

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

May 26, 2016

- I. **CALL TO ORDER** – The meeting was called to order at 1:35 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

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

Planning staff members present: Jim Duncan, Director; Bill Sallee; Barbara Rackers; Traci Wade; Tom Martin; and Debbie Woods. Other staff members present were Hillard Newman, Division of Engineering; Casey Kaucher, Division of Traffic Engineering; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire and Emergency Services; and Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 8-0 (Brewer, Penn, Plumlee absent) to approve the minutes of the April 14, 2016 and May 12, 2016, meetings with some corrections.

- III. **POSTPONEMENTS AND WITHDRAWALS** – Requests for postponement and withdrawal will be considered at this time.

1. WHAYNE SUPPLY COMPANY ZONING MAP AMDEMENT & WHAYNE SUPPLY ZONING DEVELOPEMENT PLAN

- a. MAR 2016-15: WHAYNE SUPPLY COMPANY (7/3/16)*– petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Light Industrial (I-1) zone, for 1.47 net (2.03 gross) acres, for property located at 2201 Georgetown 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 Comprehensive Plan identifies the need to protect and provide readily available economic development land to meet the need for jobs (Theme C: Creating Jobs and Prosperity), as well as encouraging development in a compact and contiguous manner (Theme E: Maintaining a Balance Between Planning for Urban Uses and Safeguarding Rural Land).

The petitioner proposes a Light Industrial (I-1) zone in order to develop a 1½-acre lot into a light industrial use, with associated off-street parking.

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

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

1. The requested Light Industrial (I-1) zone is appropriate and the existing Agricultural Urban (A-U) zone is no longer appropriate for the subject property, for the following reasons:
 - a. The 2013 Plan's Theme C: "Creating Jobs and Prosperity" identifies the need to protect and provide readily available economic development land to meet the need for jobs. This A-U zone is not appropriate for job creation.
 - b. The proposed I-1 zone is better able to fulfill the goal of increasing opportunities for employment locations within the Urban County.
 - c. The west side of the Georgetown Road corridor is primarily industrial in nature, and a significant portion of the land between Georgetown Road and the Norfolk-Southern railroad line, between New Circle Road and Spurr Road, is prime "jobs land" that is either developed or is in the process of being developed; thus, demand does exist for light industrial zoning and land use in the immediate area.
 - d. The proposed Light Industrial (I-1) zone is appropriate and is compatible with the adjoining zoning and land uses.
 - e. The subject property has been recommended for Light Industrial land use for the past four decades.
2. This recommendation is made subject to the approval and certification of ZDP 2016-51: Whayne Supply, 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 following use restriction(s) should be put into effect for the subject property:
 - a. No lighting may be directed toward any adjacent property located in either an Agricultural or Residential zone.

This restriction is necessary to prevent any intrusion of light from this industrial site to non-industrial locations along US 25.

- b. ZDP 2016- 51: WHAYNE SUPPLY (7/3/16)* - located at 2201 Georgetown Road. **(Arnold Consultants)**

The Subdivision Committee Recommended: **Postponement**. There are questions regarding the proposed access to the subject site, and the possible incorporation of this development with the adjoining property.

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

1. Provided the Urban County Council rezones the property I-1; otherwise, any Commission action of approval is null and void.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Addition of building coverage and floor area site statistics, as required by Article 21-6(b)(13) of the Zoning Ordinance.
8. Addition of tree inventory and species information, as required by Article 26 of the Zoning Ordinance.
9. Addition of adjoining property owner's information on plan.
10. Denote existing and proposed (requested) zoning in site statistics.
11. Denote that protection measures for the Royal Spring Aquifer shall be determined at the time of the Final Development Plan.
12. Discuss expanding the plan to include the proposed and the approved adjoining development.
13. Discuss access to adjoining development per notes #11 and #12.

Petitioner Representation: Steve Ruschell, attorney, was present representing the petitioner. He requested postponement of this item until the Planning Commission Subdivision Meeting on June 9, 2016.

Citizen Comment: No citizens spoke in opposition to this request.

Action: A motion was made by Ms. Mundy, seconded by Mr. Richardson, and carried 8-0 (Brewer, Penn, Plumlee absent) to postpone MAR 2016-15 and ZDP 2016- 51 to the June 9, 2016, Planning Commission Subdivision Meeting.

2. **ZOTA 2016-1: AMENDMENTS TO ARTICLES 7, 23, AND 26 FOR ENVIRONMENTALLY SENSITIVE AREAS** – petition for a Zoning Ordinance text amendment to Articles 7, 23, and 26 to strengthen oversight by the Urban County Board of Adjustment for the protection of environmentally sensitive areas (ESAs) within the community.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: COPIES OF TEXT ARE AVAILABLE UPON REQUEST

The Zoning Committee Recommended: **Referral** to the full Commission.

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

1. The proposed text amendment will help to guide the Board of Adjustment in their review of conditional use permit applications, specifically for properties that may be environmentally sensitive and could be impacted by a future land use, and will strengthen the Board's oversight of our environmentally sensitive land in Fayette County.
2. The 2013 Comprehensive Plan's Goals and Objectives related to protection of environmentally sensitive land are advanced by implementing the proposed text amendments. If approved, the Board of Adjustment will be able to assist in promoting the protection of natural features and landscapes prior to development (Theme A, Goal #3c. and Theme B, Goal #3a.); reducing the community's carbon footprint (Theme B, Goal #1); encouraging environmentally sustainable uses of natural resources (Theme B, Goal #1b.); and protecting and enhancing the natural, cultural, historic, and environmental resources of the Rural Service Area and rural farmland (Theme E, Goal #2b.).
3. The proposed text amendment will correct outdated references to the Land Subdivision Regulations as it relates to environmentally sensitive areas and geologic hazard areas.

Staff Report: Ms. Wade requested on behalf of the staff and Planning Commission members that couldn't be present at this meeting, a postponement of this item until the Planning Commission Subdivision Meeting on June 9, 2016.

Citizen Comment: No citizens spoke in opposition to this request.

Action: A motion was made by Mr. Wilson, seconded by Ms. Richardson, and carried 8-0 (Brewer, Penn, Plumlee absent) to postpone ZOTA 2016-2 to the June 9, 2016, Planning Commission Subdivision Meeting.

- IV. LAND SUBDIVISION ITEMS** - - The Subdivision Committee met on Thursday, May 5, 2016, at 8:30 a.m. The meeting was attended by Commission members: Frank Penn, Karen Mundy, Mike Owens, Will Berkley and Carolyn Plumlee. Committee members in attendance were: Hillard Newman, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee; Tom Martin; Cheryl Galt; Denice Bullock; Kelly Hunter; Dave Jarman; Debbie Woods; Captain Greg Lengal, Division of Fire & Emergency Services; and Tracy Jones and Andrea Brown, 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, May 5, 2016, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members Mike Cravens, David Drake, Carolyn Richardson, and Bill Wilson. The Committee members reviewed applications and made recommendations as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
 - (d) Hearing closed and Commission votes on zone change petition and related plan(s)

B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **LAIL INTERESTS, LLLP, ZONING MAP AMENDMENT & LAIL PROPERTY ZONING DEVELOPMENT PLAN**

- a. **MAR 2016-7: LAIL INTERESTS, LLLP** (6/5/16)* – petition for a zone map amendment from an Agricultural Rural (A-R) zone to a Light Industrial (I-1) zone, for 3.20 net (6.98 gross) acres, for property located at 1551 Greendale 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, the Plan encourages a mix of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; support of infill and redevelopment opportunities; and provision of land for a diverse workforce.

The petitioner proposes a Light Industrial (I-1) zone in order to develop a "construction yard," which will consist of a small office and outdoor storage of construction materials. The site is currently occupied by a single-family residence and two accessory structures, but the structures are not occupied.

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

The Staff Recommends: **Approval**, for the following reason(s):

1. A restricted Light Industrial (I-1) zone is appropriate, and the existing Agricultural Rural (A-R) is inappropriate for the subject location, for the following reasons:
 - a. The proposed rezoning of the subject property is compatible with the existing light industrial character of the immediate area, specifically land between the Norfolk Southern railroad to the west and the Georgetown Road corridor to the east, and between Spurr Road to the north and New Circle Road to the south.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

- b. From 1980 through 2007, the land use element of the Comprehensive Plan, specifically the land use map, has recommended light industrial future land use for the subject property. The proposal is in keeping with this historic recommendation for this location.
 - c. The property is adjacent to a very active railroad line that extends from the Tennessee state border to the Ohio River, and is bounded to the north by Spurr Road and to the east by Greendale Road. Because the site is bounded by right-of-way on all of its three sides, it is not able to be incorporated into any other surrounding development. Thus, the existing railroad serves as a strong land use buffer to the residential areas to the west.
 - d. The proposed light industrial use is a relatively low traffic generator for Greendale and Spurr Roads, which have received sporadic improvements since the area was brought into the Urban Service Area in 1980. Additional right-of-way or roadway improvements will facilitate truck traffic to and from this location.
 - e. The existing agricultural zoning is not appropriate because the site is no longer recommended for rural or agricultural protection; and the property is less than four acres in size, which is less than one-tenth the required lot size for the existing zone. These characteristics make the property undesirable for an agricultural use in the future.
2. This recommendation is made subject to the approval and certification of ZDP 2016-42: Lail Property, 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 following use restrictions are recommended via conditional zoning for the subject property:
PROHIBITED USES:
- a. Establishments and lots for the display, rental, sale and repair of farm equipment, contractor equipment, automobiles, trucks, mobile homes, recreational vehicles, minibikes, motorcycles, bicycles, boats or supplies for such items.
 - b. Tire retreading or recapping.
 - c. Truck terminals and freight yards.
 - d. Automobile service stations.
 - e. Underground storage tanks for materials other than petroleum products.
 - f. Billboards, or advertising signs as defined in Article 17-3(b)(1) of the Zoning Ordinance.
 - g. Outdoor public address systems.
 - h. Grain drying, even when operated in a fully enclosed building.
 - i. The above-ground or below-ground storage for resale of any flammable or nonflammable gas or oxidizer in liquid or gaseous form, the storage of any empty container which contained any gas in any form, and the receiving of or dispensing of any gas in any form.
 - j. Concrete mixing and concrete products.
 - k. Commercial composting.
 - l. Helistops and heliports.
 - m. Mining of metallic and non-metallic minerals.

Prohibition of these uses in the I-1 zone is appropriate and necessary for the subject property for the following reasons:

1. The subject site is located near planned and existing residential uses.
2. The site lies within the confines of the Royal Spring Aquifer recharge area, which is defined as an environmentally sensitive area.
3. Light industrial zones have been similarly restricted in this immediate area by the Planning Commission in the past.

- b. ZDP 2016-42: LAIL PROPERTY (6/5/16)* - located at 1551 Greendale Road.

(EA Partners)

The Subdivision Committee Recommended: **Postponement**. No tree inventory information has been submitted with this plan.

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

1. Provided the Urban County Council rezones the property I-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. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Denote: Review by the Royal Spring Aquifer Protection Committee shall be required at the time of Final Development Plan.
8. Dimension Spurr Road entrance shown on plan.
9. Provide exact road cross-section information from at least one location (denoting that location on plan).
10. Denote one-way vehicular circulation (with arrows) on drives.
11. Denote limits of outdoor storage uses on plan.
12. Identify non-buildable area associated with St. Claire Spring.
13. Discuss compliance with tree canopy requirement of Article 26.
14. Discuss possible improvements to Greendale and Spurr Roads.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

15. Discuss connection to sanitary sewers.

Staff Zoning Presentation – Ms. Wade presented the staff report on this zone change request and stated that this application is for a rezoning from A-R to I-1 for 3.2 acres, located on the southwest corner of the intersection of Spurr Road and Greendale Road, in the north part of the county. The adjacent zoning is residential to the west and north of the subject property. The east side is zoned as light industrial all the way to Georgetown Road. The applicant is asking to rezone this property for a construction yard, to store equipment and materials. Ms. Wade displayed a 2013 aerial photo of the subject property, which is mostly vacant land, with a few small structures. She stated that a portion of the adjacent property is leased to a gas company on railroad right-of-way. Ms. Wade said there was a recent development plan for the property across, Greendale Road, to expand industrial uses located further to the east of Eagle Beer Distribution Center and the recording studio that has been transferred to the University of Kentucky. Ms. Wade said that from 1980 to 2007 the subject property was recommended for light industrial use through the Future Land Use Map in the Comprehensive Plan, and it does have adequate infrastructure for industrial use in that the railroad line borders the subject property; however, Greendale Road and Spurr Road are in need of some improvements since they do still have a rural cross-section in this vicinity.

The petitioner mentioned some of the goals and objectives of the Comprehensive Plan related to maintaining the Urban Service Area boundary concept, creating jobs within the Urban Service Area and supporting infill and redevelopment. In the staff's opinion, the appropriate justification for the subject property to be rezoned is that the A-R zone is no longer appropriate in this location and that the I-1 zone is appropriate. Since the property is less than four acres, agricultural use of the property would be relatively difficult. Parts of it are used for structures and a pond; in addition, it is inside the Urban Service Area and is intended to be utilized for a more intense urban use rather than any kind of agricultural use. The site is compatible with the existing zoning in the area.

The staff recommended approval to the Zoning Committee two months ago. However, the applicant had requested to postpone action to further evaluate their interest in moving forward, given the requirements for improvements to both Spurr Road and Greendale Road. The staff recommends approval for the reasons mentioned earlier and also with the conditional zoning restrictions listed on the staff report. Since the staff report was published, the applicant notified of the staff of one concern about the conditional zoning restrictions. The staff has discussed this with the applicant, and they have agreed to a modification under the prohibited use list, Item j. states "concrete mixing and concrete products." The applicant wants to store products for construction use, which may include concrete manufactured products, so the staff is willing to strike "and concrete products" from the conditional zoning restrictions, leaving just "concrete mixing." The staff believes that these conditional zoning restrictions are appropriate and necessary to protect the adjoining and nearby residential neighborhoods from the most intense uses that could be located in an industrial zone. Also, the subject property is located in the Royal Spring Aquifer recharge area. It is an environmentally sensitive area that should be protected. Other light industrial zones in this vicinity have been similarly restricted through conditional zoning restrictions in the past by the Planning Commission and the Council.

Commission Questions: Mr. Owens asked how restriction number 3.i., the resale of flammable or nonflammable gas, affects the subject property. Ms. Wade replied by stating she didn't think they planned to sell retail on the property and that the applicant would be able to answer more specifically. Jacob Walbourn, attorney, was present representing the petitioner, stated that the property with the propane is in the railroad right-of-way and is not on their property, so the conditional zoning restrictions would not impact that operation.

Ms. Wade circulated an email that was received in opposition to the requested zone change.

Development Plan Presentation: Mr. Hunter presented the staff report on this development plan and pointed out the existing building and the associated parking with the existing drive off of Spurr Road. The applicant would like an entrance off of Greendale Road as well. Across Spurr Road is the location of the old recording studio that has a spring that flows under Greendale Road and onto the subject property.

Mr. Hunter said that the Subdivision Committee had recommended postponement of this plan, because the tree inventory information had not been originally submitted with this plan. He then said that, just prior to today's hearing, the staff had spoken with the Urban Forester and the applicant regarding the three discussion items listed on today's agenda. Through that discussion, those items have been addressed and the staff can now recommend approval of the applicant's request. He directed the Commission's attention to today's agenda, and briefly explained that the Urban County Council will need to approve the zone change; otherwise, the Commission's approval is null and void (condition #1). He said that conditions #2-6 are typical sign-off requirements from the different Divisions of the LFUCG; and conditions #7-12 are "cleanup" items that will be addressed prior to the plan being certified. As for three remaining discussion items, the staff was recommending the following changes to be made:

13. ~~Discuss~~ Compliance with tree canopy requirement of Article 26 to the approval of the Urban Forester.
14. ~~Discuss~~ Possible improvements to Greendale and Spurr Roads at the time of a Final Development Plan.
15. ~~Discuss~~ Resolve connection to sanitary sewers.

Commission Question – The Chair asked for clarification to condition #15. Mr. Hunter said that condition #15 should read: "Resolve connection to sanitary sewers at the time of a Final Development Plan."

Mr. Walbourn, indicated that they were largely in agreement with the staff's recommendation, but they did have one minor tweak to the development plan, conditions to propose. He said that he would like to resolve a couple of questions that Ms. Wade had raised. He explained that, in looking at the 2013 aerial photograph, the house closest to Greendale Road was removed by the prior property owner, and there is only one house along with two barns remaining on this property. He said that they are proposing to repurpose the house for office space and to remove the two barns, but plan to use the same location to rebuild a larger barn or storage facility.

Mr. Walbourn said that his client is the owner of Delong Concrete, and their primary business is bridge and infrastructure rehabilitation. He then said that his client simply wants to store some of the materials that are used in his business. This would not be an everyday use, but rather they would take the materials they need and leave the grounds.

Mr. Walbourn stated that there is a feral gas business adjacent to the site; however, it is not located on the subject property; it is located on the Norfolk-Southern railroad right-of-way. Mr Walbourn said that they agree with the staff's justifications for the rezoning request. He also mentioned that this railway is one of busiest in the Commonwealth, and serves Toyota Manufacturing in Georgetown. He doesn't think that the proposed land use will be any more noticeable to the neighbors than the trains that frequently go by.

Mr. Walbourn said that they are appreciative of the staff's revised development plan recommendations, with the exception of one condition that was not addressed - condition 6. The applicant is generally in agreement that they will not request a building permit until the final development plan. However, Mr. Lail has sought to obtain a land disturbance permit to perform some work on his property. This property has been vacant for some time; he removed dead foliage and wanted to do some grading on the property to make it more usable. He said that land disturbance permit cannot be obtained until the final development plan is approved. The applicant would like to ask for an addition to condition 6 that no building permit shall be issued for industrial use structures. He stated that they will not build anything until they have a final development plan, which may be some time since the area is still on septic and probably will require a pump station to get to the nearest line. This will be time consuming and expensive, and that is why it has been deferred to the final development plan; but Mr. Lail would still like to be able to continue to do the improvements that he is seeking to do on the property without building any industrial use.

Commission Questions - Mr. Wilson asked Mr. Walbourn to clarify the changes on condition # 6. Mr. Walbourn suggested:

6. Denote: No building permit shall be issued for industrial use structures, unless and until a final development plan is approved by the Planning Commission.

Mr. Berkley asked Mr. Walbourn if there has been an estimated cost of possible improvements on Greendale Road and Spurr Road. Mr. Walbourn said that there is not and that the neighbor adjacent to the property, the Kentucky Eagle Extension, has recently been approved with a condition that improvements are to the satisfaction of both LFCUG Traffic Engineering and the State Transportation Cabinet. At the final development plan time, the applicant will seek a comparable note. They don't want to do much; the Division of Traffic Engineering may ask for more, which is an on-going discussion at this time. Mr. Walbourn said that he is a resident of this area and his opinion is that both Greendale Road and Spurr Road are in need of improvements. He is optimistic that the Transportation Cabinet will spearhead some of these improvements; they would like to resolve that at the time of the final development plan.

Mr. Owens asked Mr. Walbourn if the insertion on condition number 6 will be for storage or for the office. Rory Kahly, EA Partners, said that Mr. Lail would like to rehabilitate the house and add a larger barn for agricultural uses as well. Mr. Lail has been delayed due to this process; Mr. Walbourn would like to find a way to allow Mr. Lail to be able to proceed with his improvements before the full final development plan. Mr Owens said that he is concerned about the repurposing of a long abandoned house for an office and waiting to resolve the sanitary sewer until the final development plan. Mr. Kahly said that both houses were on an existing septic sewer system. One of the houses has been removed, and the remaining house should still function on that system. The change to the industrial land use is what is requiring the need for them to be in compliance with getting a sanitary sewer system to the property. Mr. Owens asked if the office will be part of the industrial use. Mr. Kahly said that, until that time, the house could still be used for residential use.

Mr. Cravens asked Mr. Kahly if they will be obtaining a land disturbance permit. Mr. Kahly said that permit has been denied because they had filed the zone change. Mr. Lail was trying to have a meeting to install a silt fence to be able to start clearing the property, as it has stood vacant for a while. He said that he didn't know if Mr. Lail had attempted to get a permit for the new barn or not, but he was stopped when he was getting the first disturbance permit so that he could clean up the property. Mr Cravens said that the property owner doesn't need a permit for the barn. Mr. Kahly said that a permit is not needed under agricultural zoning but if someone is reviewing it under the proposed light industrial zone, then Mr. Lail is limited in what he can do.

Ms. Kaucher, Division of Traffic Engineering, said she has corresponded with the State, and they are also in favor of getting improvements on Greendale Road and Spurr Road. There are ongoing discussions on Greendale Road becoming a city street; however, the improvements will still be pursued. The improvements would be half-section, shoulder, and sidewalks on Spurr Road and curb and gutter improvements on Greendale Road. Mr. Berkley asked what the cost of these improvements will be. Ms. Kaucher said that she doesn't know the cost at this time. Mr. Berkley said the property has a lot of frontage and that penalizes them somewhat. Ms. Kaucher said that, from a traffic standpoint, they are taking that into account also. She said that their viewpoint is based on the fact that they are requesting an industrial zone; and in order to have that industrial traffic on these roadways, the improvements need to be there, especially with the adjacent residential uses. Since residential

vehicular traffic is going to be sharing the same facilities, these traffic improvements are more important. Mr. Berkley said that the improvements for industrial use along Spurr Road will be more significant than on Greendale Road since there will not be an entrance to the property and it is more of a rural road. Ms. Kaucher said that she believes that at one time they were proposing an entrance from Greendale Road. Improvements to Greendale Road have been done on the residential sections that have been developed. Mr. Berkley said that because of the shape of the property that creates additional road frontage; parts of the property are not going to be usable because they are so narrow. Mr. Berkley feels that they are being penalized and is more in favor of the improvements on Spurr Road. Ms. Kaucher said that is why they had said that these are the recommendations that they are going for, but ultimately at the final development plan stage they will get more details to evaluate cost. She also said that that, to be able to accommodate the industrial traffic, they will need to determine if widening the street will be a more important aspect than doing the sidewalks. Mr. Berkley said that it will be discussed again at the final development plan stage.

Mr. Walbourn said that they have also discussed with the Planning staff the same issue of traffic and the costs of improvements. There is over a thousand feet of road frontage versus the relatively small impact of the use that they are proposing. He said that staff made a point that they are proposing industrial zoning; so when the applicant no longer has that property and has failed to improve it, and a heavier use comes in, there will be competing interests. He wants their development to be viable and not supremely expensive to do. Staff has concerns and that is why they have agreed, as these are in a state of flux, as they are working with the Transportation Cabinet, and are figuring out what they can and can't do. He said that it makes sense to defer those to the final development plan stage.

Mr. Owens asked if staff had any comments on the additional language in condition number 6. Mr. Sallee conferred with staff and said that they haven't considered that addition. He said that Mr. Martin has stated that Engineering will allow land disturbance for agricultural uses on the property; and if the decision is made to recommend this rezoning, it will remain agricultural for several more weeks. From staff's perspective, there is a window that some light land disturbance could be possible on the property. Condition # 6 is straight out of Article 21 requirements. He said that the real issue is the dwelling and whether or not that should be permitted to convert to an office use prior to approval of a final development plan. As for the office use, it's a little difficult to anticipate, if that's to remain agricultural for a time, or that they will need an office building of that size. It seems more likely that the dwelling itself would be renovated. Mr. Sallee said that the Commission should consider whether that note should be expanded to say "for office and industrial buildings."

Chairman's Comments – Chairman Owens stated that the hearing was now "closed," and he opened the floor for discussion.

Zoning Action – A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-0 (Brewer, Penn and Plumlee absent) to approve MAR 2016-7: LAIL INTERESTS, LLLP, for the reasons provided by the staff, with the change noted below:

3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are recommended via conditional zoning for the subject property:

PROHIBITED USES:

- a. Establishments and lots for the display, rental, sale and repair of farm equipment, contractor equipment, automobiles, trucks, mobile homes, recreational vehicles, minibikes, motorcycles, bicycles, boats or supplies for such items.
- b. Tire retreading or recapping.
- c. Truck terminals and freight yards.
- d. Automobile service stations.
- e. Underground storage tanks for materials other than petroleum products.
- f. Billboards, or advertising signs as defined in Article 17-3(b)(1) of the Zoning Ordinance.
- g. Outdoor public address systems.
- h. Grain drying, even when operated in a fully enclosed building.
- i. The above-ground or below-ground storage for resale of any flammable or nonflammable gas or oxidizer in liquid or gaseous form, the storage of any empty container which contained any gas in any form, and the receiving of or dispensing of any gas in any form.
- j. Concrete mixing ~~and concrete products~~.
- k. Commercial composting.
- l. Helistops and heliports.
- m. Mining of metallic and non-metallic minerals

Development Plan Action – A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-0 (Brewer, Penn and Plumlee absent) to approve ZDP 2016-42: LAIL PROPERTY, for the reasons provided by the staff, with several changes noted below:

1. Provided the Urban County Council rezones the property I-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. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote: No building permit shall be issued for office and/or industrial use structures unless and until a final development plan is approved by the Planning Commission.
7. Denote: Review by the Royal Spring Aquifer Protection Committee shall be required at the time of Final Development Plan.
8. Dimension Spurr Road entrance shown on plan.
9. Provide exact road cross-section information from at least one location (denoting that location on plan).
10. Denote one-way vehicular circulation (with arrows) on drives.
11. Denote limits of outdoor storage uses on plan.
12. Identify non-buildable area associated with St. Claire Spring.
13. ~~Discuss~~ Compliance with tree canopy requirement of Article 26 to the approval of the Urban Forester.
14. ~~Discuss~~ Possible improvements to Greendale and Spurr Roads at the time of a Final Development Plan.
15. ~~Discuss~~ Resolve connection to sanitary sewers at the time of a Final development Plan.

2. R. WALKER PROPERTIES, LLC, ZONING MAP AMENDMENT & AVON ACRES SUBDIVISION, LOT 2, ZONING DEVELOPMENT PLAN

- a. MARV 2016-11: R. WALKER PROPERTIES, LLC (6/5/16)* – petition for a zone map amendment from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone, for 0.59 net (0.67 gross) acre, for property located at 5569 Briar Hill 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 Rural Land Management Plan, an adopted element of the 2013 Comprehensive Plan, recommends 3.2 acres of Retail Land Use (Figure 3-9) for the Avon Rural Activity Center. The subject property is in that designated Rural Activity Center, and there is currently about 2.7 acres of land in Avon located in a Neighborhood Business (B-1) zone.

The petitioner proposes a Neighborhood Business (B-1) zone for the subject property in order to remove a non-conforming use from the existing Agricultural Rural (A-R) zone. This location has been used for a convenience store and as a restaurant in the past, with its associated off-street parking.

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

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

1. The requested zone change from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone is in agreement with the 1999 Rural Land Management Plan, an adopted element of the 2013 Comprehensive Plan, for these reasons:
 - b. The Rural Land Management Plan recommends 3.2 acres of Retail future land use for the Avon Rural Activity Center. B-1 zoning for the subject property, even including an unusable floodplain area on the northern ½ of the site, would result in a total of about 3.3 acres of land in a Neighborhood Business (B-1) zone in this RAC, counting other existing B-1 zoned parcels.
 - c. The proposed B-1 zone can be utilized to implement the Plan's future land use recommendation for this Rural Activity Center. It is the only zone in this vicinity that permits a retail use.
 - d. The subject property is not served by typical urban services such as sanitary sewers, storm sewers, or curb/gutter/sidewalks; but it is generally in character with other properties in this Rural Activity Center, due to its age and limited commercial use in the past.
 - e. The 1988, 1996 and 2001 Comprehensive Plans have specifically recommended Retail Trade and Personal Services land use for the subject property in the past.
2. This recommendation is made subject to approval and certification of ZDP 2016-44: Avon Acres Subdivision, Lot 2, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions shall apply to the subject property:
 - a. Prohibited Uses:
 1. Drive-through facilities.
 2. The sale or provision of wine, beer or alcoholic beverages, other than by the drink.
 3. Live entertainment and/or dancing.
 4. Cocktail lounges, brew-pubs and nightclubs.
 5. Automobile service stations.
 6. Sale of firearms other than by federally licensed manufacturers, importers or dealers.
 8. Car washing establishments.
 9. Automobile and vehicle refueling stations.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

b. Other Use Restrictions:

1. Any outdoor lighting shall be shielded and directed away from any adjacent residential uses.
2. Lighting attached to a pole or any structure shall be a maximum of twelve (12) feet in height.
3. Any free-standing sign erected shall be a maximum of fifteen (15) feet in height, and shall be indirectly illuminated, if illuminated at all.

These use restrictions are appropriate and necessary for the subject property to ensure greater compliance with the 2013 Comprehensive Plan's requirements, and to prevent the possibility that uses at this location could disrupt activities on nearby residential and agricultural-rural properties in and near the Avon Rural Activity Center.

b. ZDP 2016-44: AVON ACRES SUBDIVISION, LOT 2 (6/5/16)* - located at 5569 Briar Hill Road.

(EA Partners)

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. Denote 25' floodplain setback on plan.
6. Reference current FEMA map on plan.
7. Denote floodplain elevation on plan.
8. Denote that this plan shall comply with Article 19 of the Zoning Ordinance.
9. Addition of pavement and gravel information between front of building and Briar Hill Road.
10. Addition of street cross-section for Briar Hill Road.
11. Resolve compliance with Article 18 and possible landscape variance.
12. Resolve plan status (preliminary vs. final).

Staff Zoning Presentation – Mr. Sallee presented the staff report on this zone change request and stated that this application is for rezoning from A-R to B-1 for 2.7 acres located in the northeastern portion of the county. The subject property is located on the southern end of the Avon Rural Activity Center, which is bounded by Briar Hill Road and Houston Antioch Road, and has a major railroad line that traverses it. Haley Road is located to the south and the Blue Grass Army Depot is just to the north of the subject property. The adjacent properties on the east, south, and west of the subject property are zoned A-R. The property to the immediate west is in an I-1 zone, and the property to the north is in an I-2 zone with a sizable concrete business. The subject property has been a non-conforming business use for many years and is proposed to continue in its operation. The applicant is asking to rezone the property so that they can avoid having to go to the Board of Adjustment every time there is a change sought in the allowable businesses operating at this location.

Mr. Sallee said that the staff reviews the Comprehensive Plan whenever there is a zone change and has done so in this case. The staff focused their review on the Rural Land Management Plan because the site is located in the rural part of the county and also in one of the four Rural Activity Centers. In the Rural Land Management Plan, the Avon Rural Activity Center was recommended to have 3.2 acres of retail land use. The staff calculated that there is currently 2.7 acres of B-1 zone land in Avon. The staff finds that if this property is rezoned, the resulting land that will be available for retail trade uses in this activity center will be 3.3 acres of B-1 zoned area, which would be very similar to the land use recommendation.

Mr. Sallee said that the staff and the zoning committee have recommended approval of this rezoning request, and that the requested zone change from A-R to B-1 is in agreement with the 1999 Rural Land Management Plan, which is an adopted element of the 2013 Comprehensive Plan. The staff has outlined four reasons on the staff report and the agenda to summarize that the proposed B-1 zone can be utilized to implement the Plan's future land use recommendation for this Rural Activity Center. He also said the subject property is not out of character with the other properties in this Rural Activity Center due to its age and the limited commercial use it's had in the past. He said the 1988, 1996, and 2001 Comprehensive Plans have specifically recommended retail trade and personal services uses for the subject property.

Mr. Sallee also mentioned that there is a variance associated with the requested zone change, as well as the development plan.

Development Plan Presentation: Mr. Hunter presented the staff report on this development plan. He pointed out the development area showing one existing building that will remain and its associated parking along the side and rear of the property. He also pointed out the 100-year floodplain area on the map. This development was originally recommended for postponement due to the need for a variance for the landscaping between different zones. This is a slightly different plan than what was displayed at the Subdivision Committee meeting; the new plan shows landscaping islands in three different locations. Mr. Hunter also pointed out the two entrances into the subject property. The Subdivision Committee recommended this development for approval based on the conditions listed on the agenda, with the exception that condition #12, the status of the plan, has been changed to final.

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Commission Question: Mr. Owens asked if condition #12 could be deleted and Mr. Hunter replied that it could be deleted.

Variance Report: Ms. Wade presented the variance report, stating that the petitioner is asking to eliminate the zone-to-zone landscaping requirements for the subject property. This property is bordered by three different zones and has two different requirements. Along the northern and western boundaries, where the subject property is adjacent to industrial zoning, the requirement is for a tree every forty feet plus either a double row hedge or a six-foot tall fence noting that the 15-foot buffer could be reduced to five feet. Along the eastern boundary of the subject property, where the adjacent property is zoned A-R, the requirement is a tree every forty feet, plus: a) a six-foot tall planting; b) one evergreen every fifteen feet; or c) one tree every twenty linear feet consisting of fifty percent deciduous and fifty percent evergreen and smaller flowering shrubs. The option to reduce the distance along the A-R boundary from fifteen feet to five is not available in the Zoning Ordinance.

Ms. Wade displayed an aerial photo of the subject property showing the boundaries. She said the property is a nonconforming use and is already built out along the eastern and western property lines. There is an existing privacy fence along the western property line, a creek along the northern property boundary and an existing masonry wall along the eastern boundary. In the staff's review of the variance, it was found that the existing features (the privacy fence, the wall and the creek) already provide the necessary zone-to-zone buffer to facilitate the protection between the two zones.

The staff recommended postponement to the Zoning Committee because the Landscape Review Committee had not had an opportunity to meet about this proposed variance. On May 10th, they did meet, but did not have a quorum. The applicant is providing some landscaping within the landscape islands, which could help to satisfy the requirement of increased landscaping on the subject property. The applicant felt this was a trade for the zone-to-zone screening to allow for the interior landscape islands to be done. Ms. Wade pointed out those areas on the associated development plan.

The applicant contends that the required zone-to-zone screening would reduce the amount of parking that is on the property, which could negate the zone change and their proposed reuse of the property. The Landscape Review Committee members in attendance and staff have recommended approval of this proposed variance. Ms. Wade said that there are findings and conditions for approval listed on the variance report, and that all permits would be requested as necessary by the applicant. Ms. Wade said that this variance will be null and void should the Commission or the Council choose not to re-zone the property.

Petitioner Presentation - Richard Murphy, attorney, was present representing the petitioner. He said that Mr. Randy Walker was present in the audience. Mr. Walker had grown up in this area and had worked at the store that is being proposed for the change. Also present was Rory Kahly, EA Partners, and Chas Hite, a planner with Mr. Murphy's firm. Mr. Murphy displayed photos of the subject property showing the brick wall encircling the property, which is 8.5 feet to 12 feet tall in some areas. He stated that they could only see inside the property from the aerial photos and that it isn't being used as agriculture. Mr. Murphy said that they are in agreement with the staff conditions. The Zoning Committee voted to recommend deletion of conditional zoning restriction #2 and also to delete "brew pubs" from #4 under the prohibited uses.

Discussion - Mr. Sallee said that staff is not opposed to deleting #2 and the change to #4 as requested, and he apologized for not presenting the conditional zoning portion of the report earlier. However, after speaking with the Division of Building Inspection after the Zoning Committee Meeting, they are concerned with conditional zoning recommendation #3.b.3 regarding signage. The staff had proposed to restrict the lighting and the size of the sign on the subject property. This is not a huge difference from the ordinary type of sign permitted in the B-1 zone, but their concern was that this restriction may be missed at the permitting stage. The staff has told the Division of Building Inspection staff that the removal of this condition will be suggested.

Mr. Owens asked about the restrictions on the lighting of the sign and if it will be illuminated at all. Mr. Sallee said that they are supplied with copies of the Development Plan; and if the Commission chooses to leave it in, the applicant won't be opposed and it will be on the Development Plan for the property.

Mr. Murphy said that they are in agreement with removing #3.b.3. He said that indirect lighting is where there is a spotlight shining on the sign; and with width of the right-of-way available, any signage may have to be placed in the right-of-way, which they would like to avoid. There have been times that spotlights have been a hazard to the neighbors.

Chairman's Comments – Chairman Owens stated that the hearing was now "closed," and he opened the floor for discussion.

Audience Comments - There were no comments at this time.

Zoning Action – A motion was made by Mr. Cravens, seconded by Mr. Berkley, and carried 8-0 (Brewer, Penn and Plumlee absent) to approve MARV 2016-11: R. WALKER PROPERTIES, LLC, for the reasons provided by the staff.

Action on Conditional Zoning – A motion was made by Mr. Cravens, and seconded by Ms. Richardson, and carried 8-0 (Brewer, Penn and Plumlee absent) to approve a change in the conditional zoning restrictions, deleting #2 and deleting "brew pubs" from #4 and deleting #3.b.3.

Variance Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 8-0 (Brewer, Penn and Plumlee absent) to approve the requested variances as recommended by the staff.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Development Plan Action – A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 8-0 (Brewer, Penn and Plumlee absent) to approve ZDP 2016-44: AVON ACRES SUBDIVISION, LOT 2, with the deletion of #11 and #12.

3. FULL PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMEMENDMENT

- a. ZOTA 2016-2: AMENDMENT TO ARTICLE 23A-5 TO ALLOW SCHOOLS FOR ACADEMIC INSTRUCTION IN THE EAR-1 ZONE – petition for a Zoning Ordinance text amendment to allow schools for academic instruction as a principal use in the Expansion Area Residential-1 (EAR-1) zone.

REQUESTED BY: Christian Academy of the Bluegrass, Inc.

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-5 EXPANSION AREA RESIDENTIAL 1 (EAR-1) ZONE

23A-5(b) Principal Uses

1. Single family, two-family, multi-family, and townhouse dwellings.
2. Community Residences.
3. Golf Courses and common open spaces.
4. Churches and Sunday schools, with or without associated child care, in locations where the Comprehensive Plan recommends semi-public uses.
5. Schools for academic instruction.

The Zoning Committee Recommended: Referral to the full Commission.

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

1. The proposed text amendment to the Expansion Area Residential 1 (EAR-1) zone is a timely revision to update the ordinance to be consistent with the 2013 Comprehensive Plan which no longer recommends "semi-public" land uses.
2. The amendment will also permit more flexibility and will encourage dual and efficient use of church properties, when they are in close proximity to larger collector/boulevard or arterial streets, as designated by the Expansion Area Master Plan.
3. By allowing schools for academic instruction as an accessory use to a church on the same property, the proposed text amendment would allow for a church or other religious assembly use to efficiently utilize their facilities throughout the week without increasing any burden on the public infrastructure directly adjacent to a collector street, which will promote a safe and a more desirable development.

Staff Presentation - Ms. Wade directed the Commission's attention to ZOTA 2016-2, a Zoning Ordinance text amendment to Article 23A-5 to allow schools for academic instruction as a principal use in the Expansion Area Residential-1 (EAR-1) zone.

Ms. Wade said that Christian Academy of the Bluegrass, Inc. is making a request to amend Article 23A-5 of the Zoning Ordinance. She explained that Christian Academy of the Bluegrass is a non-profit organization, and they are planning to expand an existing church to allow a school for academic instruction for property located within an Expansion Area Residential (EAR-1) zone. She said that the school is being spearheaded by the North Lexington Church of Christ, which is also located on Hume Road.

Ms. Wade said that when the applicant first came to the staff, their concern was that in the Expansion Area Residential zones, schools are listed in the EAR-2 and EAR-3 zones, but not in the EAR-1 zone. She then said that churches were added after the adoption of the 1996 Expansion Area Master Plan with very specific criteria to allow churches, Sunday schools with or without daycare facilities in locations where the Comprehensive Plan recommended semi-public uses. At that time, there were very specific notations listed in the 2001 and 2007 Comprehensive Plans that allowed a church to locate in the EAR-1 zone. Ms. Wade added that, with the exception of Hume Road, there are no other locations in the EAR-1 zone that allows churches.

Ms. Wade explained that EAR-2, EAR-3, Transition Area Overlay and Community Center zones already allow churches and Sunday schools with or without daycare as a principal use. The applicant is requesting to amend Article 23A to allow a school for academic instruction in the EAR-1 zone as a principal use. She said that in the Expansion Area Master Plan, the Boulevard and greenways are used as the backbone of the Expansion Area and were used to focus the Community Center activities in certain locations. The churches and the schools were meant to be part of the Community Center activities. She said that when the applicant submitted their request, the staff had some concern about making schools a principal use in the EAR-1 zone. She directed the Commission's attention to the Comprehensive Plan, and explained that the EAR-1 zone is permitted on the eastern side of the county near Winchester Road toward the interstate, as well as in the southern part of the county near Hays Boulevard, Richmond Road and Athens-Boonesboro Road, as well as the Armstrong Mill and Tates Creek Road area, near the edge of the Urban Service boundary.

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

Ms. Wade explained that because of the staff's concern of allowing schools in the EAR-1 zone, they are recommending an alternative text to limit churches/schools in this area. She said that, since the land use map is no longer part of the Comprehensive Plan, in the staff's estimation, the alternative text would also correct the semi-public use note that is listed in the Zoning Ordinance today. She said that the staff felt it was important to strike some of the language and replace it with the following language:

Staff Alternative Text:

23A-5(b) Principal Uses

1. Single family, two-family, multi-family, and town house dwellings.
2. Community Residences.
3. Golf Courses and common open spaces.
4. Churches and Sunday schools, ~~with or without associated child care, in locations where the Comprehensive Plan recommends semi-public uses~~ when located adjacent to a street that has the functional classification of collector/boulevard or arterial.

Ms. Wade explained that by having churches and schools restricted to collector/boulevard or arterial roads, it would lessen the impact on the nearby residential area from an increase in traffic flow that comes with schools, as well as decrease the impact from outdoor lighting used, for example for uses such as ball fields. She said that the staff felt that the proposed change would be better suited as an accessory use, and recommends adding the following language to 23A-5(c) Accessory Uses:

7. Child care facilities and schools for academic instruction (kindergarten through eighth grade) when accessory to a church on the same property.

Ms. Wade said that, at the Zoning Committee meeting, the Neighborhood Council, as well as the Committee members, raised some concerns with the staff's recommendation that led to a Supplemental Staff Report that Mr. Sallee would be presenting to the Commission today.

Mr. Sallee said that at the Zoning Committee meeting three weeks ago, there was a considerable discussion about the proposed text amendment. Primarily, the staff expressed their concern about large schools locating in the EAR-1 zone. He said that schools are permitted in the EAR-2 and EAR-3 zones, and up to now schools were not permitted in the EAR-1 zone. He then said that there is less land in EAR-1 zones versus the land that has been rezoned and developed in the EAR-2 and EAR-3 areas.

Mr. Sallee indicated at a pre-application conference for a zone change request, the staff advises the potential applicant whether or not a Traffic Impact Study is necessary with their requested zone change. He said that a school with 110 students would meet the threshold to require a Traffic Impact Study to be conducted. This affirmed the staff's initial concern with the proposed text amendment, as it was proposed, in having schools as a principal use.

Mr. Sallee said that, initially at the Zoning Committee meeting, the staff attempted to address the limitation for schools, and recommended limiting the allowable "grade levels" to only kindergarten through eighth grade. He then said that the applicant was not interested in setting those limits due to their curriculum being much broader for this facility. Mr. Sallee said that the staff did consider limiting the number of students attending the school. However, this could easily be turned into a Zoning Enforcement issue because it would cause the applicant to need to submit head counts or enrollment figures. He said that, in an attempt to resolve the Zoning Committee issues that were raised, the staff would offer to omit the restrictions of the grade levels and leave the schools as an accessory use to a church.

Mr. Sallee then said that the concept for this proposal is that if there is an existing church, this would allow that church to use their gymnasium and the Sunday school space as an academic instruction space during weekdays. He added that the staff believes this is more logical and efficient use of the land as a community and for the church. This would also allow the church to utilize their facilities not only in the evenings and on weekends, but during the day. However, for an independent school that is not part of a church, the staff would suggest adding this possibility as a new conditional use, along with the same restriction about churches being located on an arterial or major collector boulevards type of roadway. He said that this would be an expansion of the use; but by enabling the Board of Adjustment to review these requests on a site-by-site basis, it would involve notification to the surrounding property owners and neighborhood associations, while allowing the intent of the EAR-1 zone to remain intact. This text amendment will not impact the EAR-2 or the EAR-3 zones.

Mr. Sallee directed the Commission's attention to the conclusion of the Supplemental Staff Report, and briefly explained the following revised alternative text:

Revised Staff Alternative Text:

(Note: Text underlined is an addition, and text ~~stricken through~~ is a deletion to the current Zoning Ordinance. More recent revisions are indicated in italicized text.)

23A-5(b) Principal Uses

1. Single family, two-family, multi-family, and townhouse dwellings.
2. Community Residences.
3. Golf Courses and common open spaces.
4. Churches and Sunday schools, ~~with or without associated child care, in locations where the Comprehensive Plan recommends semi-public uses~~ when located adjacent to a street that has the functional classification of collector/boulevard or arterial.

23A-5(c) Accessory Uses

7. Child care facilities and schools for academic instruction ~~(kindergarten through eighth grade)~~ when accessory to a church on the same property.

23A-5(d) Conditional Uses

6. Schools for academic instruction, except as permitted herein; but only when located on a lot adjacent to a street that has the functional classification of collector/boulevard or arterial.

Mr. Sallee said that under Accessory Uses, the staff is proposing to remove “kindergarten through eighth grade” from the draft reviewed by the Zoning Committee, and add “when accessory to a church on the same property.” He then said that the staff is not recommending any change under the Principal Uses from what the staff had recommended to the Zoning Committee. He explained that churches and Sunday schools will no longer be tied to the Comprehensive Plan designation, but rather to a site location on a collector/boulevard or arterial street. Mr. Sallee said that the staff is recommending a new provision under Article 23A-5(d), which will add a new conditional use for child care facilities and schools for academic instruction with the same locational criteria as a church as a permitted use.

Mr. Sallee said that the staff is recommending approval of the revised staff alternative text. He indicated that the following reasons were presented to the Zoning Committee at their last meeting:

1. The proposed text amendment to the Expansion Area Residential 1 (EAR-1) zone is a timely revision to update the ordinance to be consistent with the 2013 Comprehensive Plan, which no longer recommends “semi-public” land uses.
2. The amendment will also permit more flexibility and encourage dual and efficient use of church properties, when they are in close proximity to larger collector/boulevard or arterial streets, as designated by the Expansion Area Master Plan.
3. By allowing schools for academic instruction as an accessory use to a church on the same property, the proposed text amendment would allow for a church or other religious assembly use to efficiently utilize their facilities throughout the week without increasing any burden on the public infrastructure directly adjacent to a collector street, which will promote a safe and a more desirable development.

Mr. Sallee then indicated that the next finding is new from what the Zoning Committee had originally reviewed.

4. The addition of a new conditional use allowing schools located along major collector or arterial streets will alleviate some of the concerns expressed by the applicant, after reviewing the initial comments offered by the staff and those attending the Commission’s Zoning Committee meeting on this subject.

Mr. Sallee concluded by saying that he would try to answer any questions regarding the proposed text amendment to Article 23A-5.

Petitioner Representation – Richard Murphy, attorney, was present, along with Tammy Lewis, who was one of the founding members of Christian Academy of the Bluegrass.

Mr. Murphy gave a brief synopsis as to why his clients were seeking the text amendment to Article 23A-5, which was initially to make schools a principal use in the EAR-1 zone. He said that they had initially spoken with the staff about the text amendment because Christian Academy of the Bluegrass is being founded by a number of members of the North Lexington Church of Christ. He explained that North Lexington Church of Christ is a new church located on Hume Road that is fairly large in size. He said that the proposed text amendment will not be limited to just North Lexington Church of Christ, but his clients thought about starting this process with this church and using the building. He then said that his clients are hopeful that eventually they will move to a free-standing building, so they were concerned with the zoning for North Lexington Church of Christ, as well as the general zoning once the school was big enough to have its own free-standing building.

Mr. Murphy said that North Lexington Church of Christ is in the EAR-1 zone, where daycare facilities were allowed as an accessory use to the church, but this church does not have either a daycare or a school at this point. If they wanted to open a 100-child daycare, they could have done so; but they could not open a 100-child school. This amendment resolves that issue. Mr. Murphy said that they were also thinking about the time when the school moves away from the church property into a free-standing facility. He said that this text amendment resolves that concern as well.

Mr. Murphy reassured the Planning Commission that even if the text amendment was granted, the EAR-1 zone will still be the most restrictive zone out of most of the zoning categories for free-standing schools. He said that even in the Agricultural Rural and Agricultural Urban zones, schools for academic instruction are a conditional use. He then said that the proposed text

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amendment also states that the schools would be a conditional use, but it also places restrictions on the facility location to be only on collector/boulevard or arterial street. The A-R and A-U zones do not have these restrictions. He said that, similarly, schools in the single family zones are a conditional use, but there are no restrictions on the location of the schools.

Mr. Murphy indicated that they do not have anything further to add and confirmed their agreement with the staff's revised recommendation, as noted on the Supplemental Staff Report.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. Walt Gaffield, Fayette County Neighborhood Council, was present. He explained that because of the infrastructure problems in this area, they were initially hesitant with allowing churches to be designated as a principal use and placed anywhere in the EAR zones. However, they reviewed the staff's revised recommendations, as noted on the Supplemental Staff Report, and are in agreement with this proposal.

Chairman's Comments – Chairman Owens stated that the hearing was now "closed," and he opened the floor for discussion.

Action - A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-0 (Brewer, Penn & Plumlee absent) to approve the Staff Alternative Text of ZOTA 2016-2, with the revised conditions proposed by staff and for the reasons provided by staff.

VI. COMMISSION ITEMS

- A. **PFR 2016-1: UNIVERSITY OF KENTUCKY'S SCHOOL OF MUSIC AND WUKY 91.3 FM** – a public facility review of the University of Kentucky's occupancy of property at 2640 Spurr Road as the broadcasting facility for its public radio station and the School of Music's recording facility.

Staff Presentation: Ms. Rackers presented the staff report, and a map of the area located at the intersection of Spurr Road, and Greendale Road, west of Georgetown Road. The University of Kentucky wants to relocate WUKY, their public radio station, and the School of Music's taping and recording studios to this property. They will be renovating the existing building and adding three small prefabricated buildings, which show on the map as a cluster, along with the transmission building and the shop with the storage building located near the parking area. They also want to install a 189-foot monopole broadcasting tower in that in the cluster that was pointed out earlier. The existing building, which is also the former site of the Saint Claire recording studio, is a two-story building that contains approximately 8,800 square feet, and was built in 2003 to accommodate the recording studio after the property was rezoned from A-R to I-1. The University of Kentucky purchased this property in June 2015 to house their taping and broadcasting facility and the School of Music's recording studios. The staff report from that zone change it was stated that the property was not to develop until it had sewer and the road improvements were made. The property did develop and those improvements have not been completed. There is still septic service on the property. Ms. Rackers referred to the Sam's Property and the Larkin Property, which is adjacent to the subject property, from which the sewer will be connected to this property that will be privately maintained. The roadway improvements were discussed on the development plan and will be completed as the property develops.

Ms. Rackers stated that the project includes interior reconfiguration of the existing building, which includes changing the studios into new broadcasting and news taping booths and a control room. There will not be any expansion of the existing building and they are leaving the existing satellite dishes. The only new additions to the property will be the small prefabricated buildings and the broadcasting tower with a six-foot fence surrounding it. The parking will also be expanded from 13 to 36 spaces to accommodate the students and employees. There is also an option for an elevator tower, but that depends on the final construction cost. This move for UK's School of Music will give them a new and improved, larger space. IT will also free up space on the main campus for more typical academic uses.

Ms. Rackers pointed out that the Community Facilities section of the 2013 Plan and Destination 2040 both supports this move. There are several goals and objectives listed in the staff report, as well. They both reference the provision of facilities and services as they relate to making Fayette County a desirable community. These are generally hospitals, schools, utilities, etc.; but it also applies to the provision of public radio and provision of arts which are as much of what make a community desirable as the availability of the more tangible facilities/services, such as hospitals, schools or libraries.

Ms. Rackers reported that the property has been used as a recording studio since 2003, but it is now owned by UK, which requires this additional review. This project is in compliance with the Comprehensive Plan. There is no longer a land use map for the Comprehensive Plan; but the previous map recommended light industrial use for this property, and the Division of Building Inspection has historically made the interpretation that a recording studio is appropriate for an I-1 zone. Ms. Rackers said that Mr. Tim Armstrong from UK is present to answer any questions.

Commission Questions - Mr. Wilson asked where the broadcasting tower is currently located. Mr. Armstrong replied that the tower is on the Patterson Office Tower. It is the only tower on the building and will not be required after the new one is installed.

Mr. Owens asked if there will be co-locations. Ms. Rackers replied that depends on the structure of the new tower, if it is a steel monopole it could be a possibility. If it's a new tower construction for a cellular tower they would need to go before the

Planning Commission but if it's a co-location they would not. They would just need a building permit from Building Inspection to co-locate on the tower. Mr. Owens also asked about the fencing around the transmission boxes and the tower. Mr. Armstrong said they have purchased some pre-engineered masonry buildings for housing the transmission boxes and felt that the building would be secure enough to not be included in the fence. Currently the plan shows a six-foot fence around the tower, which can be changed to accommodate the building as well.

Mr. Wilson asked if there will also be satellite dishes on the property. Ms. Rackers said that there are some currently on the property. Mr. Armstrong said he wasn't sure if they would be re-used or if some from UK would be moved to this property. The dishes will be used to broadcast back to the University of Kentucky or to another remote tower and also as a secondary use of broadcasting if a signal is to be sent to another location. Mr. Armstrong also stated that there will be an emergency generator on a concrete pad, and that it is identified on the drawing.

Audience Comments - There were no comments provided at this time.

Chairman's Comments – Chairman Owens stated that the hearing was now “closed,” and he opened the floor for discussion, or a motion.

Action - A motion was made by Mr. Wilson, seconded by Ms. Richardson, and carried 8-0 (Brewer, Penn & Plumlee absent) to approve PFR 2016-1: UNIVERSITY OF KENTUCKY'S SCHOOL OF MUSIC AND WUKY 91.3 FM, for the reasons provided by staff and with the one recommendation to require fencing and landscaping around the tower and the transmission building.

VII. STAFF ITEMS

A. APA AUDIO CONFERENCE – “2015 Planning Law Review,” to be held in the Division of Planning (Phoenix Building) conference room on Wednesday, June 29, from 4:00 till 5:30 p.m., good for 1.5 training credits. Please let Planning know by the close of business (5:00) Tuesday, June 28, if you plan to attend.

B. Zoning Enforcement Activity Report

A total of 61 new zoning compliance complaints were handled in May. When combined with the 36 unresolved cases carried over from April, a total of 97 cases were investigated. Ten of the new cases were determined to not involve any valid zoning compliance concerns. A total of 42 cases were resolved, meaning that necessary actions were taken by a property owner or occupant to fix a zoning compliance problem. During May 49 conditional uses were inspected, and all were determined to be in substantial compliance.

Nearly 75% of the new cases related to illegal business activities in residential areas, signage and sight triangle issues. Recurring problems with landscaping and roofing businesses continued throughout May, and accounted for much of the effort devoted to addressing businesses that are operating out of residential areas. Many of the signage issues were for temporary signs such as banners and yard signs that had been placed at unauthorized locations. Sight triangle obstructions, such as overgrown bushes and tree limbs at street intersections, are common during spring and summer, and have to be dealt with promptly for public safety reasons.

Staff received a citizen complaint in May regarding new streamers and pennants signage that was installed at a used car dealership on East New Circle Road. This type of signage is specifically prohibited in all zones throughout Lexington-Fayette County, but that provision in Article 17 of the Zoning Ordinance has not been “aggressively” enforced over the years. In response to this complaint, all property owners/business operators along New Circle Road with this type of signage were put on notice that the signage had to be removed by June 15th in order to avoid having to go through a more formal enforcement process. To date nearly all of these businesses, primarily used car dealerships, have complied.

VIII. AUDIENCE ITEMS – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will NOT be heard are those requiring the Commission's formal action, such as zoning items for early re-hearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

IX. MEETING DATES FOR June, 2016

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	June 2, 2016
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	June 2, 2016
Subdivision and ND-1 Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	June 9, 2016
Urban County Council (to approve the Recreation Zota) 1:00 p.m., 2 nd Floor Council Chambers	June 14, 2016
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	June 29, 2016
Zoning Items Public Hearing, Thursday, 1:30 p.m., 2nd Floor Council Chambers	June 23, 2016

X. ADJOURNMENT - There being no further business, the Chair adjourned the meeting at 3:19PM.

Mike Owens, Chair

Will Berkley, Secretary

TLW/TM/CT/BJR/BS/dw