

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

May 22, 2008

- I. **CALL TO ORDER** – The meeting was called to order at 1:31 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Lyle Aten; Mike Cravens; Neill Day; Linda Godfrey; James Mahan; Frank Penn; Carolyn Richardson; Lynn Roche-Phillips; Randall Vaughn, Chair; and Joan Whitman. Absent was Ed Holmes.

Planning staff members present: Bill Saltee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; Cheryl Gallt; Chris Taylor; and Stephanie Cunningham. Other staff members present were: Rochelle Boland, Department of Law; Bob Carpenter, Division of Building Inspection; Captain Charles Bowen, Division of Fire and Emergency Services; Tim Queary, Urban Forester; and Hillard Newman, Division of Engineering.

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Godfrey, seconded by Ms. Richardson, and carried 10-0 (Holmes absent) to approve the minutes of the April 24, 2008, Planning Commission meeting.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **TATES CREEK HEIGHTS, LLC, ZONING MAP AMENDMENT & PINNACLE, LOT 1 (AMD.) ZONING DEVELOPMENT PLAN**

- a. MAR 2007-9: TATES CREEK HEIGHTS, LLC (5/22/08)* – petition for a zone map amendment from a Neighborhood Business (B-1) zone with conditional zoning restrictions to a Neighborhood Business (B-1) zone with modified conditional zoning restrictions, for 4.19 net (5.83 gross) acres, for property located at 1093, 1097 & 1099 Duval Street.

LAND USE PLAN AND PROPOSED USE

The Land Use Element of the 2007 Comprehensive Plan (Sector 10) recommends Retail, Trade and Personal Services land use for the subject property. The petitioner proposes the addition of a coffee shop to the site, which is already approved for a "sit-down" restaurant, offices and a florist shop on the subject property, as well as revisions to the signage and landscaping restrictions previously imposed.

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

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

1. Conditions originally put upon the subject property were not done in anticipation of a professional office use across Duval Street from the subject property. This would constitute a change in the physical and economic nature of the area since 1996, which makes this site eligible for a revision to the very limited conditional zoning restrictions originally placed thereon.
2. The expanded uses currently requested are still consistent with the Retail, Trade and Personal Services land use recommendations of the 2007 Comprehensive Plan and the prior 2001 Comprehensive Plan.
3. This recommendation is made subject to the approval and certification of ZDP 2007-50: Pinnacle, Unit 1 (Amd.) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of any Planning Commission approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall now be subject to the following use restrictions, (with all edits shown below in italicized text from the previous conditions):
 - a. The B-1 site shall contain a maximum of four buildings and be used only as ~~either~~ a sit-down restaurants without drive-through facilities or the service of "fast food," a florist shop, and/or a use permitted in the P-1 zone other than a bank, a credit institution, a television studio or a hospital; *however, notwithstanding any provision to the contrary, a single drive-through shall be permitted solely for the use of a coffee shop (the "permitted drive-through").*
 - b. *In the event the permitted drive-through should cease to be used solely in connection with a coffee shop, or should a coffee shop cease to operate as a coffee shop (excluding any reasonable number of days necessary for repair, remodeling, or reconstruction as a result of or required by a lawful order or decree of a governmental or regulatory authority, a casualty loss, other than such a loss caused by the owner of the property), then the permitted drive-through shall be removed, no future drive-through shall be allowed on the property, and the use of the coffee shop building shall be restricted to the uses permitted herein.*
 - c. *The portion of the property used for the coffee shop shall be permitted to display on the east-facing portion of the building only a single logo, and the words may be displayed a single time on the east-facing façade, the letters of which shall not exceed 18 inches in height, and the logo shall not exceed 36 inches in height, and in no event shall the words or the logo be backlit or internally lit. Signs on the other sides of the building and on the property shall be regulated under the Zoning Ordinance.*
 - d. The existing ("**original**") structure shall be preserved except to the extent it must be modified to permit the construction of additions and/or renovations as described below.
 - e. *An additions* to the existing ("**original**") structure shall be allowed, but shall only be in accordance with a final development plan submitted to and approved by the Planning Commission; and such additions in total shall not exceed

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- 3,000 square feet and shall be governed by all of the restrictions and limitations that apply to the new building as described below.
- f. Parking will be in accordance with a final development plan submitted to and approved by the Planning Commission; *provided, however, that a visual buffer of hedges and trees shall be placed on the east-facing side of the property.*
 - g. The property owner shall preserve the existing mature trees on site except as necessary for the construction of ~~one new~~ *the office building, the additions to the existing structure, the aforementioned coffee shop* and accessory parking, all as approved by the Planning Commission on the final development plan for the site and subject to all restrictions and limitations contained herein; and such trees, if removed, shall be replaced in equal number to preserve the buffer between the site and Bates Creek Road.
 - ~~f. Signage shall be limited to the signage shown on and approved by the Planning Commission on the final development plan for the site and in accordance with the limitations contained herein;~~
 - h. Existing trees which provide a visual buffer from surrounding properties shall be preserved, *and* damaged or diseased trees may be removed if also replaced. ~~in equal number and kind on the site; and Deciduous trees shall be planted in the exterior parking lot.~~
 - i. *In addition to the above-referenced coffee shop building, the construction of one a single additional new building shall be permitted (the "office building"); however, such building shall not exceed 36,000 square feet, shall not exceed 36 feet in height at its highest point as measured from the existing grade level as of September 20, 2005, including all fixtures, equipment and any other materials (except that any equipment located on the roof shall be completely screened from view by parapet walls which are permitted to rise an additional 6 feet solely for that purpose), shall primarily utilize only a brick siding or masonry façade which must cover no less than 55% of the exterior surface of the building excluding the roof, windows and doors, and the roof shall vary in height with no less than three (3) articulating roof heights. In addition Furthermore, the easternmost edge of the office such building shall be no closer at any point than 30 feet from the right-of-way bordering Bates Creek Road at least 100 feet from the easement line on the east side of the property.*
- b. [ZDP 2007-50: PINNACLE, LOT 1 \(AMD.\)](#) (5/22/08)* – located at 1093, 1097 and 1099 Duval Street.
(EA Partners)

Note: The purpose of this amendment is to add a coffee shop with a drive-through, delete sign information, and to relocate buildings and parking.

The Subdivision Committee Recommended: Referral. There were questions regarding compliance with the off-street parking requirements of the Neighborhood Business (B-1) zone and compliance with the applicant's proposed conditional zoning restrictions.

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

1. Provided the Urban County Council revises the conditional B-1 zoning of the property; 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 landscaping, including arterial screening.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways/bike trails and pedestrian movement.
7. Revise conditional zoning restrictions.
8. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
9. Dimension drive aisles and new buildings.
10. Addition of record plat information for this development.
11. Clarify easement information.
12. Clarify required off-street parking (restaurant and coffee shop use) based on the number of seats.
13. Clarify note number 13.
14. Correct the spelling in site statistics.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner is still working with the neighborhood association to address some of their concerns about this request, and would like to request a one-month postponement in order to continue those discussions. Mr. Murphy noted that the staff requested that the petitioner re-notify the adjoining property owners of this request, and the petitioner will do so.

Action: A motion was made by Mr. Penn, seconded by Ms. Godfrey, and carried 10-0 to postpone MAR 2007-9 and ZDP 2007-50 to the June 26, 2008, Planning Commission meeting.

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

- a. MAR 2007-20: FORTUNE OFFICES, LLC (5/22/08)* - 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 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 (5/22/08)* - 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.

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Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that one of the adjoining property owners who has an interest in this request was not able to be present today, so all of the parties involved agreed to request a one-month postponement of this item.

Action: A motion was made by Ms. Godfrey, seconded by Ms. Richardson, and carried 10-0 (Holmes absent) to postpone MAR 2007-20 and ZDP 2007-113 to the June 26, 2008, Planning Commission meeting.

3. JULIE A. BUTCHER ZONING MAP AMENDMENT & EDGEMOOR SUBDIVISION, LOTS 2 & 3 ZONING DEVELOPMENT PLAN

- a. MAR 2008-15: JULIE A. BUTCHER (6/25/08)* - petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Professional Office (P-1) zone, for 0.8827 net (1.1911 gross) acres, for property located at 1918 & 1922 Nicholasville Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 3) recommends Low Density Residential (LD) land use for the subject property, which is also located within the identified study area for the Nicholasville Road Corridor North Small Area Plan, which is now underway. The petitioner proposes to re-use the residential structure on the property for a professional office with associated off-street parking.

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

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

1. The 2007 Comprehensive Plan recommends Low Density Residential (LD) land use of the subject property, defined as up to five residential dwelling units per net acre. The requested restricted Professional Office (P-1) zone is not in agreement with this land use recommendation, but the existing R-1C zoning is in agreement with the Plan.
 2. The subject property is located within the study area for the Nicholasville Road Corridor North Small Area Plan (SAP), and the initial stages of data gathering have commenced for this study. The Plan will likely address the current land use along this corridor and suggest future land use recommendations. Rezoning the subject property ahead of this detailed study is premature.
 3. The proposed P-1 zoning is inappropriate because Edgemoor Drive is a well established land use boundary between residential and office land use in this location. A six-foot brick wall even further delineates that boundary along the south side of Edgemoor Drive. It is appropriate for this boundary to remain at its current location rather than where the applicant proposes – along the northern property line of the subject property, which is mid-block along Nicholasville Road.
 4. There has been no unanticipated change in this area that has affected the basic character of the area since the adoption of the Comprehensive Plan within the past year. Thus, there is no clear justification for this rezoning request.
- b. ZDP 2008-70: EDGEMOOR SUBDIVISION, LOTS 2 & 3 (6/25/08)* - located 1918 and 1922 Nicholasville Road.
(Barrett Partners)

The Subdivision Committee Recommended: **Postponement**.

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

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, 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. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
7. Correct Nicholasville Road cross-section.
8. Denote landscape buffer areas.
9. Discuss landscaping adjacent to residential zones.
10. Discuss access to Nicholasville Road and Edgemoor Drive.

Petitioner Representation: Bruce Simpson, attorney, was present representing the petitioner. He asked the Chair if the petitioner could address the Commission with regard to this rezoning request. Mr. Vaughn agreed.

Julie Butcher, petitioner, stated that she would like to request withdrawal of this application. She said that she is an attorney, but is not an attorney specializing in zoning matters. She owns a small legal practice and is currently focused on growing her business. She saw an opportunity to do so by "rescuing" the existing building on the subject property, and attempting to rezone it for use as her law office. Several individuals informed her that, since the property is located directly across Nicholasville Road

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from other business uses, she should have no problems rezoning it. She now realizes that was poor advice. Ms. Butcher said that she still believes that the subject property would be appropriate for a rezoning for Professional Office use, and she respects the consideration that the Planning staff gives to the future of the community. The staff believes that this request is premature due to the ongoing small area plan study for the Nicholasville Road corridor, and Ms. Butcher agrees; hence, her request for withdrawal.

Neighborhood Representation: Rena Wiseman, attorney, was present representing the Southern Heights Neighborhood Association. She said that several members of the association were present and had planned to speak in opposition to this request. They appreciate Ms. Butcher's gesture, and support her request for withdrawal. Ms. Wiseman asked that all of the audience members who were present to speak about this request to stand; and approximately 15-20 individuals stood.

Chairman Comment: Mr. Vaughn thanked the neighborhood representatives for taking time from their schedules to attend this meeting, and Ms. Butcher for her formal request for withdrawal.

Action: A motion was made by Mr. Penn, seconded by Mr. Mahan, and carried 10-0 to accept the withdrawal of MAR 2008-15.

4. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT & SOUTHEND PARK, SECTION 1 ZONING DEVELOPMENT PLAN

- a. MAR 2008-16: URBAN COUNTY PLANNING COMMISSION (6/25/08)* - petition for a zone map amendment from a Light Industrial (I-1) zone to a Planned Neighborhood Residential (R-3) zone, for 21.13 net (23.02 gross) acres; from a Light Industrial (I-1) zone to a Mixed Use 2 – Neighborhood Corridor (MU-2) zone, for 4.40 net and gross acres; and from a Light Industrial (I-1) zone to a Highway Service Business (B-3) zone with conditional zoning restrictions, for 0.87 net (1.94 gross) acres, for properties located at 709-715 Byars Street; 600-606 DeRoode Street (portions of); 607-870 DeRoode Street (excluding 757 & 763 DeRoode); 714-726 Deshort Circle; 555-561 McKinley Street (portions of odd addresses only); 564-621 McKinley Street; 555-565 Merino Street (portions of odd addresses only); 800-833 Neville Street; 637 Patterson Street (a portion of); and 812-816 Pine Street.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5), which incorporated the Newtown Pike Extension Corridor Plan, recommends a combination of High Density Residential (HD), Mixed Use (MU), Public Recreation (PR), and Other Public Uses (OPU) future land use for the subject area. The configuration of these future land uses, as depicted by the Comprehensive Plan, is based on the more detailed *Southend Park Urban Village Plan*, approved by the Planning Commission in November 2003.

The Zoning Committee did not make a recommendation, due to lack of a quorum.

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

1. The proposed Planned Neighborhood Residential (R-3) zone and Mixed-Use 2: "Neighborhood Corridor" (MU-2) zone are in agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The Plan recommends High Density Residential (HD) future land use, defined as 10-25 dwelling units per net acre, for a portion of the subject area along its western boundary. The corollary development plan identifies 85 dwelling units within about 7.2 acres, for a residential density of 11.81 dwelling units per net acre, which is within the residential density range recommended by the Plan.
 - b. The Plan recommends Mixed Use (MU) future land use near the future intersection of Newtown Pike with the Scott Street connector for approximately four acres of property. This corner is proposed for MU-2 zoning, which allows for the Comprehensive Plan's recommendation for a mixture of retail, office and residential uses.
 - c. The Plan recommends Other Public Uses (OPU) future land use for just under three acres of property along the eastern side of the subject area, north of the proposed mixed-use area. This designation recognizes the desire for the Nathaniel United Methodist Mission to remain a prominent part of the Southend Park Neighborhood to continue to provide valuable outreach services. This area is proposed for R-3 zoning, which permits a community center or church as a conditional use with Board of Adjustment approval.
 - d. The Plan recommends Public Recreation (PR) future land use for about eleven acres of property to serve this neighborhood. R-3 zoning is proposed to accommodate the proposed park, which will be expanded, and will continue to be operated by the Urban County Government.
2. Although the proposed B-3 zone does not allow residential uses, as recommended by the Mixed Use future land use designation of the Comprehensive Plan, it is far more appropriate for a significant gateway and prominent intersection along the corridor than the existing Light Industrial zone, which is inferior and entirely inappropriate at this location.
3. This recommendation is made subject to approval and certification of ZDP 2008-71: Southend Park, Section 1, 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 following uses shall be prohibited for the B-3 zone via conditional zoning:

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- 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. Automobile service stations.
- c. Car washing establishments.
- d. Drive-in restaurants.
- e. Minor automobile and truck repair.
- f. Circuses and carnivals, even on a temporary basis.
- g. Taxidermy establishments.
- h. Pawnshops.
- i. Liquor stores
- j. Parking lots and structures, as a principal use.
- k. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers.
- l. Drive-through facilities for sale of goods or products or provision of services otherwise permitted herein.
- m. Advertising signs and billboards, as defined by Article 17-3(b) of the Zoning Ordinance.
- n. No free-standing business signs taller than 8' in height, or larger than 32 square feet in size.

These use restrictions are appropriate and necessary for land at the southwest corner of the intersection of Newtown Pike and Pine Street in order to protect the gateway entrance to the Southend Park Neighborhood from the most intrusive and intensive commercial land uses, and to help implement the Comprehensive Plan's vision for the Newtown Pike corridor.

- b. ZDP 2008-71: SOUTHEND PARK, SECTION 1 (6/25/08)* - located at DeRoode Street, Versailles Road and Patterson Street.
(Hall/Harmon)

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

1. Provided the Urban County Council rezones the property R-3, MU-2 and B-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
8. Approval of street names per e911 staff.

Citizen Request: Lawson King, 1295 Gainesway Drive, stated that he was an attorney, and was present representing his wife, Rachel King. Ms. King received a notification letter with regard to the rezoning of her property, and Mr. King would like to request postponement of this item in order to have time to further investigate the matter.

Margaretta Williams, 312 Misty Meadow Drive, Allen, Texas, stated that she owns several pieces of property in the area. She said that, until she received her notification letter, she was unaware that her properties were proposed for rezoning. She would like for this request to be postponed in order for her to have time to gather more information about the proposal. Ms. Williams noted that her sister, Barbara Richardson, also owns property in the area and would like to request postponement as well.

Staff Comment: Andrew Grunwald, Division of Engineering, stated that this rezoning request is part of the overall Southend Park project. In order to keep the project timeline on track, Mr. Grunwald requested that this item be heard today. He said that this project has been underway since 2001; and during that time, numerous public meetings have been conducted. In addition, property owners have been notified via letter; a web site has been set up to provide information; a neighborhood liaison was hired to address questions; all documentation with regard to the project has been published; and staff has maintained an open-door policy with regard to meeting with citizens who are concerned about the project. Mr. Grunwald noted that he believes that every possible effort has been made to make the public aware of the intentions and timeline of the project, and he would like for this request to be heard today.

Citizen Support: Charles Hite, 929 Aurora Avenue, stated that he travels through the Southend Park area very frequently. He believes that the Newtown Pike Extension project has taken too long, and this request should be heard today in order to expedite the process. He agreed that the process has been open and aboveboard, and all citizens have had ample opportunity to research issues and make comments.

Ms. Williams stated that she was raised in Davis Bottoms, and she believes that many of the residents there are not educated enough to understand the Southend Park proposal. She is concerned that those residents have not been represented fairly throughout this process. The proposal may be a positive step for the neighborhood, but many of the

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residents do not understand what is involved, and may need more time to process the information that has been presented. Ms. Williams added that this project could be the opportunity for the city of Lexington to do something great for the community.

Chris Christenson, 833 West Maxwell Street, stated that he owns a business near the properties proposed for rezoning. He has attended all of the public meetings with regard to the Southend Park Project, and he believes that they were conducted well, and a great deal of good information was presented to the public. There were a large number of residents and other citizens present at each meeting, and they were able to ask questions and discuss their concerns with the LFUCG representatives who have been working on the project. Mr. Christenson said that he did not believe that the hearing of this request should be postponed due to lack of information.

Mr. Lawson King stated that he had attended several of the public meetings, and the words "zone change" were never mentioned.

Commission Comment: Mr. Day stated that he believed that this item should be postponed, at least until the June 12th meeting. He said that he did not recall the Planning Commission ever having turned down a citizen request for postponement, and he believes that the residents should have the opportunity to gather more information if they need it.

Action: A motion was made by Mr. Day, seconded by Ms. Roche-Phillips, and carried 8-2 (Whitman abstained; Godfrey and Richardson opposed; Holmes absent) to postpone MAR 2008-16 and ZDP 2008-71 to the June 12, 2008, Planning Commission meeting.

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

- a. MARV 2008-7: CMW, INC. (5/22/08)* - 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 reason:

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.

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- 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.
- 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.) (5/22/08)* - 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 and requested a one-month postponement of this item.

Action: A motion was made by Ms. Godfrey, seconded by Mr. Penn, and carried 10-0 (Holmes absent) to postpone MARV 2008-7 and ZDP 2008-34 to the June 26, 2008, Planning Commission meeting.

IV. LAND SUBDIVISION ITEMS - The Subdivision Committee met on Thursday, May 1, 2008, at 8:30 a.m. The meeting was attended by Commission Members: Neill Day, Lyle Aten, James Mahan, Linda Godfrey and Carolyn Richardson. 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, Denice Bullock, Chris Taylor, Cheryl Gallt, Tom Martin, Rob Johnson, Frank Boateng

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

and Cindy Deitz; as well as Rochelle Boland, Department of Law; Captain 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.*

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, May 1, 2008, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Ed Holmes, Frank Penn, Randall Vaughn, 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.

1. **ESTES PROPERTY NO. 1, LLC & ESTES PROPERTY NO. 2, LLC, ZONING MAP AMENDMENT & ESTES PROPERTY (AMD.) ZONING DEVELOPMENT PLAN**

- a. **MAR 2008-17: ESTES PROPERTY NO. 1, LLC & ESTES PROPERTY NO. 2, LLC (6/25/08)*** - 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 2.04 net (2.77 gross) acres, for property located at 3294 Richmond Road and 101 South Eagle Creek Drive (a portion of).

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 9a) recommends Professional Service future land use for the subject property. The petitioner proposes to revise the conditional zoning restrictions previously imposed on this property, and to construct two restaurants with accessory drive-through windows.

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

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

1. Past zoning decisions and an amendment to the Richmond Road Traffic and Safety Ordinance by the Urban County Council constitute major changes to this area of a physical and economic nature which were not anticipated at the time the restrictions were imposed on the subject property in 2004, thus justifying a modification to the conditional zoning on the subject property.
2. Although the addition of drive-through windows accessory to restaurants will most likely increase traffic to the site, the new public roadway system should adequately accommodate the additional traffic.

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3. This recommendation is made subject to approval and certification of ZDP 2008-69: Estes 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.
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):

PROHIBITED USES:

- a. Adult entertainment establishments, adult bookstores, and adult video stores.
- ~~b. Drive-through windows accessory to restaurants.~~
- c. Cocktail lounges not associated with restaurants.
- d. Nightclubs.
- e. Billboards.
- f. Cellular telephone towers.
- g. Amusement parks and fairgrounds.
- h. Lighting shall be directed away from the abutting residential properties.
- i. No outdoor loud speakers or music.
- j. Hotels and motels.

- b. ZDP 2008-69: ESTES PROPERTY (AMD.) (6/25/08)* - located at 3294 Richmond Road. **(EA Partners)**

Note: The purpose of this amendment is to allow drive-through windows on lots 3 & 4.

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, 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. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
9. Addition of building dimensions for lot 4.

Zoning Presentation: Ms. Wade began her presentation of the staff report by briefly orienting the Commission to the location of the subject property. She noted that this is a rezoning request to modify existing conditional zoning restrictions for property near the northeast corner of Eagle Creek Drive and Richmond Road.

Ms. Wade displayed for the Commission several photographs of the subject property. She said that the petitioner proposes to remove a conditional zoning restriction that prohibits drive-throughs when associated with restaurants. That restriction was put in place in 2004 by the Urban County Council, when the parcel was rezoned from P-1 to B-3. The Council applied that restriction due to concerns about the intensity of land use on the subject property; its lack of direct access to Richmond Road; the impact of unrestricted B-3 uses on the property; and minimizing the direct impact of B-3 zoning on the adjacent residential uses. The petitioner now proposes to construct two restaurants with drive-through windows on the subject property.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Professional Services land use for the subject property, although that recommendation is not entirely relevant in the consideration of changes to conditional zoning restrictions. Article 6-7(c) of the Zoning Ordinance establishes the guidelines for changing conditional zoning restrictions: the petitioner must be able to show that there has been an unanticipated change in the immediate area of an economic, physical, or social nature, which occurred since the conditional zoning restriction was put in place in 2004. The petitioner documented their justification with three such changes: the rezoning of the Sand Lake property in 2005 to B-3, with no conditional zoning restrictions; the rezoning of the Marcum/Gentry property in 2006, from B-1 to B-3, with similar restrictions to the subject parcel; and the amendment of the Richmond Road Traffic and Safety Ordinance in 2006, to alter the access to the subject property and surrounding lots. The amendment of that Ordinance moved the existing service road access on the subject property to the northern edge of the parcel. Sand Lake Drive is also proposed to be at the rear of the property, so it will have much better traffic circulation than when the rezoning was approved in 2004. The staff concurs that those are major changes that affect the economic and physical nature of the area, and thus can be considered as justification for modifying the existing conditional zoning restrictions. While drive-through windows will likely increase traffic in the area, the staff believes that the changes to the circulation pattern allowed by the Richmond Road Traffic & Safety Ordinance will mitigate the problem. The staff and Zoning Committee both recommended approval of this zone change, for the reasons as listed on the agenda and in the staff report.

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In conclusion, Ms. Wade noted that the portion of 101 South Eagle Creek Drive that is not proposed for rezoning, which adjoins the residential uses, will retain the existing restriction prohibiting drive-through windows, should the re-zoning be approved.

Development Plan Presentation: Mr. Taylor presented the corollary zoning development plan, noting that, since this is a preliminary plan, the Commission will have the opportunity to review a final plan at a later date.

Mr. Taylor stated that the amended plan includes two proposed restaurants with drive-through windows. The access points for both restaurants remain the same as on the previously approved plan for the overall Sand Lake area. The Subdivision Committee recommended approval of this plan, subject to the nine conditions as listed on the agenda.

Petitioner Presentation: Rena Wiseman, attorney, was present representing the petitioner. She submitted into the record of the meeting the minutes of the previous meetings on which the petitioner's justification was based.

Ms. Wiseman said that, when the subject property was rezoned to B-3 in 2004, and the existing conditional zoning restrictions were put in place, the entire area north of South Eagle Creek Drive was undeveloped and zoned R-3; the property to the northwest was zoned B-1, with conditional zoning restrictions. The subject property was also separated from the Glenn Buick Dealership, which is zoned B-3, by the existing one-way access point, which will be eliminated. At this point, the subject property is surrounded by parcels that are zoned B-3, some without conditional zoning restrictions. The nature of the development has changed in recent years, and the petitioner believes that allowing drive-through restaurants on the property will not negatively impact the surrounding area, particularly since the parcel immediately adjoining the residential uses will retain its prohibition against drive-throughs. Ms. Wiseman noted that the petitioner is in agreement with the staff's recommendations, and requested approval.

Zoning Action: A motion was made by Ms. Godfrey, seconded by Mr. Penn, and carried 10-0 (Holmes absent) to approve MAR 2008-17, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Godfrey, seconded by Mr. Penn, and carried 10-0 (Holmes absent) to approve ZDP 2008-69, subject to the nine conditions as listed on the agenda.

2. HABITAT FOR HUMANITY, INC., ZONING MAP AMENDMENT & FOREST HILL LAND CO. SUBDIVISION, BLOCK "H," LOTS 33 & 34 PRELIMINARY SUBDIVISION PLAN

- a. MAR 2008-18: HABITAT FOR HUMANITY, INC. (6/25/08)* - petition for a zone map amendment from a Two Family Residential (R-2) zone to a Single Family Residential (R-1E) zone, for 0.2340 net (0.2977 gross) acre, for property located at 422 Michigan Street.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 2) recommends Medium Density Residential (MD) future land use for the subject property. The petitioner proposes an R-1E zone in order to construct two single-family dwellings on the subject property. A subdivision of the property into two lots is also proposed.

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

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

1. The requested Single Family Residential (R-1E) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
 - a. The Plan's Land Use Element recommends Medium Density Residential (MD) future land use for the subject property, defined as 5–10 dwelling units per net acre.
 - b. The petitioner proposes to redevelop the property with two single-family residences, for a density of 8.55 dwelling units per net acre, which is within the density range recommended by the Plan.
2. This recommendation is made subject to approval and certification of PLAN 2008-56P: Forest Hill Land Company Subdivision, Block H, Lots 33 & 34, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. PLAN 2008-56P: FOREST HILL LAND COMPANY SUBDIVISION, BLOCK H, LOTS 33 & 34 (6/25/08)* - located at 422 Michigan Street.
(Foster – Roland)

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

1. Provided the Urban County Council rezones the property to R-1E; 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.

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4. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Place site statistics within a box.
7. Addition of building lines.
8. Correct plan title.
9. Correct site statistics for existing R-2 zoning.
10. Document compliance with side yard setback for existing structure.
11. Renumber lots per record plat.
12. Discuss adjacent property driveway encroachment and side yard requirements.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property and displaying several photographs of the property and the surrounding area. She noted that the petitioner proposes to rezone the subject property to R-1E in order to develop two single family dwelling units. The residential unit that formerly existed on the property has been removed, and the property is currently vacant.

Ms. Wade stated that construction of the two units proposed for the subject property would result in a residential density of 8.55 dwelling units per net acre. The 2007 Comprehensive Plan recommends Medium Density Residential land use for the subject property, defined as 5-10 dwelling units per net acre. The petitioner's proposal, therefore, falls within the Comprehensive Plan's recommendation for the property. The staff noted in their report that the existing R-2 zone would allow for two units on the subject property in the form of a duplex; but for two single family lots in an R-2 zone, the subject property does not meet the requirements for lot frontage and lot size in order to be subdivided. The staff believes, therefore, that the R-1E zone is an appropriate alternative to allow development of single family residences in the area, where the majority of the existing homes are single family in character. Ms. Wade stated that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed on the agenda and in the staff report.

Development Plan Presentation: Ms. Gallt presented the corollary preliminary subdivision plan, noting that it depicts the "split" of the lot only, and not the proposed single family residences. The Subdivision Committee recommended approval of the plan, subject to the 12 conditions as listed on the agenda. Ms. Gallt stated that #12 could be changed to read, "Denote side yard requirements," since the property is currently vacant and the existing driveway has been removed.

Petitioner Representation: Myke Robbins, Foster-Roland, was present representing the petitioner. He noted that the house had been removed from the subject property, but not the driveway. He said that condition #12 had two parts: the driveway encroachment, and the side yard requirements. Since the house has been removed, it is no longer necessary to denote the side yard requirements. The resident of 438 Michigan Street has her own driveway, but it is currently occupied by an inoperable vehicle, so she uses the subject property's driveway to circle around that vehicle and access her driveway. Representatives from Habitat for Humanity have attempted to contact that individual and explain the situation, but she has not responded to and does not seem to understand that the petitioner owns the driveway area that she has been using. The Subdivision Committee members had asked Mr. Robbins at their meeting two weeks ago to resolve this situation, but he and the petitioner have been unable to do so up to this point, although they have offered her a driveway easement. Mr. Robbins noted that the petitioner is in agreement with the conditions as listed on the agenda, and he requested approval.

Commission Questions: Mr. Penn asked Mr. Robbins how he would like condition #12 to read. Mr. Robbins answered that he believed that condition #12 should be changed to read: "Denote side yard requirements." Mr. Penn asked if that would adequately address the issue of the adjacent property driveway. Mr. Robbins asked Rachel Childress, Executive Director of Habitat for Humanity, to answer that question. Ms. Childress stated that Habitat for Humanity has attempted to contact the neighbor, who has not answered phone calls or notes left on her door. She said that Habitat is willing to continue to provide an easement for the driveway, at such time as she will sign the appropriate paperwork in order to do so.

Ms. Whitman asked if the driveway is actually on the subject property. Ms. Childress answered that the petitioner's driveway encroaches six to seven feet on the subject property, and is currently blocked by a disabled vehicle. Mr. Robbins noted that the property had been surveyed, and the pin is located in the middle of the neighbor's driveway, so that driveway encroaches on the subject property. That neighbor has also been driving further onto the subject property in order to maneuver around the disabled vehicle. Habitat is willing to allow the neighbor the half of her driveway that encroaches onto their property, but she will be responsible for removal of the disabled vehicle that is currently blocking access to her driveway, so that she is not using the petitioner's property for that access.

Staff Comment: Mr. Sallee provided the following option for the wording of condition #12: "Denote: Adjacent property driveway encroachment will be resolved at the time of the final record plat." He said that, if the property is rezoned, that would allow time for the petitioner and the neighbor to discuss the future of the driveway.

Zoning Action: A motion was made by Mr. Penn, seconded by Mr. Mahan, and carried 10-0 (Holmes absent) to approve MAR 2008-18, for the reason provided by staff.

Development Plan Action: A motion was made by Mr. Penn, seconded by Mr. Mahan, and carried 10-0 (Holmes absent) to approve PLAN 2008-56P, subject to the original 11 conditions, changing #12 to read: "Denote: Adjacent property driveway encroachment will be resolved at the time of the final record plat."

Note: Chairman Vaughn declared a brief recess at 2:22 p.m. The meeting reconvened at 2:29 p.m.

3. 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.

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.

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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.

Petitioner Request: Dick Murphy, attorney, was present representing the petitioner. He stated that the petitioner would like to request withdrawal of the requested front and side yard variances, and a modification of the requested rear yard variance from eight feet to 10 feet. He said that the only variance request that would remain is a requested rear yard variance from 12 feet to 10 feet.

Withdrawal Action: A motion was made by Ms. Godfrey, seconded by Mr. Mahan, and carried 10-0 (Holmes absent) to modify the variances as requested by the petitioner.

Zoning Presentation: Mr. Emmons began the staff's presentation by distributing to the Commission four letters of opposition to this request that had been received by the staff.

Mr. Emmons presented the revised staff report, briefly orienting the Commission to the location of the subject property and displaying several photographs of the subject and surrounding properties. He also displayed several sketches submitted by the applicant of the building proposed for the subject property, and noted that they depicted the structure with the setback variances as originally requested, rather than the modified variance now requested by the applicant.

Mr. Emmons said that the 2007 Comprehensive Plan recommends Downtown Master Plan use for the subject property. Recommendation 6 of the Downtown Master Plan calls for maximizing density in vacant downtown sites. The underlying premise of the entire Downtown Master Plan is to combat sprawl by seeking infill opportunities in underutilized and vacant parcels, while noting that it is important that those infill projects are compatible and in keeping with the character of existing neighborhoods.

At the time of the Zoning Committee meeting seven weeks ago, the staff recommended postponement of this request, in order to allow them more time to review it relative to the Downtown Master Plan. Mr. Emmons stated that the staff has spent a great deal of time discussing this request and considering the recommendations of the Comprehensive Plan and Downtown Master Plan. Ultimately, the staff determined that the requested B-2A zone is appropriate for the subject property, and would fulfill many of the recommendations of the 2007 Comprehensive Plan and the Downtown Master Plan. The petitioner is proposing to construct 10-12 condominium units on the subject property, which would result in a residential density of 16-19 dwelling units per net acre. That density level would be compatible with the DTMP recommendation to maximize density in infill projects in the downtown area. The DTMP also refers to the restoration of the "street wall" in the area. There are buildings of varying height in the near vicinity, at varying setbacks that range from about 11 feet to 20 or more feet from Main Street, which contributes significantly to the streetscape. Mr. Emmons stated that the existing buildings in that portion of Main Street provide a good mix of uses and architectural styles, and the staff believes that the rezoning of the subject property and the proposed development would enhance that mix. Therefore, the staff now finds this request to be in substantial agreement with the 2007 Comprehensive Plan and the Downtown Master Plan, for the following reason:

1. The proposed B-2A zoning is in substantial agreement with the 2007 Comprehensive Plan and with the Downtown Master Plan, for the following reasons:
 - a. The applicants are proposing 10-12 residential dwelling units on a property that primarily consists of a vacant commercial building and an underutilized parking lot. These Plans recommend mixed use and residential use for the subject property, and Recommendation 6 of the DTMP recommends "Maximize Density in Vacant Sites." The proposed development complies with those recommendations.
 - b. Along this portion of the Main Street corridor there is currently a mixture of land uses, architectural styles, and heights of buildings. The proposed development will enhance this mixture.

Mr. Emmons stated that, since the nearest B-2A zoning is a block away, the staff believes that it is important to propose conditional zoning restrictions for the subject property, in order for the proposed B-2A zone to comply with the recommendations of the Comprehensive Plan for this area. The staff proposes the following conditional zoning restrictions:

Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be subject to the following use restrictions:

1. There shall be a maximum building height of 6 stories.
2. There shall be a minimum of 6 residential units provided on the property.

3. Any commercial use of the property shall be contained within a mixed-use residential building.
4. The following uses shall be prohibited:
 - a. Establishments for the display, rental or sale of automobiles, motorcycles, trucks, farm equipment, or boats or supplies for such vehicles.
 - b. Minor automobile and truck repair.
 - c. Establishments for the retail sale of used merchandise, lawn care products, prescription and non-prescription medicines, and medical supplies.
 - d. Pawnshops.
 - e. Wholesale establishments.
 - f. Any type of adult entertainment establishment, adult arcades, massage parlors, adult video stores and adult bookstores.
 - g. Passenger transportation terminals (does not include bus stops).
 - h. Gasoline pumps.
 - i. Amusement enterprises, such as indoor billiard or pool halls, or skating rinks.
 - j. Banks.
 - k. Upholstery shop.
 - l. Drive-through facilities.

These use restrictions are necessary and appropriate for the subject property in order to ensure greater compliance with the 2007 Comprehensive Plan and to protect the surrounding neighborhoods and adjacent properties.

Mr. Emmons noted, with regard to the proposed conditional zoning restriction concerning commercial uses on the subject property, that the petitioner is not proposing commercial uses on the property at this time. However, the staff must consider the impact of the B-2A zoning should the current proposal not be developed, and they believe that it would be inappropriate for a typical one-story commercial use to locate on this site. The staff attempted to craft the proposed conditional zoning restrictions so that commercial uses will still be allowed on the property, provided that they are located within a mixed-use building with a minimum of six residential dwelling units.

Commission Question: Mr. Vaughn asked, with regard to the proposed conditional zoning restriction limiting commercial uses on the property, what would govern the ratio of residential to commercial uses. Mr. Emmons answered that a formal ratio is not recommended, since the condition immediately preceding it would require that the property be developed with a minimum of six residential units.

Development Plan Presentation: Mr. Martin presented the revised preliminary development plan, further orienting the Commission to the location of the subject property. He said that the petitioner proposes to construct a six-story building, with the ground floor used for parking and the other five floors for residential units. The entire structure is proposed to contain 43,400 square feet, with 10 residential dwelling units. Two accesses are proposed to Kentucky Avenue, which would lead to the first-floor parking area. The front yard area along East Main Street depicted on the revised plan is larger than on the original plan, due to the withdrawal of the front yard variance.

Mr. Martin stated that the Subdivision Committee recommended referral of this plan at their meeting seven weeks ago, primarily due to concerns about the lack of open space. The petitioner has met many concerns with this revised plan, and a condition has been included that they denote the open space area. A rooftop garden is now proposed in addition to the balconies for each unit, so the staff was comfortable with the amount of open space that would be provided. Condition #12 as listed on the agenda related to the original plan; the petitioner proposes 30 parking spaces, but the B-2A zone has a much smaller requirement of only seven spaces for the proposed development. There were originally some concerns about the impact of the proposed parking and its orientation. Mr. Martin noted that the staff has met with the petitioner several times, and conveyed their concerns about the parking, the orientation to the street, and pedestrian facilities. Based on those meetings, the staff is now proposing that condition #12 be removed, and the following two new conditions be added:

12. Denote: Details concerning the perimeter fencing in front yards, landscaping, pedestrian facilities, bus shelters and first floor building features shall be reviewed at the time of final development plan approval.
13. Addition of conditional zoning restrictions.

Petitioner Presentation: Dick Murphy, attorney, was present representing the petitioner. He stated that both the property owner and the designer of the project were present at this meeting, and noted that they both plan to live in the proposed development upon its completion.

Mr. Murphy said that the petitioner made the changes to the development plan following the April Zoning and Subdivision Committee meetings, where the original plan was first presented. Those changes were made in response to concerns expressed by the Committee members, and resulted in their withdrawal of the front yard variance. The building setback from Main Street is now proposed to be 15.8 feet, which meets the B-2A requirement, so no variance is needed. The

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proposed building will be set back further from the street than the nearby Host Communications and Wellington Arms buildings, but closer than some of the other structures in the area. The decision to set the building back further also helped mitigate some of the concerns about visibility for drivers exiting some of the adjacent parking areas. The petitioner has also removed the necessity for a property perimeter screening variance, by providing additional space for that landscaping.

The petitioner is still requesting a rear yard variance to allow the new structure to be built 10 feet from the property line. Mr. Murphy stated that the existing building is located 6.8 feet off the property line, so the new building would actually be further from the property line. The adjoining property to the rear is owned by Bill Justice, who is in complete agreement with that variance request. The petitioner is maintaining the rear yard variance request in order to provide room for the required landscaping for the two handicap-accessible parking spaces along Kentucky Avenue.

Mr. Murphy stated that the building is proposed to be six stories tall, and should be about the same height as the Wellington Arms building, and a bit smaller than the Woodlands building, which is nine stories tall.

Mr. Murphy displayed a graphic rendering of the proposed building, depicting the structure without the setback variances that were withdrawn at the beginning of this meeting. He noted that each of the five residential floors is proposed to contain two units, and each unit will have its own private patio for use as outdoor living space. The entrance to the building is proposed to be located on Kentucky Avenue, with a lesser frontage on Main Street and a deeper frontage to the side street, similar to several other buildings in the area. The primary reason to construct the building facing Kentucky Avenue rather than Main Street is to provide for the elevator area in the center of the building. Locating the elevator area at the end of the building near Main Street would result in the loss of all the windows on that side of the building, as the space would need to be taken up with hallways. It is also required that the emergency stairwells be located in the center of the building. Mr. Murphy displayed several photographs of buildings in the immediate vicinity that also have this configuration, noting that the proposed structure would be consistent with other buildings in the area that have their orientation along side streets. The petitioner has also provided a pedestrian walkway along the Main Street side of the building on this revised development plan.

The petitioner intends to market the proposed development as an upscale condominium community, targeted primarily toward empty-nesters. Mr. Murphy noted that there is a need for this type of housing in this area of Main Street, since no such units have been built since the construction of the Woodlands approximately 20 years ago. The proposed development would be an ideal location for that demographic, since many shops, restaurants, and parks, in addition to the downtown area, are located within walking distance of the subject property. The walkability concept is featured heavily in the recommendations for infill development in Lexington.

Mr. Murphy stated that there are six different zones located within a few blocks of the subject property, so it is truly a mixed-use area, with a good mixture of architectural styles as well. The proposed development should complement this mix of styles, and the petitioner believes that the residents of the area will support the addition to the neighborhood.

With regard to the recommendations of the 2007 Comprehensive Plan, Mr. Murphy referred to his exhibit packet, which had been distributed to the Commission members at the beginning of his presentation. He read the following from the Comprehensive Plan Goals and Objectives into the record of the meeting:

“Goal 8: Create strategies that enable and encourage appropriate infill and redevelopment of established developments and neighborhoods.

Goal 12: Ensure the desirability, diversity and vitality of downtown.

Goal 13, Objective A: Offer sufficient choice of decent and safe housing for citizens of all income levels in all areas of Lexington.

Goal 13, Objective F: Provide land for residential uses of all types in sufficient amount and locations within the Urban Service Area to adequately meet the projected population growth of Fayette County.

Goal 14, Objective F: Encourage new residential developments to exceed minimum threshold densities.

Goal 19, Objective J: Encourage and enhance alternatives to motorized modes of transportation, including biking and walking.”

Mr. Murphy stated that the proposed development “is not a 10-acre luxury subdivision on the fringe of the Urban Service Area.” Instead, it is what the community has advocated and the Comprehensive Plan has recommended. The

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development community has listened to the Planning Commission and the community, and is attempting to provide projects that meet the Goals and Objectives of the Comprehensive Plan.

With regard to the recommendations of the Downtown Master Plan, Mr. Murphy said that the petitioners had been planning the proposed development for some time prior to the publication of that Plan. The petitioners believe that it is remarkable how well the proposed development fits in with the recommendations of the DTMP. Page 101 of the DTMP refers to the "draw area" for downtown development; 69.8% of the draw-area market already lives in Lexington/Fayette County. The DTMP notes that younger singles and couples, empty-nesters and retirees, make up a large part of the residential market for downtown. Mr. Murphy read the following excerpts into the record:

"However, new construction should concentrate on higher-density housing types, which support civic and commercial urban development and redevelopment and include:

- For-sale lofts and apartments (multifamily for-sale)"

"The largest general market segment is composed of younger, mostly childless households (younger singles and couples). These households typically choose to live in neighborhoods that contain a diverse mix of people, housing types, and uses."

"The next largest segment is comprised of older households (empty-nesters and retirees). A significant number of these households have children who have grown up and moved away; another large percentage are retirees, with incomes from pensions, savings and investments, and social security.

The largest potential markets for downtown Lexington in this segment are *Affluent Empty-Nesters* and *Middle-Class Move-Downs*, predominantly empty-nest couples (many of whom lived in downtown locations in their youth) who are likely to be attracted to appropriately designed housing in a vibrant downtown. Additional significant empty-nester markets are *The Social Register*, *Nouveau Money*, *Post-War Suburban Pioneers*, and *Active Retirees*. In other cities, these households have been among the first to move into downtown units, particularly once larger and more amenity-oriented condominiums have become available."

Mr. Murphy stated that there had been some discussion about whether the proposed development should be mixed-use, and should contain commercial uses. The subject property is located in a mixed-use area, but the DTMP notes that not every building in that area has to contain a mixture of uses. Younger residents may appreciate the opportunity to live in a building that contains a ground-floor bar, restaurant, store, or coffee shop, but the target market for the proposed development probably would not. Older residents may appreciate the vibrancy of downtown, but would prefer that their homes not be located in the same building with a busy commercial use. The petitioner was also concerned that a bar or restaurant located on the first floor of the proposed building may wish to have an outdoor patio area for smokers, which could interfere with the residents' use of their balconies.

With regard to the staff's proposed conditional zoning restrictions, Mr. Murphy said that the petitioner is in agreement with those restrictions. He read the following excerpt from the DTMP into the record:

"...these units should vary in size, program, and price point to attract a diverse group of residents."

Mr. Murphy displayed a map of the subject property and surrounding areas, with areas colored in to reflect the number of residents contacted who are in support of the proposed development. He noted that there were also two letters and a petition, in support of this request, included in his exhibit packet. The petitioner is aware that there are residents in the area who oppose this request, including the owner of the property immediately to the rear of the subject property. Mr. Murphy said that the building is proposed to be constructed 15 feet off that property line; the side yard requirement of the R-3 zone is only five feet, and the side yard requirement of the P-1 zone is 12 feet. There is no side yard requirement in the requested B-2A zone, but the petitioner has committed to build no closer than 15 feet to that property line. That 15-foot area is proposed to contain a driveway, a green area, and a retaining wall. The resident of that property is concerned about the visibility of her patio area to residents of the proposed development, but it is to be expected in the downtown area that buildings will be constructed fairly close together and there may be some visibility of outdoor living spaces.

In conclusion, Mr. Murphy stated that the petitioner believes that the requested B-2A zoning agrees with the recommendations of the 2007 Comprehensive Plan and the Downtown Master Plan, and that the proposed development would be a successful infill project for the community. He said that the proposed development would specifically target one of the niche markets identified by the DTMP, and he requested approval.

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Commission Questions: Ms. Roche-Phillips asked if Mr. Murphy had any information about the historic structure that is located on the Kentucky Avenue parcel of the subject property, and the petitioner's plans for that structure. Mr. Murphy answered that the property does not lie within the Aylesford Historic District, and it has a "perma-stone" façade, instead of its original façade. That building is proposed to be removed, as is the other existing structure on the property. During the hearing for the H-1 designation for the Aylesford Historic District approximately 10 years ago, the subject property was specifically not included, after a great deal of discussion. Mr. Murphy noted that, since the property does not lie within the Aylesford Historic District, the petitioner has the right to remove the structures.

Mr. Aten asked Mr. Murphy to compare the setback of the proposed building to the existing buildings in this area of Main Street. Mr. Vaughn asked if Mr. Murphy could refer to the staff's graphics to show the setback relative to the other buildings. Mr. Murphy responded that the Wellington Arms building setback is approximately 10-12'; the Barclay East apartments is approximately 15'; Hanover Towers is approximately 10'; the new buildings proposed at the corner of South Ashland Avenue and East Main Street will be set back 10'; the Justice Real Estate and "dentist" buildings are approximately 20'. The proposed building, therefore, would not have the closest setback in the area, but would also not have the largest setback in the area. Mr. Aten stated that it would have been helpful to have a graphic that better depicted those setbacks.

Citizen Support: Bill Justice, owner of the subject property and the adjoining Justice Real Estate building, stated that he loves the location of the subject property, which is close to downtown and the Woodland and Chevy Chase areas. He currently lives in a large house on five acres of property, and is interested in downsizing. With that in mind, Mr. Justice intends to live in the proposed development, and believes that it would help to both support a vibrant downtown and discourage sprawl. He asked that the Planning Commission support those ideals, and approve this request.

Citizen Opposition: Rush Scott, 113A Kentucky Avenue, stated that her home directly adjoins the subject property, and displayed several photographs of her property. She said that, although Mr. Emmons displayed several photographs of properties surrounding the subject property, none of them depicted her home, and an accurate description has not been presented of the impact the proposed development will have on her property.

Ms. Scott stated that the eight-foot retaining wall proposed along with the new building will negatively impact the open space on her property and will impair the view from her patio. The retaining wall is proposed to have no openings, and will hamper the visibility from her driveway as well. Ms. Scott's home is approximately 20 feet tall, and she believes that it will be "dwarfed" by the proposed 80-foot structure on the adjoining property. She said that she paid \$20,000-\$30,000 more for the additional property on which her patio is now located, in order to create an outdoor space she could enjoy. She spends the majority of her time on the patio when weather permits, and believes that the proposed development will ruin her enjoyment of her outdoor space. The terraces of the proposed building will directly overlook her patio; if there are five units located on her side of the building, there could at any point be five different sets of tenants looking directly onto her patio. Ms. Scott said that, since she lives alone, she also has concerns about her safety.

In addition to her concerns about the proximity of the proposed building and its negative impacts on her property, Ms. Scott also fears that construction activities on the subject property will kill her trees, damage the slab foundation via additional water runoff, and completely eliminate her ability to use her patio for the duration of the construction period.

Ms. Scott is concerned as well about the proposed location of air conditioning units, outdoor lighting, and trash pickup on the subject property. She fears that all of those activities will take place immediately next to her home, since she lives on the side of the property that does not face Main Street.

Joe Scott, 325 North Broadway, stated that he is Ms. Scott's father. He said that he and his wife and daughter have lived downtown since 1974, and are used to being in situations such as this. Ms. Scott is a single professional who is living in her first home and working at her first job, and she was stunned to receive notice of the proposed development which will look directly into her house.

Mr. Scott referred to Mr. Murphy's comment about not locating restaurant uses on the ground floor of the proposed building because outdoor smokers may interfere with the patio open spaces of the residents, and noted that the building itself will be interfering with Ms. Scott's open space on her patio. All of the testimony at this meeting has been directed toward the impact of the proposed development on Main Street, and no consideration has been given to the impact on Ms. Scott. The Planning Commission has the opportunity today to remedy the situation to some extent, at least requiring that the building be constructed further from Ms. Scott's property.

Mr. Scott stated, with regard to the proposed conditional zoning restrictions, that one of the cases heard earlier at this meeting involved the removal of conditional zoning restrictions from a property. He said that, on some other day, an individual could come before the Planning Commission and request that they remove the restrictions on this property, and many of the uses allowed in the requested B-2A zone could have a "disastrous" effect on Ms. Scott's property.

With regard to Mr. Murphy's comments about how many nearby residents are in support of this project, Mr. Scott said that one of the supporters present at this meeting has a financial investment in the proposed development. The Aylesford Historic District is opposed to this request, and Mr. Scott is not aware of any other neighbors who have expressed support for this re-zoning.

Mr. Scott stated that some of the language included in the staff report seems to indicate that there does not seem to be a zone that really fits this request, and the B-2A zone is being "shoehorned." He believes that a mixed-use zone would be more pedestrian-friendly and more in keeping with the character of the surrounding neighborhood. Mr. Scott asked that the Planning Commission disapprove this request.

Amy Clark, 628 Kastle Road, stated that, although she does not reside in the immediate vicinity, she is present today in support of the Aylesford Place Neighborhood Association, who sent a letter in opposition to this request. Ms. Clark read the following into the record from that letter:

"Street Orientation: The primary wall faces Kentucky Avenue rather than Main. Admittedly, there are two precedents: the 540 East Main office building (despite its address) fronts Kentucky and, one block east, the Bluegrass Impact office building at 570 East Main likewise fronts Old Park. While both office buildings orient to side streets, both have ground-floor occupancy, both have extended setbacks that include green space, and both are no greater than three stories in height—features neglected in the proposed design.

Ms. Clark stated that the proposed design "turns a cold shoulder to Main Street." She read the following from the Aylesford Place Neighborhood Association's letter of opposition:

"4' setback variance: The only existing structures within blocks of the proposed site that have such reduced setbacks are retail businesses around Walton and Clay Avenues, and these structures exhibit architectural features that accommodate pedestrians in the streetscape. They offer open balconies, canopies and their primary walls are greater than 10% glass—the very architectural features promoted and itemized in Article 15-7 for infill development. These retail spaces are, in fact, prime examples of the pedestrian-friendly streetscapes promoted by the Downtown Lexington Master Plan. But most important, these retail businesses have ground-floor occupancy rather than parking garages.

Height: The six-story height of the development severely amplifies the negative impact of the 4' setback. The only comparable structures in height—the Woodlands and Wellington Arms—have sufficient setbacks, green space, and rear off-Main Street parking structures. Indeed, as designed, the Bennett/Vaughn development needs increased setback, not less."

Ms. Clark said that she believes that the proposed development is fundamentally an auto-centered design, to be constructed in a walkable neighborhood. The requested B-2A zone would prohibit automobile showrooms, but locating the parking area on the ground floor would render that part of the building an auto storage area. The rendering of the proposed development includes no features that would be welcoming to pedestrians, such as windows or doors or retail on the first floor.

With regard to the target market for the proposed development, Ms. Clark stated that it is exclusionary to design such a project with one specific segment of the population in mind.

Ms. Clark said that the Planning Commission has before them a re-zoning request, and a development plan. When the zoning of a property is changed, it stays with the property, rather than zone changing based on the proposed project. Higher-density residential, commercial, or professional uses would all be more appropriate for the subject property, as would a mixed use. If the property is to be rezoned for residential use, more green space should be provided; if it is to be rezoned to a mixed-use category such as B-2A, the proposed design should be altered to include mixed uses. Ms. Clark is concerned that there is no provision in the proposed conditional zoning restrictions that would define a ratio of residential and commercial uses on the property, should the petitioner choose to include commercial uses. There are also no provisions in the B-2A zone to govern floor area ratio or lot coverage.

Ms. Clark stated that it does not send a good message for the city to allow the construction of a building located on Main Street, with no windows or doors onto that street and a parking garage on the ground floor. She said that, if mixed use is really more appropriate for this location, it may be best to wait for the creation of an appropriate mixed-use zone.

Bill Johnston, 645 West Short Street, stated that he is the president of the Historic Western Suburb Neighborhood Association. He said that he was present today representing the Bluegrass Trust for Historic Preservation, for which he

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serves as a board member. He has been focused on downtown issues for nearly all of the 36 years he has lived downtown, and he assisted in the preparation of the Downtown Master Plan.

Mr. Johnston stated that everyone agrees that infill is an important ingredient in the revitalization of downtown. He has personally been involved in several infill projects, and currently lives in an infill house in one of the oldest sections of downtown. All of those projects were constructed on land that was already vacant. Mr. Johnston said that he believes that good infill requires vacant land, and not property which requires the destruction of historic structures.

The subject property is part of the DTMP area, and the application states that this request is in agreement with the recommendations of the Plan. Mr. Johnston believes, however, that the proposed ground floor parking area and the destruction of two historic homes are not in agreement with the recommendations of the DTMP. The house at 109 Kentucky Avenue was built in the mid-1880s as part of the Woodland Subdivision, and is definitely historic. The structure at 522 East Main Street is a Richardsonian East Lake house, built sometime before 1902, and is part of a very attractive entrance to the downtown area from the east side of Lexington.

The petitioner quotes Recommendation 1 of the DTMP in their justification: "Infill improves the quality of life in older communities." Mr. Johnston said that infill does not improve the quality of life if it requires the destruction of two historic houses that have been an integral part of the community, particularly a community that is part of the Woodlands National Register Historic District. He read the following excerpts from the DTMP into the record:

"Infill should strive to strengthen existing neighborhoods by respecting the historic fabric and introducing compatible uses that complement the community's attributes and needs.

Require all new buildings to respect the historic character of Lexington.

The regional image should be preserved in the downtown core, and historic, cultural, and architectural resources enhanced.

Identify, restore, and preserve architecturally significant historic buildings in downtown Lexington."

Mr. Johnston noted that the destruction of two historic buildings does not agree with any of those recommendations of the DTMP. He does not believe that this is the type of infill that is needed in Lexington.

Variance Report: Ms. Rackers presented the revised findings for the variance request, noting that the staff was prepared to recommend disapproval of the rear yard setback to 8 feet, as originally requested. The petitioner's reason for requesting that variance was to provide additional landscaping, but the staff believed that providing more space between the buildings was more important than providing additional landscaping in this case. Since the petitioner is now requesting a variance to 10 feet, rather than 8 feet, in order to accommodate the handicap parking spaces, the staff is comfortable with recommending approval of that 2-foot variance. Ms. Rackers stated that, should the Commission choose to approve that variance request, she could provide findings for their consideration.

Commission Question: Ms. Roche-Phillips asked Ms. Rackers to point out on the rendered development plan the areas where the variances were requested. Ms. Rackers indicated the locations of those requests on the plan, noting that the requested front and side yard variances had been withdrawn, and the petitioner was currently requesting only a rear yard variance. Ms. Roche-Phillips asked how much space there is between the rear building line and Ms. Scott's property. Ms. Rackers responded that the plan includes a 5-foot space, an 8-foot driveway, and one foot between the driveway and the house, and one foot between the driveway and the proposed building, for a total of approximately 15 feet between the building and the property line.

Staff Rebuttal: Mr. Emmons stated that he had prepared a graphic displaying the building setbacks along Main Street, per Mr. Aten's suggestion. He displayed that graphic for the Commission, and noted that the proposed building setback would be in range with the other setbacks along Main Street, and it would be neither the nearest to or the furthest from the street.

Mr. Emmons said that, when the staff reviews all infill and redevelopment projects, they must consider quality and compatibility. He noted that compatibility is particularly hard to define, because it does not necessarily require that infill buildings be the same as existing buildings. If that were the case, nothing new would ever be built. There are some proposals that could be obviously out of context with the surrounding neighborhood, but this project did not fall into that category.

Mr. Emmons stated that he staff tried to reach a balance with the requested B-2A zone, the proposed conditional zoning restrictions, and the resolution of the details of the building at the time of the final development plan, in order to create a development that would be compatible with the surrounding neighborhood. The staff reviewed and discussed this rezoning request and the corollary development plan, including meetings with the petitioner, for many hours, in an attempt to work out those issues. With the revised plan, the staff is now comfortable recommending approval of this request.

Commission Questions: Ms. Godfrey asked if the existing P-1 and R-3 zones have restrictions against mixed-use buildings. Mr. Emmons answered that the "mixed-use corridor" indicated in the DTMP does not refer to the existing mixed-use zoning categories. The existing P-1 zoning would allow residential uses on the upper floors, as long as a Professional Office use existed on the first floor. The R-3 zoning would not allow any commercial uses in the building. Mr. Emmons noted that there are no mixed uses proposed by the petitioner for this location. Although the conditional zoning restrictions refer to a mixed use, that is to ensure that, should a commercial use locate on the ground floor of the building, a certain number of residential units will still be required in the building. There is nothing in the proposed conditional zoning restrictions that would prohibit a residential-only development, as long as it has a minimum of six residential units.

Ms. Godfrey asked what the building height restrictions are for the existing P-1 and R-3 zones. Mr. Emmons responded that the R-3 zone has a 35-foot maximum building height, and the P-1 zone has a 3:1 height-to-yard ratio rather than a maximum building height. The 3:1 height-to-yard ratio requires that, for every one foot of side yard provided, a building can go three feet up; therefore, a building with a 12-foot side yard could be 36 feet high.

Ms. Godfrey asked if the subject property is currently restricted by H-1 zoning, since it lies within a Historic District. Mr. Emmons answered that the subject properties are not zoned H-1.

Ms. Roche-Phillips asked Mr. Emmons to explain the differences between H-1 zoning and a National Register Historic District, and whether the listing of an area on the National Register affords any protection to historic homes. Mr. Emmons referred that question to Mr. Sallee, who answered that National Register districts require that, when federal monies are involved with a project, additional steps must be taken for review of activities on the project. Lexington's local historic districts are often closely compared to National Register Historic Districts. In the early stages of rezoning what eventually became the Aylesford Local Historic District, that same comparison was made. The planning staff spent a great deal of time in their staff reports for that rezoning covering those comparisons.

Ms. Roche-Phillips asked, with regard to the rooftop open space, whether it will be an actual roof garden, or just planters. She said that a roof garden may address some of Ms. Scott's concerns about impervious surface coverage and stormwater runoff. Mr. Murphy answered that the rooftop area is planned to be a garden, although that space has not yet been fully designed.

Petitioner Rebuttal: Mr. Murphy, with regard to Ms. Roche-Phillips's questions about the National Register Historic District, said that the subject property does lie within that district, but is not zoned H-1. The National Register designation has no impact on what a private owner can or cannot do on their property. When the townhouses where Ms. Scott resides were built, existing historic homes similar to the one at 109 Kentucky Avenue were demolished to make way for that new development. When the Aylesford Local Historic District H-1 hearings were held approximately 10 years ago, there was a great deal of discussion about the subject property, but the decision was made to remove it from the historic district. Mr. Murphy said he respects Mr. Johnston's opinions about the historic structures, but noted that the Planning Commission and the Urban County Council heard all of the information about those structures, and still chose to remove them from the H-1 area. As a result, the owner of the property could have had them removed at any point in the last 10 years, and will have them removed for any development on the subject property, whether under the current zoning or the proposed B-2A zoning. Mr. Murphy said that the discussion today should not revolve around the demolition of those buildings, but whether or not the B-2A zone is appropriate for the subject property.

With regard to Mr. Johnston's references to the Downtown Master Plan, Mr. Murphy said that most of the statements Mr. Johnston read were from the "downtown core" section of the DTMP, rather than the "mixed-use" area. There are separate Goals and Objectives for each of the three defined sections of the downtown area. Mr. Murphy contacted Harold Tate, head of the Lexington Downtown Development Authority, to confirm that, although the subject property lies within the mixed-use area, mixed uses are not required in each building. Therefore, the petitioner contends that the proposed B-2A zone is in agreement with the DTMP.

Mr. Murphy said, with regard to some of the concerns about the proposed ground-floor parking area, that the cars will not be directly visible from Main Street. Hanover Towers, however, which is located within a few blocks of the subject property, has a large surface parking area that "dominates the landscape." Another of the recommendations of the Downtown Master Plan states that residential units elevated above street level provide a sense of security and privacy for residents, and the proposed first-floor parking would both provide an area for the residents' cars, and would elevate the residential units. The proposed development is not intended to be dominated by the automobile; one of the purposes of constructing such a development in this area is to allow the residents the opportunity to walk on many of their daily travels, rather than driving.

The letter of opposition from the Aylesford Place Neighborhood Association was composed and sent to the Planning Commission prior to the petitioner's withdrawal of two of the variance requests. At the time that letter was written, Mr.

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Murphy said that the plan did not include very much landscaping. Now, however, the new plan includes additional space for landscaping and a pedestrian-friendly sidewalk along Main Street.

With regard to the questions about mixed uses on the subject property, Mr. Murphy said that, when this request was first brought before the staff, they noted that there is no true downtown residential zone. The existing residential zones are more suburban in nature, and there is a need for a downtown residential zone. The petitioner declined to introduce a text amendment to create a downtown residential zone, however, because it would take at least a year to resolve the issue and the petitioner does not have that amount of time to devote to it.

Mr. Murphy said that some of the objectors commented about the need for mixed uses in the proposed development, but the petitioner would prefer that only residential uses be located in the building, and proposed a conditional zoning restriction to that effect. The staff, however, did not want to restrict the use of the building to residential only, in case some other project develops on the property in the future and mixed uses may be appropriate.

Mr. Murphy stated that, of all the objectors present at this meeting, Ms. Scott was the only resident of the area to testify in opposition to this request. He said that there will most likely be some type of construction occurring on this property whether this rezoning request is granted or not. With regard to Ms. Scott's concerns about the proximity of the proposed building to her property, the required side yard in the existing R-3 zone is five feet, and the side yard in the existing P-1 zone is 12 feet. The proposed building will have a 15-foot side yard, so it will actually be further away than is required by the existing zoning. The B-2A zone does allow a taller building than the existing R-3 zone, but a three-story building in the R-3 zone could contain many more, smaller units than the proposed five large units on the side of the building that will overlook Ms. Scott's property.

With regard to Ms. Scott's other concerns about the impact of the proposed development on her property, Mr. Murphy said that the retaining wall on the subject property should address the stormwater runoff, and prevent it from flowing to her property. That design will be determined, as usual, at the time of the final development plan. The air conditioning units are proposed to be located on the roof of the building, rather than on the side; there will be no direct lighting near the properties on Kentucky Avenue; and trash will be compacted in the first floor of the building, in the core area, so there will be no trash pickup near Ms. Scott's property.

In summary, Mr. Murphy stated that, as the DTMP contemplates, the proposed development would appeal to a certain segment of the population who are interested in relocating to the downtown area. It is in complete agreement with the infill guidelines, and will be a good addition to the downtown area. All of the issues on the development plan can and will be dealt with at the final development plan stage, and should not affect the Planning Commission's consideration of whether the B-2A zone is the most appropriate for the subject property. Mr. Murphy stated that the petitioner and the staff have spent a great deal of time working on this request, and asked that the Planning Commission approve it.

Commission Questions: Ms. Godfrey asked if the proposed building height of six stories was negotiable. Mr. Murphy answered that six stories are required to make the proposed development work.

Mr. Aten stated that he believes that the proposed development is a great opportunity to implement the recommendations of the 2007 Comprehensive Plan and the Downtown Master Plan, and he commended the petitioner for the design and the hard work that has gone into the proposal. The corridors of the city are very important, and they affect not only automobiles, but pedestrians as well. The pedestrian movement from Main Street itself to the entrances of the buildings should be interesting and complementary. Mr. Aten said that the provision of features of interest to pedestrians is important, and it involves more than just the consideration of setbacks and landscaping, and the petitioner needs to take that into consideration as they finalize the design for the proposed development.

Zoning Action: A motion was made by Ms. Godfrey, seconded by Mr. Penn, and carried 9-1 (Cravens abstained; Roche-Philips opposed; Holmes absent) to approve MARV 2008-9, for the reasons provided by staff, adopting the conditional zoning restrictions as proposed by staff, for the reason provided by staff; and granting the requested variance of the rear yard from 12 feet to 10 feet, for the following reasons:

1. Granting this variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public because the applicant is providing handicap accessible spaces as well as the landscaping required by Article 18.
2. Granting this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the Downtown Master Plan has called for amending the Zoning Ordinance to allow for appropriate downtown urban infill.
3. The special circumstance which applies to this property is that this property is located at the corner of Main Street and Kentucky Avenue, and will be oriented to Kentucky Avenue. It will supply handicap-accessible parking in the front of the building, which requires additional space.
4. Strict application of the regulations of the Zoning Ordinance would create unnecessary hardship on the applicant by disallowing the necessary space for handicap-accessible parking.

5. The circumstances surrounding the requested variance are not the result of the actions taken by the applicant subsequent to the adoption of the Zoning Ordinance, but are based on the spatial requirements for handicap-accessible parking and the amount of space required for vehicular use area screening.

Development Plan Action: A motion was made by Ms. Godfrey, seconded by Mr. Penn, and carried 10-0 (Holmes absent) to approve ZDP 2008-59, subject to the original 11 conditions; changing #12 to read: "Denote: Details concerning the perimeter fencing in front yards, landscaping, pedestrian facilities, bus shelters, and first floor building features shall be reviewed at the time of final development plan approval;" and adding condition #13 to read: "Addition of conditional zoning restrictions."

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. ZOTA 2008-4: AMEND ARTICLE 19 TO UPDATE D-FIRM ADOPTION DATE - a Zoning Ordinance text amendment to Article 19 in order to change the effective date of the Flood Insurance Rate Maps, due to the acceptance of the new maps by FEMA, and other changes to strengthen flood protection.

REQUESTED 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 Recommended: **Approval**, for the following reasons:

1. Article 19 of the Zoning Ordinance must be amended to reflect the adoption of the September 17, 2008, Digital Flood Insurance Rate Maps by the Federal Emergency Management Agency. Otherwise, the LFUCG will be suspended from the National Flood Insurance Program (NFIP), and our citizens will not be protected from flooding losses under this Federal program.
2. The proposed changes will increase LFUCG's regulatory compliance with NFIP regulations, and will clarify potentially confusing language currently in the Ordinance.
3. The proposed changes are intended to ensure more reliable and accurate floodplain maps for Fayette County residents in the future.

Staff Presentation: Mr. Emmons presented the staff report, noting that the proposed changes would affect Article 19 of the Zoning Ordinance, which controls the conservation and maintenance of floodplain areas.

The first changes proposed to Article 19-2 and 19-3 would reflect the adoption date of the new floodplain maps. Mr. Emmons said that the staff has been working with FEMA on the adoption of the new maps for approximately three years. The staff recently received a Letter of Final Determination from FEMA, noting that the new maps will become effective on September 17, 2008. These changes must be made to the Zoning Ordinance, or LFUCG will be suspended from the National Flood Insurance Program.

Mr. Emmons stated that the changes proposed to Article 19 fall into the category of either increasing regulatory compliance, or clarification and clean-up of the Zoning Ordinance. Several recent events have warranted the staff's reconsideration of Article 19, including the first-ever appeal to the Floodplain Appeals Committee. The two major changes proposed to the Zoning Ordinance are in Article 19-7 and refer to lots that are already in existence that have floodplain areas on them. These changes will refer to whether the lot is occupied by a structure, or is vacant. The proposed change to the Ordinance regarding revision of a Special Flood Hazard Area involves situations in which an applicant must provide a Letter of Map Change (LOMC) to FEMA, in order for FEMA to officially change the flood map. Mr. Emmons displayed an aerial photograph of the Gleneagles subdivision, and noted that, when the subdivision was originally designed, the greenway was totally inclusive of the floodplain as it existed on the 1992 FEMA maps. It was labeled as a "Zone A" floodplain, which indicates that no flood study was completed there. When the development plan for this portion of the Gleneagles subdivision was submitted, the applicants included the results of a flood study that indicated that their floodplain was smaller than the official "Zone A" floodplain. Under the regulations in place at that time, the applicant was not required to submit a Letter of Map Revision (LOMR) since the results of their study produced a floodplain area smaller than that shown on the FEMA maps. When the new methodology was applied to determine the floodplain area for the new maps, however, it was determined that that floodplain area is actually larger than the greenway area in which it lies, and there are several homes that will lie within the floodplain according to the official maps. It is important, therefore, that Article 19 be revised to require that any flood study that includes a floodplain area that is different from the official maps be addressed with an official Letter of Map Revision. There are two properties in the Danby Corners neighborhood that applied for and received Letters of Map Amendment. FEMA determined that those two properties are outside of the floodplain, even though other properties surrounding them are still within the floodplain. In reality, all of those homes are served by a detention basin and greenway area.

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Citizen Comment - There was no one present to comment on this text amendment.

Mr. Emmons stated that there are several other proposed minor changes that would clean up and clarify some of the language of Article 19. He has been in contact with representatives of the State Division of Water, and they are in support of these changes. The staff is recommending approval of these changes, for the reasons listed on the agenda and in the staff report.

Action: A motion was made by Mr. Penn, seconded by Mr. Aten, and carried 10-0 (Holmes absent) to approve ZOTA 2008-4, with the corrections provided by Staff, for the reasons presented.

2. ZOTA 2008-5 & SRA 2008-1: TRANSFER GRADING PERMIT RESPONSIBILITIES TO THE DIVISION OF ENGINEERING – a Zoning Ordinance text amendment to Articles 5 and 20 of the Zoning Ordinance and Article 4 of the Land Subdivision Regulations to transfer authority for the issuance of grading permits from the Division of Building Inspection to the Division of Engineering.

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

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

ZONING ORDINANCE

ARTICLE 5 - ADMINISTRATION, ENFORCEMENT AND VIOLATIONS

5-2 PERMITS REQUIRED FOR CONSTRUCTION, DEMOLITION, AND LOCATION OF STRUCTURES - Permits shall be required for the following activities and shall be issued by the Division of Building Inspection in conformity with the provisions of this Zoning Ordinance.

5-2(b) WRECKING PERMITS - No building or other structures shall be razed, demolished or removed, either entirely or in part; nor shall any of said activities be commenced without a wrecking permit ~~therefore~~, issued by the Division of Building Inspection and any required grading permit has been obtained from the Division of Engineering.

5-2(c) GRADING PERMITS - Grading permits shall be required as provided in Article 20.

5-4 PERMIT APPLICATION REQUIREMENTS AND PROCEDURES - All applications for permits shall be accompanied by such plans and information as the Division of Building Inspection ~~or the Division of Engineering~~ deems to be necessary to determine compliance and provide for enforcement of this Zoning Ordinance. After reviewing the application materials, the Director of the Division of Building Inspection ~~or the Director of the Division of Engineering~~ shall mark the application either as "Approved" or "Disapproved" and attest to the same by signature on such copy. The original, similarly marked, shall be retained by the ~~appropriate division~~ ~~Division of Building Inspection~~.

5-4(a) BUILDING PERMITS FOR SINGLE FAMILY AND TWO-FAMILY DWELLINGS - All applications for permits for detached single family and two-family dwellings and their accessory buildings shall be accompanied by plans showing the location and dimension of any existing or proposed principal or accessory buildings on the lot; the location and dimension of all required yards; height of the building; and the location and dimension of the required parking, as well as any other information deemed necessary by the Division of Building Inspection to determine compliance with this Zoning Ordinance.

5-4(a)(1) DIVISION OF ENGINEERING APPROVAL REQUIRED - The building permit shall not be issued unless and until the Division of Engineering has approved an erosion control plan.

ARTICLE 20 - EROSION AND SEDIMENT CONTROL

20-2 DEFINITIONS - Unless specifically defined below, words and phrases used in this Article shall be interpreted so as to give the meaning they have in common usage and to give this Article the most reasonable application.

NATURAL GROUND SURFACE - Any ground surface in its original state before any grading, excavation or filling, and shall be established by the ~~Division of Building Inspection~~ or Division of Engineering when there is any question of its location.

20-3 SCOPE OF COVERAGE - The following are included within the scope of this ordinance:

- a. Grading, stripping, excavating, filling or otherwise disturbing the natural ground cover associated with construction and/or demolition shall only be permitted in conformance with this Article.

- b. All persons submitting major subdivision plans (see Article 2 of Land Subdivision Regulations for definition of major subdivision class) or development plans must include a note on the preliminary plan stating that no grading, excavating, stripping, filling or other disturbance of the natural ground cover shall take place prior to submission of an erosion and sediment control plan. Where critical conditions exist on the subject property, the Planning Commission may require the developer to indicate on the preliminary plan the methods which will be used to comply with this Article. An erosion and sediment control plan shall be submitted as a part of the required improvement plan materials.
- c. Any person disturbing the natural ground cover in an area for which there is an erosion control plan shall conform to the requirements of such plan without exception.

20-4 PROCEDURES AND STANDARDS FOR SUBMISSION OF EROSION AND SEDIMENT CONTROL PLANS AND FOR ISSUING PERMITS

20-4(d) SUBMISSION OF THE PLAN AND ISSUANCE OF A GRADING PERMIT - All erosion and sediment control plans shall be submitted to the Division of Engineering, which shall conduct an administrative review of the plan. The purpose of the administrative review shall be to verify that all items have been submitted as required in the Technical and Procedures Manuals. It shall be the sole responsibility of the landscape architect or the project engineer, as appropriate, to ensure the accuracy and completeness of all drawings, calculations, and reports, and to ensure construction feasibility of the design. Within ten (10) working days after receipt of a plan, the Division of Engineering shall notify the project engineer or the landscape architect, as appropriate, in writing, of any omissions or shall ~~notify the Division of Building Inspection and~~ authorize the issuance of a grading permit. Upon such authorization, the Division of Engineering ~~notice, the Division of Building Inspection~~ shall issue a grading permit, provided all other permit requirements are met. Upon completion of the work required under the erosion and sediment control plan, the project engineer or landscape architect shall certify to the Division of Engineering that the work has been completed.

20-4(e) EXTENSION OF TIME - Every grading permit issued to implement an erosion and sediment control plan shall expire six (6) months from the issuance of a grading permit unless work has been commenced in accordance with the plan. If work is not completed within the terms of the permit, or work is not commenced within six (6) months after issuance, the permit holder may, prior to the expiration of the permit, request in writing an extension. The Division of Engineering ~~Building Inspection~~ may extend the deadlines contained in the permit upon a showing by the applicant:

- (1) that there is sufficient justification for the delay;
- (2) that delay will not create a new erosion hazard or permit an existing one to continue; and
- (3) that a new completion date has been set.

LAND SUBDIVISION REGULATIONS

ARTICLE 4 - MAJOR SUBDIVISION PLAN PROCEDURE

4-6 CONSTRUCTION OF THE PUBLIC IMPROVEMENTS - The project engineer shall notify the Division of Engineering, the Division of Sanitary Sewers, and the Division of Traffic Engineering when construction of the infrastructure begins. Within two weeks after the commencing of construction, the developer and project engineer shall give at least 72 hours notice to the representatives of the above divisions and conduct a meeting to discuss the construction schedule. The project engineer shall prepare notes of the meeting and submit them to the various divisions. All construction shall be in conformance with the submitted improvement plan.

4-6(a) GRADING PERMIT - ~~Upon notice to proceed from the~~ The Division of Engineering, ~~the Division of Building Inspection~~ shall issue permits in conformance with the Division's established procedure.

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

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

1. The proposed Zoning Ordinance and Subdivision Regulations changes would make grading permits the sole responsibility of the Division of Engineering, thereby eliminating the need for an applicant to seek approval for a grading permit from one division, and obtain the permit from another division. By eliminating the Division of Building Inspection from this permit process, it is anticipated that the process will be streamlined and more efficient, thereby allowing issuance of permits in a timelier manner.
2. These proposed changes will help to adequately address surface drainage during and immediately after construction on single-family and two-family residential lots, as well as vacant lots post-demolition.

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3. These proposed changes will help to protect our streams, rivers and aquifers from unnecessary soil erosion and runoff on single-family residential, two-family residential, and vacant lots.
4. The Goals and Objectives of the 2007 Comprehensive Plan are furthered by this proposed text amendment to the Zoning Ordinance and Land Subdivision Regulations; namely, Goal 3, Objective G (ensure that appropriate facilities and structures are used to accommodate surface drainage); Goal 8, Objective B (streamlining the development review process); Goal 17, Objective B (protect and enhance overall water quality); and Goal 21, Objective A (sensible regulatory procedures).

Staff Presentation: Ms. Wade presented the staff report, noting that this request was initiated by the Planning Commission, at the request of the Division of Engineering, in March of this year.

The intent of the proposed changes to the Zoning Ordinance and Subdivision Regulations is to transfer the responsibility of grading permits from the Division of Building Inspection to the Division of Engineering; require a grading permit at the time of building demolition; and require erosion control plans for single-family and two-family lots. The erosion control plan provision would not require a grading permit for each individual single- and two-family lot. Erosion control and grading permits would be required, however, on a subdivision-wide level. These changes would help to reduce the amount of stormwater runoff; protect streams, rivers, and aquifers to a greater extent; and adequately address drainage during and after construction. Ms. Wade stated that the proposed changes would also help to meet several of the Goals and Objectives of the Comprehensive Plan, as well as streamlining the grading permit process. The changes will also help LFUCG comply with the EPA Consent Decree that was recently announced.

Ms. Wade said that the Division of Engineering has requested that these changes become effective on July 1, 2008, provided that the Council has completed their portion of the process by that time.

The Zoning Committee had some questions at their meeting three weeks ago about how these changes would affect the development plan review process, so Ms. Wade prepared a flow chart to assist the Commission in their understanding. She displayed the flow chart, noting that, in the development plan process, these changes would require that the developer's engineer submit their erosion control plans to the Division of Engineering following the certification of a final development plan. The Division of Engineering would review the erosion control plans and any other supporting documentation. Following the completion of any necessary corrections to the erosion control plan, the Division of Engineering staff would hold a pre-construction meeting with the developer's engineer on site. The contractor would install the sediment and erosion control system after that meeting, and the Division of Engineering would accept the construction plans for the project. If the proposed amendments to the Zoning Ordinance and Subdivision Regulations are approved, the next step in the process would be the issuance of a grading permit by the Division of Engineering. After the issuance of the grading permit, the Division of Building Inspection would issue the building permits.

With regard to the subdivision plat process, the first step would be the certification of the preliminary subdivision plan by the Planning Commission; the engineer would then prepare their improvement plans, which must include sediment and erosion control measures; the developer would submit full plans to the Division of Engineering for their approval; an on-site meeting would be held following acceptance of the full plans; the contractor would install sediment control; and the Division of Engineering would then accept the improvement plans. If the proposed amendments to the Zoning Ordinance and Subdivision Regulations are approved, the Division of Engineering would then issue a grading permit, and the public improvements could be constructed. The developer's engineer would then submit a final record plat and other supporting documents for review; the Division of Engineering would review that information and forward it to the Division of Planning for staff review; the staff would review the record plat, certify it, and have it recorded with the County Clerk; the developer would prepare an erosion and sediment control plan for the single-family lots when they request a building permit, and the Division of Engineering would sign off on that plan and issue permits.

Ms. Wade stated that another question that was raised by the Zoning Committee referred to the requirement that developers submit a 30% design report to the Planning Commission. That process runs parallel to the subdivision plan process just described: after the certification of a preliminary subdivision plan, the developer's engineer would begin preparing improvement plans, including sediment and erosion control plans. At the 30% point in their design, the engineer would submit a report to the Planning Commission summarizing their progress. After the improvement plan designs are 100% completed, they would be submitted to the Division of Engineering. Once the Planning Commission receives the 30% report, the applicant could submit a final record plat to the Planning Commission for approval. The submission of a final record plat could occur at a number of points throughout that process, depending on the speed at which the design process is moving.

Ms. Wade said that the staff is recommending approval of this text amendment, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Penn complimented the staff and the Divisions of Engineering and Building Inspection on their work on this text amendment. He asked about the purpose of the 30% design report. Ms. Wade answered that the Subdivision Regulations note that the 30% design report is designed to inform the Commission of how the developer plans to address drainage and storm and sanitary sewers, although she is not sure what format the report should take. Mr. Penn asked if the intent is to "catch problems before they are put into the ground." Ms. Wade agreed that that is the intent of the report.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Aten, and carried 10-0 (Holmes absent) to approve ZOTA 2008-5, for the reasons provided by staff.

- VI. **COMMISSION ITEMS** – Mr. Sallee noted that the Planning Commission's work session on May 29th will include discussion of the proposed digital billboard text amendment that has been postponed several times over the past few months, as well as the Commission's ad hoc committee report to address the EPA Consent Decree.

Mr. Penn asked if that work session would be televised; Mr. Sallee answered that it would be for the ad-hoc committee report, at a minimum.

Mr. Vaughn stated that he hoped all of the Planning Commission members would be able to attend the work session in order to hear the report from the ad hoc committee, which had been doing a great deal of work on their report.

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

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

IX. **MEETING DATES FOR JUNE, 2008**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	June 5, 2008
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	June 5, 2008
Subdivision Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	June 12, 2008
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	June 19, 2008
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	June 25, 2008
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	June 26, 2008

- X. **ADJOURNMENT** – There being no further business, Chairman Vaughn declared the meeting adjourned at 4:58 p.m.

TLW/TM/JWE/BJR/BS/src

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