

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

**September 22, 2016**

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

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

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

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Plumlee, seconded by Ms. Richardson, and carried 10-0 (Penn absent) to approve the minutes of the July 28, 2016 and August 25, 2016.

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

1. **ZOTA 2016-3: AMENDMENTS TO ARTICLES 8-16 TO ALLOW RECREATIONAL FACILITIES AS PRINCIPAL USES IN THE B-1 ZONE** – petition for a Zoning Ordinance text amendment to Articles 8-16 to allow recreational facilities and uses operated by non-profit organizations.

REQUESTED BY: Transylvania University

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

The Zoning Committee Recommended: **Postponement.**

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

1. The proposed “recreational facilities” land use was recently considered through a lengthy text amendment process which only recently culminated for recreational and tourism land uses across the entire county in every zoning category. Through that process, the question about recreational facilities and outdoor athletic fields was discussed by a Council Ad-hoc Work Group, the Planning Commission and the Urban County Council in depth. Some expansion of recreational uses was deemed appropriate, but outdoor recreation was determined to be appropriate in more intense business zones, such as the Highway Services Business (B-3) zone.
2. The proposed text amendment would introduce outdoor uses in a zone that is typically located in and near residential neighborhoods and where outdoor uses are currently not allowed due to noise, lighting, traffic and parking impacts. The proposed use is not generally compatible with the other uses within the Neighborhood Business (B-1) zone and generally does not the best use of the community’s neighborhood business zoned land. Recreational facilities will not generate employment opportunities or personal services for the surrounding neighborhoods, or other revenue for the county like retail sales, restaurants, offices, banks, and other similar business uses.
3. The petitioner’s proposed text amendment is not clear and is too broad, as proposed. The text is not clear about what other “uses” might be permitted by this text addition to the Zoning Ordinance. The proposal could be read to allow any use operated by a non-profit organization or to allow any accessory uses to the recreational facility. Additionally, if they must be “operated by a non-profit organization,” this puts more pressure on the government to review the owner and operator’s financial and/or business structure, which has less to do with the land use of the property.

Petitioner Representation: Dick Murphy, attorney representing the petitioner, said that the petitioner would like to request an indefinite postponement.

Action: A motion was made by Mr. Cravens, seconded by Mr. Smith, and carried 10-0 (Penn absent) for an indefinite postponement ZOTA 2016-3.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, September 1, 2016, at 8:30 a.m. The meeting was attended by Commission members: Frank Penn, Karen Mundy, Will Berkley, Joe Smith, Carolyn Plumlee and Mike Owens. Committee members in attendance were: Vaughan Adkins, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee; Tom Martin; Denice Bullock; Jimmy Emmons and Cheryl Gallt; Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services; Chris Schnelle, Division of Police; 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.*

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

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, September 1, 2016, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members Patrick Brewer, 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.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

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

The procedure for these hearings is as follows:

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

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

1. **PALUMBO PROPERTIES, INC. (AMD.) ZONING MAP AMENDMENT & NEWTOWN SPRINGS ZONING DEVELOPMENT PLAN**

- a. **MARC 2015-7: PALUMBO PROPERTIES, INC. (AMD)** – a zone map amendment from a Single Family Residential (R-1D) zone to a Planned Neighborhood Residential (R-3) zone, for 13.81 net (14.47 gross) acres, for property located at 564 Asbury Lane (a portion of). A conditional use 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.

In addition to the Comprehensive Plan mission statement, the Goals and Objectives of the Plan also encourage growing successful neighborhoods (Theme A), which includes the following elements or characteristics: inviting landscape; variety of housing choices; abundant private and public open space; neighborhood focal points; and quality connections with parks, schools and stores.

The subject property is located within the boundary of the recently adopted Winburn & Russell Cave Neighborhoods Small Area Plan (WRCN SAP), which is generally south of Interstate 75, west of Newtown Pike, north of New Circle Road and east of Russell Cave Road. The Plan identifies seven guiding principles for the area that should be further considered by the Planning Commission.

The petitioner proposes this rezoning in order to construct an apartment complex for 252 dwelling units, with 504 bedrooms, a neighborhood swimming pool and clubhouse (part of a corollary conditional use request), and associated off-street parking.

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The Zoning Committee Recommended: **Approval**.

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

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2013 Comprehensive Plan, and the adopted 2016 Winburn and Russell Cave Neighborhoods Small Area Plan (WRCN SAP), for the following reasons:
  - a. The 2013 Comprehensive Plan's Goals and Objectives encourage expanded housing choices (Theme A, Goal #1); support opportunities for infill, redevelopment and adaptive reuse that respect an area's context and design features (Theme A, Goal #2a.); encourage the development of underutilized and vacant land in a compact, contiguous and/or a mixed-use sustainable manner within the Urban Service Area (Theme E, Goals #1b. and #3); encourage providing for well-designed neighborhoods (Theme A, Goal #3); and support preserving urban neighborhoods (Theme D, Goal #3c.).
  - b. The requested zone change and proposed development will utilize vacant land inside the Urban Service Area, expand housing choices within the immediate area and provide a development pattern that respects the adjacent single-family residential neighborhoods by limiting the scale and mass of the buildings.
  - c. The Winburn & Russell Cave Neighborhoods Small Area Plan (SAP) identifies seven guiding planning principles to increase transportation connectivity; increase equity for residents; promote strategies to increase home ownership and improve housing conditions; optimize the use of land to promote mixed housing types; ensure infill is well designed and sensitive to existing neighborhoods; and improve public safety.
  - d. The petitioner's proposal addresses necessary transportation connections to adjoining properties, offers market-rate multi-family dwelling units, and meets many of the design guidelines that ensure such infill is sensitive to the surrounding neighborhoods.
  - e. As part of the SAP planning process, a set of design standards was developed for multi-family developments that provide a framework for evaluating the proposed development. The site planning guidelines have been met, and based on preliminary design work, many of the open space, landscaping, and architectural design guidelines will also be met.
  - f. Adherence to the design standards should ensure a context sensitive development and therefore, agreement with many of the goals established in the 2013 Comprehensive Plan and principles of the Winburn & Russell Cave Neighborhood Small Area Plan.
2. This recommendation is made subject to approval and certification of ZDP 2015-33: Newtown Springs, 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 land use restriction shall apply via conditional zoning:
  - a. A twenty foot (20') tree preservation area (TPA) and landscape buffer shall be established along the eastern property boundary. This buffer shall contain trees and shrubs as required by Article 18 of the Zoning Ordinance. Existing trees over 4" caliper in size shall be maintained within the TPA and buffer. Only diseased, dead and/or dying trees may be removed, and only with the Urban Forester's approval.
  - b. No pole lighting may be installed on the subject property; however, ground-level lighting, lighting for pedestrian paths and sidewalks and indirect lighting shall be permitted.

These restrictions are necessary and appropriate for the subject property to ensure greater compliance with the specific Winburn & Russell Cave Neighborhoods Small Area Plan recommendations, and to better protect the surrounding neighborhoods.

b. REQUESTED CONDITIONAL USE

A private club with outdoor recreational facilities, and accessory off-street parking (in an R-1D zone).

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

- a. Granting the requested conditional use will not harm the public health, safety or welfare, and should not adversely affect the character of the subject or surrounding properties. The proposed use will augment the residential neighborhood, because the use will provide social and recreational amenities to people who currently reside, or will

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reside in this area.

- b. All necessary public services and facilities are available and adequate to the subject site, provided Silver Spring Drive is completed as planned within the development. Sidewalks exist to the site, and will be augmented as development continues in Newtown Springs, and membership in this facility will not be limited to those residents. Sanitary sewer, storm water basins, fire & police protecting and all public utilities are provided in this portion of the Urban Services Area.

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

1. The subject property shall be developed according to the submitted Zoning Development Plan, or as further amended by the Planning Commission.
2. The proposed use shall be operated in accordance with the submitted justification by the applicant.
3. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy of this private club.
4. The Fayette County Health Department shall inspect and approve the pool and facility (kitchen, etc.) prior to the initial operation of the facility.
5. Off-street parking shall be provided on the approved development plan at a ratio at or exceeding one (1) space per four (4) members of this private club.

- c. ZDP 2015-33: NEWTOWN SPRINGS (11/28/16)\*- located at 564 Asbury Lane.

**(Eagle Engineering)**

The Subdivision Committee Recommended: **Approval**, subject to the following 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. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Correct notes #4, #7 and #9.
8. Denote the height of building(s) in feet.
9. Clarify square footage of all buildings relative to the lot coverage and floor area ratio.
10. Clarify proposed open space site statistic.
11. Clarify existing and proposed landscaping (and tree preservation) adjacent to single family zone.
12. Discuss adequacy and the need for improvements to Citation Boulevard.
13. Discuss possible trail linage per the Greenway Plan.
14. Discuss compliance with the Winburn/Russell Cave Road Small Area Plan, and its multi-family design criteria.
15. Discuss note #20.

Staff Zoning Presentation – Ms. Wade presented the staff report on this zone change. She stated that the staff has received 11 letter of correspondence related to this zone change and they date back from last year when this case was originally filed to the most current, which was from last week.

Ms. Wade summarized the staff report and recommendations of the proposed zone change. She said that the staff also recommended two conditional zoning restrictions; one of them is to maintain a 20' buffer along the eastern property line; and the other restriction is no pole lighting on the subject property. She said that the petitioner has an alternative suggestion to present to allow for some pole lighting on the subject site.

Commission Comments – There were questions in regard to the height of the apartment buildings and their location on the subject property.

Development Plan Presentation - Mr. Martin presented the staff report on the development plan and said that the staff was concerned with note #20, about the future Hollow Creek Road connection. The staff would prefer that Hollow Creek Road be built at the time of the final development plan and be barricaded until Citation Blvd is completed to Russell Cave Road.

Commission Comments – There were questions, as well as discussion, in regard to the change in the number of dwellings units.

Conditional Use – Mr. Sallee presented the staff report on the conditional use requested for this development and discussed the five recommended conditions that the staff has recommended.

Traffic Impact Study – Mr. Emmons presented the MPO's report on the Traffic Study, prepared by Integrated Engineering, for this development and said that the consultant's recommendation showed little deviation in the levels of service with or

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without the proposed development and said that the existing infrastructure can sustain the traffic. He said that the staff recommends taking pedestrian and bicycling movement into consideration with the vehicular traffic control device that is chosen at Hollow Creek Road.

Petitioner Presentation – Dick Murphy, Murphy & Clendenen, PLLC, was present representing the petitioner and said that he believes the applicant is in agreement with the staff's recommendations. He said that he has proposed revisions for the conditional zoning restrictions for 3b. The petitioner would like to propose to allow pole lighting at pedestrian scale, which is 12' in height, or less. The petitioner's request was displayed on the overhead projector.

Tom Smith, Sherman, Carter, Barnhart Architects, presented the architectural concerns and design guidelines of the proposed development.

Joe Palumbo, president of Palumbo Properties; Bill McAlpen, Eagle Engineering; Eddie Mesta, Integrated Engineering; and Charles Hite, Murphy & Clendenen, PLLC, were also present.

Commission Comments – There were questions regarding the type of lighting requested for the subject property.

The following citizens were present in favor of this case:

Ms. Shelia Coles, 649 Hollow Creek Road, said that she is for the development but concerned about Hollow Creek Road being opened for connecting traffic.

Lewis Brown, President of Green Acres/Hollow Creek/Breckenbridge Neighborhood Association, said that the association would like to have Hollow Creek Road opened, but they could wait until Citation Blvd. is complete.

The following citizens were present in opposition to this case:

Virgil Jones, 729 Dawson Springs Way, said that he had petitions signed from Newtown Springs and Hollow Creek residents.

James Lile, 1345 Silver Springs Drive, said that he doesn't want the increased traffic and the speeding cars in this area.

Joe Reister, 608 Saunders Spring Way, said that he concerned with the increased traffic and safety issues.

Petitioner Rebuttal – Mr. Murphy said that the connection of Hollow Creek Road has been a concern of theirs from the beginning. He said that speeding should not be an issue on Hollow Creek Road, which will be a T-intersection with Silver Springs Drive and there will be a stop sign there.

Citizen Rebuttal – Mr. Lile said that he doesn't believe that anyone will pay a quarter million dollars for a home, and choose to live directly across the street from townhomes and apartment buildings.

Mr. Jones said that the proposed clubhouse/pool will be for private membership and if the neighbors are not interested in joining, how will this clubhouse/pool be funded.

Staff Rebuttal – Ms. Wade said that the Small Area Plan focused on access and connection of the adjoining the subdivision and to improve existing housing conditions. Mr. Sallee said that the staff doesn't have any objections to adopting the revisions to the conditional zoning or for the conditional use.

Commission Comments – There were questions regarding the pole lighting being limited to 12' in height and the density of the buildings. There was also discussion about growth and development in this area.

Zoning Action – A motion was made by Mr. Cravens, seconded by Mr. Berkley, and carried 9-1(Plumlee opposed, Penn absent) to approve MARC 2015-7: PALUMBO PROPERTIES, INC. (AMD), for the reasons provided by the staff and to amend conditional zoning restriction 3.b. to:

Pole lighting shall be limited to 12 feet in height. In addition, ground-level lighting, lighting for pedestrian paths and sidewalks and indirect lighting shall be permitted.

Conditional Use Action – A motion was made by Mr. Cravens, seconded by Ms. Richardson, carried 9-1(Plumlee opposed, Penn absent) to approve the private club, for the reasons provided by the staff and to amend condition 5. to:

Off-street parking shall be provided on the approved development plan for members of the club who do not reside in the apartment development at a ratio at or exceeding one (1) per four (4) members of the private club who do not reside in the apartment development.

Development Plan Action – A motion was made by Mr. Cravens, seconded by Mr. Berkley, carried 9-1(Plumlee opposed, Penn absent) ZDP 2015-33: NEWTOWN SPRINGS, for the reasons provided by the staff and to amend the following conditions: to remove condition number 11 and 12 and change number 13, 14 15 to "Resolve" at the final development plan.

~~11. Clarify existing and proposed landscaping (and tree preservation) adjacent to single family zone.~~

~~12. Discuss adequacy and the need for improvements to Citation Boulevard.~~

11. Resolve possible trail linage per the Greenway Plan.

12. Resolve compliance with the Winburn/Russell Cave Road Small Area Plan, and its multi-family design criteria.

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13. Resolve note #20.

2. **COMMUNITY VENTURES PROPERTIES, LLC, ZONING MAP AMENDMENT & COMMUNITY VENTURES PROPERTIES, LLC ZONING DEVELOPMENT PLAN**

- a. PLN-MAR-16-00007: COMMUNITY VENTURES PROPERTIES, LLC – petition for a zone map amendment from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone, for 0.35 net (0.54 gross) acres, for properties located at 561, 563, and 565 E Third Street; and a Downtown Frame Business (B-2A) zone, for 2.38 net (3.95 gross) acres, for properties located at 556 and 576 E Third Street; and 225, 261 and 265 Midland Avenue, and 250 Lewis Street. Dimensional variances 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 Plan's 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 subject site is located within the boundary of the Downtown Master Plan (2007) as well as the adopted East End Small Area Plan (2009). Both plans encourage infill mixed-use development along the Midland Avenue and E. Third Street corridors.

The petitioner proposes a rezoning to create a mixed-use project with about 272,000 square feet of space. The project is planned to include retail space, a greenhouse, 102 apartment/condominium dwelling units, 30 senior living dwelling units, a senior community space, a greenhouse, professional offices, and an associated off-street parking area. Dimensional variances are requested with the zone change and a traffic impact study has also been prepared.

**The Zoning Committee Recommended: Approval.**

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

1. The requested Neighborhood Business (B-1) zone and Downtown Frame Business (B-2A) zone are in agreement with the 2013 Comprehensive Plan and the East End Small Area Plan, an adopted element of the Comprehensive Plan, for the following reasons:
  - a. The Goals and Objectives of the 2013 Comprehensive Plan recommend expanded housing choices (Theme A, Goal #1); support infill and redevelopment as a strategic component of growth and identify areas of opportunity for infill that respects the area's context and design features (Theme A, Goal #2 and #2a); provide well-designed neighborhoods and communities, including mixed-use and mixed type housing and multi-modal transportation networks (Theme A, Goal #3); support and showcase local assets to further the creation of a variety of jobs (Theme C, Goal # 1); attract the world's finest jobs, encourage entrepreneurial spirit, and enhance our ability to recruit and retain our workforce (Theme C, Goal #2); provide for accessible community services to meet the health, safety and quality of life of residents and visitors (Theme D, Goal #2); and uphold the Urban Service Area concept (Theme E, Goal #1).
  - b. East End Small Area Plan goals and objectives recommend to: create housing that is affordable, accessible and attractive to a diverse range of people (#2); promote new commercial development to create a mix of uses that respects and enhances the residential neighborhoods of the East End (#3); create a neighborhood where daily needs can be met by walking, cycling or transit (#5); ensure compatibility and encourage a complimentary relationship between adjacent land uses through strong urban design (#7); protect and enhance personal health and the environment (#9); and grow a locally based economy that offers opportunities to all residents (#12).
  - c. The SAP, as well as the Downtown Master Plan that preceded it in 2007, recommends infill mixed-use future land use along the Midland Avenue and E. Third Street corridors (p.60-62).
  - d. The proposed zone change and land uses meet these goals and objectives in that the petitioner is proposing three mixed-use structures; about 130 dwelling units, some designated for senior living; a community space for area senior citizens, a greenhouse and multiple business opportunities that respects and enhances the residential neighborhoods of the East End; and the project will help to improve the gateway into the East End and downtown Lexington.
  - e. The subject properties are located at a principal intersection that is a gateway into downtown. The proposed business zoning will help meet the vision to create a thriving, and dynamic corridor with a mixture of land uses, urban design, and density.
  - f. The proposed B-2A zone is located within the area commonly and historically thought of as "downtown Lexington," and restrictions will ensure compatibility with surrounding land uses, especially the Charles Young Community Center.

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2. This recommendation is made subject to approval and certification of PLN-MJDP-16-000015: Community Ventures Properties, LLC, 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 subject properties:
  - a. **B-2A Zone – Prohibited Uses:**
    1. Establishments for the display, rental or sale of automobiles, motorcycles, trucks, farm equipment, or boats or supplies for such vehicles.
    2. Minor automobile and truck repair.
    3. Pawnshops.
    4. Wholesale establishments.
    5. Any type of adult entertainment, adult arcades, massage parlors, adult video stores and adult bookstores.
    6. Passenger transportation terminals (does not include bus stops).
    7. Drive-through facilities.
  - b. **B-1 Zone – Prohibited Uses:**
    1. Automobile service stations, automobile and vehicle refueling stations, and/or gas pumps.
    2. Repair of household appliances, other than computers or electronics.
    3. Outdoor miniature golf or putting courses.
    4. Circuses or carnivals, even on a temporary basis.
    5. Indoor theaters and arcades, including pinball and electronic games.
    6. Drive-through facilities.
    7. Establishments for the retail or package sale of liquor, beer or wine.

These use restrictions are necessary and appropriate for the subject properties in order to ensure compliance with the 2013 Comprehensive Plan and East End Small Area Plan, and to better protect the surrounding neighborhood and the Charles Young Community Center.

b. **REQUESTED VARIANCES**

1. Increase the maximum height from 35' to 50' (in the B-1 zone)
2. Reduce the minimum front yard from 10' to 5' along Withrow Way
3. Reduce the minimum off-street parking from 28 spaces to 16 spaces (in the B-1 zone)
4. Reduce the minimum front yard from 10' to 0' (in the B-2A zone)

The Staff Recommends: **Postponement of the requested front yard variance from 10' to 0' in a B-2A zone,** for the following reasons:

- a. Approval of this variance could compromise the integrity of the Town Branch Trail project, since no detailed construction plans have been created for that work. Building setbacks from property are justified through Zoning Ordinances to protect private property from work in public rights-of-way, and vice versa.
- b. The existing building at the corner is justified in seeking a variance to these setback requirements, but the extent of the variances requested exceeds the applicant's request.
- c. A variance to the required Midland Avenue setback could be sought in the near future from the Board of Adjustment, once more information is known about the extent of the Town Branch Trail project.
- d. The two new B-2A buildings, as proposed, can be redesigned on the site to meet the required 10' front yard.

The Staff Recommends: **Approval of a height variance from 35' to 44', and approval of the other two requested variances in a B-1 zone,** for the following reasons:

- a. There will be no adverse health, safety or welfare impact to the adjoining neighborhood from these variances. The height variance is necessary to add a roof feature on the proposed building, and to allow it to have a pitched roof, as have others in the East End neighborhood. Parking will be available on the street and across the street in the future, and Withrow Way will be improved with curb, gutter and sidewalk once the B-1 building is completed. There will be no adverse impact to the Isaac Murphy Memorial Garden, directly across Nelson Avenue from this location.
- b. The unusual circumstance surrounding the proposed B-1 property is that it is encumbered by three (out of four) front yard requirements, which is rare for a single building, even in and near the downtown area.
- c. Strict application of the Zoning Ordinance would make the B-1 building less interesting and diverse from other (smaller) buildings in the general vicinity, with the exception of the applicant's building directly across East Third Street from this location. The applicant firmly believes that this project is infeasible without the granting of these variances.
- d. Approval of these variances would not result in an unreasonable circumvention of the Zoning Ordinance, as other commercial and mixed use buildings within ¼ mile of this location are similarly situated and/or deficient in off-street parking on their lots.
- e. The variances have been requested prior to construction and development of the property, and thus, there is no

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willful violation of any existing zoning regulation by the applicant.

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].
4. Prior to obtaining an Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.
5. The parking lot shall be screened and landscaped as required by Article 18 of the Zoning Ordinance.
6. A pedestrian crosswalk shall be installed by the applicant across Withrow Way at the corner of East Third Street, to the approval of the Division of Traffic Engineering.

- c. PLN-MJDP-16-00015: COMMUNITY VENTURES PROPERTIES, LLC (10/30/16)\* - located at 561 E. Third Street. **(Carman & Assoc.)**

The Subdivision Committee Recommended: Postponement. There were some questions regarding the requested variances and compliance with the open space requirements of the zone.

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

1. Provided the Urban County Council rezones the property B-2A/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. 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. Documentation of Division of Water Quality's approval of the Capacity of Assurance Program requirements, prior to plan certification.
8. Dimension the proposed buildings.
9. Denote building height in feet.
10. Clarify lot coverage and floor area ratio in site statistics.
11. Delete rear and side yard no limitation references.
12. Provided the Planning Commission grants the requested variances.
13. Denote adjoining property owner's information for B-1 property.
14. Delete notes #4 and #11.
15. Denote compliance with the Downtown Streetscape Master Plan will be achieved at time of Final Development Plan.
16. Dimension exterior of all buildings.
17. Denote required open space area per B-2 requirements.
18. Delete TPA information and replace with required Tree Inventory.
19. Discuss right-of-way and Legacy Trail on Midland Avenue.
20. Discuss timing of the construction of the proposed B-1 and B-2A properties.
21. Discuss street improvements and two way movement on Lewis Street.
22. Discuss stormwater detention and water quality measures.
23. Discuss environmental easement (covenant) under Building B.
24. Discuss sanitary sewer easement under Building B.
25. Discuss use of small building behind Building C.

Staff Zoning Presentation – Ms. Wade presented the staff report and recommendations on this zone change. She said that she has received a letter of support from the East End Community Development Corporation. She said that the staff as well as the Zoning Committee is recommending approval of this zone change.

Commission Comments – There were questions in regard to the proximity of the Town Branch Trail, which will run along Midland Avenue.

Development Plan Presentation - Mr. Martin presented the updated staff report on this development plan, which was handed out to the Commission. He pointed out that the underground parking is vital to this development. The revised conditions are:

1. Provided the Urban County Council rezones the property B-2A/B-1; otherwise, any Commission action of approval is null and void.

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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. Clarify limits of existing building and label as such.
8. Denote that existing building shall have no front yard ~~no~~ limitation along Midland Avenue and E. Third Street.
9. Provided the Planning Commission grants the requested variances.
10. Denote right-of-way and Legacy Trail on Midland Avenue shall be resolved at the time of Final Development Plan.
11. Denote timing of the construction of the proposed B-1 and B-2A properties shall be resolved at the time of Final Development Plan.
12. Denote street improvements and two way movement on Lewis Street shall be resolved at the time of Final Development Plan.
13. Denote stormwater detention and water quality measures shall be resolved at the time of Final Development Plan.
14. Denote sanitary sewer easement under Building B conflict shall be resolved at the time of Final Development Plan.
15. Denote that architectural elements and fenestration shall be discussed at the time of Final Development Plan.

Variance – Mr. Sallee presented the staff report on the variances for this development and discussed the four conditions that the staff has recommended. He said that the staff understands that the petitioner will be withdrawing requested variance number four.

Traffic Impact Study – Mr. Emmons presented the staff report of the Traffic Study, prepared by Adam Kirk Engineering, for this development and said that this will have a traffic calming effect as a dense urban environment will slow the vehicular traffic.

Petitioner Presentation – Jacob Walbourn, McBrayer, McGinnis, Leslie & Kirkland, PLLC, was present representing the petitioner and said that he believes the applicant is in agreement with the staff's recommendations. He said the applicant is not in favor of vehicular transportation; that he is a large proponent of bicycling and pedestrian facilities, which is the focus of this development.

Mr. Walbourn said that the applicant has withdrawn the requested variance number four, to reduce the minimum front yard setback from 10' to 0' (in the B-2A zone). He also said that the applicant had met with the neighborhood, and listened to their concerns, before the application was filed. He said that the applicant is committed to working with the neighborhood to address issues before the Final Development Plan stage.

Mr. Phil Halobeck, developer representing Community Ventures, presented the design guidelines of the proposed development and discuss how it met the goals of the East End Small Area Plan and the 2013 Comprehensive Plan.

The following citizens were present in favor to this case:

Mr. Thomas Tolliver, 335 E. 3<sup>rd</sup> Street, said that he welcomes this development and wants the East End to have more diversity and is exactly is the East End needs.

Ms. Anita Franklin, near E. 6<sup>th</sup> Street, President of the Windmills Round Association and member of the Board of Charles Young Community Center, does welcome Community Ventures' vision, but has concerns about the young adults in the neighborhood finding employment.

The following citizens were present in opposition to this case:

Mr. Alvin Seals, 772 Caden Lane and member of the Board of Charles Young Community Center, has concerns about the recreation center and consideration of the youth in the area.

Petitioner Rebuttal – Mr. Walbourn said that he believes this proposed development will be an asset to the Charles Young Center.

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

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Zoning Action – A motion was made by Mr. Brewer, seconded by Mr. Owens, and carried 10-0 (Penn absent) to approve PLN-MAR-16-00007: COMMUNITY VENTURES PROPERTIES, LLC, for the reasons provided by the staff, including the conditional zoning restrictions.

Variance Action – A motion was made by Mr. Brewer, seconded by Ms. Richardson, carried 9-0 (Owens abstained, Penn absent) to approve the Requested Variances, for the reasons provided by the staff and to amend condition number one to the maximum height to 44' and to withdraw variance number 4 (in the B-2A zone).

Development Plan Action – A motion was made by Mr. Brewer, seconded by Ms. Richardson, carried 10-0 (Penn absent) PLN-MJDP-16-00015: COMMUNITY VENTURES PROPERTIES, LLC, with the revised conditions provided by the staff.

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

VII. **STAFF ITEMS** –

A. PLAN 2013-122F: SOUTHEAST PARK, UNIT 1, SECTION 1 (12/20/16)\* - located in the 700 & 800 blocks of De Roode Street.  
(Council District 3) **(Hall-Harmon & LFUCG Engineering)**

Note: The Planning Commission approved this plan at their November 14, 2013 meeting, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Denote: Lots 1-4 shall be developed in accordance with the approved Final Development Plan.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Complete owners' certification information per the Land Subdivision Regulations.
11. Provided the Planning Commission grants a waiver to Articles 4-7(d)(1) and 4-7(d)(9) of the Land Subdivision Regulations.
12. Review by Technical Committee prior to plan certification.

Note: The Planning Commission approved a one-year extension on October 9, 2014, subject to the original conditions 1-7 & 9, noting the prior approval of the waiver by the Commission. On March 13, 2014, the Commission also approved the requested waivers to the Land Subdivision Regulations, for these reasons:

1. Not granting the waivers would constitute an exceptional hardship for the applicant by impeding the development of the affordable housing component of the project.
2. Granting the waivers will not negatively impact public health and safety, as the completion of the public improvements will be completed; and warranties on the improvements will be provided by the standard contractual procedures utilized and required by the applicant.
3. Granting the waivers complies with 1-5(c) of the Land Subdivision Regulations that encourages waivers that facilitate infill and redevelopment projects.

Note: A Section of this plat (for lots 1-4) was recorded on March 17, 2014. The Planning Commission granted a one-year extension to the unrecorded portions of this plan on October 8, 2015. The LFUCG Division of Engineering now requests another one-year extension of the prior approval for the unrecorded Section of this plat.

Since this approval will expire prior to the Commission's October 13, 2016 meeting, the staff recommends that the Commission re-approve the unrecorded section of this plat at today's meeting, noting the previously approved Waivers to the Land Subdivision Regulations granted by the Commission.

The Staff Recommended: Re-approval for the unrecorded Section of this plat, subject to the original conditions 1-7 & 9, noting the prior approval of the waiver by the Commission.

Staff Zoning Presentation – Mr. Sallee presented the staff report on this plan and stated that the one year extension that was granted will be expiring prior to the next Commission meeting.

Petitioner Presentation – Mr. Andrew Grunwald, Project Manager from the Division of Engineering, said that some of this property is currently in a legal dispute, which has lengthened the development process.

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Development Plan Action – A motion was made by Ms. Richardson, seconded by Ms. Mundy, carried 9-0 (Berkley abstained, Penn absent) PLAN 2013-122F: SOUTHEND PARK, UNIT 1, SECTION 1, for re-approval of the unrecorded portions of this plan.

VIII. AUDIENCE ITEMS – No such items were presented.

IX. MEETING DATES FOR October, 2016

|                                                                                                                   |                |                 |
|-------------------------------------------------------------------------------------------------------------------|----------------|-----------------|
| Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....                  | October        | 6, 2016         |
| Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....                       | October        | 6, 2016         |
| <b>Subdivision and ND-1 Items Public Meeting, Thursday, 1:30 p.m., 2<sup>nd</sup> Floor Council Chambers.....</b> | <b>October</b> | <b>13, 2016</b> |
| <b>Zoning Items Public Hearing, Thursday, 1:30 p.m., 2nd Floor Council Chambers.....</b>                          | <b>October</b> | <b>27, 2016</b> |
| Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....                   | October        | 26, 2016        |

X. ADJOURNMENT - There being no further business, Chairman Wilson declared the meeting adjourned at 4:46 p.m.

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William Wilson, Chair

\_\_\_\_\_  
Carolyn Plumlee, Secretary

TLW/TM/WLS/dw

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