

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

February 22, 2018

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

Planning Commission members present: Bill Wilson, Chair; Headley Bell; Will Berkley; Patrick Brewer; Mike Cravens; Larry Forester; Karen Mundy; Mike Owens; Carolyn Plumlee; and Carolyn Richardson. Frank Penn was absent.

Planning staff members present: Jim Duncan, Director; Traci Wade; Tom Martin; Aliza Tourkow; Cheryl Gallt; Debbie Woods; Denice Bullock; and Stephanie Cunningham. Other staff members present were Vaughan Adkins, Division of Engineering; Casey Kaucher, Division of Traffic Engineering; Kristan Curry, Environmental Services; Captain Greg Lengal and Captain Joshua Thiel, Division of Fire and Emergency Services; and Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** - A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 9-0 (Bell and Penn absent) to approve the minutes of the January 25, 2018 meeting.

- III. **POSTPONEMENTS AND WITHDRAWALS** – No requests for postponement or withdrawal were presented.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, February 1, 2018, at 8:30 a.m. The meeting was attended by Commission members: Karen Mundy, Carolyn Plumlee, Mike Owens, Will Berkley and Headley Bell. Committee members in attendance were: Vaughan Adkins, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Jim Duncan; Traci Wade; Tom Martin; Cheryl Gallt; Denice Bullock; Captain Greg Lengal & Captain Joshua Thiel, Division of Fire & Emergency Services; Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

Note: Mr. Bell arrived at this time.

1. DEVELOPMENT PLANS

- a. PLN-MJDP-18-00001: HARPER WOODS (4/14/18)* - located at 2311 ARMSTRONG MILL ROAD AND 3539 KENESAW DRIVE.
(Council District 8)
Project Contact: EA Partners

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
12. Provided the Planning Commission makes a finding for the access easement.
13. Denote lot dimensions for single family lots.
14. Resolve timing of construction of Beringer Drive cul-de-sac.
15. Resolve enhanced VUA screening adjacent to single-family lots.
16. Resolve stormwater issues at northwest corner of the property.
17. Resolve proposed lotting pattern for Lots 6 & 7.
18. Resolve location of required street trees.
19. Resolve accessibility to trail.

Staff Presentation - Mr. Martin presented revised staff conditions, which was distributed to the Planning Commission, on this major development and subdivision plan. He said this development plan is associated with a zone change that was heard on March 23, 2017. The revised staff report is as follows:

The Staff Recommends: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.

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5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
12. Provided the Planning Commission makes a finding for the access easements.
13. Denote lot dimensions for single family lots.
14. Resolve Revise note on timing of construction of Beringer Drive cul-de-sac to include a minimum of four single family lots.
- ~~15. Resolve enhanced VUA screening adjacent to single family lots.~~
- ~~16. Resolve stormwater issues at northwest corner of the property.~~
- ~~15.~~ 17. Resolve proposed lotting pattern for Lots 6 & 7.
- ~~16.~~ 18. Resolve Denote location of required street trees in cross-section.
- ~~17.~~ 19. Resolve accessibility to trail.
- ~~18.~~ Provided the Planning Commission grant the requested waivers to Article 6-3, 6-7 and 6-8 of the Land Subdivision Regulations.

Mr. Martin said the applicant is proposing an access street to serve the development, which will be a private street with a series of access easements. He said that the applicant has submitted a waiver request and a finding for the access easement. He said the applicant is proposing 31 single family lots situated relative to the private street and 10 townhouses close to Beringer Drive, which will be terminated at this location. He said that the subject property is dominated by a drainage area, which has been studied and is considered a floodplain. He said this property is governed by Article 19 of the Zoning Ordinance and the Stormwater Manual. He indicated on the development plan the location of the vegetative buffer and the 25-foot floodplain setback, which the applicant has adjusted their plan to accommodate. He said that the subject property is also heavily impacted with easements which will need to be relocated.

Mr. Martin said the staff's new conditions consist of 11 standard conditions, which involve approval from several agencies. He said that condition #12 concerns the Planning Commission making a finding for the access easement and condition #18 concerns approving the waiver. He said that condition #14 is to revise timing of the construction of Beringer Dr. He said that staff is concerned with this because they want to tie the timely construction of Beringer Dr. to a certain number of lots. He said that the condition is phrased so that a minimum of 10 lots are included, for example, 4 single family lots be included along with 6 townhomes. He said condition #16 states to denote the location of the required street trees in the cross-section of the plan. He said initially the applicant proposed all the streets to be an access easement. Staff thought that was inappropriate and recommended it to be a private street, which is required to be built to public standards, which is covered in the waiver request.

Mr. Martin said that the applicant is requesting a waiver to the cross-section of the street to reduce 12-feet from the standard 50-foot width. This would provide a 34-foot wide cross-section, to include an 18-inch swale area on each side and one sidewalk. He said the applicant is requesting these because of the site constraints. He also said that staff was concerned about the 4-foot sidewalk only to be constructed on one side of the street. The applicant is proposing to build the sidewalk on the western boundary only if they don't get permission to build their private trail through the property, which will only be an amenity for the residents since it doesn't connect to the purpose of the street. He said that staff, as well as Traffic Engineering, is comfortable that Beringer Dr. will function as a local street with the requested width reductions, however, a sidewalk is required on both sides of the street, independent of the trail. He said the trail can only be built if the applicant is granted relief from the vegetative buffer requirements in the Stormwater Manual. He said that staff is recommending approval of the reduction in the width of the cross-section.

Mr. Martin said that the second component to the waiver is that the private street isn't ending in a cul-de-sac. The plan depicts it as transitioning into the townhome area with an access easement, which will have adequate space for vehicle turn-around.

Mr. Martin said that the use of access easements, requires a finding by the Land Subdivision Regulations for approval. He said the applicant is asking for approval of the townhouses and six single family lots to be located on access easements. He said the staff is concerned with the orientation of Lots 6 and 7. There are two Bur Oak trees that the applicant will protect, per their justification statement. He depicted on the plan the root system of these trees and the impact that the two lots will have on them. He said that the staff is suggesting to remove the access easement to the south of these lots so that 20-feet will be added to protect these trees. He stated that staff is recommending the Planning Commission to make a finding on the use of the access easement with the exemption for Lot 7 and to have Lots 6 and 7 be reoriented to the private street. He also stated that a Certified Arborist will need to submit a report for the best management practices to protect the two Bur Oak trees.

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Commission Questions - Mr. Owens asked for clarification of the termination of Beringer Dr. with the connection of a minimum of 10 lots being developed. Mr. Martin said that the Beringer Dr. cul-de-sac will need to be built prior to the last 10 lots being issued building permits. Mr. Owens asked why they wouldn't build the cul-de-sac at the same time as the rest of the infrastructure. Mr. Martin stated that they may do that. Mr. Owens also asked for verification of the staff's recommendation for sidewalks to be located on both sides of the private street. Mr. Martin said that is correct. Mr. Owens said that this was granted at an early rehearing with the recommendation of better communication amongst the applicant, neighborhood and the staff. Mr. Martin stated that the applicant has met with the staff numerous times and has made many changes. Mr. Owens also asked for an update of the sidewalks, access easement and the tree arborist. Mr. Martin said the applicant has proposed not to build the sidewalk unless the trail is not approved.

Mr. Berkley said that the Subdivision Committee also had a lengthy discussion regarding the sidewalks and he believed that they recommended that if the path wasn't built then the sidewalk would be built on the other side of the street. He said that person that makes the determination of the path is located in the Planning Department. Mr. Martin said that if the applicant would like to be released from the requirements of the Stormwater Manual, they need to request that from the Commissioner of Public Works. Mr. Berkley asked why they couldn't make that determination. Mr. Martin said that he believes that this determination will be contingent upon infrastructure plans. Mr. Berkley stated that he made the motion in the Subdivision Committee and it was that once that was determined, that would tell the Planning Commission if the sidewalk would need to be built or not.

Ms. Mundy said that this is a private street and referenced a past development that protected a Bur Oak tree that was also located on a private street and the Planning Commission granted a waiver to only build a sidewalk on one side of the street. Ms. Mundy asked "If the trail is built, will the second sidewalk not be built?" Mr. Martin said that is the applicant's proposal, however, the staff is recommending a full sidewalk on both sides of the street. He said the relationship of the sidewalk is relative to the use of the street. Mr. Martin stated that the case that is being referenced concerns a sidewalk that was granted a waiver to not be built and was located on a public street, not a private street, and that the waiver was granted in order to protect that specific tree. He said that the waiver the applicant is requesting is not relative to the tree, but rather to the access easement.

Mr. Cravens asked if there is a right-of-way on that private street. Mr. Martin said that there isn't any government right-of-way.

Ms. Plumlee asked what kind of surface the trail will have. Mr. Martin said the private trail that is being proposed will be approved through the Stormwater Management process. He said that a grass trail may be preferred in the vegetative buffer.

Applicant Presentation – Jacob Walbourn, attorney representing the petitioner, said that there were several items that had been resolved since the first application, such as the access easement, private street, additional buffer space and the timing notation. In regards to Mr. Owens question, Mr. Walbourn said that Beringer Dr. will be constructed, however, the timing is unknown at this time. He said the applicant is in agreement with staff on the timing of the building of the townhomes and the street.

Mr. Walbourn said that the applicant would prefer to build an ADA accessible trail within the floodplain buffer zone, versus a sidewalk on both sides of the street. He said if they are not able to obtain the trail, they are agreeable to a note that says that they will build the sidewalk on both sides. He said that he believes that the trail could move pedestrians in the same manner as a sidewalk.

Mr. Walbourn said that the other significant issue is the Bur Oak trees. He said the applicant is in agreement to collaborate with the certified arborist on the protection of these trees. He said the applicant wants these trees to be an amenity to the community and they have oriented Lot 6 and 7 so that these Bur Oak trees will be located in their front yard, with rear loaded garage areas. He displayed a photo of the orientation with open space in the middle for the Bur Oak trees. He commented on the staff's recommendation to reorient these two lots towards the street and said that he doesn't believe it's necessary. He said that having the lots as displayed uses the Bur Oak trees as an amenity and provides architectural variety in providing for rear-loaded garage units.

Mr. Walbourn said that the Armstrong Mill trail is a proposed shared-use path along Armstrong Mill Road. He said that the subject property's frontage would use about 250 feet of the trail. He said that he believes that a majority of this trail will be constructed at the Urban County Government's expense, which isn't on any of the future plans. He said that the Land Subdivision Regulations state "that when the Comprehensive Plan asks for a shared-use path, in lieu of sidewalks, that the developer is required to dedicate right-of-way or an easement for construction." He said that there is sufficient right-of-way at this time and that the applicant would agree if more space would be needed. He also said that the applicant would only be required to build the cost of a 4-foot wide pedestrian sidewalk. He said that the staff is recommending a 12-foot wide shared-use trail. He said that the applicant will provide a fee in lieu of providing the sidewalk, to be utilized when the trail system does come through.

Commission Questions - Ms. Plumlee asked if the Bur Oak tree will maintained by the Homeowner's Association. Mr. Walbourn said it will be part of the open space area that will be maintained by the Homeowner's Association.

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Ms. Mundy asked if the easement behind Lot 7 is removed, would that make enough space for two driveways, which would then front the street. Mr. Walbourn said that is correct.

Mr. Owens asked who would build the trail amenity (located in the vegetative buffer) if the request is granted. Mr. Walbourn said that the applicant would build the trail. Mr. Owens then asked if the trail would be paved or concrete. Mr. Walbourn said that the note on the plan that was submitted states that the trail would need to be paved to be ADA compliant. Mr. Owens then asked when the decision would be made to build the sidewalk rather than the trail. Mr. Walbourn said that decision would be made after the Final Development Plan approval and certification. He said that there are a number of easements that need to be relocated and the waiver to the buffer requirements, and if that can't be accommodated, the sidewalk would be built before the units are built. Mr. Owens also asked about the orientation of the five units in front of the Bur Oak trees, would their parking be in the rear of those units. Mr. Walbourn said that they would have rear-loaded garages. Mr. Owens said that according to the drawing of the units, there isn't a sidewalk leading to the front door of these units. Mr. Walbourn said that the sidewalks to houses are not depicted on this drawing, but there will be access to the fronts of the homes. Mr. Owens also mentioned the Armstrong Mill trail. Mr. Walbourn said that the accessibility was discussed heavily in the latest meeting with the staff and their staff report has as condition #17 to resolve the accessibility to trail. He said that the staff has asked the applicant to construct a 12-foot shared-use trail and that he is verifying that the request is in conformity with the Land Subdivision Regulations, which is 6-8(n)(3).

Mr. Wilson asked for clarification of condition #17, the accessibility to the trail. He said that the staff didn't address that condition. Mr. Martin said that Scott Thompson, Bicycle & Pedestrian planner, has requested 12-foot public trails to be constructed. The Land Subdivision Regulations do not require it. He said that Armstrong Mill Road is a collector street and the applicant will be required to do improvements under their approval of the cross section through the Division of Traffic Engineering.

Mr. Berkley asked for verification that shared-use trails are 12-feet wide. Mr. Martin said that it is stated in the design manual that was adopted by reference in both the Land Subdivision Regulations and the Engineering Manuals. He said that the public has built several of them in Lexington to this design standard, such as the Legacy Trail.

Mr. Bell asked if the trail is a standalone trail that doesn't connect to anything. Mr. Martin said that it will run through the Peninsula property and connect to Jacobson Park, as part of the public system. Mr. Bell asked that other than the environmental issues, is there another reason why the internal trail wouldn't be approved. Mr. Martin said that the vegetative buffer required by the Stormwater Manual can't be disturbed and this is a private amenity that would require special permission to be able to construct the trail at that location.

Mr. Cravens asked Mr. Walbourn why the applicant wants to build the trail and not the sidewalk. Mr. Walbourn said that the applicant believes that it is a superior amenity and makes the property more marketable. Mr. Cravens also asked if Lot 7 will act like a community green space area. Mr. Walbourn said that is correct.

Ms. Mundy clarified that there are 2 trails. One of them is the Armstrong Mill trail, which the staff is recommending to be 12-foot wide and the other trail will meander the green space area as an internal trail. Ms. Mundy asked if there are regulations on the width of the internal trail. Mr. Walbourn said that will be a private trail and is proposed to be 6-feet wide, which will intersect with the public trail. He said that the public trail is proposed to travel across Man o' War Blvd. and alongside Hickman Creek. He said that the Armstrong Mill trail has been constructed in spots on either side of the subject property. He said that the applicant's proposal was to pay for the trail, what is required to be constructed, to be used at the time the trail will be constructed.

Mr. Martin clarified Article 6-8(n)(3) from the Land Subdivision Regulations, regarding the shared-use path standard. He said that it states that "the maximum obligation of the developer shall be the cost of a conventional pedestrian sidewalk," which means that they are either obligated to build or pay for a 4-foot sidewalk. Mr. Berkley asked if the staff is trying to obligate the applicant to construct the 12-foot trail. Mr. Martin said that the staff always asks, so that the public wouldn't have to pay for it.

Mr. Owens asked about the timing of construction of the sidewalk or trail. Mr. Martin said that when the applicant submits their infrastructure plans, the design for the trails will need to be submitted.

Mr. Wilson asked for clarification of reorienting Lot 7. Mr. Martin said that removing the access easement and reorienting the lots it will better accomplish the protection of the Bur Oak trees and their root zones. He said that the lots can front on the private road. Mr. Martin reminded the Planning Commission that the applicant is asking for permission for the access easements.

Mr. Cravens asked if the arborist will be consulted to consider the configuration of the lot. Mr. Martin said that the staff would like a report from the Urban Forester, stating the best management and practices.

Mr. Walbourn said that the applicant agrees to have the Urban Forester review and submit their recommendations. Mr. Martin stated that if the Urban Forester recommends to change the lotting pattern, those changes will be reflected on final record plat.

Citizen Comment – There were no citizens present to speak to this application.

Motion – A motion was made by Mr. Cravens, seconded by Ms. Richardson, for approval of PLN-MJDP-18-00001: HARPER WOODS, for the reasons provided by the staff.

Commission Discussion – Mr. Berkley referenced condition #17 and asked if it's the staff's intention to have the applicant build the 12-foot path along Armstrong Mill Road. Mr. Cravens said that that condition as the staff presented, has it that they still need to resolve that condition and said that the applicant is only obligated for 4 feet of the path.

Action – Motion passes 10-0 (Penn absent).

Findings Action - A motion was made by Mr. Cravens, Ms. Richardson, carried 9-1 (Plumlee opposed; Penn absent) for approval of the FINDINGS FOR USE OF ACCESS EASEMENT PETITION PLN-MJDP-18-00001: HARPER WOODS, for the reasons provided by the staff, including the recommendations of the Urban Forester.

Waiver Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson, carried 8-2 (Owens and Plumlee opposed; Penn absent) for approval of the FINDINGS FOR PETITION FOR WAIVER OF LAND SUBDIVISION REGULATIONS PLN-MJDP-18-00001: HARPER WOODS, per the applicant's request.

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, February 1, 2018 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, Larry Forester, 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.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENTS

1. **ZOTA 2018-1: AMENDMENT TO ARTICLE 8-1 FOR ACCESSORY STRUCTURES FOR PLACES OF WORSHIP** - petition for a Zoning Ordinance text amendment to Article 8-1 of the Zoning Ordinance to increase the size of allowable accessory structures.

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REQUESTED BY: Bharatiya Temple and Cultural Center

PROPOSED TEXT: (Note: Text underlined indicates an addition; text ~~dashed through~~ indicates a deletion to the current Zoning Ordinance.)

ARTICLE 8-1: AGRICULTURAL RURAL (A-R) ZONE

8-1(d)Conditional Uses (Permitted only with Board of Adjustment approval.)

20. Places of religious assembly which may be allowed an additional 10,000 square feet of building over and above their existing square footage, provided that the structure(s) existed or the religious entity had approval of the Board of Adjustment and owned 20 or more contiguous acres prior to the adoption of the Rural Land Management Plan on April 8, 1999.

Places of religious assembly may erect accessory structures, without permanent walls, provided that the size of the accessory structures shall not exceed thirty-five percent (35%) of the floor area of the principal structure. The accessory structures shall not count against the otherwise allowed 10,000 square feet for a principal structure.

STAFF ALTERNATIVE TEXT:

(Note: Staff alternative text is noted with **bold underline** text below)

8-1(d)Conditional Uses (Permitted only with Board of Adjustment approval.)

20. Places of religious assembly, which may be allowed an additional 10,000 square feet of building over and above their existing square footage, provided that the structure(s) existed or the religious entity had approval of the Board of Adjustment and owned 20 or more contiguous acres prior to the adoption of the Rural Land Management Plan on April 8, 1999.

Places of religious assembly may erect accessory structures, without permanent walls, provided that the size of the accessory structures shall not exceed thirty-five percent (35%) of the floor area of the principal structure. **These** accessory structures shall not count against the otherwise allowed 10,000 square feet for a principal structure.

The Zoning Committee Recommended: **Approval.**

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

1. The proposed text amendment to allow accessory structures for places of religious assembly is consistent with the community's goals of preservation of the agricultural and rural character that makes Lexington-Fayette County unique. The proposed restriction will limit accessory structures in size and scope so they will not have a detrimental effect on the Agricultural Rural (A-R) zoned land in the Rural Service Area.
2. The proposed text amendment complies with the requirements of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

Staff Presentation – Ms. Wade presented and summarized the staff report and recommendations for this text amendment, which were distributed to the Planning Commission. She said that the applicant is Bharatiya Temple and Cultural Center and they are asking to allow accessory structures without permanent walls for places of worship, and for such structures to not count towards the existing 10,000 square-foot limitation in the Agricultural Rural (A-R) zone. She said the applicant is proposing limiting any such accessory structure(s) to 35% of the principal structures on the property. She said that limitations are being proposed to prevent excessive use of the structures and to prevent them from being enclosed in the future, circumventing the requirements of the Zoning Ordinance. She said the applicant's proposed text is in addition to what is currently a conditional use in the Agricultural Rural (A-R) zone, (number 20). By allowing it as a part of the conditional use, an applicant would need to go the Board of Adjustment in order to be permitted to have this accessory use.

Ms. Wade gave a brief history of the 10,000 square-foot restrictions for conditional uses in the Agricultural Rural (A-R) zone. She said that in 1994, the Urban County Council initiated changes to the (A-R) zone, and their primary concern was land use incompatibility in the Rural Service Area for some conditional uses; the 10,000 square-foot limitation was implemented for non-agricultural conditional uses; a 10-acre minimum was established for single-family and conditional uses; a 300-foot setback was established; the reduced number of principal and conditional uses was reduced; and extensive research was conducted about

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places of religious assembly in the Rural Service Area. She said that in 2004, the question of "if an existing church or temple existed in the Agricultural Rural (A-R) zone, does the church get an additional 10,000 square-feet", was brought to the Board of Adjustment. The Board was determining on a case-by-case basis if that was permitted or not. She said due to the number of these cases a text amendment to change the language of the Zoning Ordinance to clarify the standard was processed. She said that in 2017, there was another text amendment to change the language of the conditional uses from "churches and Sunday schools" to "places of religious assembly."

Ms. Wade also referenced chapter 2 of the Rural Land Management Plan. This portion of the Plan provides information regarding religious land uses in Rural Service Area. She said that many religious assemblies are not located in Agricultural Rural (A-R) zones, but approximately 45 of them are located within the Agricultural Rural (A-R) zone. She also said that the Planning Commission should consider the Religious Land Use and Institutionalized Person Act (RLUIPA) federal law that was adopted in 2000. This law was intended to protect and ensure fair and equal treatment of religious land uses within a community, and to protect these entities from discrimination by zoning or landmarking laws. She said that the community can't infringe on the religious practices of any group through its land use regulations.

Ms. Wade said the staff is supporting the applicant's proposal and doesn't believe that it will unduly infringe on the Rural Service Area, and that it is consistent with the Rural Land Management Plan. She said that the staff is recommending two changes to the text amendment that was requested by the applicant. One of them, is a correction, adding a comma in the first paragraph. The second change is "the" to "these" in the applicant's proposed text. This will clarify that only the structure without permanent walls will not count toward the 10,000 square foot limitation. She said that the staff is recommending approval for the staff alternative text.

Ms. Wade noted that one email was received and is specific regarding the applicant, and she reminded the Planning Commission to concentrate more on the policy decision. She also noted that there are some incorrect statements in the email. This email was distributed to Planning Commission members.

Commission Questions – Ms. Plumlee asked if the openness of the accessory use count against the 10,000-feet, so that perhaps a ball field could be built. Ms. Wade said that an athletic/recreational field is an accessory to any permitted use and once a church or religious assembly has a conditional use, they can install a recreational field as long as it doesn't have an impact to the square-footage. Ms. Plumlee said that this lot is a non-conforming use. Ms. Wade said that this lot is not non-conforming, it is a legally created lot and has a conditional use was approved by the Board of Adjustment, which is a permitted use not a non-conforming use.

Mr. Owens asked if this is a 10-acre site. Ms. Wade said that she hasn't specially researched the applicant's property because this isn't the hearing for that matter. Mr. Owens asked if there are any non-conforming lots that are less than 40-acres in the rural areas. Ms. Wade said that there are a number of A-R parcels that are less than 40 acres. She said that doesn't prohibit the Board of Adjustment from considering a conditional use on those lots. Mr. Owens said that there is also language that says that conditional uses on a non-conforming lot shall not increase the non-conformity of the use. Ms. Wade said that it shall not increase the non-conformity of the use. Ms. Tracy Jones, Department of Law, was asked to clarify. Ms. Jones said that this is being proposed by a specific applicant, but this is a text amendment; this isn't a zone change and is not specific to their property. If this text amendment is enacted, it will be added to the conditional use list in the Zoning Ordinance and it will apply to every case, which will be evaluated by the Board of Adjustment. Ms. Wade said that Article 4 details non-conforming lots and uses, which can be addressed more generally in a work session if there are questions or concerns.

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

Ms. Plumlee asked if this is an accessory use if it is approved. Ms. Wade said that this is for an accessory structure. She said the staff believes that the principal use, which is the place of religious assembly, is asking to construct a structure to hold their existing conditional use in an outdoor setting, if granted from the Board of Adjustment. This will not be an additional use. Ms. Plumlee referenced Article 8-1(d)21, and said going forward and said that there isn't any use that describes a religious building with conditions that they would have to have. Ms. Wade said that the Board of Adjustment would consider that on a site-by-site basis. Ms. Plumlee asked why this is a text amendment and not going before the Board of Adjustment. Ms. Wade said that the Board of Adjustment doesn't have the authority to consider text amendments. She said that this is a policy for the Planning Commission and the Council, not the Board of Adjustment, to decide on how the Zoning Ordinance will read.

Applicant Presentation – Mr. Murphy, attorney representing the petitioner, said there is a petition with 356 signatures, which was submitted to the record. He gave a brief synopsis of the Hindu traditions and said that some religious observances are required to be held outdoors. He said that they have been holding these events outdoors with rented tents and the cost is keeping them from holding these outdoor observances as often as they are supposed to. He said that they would like to construct a picnic shelter, without any walls, which they discovered was technically considered a structure, by the Zoning Ordinance and Building Code. He said that in the Agricultural Rural (A-R) zone, churches are limited to 10,000 square feet and this temple is not eligible for any of the exceptions because they require that something had been built prior to 1995.

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Mr. Murphy clarified the size of the existing building; the PVA lists the property as having 17,000 square feet of built space. He said that it's only 10,000 square feet and the footprint of the building is deceiving, which is less than 8,500 square feet. He said that the second floor is a loft floor and is only about 1,500 square feet and the building total square footage is less than 10,000 square feet.

Mr. Murphy said that the applicant is very mindful of the need to preserve the agricultural character of the of the A-R zone. He said that after conferring with the staff; they concluded that churches are a conditional use in A-R zones, so that this will listed as part of that conditional use. He said that if the alternate text is approved, the applicant will then have the right to apply to the Board of Adjustment for permission to build their shelter. He said that this structure is limited to 35% of the floor area of the principal structure. This structure would not be any type of shed, for storage, and will not have any walls or restroom facilities.

Mr. Murphy said that the applicant didn't mention the requirements of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) because they are asking permission not demanding. He said that the staff referenced it, and stated that governments can't overly burden religious organizations unless there is a compelling government interest or unless the least restrictive means of complying with that interest. He said that is why there are so many restrictions with this text amendment.

Commission Questions - Mr. Wilson asked again what the square footage of the church is. Mr. Murphy said that the temple has a total of 10,000 square feet, with both floors. Mr. Wilson also asked if this structure will be limited strictly for the church's use and not to be rented for private events. Mr. Murphy said that the structure will not be open to the public, only available to members of this temple.

Mr. Brewer said that the Planning Commission should not be making their decision based on this specific property but upon the totality of how this can be used throughout the urban county area. He said that the questions of the uses of this shelter should be set aside and the Planning Commission should be focusing on this text amendment.

Mr. Wilson said that he wanted to know what the applicant's intent would be for the shelter.

Mr. Murphy said that they agree to limit the outdoor structure to be available only for the religious purposes of the church or place of religious assembly for which it is associated with. Mr. Wilson said that he agrees with these limitations.

Mr. Forester said that the applicant's intent is very clear and asked for clarification of Mr. Wilson's comments. Mr. Wilson said that the staff's recommendation states "that places of religious assembly may erect accessory structures, without permanent walls, provided that the size of the accessory structures shall not exceed thirty-five percent (35%) of the floor area of the principal structure." He said that it doesn't state that it can or can't be used for commercial purposes.

Ms. Richardson said that the Board of Adjustment will need to determine if any structures can be built on these properties. She said that this is just text of the Zoning Ordinance. Mr. Wilson said that this will affect all churches that want to take advantage of this provision.

Ms. Mundy said that the Planning Commission is having to view this as an overall conditional use. She said that she has experience with many churches related to these restrictions, and this particular applicant wants to increase their total square footage that is permitted in the A-R zone. She expressed concern about increasing the square footage above 10,000.

Citizen Comment – There were no citizens present to speak to this application.

Applicant Rebuttal - Mr. Murphy said there most likely will be other churches that would like to install this type of structure but the same restrictions must apply; the openness, no walls; no restroom facilities; and the size of the structure. This text amendment only gives them the right to ask the Board of Adjustment. He said that the Board of Adjustment will ask these same questions regarding the individual circumstances of each property.

Staff Rebuttal – The staff didn't have a rebuttal at this time.

Commission Discussion - Mr. Owens said that he viewing the global aspect of this application and said that the Planning Commission does get site specific on text amendments and said that those details don't apply. He said the Planning Commission predecessors had made the 10,000 square-foot limitation. The 2013 Comprehensive Plan, the revised Rural Land Management Plan, and the 2018 Goals and Objectives all state to preserve the rural character of the rural area. He said that he believes this is a non-conforming lot and the use on it has restrictions. Ms. Wade interrupted and asked him to not be specific to the applicant's property and said that is not the role of the Planning Commission at this time. Mr. Owens continued and said that the 10,000 square-foot limit is in the Zoning Ordinance, for all non-agricultural conditional uses in the rural area, for a reason. He asked how this will be regulated to prevent commercial activities from taking place in these structures. He said that the applicant is asking for "non-permanent wall," he asked if that meant that roll-up walls could be

used. He said that he believes the 35% is excessive and if it is allowed, a larger facility could ask and they could go to 7,000 square feet.

Mr. Cravens said that he doesn't see the difference between this and farms. He said that farms are allowed to do assemblies without permission.

Ms. Plumlee said that plenty can go wrong with this, such as, enforcement which will be difficult. She said that it challenges the rural area as we know it now.

Mr. Brewer said that he doesn't agree with making policy based on religion. He said that the role of the Planning Commission is to give the entities permission to ask the Board of Adjustment and to trust that body to regulate the restrictions.

Mr. Forester said that as a past member of Board of Adjustment, they have made restrictions and enforcement regulations on properties.

Mr. Wilson said that is confident that the Board of Adjustment will be asking similar questions that the Planning Commission is concerned about and the applicants have agreed that this will only be used for religious purposes.

Action - A motion was made by Mr. Owens, seconded by Ms. Plumlee, and failed 4-5 (Brewer, Cravens, Forester, Richardson, and Wilson opposed; Berkley and Penn absent) for disapproval of ZOTA 2018-1: AMENDMENT TO ARTICLE 8-1 FOR ACCESSORY STRUCTURES FOR PLACES OF WORSHIP, for the following reasons:

1. This text amendment doesn't support the intent of the A-R zone, because allowing increases to accessory structures to religious organizations permitted as a conditional use with or without walls for use doesn't promote agriculture or related uses, and doesn't preserve the rural character of the Rural Service Area.
2. The proposed text amendment will create an additional accessory use to a conditional use that will allow more structures in the A-R zone, which will not promote agriculture nor preserve rural character, and therefore should not be allowed in this zone.

Commission Discussion – Mr. Wilson said that he would like to add to the text amendment that the space can't be rented out for commercial use.

Ms. Wade said that if the Planning Commission's intention is to change the text, she requested that the staff have a recess to review the member's suggested text.

Action – A motion was made by Mr. Cravens, seconded by Ms. Richardson, to approve ZOTA 2018-1: AMENDMENT TO ARTICLE 8-1 FOR ACCESSORY STRUCTURES FOR PLACES OF WORSHIP, for the alternative text provided by the staff.

Discussion on the Motion – Ms. Mundy said that there should be a limit of commercial use of that structure, to prevent sales, parties, etc. Mr. Owens said that he agrees with Ms. Mundy's suggestion and would also like to remove the 35% of the floor area of the principal structure. Mr. Wilson said that would require an amended motion. Mr. Brewer said that he would like to defer back to the recommendation from the staff, to take a recess to draft a revised text for this amendment.

Planning Commission took a recess at 3:42 p.m. until 3:55 p.m.

Action – Mr. Cravens amended his motion, seconded by Ms. Richardson, to approve ZOTA 2018-1: AMENDMENT TO ARTICLE 8-1 FOR ACCESSORY STRUCTURES FOR PLACES OF WORSHIP, for the revised alternative text provided by the staff, as follows:

STAFF ALTERNATIVE TEXT:

(Note: Staff alternative text is noted with **bold underline** text below)

8-1(d)Conditional Uses (Permitted only with Board of Adjustment approval.)

20. Places of religious assembly, which may be allowed an additional 10,000 square feet of building over and above their existing square footage, provided that the structure(s) existed or the religious entity had approval of the Board of Adjustment and owned 20 or more contiguous acres prior to the adoption of the Rural Land Management Plan on April 8, 1999.

Places of religious assembly may erect accessory structures, without permanent walls, provided that the size of the accessory structures shall not exceed thirty-five percent (35%) of the floor area of the

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principal structure or 3,500 square feet, whichever is less. These accessory structures shall not count against the otherwise allowed 10,000 square feet for a principal structure.

Commission Discussion – Mr. Brewer asked staff to verify the existing, prohibited uses, in the A-R zone. Ms. Wade said that one of the restrictions that was added during the Tourism and Recreation ZOTA in the prohibited use list is #25, which states; special events; parties; festivals; concerts; and children's rides related to a commercial purpose. She said that the staff believes that places of religious assembly would not be able to rent out their facilities for a commercial purpose, because that would be a prohibited use. She said that the Board of Adjustment could specifically add that to their restrictions on an individual property. She said to the Planning Commission that the Planning Division is a cohesive staff and even though the Zoning Compliance section doesn't attend these hearings, we all do meet as a staff to discuss Board of Adjustment cases, as well as, the cases that come before the Planning Commission. She said that the concerns that are being voiced here are relayed back to the rest of the staff.

Motion passes 7-2 (Owens and Plumlee opposed; Berkley and Penn absent).

VI. COMMISSION ITEMS

1. PLANNING COMMISSION WORK SESSION – Following adjournment of today's meeting, the Planning Commission will meet in a work session. The Commission will be testing and training on the Granicus voting system, reviewing components of the Accela Citizen Portal, and possible other matters.

Motion - A motion was made by Mr. Forester, seconded by Carolyn Richardson, pursuant to KRS 61, 810, 1(c) to go into a closed session for the purpose of discussing litigation matters involving the Urban county Government's Planning Commission.

Chairman Wilson called the Planning Commission back into order.

2. PLAN 2015-93F: ASHLAND PARK, INC. SUBDIVISION, NO. 12, LOT 3 (AMD) - located at 508 Clinton Road. **(2020 Land Surveying)**

Note: The purpose of this amendment is to reduce the building line setback from 50' to 41'.

The Staff recommends approval, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Addressing Office's approval of street names and addresses.
4. Relocate north arrow and orient north to the top of the page.
5. Addition of responsibility note for maintaining the drainage.

Staff Comment - The staff didn't have any comment at this time.

Citizen Comment - There were no citizens present to speak to this application.

Motion - A motion was made by Mr. Forester, seconded by Ms. Mundy, carried 9-0 (Berkley and Penn absent) for approval of

PLAN 2015-93F: ASHLAND PARK, INC. SUBDIVISION, NO. 12, LOT 3 (AMD), for the reasons provided by the staff.

VII. STAFF ITEMS – No such items were presented.

VIII. AUDIENCE ITEMS – No such items were presented.

IX. MEETING DATES FOR MARCH 2018

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	March 1, 2018
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	March 1, 2018
Subdivision and ND-1 Items Public Meeting, Thursday, 1:30 p.m., 2nd Floor Council Chambers.....	March 8, 2018
Work Session, Thursday, 1:30 p.m., 3 rd Floor Phoenix Building (101 East Vine Street).....	March 15, 2018
Zoning Items Public Hearing, Thursday, 1:30 p.m., 2nd Floor Council Chambers.....	March 22, 2018
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	March 28, 2018
Work Session, Thursday, 1:30 p.m., 3 rd Floor Phoenix Building (101 East Vine Street).....	March 29, 2018

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- X. **ADJOURNMENT** - There being no further business, Chairman Wilson declared the meeting adjourned at 1:46 p.m.

William Wilson, Chair

Carolyn Plumlee, Secretary

TLW/TM/dw

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