

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

October 25, 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; Larry Forester; Karen Mundy; Bruce Nicol; Mike Owens; Frank Penn and Carolyn Plumlee. Patrick Brewer was absent.

Planning staff members present: Jim Duncan, Director; Traci Wade; Tom Martin; Hal Baillie; Keyu Yan; Chris Woodall; and Debbie Woods. Other staff members present were: Vaughan Adkins, Division of Engineering; 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 8-0 (Brewer absent) to approve minutes of the September 27, 2018 and October 11, 2018 meetings.

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

1. **JUSTICE PLAZA, LLC ZONING MAP AMENDMENT & MAN O' WAR DEVELOPMENT, UNIT 2A, LOT 10 (AMD) ZONING DEVELOPMENT PLAN**

- a. PLN-MAR-18-00015: JUSTICE PLAZA, LLC (11/4/18)*- a petition for a zone map amendment from an Interchange Service Business (B-5P) zone to a Neighborhood Business (B-1) zone, for 1.68 net (2.24 gross) acres, for property located at 1916 Justice Dr. A dimensional variance is also requested.

COMPREHENSIVE PLAN AND PROPOSED USE

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

The petitioner proposes a Neighborhood Business (B-1) zone in order to permit a wider range of business uses on the subject property. The site is currently occupied by two restaurants, but a third space within the existing building (constructed in 2017) remains vacant.

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

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

1. The existing Interchange Service Business (B-5P) zone is appropriate for the subject property for the following reasons:
 - a. The B-5P zone is only permitted at the interstate interchanges in Fayette County, and the uses within the B-5P are permitted to accommodate the traveling public and their needs. The intent statement in Article 11 of the Zoning Ordinance clearly indicates that the B-5P zone should be located at limited access highways, which the site has met since 1989.
 - b. In 2015, a rezoning for the adjacent 4.6 acres of land was approved to the B-5P zone because it was determined to be appropriate at this location within the Urban Service Area. The applicant has not provided a justification for why the existing zoning is inappropriate at this site, specifically that which exists along the interstate and Pleasant Ridge Drive area.
 - c. The subject property could be occupied as proposed in 2016 by the petitioner under the existing zoning for many uses that would be compatible with this portion of the Urban Service Area, and with surrounding properties.
2. The proposed Neighborhood Business (B-1) zone is not appropriate for the subject property for the following reasons:
 - a. Reducing the amount of B-5P zoning does not serve the needs of the traveling public, visitors and tourists when they are in Fayette County.
 - b. If the B-1 zone is permitted on the north side of Pleasant Ridge Drive, it would be isolated and physically separated by a collector street (35 mph vehicle speeds) from the nearby neighborhood.
 - c. The width and speed of vehicles along the collector street do not make the subject property easily accessible by the residents of the neighborhood via non-vehicular modes of transportation.
 - d. Although the petitioner contends that the proposed B-1 zone is appropriate, they have not provided a justification.
3. There has been no major unanticipated change in this immediate area since the 2013 Comprehensive Plan was adopted. The only change that has occurred has been to add more B-5P zoned land in 2015 at the request of the petitioner's parent/sister corporation.
4. Numerous other business zones within the immediate area allow an athletic club facility, including the P-1, B-3, B-4, B-6P, I-1 and CC zones, as a principal permitted use. Therefore an athletic club facility can easily occupy an existing structure or construct a new building in any of the above referenced zones. Within the immediate area, five athletic club facilities

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have already been permitted and are operational to serve the needs of the area. For these reasons, the staff finds that there is no compelling need for the proposed B-1 zone change.

b. REQUESTED VARIANCE

1. Increase the allowable front yard setback from 20 feet to 105 feet.

The Zoning Committee recommended: **Postponement** to the full Commission.

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

- a. The applicant has not provided a justification (required under KRS 100. 243) for their request for a dimensional variance to the front yard setback. Such documentation is needed prior to a substantive recommendation by the staff.

c. PLN-MJDP-18-00060: MAN O' WAR DEVELOPMENT, UNIT 2A, LOT 10 (AMD) (11/4/18)* - located at 1916 JUSTICE DRIVE AND 1750 PLEASANT RIDGE DRIVE. (Bryant Engineering, Inc.)

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

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
6. Clarify area of amendment on vicinity map.
7. Addition of topography on area of amendment.
8. Denote access points for construction vehicles.
9. Addition of building dimensions.
10. Should the Planning Commission grant the requested variance, it should be denoted on the face of the plan.

Petitioner Representation: Brandon Gross, attorney representing the petitioner, said that they would like a one month postponement of this zone change request to the November 29, 2018 meeting. He said that there is a companion case, which is going before the Urban County Council tonight, and presuming that reading passes, he will be amending this application to conform to that new text amendment.

Action: A motion was made by Mr. Owens, seconded by Mr. Bell, and carried 8-0 (Brewer absent) to postpone the request for JUSTICE PLAZA, LLC ZONING MAP AMENDMENT & MAN O' WAR DEVELOPMENT, UNIT 2A, LOT 10 (AMD) ZONING DEVELOPMENT PLAN, until November 19, 2018.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, October 6, 2018, at 8:30 a.m. The meeting was attended by Commission members: Karen Mundy, Carolyn Plumlee, Frank Penn, Mike Owens, Will Berkley and Headley Bell. Committee members in attendance were: Jake Stephens, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Traci Wade; Tom Martin; Cheryl Gallit; Denice Bullock; Captain Greg Lengal and Captain Josh Theil, Division of Fire & Emergency Services; and Mike Sanner, Department of Law. The Committee made recommendations on plans as noted.

General Notes

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

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

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, October 6, 2018 at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members: Larry Forester and Bill Wilson. Staff members in attendance were: Traci Wade; Tom Martin; Hal Baillie; and Debbie Woods; Mike Sanner, Department of Law. The Committee members reviewed applications; however, no quorum was met and no recommendations could be made.

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:

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- 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. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT

- a. PLN-MAR-18-00020: URBAN COUNTY PLANNING COMMISSION (11/4/18)*- petition for a zone map amendment to expand a Neighborhood Design Character Overlay (ND-1) zone for the Chevy Chase neighborhood for 4.21± net and gross acres, to preserve existing neighborhood character for properties located at 101-175 and 201-221 Romany Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The 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 Planning Commission has initiated a zone change request to add a Neighborhood Design Character Overlay (ND-1) zone to a total of 22 properties along Romany Road in the Chevy Chase neighborhood. The ND-1 Zone is proposed to regulate rear yard setbacks, building height, roof pitch, off-street parking, garage door restrictions, and accessory structures, regardless of the underlying zoning.

The Zoning Committee Recommended: made no recommendation, due to lack of a quorum.

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

1. The Neighborhood Design Character (ND-1) overlay zone is substantially in agreement with the 2013 Comprehensive Plan and the Goals and Objectives of the 2018 Comprehensive Plan, for the following reasons:
 - a. The proposed overlay zone respects the context and design features of areas surround development projects and develop design standards and guidelines to ensure compatibility with existing urban form (Theme A, Goal #2.b).
 - b. The implementation of a Neighborhood Design Character (ND-1) overlay will enable the Chevy Chase neighborhood to continue to flourish through improved regulation, expanded opportunities for neighborhood character preservation, and public commitment to expand options for mixed-use and mixed-type housing throughout Lexington-Fayette County (Theme A, Goal #3.a).
 - c. The Chevy Chase neighborhood completed a design character study, defined the existing character of the neighborhood, developed preservation goals, and proposed appropriate neighborhood design standards, thus meeting the requirements of the ND-1 zone. This 2008 study covered the 100 and 200 blocks of Romany Road.

Staff Zoning Presentation – Mr. Baillie presented the staff report and recommendations for the zone change. He displayed photographs of the subject property and aerial photographs of the general area. He said that the Planning Commission initiated a zone change to a Neighborhood Character Design Overlay (ND-1) back in 2008; however, 22 properties did not receive the required notice providing them information regarding public participation and the impacts of the proposed overlay. This zone change will complete

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the ND-1 zone overlay as intended by the neighborhood. He added that these properties were notified with this zone change and staff has received eight responses. He said that the Chevy Chase neighborhood is unique, and has a distinctive character within the county. He added that the neighborhood has a rhythm and beauty to the manner that almost appears park-like. In order to protect the neighborhood from inappropriate or incompatible development, the ND-1 Overlay zone was requested to maintain the existing rear yard setbacks, limit building height, establish a minimum roof pitch, limit off-street parking and limit the size of accessory structures.

Mr. Baillie reviewed the ND-1 Overlay design standards, which are: rear yard setbacks measure seventy feet from the front building plane or ten feet from the rear property lines, whichever is greater; building heights of a maximum of thirty feet at the highest ridge and maximum eave height at two inch floor ceiling line; roof pitch to a minimum of 7:12 slope for gabled primary roofs; wall openings have a minimum of 10% of the wall plane on each elevation of new construction; parking for single-family attached townhomes and multi-family developments is required to be located in the rear of the buildings; and the size of detached garages and other accessory structures limited to a maximum footprint of eight-hundred square feet per lot with a maximum roof height of twenty-two feet and an eave height of twelve feet.

Mr. Baillie said that this zone change request is in agreement with the 2007 Comprehensive Plan, because of the initial zone change, the 2013 Comprehensive Plan, as well as the adopted Goals and Objectives of the 2018 Comprehensive Plan. He added that the staff has recommended approval of this zone change.

Commission Questions – Mr. Penn asked why these properties were left out of the initial zone change. Mr. Baillie said that they were inadvertently left out of the notification area. Mr. Penn asked if these properties had been notified and whether or not they agree with the standards. Mr. Baillie said that the staff received seven positive and one negative responses from the neighborhood at the time of the requested initiation.

Citizen Comment – Mr. David Smith 108, Romany Rd, said that this is the first he had understood that an error had occurred. He said that he was involved in the initial meetings and assumed that their property was already included in this ND-1 Overlay. He added that he is in support of this zone change.

Commission Comment – Mr. Penn said that he appreciated the work of the staff and the citizens present to support this zone change.

Zoning Action – A motion was made by Mr. Penn, seconded by Mr. Forester, and carried 9-0 (Brewer absent) to approve PLN-MAR-18-00020: URBAN COUNTY PLANNING COMMISSION, for the reasons provided by the staff.

VI. COMMISSION ITEMS – The Chair will announce that any item a Commission member would like to present will be heard at this time.

- A. BOAR 2018-1: FRED KHAYAT** – an appeal to the Planning Commission to modify a Certificate of Appropriateness Condition approved by the Board of Architectural Review at 305 Grosvenor Ave.

The Staff Recommends: Disapproval and that the decision of the BOAR be upheld, for the following reasons:

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review is consistent with their charge in determining appropriateness of requested exterior alterations, based on the design guidelines established by the local Historic Preservation Commission. It is also consistent with past actions of the Board in determining acceptability of the type of replacement window proposed.

Staff Presentation – Mr. Baillie presented and summarized the staff report and recommendations for this Board of Architectural Review (BOAR) appeal. He said the original request to the BOAR was to retain and add vinyl windows to a historic structure. He said that the BOAR disapproved a certificate of appropriateness that was requested on August 22, 2018. He said that the appellant is requesting Planning Commission review of the decision of the BOAR for a certificate of appropriateness in order to retain the vinyl windows that were installed to replace existing wood frame windows, true light windows, throughout the residence. He added that the property owner has already installed these vinyl windows and is retroactively seeking the certificate of appropriateness.

Mr. Baillie gave a brief history of the residence, which is located within the Aylesford Historic District (H-1) Overlay zone, which was established in 1998. He said that in the historic district, the neighborhood receives the "average reciprocity of advantage," whereby the individuals may be restricted on some elements of what they are able to do on the exterior of their property, but gain the benefits of the restrictions of the surrounding properties.

Mr. Baillie displayed an aerial photograph of area and said that the subject property was constructed in 1910 and has had some modifications since that time. The most recent being the installation of two vinyl windows, which was completed prior to the appellant purchasing this property, one on the front of the house and the other on the side of the house. The appellant received citations from the Division of Code Enforcement for repairing and painting three other windows located on the front of the house. The appellant replaced three wood windows with three vinyl windows, without seeking a Certificate of Appropriateness and in violation of the Historic District Overlay Zone requirements. He added that the property owner stated at the August 22, 2018 BOAR hearing that he directed his contractor to replace the windows to match those elsewhere in the house. The contractor chose the vinyl windows to match, rather

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than the historic wood windows. During the BOAR hearing, the appellant indicated that due to the fact that vinyl already existed on the subject property, he believed that the addition of more vinyl windows for the whole of the property would not compromise the integrity of the building. He displayed photographs of the windows.

Mr. Baillie said that it is the responsibility of the property owner to maintain the property in conformity with the LFUCG Zoning Ordinance and supporting documents, and by replacing the wood windows with vinyl, the appellant has violated Article 13 of the Zoning Ordinance on two separate levels. He added that the appellant did not seek or obtain a COA, which would have indicated that the proposed work is or is not appropriate within the overlay zone, nor did they replace the windows in conformity to the H-1 Design Guidelines. The LFUCG Historic District and Landmark (H-1) Design Review Guidelines, design principle for windows states that:

Window openings, windows, window details, and the size and shape of these elements help establish rhythm, scale and proportion of buildings and reflect architectural style and character. Windows should be maintained or repaired to match the original design. If windows are deteriorated beyond repair, the installation of new wood windows to match the original designs is recommended. Windows of baked enamel or anodized aluminum clad may be considered only if original windows cannot be repaired. **Vinyl or vinyl clad windows are not allowed.** Original window openings should not be covered or concealed. They should also not be partially enclosed for the installation of smaller windows. New window openings should not be added on the fronts of buildings and are discouraged but may be acceptable at the rear or sides.

Mr. Baillie said the staff did not find any flaws in the review of the appellant's request by either the Historic Preservation staff or the Board of Architectural Review, nor has the appellant provided any additional information related to this request. Based on findings as stated in the staff report and the minutes of the public hearing, the denial of a Certificate of Appropriateness was not in error. It is consistent with the responsibility of the Board of Architectural Review, which is to interpret and apply the adopted design guidelines in determining the appropriateness of a specific request, particularly as they relate to the proposed windows in this case. The ruling in this case is also consistent with past actions of the Board in addressing window replacement. The windows installed by the appellants are vinyl, which do not meet the intent of the "Local Historic District and Landmark Design Guidelines" as adopted, because the guidelines are definitive, rather than suggestive as to the use of vinyl or vinyl clad windows. He added that the staff recommends disapproval of the appeal, and the decision by the BOAR be upheld.

Commission Question – Mr. Owens asked for verification that there was already vinyl windows in the house. Mr. Baillie said that is correct, there were two; one located on the first floor and the other located on the side of the house. Mr. Owens then asked where the new three windows were installed. Mr. Baillie said they were placed on the front of the house. He pointed them out on the photographs. Mr. Owens then asked when the original set of windows were installed. Baillie said that the staff doesn't have any information on that.

Ms. Mundy asked if the appellant was aware that they were in the H-1 Overlay. Mr. Baillie said that in the previous hearing, they had stated they were not aware they were in the H-1 Overlay zone.

Mr. Wilson asked for verification that the appellant did not seek approval for these vinyl windows. Mr. Baillie said that is correct. Mr. Wilson said that if they didn't know they were in the overlay zone and needed approval, is that being held against them. Mr. Baillie said that is the responsibility of the property owner to know their zoning and associated requirements of the Zoning Ordinance for their area. He added that it is part of the process of being a landowner in this area.

Historic Preservation Staff - Ms. Bettie Kerr, Director, entered into the record, a full set of the Local Historic District and Landmark (H-1) Design Review Guidelines and the records of this case. She then introduced Amelia Armstrong, as the project manager of this case.

Ms. Armstrong thanked the staff for their presentation and recommendation, but would like to add that the guidelines stress the use of non-vinyl windows. She added that she is available for any questions.

Commission Questions - Ms. Plumlee asked what year the H-1 Overlay was established. Ms. Armstrong said that it was established in 1998.

Appellant - Fred Khayat, property owner, said that he asked his contractor to replace three windows and to match the current windows. He added that the contractor matched the other two vinyl window that were in the same room.

Commission Questions - Mr. Owens asked the appellant how long he has owned the property. Mr. Khayat said that he has owned the property for more than ten years. Mr. Owens asked how long the two vinyl windows have been there. Mr. Khayat said that they were already there when he purchased the property.

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

Commission Discussion - Mr. Owens stated that these cases are difficult, but the language is what it is, and the Historic District Overlay zone has been in place for twenty years, which should have been made known to the homeowner.

Zoning Action – A motion was made by Mr. Owens, seconded by Ms. Plumlee, and carried 9-0 (Brewer absent) to uphold the decision of the BOAR, thereby disapproving the appeal for BOAR 2018-1: FRED KHAYAT.

B. BOAR 2018-2: THE RESIDENCES AT SOUTH HILL, LLC – an appeal to the Planning Commission to modify three Certificate of Appropriateness Conditions approved by the Board of Architectural Review at 114, 116, & 120 W. High St. and 308 & 320 S. Upper St. The Certificate of Appropriateness Conditions are also appealed by the Historic South Hill Neighborhood Association and the Bluegrass Trust for Historic Preservation.

The Staff Recommends:

1. **Uphold the BOAR decision on approving demolition**, but change the findings to be based on Article 13-7(1)(c)(2), that the “application is for the demolition or moving of a building, or portion of a building, which does not contribute to the character of, and will not adversely affect the character of the property in a zone protected by an H-1 overlay,” for the following reasons:
 - a. The subject property is currently not listed as a contributing structure within the South Hill Historic District, or listed on the National Register of Historic Places, although it may be eligible to become a contributing structure because it is over 50 years old as of 2018.
 - b. The subject property was not included in the *2009 Downtown Lexington Building Inventory*, thus it was not identified as a contributing building to Lexington’s downtown.
 - c. Based on the *H-1 Design Review Guidelines’ Brief Overview of Lexington’s Local Historic Districts and Landmarks*, the description of the South Hill Historic District does not list the mid-century modern style nor architect Thomas Page Edwards, who designed the existing structure, as part of the character of South Hill (page 24).
 - d. Based on the Division of Historic Preservation staff report, when describing the adjacent structures’ scale and style, it was stated that the subject property is very different from the other historic structures within the South Hill Historic District.
 - e. For these reasons, the subject property does not relate to the character of the particular local historic district it is in, and the removal of such structure will not have an adverse effect on the South Hill Historic District.
2. **Uphold the BOAR decision on approving the Certificate of Appropriateness** for the proposed new construction of a 4-story building, for the following reasons:
 - a. The new plans dated September 12, 2018 has met the BOAR requirements for conditions #4, #9, and the general intent of condition #3. The removal of the three conditions is appropriate because the plans are in compliance with the *H-1 Design Review Guidelines*.
 - b. In addition to the agreed upon conditions, a new condition to ensure compatibility along the block (#10 below) is necessary in order to be in compliance with *H-1 Design Review Guidelines* that were not met. Design guidelines II.B.1.E Orientation to the street, and II.B.1.F Location and proportion of entrances, state that all buildings should have the primary entrance on the front of the building and entrances shall be compatible in scale, size and proportion to established patterns of openings in adjacent and surrounding buildings. More specifically, condition #10 will ensure that the applicant addresses these design guidelines in an appropriate manner.

Subject to the following revised conditions:

1. Submit dimensioned floor plans to board for review and approval prior to the issuance of a Certificate of Appropriateness.
2. Submit building sections to board for review and approval prior to the issuance of a Certificate of Appropriateness.
3. Provide final brick selection to the board for review and approval prior to the issuance of a Certificate of Appropriateness.
4. Provide final stone selection to the board for review and approval prior to the issuance of a Certificate of Appropriateness.
5. Provide final metal panel specification and details to the board for review and approval prior to the issuance of a Certificate of Appropriateness.
6. Provide final green wall screen specifications and details to the board for review and approval prior to the issuance of a Certificate of Appropriateness.
7. Provide final door and window specifications and details to board for review and approval prior to the issuance of a Certificate of Appropriateness.
8. If any changes are made that alter the information submitted, resubmit the changes to staff or the board for review and approval prior to the start of the affected work.
9. Once reviewed by other LFUCG Divisions, resubmit changes to staff or board for review and approval prior to the start of work.
10. Redesign the ground floor plan / elevation to provide compatible streetscape in order to engage pedestrian interests along West High Street. This can be achieved by:

Option A: Design ground floor elevation on West High Street with at least 50% of the frontage to be public pedestrian-oriented; or

Option B: Incorporate at least one front entrance for the residences on West High Street; or
Option C: Provide other proposal that can ensure compatibility along the block.

Submit revised design to Board of Architectural Review for review and approval prior to the issuance of a Certificate of Appropriateness

Staff Presentation – Ms. Keyu Yan distributed two letters that the staff had received; one from the Gratz Park Neighborhood Association, the other from the Kentucky Heritage Council. She thanked the Historic Preservation Office for their efforts to safeguard the design standards. She said this case has received three appeals from three different entities and the staff compiled the appeals into one report. She added that most of the letters refer to the plans dated September 12, 2018; however, a new plan was submitted to the staff on October 24, 2018, with minor corrections.

Ms. Yan presented and summarized the staff report and recommendations for this Board of Architectural Review (BOAR) appeal. She said that on August 22, 2018, the BOAR approved demolition, based on the finding “no reasonable economic return can be realized from the property and as such the denial of the application would result in the taking of the property without just compensation,” based on Article 13-7(c)(1)(c) of the Zoning Ordinance. She added that the BOAR also approved a Certificate of Appropriateness to construct a new residential structure, parking lot and associated site work, with twelve conditions. She displayed photographs of the building.

Ms. Yan said the first appeal is from the applicant. They wish to change the findings for demolition from no reasonable economic return to not contributing to the character of the H-1 Overlay per Article 13-7(c)(1)(b) of the Zoning Ordinance. She added that they would also like to remove three conditions: #3, #4, and #9. She said that they are in agreement with the other nine conditions, which require them to go back to the BOAR for a final design review. She said the applicant highlighted the changes on the revised plan, which includes removal of the fifth floor, removal of the step down to the first floor, elimination of the retail on the first floor, additional residential units on High Street (ground floor), redesign of the front façade along High Street, elimination of the West High Street vehicular access and associated parking, increased the landscape area, and reduced scope size of the roof deck. She displayed the development plan and drawings of the proposed new structure. She said the second appeal is from the Historic South Hill Neighborhood Association, and they also wish to change the findings for demolition to be based on Article 13-7(c)(1)(b) of the Zoning Ordinance. She said they stated their reasoning and concerns that “basing demolition of structures in H-1 districts on economic hardship without clear and compelling evidence sets a dangerous precedent.” She added that they also generally agree with the applicant’s new plans, and the removal of conditions #3, #4, and #9. She added that the third appeal is from Bluegrass Trust for Historic Preservation, and they wish to change the decision by the BOAR on demolition, because they believe that the structure “contributes to the character of the zone protected by the H-1 Overlay and should not be demolished because a reasonable economic return can be realized from the property.”

Ms. Yan displayed an aerial photo of area and photographs of the current building. She said that the structure is in the Lexington Center Business (B-2B) zone and is within the Historic District Overlay (H-1) zone. She said that the 2013 Comprehensive plan recommends expanding housing choices, mixed-use and housing near commercial areas, supporting infill and redevelopment, and promoting well designed neighborhoods and communities. She added that the 2018 Comprehensive Plan’s adopted Goals and Objectives mission statement states that it seeks to provide flexible, yet focused planning guidance to prioritize higher-density and a mixture of housing types; promote developing design standards and guidelines to ensure compatibility with existing urban form; and incorporate adequate greenspace and open space into all development projects which serve the needs of the intended population.

Ms. Yan said that the subject property was constructed in 1956 and the exterior of the building has been modified over the years. It was previously owned by the Commonwealth of Kentucky (except the last two years), which exempted the building from all local land use regulations and many local building regulations. She said that the Planning Staff didn’t walk through the building, however, the Historic Preservation staff did, and described the building as similar to any structure that has not been maintained. She reviewed Article 13 on demolition and stated that the Board only needs find one of the following conditions:

- (a) *The application is for demolition of an addition, for a portion of a building or for an accessory structure which is not significant to the principal structure, site, landmark or district; and the approval of the application would not adversely affect those parts of a building site, landmark or the historic district which are significant.*
- (b) *The application is for the demolition or moving of a building, or portion of a building, which does not contribute to the character of, and will not adversely affect the character of the property in a zone protected by an H-1 overlay.*
- (c) *No reasonable economic return can be realized from the property, and the denial of the application would result in the taking of the property without just compensation.*

Ms. Yan continued that the BOAR approved demolition based on 13-7(c)(1)(c). All three appellants are opposed to the use of 13-7(c)(1)(c) as the finding. The appellant from BGT is also opposed to the use of 13-7(c)(1)(b).

Ms Yan clarified the difference between a structure that is “contributing” and one that “contributes to the character of an H-1 Overlay.” She said that whether a structure is a “contributing” building within a National Register of Historic Places is a federal standard set by the Secretary of the Interior. Neither the local Zoning Ordinance, nor the H-1 Design Review Guidelines has a definition of “contributing” by local standards. Both refer to the federal standards for evaluation of significance. The measure of whether a structure “contributes to the character of” a historic district is used in the LFUCG ordinance. She said that the staff contacted the Kentucky

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Heritage Council to verify the status of the subject property, and they confirmed that by federal standards, the subject property is currently not listed as a contributing structure and is not undergoing the process for it to become a contributing structure. She added that based on the standards it may be eligible to become a contributing structure by being over 50 years old as of 2018, and depending on whether it can meet other criteria set by the Secretary of the Interior. She said that the Kentucky Heritage Council sent the staff a report and inventory for the National Register of Historic Places, which described every structure within the district (associated with the creation of the district). They described the subject property as a two-story large white brick building.

Ms Yan said that per the Manual for State Historic Preservation Review Boards, National Register of Historic Places Bulletin, on "Evaluation of Significance," which is the criteria that must be met to apply for a structure to become contributing. It quotes that not every building within a historic district contributes to the significance of the district. The applicant must therefore supply sufficient documentation to enable the National Park Service to determine how the building relates to the district as a whole and to evaluate the historic character of the building." She said that per the *H-1 Design Review Guidelines' Brief Overview of Lexington's Local Historic Districts and Landmarks*, related to South Hill that describes the basic character, the history, and the relationship with architects and early residents of the South Hill neighborhood. Contributing styles include Federal and Greek Revival styles, Italianate and Queen Anne styles. Architects associated with the district include John McMurtry and Cincinnatus Shyrock. She displayed photographs depicting the character of the South Hill District. She added that the Historic Preservation's staff report described the adjacent structures in terms of their scale, height, and width, and that it is consistent with these photographs. They stated that the scale is quite representative of the character of the entire South Hill Historic District with structures dating from 1780s to today.

Ms. Yan said that multiple appellants or letters refer to the *2009 Downtown Lexington Building Inventory* prepared by the Division of Historic Preservation, which studied the area and didn't include the subject property. She said that from the foregoing records on the character of South Hill, the mid-century modern style building, designed by Architect Thomas Page Edwards for the subject property ("Commonwealth Building"), is not described as part of the character of South Hill. This does not mean this particular style, is not valuable in history or in the nation; rather, it does not relate to the character of this particular local historic district it is located within, and the removal of such structure does not have an adverse effect on the South Hill Historic District.

Ms. Yan said that the new construction based on the plans dated today, new primary building construction must demonstrate that the new construction has compatibility along the block and within the district by having similarity in multiple design methods, as per the *Design Review Guidelines*. She said the staff reviewed the following conditions: *B. Scale (height and width); E. Orientation to the street; and F. Location and proportion of entrances, windows, divisional bays and porches.*

Ms. Yan said that the applicant and the South Hill Neighborhood Association both requested to remove three conditions: #3, #4, and #9. She said that condition #4 is to redesign the configuration of the plan insets on the north and south elevations, so that the vertical articulation of those elevations continue to the ground plane, and submit revised design to the board for review and approval prior to the issuance of a Certificate of Appropriateness. She displayed the revised drawings of the proposed building. She added that condition #9 is to redesign the parking and landscape design to provide parking screening as required by the Guidelines and submit to the board for review and approval prior to the issuance of a Certificate of Appropriateness. She also displayed the revised development plan to depict the parking area. She added removal of these two conditions is merited because the revised plans are in now compliance with the H-1 Design Review Guidelines. She then said that condition #3 is to reduce the height of the structure from five stories to four stories; step the resulting top floor (fourth floor) down to three stories at the southwest and northeast corners, so as to not overwhelm the adjacent historic structures and submit revised design to the board for review and approval prior to the issuance of a Certificate of Appropriateness. She said that the *Design Review Guidelines*, for scale (height and width), states that new construction should be in keeping with adjacent properties in height and in width. In general, new construction should not vary in height more than 10% from the average height of buildings along the block and within the historic district. Width should also be consistent with surrounding buildings and buildings throughout the district. She displayed photographs of the area depicting the existing grade changes, which can impact overall building height.

Ms. Yan said that the applicant has agreed to remove the fifth floor, and they redesigned the roof garden area. She added that the applicant submitted a height study with the original 5-story proposal at the August 22, 2018 meeting. The new design with a 4-story building is compatible with the surrounding context in the staff's evaluation. The new proposal has met the general intent of condition #3. For this reason, the removal of condition #3 is warranted, as the new plans are in compliance with the *H-1 Design Review Guidelines*.

Ms. Yan said the staff referred to the *H-1 Design Review Guidelines* II.B.1.E. orientation to the street which states "All buildings should have the primary entrance on the front of the building." She added guidelines II.B.1.F. states that the "location and proportion of entrances, windows, divisional bays and porches. Openings, such as entrances and windows, and architectural features, such as divisional bays and porches, are design components that help establish balance, rhythm, scale, proportion and emphasis in a structure. Patterns of these components on buildings along blocks and within districts create a characteristic rhythm for streetscapes and neighborhoods." It is very important that new construction respect the balance, proportion and scale of existing buildings along the block and within the district in regards to these components. She also stated that Article 15-7 of the Zoning Ordinance requires faced improvements, as follows:

15-7 GENERAL REGULATIONS FOR INFILL AND REDEVELOPMENT CONSTRUCTION

15-7(a) NEW RESIDENTIAL CONSTRUCTION - All new residential structures and additions to the primary wall plane within defined Infill and Redevelopment Areas shall be subject to the following requirements:

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- (1) A primary entrance for pedestrian access into each building shall be provided along the primary wall plane or its offsets.
- (2) A one-story projection on the primary wall plane of a building shall be provided and shall include at least one of the following:
 - a. A porch, a minimum of twelve (12) inches high, four (4) feet in depth and width; or
 - b. A canopy over the primary entrance, a minimum of three (3) feet in depth and width; or
 - c. A bay window, projecting a minimum of one (1) foot and being three (3) feet in height; or
 - d. A recessed entry, a minimum of three (3) feet in depth and four (4) feet in width that includes exterior steps, or an arched doorway.

15-7(c) CONFLICT OF INFILL STANDARDS WITH DESIGN GUIDELINES IN A LOCAL HISTORIC (H-1) DISTRICT - In the event the provisions of Sections 15-7(a) and (b) above would conflict with the adopted Design Guidelines applied by the Board of Architectural Review as a part of the Certificate of Appropriateness review and approval process, the H-1 guidelines shall be deemed to be the stricter requirement and shall control. (Emphasis added.)

Ms. Yan said that the previous plans reviewed by the BOAR on August 22, 2018, showed the ground floor uses as retail, an entertainment room and a parking entrance, and the BOAR and/or staff didn't raise concerns on the ground floor because it was in compliance with the *H-1 Design Review Guidelines* on this matter. She said lowering the proposed building by one floor, the applicant chose to eliminate the retail store, reduce the size of the entertainment room, and added residential units on the ground floor. She added the applicant is proposing more landscaping, to protect the privacy of these ground floor units. She displayed photographs of similar buildings, fronting the street. Ms. Yan indicated that the staff recommended modification to the High Street façade to meet Article 15-7 of the Zoning Ordinance and the *Design Review Guidelines* (condition #10.)

Ms. Yan said that the staff recommends:

1. Uphold the BOAR decision on approving demolition, but change the findings to be based on Article 13-7(1)(c)(2), that the "application is for the demolition or moving of a building, or portion of a building, which does not contribute to the character of, and will not adversely affect the character of the property in a zone protected by an H-1 overlay," for the following reasons:
 - a. The subject property is currently not listed as a contributing structure within the South Hill Historic District, or listed on the National Register of Historic Places, although it may be eligible to become a contributing structure because it is over 50 years old as of 2018.
 - b. The subject property was not included in the *2009 Downtown Lexington Building Inventory*, thus it was not identified as a contributing building to Lexington's downtown.
 - c. Based on the *H-1 Design Review Guidelines' Brief Overview of Lexington's Local Historic Districts and Landmarks*, the description of the South Hill Historic District does not list the mid-century modern style nor architect Thomas Page Edwards, who designed the existing structure, as part of the character of South Hill (page 24).
 - d. Based on the Division of Historic Preservation staff report, when describing the adjacent structures' scale and style, it was stated that the subject property is very different from the other historic structures within the South Hill Historic District.
 - e. For these reasons, the subject property does not relate to the character of the particular local historic district it is in, and the removal of such structure will not have an adverse effect on the South Hill Historic District.
2. Uphold the BOAR decision on approving the Certificate of Appropriateness for the proposed new construction of a 4-story building, for the following reasons:
 - a. The new plans dated September 12, 2018 has met the BOAR requirements for conditions #4, #9, and the general intent of condition #3. The removal of the three conditions is appropriate because the plans are in compliance with the *H-1 Design Review Guidelines*.
 - b. In addition to the agreed upon conditions, a new condition to ensure compatibility along the block (#10 below) is necessary in order to be in compliance with *H-1 Design Review Guidelines* that were not met. Design guidelines II.B.1.E Orientation to the street, II.B.1.F Location and proportion of entrances state that all buildings should have the primary entrance on the front of the building and entrances shall be compatible in scale, size and proportion to established patterns of openings in adjacent and surrounding buildings. More specifically, condition #10 will ensure that the applicant addresses these design guidelines in an appropriate manner.

Subject to the following revised conditions:

1. Submit dimensioned floor plans to board for review and approval prior to the issuance of a Certificate of Appropriateness.
2. Submit building sections to board for review and approval prior to the issuance of a Certificate of Appropriateness.
3. Provide final brick selection to the board for review and approval prior to the issuance of a Certificate of Appropriateness.
4. Provide final stone selection to the board for review and approval prior to the issuance of a Certificate of Appropriateness.
5. Provide final metal panel specification and details to the board for review and approval prior to the issuance of a Certificate of Appropriateness.
6. Provide final green wall screen specifications and details to the board for review and approval prior to the issuance of a Certificate of Appropriateness.
7. Provide final door and window specifications and details to board for review and approval prior to the issuance of a Certificate of Appropriateness.

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8. If any changes are made that alter the information submitted, resubmit the changes to staff or the board for review and approval prior to the start of the affected work.
9. Once reviewed by other LFUCG Divisions, resubmit changes to staff or board for review and approval prior to the start of work.
10. Redesign the ground floor plan / elevation to provide compatible streetscape in order to engage pedestrian interests along West High Street. This can be achieved by:

Option A: Design ground floor elevation on West High Street with at least 50% of the frontage to be public pedestrian-oriented; or

Option B: Incorporate at least one front entrance for the residences on West High Street; or

Option C: Provide other proposal that can ensure compatibility along the block.

Submit revised design to Board of Architectural Review for review and approval prior to the issuance of a Certificate of Appropriateness.

Historic Preservation Staff - Ms. Kerr, Director, submitted their records of this case, along with the *Local Historic District and Landmark (H-1) Design Review Guidelines*, into the record. She clarified that the staff recommendation's, item 1.a., regarding the subject property's currently not being listed as a contributing structure within the South Hill District. She said that the property has been determined eligible and the State Historic Preservation Office (SHPO) has it as a contributing structure, in their records. She said that the Director of the National Registry program for the State of Kentucky is present to address that matter. She added that item 1.b. asked for clarification of why it is a condition to be considered, since the subject property wasn't included in the 2009 Structure Building inventory that was completed by the Historic Preservation. She added that the boundary isn't relevant, because the building is located outside of the study area. She believes that there is a fine implication that suggests this building is lacking or is insignificant. She said that item 1.c., regarding the H-1 Guidelines, the description of the South Hill area, doesn't mention this building nor its designer/architect. She also said that item 1.d. regarding their staff report, prepared for the August hearing, stated that this property is very different from the other properties within the South Hill neighborhood, which is correct, but is not a reflection that there is something problematic or less or more important about this building. She said that all of their districts that are designated H-1 have wide ranges of architectural types, and identities. Whereas most are residential, some are commercial buildings. She added that she appreciates the staff's work on this BOAR case and its appeal. She then introduced Barry Dennis.

Barry Dennis, Historic Preservation, said that he appreciates the staff's effort on this case. He distributed a report to the Planning Commission. He elaborated on the three conditions the BOAR put into place. He believes the height of the structure, condition #3, is the most important condition. Historic Preservation would like to reduce the building from five stories to four stories and step the resulting fourth floor down one more floor. He said that on both of those corners, there are 25 to 35-foot tall historic structures within twenty feet from the proposed building. He added that they agree that conditions #4 and #9, have been met, but should not be removed. He believes that those requirements should remain so that the building won't be changed. He said that the staff reviewed the height when it was based on conditions following the guidelines:

II.B.1.B. Scale (height and width). New construction should be in keeping with adjacent properties in height and in width.

In general, new construction not vary in height more than 10% from the average along the block and within the historic district.

Width should also be consistent with surrounding buildings and buildings throughout the district.

He added that four stories, could be as high as 40 to 50-feet tall based on the floor-to-floor height. He said there are adjacent buildings that are shorter and the height change is about eight feet across this building, which would be greater than the 10% average.

Mr. Dennis said that the location and proportions of entrances, windows, divisional bays and porches are design components that help establish balance, rhythm, and scale in the structure. Historic Preservation staff believes that the step-down should be kept in place. He said that the Board of Architectural Review's approval of the demolition was inconsistent with the staff's recommendation of denial of the demolition based on the criteria set forth in the *Design Review Guidelines*. He added that the Historic Preservation staff determined that the mid-twentieth century structure is significant and adds to the character of the South Hill Historic District. This structure is characteristic of a sadly under-appreciated and disappearing mid-twentieth century style of historic architecture.

Mr. Dennis said that they did walk-throughs of the building and saw no rehabilitation needs that would suggest a reason to demolish the structure. He added that demolition of this structure would adversely affect the South Hill Historic District. He said that staff believes that it is possible to renovate this structure within parameters that would result in a viable economic return. He said that there are federal and state historic tax credits available to the property owner to accomplish renovation of the historic structure. He said that the lack of demonstrated interest in leasing the building may be the reason that the structure has had little to no maintenance or improvements in the last several years.

Commission Questions - Ms. Mundy asked about the step-back, which is currently the 4th floor and if property is downhill, why is the step-back necessary. Mr. Dennis responded that it is recommended in order to reduce the effect of the height of the building. Ms. Mundy then asked if the ground is more level in that area. Mr. Dennis agreed and said that the change in grade is 8 feet.

Mr. Wilson asked what is historic about this building. Mr. Dennis said that is a mid-twentieth century style building, which are sparse in the downtown area. He added that it is finely detailed, doesn't have a lot of ornamentation, with honed granite surrounding the windows, and a double band of granite on the walls. Mr. Wilson then asked if this property is so important, why they wait until now

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to try to preserve it. Ms. Kerr said the neighborhood and community architectural tools change with every decade, and this commercial building is reflective of the time period. She added that in the business of preservation, it is referred to as change over time, which also tells stories of the character changes of the neighborhood over time. She added that the city and other governments don't tell neighborhoods that they are significant to their community and a lot does get lost before they get designated. She added that it is the property owners' responsibility to request to become designated as historic.

Appellant Presentations – Mr. Lear, attorney, was present representing the Residences at South Hill, LLC, which is the applicant. He said they are appealing the Board of Architectural Review decision to allow demolition based upon a finding of no reasonable economic return, and the approval of the Certificate of Appropriateness for a four-story building with conditions. He clarified that at the August 22, 2018 BOAR meeting, they presented evidence for removal of the building for the fact that it is not a contributing structure to the character of South Hill and the economic basis. He said that the BOAR had a lengthy discussion and got deadlocked with the vote until the Certificate of Appropriateness was reviewed. He said with this appeal they are requesting the full four stories with some minor changes. He said that they have continued to work with the South Hill Neighborhood, and they had several meetings before the hearing and after to discuss the proposed modifications. He added that they had worked out an agreement. The applicant proposed to put aside any findings related to reasonable economic return and to focus on the building's status as contributing structure. He said that the proposed findings for the demolition are: building age, building architecture, building modifications, building ownership, and zoning. He said this proposed project will bring new life to this corner. He concluded his remarks, saying that the guidelines are not requirements and that not every building is worthy of keeping.

Mr. Nicholson, attorney, also representing the Residences at South Hill, LLC, distributed a binder to the Planning Commission. He said that they are not arguing what the BOAR found, regarding the demolition based on the economic viability. However, said that jointly with the neighborhood, they are requesting to uphold the BOAR decision to approve the demolition, with some changes to the justification, stating that the building is a non-contributing structure, which if demolished will not be detrimental to the district. He said that the Zoning Ordinance states that the structure must be a non-contributing structure, but the Zoning Ordinance doesn't state the definition of non-contributing structure. He said the Federal Government does provide very clear definitions on what justifies a contributing structure and a non-contributing structure. He recited those legal definitions as follows: a "contributing structure is one which by its location, design, setting, workmanship, feeling and association adds to the district's sense of time, place and historical development." and a "non-contributing structure is one that doesn't add to the district's sense of time, place and historical development or one where the location, design, setting, material, workmanship, feeling and association had been so altered or have so deteriorated that the overall integrity of the building has been lost." He said that they believe the building meets both aspects of the non-contributing definition. He said that this building has been altered many times without any heedence to the *Design Review Guidelines*. He added that this building does not have elements that resemble the Federal and Greek Revival styles or, Italianate and Queen Anne styles, as is typical within the South Hill Historic District.

Mr. Nicholson said that the National Park System (NPS) also comments on this subject, and they have three questions; was this building present during the period of time where the district achieved its significance, does it relate to the documented significance of the district, or does it possess historical integrity or is capable of yielding important information relevant to the significance of the district? He added that the designation report goes into great detail about other buildings in the neighborhood, but this building was skipped over, like it does not exist.

Mr. Nicholson said that demolition will not be detrimental to the district as a whole. He said that this site is the key entryway from the central business district to this historic neighborhood and he believes that this building detracts from the truly historic buildings that are next door to it. He said that he had distributed Proposed Findings of approval to the Planning Commission, they are:

**PROPOSED FINDINGS OF APPROVAL
FOR A CERTIFICATE OF APPROPRIATENESS FOR THE
DEMOLITION OF AN EXISTING STRUCTURE AND
CONSTRUCTION OF NEW RESIDENTIAL STRUCTURE
RESIDENCES OF SOUTH HILL, LLC**

Based on the evidence and testimony presented, the Planning Commission finds that the application to demolish the existing structure at 120 W. High Street and construct a new structure on 114, 116 & 120 West High Street and 308 & 320 South Upper Street is APPROVED because:

1. The demolition of the building located at 120 West High Street (the "subject building") is approved because the subject building is non-contributing; the demolition will not adversely affect the character of the South Hill Historic District (the "District") and will not set a precedent for future demolitions within the District for the following reasons:
 - a. Building Age. The age of the subject building differs dramatically from the age of the buildings that formed the basis for the creation of the South Hill Historic District. In fact, the subject building was only 18 years old when the district was established. As described in the National Historic Register of Historic Places Nomination Form (the "Report") which was the rationale for establishing the District, the relevant historic structures were constructed from the early 19th to the early 20th centuries.

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- b. Building Architecture. The architecture of the subject building is dramatically different from that of the buildings which formed the basis for the creation of the South Hill Historic District. In fact, the Report simply describes the building as a "government building" built in 1958. The architectural styles of those buildings, as described in the rationale for establishing the district, are predominantly Federal and Greek Revival. This factor, in combination with the age of the building, means that this building played no part in the justification for establishing the South Hill Historic Overlay zone and was not considered as contributing to the character of the District.
- c. Building Modifications. The exterior of the subject building has been modified over the years in ways which materially and negatively impact its value for preservation. The modifications include replacement of all the windows, the addition of stairs, and the removal of railings. It is, therefore, not even an intact example of the architecture of the period in which it was constructed.
- d. Building Ownership. The subject building was constructed and owned throughout all but the last two years of its life by the Commonwealth of Kentucky which is exempt from all local land use regulations and many local building regulations. As such, the property and the structure were changed in multiple ways internally and externally over a period of many years with no oversight from or input by the Board of Architectural Review or its staff.
- e. Zoning. The subject property is zoned Lexington Center Business (B-2B) Zone. This zone (a) is intended to accommodate a wider array of uses than properties located in every other zoning category within the Historic District; and (b) has no height limitation. The subject building is the only non-historic, noncontributing structure in the South Hill Historic District zoned B-2B. In contrast, the other buildings within the District zoned B-2B were either built as residential structures or institutional, i.e., 1st United Methodist Church, all of which were built more than 100 years ago. This fact distinguishes both the building and the property from every other building and property in the District.

Because of the foregoing five factors, the building does not add to the District's sense of time and place or historical development. The building, because of its age, architecture, location and use, was never effectively part of the South Hill neighborhood. The building is simply a one-of-a-kind structure built and operated by the Commonwealth of Kentucky which has had no influence on other buildings or development within the District.

- 2. The requested new construction is appropriate under Article 13-7(b) of the Zoning Ordinance as the proposed four story structure, depicted in the elevations and floor plans dated September 12, 2018, is in substantial compliance with the applicable Design Guidelines, the approval of which is subject to the following conditions for the new construction:
 - a. Submit dimensioned floor plans to the Board of Architectural Review ("Board") for review and approval prior to the issuance of a Certificate of Appropriateness.
 - b. Submit building sections to the Board for review and approval prior to the issuance of a Certificate of Appropriateness.
 - c. Provide final brick selection to the Board for review and approval prior to the issuance of a Certificate of Appropriateness.
 - d. Provide final stone selection to the Board for review and approval prior to the issuance of a Certificate of Appropriateness.
 - e. Provide final metal panel specification and details to the Board for review and approval prior to the issuance of a Certificate of Appropriateness.
 - f. Provide final green wall screen specifications and details to the Board for review and approval prior to the issuance of a Certificate of Appropriateness.
 - g. Provide final door and window specifications and details to the Board for review and approval prior to the issuance of a Certificate of Appropriateness.
 - h. If any changes are made that alter the information submitted, resubmit the changes to staff or the Board for review and approval prior to the start of the affected work.
 - i. Once reviewed by other LFUCG Divisions, resubmit changes to staff or the Board for review and approval prior to the start of work.

Mr. Nicholson said that these findings are jointly submitted by the Historic South Hill Neighborhood Association and the applicant. He said that these findings were created with great detail so that all the residents of South Hill and those involved in the preservation of historic structures can look at them and see that this doesn't set a precedent to take down other historic buildings or non-historic buildings inside of a historic district. He said that this building was built outside of the time period, in a style that has nothing to do with the key core reasons why the district has been preserved. He added that this building has been modified without regard to the design guidelines, the underlying zoning as the B-2B zone does really matter here. (He asked the Planning Commission to adopt their proposed findings.) He displayed photos of the original building in 1956, when it was constructed. He said that the applicant is in agreement with the staff's recommendation for conditions #1-#9, but with regards to condition #10, they believe it was previously addressed with the revised submittal on October 24, 2018.

Commission Questions - Mr. Wilson asked if the staff had reviewed the applicant's proposed findings of approval. Ms. Yan said that the staff has reviewed the applicant's proposed findings of approval. She said that their findings were based upon the information that they have available. She added that the staff didn't have very much information of what had been altered. She then said that the staff based their recommendation on information they had available to them. Mr. Wilson asked if the staff is in agreement with the findings being proposed by the applicant. He added that they have indicated they worked with the community.

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Mr. Nicholson said that the proposed findings were submitted along with the letter of appeal. He added that they are similar to the staff's with the exception of the description of why this building is different and why the precedent impact doesn't move forward with any finding of approval. Mr. Wilson then asked which option of condition #10 they chose. Mr. Nicholson said they chose option A. He added that Ms. Hunt will review the new floor plans and elevations of the proposed building, which he believes complies with condition #10.

Elisabeth Hunt, Lord Aeck Sargent, presented the proposed building drawings and the site plan. She displayed photographs of what people think of when they think of the South Hill Historic District. She said the mid-century modern building is not a contributing style to this specific neighborhood. She also displayed photos of the subject property and said that the existing window openings have all been replaced. She said that the entrance off Upper Street has been modified, but it does still have the granite surround, along with the railings, and panels between the floors. She added that the window sills are cracked and are in need of repair. She said that the interior character is devoid of defining features through various tenant modifications. She also said that an ADA ramp has been added at the rear of the building, and a set of stairs added to the east side of the building. She said that reviewing the criteria for evaluation for the National Register of Historic Places, they believe that none of the criteria has been met.

Ms. Hunt displayed drawings of the floor plan then gave an overview of the proposed building. She said that the property does not have any buffers, its right up against the neighboring properties, the majority of it is a parking lot, which is not screened. She said that the proposed building will be where the current building is located, but they wanted to activate the street more by creating more streetscapes and adding an active space on the corner. She said that they removed the parking entrance from High Street, leaving an access drive, which will be maintained from the rear of the property. She said that the first floor will be residential with other amenities. She said that the height of the proposed building has been reduced from five stories down to four, which fifty-one feet in height. She then displayed elevations drawing depicting the height study and the step-down, which creates a patio area on the roof on the northwest corner so that it impede on the neighborhood.

Ms. Hunt commented on the conditions set by the BOAR. She said that condition #9 regarding the additional landscape areas have been added around the parking lot, adding more of a buffer area. She said that condition #3 regarding the height of the building is resolved through the new design. She said that condition #4 regarding the vertical articulations continuing down to the ground. She added that condition #10 provided by the staff, they chose go with Option A. She then said that the building entrance has been moved to the center of the building.

Note: Planning Commission took a recess at 3:45 p.m. until 3:54 p.m.

Jennifer Coffman, president of the Historic South Hill Neighborhood Association, said that they submitted proposed findings to the applicant and thanked them for continuing to work with them. She is concerned that the demolition will set a precedence. She said that at the BOAR hearing the economic circumstance to support the demolition would encourage neglect. She said that they agreed with the applicant to base demolition upon non-contributing character. She said that the height and mass of the proposed building were addressed with the applicant and that they had compromised. She then said that the neighborhood association referenced the September 12, 2018 plans in their appeal and stated that their Board has not approved the revised October 25, 2018 plans. She said that they agree with the proposed activity on the street and the relocation of the front entrance. She doesn't think that the changes made by the applicant in the October 25, 2018 revisions compromises their agreement in any way.

Jessica Winters, attorney representing the Bluegrass Trust for Historic Preservation, presented their appeal regarding the BOAR decision. She submitted their letter of appeal for the record, which was submitted to the Planning Commission on September 21, 2018. She also distributed to the Planning Commission copies of the presentation and their Proposed Findings of Disapproval for a Certificate of Appropriateness for the Demolition along with an addendum. She said that the Bluegrass Trust for Historic Preservation provides a voice for historic structures within our community. She added that they do support urban infill and adaptive reuse of historic structures. She said that the existing building is included in the H-1 Overlay zone, which entitles it to special protection from demolition, and added that this building is a contributing member of the South Hill neighborhood.

Ms. Winters said that the August 22, 2018 hearing regarding this case lasted almost four hours, and during that hearing the Historic Preservation staff recommended denial of the request of Certificate of Appropriateness seeking demolition. She said many spoke in opposition to the application and no one, other than the applicant spoke in favor of the either the demolition or their proposal. She said that the BOAR Chair, Jim Dickenson repeatedly stated on the record, that he didn't believe that the BOAR was in possession of sufficient information to evaluate the applicant's argument that no economic return could be obtained from this structure. She added that the applicant objected to any continuance, the LFUCG legal staff pointed to Article 13-7(c)(2) of the Zoning Ordinance, which would authorize the BOAR to postpone action to conduct further studies; however, no motion was put forth to that end. A motion then was made to approve the applicant's request for demolition of the structure, conditioned upon the satisfaction of the articulated and approved conditions, on the grounds that no reasonable economic return could be made from this property, such that the denial would result in a taking without just compensation. She said that this motion was approved.

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Ms. Winters said that the H-1 Overlay guidelines state that demolition of historic buildings permanently alters the character of the individual site, building or grouping. She said that demolition of buildings in historic districts should only be an action of last resort. She said that the applicant is incorrect and based on the LFUCG Zoning Ordinance, "every building in an H-1 Overlay zone is protected from demolition, unless one of these two circumstances exist: the application is for demolition of a building that does not contribute to the character of the property in a zone protected by an H-1 Overlay; or that no reasonable economic return can be realized from the property such that denial of the application would result in taking without just compensation."

Ms. Winters said that we have experts to determine whether a structure contributes to the character of an H-1 Overlay zone. She said that the Historic Preservation Office concluded that this location is a contributing member of the South Hill Historic District. She added that they referenced the structure as not antique in appearance and successfully demonstrates through intact architectural mid-twentieth century commercial design. She said they also stated that it reflects a sadly under-appreciated and disappearing mid-twentieth century style of historic architecture. She said the State Historic Preservation Office (SHPO) stated this structure is significant because of its historic value to the community, its rich architectural variety, its strategic location, and that it has distinctive physical characteristics to the mid-century modern design styles. She then said that there are non-experts that have determined that the subject property doesn't qualify as a contributing structure within the South Hill District. She said the South Hill Neighborhood Association states that the age, ownership and architecture of the building sets it apart from other buildings in the area and the Planning staff states that when describing the scale and style, it is very different from the other historic structures within the district.

Ms. Winters said that different doesn't mean non-contributing. She reiterated that the subject property was not included in the 2009 Downtown Lexington Building Inventory, thus it was not identified as a contributing building to Lexington's downtown. She added that there hasn't been any survey of South Hill since the National Register Nomination was filed. She then displayed photographs of structures that are on this inventory and listed as contributing. She also displayed photos of the subject property and said that it isn't so vastly different than the structures that are listed on the inventory.

Ms. Winters said that the Planning Commission staff based their recommendation to approve demolition on the fact that this structure is not contributing. She said that at the time the application was filed to designate the South Hill Historic District, this structure was only sixteen years old, which it must be fifty years old to qualify. She added that neighborhoods grow and change and buildings age to become eligible for and worthy of protection.

Ms. Winters said that the BOAR decision was based on the fact that denial of the demolition amounted to a taking without just compensation. She said that the Bluegrass Trust appeal is asking the Planning Commission to overturn that decision and make a finding that taking without just compensation would not occur. She said that the Bluegrass Trust and the Historic South Hill Neighborhood Association agree that the "Board's finding that denial of demolition would constitute a taking without compensation was not based upon substantial or compelling evidence. The Board's finding is simply a conclusion without reference to specific facts or testimony. They are concerned that basing demolition of structures in H-1 districts on economic hardship without clear and compelling evidence sets a dangerous precedent." She added that the meaning of the term "taking without just compensation" was developed through federal and state case law. The United States Supreme Court determines this by considering factors, such as, 1) the character of the government action; 2) the economic impact of government regulation on the property owner; and 3) the owner's reasonable investment-backed expectation. The question of the severity impact requires a careful assessment of the impact of the regulation on the property, including whether application of landmark laws interfered in any way with the owner's uses of the property at the time of designation. She added that in Kentucky, the property owner only suffers a taking when he loses all the economically beneficial uses of his property. "When the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking."

Ms. Winters said that the materials submitted to the BOAR by the applicant do not support a finding that no reasonable economic return can be obtained from the structure. She said that the applicant then asserted that it was entitled to a ten percent investor return per year, which would be a rental rate of \$27.80 per square-foot to obtain a "reasonable economic return." Anything less than that would be considered a taking. She added that the applicant didn't submit any documentation to support its assertions regarding the renovation costs, the estimated fit-up allowance, the estimated annual expenses, or the rent factor for vacancy. The applicant also didn't present the BOAR with any evidence regarding the manner in which the structure has been marketed, what the price per square-foot asking price was, or the offers to rent that have been received. The applicant's own letter states that the structure was recently used as an education facility by the Bluegrass Community College. She said that the documentation that was submitted by the applicant actually supports a conclusion that a reasonable economic return can be realized from the existing historic structure at this location. She said that the applicant also submitted to the BOAR an appraisal, which stated that the property conducts its own economic analysis of the structure utilizing an income capitalization approach and concludes that the highest and best use of this structure is as an office building, and that the owner/operator should realize an annual profit in the amount of \$133,443 per year, which they believe is clearly a reasonable economic return. She said that using figures, utilized by the appraisal, they reworked the figures and arrived at a rental rate of \$16.00 per square-foot, which would obtain a six percent per year investor return on this structure.

Ms. Winters said that the Planning Commission should consider the timing of the H-1 Overlay in connection with the applicant's purchase of the property to determine whether it had "reasonable investment-back expectations" that would have been so thwarted by the denial of the demolition permit so as to constitute a taking. She said that here is an experienced applicant that purchased this

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structure with full knowledge of its condition, the variables in the downtown rental market, and the H-1 Overlay designation and the attendant restrictions on demolition and development. The applicant couldn't have had a legitimate investment-back expectation that its activities would be unregulated or that it could take any action it chose in its efforts to maximize profits. She said that the applicant should not be permitted to successfully argue the denial of the demolition permit amounts to a taking because it is not able to make a profit on the building as office space, when that inability is based on its own failure to either accurately forecast office rental demand in the market or estimate the renovation costs prior to purchasing the structure.

Ms. Winters said that the Bluegrass Trust for Historic Preservation has submitted the following:

**Proposed Findings of Disapproval
For a Certificate of Appropriateness for the
Demolition of an Existing Structure and
Construction of New Residential Structure
The Blue Grass Trust for Historic Preservation**

Based on the evidence and testimony presented, the Planning Commission finds that the application to demolish the existing structure at 120 West High Street and construct a new structure on 114, 116, & 120 West High Street and 308 & 320 South Upper Street is DENIED because:

1. The demolition of the building located at 120 West High Street (the "Commonwealth Building") is denied because the Commonwealth Building contributes to the character of the South Hill Historic District (the "District"); the demolition will adversely affect the character of the property in a zone protected by an H-1 overlay.
 - a. Commonwealth Building's "contributing" status: The State Historic Preservation Office, the Kentucky Heritage Council lists the following reasons why the Commonwealth Building is determined eligible for inclusion on the National Register of Historic Places as a contributing member of the District. Because :
 - i. The Commonwealth Building falls within the physical boundary of the District.
 - ii. The District nomination states that the district is significant because of its historic value to the community, its rich architectural variety, and its strategic location." Therefore, the Commonwealth Building adds to the significance of the historic district as a contributor to the "blend of architectural styles which represent in bricks and mortar Lexington's history."
 - iii. The building has distinctive physical characteristics of design that speak to the mid-century modern style in which it was designed, which adds to the significance of the district under Criterion C (architecture) of the National Register of Historic Places.
 - b. Commonwealth Building's Condition: The Applicants have suggested that the building is beyond cost effective to renovate, but Division of Historic Preservation staff walked through the interior spaces of the building and saw no demonstrated rehabilitation needs that would suggest a reason to demolish the structure, as well as no obvious structural issues, on the exterior or interior. Staff also stated at the BOAR hearing that they saw no visible evidence of mold or water intrusion.
 - c. Commonwealth Building's Architecture: The building, built ca. 1956, has mid-century modern simplicity, scale, mass, and materials that are compatible with other historic buildings and the streetscape in the District. The commercial building was designed to fit comfortably within and not overwhelm, in either mass or height, the mainly residential character of the District.
 - d. Commonwealth Building's Modifications: The building has experienced only minor alterations which do not negatively affect its integrity as an historic building. The building's intact nature reflects its mid-twentieth century commercial architecture.
2. The demolition of the building located at 120 West High Street (the "Commonwealth Building") is denied because a reasonable economic return can be realized from the property, and the denial of the application would not result in the taking of the property without just compensation.
 - a. The Common Law establishes that refusal to issue a demolition permit in this case will not result in a taking without just compensation.
 - i. The terms "reasonable economic return" and "taking of property without just compensation" are legal terms of art that have been developed through decades of jurisprudence. The applicable decisions uniformly establish that simply denying the so-called "highest and best use" of a property does not give rise to a taking. Instead, a regulatory control must truly deprive a property owner of any beneficial use of its property before a taking will be deemed to have occurred. Specifically in connection with historic preservation ordinances, courts give deference to the value determinations made by state and local law makers in adopting such regulations, and also recognize that promotion of preservation promotes the public good.
 - ii. As the Supreme Court has recognized, its regulatory takings jurisprudence depends on "essentially ad hoc, factual inquiries . . . [that] have identified several factors that have particular significance." Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978) (hereinafter "Penn Central"). These factors generally include (1) the character of the government action; (2) the economic impact of government regulation on the property owner; and (3) the owner's reasonable investment-backed expectations. See id. Applicable decisions include:

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1. Penn Central involved a New York City designation of Grand Central Station as a historic landmark in 1965, pursuant to its Landmarks Preservation Law. The City's Landmarks Preservation Commission subsequently denied as inappropriate the application of the owner, Penn Central, to build a tower more than 50 stories tall above the station. The Court found that the denial of the permit did not restrict the owner's property rights by precluding economically beneficial use of the property, did not single out the owner to bear an unfair burden, and promoted the public interest.
2. In Weinberg v. City of Pittsburgh, 676 A.2d 207 (1996 S. Ct. Pa.), the court found that the purchaser of a building who had full knowledge of historical controls at the time of purchase could not successfully argue that a denial of a demolition permit constituted a taking – the fact that the developer underestimated renovation costs was not sufficient to justify demolition.
3. Under Kentucky law, a property owner only “suffers a taking when he loses all the economically beneficial uses of his property.” Bianchi v. City of Harlan, 2006 Ky. App. Unpub. LEXIS 99, at *15-17 (Ct. App. Nov. 3, 2006)(citing Bobbie Preece Facility v. Commonwealth of Kentucky, Department of Charitable Gaming, 71 S.W.3d 99, 103 (Ky. App. 2001)(emphasis added)). The Court in Preece reiterated that “When the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking.” Id. (quoting Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1019, 112 S. Ct. 2886, 2895, 120 L. Ed. 2d 798 (1992)(emphasis in original)). The Court further noted that to constitute a taking, the property owner must be divested of a bundle of rights that existed at the time the property was acquired. Id.
- iii. Based on the foregoing, the Commission should consider the timing of the H-1 Overlay in connection with the Applicant's purchase of the property to determine whether it had “reasonable investment-backed expectations” that would have been so thwarted by denial of the demolition permit as to constitute a taking. Here, we have an experienced Applicant that purchased the building with full knowledge of the condition of the building, the variables in the downtown office rental market, and most importantly the H-1 Overlay designation and the attendant restrictions on demolition and development. The Applicant could not therefore have had a legitimate investment-backed expectation that its activities would be unregulated or that it could take any action it chose in its efforts to maximize profits. Additionally, the Applicant should not be permitted to successfully argue that denial of the demolition permit amounts to a taking because it is not able to make a profit on the building as office space due to its failure to either accurately forecast office rental demand in the market or accurately estimate renovation costs prior to purchasing the building.
- b. The materials submitted by the applicant do not support a finding that no reasonable economic return can be obtained from the building.
- c. The Applicant's appraisal undercuts the Applicant's renovation estimates.
- d. The Applicant's appraisal undercuts the Applicant's estimates with regard to fit-up allowance, expenses, and vacancy rate.
- e. The figures set forth in the appraisal establish that a reasonable economic return can be obtained from the building.
3. The demolition of the building located at 120 West High Street (the “Commonwealth Building”) is denied because adaptive reuse of the property meets the following Goals and Objectives of the Comprehensive Plan:

Theme A: Growing Successful Neighborhoods

Goal 1: Expanding Housing Choices

Objectives:

- a. Pursue incentives and regulatory approaches that encourage creativity and sustainability in housing development.
- b. Plan for housing that addresses the market needs for all of Lexington-Fayette County residents, including, but not limited to, mixed-use housing near employment and commercial areas.
- c. Plan for safe, affordable, and accessible housing to meet the needs of older and/or disadvantaged residents.
- d. Create and implement housing incentives that strengthen the opportunity for economic development, new businesses and jobs, including, but not limited to, higher density and affordability.

Goal 2: Support Infill and Redevelopment Throughout the Urban Services Area as a Strategic Component of Growth

- a. Identify areas of opportunity for infill, redevelopment, and adaptive reuse that respect the area's context and design features whenever possible.
- b. Implement innovative programs, such as the land bank, to facilitate sustainable development, including but not limited to, affordable housing and commercial and economic activity.

Theme B: Protecting the Environment

Goal 2: Reduce Lexington-Fayette County's carbon footprint.

Objectives:

- a. Implement the adopted environmental policy.

- b. Anticipate the community's needs by encouraging environmentally sustainable uses of natural resources.
- c. Provide incentives for green building, sustainable development, and transit-oriented development with civic agencies leading by example through the use of green building standards.

Goal 3: Support the funding, planning, and management of a green infrastructure program.

- b. Incorporate green infrastructure principles in new plans and policies, including, but not limited to, land use and transportation.

Theme C: Creating Jobs and Prosperity

Goal 1: Support and showcase local assets to further the creation of a variety of jobs.

Objectives:

- a. Strengthen efforts to develop a variety of job opportunities that lead to prosperity for all.
- e. Encourage the development of appropriate attractions and supporting uses that promote and enhance tourism.

Theme D: Improving a Desirable Community

Goal 3: Protect and enhance the natural and cultural landscapes that give Lexington-Fayette County its unique identity and image.

Objectives:

- a. Protect historic resources and archaeological sites.
- b. Incentivize the renovation, restoration, development, and maintenance of historic residential and commercial structures.
- c. Develop incentives to retain, restore, preserve and continue use of historic sites and structures, rural settlements, and urban and rural neighborhoods.

Theme E: Maintaining a Balance between Planning for Urban Uses and Safeguarding Rural Land

Goal 1: Uphold the Urban Services Area concept.

Objectives:

- b. Encourage compact, contiguous, and/or mixed-use sustainable development within the Urban Service Area, as guided by market demand, to accommodate future growth needs.

Goal 3: Maintain the current boundaries of the Urban Service Area and Rural Activity Centers; and create no new Rural Activities Centers.

Ms. Winters said that denial of the requested demolition permit would require the applicant or subsequent purchaser to develop a creative adaptive reuse plan for the historic building, which could do the same as a new development, adding life, commercial use, and activity to this site. She said that these proposed findings do comply with the Goals and Objectives of the Comprehensive Plan. Theme A: Expanding Housing Choices, Support Infill and Redevelopment Throughout the Urban Services Area as a Strategic Component of Growth; Theme B: Reduce Lexington-Fayette County's carbon footprint; Theme C: Support and Showcase Local Assets to Further the Creation of a Variety of Jobs; and Theme D: Protect and Enhance the Natural and Cultural Landscapes that Give Lexington-Fayette County its Unique Identity and Image. She added that Lisa Thompson, Director in Kentucky of the National Register program, is present to answer any questions whether or not this building is a contributing structure in the eyes of the National Register Program.

Commission Questions - Ms. Mundy asked how this a "taking," when a taking is usually an action of eminent domain. Ms. Winters said that under their Zoning Ordinance it states that if a building is within an H-1 Overlay, it can't be demolished unless it is either non-contributing, or no economic return can be obtained from the structure such that denial of the demolition permit amounts to a taking without just compensation. She added that it is the applicant's position that denial of the demolition permit, in this case, will result in a taking without just compensation.

Citizens in Opposition - Jim McKeighen, 170 Old Georgetown Street, said that he is against the proposed building demolition. He said that he assisted with the Historic Commission and the writing of the guidelines. He added that across the street from his home is a two-story apartment building and from the street, you can't tell that it's there. He added that the scale of the building will ruin the lighting for a number of neighboring houses. He said that this building may not be Victorian, but it is part of our history.

Note: Mr. Owens left the meeting at 4:35 p.m.

David Cohen, chairman of the LFUGC Historic Preservation Commission, said that the Commission discussed this appeal and submitted a letter to the Planning Commission, which he read into the record (attached in the appendix to these minutes). He said that this building was included in the H-1 Overlay and absolutely contributes to the character of the district.

Blake Hall, 36 Richmond Avenue, said that he is in support of the demolition. He said that he is an advocate for urbanism and good infill redevelopment and this is a great example of an unfulfilling property, on an active downtown street, and turns it into homes for

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many people. He added that part of the Comprehensive Plan is infill and he said that Lexington's population will continue to grow and those people need a place to live. He said that he doesn't believe this building is contributing in any historical manner, and it doesn't conform to the 19th century style of the rest of the neighborhood. He then asked why does the first rule exist regarding if a building is non-confirming if any building can become conforming once it ages to fifty years old. He also said that if this building is not demolished, the precedence will be set that the Planning Commission is not for the Comprehensive Plan and infill redevelopment.

Janie Fergus, 308 S. Hanover Ave., President of Ashland Park Neighborhood Association, spoke on the behalf of the Board in opposition of demolition. She said that the neighborhood association board believes that demolition of this building undermines the protection of the H-1 Overlay.

Bill Johnston, 2700 Man o' War Boulevard, President of the Historic Western Suburb Neighborhood Association. He distributed a letter to the Planning Commission and said this neighborhood doesn't match the 19th century style of the South Hill but became an H-1 Overlay district. Those buildings were not considered historic when they were included in the overlay because they were still new, now they are sixty to seventy years old. He is concerned about tearing down a building that is usable but not historic enough in an H-1 Overlay district, there is no reason to not continue with other parcels in the H-1 Overlay that could also be more efficiently utilized.

Sheila Ferrell, 4011 Henry Clay Boulevard, member of the Gratz Park Neighborhood Association, said that they had submitted a letter to the Planning Commission prior to this meeting. She said that they are in opposition of the demolition and wish to protect this building. She said that enhancing our community's quality of life by maintaining the integrity and character of our historic buildings and our neighborhoods is important. She said they believe that approving demolition on the grounds that this building can't yield a reasonable economic return set a dangerous precedent. She said they are concerned that the same claim of economic hardship could be made in the historic neighborhood, which could result in other historic buildings being demolished. She added that they believe that this structure is a contributing structure to this neighborhood and district.

Sam Matheny, President of Northside Neighborhood Association, he said that there is a large number of members that are concerned with this proposal and they are in opposition to the demolition. He believes that the threat to the preservation and integrity of the H-1 Overlay is crucial and asked the Planning Commission to overturn this decision.

Tim Condo, 659 Cardinal Lane, said that South Hill has a diverse history and can't be distilled into one snapshot, such as the Pioneer Days or Antebellum. He said that it represents a broad range of architectural style. This building is historic because it represents the mode of building in a particular time in America. He added that the loss of this building will have an adverse effect on the character of the property and the district, therefore this building was not considered at the time of the nomination.

Jackson Oslan, read a letter submitted to the Planning Commission on behalf of the State Historic Preservation Office (SHPO). He said that the minimum requirement for a building to be listed on the National Register is that it is fifty years or older. The South Hill Historic District was listed in 1978 and those buildings had been built prior to 1929. He added that the minimum requirement of fifty years of age changes every year, today this eligibility status of all building built prior to 1968 must be taken into consideration. He said that this building is determined eligible for inclusion on the national Register of Historic Places as a contributing member because: it is located within the physical boundary of the South Hill Historic District; the South Hill Historic District nomination states the district is significant "because of its historic value to the community, its rich architectural variety, and its strategic location." Therefore, this building adds to the significance of the historic district as a contributor to the "blend of architectural styles which represent in bricks and mortar Lexington's history"; and the building has distinctive physical characteristics of design that speaks to the mid-century modern style in which it was designed. He said that due to these reasons, the State Historic Preservation Office has determined that this building is eligible for inclusion on the National Register of Historic Places as a contributing resource of the South Hill Historic District.

Applicant Rebuttal - Mr. Lear said that fifty years is the minimum requirement for eligibility on the National Register, in order to be considered. He said that as far as he is concerned, dismiss everything that was said today regarding rebutting an economic based argument for demolition. He said that an agreement was made with the neighborhood not to base this case on that and to base it on the non-contributing nature of this building, which is very justifiable, and is what was presented. He reminded the Planning Commission that this is a de novo proceeding, everything being heard is as if being heard at the same time. He said that it comes up as an appeal but it is not an appeal on the record. He said that he was appreciative that opposing counsel mentioned the Comprehensive Plan because the Historic District, the Design Guidelines, and the Zoning Ordinance are all documents that are relevant to this decision. He added that the Goals and Objectives from the 2018 Comprehensive Plans recommend redevelopment, particularly in and around the downtown area. In regards to the comment of experts versus the layperson, he said that this body is not intended to be made up of experts but rather people from the community who can hear from experts that are not governed. He said that Ms. Coffman asked them to expand the landscaping on their proposed findings. He added that the owner of the property, the Board of Architectural Review, and the neighborhood are all in favor of the demolition and the improvements. He said that all of the opposition is from third parties, not the neighbors, nor the professionals. He said that the evidence supports the fact that this is not a contributing structure and they respectfully request the Planning Commission's concurrence. He said that the staff didn't agree with the condition related to the B-2B zoning; he said that along with Ms. Coffman, they would like all of those accepted, but to remove condition #10.

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Ms. Coffman said that she doesn't believe that demolition should not be allowed for economic reasons. She said that they agree with the Bluegrass Trust, in such that demolition should be allowed but not be allowed to set a precedent, which is why they submitted their highly specific findings of approval. She said that their agreement made specific reference to the plans of September 12, 2018, not the changes on the October 16, 2018, those plans added more greenspace, which is agreed upon.

Ms. Winters said this building is within an H-1 Overlay district and to approve a demolition the following would have to be found, either the building is not contributing or that denial of the demolition permit will amount to a taking. She said that there is no provision of law that allows an applicant and a third party to settle an appeal of a BOAR decision. She added that this body has the independent responsibility to conduct a de novo hearing and render a finding based upon facts. She said that the applicant stated in their appeal letter that "in the event that the BOAR's approval of the demolition permit is appealed by another party, applicant will demonstrate the issuance of the permit is warranted both on the basis determined by the BOAR, that is if there has been a taking, and also because the application is for demolition of a building, which does not contribute to the character of the district." She said that the applicant specifically stated in the appeal document that they are appealing on both grounds and the Bluegrass Trust has presented their argument on both grounds. She said that there is no guarantee that the construction proposed today will actually take place.

Citizen Rebuttal - Ms. Kerr stated that she doesn't have anything to add to the rebuttal but asked if the Planning Commission is considering a motion that doesn't require the applicant to return to the BOAR. She said that their appeal was based on three specific conditions of the twelve conditions placed by the BOAR in their actions. She then asked if the Planning Commission's action will be limited to those three conditions or if they are applicable to all twelve conditions.

Staff Rebuttal - Ms. Wade, said that the staff doesn't have an objection to the findings provided by the applicant, with the exception of item E., which is factual that the zoning is different at this location, but is not relevant to whether the structure is contributing or not and doesn't support the previous statement in the finding. She then asked the Planning Commission to strike 1.e. from the list and in the summary, change "five" factors to "four" factors, and remove condition #10. She said that the revision that was submitted to the staff would meet that condition. Ms. Tracy Jones added that these findings can be found in the information provided by the applicant, under tab 1. Ms. Wade then clarified Ms. Kerr's question regarding if that the applicant would return to the BOAR. She said that the applicant was agreeable to return to the BOAR for the items listed in their findings, which would be to submit dimensional floor plans, building sections, final brick, stone, and metal panel selections, and final details, but not for further design review.

Commission discussion - Mr. Penn said that he supports overlay concept and relies on the people that live there to determine what is best for them. He said that he understands the point of setting a precedent but doesn't believe that the precedent should be that any building located within an H-1 Overlay can't be removed. He said that he believes that it can be done with the approval of the neighborhood, and they want it removed. He said that he is supporting the staff's recommendations.

Ms. Mundy, agrees with Mr. Hall's comment that "we have been charged with providing homes for those coming into our community, and the Goals and Objectives of the 2018 Comprehensive Plan have charged us with infill." She said that if the community is happy with this project going into their community, she will support this as well.

Mr. Wilson asked for clarification of the statement "the applicant didn't submit any documentation in support of its assertion regarding the renovation costs." He asked the applicant if this was necessary. Mr. Lear said that the Zoning Ordinance allows them to prove one of two things: either there is no reasonable economic return or that the structure in question is not a contributing structure. He added that they presented evidence on both, and reminded the Planning Commission that this is a de novo hearing and there was no evidence presented today on the economic basis, only on the non-contributing basis.

Zoning Action - A motion was made by Mr. Penn, seconded by Mr. Bell, and carried 8-0 (Brewer and Owens absent) to uphold the BOAR decision to approve the demolition and to uphold the BOAR decision to approve the Certificate of Appropriateness for BOAR 2018-2: THE RESIDENCES AT SOUTH HILL, LLC, with the Findings of Approval submitted by the applicant, and amended as follows:

**PROPOSED FINDINGS OF APPROVAL
FOR A CERTIFICATE OF APPROPRIATENESS FOR THE
DEMOLITION OF AN EXISTING STRUCTURE AND
CONSTRUCTION OF NEW RESIDENTIAL STRUCTURE
RESIDENCES OF SOUTH HILL, LLC**

Based on the evidence and testimony presented, the Planning Commission finds that the application to demolish the existing structure at 120 W. High Street and construct a new structure on 114, 116 & 120 West High Street and 308 & 320 South Upper Street is APPROVED because:

1. The demolition of the building located at 120 West High Street (the "subject building") is approved because the subject building is non-contributing; the demolition will not adversely affect the character of the South Hill Historic District (the "District") and will not set a precedent for future demolitions within the District for the following reasons:

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- a. Building Age. The age of the subject building differs dramatically from the age of the buildings that formed the basis for the creation of the South Hill Historic District. In fact, the subject building was only 18 years old when the district was established. As described in the National Historic Register of Historic Places Nomination Form (the "Report") which was the rationale for establishing the District, the relevant historic structures were constructed from the early 19th to the early 20th centuries.
- b. Building Architecture. The architecture of the subject building is dramatically different from that of the buildings which formed the basis for the creation of the South Hill Historic District. In fact, the Report simply describes the building as a "government building" built in 1958. The architectural styles of those buildings, as described in the rationale for establishing the district, are predominantly Federal and Greek Revival. This factor, in combination with the age of the building, means that this building played no part in the justification for establishing the South Hill Historic Overlay zone and was not considered as contributing to the character of the District.
- c. Building Modifications. The exterior of the subject building has been modified over the years in ways which materially and negatively impact its value for preservation. The modifications include replacement of all the windows, the addition of stairs, and the removal of railings. It is, therefore, not even an intact example of the architecture of the period in which it was constructed.
- d. Building Ownership. The subject building was constructed and owned throughout all but the last two years of its life by the Commonwealth of Kentucky which is exempt from all local land use regulations and many local building regulations. As such, the property and the structure were changed in multiple ways internally and externally over a period of many years with no oversight from or input by the Board of Architectural Review or its staff.
- e. ~~Zoning. The subject property is zoned Lexington Center Business (B-2B) Zone. This zone (a) is intended to accommodate a wider array of uses than properties located in every other zoning category within the Historic District; and (b) has no height limitation. The subject building is the only non-historic, noncontributing structure in the South Hill Historic District zoned B-2B. In contrast, the other buildings within the District zoned B-2B were either built as residential structures or institutional, i.e., 1st United Methodist Church, all of which were built more than 100 years ago. This fact distinguishes both the building and the property from every other building and property in the District.~~

Because of the foregoing ~~five~~ four factors, the building does not add to the District's sense of time and place or historical development. The building, because of its age, architecture, location and use, was never effectively part of the South Hill neighborhood. The building is simply a one-of-a-kind structure built and operated by the Commonwealth of Kentucky which has had no influence on other buildings or development within the District.

2. The requested new construction is appropriate under Article 13-7(b) of the Zoning Ordinance as the proposed four story structure, depicted in the elevations and floor plans ~~dated September 12, 2018~~ collection of drawings submitted October 25, 2018, is in substantial compliance with the applicable Design Guidelines, the approval of which is subject to the following conditions for the new construction:
 - a. Submit dimensioned floor plans to the Board of Architectural Review ("Board") for review and approval prior to the issuance of a Certificate of Appropriateness.
 - b. Submit building sections to the Board for review and approval prior to the issuance of a Certificate of Appropriateness.
 - c. Provide final brick selection to the Board for review and approval prior to the issuance of a Certificate of Appropriateness.
 - d. Provide final stone selection to the Board for review and approval prior to the issuance of a Certificate of Appropriateness.
 - e. Provide final metal panel specification and details to the Board for review and approval prior to the issuance of a Certificate of Appropriateness.
 - f. Provide final green wall screen specifications and details to the Board for review and approval prior to the issuance of a Certificate of Appropriateness.
 - g. Provide final door and window specifications and details to the Board for review and approval prior to the issuance of a Certificate of Appropriateness.
 - h. If any changes are made that alter the information submitted, resubmit the changes to staff or the Board for review and approval prior to the start of the affected work.
 - i. Once reviewed by other LFUCG Divisions, resubmit changes to staff or the Board for review and approval prior to the start of work.

- C. **ADOPTION OF 2019 MEETING & FILING SCHEDULE** - The Chair will announce that the Commission will consider adoption of the "Official Meeting and Filing Schedule for 2019" at this time. Once adopted, the staff will distribute copies of the 2019 schedule for use by the Commission and the general public.

Action – A motion was made by Ms. Mundy, seconded by Mr. Berkley, and carried 8-0 (Brewer and Owens absent) to adopt the **ADOPTION OF 2019 MEETING & FILING SCHEDULE**.

VII. **STAFF ITEMS** – No such items were presented.

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

VIII. **AUDIENCE ITEMS** – No such items were presented.

IX. **MEETING DATES FOR NOVEMBER 2018**

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

X. **ADJOURNMENT** - There being no further business, Chairman Wilson declared the meeting adjourned at 5:30 p.m.

William Wilson, Chair

Carolyn Plumlee, Secretary

TLW/TM/HB/dw

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