

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

April 11, 2019

- I. **CALL TO ORDER** - The meeting was called to order at 1:30 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present – William Wilson, Chairman; Headley Bell (arrived at 1:32 pm); Bruce Nicol; Graham Pohl; Mike Owens; Frank Penn; Carolyn Plumlee; Will Berkley; Patrick Brewer; Karen Mundy and Larry Forester (departed at 3:39 pm).

Planning Staff members present – Jim Duncan, Director; Traci Wade, Tom Martin, Harold Baillie, Lauren Hedge, Cheryl Gallt, Denice Bullock and Marc Petitfrere. Other staff members in attendance were Casey Kaucher, Traffic Engineering; Vaughan Adkins, Division of Engineering; Captain Greg Lengal and Firefighter Embry Beatty, Division of Fire & Emergency Services & Tracy Jones, Law Department.

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Plumlee, seconded by Ms. Mundy and carried 10-0 (Bell absent) to approve the minutes of the March 14, 2019, meeting.

- III. **POSTPONEMENTS OR WITHDRAWALS** – Requests for postponement and withdrawal were considered at this time.

- a. PLN-MJSUB-19-00006: TUSCANY, UNIT 15 (6/2/19)* - located at 1970 WINCHESTER ROAD (A PORTION OF), LEXINGTON, KY.
Council District 6
Project Contact: EA Partners

The Subdivision Committee Recommends: **Postponement**. There were significant concerns regarding the proposed street system and future connections, and compliance with the preliminary development plan.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Denote proposed and existing easements.
11. Delete note #12.
12. Depict connection of Eastmont Road to Haymaker Parkway.
13. Depict connection of Haymaker Parkway to Fortune Drive via Trade Center Drive.
14. Include remainder of adjacent land within Tuscany development on this preliminary subdivision plan.
15. Discuss connecting cul-de-sacs to provide a loop street.
16. Discuss shifting Haymaker Parkway closer to greenway to provide access to open space.
17. Discuss compliance with approved preliminary development plan.

Representation – Rory Kahly, EA Partners, requested a one month postponement, per the Subdivision Committee recommendation of postponement.

Citizen Comments - There were no audience members present to speak to this request.

Action - A motion was made by Mr. Owens, seconded by Ms. Plumlee and carried 10-0 (Bell absent) to postpone **PLN-MJSUB-19-00006: TUSCANY, UNIT 15** to the May 9, 2019, meeting.

Note: Mr. Bell arrived at the meeting.

- b. PLN-FRP-19-00005: CROSSROADS CHRISTIAN CHURCH (AMD) (6/2/19)* - located at 4128 TODDS ROAD, LEXINGTON, KY.
Council District 12
Project Contact: EA Partners

Note: This plan requires the posting of a sign and an affidavit of such. The purpose of this amendment is to subdivide one tract into two lots.

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

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
9. Discuss sanitary sewer line to A-R lot.
10. Discuss location of proposed access point(s).
11. Discuss right-of-way improvements to Todds Road.

Representation – Rory Kahly, EA Partners, requested a one month postponement to allow additional time to resolve the sanitary sewer line to the A-R lot (condition #9).

Citizen Comments - There were no audience members present to speak to this request.

Action - A motion was made by Mr. Penn, seconded by Mr. Brewer and carried 11-0 to postpone **PLN-FRP-19-00005: CROSSROADS CHRISTIAN CHURCH (AMD)** to the May 9, 2019, meeting.

- c. **PLN-FRP-19-00001: RED MILE SQUARE, INC., TRACT D, LOT 3 (AMD)** (4/11/19)* - located at 1151 UNITY DRIVE, LEXINGTON, KY.
Council District 11
Project Contact: Endris Engineering

Note: The purpose of this amendment is to subdivide one lot into 17 lots, and create easements as denoted with two asterisks (**) on the plan.

The Subdivision Committee did not review this plan at their February 7, 2019, March 7, 2019, and April 4, 2019 meeting.

The Technical Committee and Staff Recommends: Postponement. There was a question regarding compliance with the required open space for the R-1T zone.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Addition of street cross-section on plan.
8. Provided the Planning Commission makes a finding on the access easement.
9. Discuss open space for Lot 31, per Article 8-10(o)(3) of the Zoning Ordinance.

Staff Comments – Mr. Martin said that the staff had received communication from the applicant's representative requesting an indefinite postponement because they have been unable to resolve the required open space issue for the R-1T zone.

Citizen Comments - There were no audience members present to speak to this request.

Action - A motion was made by Ms. Mundy, seconded by Ms. Plumlee and carried 11-0 to indefinitely postpone **PLN-FRP-19-00001: RED MILE SQUARE, INC., TRACT D, LOT 3 (AMD)**.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, April 4, 2019, at 8:30 a.m. The meeting was attended by Commission members: Carolyn Plumlee, Mike Owens, Frank Penn (departed at 9:45 am), Headley Bell and Karen Mundy. Committee members in attendance were: Josh Dezarn, Division of Engineering; and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Traci Wade, Tom Martin, Cheryl Gallt, Lauren Hedge, Denice Bullock, Scott Thompson; Captain Greg Lengal and Firefighter Embry Beatty, Division of Fire & Emergency Services; & Tracy Jones and Chad Edwards, 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.

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

- A. **CONSENT AGENDA** – Following requests for postponement or withdrawal, items requiring no discussion were considered.

Criteria:

- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
- (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
- (3) no discussion of the item is desired by the Commission; and
- (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
- (5) the matter does not involve a waiver of the Land Subdivision Regulations.

Requests can be made to remove items from the Consent Agenda:

- (1) due to prior postponements and withdrawals,
- (2) from the Planning Commission,
- (3) from the audience, and
- (4) from Petitioners and their representatives.

Ms. Wade said that a printed Consent agenda was placed at the Commission's seats; however, it was brought to the staff's attention that members of the audience would like to further discuss **PLN-MJDP-19-00014: PENMOKEN PARK, LOT P-104 (SOUTHERN & JONES PROPERTIES, LLC)**; and the applicant's representative would like further discuss condition #14 for **PLN-MJDP-19-00013: PAPPERT PROPERTY (AMD)**. Under the By-laws of the Planning Commission neither one of these applications will now qualify for the Consent agenda.

- B. **PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 11-0 to approve the release and call of bonds as detailed in the memorandum dated April 11, 2019, from Barry Brock, Division of Engineering.
- C. **DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee 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 OR 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)
- Commission discusses and/or votes on the plan.

Note: Requests for additional time, stating the basis for the request, must be submitted to The Subdivision Committee no later than two days prior to the meeting. The Chair will announce his/her decision at the outset of the hearing.

1. **FINAL SUBDIVISION PLANS**

- a. **PLN-FRP-19-00007: HAMBURG PLACE FARM, SIR BARTON WAY OFFICE PARK, PHASE 2, LOT 18A (AMD) (6/2/19)* - located at 2540 SIR BARTON WAY, LEXINGTON, KY.**
Council District 6
Project Contact: Palmer Engineering

Note: The purpose of this plat is to subdivide one lot into two lots.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Addressing Office's approval of street names and addresses.
4. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
7. Addition of Lot 18B to plat for extension of access easement.
8. Complete owner's certification for Lots 18A and 18B.
9. Provided the Planning Commission makes a finding regarding the access easement.
10. Discuss alignment of access easement towards I-75 for future connection under I-75.

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

Staff Presentation - Ms. Gallt directed the Commission's attention to the final record plat, and briefly explained the proposed request. She indicated that the staff was recommending approval, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Addressing Office's approval of street names and addresses.
4. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
- ~~7. Addition of Lot 18B to plat for extension of access easement.~~
- ~~8. Complete owner's certification for Lots 18A and 18B.~~
7. 9. Provided the Planning Commission makes a finding regarding the access easement.
8. 10. Discuss alignment of access easement towards I-75 for future connection under I-75.

As for the condition #8, Ms. Gallt indicated that the applicant and the staff can continue their discussions to resolve the alignment of the access easement towards I-75 for future connection under the interstate.

Ms. Gallt presented the Staff Report and indicated that Article 6-8(m) of the Land Subdivision Regulations requires the Planning Commission make a finding to approve lots which are proposed to have their sole access provided via an access easement, rather than via a public or private street.

The findings for appropriateness of access easements as sole access for certain lots:

1. Allowing for the proposed lot to be accessed only via the existing access easement(s) is appropriate for the proposed development and consistent with the intent of the Land Subdivision Regulations and will not negatively impact public health and safety.

The Staff makes the following recommendations relevant the use of an access easement as sole access for a lot:

- a. The exact alignment of Sanford Way be resolved to best support the extension of the roadway under I-75 as part of traffic congestion relief project in this portion of the Urban Service Area. The Planning Commission will re-evaluate access to the proposed lot (18B) when an amended final development plan is submitted.

Representation – Stephanie Blain, Palmer Engineering, indicated that the applicant was in agreement with the staff's recommendation, as well as the recommendation made on the staff report for the requested waiver and requested approval.

Commission Questions – There were none.

Citizen Comments - There were none.

Action - A motion was made by Mr. Penn, seconded by Mr. Brewer, and carried 11-0 to approve **HAMBURG PLACE FARM, SIR BARTON WAY OFFICE PARK, PHASE 2, LOT 18A (AMD)** as recommended by the staff, changing condition #8 to read "Resolve alignment of access easement towards I-75 for future connection under I-75" and included the finding for the access easement, as recommended by the staff.

2. DEVELOPMENT PLANS

- a. PLN-MJDP-19-00013: PAPPERT PROPERTY (AMD) (6/2/19)* - located at 2811 SPURR ROAD, LEXINGTON, KY.
Council District 12
Project Contact: EA Partners

Note: The purpose of this amendment is to revise the street layout for single-family dwelling.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. United States Postal Service Office's approval of kiosk locations.
10. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.

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

11. Division of Waste Management's approval of refuse collection locations.
12. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
13. Dimension driveway, walkway and points of egress and ingress in feet on plan.
14. Remove Lot 114 label on plan.
15. Dimension height of apartment buildings and clubhouse in feet on plan.
16. Denote the Royal Springs Aquifer Committee's consideration and/or approval prior to certification.

Staff Presentation - Mr. Martin directed the Commission's attention to the final development plan, and briefly explained the proposed development of the property. He indicated that the staff was recommending approval, subject to the conditions listed on today's agenda. He noted the reason this item was removed from the Consent agenda was due to condition #14. He explained that due to a graphical error on the original submittal, the lot line between Lots 114 and 115 was mistakenly left off. The applicant has since corrected that mistake and they are now requesting condition #14 be removed.

Representation - Rory Kahly, EA Partners, indicated that the applicant was in agreement with the staff's recommendation, and requested approval.

Commission Questions - There were none.

Citizen Comments - There were none.

Action - A motion was made by Mr. Forester, seconded by Mr. Bell, and carried 11-0 to approve **PLN-MJDP-19-00013: PAPPERT PROPERTY (AMD)**, as recommended by the staff, removing condition #14.

- b. **PLN-MJDP-19-00014: PENMOKEN PARK, LOT P-104 (SOUTHERN & JONES PROPERTIES, LLC) (6/2/19)*** - located at 1847 NICHOLASVILLE ROAD, LEXINGTON, KY.
Project Contact: ECSI, LLC
Council District 3

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. United States Postal Service Office's approval of kiosk locations.
12. Delete notes #8 & #9.
13. Denote typical lot size.
14. Denote development shall substantially comply with submitted renderings.
15. Denote compliance with private open space requirements per lot by denoting square footage per lot.
16. Resolve timing of relocation of residents.

Staff Presentation - Mr. Martin directed the Commission's attention to the final development plan, and briefly explained the proposed development of the property. He indicated that the staff was recommending approval, subject to the conditions listed on today's agenda.

Representation - Bruce Simpson, attorney, along with Fred Eastridge, ECSI, LLC, Maggie Thacker, architect, and David Jones, developer, gave a brief history of the process of the zone change, the neighborhood meetings and their design options and what led to this final development plan.

Mr. Simpson said that they had notified the tenants living in the building about their plans to rezone the property back in November. The tenants were informed that the applicant was willing to help relocate them to another building where the rent would be the same or equal price to what they were currently paying, and his client would move their belongings at no cost to the tenant. Mr. Simpson said that should the tenants take his client up on this offer, the tenants would be required to sign a 6 month lease at the new location.

Mr. Simpson indicated that the applicant was in agreement with the staff's recommendation, and requested approval.

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

Commission Questions – Mr. Pohl asked if the applicant's exhibit was a view of the townhouses from Penmoken Park and questioned why the access was depicted closer to Nicholasville Road. Mr. Eastridge replied that is correct and indicted that the access has been moved to the further away from the intersection to the other side of the townhomes.

Mr. Pohl asked if there is an elevation plan for the site. Mr. Eastridge replied he does not have an elevation plan to review. Mr. Pohl then asked if the elevation has been studied. Mr. Eastridge replied that he did not know. Mr. Simpson said that the townhouses along Penmoken Park will have the same architectural features as the townhouse along Nicholasville Road. Mr. Jones agreed, and explained that the townhouses were shifted at the request of Traffic Engineering. The entrance was moved further down on Penmoken Park, which is not shown on the conceptual drawing. He then said that there will be full architectural plans provided to Building Inspection and the Division of Planning once the design has been chosen.

Mr. Pohl said that the most important elevation is the elevation that is not shown, which is the end of the units facing Penmoken Park. He then said that it was a huge error to leave that portion of the townhouses off the drawing because that side is speaking to the Penmoken Park area. It would be a shame to leave the sides unconsidered or undesigned as it appears at this time. Mr. Jones replied that this has been a very tough project with many voices as to how to design these units. He then said that designs are extremely subjective and what one person may like, the next person may not like. He added that to keep these units within a reasonable price range, he is willing to make reasonable accommodations to maintain a substantially similar design. They did not bring a full set of construction plans for the Planning Commission to review. The actual footprint has been revised multiple times at the request of several departments. He said that the design the Planning Commission is seeing is in substantial compliance with their previous commitments to the type of material to be used, as well as compliance with Article 15-7 of the Zoning Ordinance. He then said that the reason there is not a final set of plans is because they are open to any reasonable request to change the design elements of the building.

Mr. Pohl said that his comments were not about the style, building materials or anything other than acknowledgment that the façade on the end of units facing Nicholasville Road is very different from the façade facing Penmoken Park. The side of the units on Penmoken Park is perceived to be a frontage for the Penmoken Park area and his comment is strictly to encourage the applicant to think about its importance to the street elevation on Penmoken Park.

Citizen Comments – Juliette Symons, 136 Suburban Court, presented a PowerPoint presentation and voiced her concerns about the final rendering not being submitted to show the type of material that will be used. She indicated that the residents are worried that the setbacks and the size of the buildings will be out of character with the existing neighborhood. She added that the residents of this area are worried about stormwater mitigation and that the proposed layout will create more issues than those that already exist in the area.

Ms. Symons said that the proposed use will increase cut-through traffic on Penmoken Park toward Rosemount Garden. She then said that even though the staff said there could be a traffic study done in the future the residents are afraid that responsibility would fall on them to fund, not the developer.

Ms. Symons said that the developer should be held to the affordable housing that they promised during the zone change. These townhomes will be priced above what the houses in the Penmoken Park and the rest of the neighborhood cost.

Ms. Symons said that during the zone change hearing the tenants of the building were alerted about the property being demolished and they were given the opportunity to find housing elsewhere on the developer's other properties. However, that is not the same for the newer tenants who had no idea about the property being rebuilt.

Candice Wallace, 130 Goodrich Avenue, indicated that during the neighborhood meeting a rendering was presented to the residents but that rendering is not the same rendering being shown to the Planning Commission. She did not understand why the developer asked the residents for ideas and comments if those comments were not going to be used.

Ms. Wallace said that the Planning Commission needs to hold the developer to the goals of the Comprehensive Plan by keeping with the character of the urban form of the neighborhood, Nicholasville Road and Penmoken Park.

Mareth Birmingham-Gillespie, 164 Penmoken Park, expressed her concern for the current tenants residing at 1847 Nicholasville Road, who were not able to attend the meeting. She asked if she and the other residents that could not make the meeting donate their time to Jeffery Hayes, who resides at 1847 Nicholasville Road.

Jeffery Hayes, 1847 Nicholasville Road, spoke about the lack of communication between the new tenants and the property owner about the process of relocating the tenants to other apartments.

Rebuttal – Mr. Simpson explained that this type of housing is based upon 30 day leases, and said that if the tenant pays the rent that is owed then there would be no eviction. A seven day notice to vacant the property is

between a judge and the tenant. This type of action is just one of the problems that takes place with rental properties, but when a seven day notice letter is given, it means the tenant is behind on their rent.

Mr. Simpson said that the older tenants did receive notification about the zone change in November, but as for the newer tenants, they did not receive the notification if they moved in after November. His client had planned to hold off on developing this property, but with the moratorium now in place for the Penmoken Park neighborhood, his client decided to go forward with this request.

Mr. Simpson then said that the commitment from his client to the tenants was still the same as from the beginning. As long as the tenant pays their rent and signs the required lease agreement, his client, at no expense to the tenant, will help move them into another property within Lexington at the same or equal rental. He said that his client has put that agreement in writing and submitted it to the Planning Commission for review. The representatives for the neighborhood made the same objection today as she did during the zone change hearing. She also chastised his client for not providing affordable housing, but the specific design changes will increase the price of the townhomes in the thousands.

Mr. Simpson indicated that there had been several meetings with the staff to ensure that this development is in compliance with the Land Subdivision Regulations and the Zoning Ordinance prior to coming to the Planning Commission. His client has gone above and beyond the normal commitments by submitting architectural renderings and continuing to working with the residents of this area to tweak the design further. He said that everyone has an idea of good design, but his client has an architect who is familiar with the context of the neighborhood and the end result will enhance this area. Mr. Simpson said that his client also agreed to give up 12 feet of his property for future right-of-way. Even though his client was not required to do this, he is willing to accommodate the future plans for a potential roadway expansion.

Mr. Simpson said that the Commission's decision is not about the design of the structure, but rather is this development plan in compliance with the Land Subdivision Regulations and the Zoning Ordinance. Based upon the evidence and the staff's endorsement this development plan is in compliance.

Ms. Symons said that there has not been any discussion as to how this development will change the neighborhood. The applicant is requesting the Commission to approve a final development plan when not everything is final.

Staff Rebuttal – Mr. Martin said that the Subdivision Committee recommendation of approval, and the staff report, speaks for itself by supporting this request. He then said that the staff is aware of the many issues that impact rental properties and the staff hopes there is some room for human compassion when dealing with individual circumstances.

Commission comments – Mr. Owens said that if there are any substantial changes, then the final development plan would be amended and reviewed by the Commission. Mr. Martin replied affirmatively.

Mr. Brewer asked if the orientation of the building would be sufficient for this request to come back to the Commission. Mr. Martin said that what the Commission reviewed at today's meeting is a representation for both street frontages, and the rendering shows how the townhouses are constructed and intend to look.

Mr. Brewer said that the final development plan rendering is sufficient at this time and the photograph is just an example of what the buildings would look like. Mr. Martin replied affirmatively.

Mr. Wilson said that he understood there are issues with the design of the buildings, but the Commission's role is to determine whether or not this final development plan is in compliance with the Land Subdivision Regulations and the Zoning Ordinance.

Action - A motion was made by Mr. Berkley, seconded by Mr. Nicol, to approve **PLN-MJDP-19-00014: PENMOKEN PARK, LOT P-104 (SOUTHERN & JONES PROPERTIES, LLC)**, as recommended by the staff.

Discussion of motion - Mr. Penn asked if condition #16 (Resolve timing of relocation of residents) should remain listed on the recommendation. Mr. Martin said that the staff would like a time frame as to when the residents would be relocated noted on the final development plan. Mr. Simpson replied that if the residents are interested in taking their offer then those people would be moving earlier; otherwise, they would have 30 days, which is constant with the monthly rental agreement.

Mr. Penn asked if language should be added to note 30-days or leave the conditions as is. Mr. Martin replied that the staff is comfortable with leaving the conditions as is.

Mr. Pohl requested to amend the motion on the floor by adding the underlined language to condition #14:

Denote development shall substantially comply with submitted renderings of the Penmoken Park façade and the units fronting Nicholasville Road shall be further developed in a way that would be consistent with the development of the façade facing Penmoken Park, not a throw away façade as indicated in the rendering.

Mr. Pohl then suggested to screen vehicles parked on the property by adding a 17th condition to require additional landscaping adjacent to the parking area closest to the Penmoken Park.

Mr. Wilson asked if Mr. Pohl was suggesting the façade facing Nicholasville Road would be further developed. Mr. Pohl briefly explained that the side of the units facing Nicholasville Road should be further developed with more than just windows and the units facing Penmoken Park should mirror that design.

Mr. Wilson then asked for more clarification to adding a 17th condition. Mr. Pohl explained that additional landscaping should be added to the parking area that projects more than 15 feet to hide the parked vehicles.

Mr. Wilson asked if staff review of the amendment. Mr. Martin said that Article 18 of the Zoning Ordinance addresses vehicular use screening and asked if Mr. Pohl wanted to enhance or add to what is already required by the Zoning Ordinance. Mr. Pohl said that there is no landscaping shown on the development plan. Mr. Martin said that the staff only reviews site plans to ensure the development plan complies with Article 18 of the Zoning Ordinance.

Mr. Wilson asked if Mr. Pohl was satisfied with staff's comments. Mr. Pohl replied affirmatively.

Mr. Wilson commented on the façade on the north wall. Mr. Simpson said that his client is not required to submit any renderings to the Commission and asked what is being requested. Mr. Wilson replied at this stage of the meeting the Commission is talking among themselves about the amendment to the motion on the floor. He said that the members must take action on the amendment first then take action on the original motion on the floor. He wanted to make sure the members knew what the amended motion consisted of before going forward. Mr. Pohl said that it is really important to understand the proposal from a three dimensional stand point. When comparing the rendering from the zone change hearing and today's meeting, the only change that was made was the pitch of the roof and the added dormers to the roof. The side elevation has an asymmetrical gable roof, which is extremely unattractive. The applicant is proposing to make that asymmetrical gable roof the major elevation on Penmoken Park. This is extremely important because of the visual view from Nicholasville Road. Mr. Pohl said that he wants someone to review and improve that elevation making it consistent to reflect the pride in the neighborhood and their properties.

Mr. Wilson asked if the Planning Commission is out of their preview with this request. Ms. Jones replied affirmatively. She said that the applicant volunteered to provide the renderings and unless there are certain requirements not being met the Planning Commission has no authority to dictate the type of design for a building. She then said that the Planning Commission can ask for a more definitive drawing, but the Commission cannot tell the applicant how to design the proposal. The proposal must be compliant with the regulations.

Mr. Wilson asked if Mr. Pohl could make a recommendation for a more definitive drawing. Ms. Jones said that the Commission can request the drawing, but they cannot dictate the design of the townhouses. Mr. Simpson said that they do not mind to submit the architectural plans, but those have yet to be drawn. They do not want to keep coming back to the Planning Commission for them to decide whether or not the design is acceptable to someone. They are not required to submit any drawings at all and what has been submitted is a courtesy to the Commission. Ms. Jones said that she is not suggesting for the applicant to continue to come back to the Planning Commission, but they could note in the record the renderings that the applicant submitted. Mr. Simpson replied that is fine. He said that his client could submit the architectural plans once those are finalized.

Mr. Wilson asked for guidance with the amended motion on the floor. Ms. Jones explained that the Commission does not have to change it, but rather denote development will substantially comply with the submitted renderings, which would be provided at the time of the final architectural drawings. The Planning Commission cannot require the design of the building and they must recognize those drawings may not be the exact drawing seen by the Commission.

Mr. Wilson asked if Mr. Pohl wanted to use the language that had been discussed. Mr. Pohl said that he would be happy to withdraw the amendment as long as the applicant makes the assurance that they recognize the validity of his concern. Ms. Thatcher said that she would be looking at those elevations further and would be giving the townhouses more detail in the design and addressing the neighborhood concerns. As for the throwaway elevations, she would make an effort to address those concerns. Mr. Pohl said that he had spoken about these concerns at the Zoning Committee meeting, but nothing happened at the hearing to address those concerns. Now he expected to see the change, but there is no change. Ms. Thatcher said that, after speaking with Mr. Jones, she knows what direction he wants to go and she would use every asset she has to make those drawings. Mr. Pohl withdrew his amendment to the motion.

Mr. Owens supports Mr. Pohl and said that this is a major corridor and the visual look should be something more than solid brick wall (like for Trader Joe's).

Mr. Wilson said that having this testimony on record is important and to the developer's credit they have indicated they have submitted more detail than is required by the Zoning Ordinance.

The motion carried 11-0.

- c. PLN-MJDP-19-00015: HARPER WOODS (FEATHERSTON PROPERTY, LOT 2) (AMD) (6/2/19)* - located at 2311 ARMSTRONG MILL ROAD, LEXINGTON, KY.
Council District 8
Project Contact: EA Partners

Note: The purpose of this amendment is to enlarge the townhouse and add guest parking.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Reference note #17 on the cul-de-sac detail.
12. Resolve townhouse parking area conflict with vegetative buffer.
13. Denote maintenance of shared-use trail.
14. Discuss guest parking along private street.

Staff Presentation - Mr. Martin directed the Commission's attention to the final development plan, and briefly explained the proposed development of the property. He indicated that the staff was recommending approval, subject to the conditions listed on today's agenda.

Mr. Martin explained that the applicant was proposing off-street parking, but the location of the proposed parking is not considered to be off-street, but rather it is adjacent to the right-of-way. He then said that the right-of-way must be utilized for the parking to function correctly. Even though there will be a low volume of traffic in this area, the staff considers this type of design layout to be a public safety hazard.

Mr. Martin said that Article 16-2 states that aisles and access drives shall be designed so as to provide adequate vehicular maneuvering wholly upon the property being served; and in no case shall off-street parking areas be permitted that encourage or require the backing onto, or maneuvering within, the right-of-way of any public or private street. He then said that the proposed parking areas clearly does not meet Article 16-2 of the Zoning Ordinance and recommend those parking areas be removed. He noted that parking can be provided through the use of a guest parking lot on the HOA lot, or restrict the parking to one side of the street by changing the width of the street from 28' to 30'. The proposed parking is not in compliance with the Zoning Ordinance and should be relocated, redesigned or removed from the plan.

Commission Questions – Mr. Wilson said that the Subdivision Committee recommended approval of the final development plan, but he staff still has concerns. He asked if the staff believes the parking can be resolved. Mr. Martin said that the staff wanted the Subdivision Committee to be aware of and discuss the concerns with the guest parking (condition #14). As part of that discussion, the staff's position is the proposed parking areas is poorly located and poses a public safety hazard and should be removed.

Mr. Wilson said that condition #14 could be changed to resolve. Mr. Martin replied affirmatively, adding that there are other designs that could be utilized.

Representation – Al Gross, EA Partners, said that his client believes this type of parking is a good idea for this private area. There is no public right-of-way, the entire development will be private. However, the street can easily become an access easement.

Mr. Gross said that there are several areas in Lexington that utilize this type of parking, such as the Townley Center or the shopping area in Chevy Chase neighborhood. The drivers are aware that they will be backing out into traffic because it would be no different than a shopping center or a commercial parking lot. If the Planning Commission does not agree with this type of layout, then they are agreeable to remove the parking from the

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

proposed development. They believe this is a good idea for this community and this layout does more good than harm.

Commission Questions – Mr. Wilson asked if the applicant was willing to work with the staff if condition #14 was changed to resolve. Mr. Gross replied that he does not believe it can be worked out with the staff, but is willing to look at other alternatives.

Staff Comments – Ms. Kaucher said that the staff does not have a problem with additional parking, and they do not disagree it would be a benefit to the community. Their concern is if the parking was provided then the staff wants to ensure it is safe to maneuver. She said that backing out into a street is different than backing out in a parking lot. The staff would not object to parallel parking spaces or some other different configuration.

Commission Questions – Mr. Berkley said that the Chevy Chase area has this type of parking. Ms. Kaucher said that the Chevy Chase area has back in angled parking, which is different because the driver is already in the street backing in the parking space, then pulling out of the parking spaces into traffic. Mr. Berkley said that the driver is backing into traffic. Ms. Kaucher replied that the driver is backing in the parking spaces, not traffic. Mr. Berkley said that the driver cannot maneuver a vehicle straight into a parallel parking spaces or a 45 degree parking space without backing into traffic. Ms. Kaucher agreed, but the driver is already in the street backing into the parking space. The driver is not backing into moving traffic and that is the difference.

Mr. Bell said that there is one place in Lexington where the driver does have to back into the traffic, and that is in front of the Chevy Chase Hardware Store. Ms. Kaucher agreed, and indicated that there are existing conditions in Lexington where Traffic Engineering disagrees with but cannot do anything about those.

Mr. Owens asked if the parking were allowed only on one side of the street which side would parking be on. Ms. Kaucher replied parking would be on the opposite side of the fire hydrants.

Mr. Owens said that this is a private street with limited units. He asked if the parking is a deal breaker with the staff. Ms. Kaucher said that this type of development has the opportunity to be developed safely and correctly while still be able to provide enough parking for this area, such as parking lot or parallel parking.

Mr. Bell said that this is a private street that will have a low traffic volume. The developer is trying to bring amenities that will make this area more attractive for a private situation compared to a public situation. He asked shouldn't the Planning Commission consider this opinion. Ms. Kaucher said that the staff does acknowledge and agree with the concept that this development has a dead-end street. She then said that this development will not have the same traffic volume as a major roadway, but there will be enough traffic to give the staff concerns with vehicles backing into traffic.

Mr. Bell said that a homeowner investing in this community will be aware of the concerns compared to the staff suggesting, on behalf of the public, protecting the public. Ms. Kaucher said that the staff had reviewed the layout and even though this development will have a lower volume street, it will still function as a street. She said that it will not function as a parking lot or an access easement. A street that is private only reflects who owns that street and the staff still wants the street to function safely for the residents and vehicles.

Ms. Mundy said that the staff seemed pleased with the backing in angled parking. Ms. Kaucher replied affirmatively. Ms. Mundy asked if the staff would be agreeable with that type of parking for this development. Ms. Kaucher replied that if that type of parking is used then the vehicles would be forced to the back of the development to turn around to exit the area. Since this development has a private street there is not a full cul-de-sac at the rear. Ms. Mundy said that the direction would depend on the angle of the parking spaces. Mr. Gross agreed with Ms. Kaucher; the angle would not make a difference.

Ms. Mundy said that from her experience living on a private street it was a nightmare and reviewing this development she sees it being a nice enhancement. Ms. Kaucher agreed that the parking would be an enhancement, but the staff is concerned with how the parking is oriented.

Ms. Plumlee said that there are times when private streets become public streets so the highest standards should be used. Ms. Kaucher replied affirmatively.

Mr. Gross said that Mr. Owens raised a valid point regarding setting a precedent. He proceeded to say that setting a precedent starts and stops by limiting the number units served by the private street. This development has a private street and adjacent to the street are two private access easements with parking off of them. Both will be constructed the same and you will not be able to see the difference in the two. This development will generate a low traffic volume during the peak hours and there will be no potential conflicts. This is a unique and different development and it is as safe as it can be.

Mr. Wilson recapped and said that a possible motion from the Planning Commission could be to change condition #14 to resolve. He then said that if condition #14 is changed to resolve that means the staff and the applicant would need to come to an agreement about the guest parking.

Mr. Penn said that the Subdivision Committee could not come to an agreement about the guest parking so they recommended approval with that discussion item remaining. He then said that the Committee wanted the full Planning Commission to hear this discussions on the guest parking.

Ms. Wade said that the development plan is in violation of Article 16-2 of the Zoning Ordinance. The staff does not want to set up a situation where the Planning Commission is violating any section of the Zoning Ordinance through their approval process. The staff would recommend the Commission change the condition to a resolution with Traffic Engineering. The staff and the applicant can determine the layout to comply with the Article 16-2 of the Zoning Ordinance.

Mr. Wilson said that the staff and the applicant needs to work this issue out.

Mr. Owens asked if the regulations apply to private or public streets. Ms. Wade said that at the end of Article 16-2 it reads "encourage or require the backing onto, or maneuvering within, the right-of-way of any public or private street." Mr. Owens replied encourages. Ms. Wade then said that Article 16-2 also notes that "in no case shall off-street parking areas be permitted." She said that Article 16-2 prohibits backing into a private or public street.

Mr. Martin replied to a question from Mr. Berkley and said that parking could be on both sides of the street if the width was 30 feet. He indicated that the applicant is not proposing 30 feet.

Action - A motion was made by Mr. Berkley, seconded by Ms. Mundy, approve **PLN-MJDP-19-00015: HARPER WOODS (FEATHERSTON PROPERTY, LOT 2) (AMD)**, as recommended by the staff, changing condition #14 to "Resolve guest parking along private street."

Discuss of motion – Mr. Owens said that he is not one to go against the Zoning Ordinance, but he lives in a development with this type of off-street parking and he prefers it better to any on-street parking.

Mr. Bell said that if the condition was changed to resolve then the staff would have to work it out, but he does not believe it would be any different than what has been discussed today.

Mr. Berkley amended his motion to delete condition #14. Mr. Wilson said that the Planning Commission has a legal requirement. Mr. Berkley said that Mr. Owens raised a good point and asked if there were other areas with the same type of parking. Mr. Berkley asked for the Planning Commission to take action on the amended motion. Mr. Wilson said that he wants the Commission to make sure they are not voting on something that is out of their legal requirement.

Mr. Berkley said that he proposed an amendment to the original motion to delete condition #14 and asked for the Commission to take action. Mr. Wilson asked if deleting condition #14 would place the Planning Commission in any legal conflict with the Zoning Ordinance. Ms. Wade said that the applicant will have to meet Article 16-2 of the Zoning Ordinance. Mr. Martin said that the applicant will also have to meet the Land Subdivision Regulations, which governs private streets, which is virtually identical to public streets. Mr. Wilson said that from the Chairs perspective the Commission cannot vote on an amendment of any kind that is out of compliance legally. He then said that he cannot entertain Mr. Berkley's amendment and the original motion on the floor should be acted on.

The motion carried 11-0

Mr. Wilson said that due to a Council meeting the Planning Commission will have to relocate to the Caucus room for the remaining items listed on the agenda.

Note: A recess was declared by the Chair at 3:39 p.m. and the meeting re-convened at 3:49 p.m. Mr. Forester left the meeting at this time.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, April 4, 2019, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members: Carolyn Plumlee, Larry Forester, and Graham Pohl. Staff members in attendance were: Traci Wade; Tom Martin; Hal Baillie; Lauren Hedge; and Debbie Woods; and Tracy Jones and Chad Edwards, Department of Law. The Committee members reviewed applications and made recommendations as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS

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

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

- The staff has recommended approval of the zone change petition and related plan(s)

- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

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

The procedure for these hearings is as follows:

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

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

1. **PLN-MAR-19-00006: DAVID TIPTON** - a petition for a zone map amendment to modify the restrictions of the Neighborhood Design Character (ND-1) Overlay zone in the Single Family Residential (R-1C) zone for 0.1722 net and gross acres, for property located at 422 Dudley Road.

Proposed Design Standard Amendment:

6. ACCESSORY STRUCTURES:

Maximum footprint of 800 square feet for all accessory structures per lot. Maximum ~~22'~~ 23.3' height to roof ridge, maximum 12' height to eave (aka gutter line). No exterior stairs shall be permitted. Maximum 50 percent of roof square footage allowed to be shed dormer. (Eave height measured at top of fascia board and does not apply to dormers, and no minimum roof pitch required on accessory structures)

(NOTE: Underlined text above indicates a proposed addition, while ~~stricken-through~~ text indicates a proposed deletion to the adopted Chevy Chase ND-1 design standards for the subject property.)

The Zoning Committee Recommends: **Disapproval**, for the following reasons:

1. There is no clear delineation of special circumstances that do not generally apply to land in the same ND-1 overlay district, nor would the strict application of the restrictions deprive the applicant of the reasonable use of the land.
2. The applicant has not indicated a clear hardship that would be alleviated by the modification of the ND-1 Overlay standards for this property.
3. Goal #2 of the Chevy Chase ND-1 overlay neighborhood preservation goals specifically references the scale and physical character of the built environment of the area. While the difference in the height of the constructed accessory structure and the plans submitted to Building Inspection is relatively small, the standards were designed in a way to help conserve or promote certain visual characteristics of the neighborhood. The petitioner has not provided an adequate justification as to how these elements would be preserved.
4. Although the applicant has stated they did not intentionally violate the standards, there has been a willful decision by the applicant or their contractor to not follow the approved plans.

Staff Presentation - Mr. Baillie directed the Commission's attention to the Neighborhood Design Character (ND-1) Overlay Amendment request, and said that this is a petition for a zone map amendment to modify the restrictions of the Neighborhood Design Character (ND-1) Overlay zone in the Single Family Residential (R-1C) zone for 0.1722 net and gross acres, for property located at 422 Dudley Road.

Mr. Baillie briefly explained that during a storm in May of 2013, the applicant had a 36" hackberry tree fall and destroy the original garage on the property. The applicant's insurance company deemed the wood structure to be completely destroyed, but the foundation to be salvageable. The applicant followed the proper process of obtaining the necessary permits from the Division of Building Inspection, and submitted plans to build a new garage in accordance with the LFUCG Zoning Ordinance and the Chevy Chase ND-1 Overlay zone. During the construction of the accessory structure, a field construction error and other small plan errors accumulated to result in an overall building height of 23'-3 1/4". The petitioner is requesting that design standard #6 of the existing Neighborhood Design Character Overlay (ND-1) zone design standards be modified to allow for the height of the accessory structure to be increased due to a failure by the contractor to adhere to the permitted plans and a miscalculation of the grade at the time of permitting.

Mr. Baillie said that the applicant is requesting that the Planning Commission modify this ND-1 design standard to allow the constructed garage on the subject property to remain by increasing the maximum height of an accessory structure to 23.3-

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

feet in height, rather than the 22-foot height limit to the ridgeline for this property only. Design Standard #6 will need to be modified for the subject property to state the following:

Proposed Design Standard Amendment:

6. ACCESSORY STRUCTURES:

Maximum footprint of 800 square feet for all accessory structures per lot. Maximum 22' 23.3' height to roof ridge, maximum 12' height to eave (aka gutter line). No exterior stairs shall be permitted. Maximum 50 percent of roof square footage allowed to be shed dormer. (Eave height measured at top of fascia board and does not apply to dormers, and no minimum roof pitch required on accessory structures)

Mr. Baillie then said that the Zoning Committee reviewed the applicants request and recommended disapproval, for the reasons listed on today's agenda.

Commission Questions – Mr. Berkley asked if the garage was completed. Mr. Baillie replied the applicant would be able to answer that question. Mr. Berkley then asked when dealing with ND-1 applications, what role does Building Inspections have in the process? Mr. Baillie briefly explained that the applicant submits their construction plans to Building Inspection, who then reviews those plans for compliance with the ND-1 standards. The developer/contractor can start the construction, then at the point where the construction is finalized the applicant will contact Building Inspection to conduct a site visit to ensure that the structure is built to code.

Mr. Berkley then asked if one of the inspection steps is during the framing of the structure. Mr. Tipton replied that Building Inspection only inspected the structure in the final stages. Mr. Berkley asked if the construction was completed. Mr. Tipton said that the painting was completed. Mr. Berkley said that Building Inspection caught the mistake during the final inspections. Mr. Baillie said that this would had been the first time the structure was inspected.

Mr. Berkley said that the staff had stated that the structure errors were founded during the initial framing, but Building Inspection allowed the structure to be completed. Mr. Baillie replied negatively, and said that Building Inspection site visit was done after the structure was framed. Once the error was found Building Inspection told the applicant to stop the remaining construction because it does not meet the design standards adopted for the Chevy Chase neighborhood.

Mr. Berkley asked if Building Inspection performs a framing inspection. Mr. Baillie replied that the applicant can explain when Building Inspection performed the site visit. Mr. Berkley asked if Building Inspection is required to perform a framing inspection. Ms. Wade said that the Division of Planning does not know what or how Building Inspection does their procedures. Mr. Berkley said that he wants his question answered.

Mr. Owens said that there were a few oversights on this project and asked if there were any other conflicts with the ND-1 regulations. Mr. Baillie replied there are no other conflicts with the ND-1 regulations.

Mr. Nicol said that the pitch of the roof was changed from the construction plans, and asked if that had an impact on the overall height of the structure. Mr. Baillie replied in terms of the ND-1 there is an allowable maximum height.

Mr. Pohl asked if the new pitch complies. Mr. Nicol replied that the new pitch does comply. Mr. Baillie said that there is a minimum on the slope and the applicant is above that minimum. Ms. Wade clarified that there is no minimum roof pitch on an accessory structure.

Mr. Nicol said that if the structure was built according to the construction plans the roof would had been 3 inches too high. Mr. Baillie agreed. Mr. Nicol confirmed that the wrong type of lumber was used. Mr. Baillie replied affirmatively, and said that the wrong lumber was used which raised the pitch an additional 3 inches. Mr. Nicol said that there are two contributing factors. Mr. Baillie said that there are three contributing factors, which include the building mistakes and the pitch.

Representation – Roger Crittenden, attorney, was present representing David Tipton. He presented a PowerPoint presentation and briefly described the reasons why they are requesting the proposed variance request. (A copy of the PowerPoint presentation is attached as an appendix to these minutes).

Commission Questions – Mr. Brewer asked what is the point in showing the Commission the slides of the other permitted residential houses. Mr. Crittenden said that they wanted to show the Commission that the architectural style of the neighborhood is the same as the accessory building his client is constructing.

Applicant presentation – Mr. Tipton further explained the reasons why he was requesting a variance to the ND-1 Design Standard. He submitted a petition into the record to show the number of residents who were in favor of this request.

Commission Questions – Mr. Nicol asked if the construction plans that were submitted were stamped by a license architect. Mr. Tipton replied negatively. Mr. Nicol confirmed that the construction plans were drawn by the applicant, and not a licensed architect.

Ms. Mundy asked if the applicant chose to use the 12 foot framing material. Mr. Tipton replied affirmatively.

The questions asked by Mr. Pohl and Mr. Brewer were muffled and inaudible.

Mr. Bell asked Mr. Tipton to explain why he chose to construct the building as he did. Mr. Tipton explained why he chose to construct the building as he did.

Mr. Bell then asked if the contractor is liable for not following the approved plans. Mr. Tipton replied negatively.

Mr. Brewer asked if the "x's" on the presentation indicated the houses who were in opposition. Mr. Tipton replied affirmatively.

Mr. Bell wanted to know what neighborhood association is over this area. Mr. Tipton replied the Chevy Chase Neighborhood Association.

Citizen Comments – Michael Kerwin, 1225 Cooper Drive, emphasized the amount of time it took to have the ND-1 Overlay adopted for this neighborhood. He added that residents of this area have made changes to their house abided by the ND-1 rules. Allowing this request to go forward would set a precedent for this area and he asked the Commission to deny their request.

David Medley, 333 Dudley Road, voiced his concerns with the applicant knowing the rules, but failed to abide by those rules.

Brad Hawkins, 405 Dudley Road, voiced his concerns with the time and dedication it took for the residents of this area to have the ND-1 Overlay adopted. He asked the Planning Commission to disapprove the applicant's request and not set a precedent for the Chevy Chase area.

Norah Metry, 413 Chinoe Way, expressed her concerns with the potential increase in water drainage and loss of greenspace from constructing this building. She said that it seems the garage will have an apartment, and if so, her backyard privacy will be impacted.

Carla Vanhooose, 110 Louisiana, spoke in opposition to this request, and requested the Planning Commission to deny the applicant's request.

Anne Graham, 1225 Providence Lane, noted that the neighborhood took time to establish and explain the ND-1 Overlay, and the residents of this area knew exactly what they were agreeing too. She noted that a Commission member mentioned Traders Joe's, and the homeowner to the rear of the subject property is looking at a Trader Joe's.

David Medley, 333 Dudley Road, said that the ND-1 Overlay should be maintained and the applicants request should be denied.

Ms. Graham indicted that a Commission member mentioned Trader Joe's was an eye sore and for the homeowner to the rear of this property, it will be like looking at a Trader Joe's.

Rebuttal – Mr. Crittenden said that the roof line can come down 15 inches to meet to the required height, but this will not set a precedent for this area. The Planning Commission does have the authority to approve this request

David Medley said that the Planning Commission approved the ND-1 Overlay and the applicant's proposal does not meet the standards of the ND-1 Overlay. The neighborhood association is asking the applicant to be responsible and uphold the ND-1 standards.

Mr. Baillie had no rebuttal.

Commission Questions – Ms. Mundy asked if the applicant is a realtor. Mr. Tipton replied affirmatively. Ms. Mundy then asked if Mr. Tipton knew the property was within the ND-1 Overlay when they purchased the home. Mr. Tipton replied affirmatively.

Mr. Penn said that he remembers when the ND-1 Overlay was approved and it was not an easy process. He then said that the neighbor's reasons for wanting the ND-1 Overlay were correct for this area, but that is not the discussion for today's hearing. This hearing is to determine whether or not the applicant needs to decrease the height by 15 inches or allow the height of the building to remain. He said that the Planning Commission appreciated the neighbors coming out to voice their concerns with this request. Mr. Penn said that with these type of overlays there comes responsibility to meet the regulations. Whatever the outcome of this hearing the Planning Commission does supports the ND-1 Overlay.

Mr. Brewer expressed he is a big supporter of a ND-1 process and with these types of an agreements there will always be a handful of residents who believe the ND-1 Overlay will devalue their property. The ND-1 preserves a neighborhood and the vast majority of the residents were in favor of the change for the Chevy Chase area. He supports the staff's recommendation of disapproval.

Mr. Berkley said that he lives in the Chevy Chase area, and at the time the zone change was approved he did not vote for the change to ND-1. He then said that the larger community wanted the ND-1 Overlay for this area and the Commission should uphold the decision.

Ms. Plumlee thanked the residents for coming out to show their support with the ND-1 Overlay.

Mr. Graham said that the danger of approving the applicants request is not so much setting a precedent but it is sending a message to the community that they can disrespect the ND-1 Overlay.

Mr. Wilson said that there are no bad people in this particular case, but the work that went into this ND-1 Overlay does need to be respected. The applicant made an unintentional mistake, but if approved it does send a message to the community.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Brewer, to support the staff's recommendation to disapproved **PLN-MAR-19-00006: DAVID TIPTON** for the following reasons:.

1. There is no clear delineation of special circumstances that do not generally apply to land in the same ND-1 overlay district, nor would the strict application of the restrictions deprive the applicant of the reasonable use of the land.
2. The applicant has not indicated a clear hardship that would be alleviated by the modification of the ND-1 Overlay standards for this property.
3. Goal #2 of the Chevy Chase ND-1 overlay neighborhood preservation goals specifically references the scale and physical character of the built environment of the area. While the difference in the height of the constructed accessory structure and the plans submitted to Building Inspection is relatively small, the standards were designed in a way to help conserve or promote certain visual characteristics of the neighborhood. The petitioner has not provided an adequate justification as to how these elements would be preserved.
4. Although the applicant has stated they did not intentionally violate the standards, there has been a willful decision by the applicant or their contractor to not follow the approved plans.

Discuss of motion - Mr. Berkley believed that the applicant's actions were not willful and asked if the word "willful" could be removed on from condition #4. Mr. Baillie said that the word willful was directly targeted to the applicant making a choice to use the 12' wood. Mr. Wilson said that the applicant has been honest with the Commission when answering questions and he does not take offense to using the word willful in the staff's recommendation

The motion carried 10-0 (Forester absent).

V. COMMISSION ITEMS

- a. **RECRUITING FAIR** – Mr. Duncan explained that the Mayor's Office has made a request for the Commission members to attend the different recruiting fairs and speak to potential Board and Commission members. The staff will not be attending these fairs because he does not want it to look like the staff is recruiting future members. The first meeting will be at the Senior Center from 9 a.m. to Noon. Mr. Wilson said that members on the Planning Commission is appointed by the Mayor Office. The Planning Commission can make a recommendation to the Mayor but they cannot make a commitment to anyone that they will be on the Commission.
- b. **WORK SESSION** – Mr. Duncan reminded the Commission members that their next work session will be held Thursday, April 18, 2019 to discuss the pending ligations in closed session. Ms. Jones informed the Commission should the media or other persons ask questions about the ligation the general response would to be inform them the Commission does not comment on pending ligations.
- c. **2017 & 2018 ANNUAL REPORT** – Ms. Wade briefly explained the Annual Report depicts the activity level of certain types of applications processed by the Division of Planning during 2017 and 2018.

VI. STAFF ITEMS – There were none.

VII. AUDIENCE ITEMS – There were none.

VIII. NEXT MEETING DATES

Work Session, Thursday, 1:30 p.m., 3 rd Floor Phoenix Building	April 18, 2019
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	April 24, 2019
Zoning Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 25, 2019
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building).....	May 2, 2019
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	May 2, 2019
Subdivision and Zoning Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	May 9, 2019

IX. **ADJOURNMENT** - There being no further business, the Chair adjourned the meeting at 5:04 PM.

William Wilson, Chair

Carolyn Plumlee, Secretary

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