

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

April 24, 2008

- I. **CALL TO ORDER** – The meeting was called to order at 1:38 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Mike Cravens; Neill Day (arrived at 1:49 p.m.); Linda Godfrey (arrived at 1:42 p.m.); Ed Holmes; James Mahan; Frank Penn (arrived at 2:23 p.m.); Carolyn Richardson; Lynn Roche-Phillips; Randall Vaughn, Chair; and Joan Whitman. Absent was Lyle Aten.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Traci Wade; Tom Martin; Cheryl Gallt; Chris Taylor; and Stephanie Cunningham. Other staff members present were Ed Gardner, Department of Law; Tim Queary, Urban Forester; Bob Carpenter, Division of Building Inspection; Captain Charles Bowen, Division of Fire and Emergency Services; Jeff Neal, Division of Traffic Engineering; and Hillard Newman, Division of Engineering.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Mahan, seconded by Ms. Richardson, and carried 7-0 (Aten, Day, Godfrey, and Penn absent) to approve the minutes of the February 14, 2008, February 28, 2008, and March 27, 2008, Planning Commission meetings.

Note: Ms. Godfrey arrived at this time.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **MILLER-SAMPLES PARTNERSHIP ZONING MAP AMENDMENT & FAYETTE INDUSTRIAL PARK, LOT 5-C, ZONING DEVELOPMENT PLAN**

- a. MAR 2008-8: MILLER-SAMPLES PARTNERSHIP (6/12/08)* - petition for a zone map amendment from a Light Industrial (I-1) zone to a Highway Service Business (B-3) zone, for 1.82 net (2.13 gross) acres, for property located at 156 West Tiverton Way.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Retail, Trade and Personal Services future land use for the subject property. The petitioner proposes a reuse of the existing building on the subject property for a restaurant.

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

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

1. The requested Highway Service Business (B-3) zone for the subject property is in agreement with the Retail Trade and Personal Services future land use recommendation of the 2007 Comprehensive Plan. Additionally, use restrictions are appropriate to make the proposed zoning compatible with other nearby B-3 zoning.
2. This recommendation is made subject to the approval and certification of ZDP 2008-57: Fayette Industrial Park, Lot 5-C, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses are to be prohibited at this location:
 - a. Establishments and lots for the display, rental, sale, service, and minor repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes, or supplies for such items.
 - b. Cocktail lounges and nightclubs.
 - c. Car washing establishments.
 - d. Motel or hotel.
 - e. Kennels.
 - f. Circuses and carnivals, even on a temporary basis.
 - g. Taxidermy establishments.
 - h. Amusement park, fairgrounds, or horse racing track.
 - i. Outdoor recreational facilities including go-cart tracks, archery courts, skateboard and roller skating tracks, trampoline centers, rifle and other fire-arm ranges, swimming pools, water slides and other water related facilities, and other similar uses.
 - j. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers.
 - k. Mining of non-metallic materials.
 - l. Passenger transportation terminals.

These restrictions are appropriate and necessary for the following reasons:

1. Existing multi-family residential and public park uses are located within 500 feet of the subject property.
2. Many of the above uses are not recommended by the land use element of the Comprehensive Plan at this location.

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

- b. ZDP 2008-57: FAYETTE INDUSTRIAL PARK, LOT 5-C (6/12/08)* - located at 156 West Tiverton Way.
(Midwest Engineers)

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffers (restaurants).
5. Urban Forester's approval of tree inventory map.
6. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
7. Addition of adjacent property information.
8. Addition of entrance dimensions.
9. Correct plan title.

Petitioner Representation: Tom Miller, attorney was present representing the petitioner, and requested a one-month postponement of this item.

Action: A motion was made by Ms. Whitman, seconded by Ms. Roche-Phillips, and carried 8-0 (Aten, Day, and Penn absent) to postpone MAR 2008-8 and the associated zoning development plan to the May 22, 2008, Planning Commission meeting.

2. KEVIN CROUSE, PREMIER VILLAGES ZONING MAP AMENDMENT & OLD SCHOOL HOUSE LANE ZONING DEVELOPMENT PLAN

- a. MAR 2008-14: KEVIN CROUSE, PREMIER VILLAGES (6/12/08)* - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Planned Unit Development-1 (PUD-1) zone, for 24.88 net (27.7 gross) acres, for property located at 4500 & 4524 Old Schoolhouse Lane.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Medium Density Residential future land use for the subject property. The petitioner proposes to construct 192 townhouse residential units, for a density of 6.93 dwelling units per gross acre.

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

The Staff Recommends: Postponement, for the following reasons:

1. Requirements of the Planned Unit Development-1 (PUD-1) zone have not been met with the application submitted to the Division of Planning. Specifically, a site inventory; any restrictive covenants (if necessary); evidence that two or more design professionals contributed to the corollary development plan; evidence that the plan respects any known natural or historic features; or, lastly, the continuation of Twain Ridge Drive on the proposed plan (or at least a right-of-way for such connection) are lacking from the submitted materials.
2. The proposed design standards indicate a minimum lot frontage of 20' for this proposal. However, if the units front on open space and an alley, the actual frontage may be 0'. Further discussion of this and other standards may be warranted.
3. Further consideration of the planned extension of Twain Ridge Drive, as recommended by the 2007 Comprehensive Plan, is necessary in light of the Schneider v. LFUCG et al. case.

- b. ZDP 2008-61: OLD SCHOOL HOUSE LANE (6/12/08)* - located at 4500 Harrodsburg Road.
(CDS Associates)

The Subdivision Committee Recommended: Postponement. There were questions regarding the overall site design, the planned Twain Ridge Drive connection and the plan for the provision of public services.

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

1. Provided the Urban County Council rezones the property PUD-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. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant location.
8. Division of Waste Management's approval of refuse collection.
9. Department of Environmental Quality's approval of environmentally sensitive areas (steep slopes).

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

10. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
11. Addition of tree inventory map (on plan face).
12. Discuss sanitary sewer capacity at South Elkhorn pump station.
13. Discuss necessary access for dumpster service.
14. Discuss Division of Fire emergency access.
15. Discuss location of stormwater detention basin.
16. Discuss the need for south collector street.
17. Discuss building locations near floodplain and proposed Twain Ridge Drive extension.
18. Discuss alley widths proposed.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner and requested a two-month postponement of this item.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Mahan, and carried 8-0 (Aten, Day, and Penn absent) to postpone MAR 2008-14 and the associated zoning development plan to the June 26, 2008, Planning Commission meeting.

3. CMW, INC., ZONING MAP AMENDMENT & MARK ACRE PROPERTIES, LLC, ZONING DEVELOPMENT PLAN

- a. MARV 2008-7: CMW, INC. (5/15/08)* - petition for a zone map amendment from a Mixed Use 2 – Neighborhood Corridor (MU-2) zone to a Downtown Frame Business (B-2A) zone, for 1.028 net (1.66 gross) acres, for property located at 502-526 South Broadway; 320 Pine Street; and 319 Cedar Street. A dimensional variance to the front setback is also being requested at this location.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends Downtown Master Plan future land use for the subject property. The petitioner proposes a mixed-use development for approximately one acre, incorporating retail business, service-oriented business, 80 residential condominium units and associated off-street parking. The condominium units proposed are to be part of a boutique hotel use of the property.

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

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

1. The requested Downtown Frame Business (B-2A) zone is in agreement with the 2007 Comprehensive Plan, and with the *Downtown Lexington Masterplan*, an element of the Comprehensive Plan, for the following reasons:
 - a. The 2007 Plan recommends Commercial Residential Mixed Use (formerly Retail/Office Mixture) for the subject property, and for other sites to the south and west. The proposed mixture of residential condominiums, a "boutique hotel," restaurants and retail stores, along with the necessary off-street parking for those uses, meets this specific land use recommendation.
 - b. The *Masterplan* recommends an "increase in residential development," and to maximize residential density "while keeping new structures compatible in form and character with the existing neighborhood." The proposed development of the subject site will provide a compatible mixed-use development between South Hill and the approved Shelbourne Plaza mixed-use project, at a density of 77.82 dwelling units per net acre.
 - c. The *Masterplan* recommends almost 270,000 square feet of additional multi-family residential use in the entire South Hill area, for an additional 244 dwelling units. This proposed development would supply approximately one-third of that recommended amount.
2. This recommendation is made subject to approval and certification of ZDP 2008-34: Mark Acre Properties, LLC (Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under Article 6-7 of the Zoning Ordinance, the following uses are to be prohibited on the subject property via conditional zoning:
 - a. Hospitals.
 - b. Drug stores.
 - c. Indoor theatres.
 - d. Bowling alleys.
 - e. Establishments for the display, rental or sale of automobiles, motorcycles, trucks and boats.
 - f. Passenger transportation terminals.
 - g. Wholesale establishments.
 - h. Major or minor automobile or truck repair.
 - i. Establishments primarily engaged in the sale of supplies and parts for vehicles and farm equipment.
 - j. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers.
 - k. Storage yards for delivery vehicles of a permitted use.

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- l. Mining of non-metallic minerals.
- m. Gasoline pumps of any kind.

These restrictions are appropriate and necessary to ensure that uses on the subject property will not require large areas for off-street parking, and to ensure a compatible transition from the Historic South Hill Neighborhood to the east and the Shelbourne Plaza development planned to the immediate west of this location.

b. REQUESTED VARIANCE

- 1. Reduce the required (front yard) setback along South Broadway, Plunkett Street and Cedar Street from 10' to 0'.

The Staff Recommends: Approval of the variance from 10' to 0', for the following reasons:

- a. This variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, due to the wide sidewalks surrounding the building and the central courtyard feature of the proposed mixed-use development.
- b. This variance will not result in an unreasonable circumvention of the Zoning Ordinance, as the design of the proposed building will include architectural features to vary the appearance of the building along the streetscape.
- c. The special circumstances that contribute to justifying this variance are the relatively narrow width of the subject property, the fact that this property has four street frontages, and the wide sidewalk that will extend around the perimeter of the property.
- d. Strict application of the Zoning Ordinance requirement would likely result in a significantly smaller courtyard, which is one of the defining features of the proposed development.
- e. This variance is not the result of any prior actions of this applicant or the current owner, nor is it a result of a willful violation of the Zoning Ordinance.

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

- 1. Provided the Urban County Council rezones the property B-2A; otherwise, any Commission action of approval of this variance is null and void.
- 2. Should the property be rezoned, it shall be developed in accordance with the approved Preliminary Development Plan, or as approved by the Planning Commission via a certified Final Development Plan.
- 3. A note shall be placed on the Preliminary Development Plan indicating the dimensional variance that the Planning Commission has approved for this property under Article 6-4(c) of the Zoning Ordinance.
- 4. All necessary permits shall be obtained from Building Inspection prior to construction, after certification of a Final Development Plan, should this property be rezoned.

c. ZDP 2008-34: MARK ACRE PROPERTIES, LLC (AMD.) (5/15/08)* - located on South Broadway, Pine Street and Cedar Street.
(CMW, Inc.)

The Subdivision Committee Recommended: Approval, subject to the following requirements:

- 1. Provided the Urban County Council rezones the property B-2A; otherwise, any Commission action of approval is null and void.
- 2. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
- 3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
- 4. Building Inspection's approval of landscape buffers.
- 5. Urban Forester's approval of tree inventory map.
- 6. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
- 7. Clarify street tree details.

Petitioner Representation: Brian Hill, CMW, Inc., was present representing the petitioner. He stated that the petitioner has made good progress in their discussions with the Historic South Hill Neighborhood Association, but would like to request a one-month postponement of this item in order to continue to work with them.

Action: A motion was made by Ms. Whitman, seconded by Ms. Richardson, and carried 8-0 (Aten, Day, and Penn absent) to postpone MARV 2008-7 and the associated zoning development plan to the May 22, 2008, Planning Commission meeting.

4. HUGH BENNETT & ROLAND VAUGHAN ZONING MAP AMENDMENT & BENNETT/VAUGHAN RESIDENTIAL DEVELOPMENT ZONING DEVELOPMENT PLAN

- a. MARV 2008-9: HUGH BENNETT & ROLAND VAUGHAN (6/12/08)* - petition for a zone map amendment from a Professional Office (P-1) zone to a Downtown Frame Business (B-2A) zone, for 0.16 net (0.19 gross) acre; and from a Planned Neighborhood Residential (R-3) zone to a Downtown Frame Business (B-2A) zone, for 0.24 net (0.42 gross) acre, for property located at 522-528 East Main Street and 109 Kentucky Avenue. Dimensional variances are also being requested at this location.

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

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Downtown Master Plan future land use for the subject property. The applicant is proposing a 6-story residential structure.

The Zoning Committee Recommended: Referral to the full Commission.

The Staff Recommended: Postponement, for the following reason:

1. More time is needed to evaluate the requested Downtown Frame Business (B-2A) zone to determine whether or not it is in agreement with the 2007 Comprehensive Plan, and with the *Downtown Lexington Masterplan*, an element of the Comprehensive Plan, for the following reasons:
 - a. The 2007 Plan recommends Downtown Mixed Use for the subject property, and for other sites along East Main Street. It is unclear whether the proposed residential condominium development is in agreement with this recommendation at the present time.
 - b. Insufficient information has been provided to assess whether or not the proposed building will be compatible in form and character with the existing neighborhood. The proposed zoning development plan does not address how the building will orient to East Main Street.
 - c. There is a discrepancy between the zoning application which is for up to 12 residential units and the submitted development plan which proposes only 10 residential units. The proposed residential density for this site would be between 16.4 dwelling units per net acre and 19.6 dwelling units per net acre, based on the number of units constructed.

b. REQUESTED VARIANCES

1. Reduce the required (front yard) setback along East Main Street from 10' to 4'.
2. Reduce the rear yard adjoining the P-1 zone at 518 East Main Street from 12' to 8'.
3. Reduce the perimeter landscape requirement adjacent to the R-3 zone at 111 & 113-A East Main Street from 5' to 4', with required plant material to still be provided.

The Staff Recommends: Postponement, for the following reason:

- a. Although the Planning Commission will have the authority to either approve or disapprove the final site design at a later point in time, there is currently insufficient information as to how the Main Street façade of the building will be addressed to allow a substantive recommendation regarding the requested variance to four feet.
- c. ZDP 2008-59: BENNETT/VAUGHAN RESIDENTIAL DEVELOPMENT (6/12/08)* - located at 522-528 East Main Street and 109 Kentucky Avenue.
(Wheat and Ladenburger)

The Subdivision Committee Recommended: Referral. There were questions as to whether or not the open space requirements are being met for this proposed development.

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

1. Provided the Urban County Council rezones the property B-2A; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
7. Denote: A consolidation plat shall be recorded prior to certification of a final development plan.
8. Addition of note for private street or access easements.
9. Addition of 3' buffer.
10. Denote useable open space.
11. Resolve compliance with Article 15-7 of the Zoning Ordinance prior to the final development plan.
12. Discuss compliance of the parking/orientation to the street.

Citizen Request: Joe Scott, 325 North Broadway, stated that he is the owner of a neighboring property, and he would like to request a one-month postponement of this item. He and his wife have been out of the country, and did not receive their notification letter due to it being returned to the Planning Commission as undeliverable. They were able to meet with the petitioner last week, but believe they need more time to prepare for the hearing.

Staff Comment: Ms. Wade stated that she had spoken with Mr. Scott, and notified him that the notification letter was returned due to being sent to an invalid address. The letter was addressed correctly according to the PVA listing. After speaking with Mr. Scott, Ms. Wade re-mailed his letter to the address he specified in their phone conversation.

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

Petitioner Representation: Richard Murphy, attorney for the petitioner, stated that the petitioner would oppose this request for postponement and would like to proceed with this hearing today. The petitioner has had a great deal of discussion about the development plan with the staff, and there are some design review issues that appear to be unable to be resolved. The petitioner also met with Mr. and Mrs. Scott, and does not believe that their concerns could be resolved either, without coming before the Planning Commission. The petitioner does not believe that any of those positions are going to change in the next 30 days if this request is postponed, and would prefer to go forward at this time.

Citizen in Support of Postponement: Tom Miller, attorney, stated that he was present representing Jennifer Schnabel, who owns the property immediately adjoining the subject property on East Main Street. He said that he learned yesterday that there is a proposed modification to the development plan with regard to the building setback. Ms. Schnabel is currently out of town, and neither she nor Mr. Miller has had the opportunity to review the revised development plan. They would support the request for a one-month postponement, in order to have time to review the revised plan and any variance request that may arise from it.

Citizen in Opposition to Postponement: Bill Justice, 518 East Main Street, stated that he is the owner of the subject property. He said that the variance to reduce the Main Street setback was requested at the recommendation of the staff. All of the notification letters to adjoining property owners have been sent as required, and he would like for this request to be heard today.

Staff Comment: Mr. Vaughn asked if the staff had any further comment. Mr. Sallee noted that the Planning Commission has until June 12th to hear this request, and that the staff's current recommendation, for both the rezoning and the variances, is for postponement, as listed on the agenda.

Commission Questions: Ms. Godfrey asked if it had been determined if this request met with the recommendations of the Downtown Master Plan, or if the staff would require further information in order to make that determination. Ms. Wade answered that, at this point, the staff believes that allowing more time to consider this request would benefit the petitioner, the staff, the Planning Commission, and the community, which was the basis of their recommendation for postponement. The staff also does not believe that the petitioner has provided sufficient information in order for this request to move forward today.

Mr. Holmes asked if the staff's concern about lack of necessary information had been communicated to the petitioner. Ms. Wade replied that it had.

Ms. Whitman asked for everyone in the audience who came to hear this request to raise their hands. Approximately 10 people did so.

Action: A motion was made by Ms. Godfrey, seconded by Ms. Roche-Phillips, and carried 5-3 (Cravens, Holmes, and Whitman opposed; Aten, Day, and Penn absent) to postpone MARV 2008-9 and the associated zoning development plan to the May 22, 2008, Planning Commission meeting.

Note: Mr. Day arrived at this time.

5. FORTUNE OFFICES, LLC, ZONING MAP AMENDMENT & EASTWOOD, UNIT 6, SECTION 1, LOT 6 ZONING DEVELOPMENT PLAN

- a. MAR 2007-20: FORTUNE OFFICES, LLC (4/24/08)* - petition for a zone map amendment from a Professional Office (P-1) zone to a Wholesale & Warehouse Business (B-4) zone, for 5.555 net (5.635 gross) acres, for property located at 2472 Fortune Drive.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 8) recommends Professional Services (PS) future land use for the subject property. The petitioner proposes constructing 57,000 square feet of warehouse and accessory office space, as well as off-street parking and loading areas.

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

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

1. The existing Professional Office (P-1) zoning is inappropriate, and the proposed Wholesale and Warehouse Business (B-4) zoning is appropriate at this location for the following reasons:
 - a. The B-4 zone requested would be compatible with adjacent commercial development and will not adversely affect the surrounding area or other 2007 Comprehensive Plan land use recommendations for this area.
 - b. The subject property would function well as a part of the existing business park development along Fortune Drive, and the requested zone change will allow it to function in this manner.
 - c. The subject property is separated from the adjacent P-1 zoned property to the south by an existing tree stand and from the residentially zoned property to the northeast by a large detention basin. The tree stand and detention basin are

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- more appropriate and recognizable land use buffers between the office and residential uses and the proposed wholesale/warehouse use in this instance.
2. This recommendation is made subject to approval and certification of ZDP 2007-113: Eastwood, Unit 6, Sec. 1, Lot 6, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
 3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions shall apply to the property via conditional zoning:

PROHIBITED USES

1. Machine shop.
2. Major or minor automobile or truck repair.
3. Tire re-treading and recapping.
4. Truck terminals and freight yards.
5. Circuses and carnivals, even on a temporary basis.
6. Any wholesale or trucking use operating between the hours of 11 p.m. and 7 a.m.

These use restrictions are appropriate and necessary at this location to ensure that the proposed development adequately protects the nearby neighborhood and assisted living facility.

- b. ZDP 2007-113: EASTWOOD, UNIT 6, SECTION 1, LOT 6 (4/24/08)* - located at 2472 Fortune Drive.
(Strand Associates)

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

1. Provided the Urban County Council rezones the property B-4; 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. Building Inspection's approval of landscaping.
5. Urban Forester's approval of tree inventory map.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
8. Revise owner's certification and Planning Commission's certification.
9. Correct plan title.
10. Addition of written scale information.
11. Label building lines.
12. Verify the recordation of drainage easements.
13. Resolve building and drainage easement conflict.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner would like to request a one-month postponement of this item. All of the appropriate parties have been notified and are in agreement with that request.

Action: A motion was made by Ms. Roche-Phillips, seconded by Ms. Godfrey, and carried 9-0 (Aten and Penn absent) to postpone MAR 2007-20 and the associated zoning development plan to the May 22, 2008, Planning Commission meeting.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, April 3, 2008, at 8:30 a.m. The meeting was attended by Commission Members: Neill Day, Lyle Aten, James Mahan, Randall Vaughn, Carolyn Richardson and Mike Cravens. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Jimmy Emmons, Traci Wade, Denise Bullock, Chris Taylor, Cheryl Gallt, Tom Martin, Rob Johnson, Frank Boateng and Kenzie Gleason; as well as Ed Gardner, Department of Law; Captain(s) Bill Woodward and Charles Bowen, Division of Fire & Emergency Services; and Bob Carpenter, Division of Building Inspection. 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.

A. DEVELOPMENT PLANS

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

1. DP 2008-36: RESERVE AT WALNUT GROVE (AMD.) (5/23/08)* – located at 3820 Hatfield Lane.
(Council District 12) **(EA Partners)**

Note: This plan was postponed at the April 10, 2008 meeting. It requires the posting of a sign and an affidavit of such. The purpose of this amendment is to revise the street layout and the resulting lot pattern.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscape buffers.
4. Urban Forester's approval of tree preservation plan.
5. Department of Environmental Quality's approval of environmentally sensitive areas (stone fences).
6. Division of Fire's approval of emergency access and fire hydrant location (water supply).
7. Approval of street names and addresses per e911 staff.
8. Denote: No final record plat shall be filed until compliance with Article 4-5(b) of the Land Subdivision Regulations is documented.
9. Correct spelling in tree protection area (TPA) note.
10. United States Postal Service (USPS) approval of mailbox locations.

Staff Presentation: Mr. Martin stated that this item was postponed at the April 10th meeting due to the lack of sign posting by the applicant. He briefly oriented the Commission members to the location of the subject property, noting that this development is proposed to be low-density, with 200-foot setbacks from Walnut Grove Lane and several Tree Protection Areas. There is also a pedestrian trail proposed for the development.

The petitioner proposes to construct 53 dwelling units; that number has not changed from the original plan. The purpose of this amendment is to move the location of the road closer to the top of the ridge, better acknowledging the topography of the land. In order to move the road as proposed, the building areas for some of the homes have been adjusted on this amended plan as well.

Mr. Martin noted that the neighbors in this vicinity are concerned about maintaining the quality of the environmentally sensitive wetland area, as well as protecting the trees on the subject property.

The Subdivision Committee recommended approval of this plan, with the 10 conditions listed on the agenda.

Petitioner Representation: Rory Kahly, EA Partners, submitted for the record the photograph and affidavit of the posting of the sign on the subject property. He said that an EAMP compliance statement was also required for this development plan, and the staff submitted that to the Commission members at the April 10th meeting. Mr. Kahly said that the petitioner is in agreement with the 10 conditions as listed on the agenda, and requested approval.

Commission Question: Mr. Vaughn asked if copies of the EAMP compliance statement were available, which the staff subsequently provided to the Planning Commission.

Citizen Objection: Bruce Simpson, attorney, stated that he was present representing Rob Rosenstein and David Svetich, who are concerned about the existing wetlands on the subject property and the possible impact of the proposed detention basin on the surrounding area. When the original plan was brought before the Planning Commission, the detention basins were proposed to be located approximately 25 feet off the property line. The basins are proposed to be approximately 200 feet by 150 feet in size, and Mr. Simpson's clients became concerned about the points of discharge into the wetlands area. When this plan was approved by the Planning Commission approximately a year ago, a condition was added to require the review and approval of Jim Rebmann, Environmental Planner, prior to any development on the subject property. Mr. Simpson's clients were pleased with that version of the development plan, and with the conditions for approval.

Mr. Simpson stated, however, that his clients are now concerned that the property will not be developed in accordance with the development plan. He has another set of clients, in a different location, who were negatively impacted recently when construction plans were filed for an adjoining property that were substantially different from the approved development plan. Mr. Simpson submitted into the record the following three additional conditions, and requested that the Planning Commission add them to the existing conditions for approval of this plan:

1. The plan shall be brought back before the Planning Commission for further review if the construction plans depict the detention basins to be relocated any closer to the common boundary line with the lots in Briar East than shown on this plan.

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

2. The tree protection area shall remain undisturbed to the maximum extent possible, except to minimally accommodate the necessary infrastructure, and then only along the northern edge of the tree preservation area.
3. The developer shall deliver a copy of the proposed construction plans to the attorney for Rob Rosenstein and David Svetich at the same time said documents are filed with the Division of Engineering.

Commission Question: Mr. Vaughn asked if the staff had been made aware of these conditions prior to today's meeting. Mr. Martin answered that he had had an opportunity to review the conditions with Mr. Queary, Mr. Newman, and the Legal Department, and the staff would have no objection to the Commission adding them to this plan.

Petitioner Comments: Mr. Kahly stated that he found out about the proposed additional conditions just prior to the beginning of this meeting. He said that his client has agreed to add conditions #1 and 2, but objects to the addition of condition #3. Mr. Kahly does not believe it should be necessary to provide copies of the construction documents to private citizens or their attorneys; if they would like to obtain copies of those documents, they should be required to contact the Division of Engineering and file a formal request, according to the usual procedure.

Mr. Simpson stated that, if the petitioner would not agree to provide copies of the construction plans, he would ask that the Commission add a condition to the development plan requiring that the petitioner notify him at the time of filing of those plans.

Director Comment: Mr. King suggested that, should the Commission choose to require notification of the filing of construction plans, they could change the language of Mr. Simpson's condition #3 to read: "The developer shall provide written notice of the submittal of the proposed construction plans to the attorney for Rob Rosenstein and David Svetich at the same time said documents are filed with the Division of Engineering." He said that it would be best to require written notice, rather than verbal notice.

Commission Questions: Mr. Cravens asked if it was unusual for an attorney to request copies of construction plans. Mr. King answered that it was not unprecedented; there have been other development plans where there were areas of concern that were approved with similar requirements.

Ms. Roche-Phillips suggested, with regard to condition #1, that the language be changed to prevent the moving of the detention basin further away from the common property line, without the approval of the Planning Commission. She said that condition #1 could be considered to be redundant and unnecessary, as those requirements are part of the Planning Commission's procedures when revisions are made to development plans.

Mr. Holmes stated, with regard to condition #2, that the language "maximum extent" and "minimally accommodate" were vague and may be difficult to measure or enforce. Mr. Martin said that the standard tree protection note requires the Urban Forester's sign-off in order to obtain a grading permit. He noted that, should the Planning Commission choose to impose that condition, the end of the sentence should be changed to read, "tree protection area," in order to be consistent

Mr. Cravens said that this plan had been previously approved, and asked if the purpose of this amendment was to move the lots away from the planned detention basin. Mr. Kahly answered that, following the certification of the original plan, the petitioner's engineer staked out the centerline of the new street on the ground. At that time, it was determined that the one cul-de-sac needed to be shifted by 50 to 100 feet in order to create some walk-out basement lots. He noted that this plan appeared on the consent agenda at the April 10th meeting. Mr. Cravens stated that he has a problem with placing the proposed notes, which he believes are unusual, on this plan at the last minute. Mr. Kahly stated that he did have a problem with the addition of those notes, but his client was willing to go along with #1 and 2.

Mr. Vaughn asked if Mr. Kahly would be amenable to the addition of condition #3. Mr. Kahly answered that he would be more comfortable with the language suggested by Mr. King, rather than that offered by Mr. Simpson.

Mr. Cravens asked Mr. Simpson why his clients believe that the petitioner will not comply with the development plan. Mr. Simpson responded that he had an experience with a previous developer who did not adhere to a development plan, and is now in litigation over that issue. He is now skeptical that the developer will comply with the development plan in this case. He added that he does not understand the basis for Mr. Kahly's objection to the addition of those conditions.

Action: A motion was made by Ms. Godfrey and seconded by Ms. Roche-Phillips to approve DP 2008-36, with the 10 conditions as listed on the agenda; adding the three conditions proposed by Mr. Simpson, but changing

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condition #3 according to Mr. King's suggestion; and accepting the EAMP compliance report. The motion failed, 5-4 (Cravens, Day, Richardson, Roche-Phillips, and Whitman opposed; Aten and Penn absent).

A motion was made by Mr. Cravens, seconded by Ms. Whitman, and carried 9-0 (Aten and Day absent) to approve DP 2008-36, with the 10 conditions as listed on the agenda, accepting the EAMP compliance report as presented by the staff.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, April 3, 2008, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Linda Godfrey, Ed Holmes, Frank Penn, Lynn Roche-Phillips, and Joan Whitman. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

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 AND RELATED PLANS** – 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.

Note: Mr. Penn arrived at this time.

1. **STONE ROAD REALTY, LLC, ZONING MAP AMENDMENT & L.C. BERRY SUBDIVISION, LOT 28 (STONE ROAD REALTY, LLC, PROPERTY) (AMD.) ZONING DEVELOPMENT PLAN**

- a. MAR 2008-11: STONE ROAD REALTY, LLC (6/12/08)* - petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Professional Office (P-1) zone, for 0.16 net (0.21 gross) acre, for property located at 160 Pasadena Drive.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 4) recommends Professional Service (PS) future land use for the subject property. The petitioner proposes to replace the existing residence with a parking lot.

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

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

1. The requested Professional Office (P-1) zone is in agreement with the 2007 Comprehensive Plan's recommendation for Professional Services future land use for the subject property.
2. This recommendation is made subject to the approval and certification of ZDP 2008-55: L.C. Berry Subdivision, Lot 28 (Stone Road Realty, LLC Property) (Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

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- b. ZDP 2008-55: L.C. BERRY SUBDIVISION, LOT 28, (STONE ROAD REALTY, LLC PROPERTY) (6/12/08)* - located at 160 Pasadena Drive.
(Foster - Roland)

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
7. Correct plan title.
8. Place site statistics within a box.
9. Delete note numbers 5 and 6.
10. Correct Planning Commission certification.
11. Correct note number 4.
12. Denote required landscape buffer.
13. Provided the Board of Adjustment grants the conditional use proposed for the property prior to a final development plan.
14. Discuss the need for stormwater detention.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property. She noted that the property is currently occupied by a single family residence. The petitioner proposes to remove that structure and use the property as a parking lot in association with the Professional Office use at 166 Pasadena Drive.

The 2007 Comprehensive Plan recommends Professional Services land use for the subject property. The petitioner's proposal to rezone the property to P-1 is in agreement with the land use recommendations of the Comprehensive Plan, and the staff and Zoning Committee are recommending approval of this request, for that reason.

Development Plan Presentation: Ms. Gallt presented the corollary zoning development plan filed in conjunction with this request, noting that the petitioner proposes to use the existing access point to Pasadena Drive. They also propose to add 11 parking spaces on the property.

The Subdivision Committee recommended approval of this plan, with 14 conditions as listed on the agenda. Ms. Gallt stated that condition #14 refers to the Committee's concerns about the mitigation of stormwater drainage on the subject property. It was determined that that stormwater will be routed to a large detention basin further to the west on Pasadena Drive, so that condition should be changed to read: "Resolve the need for stormwater detention at the time of the final development plan."

Petitioner Presentation: Myke Robbins, Foster-Roland, stated that the petitioner is in agreement with the staff's recommendations, and he requested approval.

Public Comment: No citizens were present to speak to this request.

Zoning Action: A motion was made by Ms. Godfrey, seconded by Mr. Mahan, and carried 101-0 (Aten absent) to approve MAR 2008-11, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Godfrey, seconded by Ms. Whitman, and carried 10-0 (Aten absent) to approve ZDP 2008-55, with the first 13 conditions as listed on the agenda, changing #14 to read, "Resolve the need for stormwater detention at the time of the final development plan."

2. TIVERTON WAY, LLC, ZONING MAP AMENDMENT & FAYETTE INDUSTRIAL PARK, LOT 3, (AMD.) ZONING DEVELOPMENT PLAN

- a. MAR 2008-13: TIVERTON WAY, LLC (6/12/08)* - petition for a zone map amendment from a Highway Service Business (B-3) zone with conditional zoning restrictions to a Highway Service Business (B-3) zone with modified conditional zoning restrictions, for 4.00 net (4.42 gross) acres, for property located at 128-130 West Tiverton Way.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Retail Trade and Personal Services land use for the subject property. The petitioner proposes to occupy a portion of the existing building with a children's educational facility that is

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

considered an "indoor amusement" use, and to revise the conditional zoning restrictions previously imposed on this property.

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

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

1. Conditions originally placed upon the subject property were not done in anticipation of a Kangaroo Bob's as an "indoor amusement" use that also has some similarities to a restaurant, a child care center and an indoor athletic facility for youth. Restaurants and child care centers are not currently prohibited at this location.
 2. The growth and increased visibility of a similar child-oriented use known as "Kids' Place," located at the Lexington Athletic Club a short distance northwest of the subject property, does constitute an unanticipated change in the physical and economic character of this area since the condition was originally imposed on the subject property in 1999.
 3. This recommendation is made subject to the approval and certification of ZDP 2008-54: Fayette Industrial Park, Lot 3 (Amd.) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
 4. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall now be restricted with the following prohibited uses (with all edits shown below in italicized text from the previous conditions):
 - a. Establishments and lots for the display, rental, and sale of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, or mobile homes.
 - b. Cocktail lounges and nightclubs.
 - c. Car washing establishments, unless located more than 250 feet from any hotel or motel.
 - d. Motels or hotels.
 - e. ~~Indoor amusements such as billiards~~ Billiard or pool halls, skating rinks, or bowling alleys.
 - f. Kennels.
 - g. Adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers.
 - h. Taxidermy establishments.
 - i. Pawnshops.
 - j. Indoor and outdoor athletic facilities such as a field house, gymnasium, football stadium, tennis courts, soccer field or polo field, and baseball field, except that learning centers that incorporate play as part of their activities and that primarily use instructors to guide the play, are not prohibited.
 - k. Amusement parks, fairground, or horse racing track.
 - l. Outdoor theaters.
 - m. Outdoor recreational facilities including go-cart tracks, archery courts, skateboard and roller skating tracks, trampoline centers, rifle and other fire-arm ranges, swimming pools, water slides and other water related facilities, and other similar uses provided that miniature golf courses and putt-putt facilities may be allowed subject to approval of a conditional use permit by the Board of Adjustment.
 - n. Passenger transportation terminals.
 - o. Mining of non-metallic materials.
 - p. Adult arcades, adult bookstores, adult video stores and massage parlors.
 - q. Advertising signs (billboards) as defined in Article 17 of the Zoning Ordinance and freestanding signs except as permitted in the B-6P zone.
- b. ZDP 2008-54: FAYETTE INDUSTRIAL PARK, LOT 3 (AMD.) (6/12/08)* - located at 128 West Tiverton Way.
(Barrett Partners)

Note: The purpose of this amendment is to revise the conditional zoning restrictions.

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

1. Provided the Urban County Council revises the conditional B-3 zoning of the property; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.
3. Building Inspection's approval of landscape buffers.
4. Urban Forester's approval of tree inventory map.
5. Complete adjacent property information.
6. Addition of conditional zoning restrictions.

Zoning Presentation: Mr. Sallee presented the staff report on this zone change application, briefly orienting the Commission to the location of the subject property. He noted that this request is not to rezone the property from one zone to another, but to modify the existing conditional zoning restrictions instead.

The petitioner has requested that the existing conditional zoning restrictions be modified for the subject property to allow a new type of commercial venture to locate there. Currently, there is a prohibition of a number of uses on the property,

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which are listed in the staff report and on the agenda. Those conditions were imposed in 1999, because the subject property was located within ¼ mile of residential uses. Mr. Sallee said that the existing restrictions mirror very closely those imposed on the Wal-Mart development immediately to the south of the subject property.

The 2007 Comprehensive Plan recommends Retail Trade & Personal Services use for the subject property. However, in cases where conditional zoning restrictions are proposed to be modified, the staff must consider what conditions have changed on or near the property since the imposition of the original restrictions. The staff has identified two in this case: first, the prohibition on indoor amusements was imposed but could not have been in anticipation of a use such as the Kangaroo Bob's proposed, which has elements of a restaurant, child care center, and indoor youth-oriented athletic center. Those types of uses generally did not exist in this area at that time. Secondly, a child-oriented use at the Lexington Athletic Center, which is located near the subject property, has expanded into a similar use since the original conditional zoning restrictions were put in place. This constitutes an unanticipated physical and economic change in the area. Thus, the staff has found that there are two criteria available to warrant the requested modification to the conditional zoning restrictions.

Mr. Sallee stated that, with regard to item "e" in the original list of prohibited uses, the staff is proposing to remove the prohibition on indoor amusements, while retaining on the list a prohibition for billiard or pool halls, skating rinks, and bowling alleys. He noted that, following the Zoning Committee meeting, the petitioner met with the staff and the Division of Building Inspection, and the staff subsequently modified the list of conditional zoning restrictions, as reflected in the supplemental staff report. The staff is proposing the following revision to item "j" in the list of conditional zoning restrictions:

- j. Indoor and outdoor athletic facilities, such as a fieldhouse, gymnasium, football stadium, tennis courts, soccer field or polo field, and baseball field, except that children's activity centers learning centers that incorporate play as part of their activities and that primarily use instructors to guide the play, are not prohibited.

That change was recommended after consultation with the Division of Building Inspection and consideration of what a future occupancy permit might entail at this location.

The staff is recommending approval of this conditional zoning modification, for the reasons as listed on the agenda and in the staff report.

Development Plan Presentation: Mr. Taylor presented the corollary zoning development plan, noting that, since it is a final development plan, the Planning Commission may not have another opportunity to review it.

The development plan depicts the two existing buildings on the subject property, with the associated parking and three existing access points to West Tiverton Way. There are no physical changes proposed to the development plan itself, just to the notes with regard to the conditional zoning restrictions. The Subdivision Committee recommended approval of this amended plan, subject to the six conditions as listed on the agenda.

Petitioner Presentation: Bruce Simpson, attorney, was present representing the petitioner. He said that the petitioner has worked with the staff and the Division of Building Inspection on the appropriate modifications to the conditional zoning restrictions, and is in agreement with the proposed changes and the staff's recommendations.

Public Comment: No citizens were present to speak to this request.

Zoning Action: A motion was made by Ms. Godfrey, seconded by Ms. Whitman, and carried 10-0 (Aten absent) to approve MAR 2008-13, modifying the existing conditional zoning restrictions as listed on the agenda and the supplemental staff report.

Development Plan Action: A motion was made by Ms. Godfrey, seconded by Mr. Penn, and carried 10-0 (Aten absent) to approve ZDP 2008-54, subject to the six conditions as listed on the agenda.

3. WILLIAM T. BURKE ZONING MAP AMENDMENT & CHEVY CHASE SUBDIVISION, UNIT 19, LOT 7 (WM. T. BURKE PROPERTY) (AMD.)

- a. MAR 2008-10: WILLIAM T. BURKE (6/12/08)* - petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Two Family Residential (R-2) zone, for 0.17 net (0.21 gross) acre, for property located at 1136 Providence Lane.

LAND USE PLAN AND PROPOSED USE

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

The 2007 Comprehensive Plan (Sector 3) recommends Low Density Residential land use, defined as 0–5 dwelling units per net acre. The petitioner proposes replacing the single family residence with a two family dwelling, for a residential density of 11.76 units per net acre.

The Zoning Committee Recommended: Referral to the full Commission.

The Staff Recommends: Postponement, for the following reason:

1. Further evaluation of the applicant's proposal to significantly increase density along this side of Providence Lane is necessary. The proposed rezoning should be considered from a broader perspective and evaluation of a possible change for all four parcels with R-1C zoning in this immediate area.
- b. ZDP 2008-56: CHEVY CHASE SUBDIVISION, UNIT 19, LOT 7 (WM. T. BURKE PROPERTY) (6/12/08)* - located at 1136 Providence Lane.
(Foster - Roland)

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Provided the Urban County Council rezones the property R-2; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
7. Correct plan title.
8. Place site statistics within a box.
9. Correct Planning Commission certification.
10. Delete note numbers 5 and 6.
11. Correct note number 4.
12. Denote 6' landscape buffer.
13. Denote vehicular use area (VUA) screening.

Zoning Presentation: Ms. Wade presented the revised staff report, noting that the appropriate findings were listed on that revised report, rather than on the agenda. She briefly oriented the Commission to the location of the subject property.

The subject property is currently vacant, following the demolition of a former single family residence on the lot; and the petitioner proposes to construct a building that would be defined as a duplex by the Zoning Ordinance, but would be more similar to a townhouse in appearance. Construction of a duplex on the subject property would result in a residential density of 11.76 dwelling units per acre.

Ms. Wade displayed several photographs of the subject property and surrounding area for the Commission. She noted that the area in which the subject property is located is more densely settled than some sections of the surrounding neighborhood, and contains several townhouses of the style proposed by the petitioner.

The requested R-2 zone would allow development of the property at twice the density that is currently allowed there with single-family zoning. The 2007 Comprehensive Plan recommends Low Density residential use for the subject property, or 0–5 dwelling units per acre; therefore, it cannot be said that this request is in agreement with the Plan's recommendation.

Since this request is not in agreement with the recommendation of the Comprehensive Plan, the Planning Commission should consider the appropriateness of the petitioner's proposal. Ms. Wade said that the petitioner contends that the proposed R-2 zone is appropriate as a transition between the R-3 zoning and apartment uses to the south, and the R-1C zoning for the school and church uses to the north. The petitioner also contends that the proposed development is in keeping with the character of Providence Lane, with regard to the existing townhouses to the west of this location.

Ms. Wade stated that, following the Zoning Committee meeting, the staff conducted more research into this request and found that there were four zone changes between 1986 and 1989 in the immediate area that created a new character along Providence Lane. Subsequent Comprehensive Plan updates have maintained the Low Density land use recommendation in the area, due to the existing R-1C zoning, although the area has become more high density in nature since those rezonings in the 1980s. The staff now believes that the existing R-1C lots are out of character with the rest of Providence Lane; the street is now dominated by two-story, brick façade townhouse structures, rather than by single-family residences. The petitioner's proposal is to extend that type of development; therefore, they would make the subject property more compatible and consistent with the immediate area.

The Zoning Committee recommended referral of this request at their meeting three weeks ago. At that time, the staff was recommending postponement. The staff is now recommending approval of this request, for the following reason:

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1. The requested Two Family Residential (R-2) zone is appropriate and the existing Single Family Residential (R-1C) zone is inappropriate for the subject property, for the following reasons:
 - a. The R-2 zone allows for a redevelopment of the subject property, which is consistent and compatible with the townhouse-style construction and the overall residential character in terms of size, scale, density and bulk along this portion of Providence Lane. The R-1C zoned lots are now out of character with the immediate area.
 - b. The mixed-use block bounded by Providence Lane, Romany Road, Duke Road and Cooper Drive is mostly characterized by either commercial or high density residential land uses. The 2007 Comprehensive Plan recommends a high density residential land use for a majority of this block. The requested R-2 zoning allows for twice the density on the subject property, bringing it more in line with the rest of the block, than the existing R-1C zone.
 - c. The requested R-2 zone is an appropriate transition between the apartments (R-3 zone) to the south and the church (R-1C zone) to the north of the subject property.

Development Plan Presentation: Mr. Taylor presented the corollary preliminary development plan, further orienting the Commission to the location of the subject property.

Mr. Taylor stated that the development plan proposes two units of approximately 1,400 square feet each on the subject property, with access and driveways to one side of the two proposed units, and a detached garage at the rear of the property.

The Subdivision Committee recommended approval of this plan, subject to the 13 conditions as listed on the agenda.

Commission Questions: Ms. Roche-Phillips asked if Mr. Taylor could clarify the potential shared driveway conflict with the property at 1140 Providence Lane. Mr. Taylor responded that this plan does not include any easement information; that information would need to be added at the time of the final development plan. Any utility relocation will be required within the existing easement area. Kentucky Utilities might address that with the developer and with the owners of the adjoining property. Should any easement adjustments or new easements be required, it could be addressed with a new plat.

Ms. Roche-Phillips said that it appears on this plan that the driveway is fully contained on the subject property, and not shared with the adjoining property. Mr. Taylor agreed that that is how the driveway is depicted on this development plan.

Chair Comments: Mr. Vaughn said that it would be appropriate at this time to review the Commission's adopted time limit procedure. The staff and petitioner are each allowed 30 minutes for their presentations. Citizens in favor of the request are allowed 10 minutes total in which to address the Commission, or three minutes each if more than one person would like to speak. Any objectors to the request will be allowed to speak for a maximum of 30 minutes, or three minutes each. The petitioner, objectors, and staff will all be allowed five minutes maximum to present any rebuttal items and their closing comments.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioner. He said that the petitioner proposes to construct two attached single family homes, which will be very similar in appearance to the existing two-unit townhouses on Providence Lane and Duke Road. He displayed photographs of those townhouses and the subject property for the Commission.

The proposed attached single family units would be two-story, brick, with a detached garage in the rear and a small front setback. Mr. Murphy said that the existing units are zoned R-1T, rather than R-2, which is the zoning requested for the subject property. After the existing townhouses were approved in the 1980s, the Zoning Ordinance was amended to require at least three attached units in the R-1T zone. Since the petitioner proposes to construct only two units, the R-1T zone would therefore be inappropriate for the subject property. Although the zoning will be different for the proposed units, they will be similar in appearance, size, density, and bulk to the existing two-unit townhouses on Providence Lane.

The area surrounding the subject property is one of the most pedestrian-friendly locations in Lexington. Residents in the area can easily walk to grocery stores, offices, retail shops, a pharmacy, even a bank, and the post office. Several churches, schools, and restaurants are also located within a short walking distance of the subject property. Mr. Murphy said that neighborhoods such as this one provide opportunities for the type of infill that the city needs. He displayed several photographs of the subject property and surrounding neighborhood, depicting some of the commercial and multi-family uses in the area.

Mr. Murphy stated that the following Comprehensive Plan Goals and Objectives support the petitioner's request for R-2 zoning on the subject property:

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- Goal 7, Objective J: Assure that development maximizes efficient use of existing adequate essential facilities or occurs only where essential facilities are planned and programmed to reasonably coincide with the occurrence of development.
- Goal 8: Create strategies that enable and encourage appropriate infill and redevelopment of established developments and neighborhoods.
- Goal 8, Objective H: Ensure that infill and redevelopment projects are compatible with and complementary to existing development.
- Goal 13, Objective I: Encourage infill housing opportunities where compatible with existing areas and where services and infrastructure problems will not be exacerbated.
- Goal 15, Objective A: Retain the character, identity, and appearance of vital, successful residential and nonresidential areas.
- Goal 15, Objective E: Plan for and promote infill and redevelopment that is appropriate in character, density, and design and serves to reinforce the fabric of the neighborhood.
- Goal 15, Objective K: Promote human-scale, bicycle and pedestrian-friendly neighborhoods.

Mr. Murphy noted that he had done some density calculations for the area, and the subject property, if developed as proposed, would actually be below the density level for the rest of the block, due to the existing multi-family uses in the area.

With regard to the conditions for approval of the corollary development plan, Mr. Murphy said that he had spoken with Bob Carpenter from the Division of Building Inspection, and he agreed that condition #12 could be deleted. Condition #13 could be changed to read, "Resolve vehicular use area (VUA) screening," since that will need to be determined by the size of the paving. That issue can also be resolved with Mr. Carpenter at the time of the final development plan.

Mr. Murphy said that he met immediately prior to this meeting with some of the neighbors of the subject property, who reside in the adjoining townhouse. He told some of the neighbors that there had been an engineering study done on the subject property that suggested that it may be more appropriate for this property to share a driveway with the adjoining property. That was only the result of a study; but the neighbors may have believed that that was part of the petitioner's proposal, and it is not. The driveway could not be shared without the permission of the owners of that property; if the petitioner chose to attempt that, he would have to discuss it with those individuals and enter into some type of formal arrangement.

The petitioner also met with the neighbors on the other side of the property, who own the adjoining single family lot. There is an existing power line that runs the length of the shared property line, and the pole is located in front of their home. It appears that a Kentucky Utilities employee told the neighbors that there had been some discussions between KU and the petitioner's engineer about the possibility of locating that power line underground. The neighbors became concerned about the possible location of additional power lines on their property. Mr. Murphy said that, should the petitioner choose to relocate those utility lines, he would be required to pay approximately \$14,000 in order to do so. If he did choose to do so, those lines would be located on the petitioner's property, not the neighbor's.

Mr. Murphy stated that those development plan items do not actually relate to the issue of whether the proposed R-2 zone is appropriate for the subject property. The petitioner believes that it is, and that adding an additional townhouse unit to those already in existence on Providence Lane would be an excellent infill project for this neighborhood. The petitioner agrees with the staff's recommendations, and would request approval of this rezoning.

Commission Question: Mr. Vaughn asked Mr. Carpenter if he would be in agreement with deleting condition #12 and changing #13 as Mr. Murphy referenced. Mr. Carpenter answered affirmatively.

Citizens in Opposition: Frank Lewis, 1134 Providence Lane, stated that his property adjoins the subject property. He said that neighbors met with Mr. Murphy just prior to this meeting and were able to resolve some of their concerns. Mr. Lewis requested that the Planning Commission consider the final development plan for this property very carefully, particularly with regard to the setback of the building. The setback on their property, which is zoned R-1T, is 10', and the setback on the subject property could be up to 30'. Mr. Lewis wants to ensure that the development on the subject property will be compatible with his existing townhouse.

Rosalyn Butler, 1140 Providence Lane, stated that the proposed development plan for the subject property is very nice, but she and her husband are concerned about the lack of communication from the petitioner. Some of the recent activity on the subject property has already negatively impacted her property values, and she fears that those activities may

continue if the property is rezoned. Ms. Butler stated that she and her husband need more time to analyze the impact that construction on the subject property may have on their home.

Ms. Butler said that trees had been removed from her property without permission, before the survey to determine the property lines was completed. Their fence was also partially removed during demolition on the subject property, again without permission.

With regard to the proposed changes to the utilities on the subject property, Ms. Butler said that she had received information that an easement was going to be relocated from the subject property to her property. Although Mr. Murphy said in his presentation that that could not occur without the Butlers' permission, some of the petitioner's past activities have led them to believe that that may not be true.

Ms. Butler stated that she and her husband are also concerned that the subject property may not have adequate area to hold the proposed townhouse units. As a result, she asked that the Planning Commission allow them more time for consideration of this proposal.

Cecil Butler, 1140 Providence Lane, stated that he would like for the Planning Commission to postpone the hearing of this request for 45–60 days, to allow him time to retain legal counsel, particularly with regard to the issues with Kentucky Utilities. He said that he is concerned about this future possibility of constructing a garage or other type of outbuilding, should the utility easement be relocated to his property.

Commission Question: Mr. Mahan asked Mr. Butler under what circumstances the trees in his yard were cut down. Mr. Butler answered that the petitioner attempted to move their shared property line by three feet; the trees were located on Mr. Butler's property, but overhung the petitioner's property. The petitioner had the right to cut the overhanging limbs, but he cut the trunk of the tree as well. The petitioner also staked out three feet of Mr. Butler's property without providing results of a survey to the Butlers.

Mr. Butler stated that there has been such a lack of communication with the petitioner that he fears that, if this request is approved, he may need to retain legal counsel in order to protect his property from further encroachment.

Staff Rebuttal: Mr. Martin noted that a preliminary development plan has been submitted in conjunction with this request, and the Commission will have the opportunity to review a final development plan should the Urban County Council choose to approve this rezoning request. He added that the Planning Commission could require that the petitioner notify the neighbors of the filing of a final development plan, which may help address their concerns.

Petitioner Rebuttal: Mr. Murphy said that the petitioner had the subject property surveyed prior to cutting any trees. All of the trees that he removed were located on their property, according to that survey. The law provides homeowners with the right to cut overhanging tree limbs at the property line. With regard to the Butlers' fence, the portion removed was located on the petitioner's property according to the survey.

Mr. Murphy stated that the Kentucky Utilities easement issues do not relate the rezoning of this property. Any relocation of the easement is a matter of easement law between all the property owners and KU, and must be resolved that way. Condition #6 for approval of the development plan requires that there shall be no development on the property until the Planning Commission approves a final development plan; all of these issues can be resolved at that time.

Mr. Murphy noted that the petitioner would be agreeable to notifying the neighbors of the filing of a final development plan, per Mr. Martin's suggestion.

There has been some discussion about the appropriateness of rezoning other properties on Providence Lane to R-2, in order to make them more compatible with the existing development on the street. Mr. Murphy stressed that this rezoning request relates only to the property at 1136 Providence Lane, and the petitioner does not have the right to attempt to rezone anyone else's property.

Citizen Rebuttal: Mr. Butler said that that was not the information that Mr. Murphy had provided him just prior to this meeting; they had discussed the potential benefits Mr. Butler may gain by rezoning his property as well. With regard to the survey of the petitioner's property, Mr. Butler said that the trees were removed three weeks prior to the survey being completed. He asked that the Planning Commission continue this item, so that he can retain legal counsel in order to protect his property.

Commission Questions: Ms. Godfrey asked if the adjoining property owners were provided with copies of the survey, and if those issues had been clarified. Mr. Butler said that the survey showed that the new property line is only one inch from the original property line, but the trees he removed were approximately three feet over the property line. He stated that he

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had contacted the petitioner's engineer to do some work for him, and they informed him that the survey was not completed at the time that the trees were cut down.

Legal Comment: Mr. Gardner stated that many of the concerns discussed today are not relevant at all to the zoning and development plan issues currently before the Planning Commission. Those issues are strictly between the property owners, and any legal problems arising from that must be addressed by the property owners. The Planning Commission could not get involved in such private property issues.

Zoning Action: A motion was made by Mr. Penn, seconded by Ms. Richardson, and carried 10-0 (Aten absent) to approve MAR 2008-10, for the following reason:

1. The requested Two Family Residential (R-2) zone is appropriate and the existing Single Family Residential (R-1C) zone is inappropriate for the subject property, for the following reasons:
 - a. The R-2 zone allows for a redevelopment of the subject property which is consistent and compatible with the townhouse-style construction and the overall residential character in terms of size, scale, density and bulk along this portion of Providence Lane. The R-1C zoned lots are now out of character with the immediate area.
 - b. The mixed-use block bounded by Providence Lane, Romany Road, Duke Road and Cooper Drive is mostly characterized by either commercial or high density residential land uses. The 2007 Comprehensive Plan recommends a high density residential land use for a majority of this block. The requested R-2 zoning allows for twice the density on the subject property, bringing it more in line with the rest of the block, than the existing R-1C zone.
 - c. The requested R-2 zone is an appropriate transition between the apartments (R-3 zone) to the south and the church (R-1C zone) to the north of the subject property.

Development Plan Action: A motion was made by Mr. Penn, seconded by Ms. Richardson, and carried 10-0 (Aten absent) to approve ZDP 2008-56, with the first 11 conditions as listed on the agenda; changing #12 to read: "Resolve vehicular use area (VUA) screening;" and adding a new #13, to read: "Document notice to adjoining property owners at the time of the filing of a final development plan for the subject property."

Note: Chairman Vaughn declared a brief recess at 3:27 p.m. The meeting reconvened at 3:37 p.m.

4. GCL PROPERTIES, LLC, ZONING MAP AMENDMENT & LEDERER PROPERTY (GCL PROPERTIES, LLC) ZONING DEVELOPMENT PLAN

- a. MARV 2008-12: GCL PROPERTIES, LLC (6/12/08)* - petition for a zone map amendment from a Single Family Residential (R-1E) zone to a Neighborhood Business (B-1) zone, for 0.267 net (0.347 gross) acre, for property located at 135-139 East Third Street. A dimensional variance is also being requested at this location.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends that the subject property follow the core principles and recommendations of the Downtown Master Plan. The petitioner proposes a Neighborhood Business (B-1) zone in order to construct a parking lot, which would be used in association with the adjacent proposed banquet facility at the Carrick House.

The Zoning Committee Recommended: **Postponement**, for the reason provided by staff.

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

1. "The *Masterplan* vision places a premium on human interaction and the visual appeal of structures, with emphasis on developing outdoor recreation, entertainment, maximizing residential densities, and creating attractive gateways. The *Masterplan* presents the interrelationships of neighborhoods and the interaction of the people with the built environment, which relies on the size, location, and appearance of structures – form-based design – rather than traditional land uses, as found elsewhere in the 2007 Comprehensive Plan." More time is needed to review whether or not the proposed zoning and the proposed use fulfill the vision of the *Masterplan* for the revitalization of the downtown area, while still being within the context of the immediate neighborhood.
- b. REQUESTED VARIANCE
 1. Reduce the required vehicular use area screening along the northeastern and northwestern boundaries from 5' to 0'.

The Staff Recommends: **Approval of the landscape variance from 5' to 0'**, for the following reasons:

- a. This variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, as it will be developed as an extension of the Carrick house parking, and existing sidewalks along E. Third Street are to remain.

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- b. This variance will not result in an unreasonable circumvention of the Zoning Ordinance, as the design of the parking lot will incorporate it into the adjacent property's parking lot.
- c. The special circumstance that contributes to justifying this variance is the fact that it will be incorporated into the adjacent property's parking lot.
- d. Strict application of the Zoning Ordinance requirement would likely result in a less efficient use of parking area and would sever this property from the Carrick House property, thus visually emphasizing the use of this property as a stand-alone parking lot.
- e. This variance is not the result of any prior actions of this applicant or the current owner, nor is it a result of a willful violation of the Zoning Ordinance.

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

- 1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval of this variance is null and void.
- 2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by the Planning Commission.
- 3. A note shall be placed on the Preliminary Development Plan indicating the dimensional variance that the Planning Commission has approved for this property under Article 6-4(c) of the Zoning Ordinance.
- 4. All necessary permits shall be obtained from Building Inspection prior to construction, after certification of a Final Development Plan, should this property be rezoned.
- 5. The use of this property shall be restricted to a parking lot that functions as an extension of the Carrick House property (312 North Limestone Street); otherwise, compliance with Article 18-3(a)(2) of the Zoning Ordinance will be expected of the development plan approved by the Planning Commission.

- c. ZDP 2008-58: LEDERER PROPERTY (GCL PROPERTIES, LLC) (6/12/08)* - located at 135-139 East Third Street.
(Wheat and Ladenburger)

The Subdivision Committee Recommended: Approval, subject to the following requirements:

- 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 and storm and sanitary sewers.
- 3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
- 4. Building Inspection's approval of landscape buffers.
- 5. Urban Forester's approval of tree inventory map.
- 6. Addition of adjacent property information.
- 7. Improve plan legibility (notes and cross-sections).
- 8. Correct plan title.
- 9. Adjust 3' landscape buffer to be on property.
- 10. Discuss need for requested landscaping variances.

Zoning Presentation: Ms. Wade presented the staff report, noting that it had been revised since the Zoning Committee. She submitted one letter of concern about this request into the record of the meeting, and distributed it for the Commission's review. She displayed for the Commission several photographs of the subject and surrounding properties.

Ms. Wade briefly oriented the Commission to the location of the subject property, which is within the Constitution Historic District. The H-1 overlay zoning is not proposed to be changed as part of this request. The subject property is currently vacant, it is now a gravel lot. It is the only property currently zoned for residential use on the west side of this portion of East Third Street. The petitioner proposes to rezone the subject property to B-1 in order to use it as a parking lot for the adjacent Carrick House banquet facility. Parking lots are principal permitted uses in the B-1 zone proposed. The petitioner does not propose to consolidate the subject parcel with the Carrick House parcel, so a landscape variance has been requested and will be addressed in a separate staff report. Although the subject property has been zoned for residential use for some time, no residential use has ever been constructed there. The location of the property within the Constitution Historic District will require Board of Architectural Review approval of the landscaping design and materials for the proposed parking lot.

The 2007 Comprehensive Plan recommends Downtown Master Plan use for the subject property. Ms. Wade stated that the residential use that would be permitted under the existing R-1E zoning is in keeping with the character of the area. The rezoning of the property to R-1E in 2006 was done to help maintain that character. At that time, however, the 2001 Comprehensive Plan recommended a combination of High Density Residential and Retail Trade uses for the subject property. Today, the 2007 Comprehensive Plan recommends that redevelopment follow the core principles of the Downtown Master Plan, which places emphasis on human interaction and visual appeal of structures; maximizing residential densities; creating attractive gateways; and maximizing interrelationships with neighborhoods and the interaction of people with the built environment. It would be difficult to say that the proposed parking lot would increase

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the interaction of people with the built environment; however, the current status of the property as a vacant lot does nothing to increase that interaction either.

Following the Zoning Committee, the staff considered the requested B-1 zoning more carefully with regard to the recommendations of the Downtown Master Plan, and found that, for his site, the requested B-1 zoning is appropriate and the existing R-1E zoning is inappropriate, for the following reasons:

1. The proposed B-1 zoning is appropriate for the subject property and the existing R-1E zoning is inappropriate for the subject property, for the following reasons:
 - a. The property is surrounded on all sides by business zones, including both B-1 and B-2A designations.
 - b. The proposed B-1 zoning would allow for a more substantive redevelopment of the site in the future that is in keeping with the vision of the 2007 Comprehensive Plan and the Downtown Master Plan.

Ms. Wade said that the staff would like to emphasize that they hope that the subject property does not remain a parking lot indefinitely, and that the B-1 zone would allow for a higher-intensity use of the property, should it ever redevelop.

Variance Report: Mr. Sallee presented the variance report, displaying two photographs of the subject property for the Commission.

The petitioner has requested a variance to the vehicular use area screening along the property line. Article 18-3(a)(2) of the Zoning Ordinance requires that a 3' or 5' landscape buffer be established along the edge of the parking lot, along the existing property line. This variance request was prompted by the petitioner's desire to maintain this property as a separate lot from the lot where the Carrick House and its associated parking are located. The Zoning Ordinance would require the landscape screening along the property line between those two separate properties.

The staff believes that the two parking lots will be integrated and will function as a single parking lot, regardless of the property line. Mr. Sallee stated that the staff reviewed the variance request in that light, and is recommending approval of this request. At the time of the Zoning Committee meeting three weeks ago, however, the variance request had not yet been reviewed by the Landscape Review Committee. It is required that they review all landscaping variances and make recommendations. On April 15th, that body met, and, although they did not have a quorum, there was unanimity among the members present that the variance should be authorized, with one condition. That is the one also recommended by the staff (#5). Mr. Sallee noted that the subject property is also zoned H-1; and as such, regardless of the Planning Commission's decision today and/or on the variance, ultimately the design of the parking lot will be subject to the review and approval of the Division of Historic Preservation staff and the Board of Architectural Review if the property is rezoned to B-1.

The staff is recommending approval of the requested variance, for the reasons cited and subject to the five conditions, both as listed on the agenda.

Commission Question: Mr. Holmes asked, with regard to condition #5, what the subject property would be used for if it were no longer being used as a parking lot. Mr. Sallee said that, if the property is rezoned B-1, that would allow a number of different uses there. The staff would expect that, should that occur in the future, there would need to be an amended development plan presented to the Commission. At that time, the staff would review this information, as well as the development plan, and recommend buffering.

Development Plan Presentation: Mr. Taylor presented the corollary zoning development plan, noting that the plan proposes 35 additional parking spaces for the existing Carrick House banquet facility. There are two existing accesses, to Lake Alley and Third Street, that are proposed to be retained. The Subdivision Committee recommended approval of this plan, subject to the 10 conditions as listed on the agenda. Should the Commission choose to approve the variance request, #10 could be deleted.

Petitioner Presentation: Rena Wiseman, attorney, was present representing the petitioner. She said that the purchase and conversion of the Carrick House from a funeral home to a banquet facility was the impetus for this rezoning request. The former owner of the subject property filed a text amendment request last year to allow a banquet facility in a B-1 zone, which was approved by the Planning Commission. The petitioner purchased the property last fall, and determined that it would be an excellent location in which to offer reception, banquet, and private meeting services. In order to maintain that type of business on the property, though, the petitioner needs an additional parking area, to discourage on-street parking. The Carrick House property has a large front lawn that could provide additional space for parking, but it is very attractive and could be considered an enhancement to the neighborhood, which would make parking undesirable there.

Ms. Wiseman stated that, in an effort to acquire additional parking space for the Carrick House, the petitioner purchased the subject property, which was formerly the location of the Ashley Wheel & Brake facility. Laurella Lederer, the former owner of the property, had filed a request in 2006 to rezone the property from B-1 to R-1E, in order to construct two

single family dwellings. The existing buildings were then removed from the property and a preliminary subdivision plat was approved, but the homes were never built and the property was not subdivided. The petitioner purchased the property from Ms. Lederer with the specific intent of using it for parking. He has entered into reciprocal parking arrangements with Lexington Traditional Magnet School and two businesses in the area, but the additional 35 spaces provided by the subject property would create more accessible parking for individuals who may have limited walking ability.

Ms. Wiseman stated that the proposed B-1 zoning is appropriate for the subject property, and the existing R-1E zoning is inappropriate. Ms. Wiseman displayed an exhibit depicting the properties zoned for business use in the area immediately adjacent to the subject property, versus the properties zoned for residential use. The subject property is surrounded on three sides by business zoning and surface parking areas. All of the properties across the street are zoned B-2A for commercial use, which allows more uses with fewer requirements than the requested B-1 zoning. The subject property is the only one zoned for residential use in the area, and has never been used as such.

Ms. Wiseman entered as exhibits two letters of support from property owners in the area near the subject property.

Ms. Wiseman said, with regard to the recommendations of the Downtown Master Plan, that a parking lot itself will not actually foster interaction with the community. The parking lot would be there, however, to serve the Carrick House, which does foster interaction with the community, as well as creating an additional downtown destination business. The petitioner is in agreement with the staff's findings for approval of the variance request, but offered the following findings of approval, which are more detailed than the staff's, for the zone change:

"The existing Single Family Residential (R-1E) zone is inappropriate and the proposed Neighborhood Business (B-1) zoning is appropriate based on the following:

- A. Prior to September 2006, the property was zoned Neighborhood Business (B-1) and had been used for over 30 years as an automobile repair facility.
- B. The property was rezoned to the Single Family Residential (R-1E) category in 2006 based on the prior owner's desire to construct two single-family homes on the property. A preliminary subdivision plat creating two single-family lots was approved. The existing commercial structures were demolished in anticipation of construction of the new houses.
- C. The owner who obtained the zone change to R-1E did not construct dwellings on the property which remains vacant nor was a final record plat recorded creating the two residential lots. In November 2007, the owner sold the property to the applicant who owns 329 North Limestone (the 'Carrick House') which is being converted from a funeral home into a banquet facility. The applicant intends to use the property as accessory parking for the Carrick House.
- D. The subject property is surrounded on three sides by properties which are zoned Neighborhood Business (B-1), including the Carrick House property and the property at 147 East Third Street. In fact, the entire north block of East Third Street between North Limestone Street and Martin Luther King Boulevard, with the exception of the subject property, is zoned B-1. The properties across East Third Street in the south are zoned B-2A, with the exception of the property at 225 and 227 Martin Luther King Boulevard (the southeast corner of East Third and Martin Luther King Boulevard), which is zoned B-4. The B-2A zone is more intense than the B-1 zone because it allows more commercial uses, permits taller structures, and requires 75% less off-street parking.
- E. A significant part of the subject property is adjoined by paved parking areas, including the existing parking lot at the Carrick House and the parking lot behind the law offices at 147 East Third Street.

Ms. Wiseman stated that, immediately prior to this meeting, the petitioner had met with some of the neighbors of the subject property in order to hear their concerns about the proposed B-1 zone and some of the uses that may be allowed there. The petitioner agreed, after discussion with the neighbors, to prohibit the following uses through conditional zoning:

1. Retail sale of liquor and wine. No free-standing liquor stores where sale of liquor and/or wine is the principal use.
2. Retail sale of fabrics; yard goods; fixtures; furnishings; appliances; floor covering; furniture; kitchen and laundry equipment; hardware and wallpaper; lawn care products; paint and other interior or exterior care products; newspapers and magazines; flowers; music; cameras; jewelry and luggage; business supplies and machines; prescription and non-prescription medicines and medical supplies.
3. Beauty shops, barber shops, shoe repair, self service laundry, or laundry pick-up stations, including clothes cleaning establishments of not more than 40 pounds capacity and using a closed system process.
4. Automobile service stations, provided such use conforms to all requirements of Article 16.

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5. Repair of household appliances.
6. Retail sale of plant nursery or greenhouse products, except as prohibited herein.
7. Outdoor miniature golf or putting courses.
8. Quick copy services utilizing xerographic or similar processes, but not utilizing offset printing methods.
9. Circuses and carnivals.
10. Indoor theaters.
11. Rental of equipment whose retail sale would be permitted in the B-1 zone.
12. Arcades, including pinball and electronic games.
13. Pawnshops.
14. Athletic club facilities.

Ms. Wiseman asked that the Planning Commission incorporate those conditional zoning restrictions should they choose to recommend approval of this request.

Citizen Opposition: John Morgan, 343 North Limestone Street, stated that he also owns three properties on Third Street. He said that he is in support of the use of the Carrick House as a banquet facility, and believes that it is an asset to the neighborhood and downtown as a whole. He is concerned, however, about the other uses permitted in the B-1 zone. The neighbors appreciate the petitioner's suggestion of conditional zoning restrictions, but they want to ensure that the use of the subject property does not change, and it remains as a parking lot.

Mr. Morgan said that the petitioner currently has a temporary tent-like structure on the subject property that has taken up some of the existing parking area, and the neighbors are also concerned that no more such structures be permitted there. The Third Street neighborhood has improved in recent years, but it is still sensitive, and the neighbors want to ensure that the character of the area is appropriately protected.

Laurella Lederer, 138 East Third Street, stated that she originally got involved with the subject property because a neighboring property owner attempted to build a three-unit townhouse on the lot line in his rear yard adjoining her property. She purchased the subject property in order to prevent any attempts at such development there, and rezoned it to R-1E with the intent of constructing two single family homes on it. The housing market downturn, however, prevented her from constructing those homes, and she felt that it was financially necessary for her to sell the property to the petitioner. As part of that sale of the property, deed restrictions were placed on it that require that no buildings be placed on the lot as long as Ms. Lederer lives on her property at 138 East Third Street. Ms. Lederer stated that she is concerned that, if the property is rezoned to B-1, the petitioner may construct more temporary structures there. She does not believe that the current temporary structure adds to the streetscape of the neighborhood.

Ms. Lederer said that she has lived on East Third Street for 35 years, has worked very hard to improve and enhance the neighborhood, and she does not want to see anything happen on the subject property that may reverse all those years of effort.

Staff Comment: Mr. Sallee provided a finding that the Commission could use, should they choose to approve this request and impose the conditional zoning restrictions suggested by the petitioner.

Petitioner Rebuttal: Ms. Wiseman said that the petitioner believes that the conditional zoning restrictions to which they have agreed are sufficient, and they should not have to agree that the property will never be used for anything other than a parking lot. Circumstances change, and the petitioner may have some need to redevelop the property at some point in the future.

Commission Questions: Mr. Holmes asked if the petitioner was suggesting that they do not want to restrict the uses allowed by the B-1 zone. Ms. Wiseman answered that, under the proposed B-1 zoning and conditional zoning restrictions, the subject property could be used as a parking lot, or any of the other B-1 uses not prohibited via those restrictions. She said that none of the adjoining property owners have provided any guarantee of what they may decide to do to their property in the future, and the petitioner believes that it would not be equitable to require that he limit his property to just one possible use.

Mr. Penn asked for clarification with regard to the deed restrictions to which Ms. Lederer referred. Ms. Lederer answered that there is such a deed restriction on the subject property, and read the following into the record:

"GCL Properties hereby declares and places upon the lot the following restriction as to its current and future use (the restrictions): should GCL Properties, its successors or assigns desire to build a permanent building and/or residence on the lot, requiring a foundation, GCL Properties, its successors and assigns agree to provide Ms. Lederer with notice of the development and copies of such plans for Ms. Lederer's approval. Ms. Lederer's approval cannot unreasonably be withheld or delayed with respect to any single family residence developed in or built by GCL Properties. This restriction shall run

with the lot, and shall endure as long as Ms. Lederer is alive and is a permanent resident at 138 East Third Street."

Ms. Lederer said that, according to the deed restrictions, she cannot object to any single family residence proposed for the subject property, but she can object to any other use the petitioner proposes. The intent of the restrictions was that, as long as Ms. Lederer resides across the street from the subject property, nothing could locate there except for a parking lot, a garden, or a single family residence.

Mr. Penn said that the deed restrictions do not appear to refer to any temporary structures, such as the existing tent on the subject property. Ms. Lederer responded that they do not; it never occurred to her that any such structures would be placed there.

Petitioner Comment: Ms. Wiseman said that it is not within the Planning Commission's purview to control deed restrictions. The deed restriction does not prohibit buildings on the subject property; it requires that, should the petitioner desire to build a permanent building on the property, he would provide Ms. Lederer with notice of his intent, and copies of the plans for her approval. It makes a distinction that Ms. Lederer cannot withhold her approval of any proposed single family residence.

Staff Comment: Ms. Wade noted for the Commission that it is not their responsibility to uphold or maintain deed restrictions for any property.

Zoning Action: A motion was made by Ms. Godfrey and seconded by Mr. Day, and carried 10-0 (Aten absent) to approve MARV 2008-12, including the requested variance, for the reasons provided by staff.

Staff Comment: Mr. Sallee asked to clarify that Ms. Godfrey's motion did not include the proposed conditional zoning restrictions.

Legal Comment: Mr. Gardner said that a motion could be made to amend the previous motion, if conditional zoning is desired here.

Amendment of Original Motion: A motion was made by Ms. Richardson, seconded by Ms. Whitman, and carried 10-0 (Aten absent) to amend the original motion to include the following conditional zoning restrictions:

PROHIBITED USES

- a. No freestanding liquor stores for the sale of liquor and/or wine as the principal use.
- b. Establishments for the retail sale of merchandise, including: fabrics; yard goods; fixtures, furnishings; appliances; floor covering; furniture; kitchen and laundry equipment; hardware and wallpaper; lawn care products; paint and other interior or exterior care products; newspapers and magazines; flowers; music; cameras; jewelry and luggage; business supplies and machines; prescription and non-prescription medicines and medical supplies.
- c. Beauty shops, barber shops, shoe repair, self service laundry, or laundry pick-up stations, including clothes cleaning establishments of not more than 40 pounds capacity and using a closed-system process.
- d. Automobile service stations, provided such use conforms to all requirements of Article 16.
- e. Repair of household appliances.
- f. Retail sale of plant nursery or greenhouse products, except as prohibited herein.
- g. Outdoor miniature golf or putting courses.
- h. Quick copy services utilizing xerographic or similar processes, but not utilizing offset printing methods.
- i. Circuses and carnivals on a temporary basis.
- j. Indoor theaters.
- k. Rental of equipment whose retail sale would be permitted in the B-1 zone.
- l. Arcades, including pinball and electronic games.
- m. Pawnshops.
- n. Athletic club facilities.

These restrictions are appropriate for the subject property due to the close proximity of residential and educational land uses in this neighborhood.

Development Plan Motion: A motion was made by Ms. Godfrey and seconded by Mr. Cravens to approve ZDP 2008-58, subject to the first nine conditions as listed on the agenda; deleting #10; and adding a new #10 to read: "Addition of conditional zoning restrictions."

Discussion of Motion: Mr. Penn asked if the landscaping shown on the staff's photographs was intended to be temporary, as most of the trees were leaning. Mr. Carpenter answered that the Division of Building Inspection had not yet reviewed the landscaping on that property, since they had not received an application. He said that he would not approve the trees

as they appear today, and that the petitioner will have to present a landscape plan for his approval prior to the approval of the final development plan.

Development Plan Action: Ms. Godfrey's motion carried, 10-0 (Aten absent).

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. ZOTA 2008-3: AMENDMENT TO ARTICLE 25: TELECOMMUNICATION TOWERS – a Zoning Ordinance text amendment to address the issue of sureties and to provide clarification regarding rooftop tower and/or antenna construction.

INITIATED BY: Urban County Planning Commission (at the request of the staff)

PROPOSED TEXT: *(Copies of the entire text and the proposed changes are available from the Division of Planning)*

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

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

1. The revisions to Article 25, as proposed, will allow for easier and more efficient analysis and implementation of a cellular tower application on the part of the Planning Staff, as well as the Division of Building Inspection. In particular, providing parameters for the amount that should be collected in the event a tower is abandoned will aid the Division of Building Inspection when the permit for construction is issued, as it is their responsibility to collect some form of surety to cover the cost of demolition and removal of the tower at that time.
2. Provision of a definition for a rooftop antenna (as opposed to a tower placed on a roof) will help to clarify the difference between the two, which has been somewhat of a source of confusion in the past. In addition, the ability to regulate the height of a rooftop antenna should help to minimize any negative visual impact it might have.
3. The proposed language change regarding the length of time that a temporary tower may remain on a property will not, in reality, lessen the allowable amount of time. Previously, a temporary tower could remain on a property for up to a year, once approved by the Planning Commission and a permit issued by Building Inspection. With the current language, it can remain on a property for up to six months; and upon application to the Planning Commission, it will be able to remain an additional six months, not to exceed one year. This change will allow for more accountability on the part of the applicant and more control on the part of the Urban County Government with regard to enforcement and the tracking of permits.

Staff Presentation: Ms. Rackers presented the staff report, noting that this request was initiated by the Planning Commission several months ago at the request of the staff, but a lot of discussion between various divisions of LFUCG was required in order to resolve the various issues involved.

Ms. Rackers stated that Article 25 was created in 2000 in response to House Bill 68. It gave local governments limited regulation with regard to cell towers; the Planning Commission could approve a request, but the Public Service Commission had the authority to overturn their action. Article 25 has been revised twice since its inception: in 2003, it was revised in response to a change in KRS 100, which gave Planning Commissions and other local government entities the power to act on cell tower applications without Public Service Commission intervention; and in 2004 a change was made to Article 25 to make it consistent with the Engineering Stormwater Manuals. Cell towers and their equipment can now be located within the 25' buffer area around a floodplain, but not within the floodplain itself.

This revision came about because of a request by the Division of Building Inspection with regard to the issuance of sureties to cover demolition and removal costs of cell towers in the event that they are abandoned. Ms. Rackers said that Article 25 currently requires a bond, a letter of credit, or some other form of surety to be collected when a permit is issued by Building Inspection. That Division can no longer collect letters of credit, so they asked the staff to proceed with initiation of this text amendment. No amount has ever been specified in the Zoning Ordinance with regard to the collection of sureties, so the staff contacted industry representatives, who informed them that 25% of the construction costs of a tower would cover the cost of demolition. The staff added that language to the Zoning Ordinance, and removed the language that referred to letters of credit. The surety collection program will be managed within LFUCG, and reviewed annually to determine if fees need to be increased due to inflation or other factors that may contribute to raising the cost of tower removal.

Ms. Rackers stated that the proposed changes to Article 25 also include a definition of "rooftop antenna," as opposed to "rooftop tower construction," because there has been some confusion in the past about that. Generally, rooftop antennas are staff-level approval items, and there are no height restrictions. At the request of a member of the mayor's staff, the staff is recommending that any rooftop antennas can be located on the edge of a building if they are up to 15 feet in height; if they are 15-20' feet in height, a 1:1 height-to-yard ratio would be required; if the tower is greater than 20', it would require Planning Commission approval.

A change is also proposed to the application requirements for temporary cell towers. Currently, a temporary tower can be placed on a property by right if a permanent tower has been approved. The question came up in the past as to whether that refers only to the same applicant, on the same property. It is intended to refer to the same applicant on the same property; if an applicant has gotten

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an application approved for a permanent tower, then they can construct a temporary tower by right. If another party wishes to locate a temporary tower on that property, they must complete a Uniform Application and submit it to the Planning Commission.

Ms. Rackers said that temporary towers are currently permitted to remain on a property for one year. The staff is recommending that temporary towers be allowed for six months, and renewable for up to one year with Planning Commission approval.

The landscape requirement for alternative design for cell towers is also proposed to be changed. If an applicant proposes to totally contain the cell tower inside a church tower, clock tower, or other design feature, landscaping will not be required around it.

Ms. Rackers said that the remaining proposed revisions to the Article 25 are all minor language changes. The proposed changes will make it easier and more efficient to analyze and implement cell tower applications, as well as provide guidelines to the Division of Building Inspection for collection of sureties. The staff and Zoning Committee recommended approval of this request, for the reasons provided by staff.

Commission Question: Mr. Penn asked if the sureties for removal of towers apply only to new tower applications; and, if so, what provisions are in place for removal of older towers. Ms. Rackers answered that this does apply only to new applications. She said that the parties that constructed the existing towers are required to take them down, but there is no enforcement power to require their removal.

Director Comment: Mr. King stated that, during the time that cell towers were regulated by the Public Service Commission, the staff requested, and in most cases received, a requirement that was attached to their permit from the PSC for the removal of the tower if it was abandoned. Many of the earlier towers approved in Lexington are regulated by those agreements.

Action: A motion was made by Mr. Penn, seconded by Ms. Richardson, and carried 10-0 (Aten absent) to approve ZOTA 2008-3, for the reasons provided by staff.

VI. COMMISSION ITEMS – No such items were presented.

VII. STAFF ITEMS – No such items were presented.

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

IX. MEETING DATES FOR MAY, 2008

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	May 1, 2008
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	May 1, 2008
Subdivision Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	May 8, 2008
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	May 15, 2008
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	May 22, 2008
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	May 28, 2008
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	May 29, 2008

X. ADJOURNMENT – There being no further business, Chairman Vaughn declared the meeting adjourned at 4:43 p.m.

Randall Vaughn, Chair

Frank Penn, Secretary

TLW/TM/JWE/BJR/BS/src

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