

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

August 27, 2015

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

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

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

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 9-0 (Berkley and Wilson absent) to approve the minutes of the July 23, 2015, meeting.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **FLYING DUTCHMAN PROPERTIES, LLC, ZONING MAP AMENDMENT & GIBSON PARK SUBDIVISION, BLK B, ZONING DEVELOPMENT PLAN**

- a. MAR 2015-15: FLYING DUTCHMAN PROPERTIES, LLC (9/4/15)* - petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Townhouse Residential (R-1T) zone, for 0.654 net (0.754 gross) acre, for property located at 509, 513 and 517 Pyke Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

In addition to the Comprehensive Plan mission statement, the Goals and Objectives of the Plan also encourage growing successful neighborhoods (Theme A), and maintaining a balance between planning for urban uses and safeguarding rural land (Theme E).

The petitioner proposes to redevelop the subject properties with an 8-unit townhouse residential development with associated off-street parking.

The Staff Recommends: Approval, for the following reason:

1. The requested Townhouse Residential (R-1T) zone is in agreement with the 2013 Comprehensive Plan, as follows:
 - a. The Goals and Objectives recommend growing successful neighborhoods through expanded housing choices that address the market needs for all residents (Theme A, Goal #1b.). The petitioner proposes a townhouse style development of 8 dwelling units, which creates a variety of housing types in the immediate area that complement the existing neighborhood.
 - b. The Goals and Objectives encourage infill development throughout the Urban Service Area as a strategic component of growth for our community (Theme A, Goal #2). The petitioner proposes to increase the density of the subject properties, as compared to the surrounding area, to 12.23 dwelling units per net acre.
 - c. The Goals and Objectives recommend identifying areas of opportunity for infill development that respects the area's context and design features (Theme A, Goal #2a). The applicant plans to maintain a similar front yard setback, and provide off-street parking in the rear of the development, which will better match the existing character of the neighborhood.
 - d. The Goals and Objectives also encourage the use of underutilized land (Theme E, Goal #1a.) and building in a compact, contiguous, and/or sustainable manner (Theme E, Goal #1b.) The proposed development is well aligned with the vision articulated in the Comprehensive Plan for "single/small lot infill" projects, and is using two vacant lots that are considered underutilized in this urban context.
2. This recommendation is made subject to approval and certification of ZDP 2015-63: Gibson Park Subdivision, Blk B, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

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

- b. ZDP 2015-63: GIBSON PARK SUBDIVISION, BLOCK B (9/4/15)*- located at 509, 513 & 517 Pyke Road.
(Vision Engineering)

The Subdivision Committee Recommended: **Postponement**. There were some questions regarding compliance with the requirements of Articles 8-10 and 15-7 of the Zoning Ordinance.

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

1. Provided the Urban County Council rezones the property R-1T; 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. Correct plan title.
6. Denote: Compliance with Art. 15-7(d) of the Zoning Ordinance shall be determined at the time of the Final Development Plan.
7. Dimension sidewalks.
8. Discuss timing of the resolution of the conflict with the 30' platted building line.
9. Discuss proposed lotting and parking lot maintenance and access.
10. Discuss note #9.
11. Discuss compliance with Article 15-7(d) of the Zoning Ordinance.
12. Discuss compliance with Article 8-10(o)(g) of the Zoning Ordinance.
13. Discuss Article 18 landscape requirements' conflict with existing utility easement at rear of property.
14. Discuss easement conflict with proposed building.

Petitioner Representation: Jacob Walbourn, attorney, was present representing the petitioner. He stated that the petitioner was in the process of amending their application, and requested a two-month postponement.

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

Action: A motion was made by Ms. Mundy, seconded by Mr. Smith, and carried 9-0 (Berkley and Wilson absent) to postpone MAR 2015-15 to the October 22, 2015, Planning Commission meeting.

2. DR. MICHAEL GENTRY ZONING MAP AMENDMENT & CADENTOWN SUBDIVISION ZONING DEVELOPMENT PLAN

- a. MARV 2015-8: DR. MICHAEL GENTRY (8/2/15)* – petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Wholesale & Warehouse Business (B-4) zone, for 4.17 net (4.54 gross) acres, for property located at 2833 Liberty Road. A dimensional variance is also requested.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The petitioner proposes to construct a veterinary clinic and an animal kennel. The proposed facility will be mostly enclosed (± 20,000 square feet of space), with a small outdoor play area planned, and associated off-street parking.

The Zoning Committee Recommended: **Approval**.

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

1. The requested rezoning to a Wholesale and Warehouse Business (B-4) zone is not in agreement with the 2013 Comprehensive Plan. The Goals and Objectives and policy statements of the Plan encourage the consideration of how proposals relate to existing development in the immediate vicinity, and focus on protecting neighborhoods and residential areas from incompatible land uses. A neighborhood node already exists a short distance away at Man o' War Boulevard and Liberty Road in this immediate vicinity. The Comprehensive Plan also encourages the placement of residential land and development nearest to our parks and greenways to ensure that they are utilized to the highest extent possible.
2. Re-zoning at this location may significantly impact the nearby neighborhoods within the area, especially Campbell Lane and the established Cadentown Historic District. The Comprehensive Plan does not state that job creation should be accomplished to the detriment of the community or nearby neighborhood(s).
3. Although the subject property is situated along a recently improved roadway, it is a considerable distance from the already established neighborhood node at Man o' War Boulevard and Liberty Road. No justification exists for leapfrogging business zoning along Liberty Road to the subject property. The existing residential zone remains appropriate for the site and is compatible with adjoining properties.

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4. There have been no unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in 2013 that would support B-4 zoning for the subject property.

b. REQUESTED VARIANCE

Decrease the minimum distance required for a kennel or animal clinic from a residential zone from 100 feet to 50 feet along the northwest property line.

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

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

- a. Granting the requested variance to 50 feet will not adversely affect the public health, safety or welfare. It will not negatively impact the essential character of the general vicinity because this modern kennel/animal clinic is primarily designed to keep the pets indoors; and in this case, the outdoor play area for pets will be more than 60 feet from a residential zone. Additionally, the property to the northwest is currently vacant and is buffered by a heavy line of vegetation that is proposed to remain.
- b. There is a special circumstance regarding this property (an 11-sided lot) that makes standard development more difficult. It applies to this property but does not generally apply to most commercial properties, which are generally much more rectangular in shape. Additionally, the proposed variance along the northwestern property line was chosen because the adjoining property is vacant, whereas there are occupied residential properties to the southeast on Campbell Lane.
- c. Although a facility could be constructed on this site without a variance, it would not likely result in a better design or outcome. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship for the applicant, because the design of the facility would need to be less efficient and could impact the operational needs of the proposed kennel/animal clinic.
- d. The requested variance is not an unreasonable circumvention of the Zoning Ordinance, because the setback requirements for this use are to buffer nearby residential uses from the potential nuisances of this use. This facility, like most modern kennels, will be built in such a way that the majority of the animal keeping is indoors with outdoor play areas located more than 60 feet from any residential zone, and more than 100 feet from any existing dwellings.
- e. The circumstances surrounding the requested variance are a result of the odd shape and other special considerations, and are not the result of prior actions taken by this applicant, as no construction 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-4; 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. The tree line along the northwestern property line shall be retained.

Alternative Recommendation:

Should the Planning Commission recommend Disapproval of the requested B-4 zone change, the Staff Recommends: **Disapproval**, for the following reasons:

- a. Under Article 6-4(c) of the Zoning Ordinance, the Planning Commission may only hear conditional uses and variances when filed with an associated zone change. Therefore, unlike the associated zoning development plan, the Commission may only consider this matter within 90 days of its filing.
- b. Disapproval of the conditional use does not prohibit the applicant from filing a dimensional variance application with the Board of Adjustment, should the Urban County Council approve the requested B-4 zoning of the subject property in the future.

c. ZDP 2015-49: CADENTOWN SUBDIVISION – ANIMAL HOSPITAL/KENNEL (8/2/15)*- located at 2833 Liberty Road.
(Vision Engineering)

The Subdivision Committee Recommended: Postponement. There were some questions regarding the access to the proposed trail system and outdoor pet areas to be used.

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

1. Provided the Urban County Council rezones the property B-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.

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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. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Denote access drive dimensions.
7. Denote sidewalk dimensions.
8. Denote canopy height.
9. Clarify outdoor kennel space.
10. Provided the Planning Commission grants the requested variance to the setback.
11. Clarify proposed building entrance.
12. Remove parking space conflict from required landscape buffer.
13. Denote access locations across Liberty Road on plan.
14. Denote proposed stormwater detention area.
15. Discuss excess parking.
16. Discuss access to Campbell Lane.
17. Discuss open space area at the rear of the property.
18. Discuss access to proposed trail along the northern property boundary.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner was in the process of amending his application, and he requested a one-month postponement.

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

Action: A motion was made by Mr. Penn, seconded by Ms. Richardson, and carried 9-0 (Berkley and Wilson absent) to postpone MARV 2015-8 to the September 24, 2015, Planning Commission meeting.

3. **CT 2015-1: SKYWAY TOWERS, LLC & CELLCO PARTNERSHIP (dba Verizon Wireless)** – an application for a 199-foot cell tower at 4279 Huffman Mill Pike.

Ms. Rackers stated that the petitioner in this case had submitted a request to the staff for postponement to the Commission's September 10th meeting.

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

Action: A motion was made by Ms. Plumlee, seconded by Mr. Penn, and carried 9-0 to postpone CT 2015-1 to the September 10, 2015, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, August 6, 2015, at 8:30 a.m. The meeting was attended by Commission members: Karen Mundy, Joe Smith, Mike Owens, Will Berkley, Carolyn Plumlee and Frank Penn. 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, Traci Wade, Cheryl Gallt, Denice Bullock and Dave Jarman, as well as C.D. Schnelle, Division of Police; Captain Greg Lengal, Division of Fire & Emergency Services and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

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

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

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, August 6, 2015, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members Mike Cravens and Carolyn Richardson. The Committee members reviewed applications; but, since no quorum was present, they were unable to make recommendations.

A. PUBLIC HEARING ON ZONING MAP AMENDMENTS

1. **SOLOMON VAN METER ZONING MAP AMENDMENT & MEADOWTHORPE COMMUNITY BUSINESS CENTER, UNIT 1 (AMD), ZONING DEVELOPMENT PLAN**

- a. **MARV 2015-12: SOLOMON VAN METER (9/4/15)*** - petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a Neighborhood Business (B-1) zone, for 2.865 net (3.457 gross) acres, for property located at 1447 Antique Drive. A dimensional variance is also requested.

LAND USE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan no longer makes a specific land use recommendation for each and every parcel in Lexington-Fayette County, but *Chapter 1: Goals and Objectives* does recommend "supporting infill opportunities as a strate-

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gic component of growth,” and to promote “collaboration with healthcare entities to meet the needs of Lexington-Fayette County’s residents.” The applicant is requesting this rezoning in order to develop an assisted living facility or a licensed personal care facility on the subject property.

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

1. The requested Neighborhood Business (B-1) zone for the subject property is in agreement with the 2013 Comprehensive Plan for the following reasons:
 - a. The Goals and Objectives of the 2013 Plan recommend planning for safe, affordable, and accessible housing to meet the needs of older residents of Lexington-Fayette County (Theme A., Goal 1c). This development will accomplish that goal, by providing a specialized residence for seniors in need of assistance or a spectrum of care in order to live near an established neighborhood and one of the community’s largest shopping areas.
 - b. The Goals and Objectives encourage the use of our local assets to create a variety of jobs (Theme C, Goal 1d) and enable infill and redevelopment to create jobs where people reside. The applicant is proposing to develop a well-landscaped facility on a by-passed property to further this goal, in a manner that is sensitive to the character and nearby residential and commercial residents of the Meadowthorpe neighborhood.
 - c. The Plan’s Goals and Objectives support the improvement of our desirable community by providing for healthcare facilities to meet the needs of the County’s residents (Theme D, Goal 2b). The petitioner will provide such a residential care facility, perhaps including an assisted living component, for a portion of the Urban County that is and has been underserved by such facilities.
2. The proposed B-1 zone would be appropriate for the subject property, since it is more than 90% surrounded by properties with B-1 zoning.
3. This recommendation is made subject to approval and certification of ZDP 2015-61: Meadowthorpe Community Business Center, Unit 1 (Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission’s approval.

b. REQUESTED VARIANCE

- a. Increase the maximum allowable front yard in a Neighborhood Business (B-1) zone from 20 feet to 100 feet.

The Staff Recommends: **Approval of the requested variance**, for the following reasons:

1. Granting the requested variance to allow a maximum front yard setback of 100 feet will not adversely affect the public health, safety or welfare. It will not negatively impact the essential character of the general vicinity because this property is the only property that has Antique Drive as the sole street frontage.
2. There are several special circumstances regarding this property that make compliance with the required setback more difficult. The property is of a triangular shape, which makes a conventional building design more difficult; there is a drainage area that will need to be moved, and there is an 80’ deep access easement across half of the frontage of this property. Furthermore, Antique Drive is primarily used for the rear service access to the Meadowthorpe Shopping Center. The proposed residential care facility will be the only property utilizing this public street for its frontage. These unique facts apply to this property but do not generally apply to most commercial properties, which generally have a much more typical arrangement.
3. Although a facility could be constructed on this site without a variance, it would not likely result in a better design or outcome. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship for the applicant, because the result could seriously impact the operational needs of the proposed residential care facility.
4. The requested variance is not an unreasonable circumvention of the Zoning Ordinance based on the unique circumstances of this property, which are a result of special considerations that affect the property.
5. This variance is not the result of prior actions taken by this applicant, as no construction 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-1; 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).
- c. ZDP 2015-61: MEADOWTHORPE COMMUNITY BUSINESS CENTER, UNIT 1 (AMD) (9/4/15)* - located at 1447 Antique Drive. **(Endris Engineering)**

Note: The purpose of this amendment is to propose a new zone and development of the property.

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

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Addition of metes and bounds description of the property.
6. Denote canopy height on plan.
7. Delete zoning requirement from plan face.
8. Denote timing of the resolution of the building easement conflict on plan.
9. Denote lot coverage, floor area ratio and open space site statistics per Art. 21-6(a)(13) of the Zoning Ordinance.
10. Discuss pedestrian access to site and street improvements.
11. Discuss front building line per Article 8-16(h) of the Zoning Ordinance.
12. Denote emergency access gates to the approval of the Division of Fire and Emergency Services.

Zoning Presentation: Mr. Sallee presented the staff report on this requested zone change, using an aerial photograph to briefly orient the Commission to the location of the subject property. He said that the subject property, which is just under 3.5 acres in size, is located on Antique Drive. In the vicinity, Antique Drive connects North Forbes Road with Burke Road, behind the Meadowthorpe commercial area. The subject property is triangular-shaped, with two "wings" along Antique Drive; those "wings" provide approximately 40' of frontage along both North Forbes Road and Burke Road.

Mr. Sallee stated that the subject property was rezoned to B-4 from B-1 in 2008. It has been vacant for the past 30-35 years, and it remains vacant today. The petitioner is proposing the zone change in order to develop either an assisted living or a licensed physical care facility on the property. The petitioner contends that the proposed zone change is in agreement with the Goals & Objectives of the 2013 Comprehensive Plan, with which the staff concurs. The staff also believes that the proposed B-1 zone would be more consistent with the existing B-1 zoning that almost entirely surrounds the subject property, with the exception of the R-1C zoning in the adjoining Meadowthorpe neighborhood residential area. Mr. Sallee explained that the uses that are proposed are allowed in the B-1 zone. The staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, explaining that the petitioner is proposing to construct an 18,000 square-foot building, with 40 off-street parking spaces. The assisted living facility is proposed to include 30 beds, a greenspace area, and a large recreation area. There is an existing large easement on the property, which will need to be addressed prior to the issuance of any permits on the property. That access easement also relates to the requested variance to the B-1 setback line. Mr. Martin noted that the development plan also depicts a large detention basin, which should help to address existing stormwater problems in the area.

Mr. Martin stated that the Subdivision Committee recommended approval of this plan, subject to the 12 conditions as listed on the agenda. Condition #8 relates to the building easement, which the staff anticipates will be addressed on a final development plan for the property. Condition #11 refers to the front building line; should the Commission approve the requested variance, this condition could be deleted. Mr. Martin explained that condition #10 refers to Antique Drive, which has very few improvements along the frontage of the subject property. The staff believes that pedestrian connections will be particularly important into the subject property, and that the petitioner can address those specifics on the final development plan for the property.

Variance Presentation: Mr. Emmons presented the variance report, explaining that the requested B-1 zone has a maximum front yard setback of 20'; the petitioner is requesting a variance to allow a maximum setback for the proposed development of 100'. The difference between the permitted 20' and requested 100' might seem to be a very large variance, Mr. Emmons noted, but the staff believes that there are several unique circumstances for the subject property that justify the requested variance: 1) the oddly-shaped, triangular configuration of the property; 2) the 80' easement that extends over half of the property's frontage along Antique Drive; and 3) the function of Antique Drive as essentially a service road to the rear of the Meadowthorpe shopping center. In addition, the subject property is the only parcel that has frontage on Antique Drive.

Mr. Emmons stated that the staff believes that the requested variance to 100' is justified, and the staff is recommending approval, for the reasons as listed in the staff report and on the agenda, and subject to the conditions as listed.

Petitioner Presentation: Solomon Van Meter, petitioner, stated that he was in agreement with the staff's recommendations.

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Commission Question: Mr. Owens asked if Mr. Van Meter would be agreeable to the change to condition #10 to resolve the pedestrian access at the time of the final development plan. Mr. Van Meter responded that he was agreeable with that condition.

Citizen Comment: Larry Stahlman, 1481 Leestown Road, stated that his commercial building is prone to flooding. He said that, in March of 2015, his building sustained serious damage, and he wants to ensure that construction of the proposed development does not make the situation worse.

Mr. Martin stated that there were no staff members present from the Division of Engineering, but the petitioner will be required to submit an improvement plan to address the drainage on the site prior to the issuance of any permits for the property.

Mr. Penn asked how drainage on the property would be managed throughout the construction phase. Mr. Martin answered that that would be handled through the permitting and inspection processes.

Mr. Owens asked if Mr. Stahlman would be notified of any future development plans for the property. Mr. Martin answered that official notice is not required for development plans, but Mr. Stahlman could request notification. Mr. Sallee added that the Commission could also make that notification a condition of their approval of the plan.

Zoning Action: A motion was made by Mr. Brewer, seconded by Ms. Richardson, and carried 9-0 (Berkley and Wilson absent; Smith abstained) to approve MARV 2015-12, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Brewer, seconded by Ms. Richardson, and carried 9-0 (Berkley and Wilson absent; Smith abstained) to approve the requested variance, for the reasons provided by staff, subject to the three conditions as listed on the agenda.

Development Plan Action: A motion was made by Mr. Brewer, seconded by Ms. Mundy, and carried 9-0 (Berkley and Wilson absent; Smith abstained) to approve ZDP 2015-61, subject to the first nine conditions as listed on the agenda; changing #10 to read: "Resolve pedestrian access to site and street improvements at the time of a final development plan for the property;" deleting condition #11; and adding a new condition to require the notification of Mr. Stahlman, owner of 1481 Leestown Road.

2. GULFSTREAM ENTERPRISES, LLC, ZONING MAP AMENDMENT & MAN O' WAR, UNIT 2A (AMD) ZONING DEVELOPMENT PLAN

- a. MAR 2015-14: GULFSTREAM ENTERPRISES, LCC (9/4/15)* - petition for a zone map amendment from a Planned Shopping Center (B-6P) zone to an Interchange Service Business (B-5P) zone, for 4.66 net (5.41 gross) acres, for property located at 1750 Pleasant Ridge Drive; 2008 and 2024 Bryant Road; and 1976 Justice Drive.

COMPREHENSIVE PLAN AND PROPOSED USE

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

The petitioner proposes an Interchange Service Business (B-5P) zone in order to develop two hotels on the subject properties. The hotels are planned to have 125 and 100 rooms, respectively, and associated off-street parking.

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

1. The requested Interchange Service Business (B-5P) zone is appropriate, and the existing Planned Neighborhood Shopping Center (B-6P) zone is inappropriate, for the following reasons:
 - a. The existing B-6P zoning is no longer appropriate at this location because the demand for general commercial is being met on alternate sites within the general area, but neither of these two developments has successfully incorporated hotels to serve the traveling public.
 - b. The site remains an underutilized site after a decade of B-6P zoning, and should be considered for a possible change to an alternative business zone (and use) in order to better serve the needs of the community and infill vacant lands within the Urban Service Area.
 - c. The B-5P zone is appropriate at this location because it is compatible with adjoining land uses and zoning, and because it meets the intent of Article 11 of the Zoning Ordinance, which states that limited commercial facilities that conveniently provide transient type services should be located at limited access highway interchanges.

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2. This recommendation is made subject to approval and certification of ZDP 2015-65: Man O' War, Unit 2A (Amd) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2015-65: MAN O' WAR, UNIT 2A (AMD) (9/4/15)*- located at 1750 Pleasant Ridge Drive, 1976 Justice Drive and 2008 and 2024 Bryant Road.
(Bryant Engr., Inc.)

Note: The purpose of this amendment is to change the development concept from retail uses to hotel and/or restaurant(s).

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

1. Provided the Urban County Council rezones the property B-5P; 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. Clarify purpose of amendment note (delete "zoning").
6. Addition of topography source.
7. Dimension sidewalk widths.
8. Clarify street cross-sections for Justice Drive.
9. Denote that there will not be any outdoor swimming pools.
10. Clarify canopies with solid lines (similar to those for buildings).
11. Addition of a note restricting high rise pole signs for the southern half of the property on plan.
12. Discuss applicable design guidelines from previous preliminary development plan.
13. Denote that there will be a future Consolidation Plat for the parking spaces on the western boundary of the property.

Zoning Presentation: Ms. Wade presented this rezoning request from B-6P to B-5P, orienting the Commission to the location of the subject properties in the southwest quadrant of the Interstate 75/Man O' War Boulevard interchange. She said that the Hamburg commercial center is located to the northwest, and the Timber Creek subdivision is to the south of the subject properties. There is other, interstate-related commercial development located along Man O' War Boulevard and the interstate. Bryant Road loops around the subject properties, bordering them to the north; Justice Drive borders the properties to the west; and Pleasant Ridge Drive borders them to the south. Also included in that block are a car wash (zoned B-5P), and a detention basin; and tire store (zoned B-6P).

Ms. Wade displayed an aerial photograph of the subject properties, noting that most of the area around the site is developed with restaurants, commercial uses, hotels, and a residential subdivision located nearby. The petitioner is proposing to rezone the subject properties in order to construct two hotels on the site. The properties were originally rezoned in 1989 from an agricultural zone to the B-5P zone. No development has occurred on the properties since that time. In 2004, a previous owner rezoned the properties to B-6P, with the intent of developing retail businesses, similar to those in the Hamburg development. After a decade without development, the new owner of the properties is requesting rezoning back to the B-5P zone. The requested hotel use is permitted in the B-5P zone, but not in the existing B-6P zone.

Ms. Wade said that although the petitioner contends that the requested rezoning to B-5P is in agreement with the 2013 Comprehensive Plan, the staff does not believe that the Plan directly addresses minor changes between different commercial land uses. Rather, the staff finds that the B-6P zone is inappropriate at this location, and the B-5P zone is appropriate, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Ms. Gallt presented the zoning development plan, explaining that the petitioner is proposing to construct two hotels on the subject properties. The petitioner is currently working with one hotel client who has expressed an interest in the development, while the other hotel tenant has yet to be decided upon.

Ms. Gallt said that, following the Subdivision Committee meeting three weeks ago, the staff received a revised version of the plan. The staff is recommending approval, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property B-5P; 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. ~~Clarify purpose of amendment note (delete "zoning").~~
6. ~~Addition of topography source.~~
7. ~~Dimension sidewalk widths.~~
8. ~~Clarify street cross-sections for Justice Drive.~~

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- ~~5. 9. Denote that there will not be any outdoor swimming pools for "Hotel A."~~
- ~~6. 10. Clarify canopies with solid lines (similar to those for buildings) for "Hotel A."~~
- ~~11. Addition of a note restricting high rise pole signs for the southern half of the property on plan.~~
- ~~7. 12. Denote that there will be a future Consolidation Plat for the parking spaces on the western boundary of the property.~~
- ~~13. Discuss applicable design guidelines from previous preliminary development plan.~~
- 8. Clarify note #17.

Ms. Gallt stated that condition #8 should read: "Clarify note #11." She said that that plan note refers to the provision that prohibits the issuance of building permits pending the certification of a final development plan for the property.

Petitioner Representation: Darby Turner, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, including the revised development plan conditions.

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

Zoning Action: A motion was made by Mr. Penn, seconded by Ms. Richardson, and carried 9-0 (Berkley and Wilson absent) to approve MAR 2015-14, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 9-0 (Berkley and Wilson absent) to approve ZDP 2015-65, including the eight revised conditions as listed.

3. LEX PROPERTIES, LLC, ZONING MAP AMENDMENT & WINDING CREEK AT MONTICELLO ZONING DEVELOPMENT PLAN

- a. MAR 2015-11: LEX PROPERTIES, LLC (8/30/15)* – petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 10.14 net and gross acres, for property located at 3455 Saybrook Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The 2013 Plan's Goals and Objectives emphasize the importance of growing successful neighborhoods (Theme A) by expanding housing choices (Goal #1), supporting infill and redevelopment (Goal #2) and providing well-designed neighborhoods (Goal #3). It also recommends protecting the environment (Theme B) by supporting the community's green infrastructure program (Goal #3) and by implementing the adopted environmental policy (Goal #2.a.). Lastly, the Plan advocates for compact, contiguous and/or mixed-use sustainable infill development to accommodate future growth needs and sustain the Urban Service Area concept (Theme E, Goal #1.b.)

The petitioner proposes to develop 27 detached single-family residential lots on the site, which would yield a residential density of 2.66 dwelling units per acre.

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

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

- 1. The environmental suitability of the site for residential land use is questionable given its previous use for a private sanitary sewer treatment plant. Such plants, once removed, can leave contaminated soils or other potentially hazardous materials that would not be appropriate for a future residential land use. Additional environmental studies are recommended to provide assurance to the Urban County Government and the Planning Commission prior to making a recommendation to the Urban County Council.
- 2. The requested Planned Neighborhood Residential (R-3) zone is not the most compatible residential zone with the surrounding Monticello and Robinwood subdivisions. If the site can be found to be suitable for development from an environmental perspective, the staff believes that the Single Family Residential (R-1D) zone would be more appropriate for the subject property.

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- b. ZDP 2015-53: WINDING CREEK AT MONTICELLO (8/30/15)*- located at 3455 Saybrook Road.
(EA Partners)

The Subdivision Committee Recommended: Postponement. There were some questions regarding the proposed lotting and past environmental concerns involving the subject property.

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

1. Provided the Urban County Council rezones the property R-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. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote 25' floodplain setback on east side of floodplain.
8. Addition of radius information on cul-de-sac.
9. Discuss lotting pattern proposed for floodplain.
10. Discuss proposed access to LFUCG property.
11. Discuss lack of environmental Phase I or II study on the property.
12. Discuss need for HOA maintenance of floodplain area.
13. Discuss width of park access from cul-de-sac.
14. Discuss environmental conditions on site.

Request for Amendment: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner has closed on the purchase of the subject property, and now needs to amend the application for this rezoning request to reflect the change. He entered an amended application form and the new deed for the property into the record of the meeting, noting that, although the company name contains the word "condominiums," the petitioner does not intend to build condominiums on the subject site.

Staff Presentation: Ms. Wade began the staff's presentation of this rezoning request by noting that the staff had distributed to the Commission members a supplemental staff report; copies of a 1994 staff report; and an excerpt from the Zoning Ordinance. She added that the staff had received a large amount of correspondence related to this request, including a petition submitted in July, and a more recent petition submitted a few days prior to this hearing. She distributed those items to the Commission members for their review.

Ms. Wade stated that the subject property is mostly treed or covered in vegetation, and approximately one-third of its area is occupied by the floodplain of South Elkhorn Creek. The property is approximately 10 acres in size, and Saybrook Road stubs into it. All of the surrounding properties are zoned R-1C, with the exception of a small lot to the south, which is zoned A-U and owned by the Lexington-Fayette Urban County Government. The property is bordered by the Robinwood and Monticello subdivisions, with Boston Road, Cromwell Way, and Monticello Drive serving as collector streets in the area. Ms. Wade explained that the petitioner is proposing the R-3 zone for the subject property in order to develop 27 single-family residential lots, for a density of 2.66 dwelling units per acre.

Ms. Wade displayed the following photographs of the subject property and surrounding area: 1) a view into the property from Saybrook Road, noting a deteriorated driveway with a gate; 2) a view of the property looking toward South Elkhorn Creek, noting the adjacent single-family homes to the east; 3) a view toward the west, also depicting single-family residences; 4) a view of South Elkhorn Creek from Halifax Drive, noting that, although the stream is channelized at that location, it flows naturally through the subject property; 5) a view from Cromwell Way, south of the subject property, noting the more natural creek in that area; and 6) an aerial view of the subject property.

With regard to the history of the subject property, Ms. Wade stated that it was rezoned in 1964 from a Residential zone to a Heavy Industrial zone to allow for development of the Monticello Wastewater Treatment Plant, which was a private sanitary sewer package plant. The facility provided sanitary sewer service to this portion of Fayette County prior to construction of public sewers in the far southwestern portion of the community. In 1969, the property was rezoned from the I-2 zone to the A-U zone as part of a comprehensive rezoning of the entire community. That zoning has remained in place since 1969. Ms. Wade noted that, in 1984, LFUCG went through a condemnation process to remove the private sanitary sewer plant, and require connection of that area to the public sanitary sewer system. Shortly thereafter, the property was reconfigured for use as a public park. In 1993, the park was closed, and equipment was removed. In 1994, Ball Homes requested to rezone the property from A-U to R-1D in order to develop 22 single-family residential lots. The staff recommended approval at that time, due to the appropriateness of the R-1D zone, but that request was withdrawn after concerns surfaced about environmental contamination on the subject property.

Ms. Wade stated that the 2013 Comprehensive Plan Goals & Objectives emphasize the importance of growing successful neighborhoods; specifically by supporting infill and redevelopment, and providing well-designed neighbor-

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hoods. The Plan also recommends protecting the environment via support of the community's Green Infrastructure program, as well as providing infill and redevelopment in a compact, contiguous, and/or mixed-use fashion in order to accommodate future growth needs and sustain the Urban Service Area. The staff reviewed all of the elements of the Plan prior to their presentation of the staff report to the Zoning Committee in July, wherein they recommended postponement of this request due to environmental concerns on the subject property, and staff concerns that the requested R-3 was not the most compatible residential zone for the surrounding neighborhoods. The staff contended that the site was more suitable for development of R-1D lots.

Ms. Wade noted that, since that meeting in July, the petitioner has completed soil sample studies on the subject property, and provided a report on those studies from Childress & Associates, LLC. The soil sample locations were established in consultation with the LFUCG Division of Environmental Services; the testing indicated that there was no significant contamination on the subject property. The staff's major concern about the appropriateness of the R-3 zone remains, however. The petitioner revised their development plan a few days prior to this hearing, but the proposed density did not change. And, although some revisions were made to the lotting pattern, some lots still include portions of the creek, the floodplain, and the treed areas, about which the staff is also concerned. The petitioner seems intent on subdividing the creek and the floodplain area, rather than leaving it in the ownership of an HOA, which could better manage and maintain it. The staff has seen several instances wherein single-family residential lots abutting creeks and floodplain areas led to a degradation of the environmental quality of the land, and impacted the stormwater quality through unnecessary mowing of riparian areas.

Ms. Wade stated that, although the petitioner contends that the proposed rezoning to R-3 is in agreement with the Comprehensive Plan, and that the A-U zone is inappropriate and the R-3 zone is more appropriate, the staff cannot come to that conclusion. While the Comprehensive Plan does emphasize infill and redevelopment, it encourages that it be done in a context-sensitive manner to both the environment and the scale of the lots of the adjoining neighborhoods. The staff could support the development of single-family homes on the subject property, but the number of lots proposed--and possible--in the R-3 zone remains troubling to the staff, and leads to their recommendation of disapproval of this request. With regard to the petitioner's contention that the A-U zone is not appropriate for the subject property due to the unlikelihood of developing an agricultural use there, the staff would note that that is also intended as a "holding zone" until more appropriate urban development is proposed. The petitioner contends that the proposed density is much lower than that of the surrounding neighborhood, but the staff opined that the density is only lower because so much of the property is undevelopable due to the floodplain.

Ms. Wade noted that the staff had distributed several excerpts from the Zoning Ordinance to the Commission members, detailing the specifications of the R-1C, R-1D, and R-3 zones. The R-1C zone requires an 8,000 square-foot lot; the R-1D zone requires a 6,000 square-foot lot; and the R-3 zone permits zones as small as 2,500 square feet. With regard to street frontage, the required frontage for the R-1C and R-1D zones is 60 feet, while the R-3 zone requires only 25 feet. The petitioner is currently proposing 27 lots with 50 feet of frontage, but they could double the number of lots depicted on their development, and the staff does not believe that level of density would be appropriate directly adjacent to existing, established single-family residential neighborhoods. With regard to the petitioner's offer of conditional zoning restrictions, Ms. Wade said that limiting the development of the property to single-family does not go far enough to ensure that the proposed development is compatible with the adjoining neighborhood. The staff is recommending disapproval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the preliminary zoning development plan, referring to a rendered copy of the plan to orient the Commission. He stated that the petitioner is proposing to extend Saybrook Road into the subject property, with an "elbow" and a cul-de-sac. The plan depicts 26 single-family lots, of varying sizes, with a 27th lot for management of the floodplain area. This version of the development plan is a revision, for which the staff issued the following revised recommendation:

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

1. Provided the Urban County Council rezones the property R-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. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. ~~Denote 25' floodplain setback on east side of floodplain.~~
8. ~~Addition of radius information on cul-de-sac.~~
- 7.9. ~~Discuss lotting pattern proposed for~~ Revise (shorten the depth of) Lots 19-22 to include additional floodplain area in Lot 27.
10. ~~Discuss proposed access to LFUCG property.~~
11. ~~Discuss lack of environmental Phase I or II study on the property.~~

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- 8.12. ~~Discuss Denote~~ need for HOA maintenance of floodplain area.
- 13. ~~Discuss width of park access from cul-de-sac.~~
- 14. ~~Discuss environmental conditions on site.~~

Mr. Martin stated that the staff has considerable concerns about the proposed lotting of the floodplain, although there is no specific prohibition against it. That type of development exists in several older areas of Lexington-Fayette County, but, in the past, it has led to management issues for floodplain areas. The staff believes that it would be better to have as much of the floodplain area as possible under HOA control, rather than private ownership, because that arrangement typically leads to better maintenance of floodplain areas. Condition #7 in the revised staff recommendation would require that several of the depicted lots be shortened, so that more of the floodplain area could be included in the HOA lot.

With regard to condition #10, Mr. Martin said that the plan originally depicted a proposed access to the adjacent LFUCG property. The original plat for the property includes a note that access is provided to that property via an access easement. Since that access exists, the staff no longer believes that it is necessary to provide access from the subject property, so condition #10 was deleted. Conditions #11 and #14 were deleted following the submission of the petitioner's environmental report, indicating that there are no existing environmental issues on the property.

Commission Questions: Mr. Drake asked for the dimensions of the smallest lot depicted in the proposed development. Mr. Martin answered that the smallest lots are approximately 5,000 square feet in size.

Mr. Owens asked Mr. Martin to indicate the location of the access easement to the LFUCG property. Mr. Martin answered that the access easement is not depicted on this plan, but it is located off of Cromwell Way. Mr. Owens asked if it would be possible to create lots that did not include the floodplain area. Mr. Martin responded that it would require an irregular lot line, but it was possible, particularly given the smaller lot sizes that are allowed under R-3 zoning.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioner. He reiterated that the petitioner is proposing to construct single-family, detached residential units on the subject property, with a conditional zoning restriction that would permit only such units to be constructed.

Mr. Murphy stated that there was a package sewage treatment plant on a portion of the subject property until approximately 1990, when LFUCG created a policy to take private sewage facilities offline, and require connections to the city sewer system. He said that there was some discussion at the Subdivision Committee meeting about overnight pumping of sewage onto the subject property in the past, which was the basis for the petitioner's environmental study. Mr. Murphy interviewed Wayne Waddell, who worked for the LFUCG Department of Law at the time, and he indicated that, when the private plant was taken offline in 1990, the lagoons were drained. A siphon system was developed to transfer that water into the newly-constructed trunk sewer system; those transfers were performed overnight, because that is the lowest flow time for sanitary sewer systems. The sludge was also removed from the property, and taken to the city's main sewage treatment facility, which had the capacity to handle it. Mr. Murphy noted that the neighbors of the subject property have been vigilant over the years, and have made several complaints about dumping on the property. He obtained copies of the most recent complaint, which indicated that a company called Hydromax was dumping raw sewage in the vacant park area. LFUCG sent representatives from six different divisions to investigate the complaint, and found a sanitary sewer manhole with tire tracks near it, but no evidence of dumping. They contacted Hydromax and found that the company had performed TV testing, clearing, and smoking of the sewers in December of 2011. Mr. Murphy explained that TV testing requires a truck with a motor, which could easily be mistaken for a pump truck.

Mr. Murphy stated that the petitioner performed Phase I and II environmental testing on the subject property. Phase I involves an inspection by the consultant, and a check of public records to see if a Phase II test would be needed. The petitioner determined that a Phase II test would not be necessary, but, because of the neighbors' concerns, performed the additional Phase II testing anyway. Copies of the Phase II testing report, which indicated no concerns on the property, were distributed to the Commission members prior to the start of the hearing.

Mr. Murphy said that the petitioner contends that the proposed development is fully compatible with the existing neighborhoods, despite the neighborhood concerns to the contrary. With regard to the concerns about traffic, he said that it was always planned for Saybrook to end in a cul-de-sac on the subject property, since it is the only way in and out of the property. In response to concerns about overcrowding at Wellington Elementary School, Mr. Murphy contacted Fayette County Public Schools, which indicated a projected 2015 fall enrollment of 666 students. The actual enrollment was 640 students, so there should be no issues with overcrowding. The petitioner contends, with regard to concerns about displacement of wildlife on the property, that over 1/3 of the acreage will remain undeveloped, since it is a floodplain area, so there will still be habitat areas for the wildlife. Mr. Murphy added that the petitioner also contends that residents' concerns about the proposed development causing a reduction in property values will likely be unfounded. Houses in the proposed development will be 2,000 square feet in size, with a two-car garage, and will sell for approximately \$240,000. The houses will be larger than most of the surrounding homes, so there should be no loss of property values.

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Mr. Murphy stated that the staff seems to agree that the subject property is suitable for development, but they do not agree with the petitioner's contention that the R-3 zone is appropriate. He said that one of the overarching themes of the 2013 Comprehensive Plan was the need to utilize vacant, overlooked parcels for development, in order avoid the expansion of the Urban Service Area boundary. The 2013 Vacant Land Survey, performed in 2013, determined that the subject property should be included in the 6,700 acres that were found to be available for development. The property has been designated for residential development in every Comprehensive Plan for the last 40 years.

With regard to the staff's concerns, Mr. Murphy said that their opinion seems to differ from the petitioner's on two points: management of the floodplain area, and the appropriateness of the R-3 zone. Referring to the rendered development plan, he said that the west side of the floodplain area is irregularly-shaped; the east side is straighter, but the stream does not lie in the center of the floodplain. The petitioner lotted off the floodplain area, because of the other floodplain in the area is included in individual lots rather than being managed by an HOA. The petitioner is concerned that the small size of the proposed development would not be able to maintain the floodplain area, since many small HOAs go defunct. By placing the floodplain in the direct responsibility of private owners, the petitioner believed that it could be better maintained. The petitioner has included part of the floodplain in a lot, with the intention of performing a hydrological study at some point in the future to determine the exact location of the floodplain. Once that determination is made, the petitioner might take further action on the property. Mr. Murphy noted that, after some discussion with the petitioner prior to the hearing, the petitioner would be willing to create an HOA and revise the lotting of the proposed development in order to place more of the floodplain area under HOA management.

Mr. Murphy said, with regard to the staff's concerns about the proposed R-3 zone, that he took exception to the portion of the staff report that reads: "The only reason the density is lower than the adjoining subdivision is because of the calculation factors in the large amount of undevelopable land and floodplain." He said that the overall density proposed is 2.6 dwelling units per acre; Low Density Residential is defined as five units per less per gross acre, or four units or less per net acre. After removing approximately 1/3 of the property area from the calculation (because of the floodplain), Mr. Murphy calculated a residential density of approximately 3.9 units per acre, which is also below the definition of Low Density. The petitioner believes that, although the density and lot sizes proposed would be commensurate with the requirements of the R-1D zone, the R-3 zone is necessary due to the topographic features of the subject property. The setback and side yard flexibility will be required in order to construct the larger houses proposed, which include two-car garages.

Referring to his exhibit packet, Mr. Murphy stated that he had performed an assessment of the 161 properties within the 500' notification area. Those properties have an average lot size of .26 acres; the average lot size of the proposed development is .25 acre. The average frontage of most of the lots in the neighborhood is 74 feet; lots in the proposed development will have an average of 50 feet of frontage. The average assessed value of the homes in the area is \$141,000; the petitioner is proposing home prices of approximately \$240,000 for the subject property. The petitioner contends that a grid development would not be feasible for the subject property, due to the extensive floodplain area and the need for a cul-de-sac, rather than a through street. Mr. Murphy said that the petitioner will agree to a minimum lot size of 6,000 square feet, but they believe that the R-3 zone is necessary for the success of the proposed development.

Mr. Murphy stated that the petitioner understands the concerns of the staff and the neighbors, but he believes that he "has gone above and beyond" to address those concerns. The petitioner also believes that many successful neighborhoods have been developed in the community with R-3 zoning. Mr. Murphy displayed several photographs of existing subdivisions with the types of housing that could be built under the proposed R-3 zoning. He added that the subject property is not appropriate for agricultural use, so the existing A-U zoning is no longer appropriate.

Citizen Support: Greg Edmonson, realtor, stated that he had performed some cost analysis of the proposed development and the surrounding area. He believes that the homes in the proposed development would be attractive and energy efficient, and would enhance the property values in the area. He said that the proposed development could be similar to the successful Wellington Gardens subdivision.

Mr. Edmonson added that he believes that the proposed R-3 zoning could help to keep the prices of the homes in the proposed development down, since it could reduce construction costs.

Note: Chairman Owens declared a brief recess at 3:04 p.m. The meeting reconvened at 3:12 p.m.

Citizen Opposition: Otto Piechowski, 3451 Saybrook Road, stated that his home is immediately adjacent to the subject property. He asked if the Commission has the authority to reject the proposed development. Mr. Owens answered that the Commission can recommend approval or disapproval to the Urban County Council.

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Mr. Piechowski stated that Lenntech, a company specializing in water treatment and purification, defines heavy metals as "elements of heavy density which are seriously toxic." Referring to a photograph of the subject property, he noted that several areas were recently mowed, because he and his neighbors have been mowing it for over 20 years, in addition to removing trash and debris. Mr. Piechowski feels that he and his neighbors "have been caring for the property for 20 more years than the people who wish to develop it."

Mr. Alcorn, a former neighbor, had testified that there were two sewage tanks which were removed from the subject property. He said that the environmental study performed by Childress & Associates, LLC, did not indicate the former location of the towers, or whether those locations were tested. If illegal dumping was done on the property, those sites needed to be found and tested to the full depth, Mr. Piechowski opined, because heavy metals sink. The site should also be tested for polychlorinated biphenyls (PCBs), he believes, which were made illegal by the Environmental Protection Agency in 1979 due to their high levels of carcinogens. Mr. Alcorn had also testified that an electrical transformer had been removed from the site at some point, and Mr. Piechowski believes that site should be found, and the soil tested for PCBs.

Mr. Piechowski stated that, although the testimony at this hearing has referred to one floodplain and one stream being located on the subject property, he believes that there are two streams on the site. He said that climate change could result in annual rainfall rates as much as five inches above current levels; the additional impervious surface created by the proposed development could increase the amount of stormwater in the area and further exacerbate an existing flooding problem. The presence of PCBs or heavy metals on the subject property could cause that runoff to be toxic.

Mr. Piechowski urged the Planning Commission members to disapprove this request, since he believes that proper testing of the site has not been done. He read the following quote from Pope Francis: "Neighborhoods lacking in sufficient greenspace often occur. We are not meant to be inundated by cement, asphalt, glass, and metal, and to be depleted from our physical contact with nature. There is a need to protect common areas in urban landscapes, which increase our sense of belonging, of rootedness, of feeling at home within a city, which includes us and brings us together. In urban settings it is helpful to set aside green spaces which can be preserved and protected from human intervention."

Janet Piechowski, 3451 Saybrook Road, stated that over 400 residents in the Robinwood and Monticello neighborhoods had signed petitions against this request due to concerns about the environmental issues and increased density. She said that she was concerned that the proposed R-3 zoning could result in the petitioner constructing additional units over the number currently proposed. Ms. Piechowski added that she was not reassured by Mr. Edmonson's indication that the proposed development could be similar to the Wellington Gardens subdivision, since she believes that development is "claustrophobic" and "just an unappealing series of garages."

Bob Seelbach, formerly of 3485 Boston Road, stated that he resided at that address at the time of the removal of the sewage plant. He said that the treatment plant was located directly behind his house; and, at one time, his brother spent a summer painting the two holding tanks to which Mr. Piechowski referred. Mr. Seelbach has photographs of the former park on the property, and he served as the chairman of the committee that raised funds to provide the park equipment there.

Mr. Seelbach stated that the former sewage retention pond was located near the end of the existing terminus of Saybrook Road. The report from Childress & Associates, LLC, indicated that that area of the property was tested, and was determined to be free of hazards; however, the effluent that was stored in the pond had already been treated, so Mr. Seelbach believes that the testing should have been done at the location of the tanks. He noted that, contrary to Mr. Murphy's statements, the effluent was not pumped away, but rather was drained into the creek.

Mr. Seelbach said, with regard to the LFUCG property on Cromwell Way, that he does not believe that the access easement on the property exists. The owner of the property at 529 Cromwell Way signed the submitted petition, and he was not aware of such an easement or its location on his property.

Mr. Seelbach stated that the subject property is 10.1 acres in size, but the petitioner is proposing to develop 4.2 acres of it due to the floodplain area. He said he does not believe that the proposed R-3 zoning is appropriate for the subject property.

Molly Franklin, 556 Merrimac Drive, stated that she is concerned that, if the subject property is rezoned to R-3, the petitioner will develop it with the maximum number of units, rather than the 27 units proposed. She said, with regard to Mr. Murphy's comments about Wellington Elementary School, that it is not overcrowded at the moment. However, in the FCPS redistricting plan, which will take effect in 2016, Wellington's coverage area was increased. Ms. Franklin is concerned that that plan did not take into account the proposed development, and the resulting increases in attendance could result in overcrowding.

Mark Tucker, 545 Cromwell Way, stated that his home is located downstream from the subject property. He echoed his neighbors' concerns about the proposed R-3 zoning, opining that any density greater than that allowed by the R-1C zone would be inappropriate and inconsistent with the surrounding neighborhoods.

Mr. Tucker said that there have been two sanitary sewer overflows into his living space within the past five years. He is concerned that deforesting the subject property and adding impervious surface could increase the stormwater runoff, which could increase the flooding impact on his property. Mr. Tucker stated that, until LFUCG has addressed the ongoing concerns in the area, he believes that it would be "highly imprudent" to add more development to the area.

Robin Young, Robinwood Neighborhood Association, stated that she is concerned about the proposed R-3 zoning and its potential impact on the Robinwood, Monticello, and Stonewall neighborhoods. She said that those three neighborhood associations have worked together over the years to keep the south side of Lexington-Fayette County "clean, healthy, and safe," and they do not want additional development to be to the detriment of the existing residents.

Ms. Young noted that she is not opposed to development itself, because she appreciates her neighbors. She said that developing the vacant subject property, which is heavily treed, could help to eliminate some areas of concern, and could provide more eyes and ears to help monitor the neighborhood. She asked that, should the Commission choose to approve this request, they consider the R-1D zone, rather than the R-3 zone.

Mr. Seelbach noted, for clarification, that he currently resides at 3386 Tisdale Drive (on the other side of the subject property), and has done so since 1974.

Evan Belt, 3439 Saybrook Road, stated that he was concerned that, if the R-3 zone is approved for the subject property, the development plan could change, based on the petitioner's need for flexibility.

Kathy Acres, 3436 Saybrook Road, stated that she is concerned about the land on the other side of the creek, and how it will be maintained.

Petitioner Rebuttal: Mr. Murphy stated that the petitioner understands the neighbors' concerns, particularly since the subject property has remained undeveloped for 40 years. He said that environmental testing is not a requirement for a zone change, but the petitioner had it done in an attempt to address the residents' concerns about the safety of developing the property. Ms. Childress is experienced, and conducted the environmental testing to recognized industry standards, and no hazards were found.

With regard to the concerns about flooding, Mr. Murphy noted that the Engineering Manuals place very stringent requirements on development, which the petitioner must meet. In addition, the petitioner cannot build within 25 feet of the established floodplain area on the property, and every permit throughout the construction process requires the approval of the Divisions of Engineering and Water Quality. Mr. Murphy explained that the petitioner is also required to conform to the requirements of the EPA Consent Decree, including the Capacity Assurance Program.

Mr. Murphy said, with regard to the concerns that the development plan could change, that the petitioner is willing to agree to conditional zoning restrictions for the property. Should the petitioner wish to change those restrictions, another zone change would be required to do so, including the notification and hearing processes. He said that the petitioner is willing to agree to those conditional zoning restrictions to restrict the minimum lot size, and to create an HOA lot to manage the floodplain area. The petitioner believes, however, that the R-3 zoning is necessary to provide the degree of flexibility in setbacks and side yards in order to develop the types of homes that will sell in the current market.

Opposition Rebuttal: Mr. Belt stated that Mr. Murphy did not refer to a restriction to limit the subject the property to single-family units. He added that he believed that there is sufficient demand for the types of homes that already exist in the area.

Petitioner Comment: Mr. Murphy stated that the petitioner is requesting a conditional zoning restriction to limit the subject property to single-family, detached dwellings.

Staff Rebuttal: Ms. Wade noted that the staff did not receive formal notice of the petitioner's intent to offer conditional zoning restrictions for the subject property; rather, those restrictions were included on the face of the revised plan when it was filed earlier in the week. According to the Zoning Ordinance, the Planning Commission and the Council may restrict a property to a particular use, a category of uses, or a particular density; may impose architectural or visual requirements; or impose screening or buffering restrictions. Ms. Wade noted that the Planning Commission could not restrict lot sizes via conditional zoning, and she would not advise that they pursue that avenue, because it is not specifically outlined by Kentucky state law. She opined that the petitioner has not offered a particular density re-

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striction because he intends to attempt to change the location of the floodplain in order to create additional lots on the property. The staff believes that the R-1D zone would be more appropriate for the subject property, and that the Comprehensive Plan recommends compatible development, including massing and scale. The staff contends that the massing and scale of a development with three-foot side yards would be different from that of the existing, adjoining neighborhoods.

Ms. Wade stated, with regard to Mr. Murphy's statement about the A-U zone, that there are currently 24 conditional uses that are available in the A-U zone, besides single-family residential or agricultural use. The staff's contention that the subject property is not ready for the R-3 zone does not indicate, therefore, that there are no allowable uses for the property.

Ms. Piechowski asked if a community garden would be allowed in the existing A-U zone. Ms. Wade answered that a garden center would be allowed as a conditional use in the A-U zone, but a community garden is not specifically listed in the Zoning Ordinance; they have been deemed appropriate in any zone.

Commission Questions: Mr. Drake stated that it appeared that the major point of contention was the difference between the R-1 and R-3 zones; he asked if the petitioner would lose lots in the proposed development if he agreed to the R-1D zone. Ms. Wade answered that she did not know if the petitioner would lose lots under those circumstances. Mr. Drake said that it seemed that the economics of the development could change, which might require the petitioner to develop larger homes that were more out of scale with the surrounding development. Ms. Wade responded that Mr. Drake's scenario made a number of assumptions, which she was not sure the Commission should be prepared to make. She said that there were several options for the petitioner, including developing the property with smaller houses that would fit in with the neighborhood, or selling the property to another developer. Mr. Drake said that all of those options were limited by economics, and there is a minimum rate of return to make the development profitable. Ms. Wade responded that the Planning staff does not review pro formas or "crunch numbers" to determine whether a development will provide a return on investment, because planning for the community does not include calculating the economic success for the developer. Mr. Drake said that, if the number of lots is decreased, the developer will be required to earn more revenue to per lot by constructing larger homes. He asked if that type of development would fit with the desire for compatibility with the existing neighborhoods, to which Ms. Wade responded that it would not.

Mr. Owens asked if the Commission should not restrict the number of lots in the proposed development via conditional zoning. Ms. Wade answered that, under previous Comprehensive Plans, the staff used the density recommendations of the Land Use map to generate a maximum number of units for a development that would be appropriate for a property. The Planning Commission and the Council have adopted conditional zoning restrictions in the past for a particular number of units; however, the 2013 Comprehensive Plan no longer includes a Land Use map, so the staff no longer feels comfortable recommending a maximum number of units for a property. Rather, the staff now bases their recommendations on which zones are more appropriate for the property. Ms. Wade noted that the staff does not believe that the Commission should attempt to restrict lot sizes via conditional zoning. Mr. Owens asked if a conditional zoning restriction limiting the number of lots would also limit the lot size. Ms. Wade answered that it would not, because the petitioner could vary the lot sizes.

Mr. Penn stated that today's hearing is an example of "trying to push a development through" without being responsive to the staff's concerns or the recommendations of the Subdivision Committee. He said that the committee process is in place to address these types of issues, and that he did not believe that the Commission should be trying to change a development plan to support the requested zone during a public hearing. Mr. Penn opined that the Commission should be prepared to either support the staff, or oppose the staff based on zoning law, but they should not be "designing a development plan on the fly."

Ms. Plumlee thanked the neighbors for their input in the process, noting that she had concerns about the maintenance of the floodplain; access to the LFUCG property; the fate of Lot 27; and the possibility of development that is not compatible with the surrounding neighborhood. She said that she would support the staff's recommendation of disapproval of this request.

Mr. Cravens stated that this is a preliminary development plan; the Subdivision Committee was required to review it as if the requested R-3 zoning was in place. He said that, based on his calculations, increasing the lot size from a 50' frontage lot to a 60' lot could result in a price increase of \$48,000 for the house. Mr. Cravens said that he would support removing the lots from the floodplain, so that homeowners would not be forced to buy flood insurance. He would also support a conditional zoning restriction to limit development on the property to 27 single-family residences.

Ms. Mundy said that she also appreciated the comments from the neighbors. She said that she had some background in sanitary and wastewater treatment, and she was not concerned about the removal of sludge from the subject property, as that could have been safely removed and hauled away.

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Ms. Mundy stated that the neighbors should consider that homes valued at \$240,000 could increase their own property values, and could improve the overall housing market in that area.

Mr. Brewer stated that it was "hard to vote against 400 people" who signed petitions. He commended the petitioner for completing environmental testing, even though he was not compelled to do so, noting that the development of the property provided the neighbors with some answers as to the safety of the property that they might not have had otherwise. Mr. Brewer noted, however, that he has not heard sufficient reasons to go against the staff recommendation of disapproval.

Zoning Action: A motion was made by Ms. Plumlee, seconded by Mr. Penn, and carried 8-1 (Drake abstained; Cravens opposed; Berkley and Wilson absent) to disapprove MAR 2015-11, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 8-1 (Cravens opposed; Berkley and Wilson absent) to indefinitely postpone ZDP 2015-53.

Note: Chairman Owens declared a brief recess at 4:06 in order to move the location of the hearing due to a Council meeting. The hearing reconvened at 4:25 p.m. at 101 East Vine Street, Suite 700. Ms. Richardson left the meeting at this time.

4. GREER NICK RD II, LLC, ZONING MAP AMENDMENT & GIBSON PARK SUBDIVISION, BLOCK C, ZONING DEVELOPMENT PLAN

- a. MAR 2015-13: GREER NICK RD II, LLC (9/4/15)* - petition for a zone map amendment from a Single Family Residential (R-1C) zone and a Neighborhood Business (B-1) zone to a Highway Service Business (B-3) zone, for 1.12 net (1.47 gross) acres, for property located at 1201 South Broadway, 406 Pyke Road and 408 Pyke Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The petitioner proposes to maintain the existing Thornton's convenience store near Gibson Avenue and to construct a new fast food restaurant with an accessory drive-through facility on the portion of the zone change area near Pyke Road. The proposed rezoning of the Thornton's parcel and the two parcels to the rear of a vacant tract will bring the land between Gibson Avenue and Pyke Road all into the same zoning category.

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

1. A restricted Highway Service Business (B-3) zone is appropriate, and the combined Single-Family Residential (R-1C) and Neighborhood Business (B-1) zoning is inappropriate, for the following reasons:
 - a. The restricted B-3 zone is compatible with the existing zoning along this portion of the South Broadway corridor. The subject site is primarily surrounded by business zoning (B-1, B-3, B-4, & B-6P).
 - b. The proposed rezoning will eliminate a split-zoning condition on the site, which should encourage its redevelopment.
 - c. The existing B-1 zone now has a more restrictive setback not conducive to the type of redevelopment planned or consistent with the character of the corridor, which makes it less appropriate than a restricted B-3 zone.
 - d. The existing R-1C zone is no longer appropriate, because the two lots are already being utilized as a landscape buffer and/or transition area to the adjoining residential neighborhood. Redevelopment of a portion of the site (along Pyke Road) will allow for a more consistent landscape buffer treatment between the neighborhood and the South Broadway corridor.
 - e. The depth of business zoning between Pyke Road and Gibson Avenue will be consistent at approximately 235 feet from the right-of-way of South Broadway.
 - f. The required 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 2015-62: Gibson Park Subdivision, Blk. C, 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

- a. Establishments and lots for the display, rental, sale, service, and minor repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes, or supplies for such items.
- b. Cocktail lounges and nightclubs.

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- c. Pawnshops.
- d. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers.
- e. Advertising signs, also known as billboards, as regulated by Article 17.

Landscape Buffering & Lighting Restrictions

- a. A 20-foot wide landscape buffer shall be provided along the northwest site boundary, between the existing residential subdivision and the site. The landscape buffer shall contain a 6-foot privacy fence, shrubs, and a tree every forty (40) feet on center, selected from Group A or B in the Planting Manual.
- b. All outdoor lighting shall be shielded to reduce glare and shall be arranged so as to reflect lights away from all adjacent residences and residential zoning districts. Exterior light poles shall not exceed twenty (20) feet in height and shall not be located within the designated landscape buffer.

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 to the nearby neighborhood. Such uses could have a negative impact on the neighborhood related to noise, lighting and/or traffic congestion.

- b. ZDP 2015-62: GIBSON PARK SUBDIVISION, BLK. C (9/4/15)*- located at 1201 S. Broadway & 402, 406 and 408 Pyke Road.
(Vision Engineering)

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

- 1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
- 2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
- 3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
- 4. Urban Forester's approval of tree inventory map.
- 5. Dimension existing building and canopy height.
- 6. Discuss access to South Broadway and removal of apron(s).
- 7. Discuss notes #10 & #14.
- 8. Discuss need for landscape buffers adjacent to residential lots.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property, which is comprised of three tracts that lie on South Broadway, between Gibson Avenue and Pyke Road. In the vicinity of the subject property are the Lexington Clinic to the west; the Golf View and Gibson Park neighborhoods, to the north; and a number of commercial uses along South Broadway. The property is L-shaped, with a Thornton's convenience store and gas station currently located on the parcel at 1201 South Broadway. One of the parcels on Pyke Road contains a single-family residence, while the other is currently vacant. The rear 50' of the 1201 South Broadway parcel and one of the Pyke Road parcels are currently zoned R-1C, while the other Pyke Road lot and the remainder of the Thornton's property are zoned B-1. Ms. Wade said that the petitioner is proposing to rezone the properties to B-3 in order to incorporate them into one development with the existing B-3 lot on the corner.

Ms. Wade displayed the following photographs of the subject property and surrounding area: 1) a view of the 1201 South Broadway parcel, noting the location of the Thornton's station; 2) a view from Gibson Avenue to the rear of the Thornton's property, noting the location of the dumpster; a parking area; and the landscape buffer for the homes along Gibson Avenue; 3) a view of the B-1 parcel on Pyke Road, which is currently vacant; and 4) a view of the R-1C parcel on Pyke Road, which contains a single-family residence. The property at the intersection of South Broadway and Pyke Road was formerly occupied by the Rag Peddler fabric store; it was rezoned to B-3 in 1989, with a conditional zoning restriction prohibiting billboards. At that time, a drive-in restaurant called Hot & Now was proposed at that location, but it was never constructed.

Ms. Wade stated that the 2013 Comprehensive Plan does not specifically address minor changes between two commercial land uses; but the petitioner contends that the requested rezoning is appropriate, and the existing zoning is inappropriate, at this location. The petitioner hopes to eliminate both the split-zoning of the property, as well as the step-back of the zoning from South Broadway, both of which make redeveloping the property difficult. The petitioner also contends that the cohesive zoning of the three properties will help to create a better, more continuous corridor of business zoning in this portion of the South Broadway area, and that the current R-1C zoned area could be used as a buffer for the adjoining residential neighborhood. Ms. Wade said that the staff agrees with the petitioner's justification, and is recommending approval of this request, for the reasons listed in the staff report and on the agenda. She noted that the staff is also recommending conditional zoning restrictions to prohibit a number of uses on the subject property, and to require a 20' landscape buffer along the rear property line, and restrict outdoor lighting.

Development Plan Presentation: Mr. Martin presented the zoning development plan, noting that the petitioner is proposing to construct a fast-food restaurant on the site. Referring to the rendered development plan, he noted the proposed locations of the drive-through and access points.

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Mr. Martin stated that this plan was discussed at length at the Subdivision Committee meeting. He noted that this is a preliminary plan, and approval of a final development plan will be necessary prior to the issuance of any permits for the proposed restaurant. Prior to this hearing, the staff distributed the following revised recommendation to the Commission members:

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. Dimension exterior of existing building ~~and canopy height~~.
6. ~~Discuss~~ Delete access to South Broadway and/or Gibson Avenue and removal of apron(s) to the approval of the Division of Traffic Engineering.
7. ~~Discuss notes #10 & #14.~~
- 7.8. ~~Discuss need for~~ Continue 15' landscape buffers adjacent to residential lots at 411 Gibson Avenue.

Mr. Martin stated that condition #15 refers to the proposed buffer area that is depicted on the plan; should the Commission choose to adopt the staff's recommended conditional restrictions, that buffer will increase from 15' to 20'.

Mr. Martin said that the major area of concern on the subject property is access. As properties have redeveloped along South Broadway, there has been a great deal of discussion among the staff about restricting access where appropriate, since, in some cases, existing situations are not optimal. The petitioner has a lease with the Thornton's store, which has been located on the subject property for a number of years with its existing access configuration. With the proposed rezoning and filing of a new development plan for the property, the staff saw an opportunity to clean up the access situation. The petitioner is proposing a full access to South Broadway on the restaurant side of the property, in addition to the two existing full accesses along the Thornton's lot frontage, one of which is located very near the intersection of Gibson Avenue and South Broadway. There are also two full accesses proposed from Thornton's to Gibson Avenue, and one full access from the restaurant property to Pyke Road. Mr. Martin said that the staff proposed condition #6 to require the removal of one of the South Broadway accesses and/or the Gibson Avenue access to Thornton's, in order to improve the safety of this intersection and the South Broadway corridor as a whole. The staff is concerned about the lack of a turn lane into the Thornton's, and would prefer to see the proposed accesses to South Broadway for Thornton's and the restaurant combined into one access in the middle of the property.

Mr. Martin noted that the Thornton's property is fully developed, and a final development plan for that portion of the property is very unlikely to be submitted in the near future. It is very important, therefore, to address the concerns of the staff and the Division of Traffic Engineering at this time.

Commission Questions: Mr. Brewer asked if the Planning Commission had the authority to ask the petitioner to revise the access points on the subject property. Mr. Martin answered that the Commission does have that authority, since the petitioner filed a development plan for the entire property.

Petitioner Representation: Matt Carter, Vision Engineering, stated that the petitioner is in agreement with the staff's recommendation, with the exception of condition #6 on the development plan. He said that the petitioner contends that it would be more appropriate to address the access to the property at the time of a final development plan. The petitioner will agree to add a note to this plan, requiring a discussion of the access at the filing of a final development plan for the restaurant property. Mr. Carter acknowledged the staff's concern that the petitioner will remove the restaurant parcel from the development plan, effectively eliminating the opportunity to address the issue of access. He noted, however, that the addition of a note on this plan would require that that discussion take place. Mr. Carter said that, if the Commission chooses to approve the rezoning request, the petitioner would have only two weeks in which to certify this development plan; he is concerned that the discussion of the access points might require more than two weeks to resolve.

Commission Comment: Mr. Brewer stated that, if the Commission approves this plan with such a note, they could lose the opportunity to resolve the access situation. He said that he would be in favor of supporting the recommendation of the staff and the Division of Traffic Engineering. Mr. Carter noted that both this plan and a final development plan will have a sign-off for the Division of Traffic Engineering. Restrictions could be imposed on the final development plan, just as they could on this current plan.

Citizen Support: No citizens were present in support of this request.

Citizen Opposition: Vicky Batzka, 1080 Duncan Avenue, stated that residents of the neighborhood, particularly Pyke Road, are concerned about the access proposed from the fast-food restaurant to Pyke Road. She said that the Gatehouse building, on the opposite corner of the Pyke Road/South Broadway intersection, makes it very difficult to see oncoming traffic when turning from Pyke Road onto South Broadway. They believe that left-hand turns from that location

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will be particularly dangerous, especially without a traffic signal in place. For that reason, the neighbors do not believe it would be appropriate to make that access the primary means of ingress and egress to the restaurant.

Ms. Batzka said that she was also concerned about encouraging traffic from the restaurant to use the Gibson Avenue access on the Thornton's property, because of its close proximity to the intersection with South Broadway. The Gibson Avenue/South Broadway/American Avenue/Burley Avenue intersection is congested and confusing, with many possible turning movements in a small area, and she does not believe any proposed development should add traffic to the poor situation. Ms. Batzka added that she also does not believe that the South Broadway corridor needs another fast-food restaurant. She submitted a letter of opposition to the staff.

Sandra Duncan, 421 Pyke Road, stated that parking is permitted on both sides of Pyke Road. She provided the Commission members with a photograph of cars parked along both sides of the street, noting that those cars exacerbate the difficult turn situation at the Pyke Road/South Broadway intersection.

Petitioner Rebuttal: Mr. Carter stated that the petitioner is also concerned about the traffic situation, since about 37,000 cars travel past the subject property each day. He said that this development plan is conceptual, for the filing of the zone change, and the petitioner will be required to submit a final development plan for the property. At that time, the petitioner can address the locations of the most appropriate access points for the property.

Staff Rebuttal: Mr. Martin reiterated that staff is concerned about the existing bad access situation in the area. He said that the staff wants to ensure that access points are closed, rather than discussed, at the time of the final development plan.

Commission Question: Mr. Brewer asked if the staff wanted both access points closed, or just one. Mr. Martin answered that both accesses are poorly situated, so the staff would prefer the closure of both, but they worded condition #6 to read "and/or." He added that the access to South Broadway is the most problematic.

Mr. Sallee stated that the staff was aware, when they drafted the revised recommendation, that the petitioner was working with the Division of Traffic Engineering, so they did not want to pre-judge that discussion.

Ms. Kaucher noted that there are several options that would be acceptable to the Division of Traffic Engineering, including the elimination of some proposed accesses, or combining two access points. She said that the Traffic Engineering staff's main concern is the access points that are located within the Gibson Avenue/South Broadway intersection.

Mr. Penn asked if Ms. Kaucher thought it would be possible to make a left-hand turn from the restaurant property onto South Broadway, or if that access should be right-only. Ms. Kaucher answered that, without a median in place, it would be difficult to require the access to be right-only. Mr. Penn noted that cars stack from the intersection past that proposed access. Ms. Kaucher noted that the petitioner has to have some access to the site. She said that, during peak hours, it would be unlikely for drivers to be able to make a left-hand turn from the restaurant property or Pyke Road. It could be advantageous to provide a single access between the two parcels, and encourage drivers to use the traffic signal at the Gibson Avenue/South Broadway intersection.

Mr. Brewer asked for Ms. Kaucher's opinion on the sight distance at the Pyke Road/South Broadway intersection, to which Ms. Batzka referred. Ms. Kaucher responded that the Gatehouse building is existing, so the situation is unlikely to improve. The proposed configuration of the restaurant drive-through would also likely direct drivers to the Pyke Road access point. Ms. Kaucher noted that the Division of Traffic Engineering staff believes that there are enough access options to the property that they are not overly concerned about the Pyke Road sight distance.

Mr. Brewer asked if Ms. Kaucher would be comfortable with deferring the discussion of access to a final development plan. Ms. Kaucher answered that, if the accesses are not removed, the Division of Traffic Engineering would not sign off on a final development plan for the site. She said that she would prefer to address the situation at this time, but she was comfortable in the knowledge that Traffic Engineering will not approve the site unless those accesses are eliminated. Mr. Sallee explained that the reason for the staff's wording of condition #6 was that, if the restriction is made on the preliminary development plan, a note is included to require that no building permits can be issued until a final development plan is filed for the property. Any change to the property that would require a building permit would not be allowed until a final development plan is filed. Mr. Sallee noted that the staff's strongest position for the removal of the problematic access points is to require that the situation be addressed on this plan. The staff's concern is that, since the properties are separate, the owner of one parcel (i.e. restaurant) could file a final development plan for their property, independent of the other (Thornton's) parcel. It is very difficult to require action on a plan that involves an additional owner.

Mr. Carter noted that the Thornton's station needs to be able to continue their operation on the property. He said that, if the access point nearest the South Broadway/Gibson Avenue intersection is closed, refueling trucks will be required to fill gas tanks from Gibson Avenue. That access point is the only ingress to the site that can accommodate their trucks during the refueling process, so its closure could effectively put the store out of business. Mr. Carter noted that Division of Solid Waste trucks use the rear access on Gibson Avenue to reach the dumpsters, but the larger refueling and delivery trucks

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cannot make the tight turn onto Gibson Avenue. The store manager indicated that different refueling configurations had been tried in the past, but they all required large trucks to reverse into traffic on South Broadway.

Mr. Cravens asked if the refueling access could be closed with a gate, and opened only for fuel trucks. Mr. Carter answered that that configuration might leave fuel trucks stuck in traffic on South Broadway, waiting for the gate to be opened.

Ms. Mundy asked if the access point could be made right-only. Ms. Kaucher answered that it could; but, without a median in place, it would be difficult to enforce.

Mr. Carter reiterated that he believed that it would be more appropriate to address these issues at the time of a final development plan, in order to allow the petitioner more time to meet with the staff and the Division of Traffic Engineering. He said that the note on the development plan runs with the land, and it will always be there, unless the plan is amended.

Mr. Sallee noted that the staff was still concerned about the possibility of losing the opportunity to improve the access situation, if it is not addressed as part of the consideration of the preliminary development plan. Ms. Kaucher asked if the development plan note could be tied to the development of the Pyke Road parcel. Mr. Carter agreed that the development plan note could refer specifically to the development of the Pyke Road parcel, and tie it to the resolution of the Thornton's access. Mr. Sallee responded that it could be possible that the Thornton's property might never need a final development plan, which would eliminate the opportunity to address the access.

Mr. Owens noted that this item could be continued to the Commission's October 4th meeting, if the petitioner was agreeable. Mr. Carter responded that the petitioner would be agreeable to a continuation, in order to allow time to resolve the impasse.

Citizen Rebuttal: Ms. Batzka stated that Thornton's was her neighborhood gas station, and she did not believe that it would be appropriate to encourage drivers to cross the Thornton's parcel from the restaurant drive-through to reach the traffic signal at Gibson Avenue. She reiterated that the sight distance issues at Pyke Road created an unsafe situation for anyone wishing to make a turn.

Action: A motion was made by Mr. Cravens, seconded by Mr. Brewer, and carried 8-0 (Berkley, Richardson, and Wilson absent) to continue MAR 2015-13 to the September 24th Planning Commission meeting.

5. NATIONAL STATION, LLC, ZONING MAP AMENDMENT & NATIONAL STATION (FKA BEECHLAND SUBDIVISION, BELLEDALE ADDITION & EAST END ADDITION & right-of-way) ZONING DEVELOPMENT PLAN

- a. MARCV 2015-16: NATIONAL STATION, LLC (9/4/15)* - petition for a zone map amendment from a Two-Family Residential (R-2) zone to a Planned Neighborhood Residential (R-3) zone, for 0.1653 net (0.1908 gross) acre, for property located at 334 Richmond Avenue. A conditional use permit and a dimensional variance are also requested.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World. The Goals and Objectives also promote compact and contiguous development and expansion of housing choices, support creating jobs and prosperity, encourage infill and redevelopment of underutilized land, and promote infill that respects an area's context and design features.

The petitioner proposes to rezone the subject property in order construct an accessory parking lot for the adjacent warehouse redevelopment project at the terminus of National Avenue. The proposed parking lot will have 22 parking spaces and will replace a non-conforming warehouse use.

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

1. The proposed Planned Neighborhood Residential (R-3) zone is in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. The Goals and Objectives encourage expanding housing choices through a variety of housing types and densities (Theme A, Goal #1), which could be accomplished on this site if the conditional request is not approved or is ever removed from the site.
 - b. Several Goals and Objectives encourage well-designed neighborhoods and communities that are compact, contiguous, and respect the area's context (infill development) (Theme A, Goals #2a. & #3, as well as Theme E, Goal #1b.). The zone change will facilitate improving the immediate area by replacing an unsight-

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- ly, non-conforming warehouse with a parking lot (or alternatively another residential use) that can act as a land use buffer between the B-4 zone and the low density adjoining neighborhood.
- c. The Goals and Objectives also support infill and redevelopment of our underutilized land (Theme E, Goal #1a.), and creation of jobs and prosperity (Theme C, Goal #1). The petitioner's associated redevelopment of National Station, currently an underutilized area, will help to build on the current renewal along National Avenue for an employment hub.
 2. This recommendation is made subject to approval and certification of ZDP 2015-64: National Station, LLC (fka Beechland Subdivision, Belldale Addition & East End Addition), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. REQUESTED CONDITIONAL USE
1. A parking lot, accessory to the adjacent business use, in a Planned Neighborhood Residential (R-3) zone.

The Staff Recommends: **Approval** of the requested conditional use, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. The proposed parking lot will be used in conjunction with the adjacent business use and is to be designed to meet all of the requirements concerning design, landscaping, storm water, and maintenance. Although difficult to document, there have been at least some non-conforming uses of this property in the past; and, according to the applicant, the previous owner had used this lot as a parking lot. Approval of the conditional use will incentivize the applicant to make improvements that will better the visual quality and the functionality of this use.
 - b. All necessary public services and facilities are available and adequate to the subject site, although the proposed use of a parking lot is not expected to have a need for many of these services.
- c. REQUESTED VARIANCES
1. To reduce the required 100' setback for the portion of the buildings that have overhead doors in a Wholesale & Warehouse (B-4) zone to 53 feet from an adjacent residential zone.
 2. To reduce the required rear yard from 32 & 28 feet to 5 feet for the portion of the property that abuts an adjacent residential zone.

The Staff Recommends: **Approval of 1) side and rear yard variances to a minimum setback of 15 feet from the property line; and 2) Approval of the overhead door variance from 100' to 53'**, for the following reasons:

- a. Granting these reduced variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, provided the buildings are set back a minimum of 15 feet from residential properties to lessen the impact of potential uses on the neighboring properties.
- b. A 15' landscape buffer required, in conjunction with buildings that are designed to mitigate the potential negative effects of noise and other nuisances, is a special circumstance that contributes to justifying a reduction in the required side and rear yards at this corner location.
- c. Strict application of the Zoning Ordinance would result in a significant loss of buildable area, but will not necessarily result in a better outcome for either the subject property or the adjacent residential properties, since access could be made in the more open areas.
- d. The appellant has worked to design a redevelopment that is both functional and in compliance with landscaping requirements and other provisions regulating development in the B-4 zone. A more limited variance than has been requested, should not be interpreted as circumvention of the Zoning Ordinance.

These recommendations of approval are made subject to the following conditions:

1. Should the subject property be rezoned to R-3, it shall be developed according to the submitted Zoning Development Plan, or as further amended by the Planning Commission, with at least a 15' side and rear yard setback along the residentially zoned properties.
2. All necessary permits, including a Zoning Compliance Permit, Building & Paving permits, shall be obtained from the Divisions of Planning and Building Inspection prior to any construction, and prior to occupancy of the new facilities.
3. The parking lot and driveway shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the parking lot, access drive and internal circulation shall be subject to review and approval by the Division of Traffic Engineering.
5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
6. A landscape buffer area shall be provided along all property boundaries adjacent to any residential zone and shall include, at a minimum, a 6' tall fence or hedge, and 1 tree every 40 linear feet as required in Article 18-3 of the Zoning Ordinance.

7. At a minimum, the walls of the new buildings that are within 53' of a residentially zoned property shall be constructed using only stationary windows and pedestrian access doors, and also constructed with insulation & drywall (or similar construction techniques) to provide a sound barrier.
- d. ZDP 2015-64: NATIONAL STATION, LLC (FKA BEECHLAND SUBDIVISION, BELLEDALE ADDITION & EAST END ADDITION & ROW) (9/4/15)*- located at 949 National Avenue and 334, 340, 342 and 346 Richmond Avenue.
(Randy Martin)

The Subdivision Committee Recommended: **Postponement**. There were some questions whether this development meets all off-street parking and building setback requirements of the Zoning Ordinance.

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

1. Provided the Urban County Council rezones the property R-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. Addition of tree protection plan per Art. 26 of the Zoning Ordinance, and document compliance with tree canopy requirements.
6. Correct zoning references in site statistics and on plan face.
7. Denote lot coverage and floor area ratio per Art. 21 of the Zoning Ordinance.
8. Denote height of proposed buildings.
9. Delete notes #5, #7, #8, #9, #10, #11 and #13.
10. Correct note #2 to state "Article 16 of the Code Ordinances".
11. Addition of exterior building dimensions.
12. Complete cross-section details.
13. Denote all existing and proposed easements on the plan.
14. Discuss internal pedestrian circulation.
15. Discuss parking requirements per current BOA application for indoor athletic facility.
16. Discuss plan status (preliminary vs. final).
17. Discuss building setbacks and required landscaping next to residential zones.
18. Discuss restrictions needed on overhead door provisions of Article 8-21(o)(1) of the Zoning Ordinance.
19. Discuss proposed handicap parking locations near the railroad right-of-way.
20. Discuss need for a crosswalk at National Avenue/Richmond Avenue intersection.

Staff Presentation: Ms. Wade presented the staff report, noting that, although this zone change request is for a small lot on Richmond Avenue, the corollary zoning development plan includes four parcels located on Richmond Avenue and National Avenue. The subject property is located at the end of Richmond Avenue as it intersects National Avenue. It is on the south side of Richmond Avenue, and is bordered by B-4 zoning to the north and east, and R-2 zoning on the other two sides. Ms. Wade said that the petitioner is requesting the R-3 zone in order to utilize the property as a parking lot, which is permitted only as a conditional use in the R-3, R-4 or R-5 zones. The parking lot is proposed to include 22 spaces, to serve the development that is depicted on the zoning development plan for the property.

Ms. Wade stated that the subject property is currently vacant, but it most recently contained a non-conforming warehouse use. Referring to several photographs of the property, she noted that the adjacent parcels are zoned for single-family or two-family residential use. On the opposite side of the property is a warehouse which was recently approved by the Board of Adjustment for indoor recreation as a conditional use. Across the subject property is an existing single-family residence and a shop of special trade, at the intersection of Richmond Avenue and National Avenue. The southeastern property line of the B-4 parcel is requested for a variance down to 5'; it is currently fenced, and there are existing trees. The rear property line along Owsley Avenue is treed as well, and there is an existing fence.

Ms. Wade stated that the petitioner contends that the requested rezoning is in agreement with the 2013 Comprehensive Plan, particularly the Goals & Objectives which encourage expanding housing choices through a variety of housing types and densities. That could be accomplished if the site were not used as a parking lot, as is requested. The petitioner also contends that the proposed rezoning is in agreement with Theme A, Goals 2a and 3, as well as Theme E, Goal 1b. Those Goals specifically encourage well-designed neighborhoods and communities that are compact, contiguous, and respect the area's context. Ms. Wade said that the staff believes that the proposed rezoning can help to improve the area by replacing a warehouse with a parking lot. The parking can serve as a better buffer for the neighborhood from the additional redevelopment planned for the remainder of the subject property. The proposed rezoning will also help to encourage infill and redevelopment in the area. The area is currently considered underutilized, and the petitioner has cleaned up the property, including removal of a vehicle storage yard/auto parts

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

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

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, noting that there are two existing buildings located on the B-4 property. Those two buildings combined have over 27,000 square feet of floor area; following the construction of the building that is proposed on this plan, there will be over 59,000 square feet of B-4 space. Parking is proposed to be associated with each of the B-4 units.

Mr. Martin stated that the staff is concerned about the conditional use permit that was approved for an indoor athletic facility on the property. Under the B-4 zoning, the building requires 20 parking spaces; the Board of Adjustment required 36 spaces as part of the conditional use permit. A condition was recommended to denote that number in the parking statistics, so that the staff can reconcile the parking requirement for the total site. There is an existing shared parking agreement, which must address hours of operation, etc., in order to share parking with the existing indoor soccer facility. The staff wants to ensure that the petitioner can meet the parking requirements for the overall property.

Mr. Martin stated that this version of the plan was a revision, with which the petitioner cleaned up the conditions considerably. The staff is recommending approval, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property R-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. Addition of tree protection plan per Art. 26 of the Zoning Ordinance, and document compliance with tree canopy requirements.
- ~~6. Correct zoning references in site statistics and on plan face.~~
- ~~6. Denote lot coverage and floor area ratio per Art. 21 of the Zoning Ordinance.~~
- ~~8. Denote height of proposed buildings.~~
- ~~9. Delete notes #5, #7, #8, #9, #10, #11 and #13.~~
- ~~10. Correct note #2 to state "Article 16 of the Code Ordinances".~~
- ~~11. Addition of exterior building dimensions.~~
- ~~12. Complete cross section details.~~
- ~~13. Denote all existing and proposed easements on the plan.~~
- ~~14. Discuss internal pedestrian circulation.~~
- ~~7.15. Discuss Revise parking requirements to reflect the per current BOA approval of a conditional use permit application for indoor athletic facility (36 spaces).~~
- ~~16. Discuss plan status (preliminary vs. final).~~
- ~~17. Discuss building setbacks and required landscaping next to residential zones.~~
- ~~8.18. Discuss restrictions needed on overhead door provisions of Provided the Planning Commission grants a variance to Article 8-21(o)(1) of the Zoning Ordinance.~~
- ~~19. Discuss proposed handicap parking locations near the railroad right of way.~~
- ~~20. Discuss need for a crosswalk at National Avenue/Richmond Avenue intersection.~~
9. Revise off-street parking required and gross sq. ft. site statistics for warehouse uses.
10. Document compliance with off-street parking requirements.

Conditional Use and Variance Presentation: Mr. Emmons presented the report on the requested conditional use and variances. He explained that parking lots are allowed as conditional uses in the R-3 zone, as long as they are adjacent to, and used in conjunction with, a neighboring business zone.

Mr. Emmons said that, in researching the history of the subject property, the staff found that it had been used for a warehouse and apartment building, among other uses, but it was never used for single-family or two-family residences. That history was a major factor in the staff's consideration of the appropriateness of the requested conditional use for parking.

Mr. Emmons said that the staff believes that the requested parking area could serve as a buffer between the adjacent residential zones and the more intense B-4 uses on the subject property. Allowing a parking lot on the subject property could also provide the opportunity to require landscaping and stormwater improvements in order to bring the property up to code. Mr. Emmons stated that the staff is recommending approval of the requested conditional use, for the reasons listed in the staff report and on the agenda.

With regard to the requested variances, Mr. Emmons said that an L-shaped building is proposed on the subject property. Referring to the rendered development plan, he noted the location of the existing structure. The B-4 zone has no requirements for front and side yard setbacks; however, when the side or rear yard of a B-4 zone adjoins a

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property with more restrictive setbacks, the more restrictive requirements must be met. On Marne and Owsley Avenues, the residential lots have a setback of approximately 30 feet. Mr. Emmons explained that, in addition, the Zoning Ordinance requires that, for buildings in the B-4 zone with overhead doors, the doors must be located at least 100 feet away from a residential zone. That provision is in place to provide some measure of protection for adjoining residences, since the B-4 zone allows uses that could potentially be noisy.

Mr. Emmons stated that the petitioner contends that the proposed L-shaped building itself provides a buffer for the adjoining residential uses, and they originally proposed that it be allowed a 5-foot setback from the adjoining residential properties. The staff felt that five feet was too close, and recommended a 15-foot setback. The staff is also recommending that all of the walls of the building adjacent to residential zones have insulation and drywall in order to use the building wall as a sound buffer. Mr. Emmons noted that the site could be redesigned so that no variance would be necessary for the overhead doors, but the staff does not believe that configuration would provide as much of a buffer for the neighborhood as would the proposed layout.

Mr. Emmons said that the staff is recommending approval of the requested variance, with a modification to the setback variance of 15', and a requirement that the rear wall be insulated, for the reasons as listed in the staff report and on the agenda, and subject to the seven conditions as listed.

Petitioner Representation: Charles Curry, attorney, was present representing the petitioner. He said that the petitioner is in agreement with the staff's recommendations, and he requested approval.

Dal Harper, also representing the petitioner, stated that the petitioner would like to amend his application in order to request a 15' setback variance, and a variance of 53' for the overhead doors, in agreement with the staff's recommendations.

Citizen Support: There were no citizens present in support of this request.

Citizen Comments: Damien Mallen, Kenwick Neighborhood Association, stated that he had an encouraging conversation with the petitioner prior to the start of the hearing, and the petitioner answered some of the residents' questions. The residents had questions about the height of the buildings and stormwater management, and the petitioner was able to answer them satisfactorily.

Mr. Mallen said that the Kenwick Neighborhood Association is not opposed to the proposed development; rather, the neighborhood residents are enthused about the redevelopment of the National Avenue corridor. The petitioner's proposal seems to continue the mixed-use type development that is occurring in the area, with space for businesses that might not otherwise be able to locate in that area. The Kenwick residents also appreciate that the petitioner has cleaned up the property.

Mr. Mallen stated that the Kenwick residents do remain concerned, primarily about additional traffic in the neighborhood. He said that he believed that it would be more appropriate to designate National Avenue as the "commercial corridor," since Richmond Avenue is very narrow, with parking on both sides, and it is developed solely with residential uses. If the neighbors had some assurance that all traffic to the subject property would use National Avenue as their only point of ingress and egress, they would be totally in support of the proposed development. Residents are particularly concerned about large truck traffic, since Richmond Avenue is far too narrow to accommodate that type of vehicle.

Mr. Mallen said that the Kenwick residents would like to suggest the installation of signage limiting the weight or number of axles on vehicles, in order to discourage the use of Richmond Avenue for truck traffic traveling to the subject property. The petitioner proposed placing some signage on the subject property, instructing drivers to use National Avenue as they exit, and the residents suggested changing the shape of the curb near the subject property in order to direct traffic away from Richmond Avenue. In addition, the residents would like for the entirety of the subject property to have a National Avenue address, as they believe that could also discourage travel on Richmond Avenue. Mr. Mallen stated that the petitioner has indicated an intent to create a contract with the parents who use the indoor soccer facility, requiring that they use National Avenue for ingress and egress to the subject property; the Kenwick residents would encourage that type of clause in the lease for each of the 27 units on the property.

Petitioner Rebuttal: Tom Jones, petitioner, stated that he intends to consolidate the parcels and rename the entirety of the property National Station, after which it will have a National Avenue address. He said that he was aware that such an agreement was not enforceable, but the owner of the soccer facility suggested that parents use National Avenue, and other tenants could do the same. Mr. Jones stated that National Avenue is clearly the preferred method of ingress and egress for the property, since Richmond Avenue is narrow and "daunting" due to the amount of traffic and on-street parking.

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Ms. Kaucher stated that street signage is approved and installed by the Division of Traffic Engineering, and the petitioner would not be allowed to install signs as suggested. She said a "no through trucks" sign is already in place on Richmond Road at Richmond Avenue, and Traffic Engineering does not install signage restricting the type of vehicle or number of axles.

Mr. Curry stated that he believed that changing the address for the subject property would help, and that he did not believe that drivers of large trucks would want to attempt to navigate Richmond Avenue.

Zoning Action: A motion was made by Mr. Penn, seconded by Mr. Smith, and carried 7-0 (Berkley, Drake, Richardson, and Wilson absent) to approve MARCV 2015-16, for the reasons provided by staff.

Conditional Use Action: A motion was made by Mr. Penn, seconded by Mr. Smith, and carried 7-0 (Berkley, Drake, Richardson, and Wilson absent) to approve the requested conditional use, for the reasons provided by staff, and subject to the conditions as recommended by staff.

Variance Action: A motion was made by Mr. Penn, seconded by Mr. Smith, and carried 7-0 (Berkley, Drake, Richardson, and Wilson absent) to approve the associated variances, as recommended by staff, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Penn, seconded by Mr. Smith, and carried 7-0 (Berkley, Drake, Richardson, and Wilson absent) to approve ZDP 2015-64, subject to the 10 conditions as listed in the revised staff recommendation.

B. PUBLIC HEARING ON ZONING ORDINANCE TEXT AMENDMENT

1. **ZOTA 2015-7: AMENDMENT TO ARTICLE 23A-7: EXPANSION AREA RESIDENTIAL 3 (EAR-3) ZONE SPECIAL PROVISIONS** – a Zoning Ordinance text amendment to allow for no more than twenty-five percent (25%) of the required off-street parking to be located between an apartment building and a collector street in the Expansion Area Residential 3 (EAR-3) zone.

REQUESTED BY: MV Residential Development, LLC

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

ARTICLE 23A – EXPANSION AREAS ZONING CATEGORIES AND RESTRICTIONS

23A-7 EXPANSION AREA RESIDENTIAL 3 (EAR-3) ZONE

23A-7(k) SPECIAL PROVISIONS

1. Affordable housing units shall not be considered as dwelling units for the purposes of calculating maximum density, provided the number of affordable units does not exceed eight (8) units per gross acre.
2. At least twenty-five percent (25%) of the net developable acreage of any project in the EAR-3 zone shall be open space.
3. Permitted schools shall not be located on a lot exceeding 15 acres in area.
4. ~~There shall be no off-street parking permitted in a yard which abuts a collector street.~~ No more than twenty-five percent (25%) of the required off-street parking for a multi-family residential development shall be located between the closest residential building and the right-of-way of any collector street.

Staff Alternative Text:

23A-7(k) SPECIAL PROVISIONS

4. ~~There shall be no off-street parking permitted in a yard which abuts a collector street.~~ No more than twenty-five percent (25%) of the required off-street parking for a multi-family residential development **principal structure** shall be located between the closest residential building **wall plane of the structure** and the right-of-way of any collector street.

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

1. The proposed text amendment to the special provisions of the Expansion Area Residential 3 (EAR-3) zone is a timely revision that will permit more flexibility and will encourage higher density development in close proximity to the collector street, as designated by the Expansion Area Master Plan and 2013 Comprehensive Plan.

2. The proposed text amendment would allow for a more even distribution of parking throughout a development, without creating a "sea of parking" directly adjacent to a collector street, which will promote safer and a more desirable development.

Staff Presentation: Ms. Wade presented the staff report, explaining that the petitioner is proposing to modify the Special Provisions of the EAR-3 zone in order to permit up to 25% of the parking between a building and a collector street. There is currently an explicit prohibition on parking in such a yard in the EAR-3 zone. The proposed text amendment would apply only to the EAR-3 zone, in which a multi-family residential development would be likely.

Ms. Wade stated that the EAR-3 zone is one of seven zoning categories created in the Expansion Area by the Expansion Area Master Plan (EAMP), which was drafted in 1996. In order to implement that plan, Article 23 of the Zoning Ordinance was drafted to regulate the parking in the EAR-3 zone, as well as the CC and ED zones. The only location where EAR-3 zoning is recommended is in Expansion Area 2a. The only remaining area where EAR-3 zoning is in place or recommended is along the east side of Polo Club Boulevard, between Winchester Road and Man O' War Boulevard. Polo Club Boulevard is the only collector street within Expansion Area 2a, is fully constructed, and serves as the main collector street for this portion of the Expansion Area.

Ms. Wade said that the petitioner believes that the existing requirements of the Zoning Ordinance are too restrictive with regard to the EAR-3 zone, so they are proposing to modify them to be allowed to place up to 25% of the parking for a development between the building and the collector street. The petitioner has a development plan that was recently approved by the Planning Commission, which is the only existing development plan for land zoned EAR-3. Referring to that development plan, Ms. Wade explained that the yard starts at the wall plane of the structure; from the right-of-way of Polo Club Boulevard to that wall plane is considered the yard for the property.

Ms. Wade said that the development plan depicts two buildings, both of which have frontage on the collector street. In reviewing this request, the staff became concerned that a development plan could be filed with several buildings, and 25% of the parking for all of the buildings could be permitted along the collector street. The staff drafted an alternative text to clarify that up to 25% of the parking for a building that abuts a collector street could be permitted in the yard, but not 25% of the total parking for the development.

Ms. Wade noted that the petitioner proposed for this text amendment to be associated with multi-family development, but the staff believes that it should be applicable to other principal uses in the EAR-3 zone, such as churches and schools. In addition, the staff suggested changing the terminology to "wall plane," because that term is already defined in the Zoning Ordinance. Ms. Wade stated that the staff is recommending approval of the Staff Alternative Text, for the reasons listed in the staff report and on the agenda.

Commission Question: Mr. Penn asked if a denser landscape screen would be required in the situations in which this provision would apply. Ms. Wade answered that some screening is already required. Mr. Sallee added that 50% of the area between the wall plane and the street must be landscaped, regardless of this specific provision of the Zoning Ordinance. He noted that that requirement would serve as somewhat of an encouragement to locate buildings closer to the street, and it would be consistent with how all of the other zones treat building orientations to collector streets.

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

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

Action: A motion was made by Mr. Brewer, seconded by Ms. Mundy, and carried 7-0 (Berkley, Drake, Richardson, and Wilson absent) to approve the Staff Alternative Text of ZOTA 2015-7, for the reasons provided by staff.

VII. STAFF ITEMS

VIII. AUDIENCE ITEMS – No such items were presented.

IX. MEETING DATES FOR September, 2015

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	September 3, 2015
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	September 3, 2015
Subdivision and ND-1 Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	September 10, 2015
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	September 23, 2015
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	September 24, 2015

X. ADJOURNMENT – There being no further business, Chairman Owens declared the meeting adjourned at 6:03 p.m.

TLW/TM/CT/BJR/BS/src

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