle freely on the roadways. That letter writer also recommended not including commercial activities in the agricultural area.

Mr. Owens opined that "commercial agricultural activities are incompatible with the agricultural activities that the Commission has been charged with promoting and preserving." He said that approximately 40% of the Comprehensive Plan's mission statement speaks to the preservation of rural character and agricultural land. Each page of the City of Lexington's Visitors' Guide contains either an equine-related article, or an image of the blue horse that LFUCG adopted as part of its branding.

Mr. Owens stated that "equine is agriculture, and it is not compatible with bicycles and pedestrians." He said that the proposed staff text refers to uses that "do not result in significant loss of prime agricultural land." He said all agricultural land is prime, and he believes that that determination would be subjective. Mr. Owens said that, during this ZOTA process, the workgroup and the Commission "tried to think of everything," but new uses like canopy tours and rock climbing keep coming forward. He opined that the Commission "has a good plan," with this text amendment, and "we need to push it forward."

Mr. Drake stated that he believes it is essential to preserve and nurture the thoroughbred industry, and that public policy and regulation have a significant role to play in that effort. He opined that it is important to strike a balance between the needs of the equine industry and the economic and social interests of other segments of society; the Planning Commission must determine if the proposed text amendment strikes that balance.

During the public hearing, Mr. Drake stated, some of the speakers indicated that they were opposed to this text amendment simply because it adds regulations; others were opposed for other reasons, while some speakers supported it. He said that he views the text amendment in its totality, rather than in portions, and he is concerned that it is too narrow and restrictive, and does not strike the necessary balance.

Mr. Drake stated that it is incumbent upon those who are entrusted with the power of governance to use it judiciously. Many citizens see government as an intrusive force, and he believes that the Commission must be careful in their role so that they do not exacerbate those feelings. Mr. Drake opined that, at times during this process, he has felt like the Commission's proposed text showed a "lack of trust in our successors." He said that decision makers must have the flexibility and latitude to assess issues and apply judgment to obtain an optimum outcome. For those reasons, Mr. Drake stated that he could not vote in favor of this proposed text amendment, although he honors opposing viewpoints and will accept the collective decision of the body.

Ms. Richardson stated that she agreed with many of Mr. Drake's comments, noting that she, too, has concerns about the restrictiveness of the proposed text. She said that she loves animals and supports the agricultural industry; but she believes it is important for the Commission to be careful about the balance of those industries, noting that she "does not want to be part of the Commission that squashed entrepreneurship." There are many differing viewpoints in society, and people who have different interests and activities. Ms. Richardson stated that Commerce Lexington spends a great deal of time and effort to promote the community and draw in new businesses and activities. When new companies are considering locating in Lexington-Fayette County, they want to know that there are good schools available, along with a variety of activities for their employees.

Ms. Richardson said that, because it is already difficult and expensive to start a new business, she is concerned that severely limiting the allowable uses in the rural area (such as in the Commission's proposed text) could result in a loss of entrepreneurship in the community. She believes that there should be regulations in place to protect the equine industry, but she believes that "this one has gone a step or two too far." She said that she could not support the proposed text amendment at this time, because she feels that it is too restrictive.

Mr. Penn stated that the proposed text amendment would allow 50 new uses in the A-R zone that are not currently permitted. He said that the objective of this text amendment was to define uses, not change the intent of the zoning

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categories. Mr. Penn said that “commercial uses in the A-R zone work “only if they are well thought out.” He said that there are 23 B-1 sites in the agricultural area, and commercial uses should be limited to those locations.

Mr. Penn said that, “agriculture is a commercial use; it is a factory, we produce a product that lives and breathes.” He opined that thoroughbreds are just a small part of the equine industry, which includes the Kentucky Horse Park, show horses, and non-race industry breeds. Mr. Penn said that those industries support the economy of Lexington-Fayette County, and people move here from other counties to take advantage of the rural protection offered here. He added that the community would have to make a decision about whether “to be a convention town or a tourism town,” and to protect the agricultural industry, which brings tourists here; the proposed text amendment is intended to be part of that protection.

Mr. Cravens asked if the Commission needed to take action on the staff alternative text. Mr. Owens said that, if the Commission is ready, they could vote for their draft, or for the staff alternative.

Mr. Cravens stated that he had made several suggestions for modifications to the draft text, but none of the changes were made until the work session one week prior to this hearing. He said he believes that many of the suggested changes are “absurd,” such as defining a “recreational vehicle” and determining if children’s rides can include music. He believes that the proposed text amendment goes too far, and he does not believe that it is appropriate to make so many activities conditional uses, which will require more applicants to go to the BOA. Mr. Cravens said that part of his objection to this text amendment is based on his belief in personal property rights.

Mr. Cravens explained that, for some time, he has wanted to modify the draft text to include some principal uses in the A-N zone, including: youth camps; agritourism; equitourism; and commercial and non-commercial outdoor recreational facilities. He said that a residence is the only principal use currently listed in the A-N zone, and he believes that it is too onerous to require every other use in that zone to be a conditional use. He asked if the Chair would prefer to discuss his A-N proposal, or if he should make a motion to include it at this time. Mr. Owens responded that he would prefer to discuss the proposal in a work session. Mr. Cravens stated that, if a vote on this text amendment takes place today, there will be no more work sessions. Mr. Owens said that, if the Commission is ready to vote, they can; if not, this item could be continued to another meeting.

Motion: A motion was made by Mr. Cravens and seconded by Mr. Drake to include the following as principal uses in the A-N zone: youth camps; agritourism; ecotourism; and commercial and non-commercial outdoor recreational facilities.

Discussion of Motion: Mr. Owens stated that the staff would need to draft language for Mr. Cravens’ proposed addition, and he did not believe that the staff preferred to “draft text on the fly.”

Mr. King said that the staff would be opposed to that addition to the text, since they believe that it is “entirely against” the intent of the proposed text amendment. He stated that the environmental sensitivity of the A-N area warrants BOA approval of any of those types of uses. With regard to drafting the text, he noted on the staff exhibit the list of uses that would move from conditional to principal under Mr. Cravens’ proposal. Mr. Owens asked if the staff could draft that text at this point. Mr. King answered that, with the knowledge that there was a motion on the table, the staff would do what they could to assist. He noted that the staff was still opposed to Mr. Cravens’ proposed text.

Mr. Berkley asked if it was necessary to make uses in the A-N zone conditional, since no land is currently zoned A-N and any new uses would require a zone change. Mr. King answered that, if a parcel is proposed for rezoning and the owner wants a conditional use, they could apply to have the Planning Commission hear the conditional use request along with the zone change. Mr. Berkley stated that he did not see the point of making those uses conditional, since zone changes will be required. Mr. King responded that circumstances can change; a property could be rezoned for one use, but financing or other issues might result in that use not being operated on the property. Mr. Berkley said that those types of issues can be addressed via conditional zoning, and added that he did not see “why we would need this extra layer of a conditional use” when there is currently no land zoned A-N in Lexington-Fayette County. Mr. King stated that the Planning Commission’s control would be at the time of a re-zoning, but the use could continue on past that date. Mr. Berkley said that he believed that “these are big enough issues” that the Planning Commission needs to be dealing with it, not the BOA. Mr. King noted that the BOA has the authority to regulate specific conditions of operation and other criteria, that the Planning Commission cannot. He said that conditional zoning restrictions are very limited under statute, compared to what can be regulated by a conditional use permit through the BOA. Mr. King said that the staff believed that the Commission would need and want that level of flexibility in dealing with new uses in the A-N zone.

Ms. Plumlee stated that she believed that the proposed text amendment is much too liberal; and, as written, does not fulfill the intent of the A-N zone. She said that the area of the county recommended for A-N zoning is environmentally sensitive and has steep slopes. An ad hoc committee was specifically appointed to study the potential for the use of surety bonds for environmentally sensitive areas, and that group has not yet released its results. Ms. Plumlee said that, if the group determines that it is too expensive to participate in a surety process, that should serve as an indication that the land is so valuable that it should not be developed at all. In addition, there are currently no mitigation requirements or measures for returning the land to its original state, should a use no longer be active. Ms. Plumlee stated that that portion

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of Lexington-Fayette County is a "prized area, and we need to offer the most protection there." She opined that the proposed text amendment should not be any more liberal than the current regulations in that area.

Mr. Brewer asked if the motion on the table referred to the staff's proposed text, or the Planning Commission draft. Mr. Cravens answered that he wanted to add those items as conditional uses. Mr. King stated that the motion would take the Planning Commission's version, and make the changes that he outlined, as requested by Mr. Cravens. Mr. Brewer said that he was concerned about this motion, because it includes new information as well as the entire text amendment. Mr. Cravens explained that his intent was just to add his proposed changes, not to vote on the entire text. He said that the result of the motion would be to either add his proposed changes, or carry the text amendment forward as is.

Action: Mr. Cravens' motion carried, 6-5 (Brewer, Owens, Penn, Plumlee and Wilson opposed).

Discussion: Mr. Berkley stated that he would like to make a motion to modify the proposed text amendment, to apply to all agricultural zones. He proposed: an amendment to Article 1-11 to redefine "farm gift shop" to "accessory gift shop;" an amendment to Article 8-19(d), adding #32 as accessory gift shops, limited to 500 square feet; and to add "accessory gift shop," limited to 500 square feet, to Article 8-2(d), Article 8-3(d), and Article 8-4(d). His motion was seconded by Mr. Cravens.

Mr. Owens stated that he believed that Mr. Berkley's modification to the proposed text would allow a gift shop anywhere in the agricultural area. Mr. Berkley responded that his intent would not be to allow a freestanding gift shop anywhere in the agricultural zones; rather, it would allow an accessory gift shop to one of the otherwise allowable uses. Mr. Owens asked if it would allow gift shops as accessory to agricultural, agritourism, or ecotourism uses. Mr. Berkley answered that gift shops would be allowed as accessory uses to any permitted use in the four agricultural zones, whether they are a principal or conditional use.

Mr. Penn asked if Mr. Berkley would be agreeable to requiring BOA approval for such gift shops. Mr. Berkley responded that, if the use required BOA approval because it would be conditional, that would be acceptable. He said that, based on Mr. Cravens' modification that was just approved, he believed that new uses in the A-N zone might be principal, which would not require BOA approval. Mr. Penn said that, under the current Ordinance, farm gift shops are conditional uses. Mr. Berkley clarified that, if the primary use was allowable without BOA approval, he would not want BOA approval to be required for an accessory gift shop.

Mr. Owens suggested continuing this hearing, so that the Commission and the staff could discuss these issues further at a work session, rather than attempting to draft text on the fly. He asked if Mr. Berkley would be agreeable. Mr. Berkley answered that, if the Commission chose to continue the hearing, he would be agreeable; but he did not want to take his motion off the table. He said that, whenever the Commission votes on this item, he wants that modification to be considered. Mr. Owens asked if Mr. Berkley would be willing to withdraw his motion at this point, in order to allow the Commission and the staff to work on it further. Mr. Berkley answered that he would rather vote on his motion today, then discuss the rest of the text amendment.

Mr. Cravens asked if Mr. Owens was suggesting continuing the hearing. Mr. Owens answered affirmatively.

Mr. Brewer stated that he thought the Commission was much closer to being ready to vote on the proposed text amendment. He proposed that they continue the hearing at this point to allow for further discussion, since several substantive issues had been brought forward.

Mr. Berkley stated that he would withdraw his motion, provided that action would not be taken on the whole Ordinance today.

Mr. Owens stated that ZOTA 2014-4 would be continued to a later date. Mr. King suggested that, if any Commission member intended to make another motion, they let the staff know as soon as possible so that the language could be presented and discussed at an upcoming work session.

Mr. Wilson asked if the text amendment would be tabled or continued. Mr. King answered that the Commission should continue their hearing. Mr. Brewer asked if it could be continued to a work session. Mr. King responded that formal Commission consideration of the text amendment needs to be at a full public hearing, but the Commission could have a work session to talk about it in the interim.

Mr. Penn asked if the report would be available from the environmental surety bond work group, so the Commission could use that information in their consideration. Mr. King answered that the report is very close to being completed, and it could possibly be available at the next work session. Mr. Penn noted that he did not believe the Commission should vote on the proposed text amendment without knowing the results of that report. Mr. King stated that it was staff's understanding that environmental surety bonds would be treated as a separate issue, although the report would somewhat inform their work on this text amendment.

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Mr. Brewer asked if a motion was needed to continue this item. Ms. Jones stated that, if the Commission has questions to pose to the staff, they should ask them as soon as possible, so that the staff is not "working on the fly" at the work session. She added that, if the Commission intends to continue the hearing, a motion would be needed; and it must be continued to a specific date. Mr. Sallee noted that the Commission's next scheduled work session is April 30th. Mr. King stated that the Commission would be asked to set April 30th as a hearing date for two small area plans, so that would not be a good day to discuss this text amendment. He said that the Commission could potentially schedule a work session on the 16th, but they would need to continue this hearing, not to a work session, but to a regularly scheduled meeting. He suggested that they continue to their April 23rd meeting.

Mr. Drake stated that he had a previous commitment out of state on April 23rd. Ms. Plumlee stated that, since consideration of this item had dragged on for so long, she believed it should be heard in April. Mr. Cravens said that he disagreed, since Mr. Drake could not attend on April 23rd. He opined that this item should be continued until May.

Mr. King stated that May 21st was available for a work session, with the hearing on May 28th.

Motion: A motion was made by Mr. Brewer, seconded by Mr. Cravens, and carried 10-1 (Plumlee opposed) to continue ZOTA 2014-4 to the May 28, 2015, Planning Commission meeting.

2. **ZOTA 2015-3: AMENDMENT TO ARTICLE 17-7(k) TO ALLOW MULTI-TENANT LISTINGS ON FREE-STANDING SIGNS IN THE PLANNED SHOPPING CENTER (B-6P) ZONE** (6/4/15)* – petition for a Zoning Ordinance text amendment to allow a maximum of eight multi-tenant panels on free-standing signs in the Planned Shopping Center (B-6P) zone.

REQUESTED BY: Ruggles Sign

PROPOSED TEXT: (Text underlined indicates an addition to the existing Zoning Ordinance.)

ARTICLE 17: SIGNAGE REGULATIONS

17-3(b) (2) ATTRACTION BOARD - A sign which contains no permanent copy, either letters or emblems, on which copy is changed manually with changeable letters and which announces special activities on the property.

17-3(b) (4) BUSINESS SIGN - A sign which directs attention to a business, profession, product, activity, or entertainment, sold or offered upon the premises where such sign is located, and may include information as for an identification sign.

17-3(c) (5) FREE-STANDING SIGN - A sign, not attached to any building, and attached to the ground by poles, braces, or other means.

17-7(k) PLANNED SHOPPING CENTER ZONE (B-6P) - Signs within the B-6P zone shall be permitted and regulated as for B-1 [Section 17-7(f)], except as follows:

- (1) In place of the free-standing signs permitted under Section 17-7(f)(1)(b), the only permitted free-standing signs shall be shopping center identification signs. One sign shall be permitted per street frontage, with a maximum of two (2) signs. The maximum square footage of each sign shall be 150 square feet, with a maximum height of twenty-five (25) feet for a regional shopping center; and seventy-five (75) square feet, with a maximum height of twenty (20) feet in a community or neighborhood shopping center. An attraction board may be attached to the free-standing sign, provided it does not exceed the area of the identification sign and provided that no permanent copy identifying any specific business or product sold within the center is included on the attraction board. The area of the attraction board shall be included in the computation of the area of the free-standing sign. The copy on such an attraction board shall be limited to sales or other events on the premises and civic meetings, rallies or other noncommercial events on or off the premises.

In lieu of an attraction board, multi-tenant panels may be used. A maximum of eight (8) tenants may be listed. The area of the tenant panels shall be included in the computation of the area of the free-standing sign.

- (2) The wall-mounted signs shall show only the name and/or logo of the business or profession, and shall contain no product trade name identifications. A listing of any products sold or offered on the premises may be an integral part of, and incorporated into, each permitted wall sign, provided the listing occupies no more than fifty percent (50%) of the area of the sign.
- (3) Window signs shall be permitted, limited to no more than twenty-five percent (25%) of the total window area.

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- (4) Non-illuminated or indirectly illuminated projecting signs may be permitted only as a conditional use as described under Section 17-12, where the purpose of such projecting signs is to create a unified and distinct shopping area design and where such signs will be utilized in place of wall signs.

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

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

1. While the proposed text amendment may be addressing a recent trend involving shopping center signage, more edits are needed to take this proposal into a final form that the staff can support.
2. As a whole, the staff is concerned with the applicant's proposal to significantly relax the current signage restrictions in the B-6P zone. However, the applicant has indicated a willingness to address the concerns of the staff to respond to these concerns before the required public hearing before the Planning Commission.

Staff Presentation: Ms. Wade presented the staff report on this requested Zoning Ordinance text amendment, explaining that the petitioner was proposing to amend Article 17-7(k) to permit up to eight multi-tenant panels on a freestanding shopping center identification sign in the B-6P zone. The current Ordinance specifically limits signage to one freestanding sign, in order to identify and create a sense of place for a shopping center, rather than allowing signs for each tenant. Since the 1950s, the Zoning Ordinance has permitted only the one freestanding sign per shopping center, with an allowance for an attached bulletin board with changeable copy to advertise sales or events. Ms. Wade said that the petitioner is proposing to amend the text in order to permit tenant panels in lieu of a bulletin board, which have fallen out of fashion in recent years.

Ms. Wade displayed for the Commission several graphics provided by the petitioner as examples of multi-tenant panels. The petitioner initially provided a different set of graphics, but the staff clarified that the language of the Ordinance requires that shopping center identification be at least half of the area of the sign, with a bulletin board being less than half. In reviewing the petitioner's proposal, the staff wanted to ensure that a shopping center name and identity remain primary, with tenant panels being secondary. The revised graphics provided by the petitioner addressed that concern to a certain extent.

Ms. Wade stated that, in the staff's review of this application, there were some concerns about the proposal to allow up to eight panels per sign. Most of the petitioner's graphics depict six panels, and the staff felt that six panels provided a better balance for the signs. Based on the square footage of signage allowed in the B-6P zone, the staff calculated that, with six panels, each panel could be between five and 10 square feet each. The staff alternative text also clarifies that the shopping center identification portion of a sign should remain primary, with a recommendation of 60% of the sign, and a limitation of the tenant panels to 40%. Ms. Wade said that the staff was also concerned about the need to define "tenant panel," since it is not currently defined in the Zoning Ordinance, so the staff's alternative text contains a definition of that term. The staff also believed that it was important to require that tenant panels be legible from 200 feet away, since they do not feel that tenant panels will be effective as wayfinding aids if they are too small. The staff alternative text clarifies that any sign being updated with tenant panels must conform to the rest of the requirements of Article 17. Ms. Wade said that the staff is recommending approval of the staff alternative text, for the following reason:

1. The proposed text amendment appears to be addressing a recent national trend involving shopping center signage. While identifying tenants on an individual basis could be helpful, the community must also balance the aesthetic appearance and impression made by such signs. The alternative text addresses the desire for tenant panels in a limited fashion, yet ensures legibility and an appropriate hierarchy for a shopping center identification sign.

Commission Questions: Mr. Owens asked why the staff was recommending the 60/40 split for this type of signage. Ms. Wade answered that the existing Ordinance requires that at least 50% of a shopping center sign be used for identification of the center. Mr. Owens asked why the staff was recommending increasing the amount of signage that must be devoted to center identification. Ms. Wade answered that the staff is requesting the increase because tenant panels will be permanent, whereas text on the existing allowable bulletin board can be changed. The bulletin board also can have more plain text, as opposed to logos or graphics, so it does not have a great deal of advertising value. The staff believes that tenant panels will serve as additional advertising. Ms. Wade stated that the staff wants to ensure that identification of the shopping center remains the primary purpose of a sign, and they do not believe that a 50/50 split will allow for that. Mr. Owens opined that it might be more important for drivers to be able to identify the stores within a shopping center, rather than the name of the center itself. Ms. Wade responded that, in terms of community aesthetics, the staff feels that keeping the identification of the shopping center primary is very important.

Mr. Wilson stated that some shopping centers already have more than eight tenant panels, and asked if those centers would be grandfathered with the proposed text amendment. Ms. Wade answered that those shopping centers are not in the B-6P zone; they are in either B-1 or B-3 zones. Mr. Wilson asked if digital tenant panels would be allowed. Ms. Wade answered that LED signage is not permitted in the B-6P zone.

Mr. Drake asked what the logic is behind making the identification of the shopping center more important than the te-

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nants. Ms. Wade responded that the purpose of the shopping center zone is to create one singular place, not a grouping of individual tenants.

Petitioner Representation: Elizabeth Pitchford, Ruggles Sign, stated that she believes that the use of multi-tenant panels will be an incentive for businesses to locate in Lexington-Fayette County, and will aid in wayfinding for drivers. She said that she is in agreement with the staff alternative text, and requested approval.

Citizen Comments: Dick Murphy, attorney, was present on behalf of Hamburg Development. He said that his client is not the applicant, but will be impacted by the proposed text amendment, and appreciates the willingness of the staff and the applicant to allow them to participate in the discussion.

Mr. Murphy stated that his client is in agreement with the original text as proposed by the petitioner, and with the staff alternative text.

Action: A motion was made by Ms. Plumlee, seconded by Ms. Richardson, and carried 11-0 to approve the staff alternative text for ZOTA 2015-3, for the reasons provided by staff.

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

VI. COMMISSION ITEMS

- A. PUBLIC HEARING ON TWO SMALL AREA PLANS** – Mr. Owens stated that the Long Range Planning staff had requested that the Commission add a public hearing on April 30th, to take public comments on two upcoming Small Area Plans.

Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 10-0 (Brewer absent) to schedule a public hearing on April 30, 2015 (1:30 p.m.), to hear public comment on two Small Area Plans.

- B. PLANNING COMMISSION RESOLUTION** – Mr. Owens said that Ms. Jones had drafted, at the request of Ms. Plumlee, a resolution encouraging the inclusion of an Environmental Inspector position in the Department of Environmental Services in the 2016 LFUCG budget. He said that the text of the resolution had been sent to the Commission members for their review prior to this meeting.

Commission Questions: Mr. Penn asked if this resolution should be held until the environmental surety bond committee submits their report. Mr. Owens responded that the two issues are not related.

Action: A motion was made by Ms. Plumlee to send to the Urban County Council a resolution encouraging the inclusion of an Environmental Inspector position in the Division of Environmental Services in the 2016 LFUCG budget. She read the resolution for the record:

“Be it resolved by the Planning Commission of the Lexington-Fayette Urban County Government:

Section 1 – That the position of Environmental Inspector in the Division of Environmental Services is encouraged to be included in the 2016 budget of the Lexington-Fayette Urban County Government; and

Section 2 – That this position is necessary and warranted in the Division of Environmental Services to provide compliance related to the commercial landscaping ordinance as well as to provide assistance in support of greenway maintenance.

Section 3 – That this resolution shall become effective on the date of its passage and shall be forwarded to the Urban County Council as well as the Mayor of the Lexington-Fayette Urban County Government.”

Ms. Plumlee's motion was seconded by Mr. Penn.

Discussion: Mr. Drake asked what the fiscal impact of the additional position would be. Mr. King answered that the position would not be part of the Planning staff, so he does not know what the budgetary impact would be. He said that was a position previously that did the same type of work; but, like many other positions in government, they were lost through attrition during the recent national fiscal crisis. Mr. King added that he believed that the Division of Environmental Services would be requesting the position in their FY2016 budget.

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Ms. Plumlee said that her resolution was intended to endorse a position that was intended to be included in the budget for 2016. She added that there are existing issues with commercial landscaping, and there needs to be some follow-up after the Commission approves a zone change or development plan.

Mr. Cravens said that he does not believe that the Planning Commission should be getting involved in recommendations for hiring and firing of employees, since that is not part of their purview. He said that he opposes this resolution.

Action: Ms. Plumlee's motion carried, 7-3 (Richardson abstained; Berkley, Cravens, and Drake opposed; Brewer absent).

C. REQUEST TO SCHEDULE A WORK SESSION – Mr. King stated that, based on the Commission's decision on ZOTA 2014-4, the staff would request that the Commission schedule a work session on May 21st.

Action: A motion was made by Mr. Penn, seconded by Ms. Mundy, and carried 9-1 (Plumlee opposed; Brewer absent) to schedule a work session on May 21, 2016 (1:30 p.m.), in order to discuss ZOTA 2014-4.

Discussion: Ms. Plumlee stated that she would be out of town on May 28th, and she did not believe it was appropriate for the Commission to schedule discussions around particular members' schedules. Mr. Owens said that he agreed with Ms. Plumlee.

Mr. Drake asked if there was any reason not to accommodate Ms. Plumlee's absence. Mr. Penn asked if it would be better to schedule the work session on April 16th. Ms. Wade stated that all of the Commission members indicated that they could be present for a May 21st work session, but not for the May 28th hearing. Mr. Owens said that he believed that it would be better to hold the work session on May 21st.

VII. STAFF ITEMS

VIII. AUDIENCE ITEMS – No such items were presented.

IX. MEETING DATES FOR March, 2015

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	April 2, 2015
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	April 2, 2015
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 9, 2015
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 23, 2015
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	April 29, 2015
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 30, 2015

X. ADJOURNMENT – There being no further business, Chairman Owens declared the meeting adjourned at 4:10 p.m.