

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

July 22, 2021

- I. **CALL TO ORDER** - The meeting will be called to order at 1:30 p.m. via video teleconference.

Due to the COVID-19 State of Emergency, this meeting is being held via live video teleconference pursuant to 2020 Senate Bill 150, and in accordance with KRS 61.826.

ATTENDANCE – Chair Larry Forester called the meeting to order at 1:30 p.m. via video teleconference from the Division of Planning, 7th Floor, 101 E. Vine Street, Lexington, KY 40507. Planning Commission Members present via video teleconference were: Ivy Barksdale, Headley Bell, Zach Davis, Anthony de Movellan, Janice Meyer, Robin Michler, Bruce Nicol, and Graham Pohl (Frank Penn absent). Planning staff members present via video teleconference were: Jim Duncan, Director; Traci Wade, Autumn Goderwis, Hal Baillie, Samantha Castro, Stephanie Cunningham, Debbie Woods, and Elizabeth Jefferson. Other staff members present were: Vaughn Adkins, Division of Engineering; Firefighter Embry Beatty, Division of Fire and Emergency Services; and Tracy Jones, Department of Law.

Chairman Forester welcomed new Planning Commission member Mr. Robin Michler. Mr. Michler thanked Chair Forester and expressed his appreciation for being appointed and eagerness to work with the other members.

- II. **APPROVAL OF MINUTES** – A motion was made by Ms. Meyer, seconded by Mr. Pohl, and carried 8-0 (Michler abstained; Mr. Penn absent) to approve the minutes of the June 24, 2021.

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

1. **LATA, LLC (AMD) ZONING MAP AMENDMENT & BRYAN PROPERTY, LOT 2 (AMD) ZONING DEVELOPMENT PLAN**

- a. PLN-MAR-18-00023: LATA, LLC (AMD) (8/22/21)*- a petition for a zone map amendment from a restricted Highway Service Business (B-3) zone to a Planned Neighborhood Residential (R-3) zone, for 4.98 net and gross acres, for property located at 1800 Bryant Road.

COMPREHENSIVE PLAN AND PROPOSED USE

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

The petitioner proposes rezoning a portion of the parcel to the Planned Residential Neighborhood (R-3) zone to allow for the development of a 100-unit apartment complex with 172 bedrooms, a club house, pool, and associated off-street parking.

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

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

1. The requested rezoning to a Planned Residential Neighborhood (R-3) zone is not in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. The proposed R-3 zone does not provide for or create a well-designed neighborhood or community, but rather creates an "islanding effect," that isolates residents rather than incorporates them into the broader community.
 - b. The proposed apartment complex will be physically separated from the surrounding neighborhoods, and situated within an area that is heavily focused on commercial activities.
2. The proposed Planned Neighborhood Residential (R-3) zone is not appropriate for the subject property, for the following reasons:
 - a. The LFUCG Land Subdivision Regulations Article 6-8(q)(3)(a), Land Use Access for Residential Development states that "apartment complexes, condominium developments, as well as all other developments that are accessed through a common private drive or street system, shall be treated as high density residential developments regardless of the actual overall density of the development" and that "high density private driveways should not intersect local streets."
 - b. The high flow of traffic at the intersection of Bryant Road and Pleasant Ridge Drive, and the carrying capacity of Bryant Road creates a safety risk to potential residents.
3. There have been no unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in 2013 that would justify a shift from the B-3 zone for the subject property.

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

- b. PLN-MJDP-18-00088: BRYAN PROPERTY, LOT 2 (AMD) (8/2221)* - located at 1800 BRYANT ROAD, LEXINGTON, KY
Project Contact: Vision Engineering

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

1. Provided the Urban County Council rezones the property R-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. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Remove Lot 1 information from site statistics.
8. Dimension parking lot drive aisles and parking spaces.
9. Dimension pool.
10. Discuss retention of conditional zoning restriction for buffering.
11. Discuss Bryant Road improvements.

Applicant Representation: Matt Carter, representing the petitioner, said that they would like a postponement of this zone change to the August 26, 2021 meeting. He said that they are continuing to work with the staff and would like additional time.

Action: A motion was made by Mr. Pohl, seconded by Mr. Bell, and carried 9-0 (Penn absent) to postpone PLN-MAR-18-00023: LATA, LLC (AMD) and PLN-MJDP-18-00088: BRYAN PROPERTY, LOT 2 (AMD) to the August 26, 2021, meeting.

2. **PLN-ZOTA-21-00005: AMENDMENT TO ARTICLE 6 AND ARTICLE 7: NOTIFICATION FOR PUBLIC HEARINGS** – petition for a Zoning Ordinance text amendment to Article 6 and Article 7 of the Zoning Ordinance to include the notification of both owners and occupants of properties within the designated notification area for public hearings.

INITIATED BY: URBAN COUNTY PLANNING COMMISSION

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: **Postponement**.

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

1. The proposed text amendment was developed in response to a policy calling for a continued modernization of the Zoning Ordinance to proactively plan for the Lexington-Fayette County's future growth (Theme E, Accountability Policy #2) of the 2018 Comprehensive Plan.
2. The Public Engagement Toolkit, as an implementation item from the 2018 Comprehensive Plan: *Imagine Lexington*, calls on the Division of Planning to broaden notification to include all owners and occupants within the notification radius, thereby seeking to inform and include a larger portion of the Lexington community in the planning process (Theme F, Goal #1).

Applicant Representation: Ms. Wade said that the Zoning Committee requested that the staff reevaluate some concerns that were discussed during the July 1, 2021, meeting. She said that the staff would like to request a postponement of this text amendment to the August 26, 2021 meeting.

Action: A motion was made by Mr. de Movellan, seconded by Mr. Pohl, and carried 9-0 (Penn absent) to postpone PLN-ZOTA-21-00005: AMENDMENT TO ARTICLE 6 AND ARTICLE 7: NOTIFICATION FOR PUBLIC HEARINGS to the August 26, 2021, meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, July 1, 2021, at 8:30 a.m. The meeting was attended by Commission members Ivy Barksdale, Headley Bell, Anthony de Movellan, Jan Meyer, and Frank Penn. Committee members in attendance were: Vaughan Adkins, Division of Engineering; and Stephen Parker, Division of Traffic Engineering. Staff members in attendance were: Jim Duncan; Traci Wade; Tom Martin; Hal Baillie; Cheryl Gallit; Lauren Hedge; Samantha Castro; Scott Thompson; and Stephanie Cunningham; Captain Greg Lengal, Division of Fire and Emergency Services; and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

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

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

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A. NO DISCUSSION ITEMS – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

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

B. DISCUSSION ITEMS – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Commission discusses and/or votes on the plan.

V. ZONING ITEMS - The Zoning Committee met on Thursday, July 1, 2021, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members: Bruce Nicol, Zach Davis, Larry Forester, and Graham Pohl. Staff members in attendance were: Traci Wade, Hal Baillie, Autumn Goderwis, Sam Castro, and Debbie Woods; and Tracy Jones, Department of Law. The Committee members reviewed applications and made recommendations as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS

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

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

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

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

The procedure for these hearings is as follows:

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

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

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENTS

1. **PLN-ZOTA-21-00004: AMENDMENT TO ARTICLE 1-11 AND 3-10: HOME-BASED BUSINESSES AND HOME OCCUPATIONS** – petition for a Zoning Ordinance text amendment to Article 1-11 and 3-10 of the Zoning Ordinance to modernize the definition of Home-based businesses and Home occupations to greater comply with the established state regulations.

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

INITIATED BY: URBAN COUNTY PLANNING COMMISSION

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: **Approval.**

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

1. The proposed text amendment supports and implements the 2018 Comprehensive Plan, in the following ways:
 - a. The amendment was developed in response to the implementation item calling for an increase in flexibility on types of home occupations allowed (Theme C, Policy #6).
 - b. The proposed changes will maximize context-sensitive employment opportunities within the opportunity zone tracts, providing equitable community development and prioritizing local residents for advancement opportunities (Theme C, Diversity Policy #5).
 - c. The amendment will encourage a diverse economic base to provide a variety of job opportunities, allowing upward mobility for lower income residents of Fayette County (Theme C, Policy #2).
 - d. The amendment will enable existing and new neighborhoods to flourish through improved regulation, expanded opportunities for neighborhood character preservation, and public commitment to expand options for mixed-use and mixed-type housing throughout Lexington-Fayette County (Theme A, Goal #3.a).
 - e. The amendment will strengthen efforts to develop a variety of job opportunities that lead to prosperity for all (Theme C, Goal #1.a).
2. The amendment will modernize the Zoning Ordinance, reconciling its requirements with relevant state laws.

Staff Text Amendment Presentation – Ms. Autumn Goderwis, Senior Planner for the Board of Adjustment, presented and summarized the staff report and recommendations for this text amendment. She said that this text amendment was initiated by the 2018 Comprehensive Plan, in regards to Theme C, Policy #6, which called for the increase in flexibility on the types of home occupations that are allowed. She said that currently there are three tiers of home based work in the Zoning Ordinance. The tiers include: a) home office, which is for record-keeping and administration of work; b) home occupation, where producing a product and selling them at another location, with no customers coming to the house; and c) home-based business, which include customers coming to the house or the use of disturbing materials to the surrounding properties. She said that home offices and home occupations are regulated as accessory uses to the residential use of the property. Home-based businesses are regulated as a conditional use and must be reviewed by the Board of Adjustment. The Board holds a public hearing and can conditional approve a permit for a home-based business. She added that in all of these businesses there are not any employees on the site.

Ms. Goderwis said that the proposed text amendment will incorporate some new Kentucky State regulations. She said that the staff is expecting a second part of this amendment with a more comprehensive review of home-based businesses and home occupations. She said that there are two categories being reviewed at this time, the first is home-based businesses and home occupations related to firearms. She said that currently the Zoning Ordinance states that any business with firearms is a home-based business, rather than a home-occupation, no matter if customers are coming to the house or not, and the Board of Adjustment must hear these as conditional uses. She added that there are state regulations that prohibit local jurisdictions from regulating the manufacture, sale, purchase, taxation, transfer, ownership, possession, carrying, storage, or transportation of firearms, ammunition, components of firearms and ammunition, firearms accessories, or combination thereof. She said that this text amendment would eliminate the extra regulation of firearm related home occupations, so that they will not be treated any differently than any other type of item or product. The second category of this text amendment is related to home-based processing, which would allow individual farm owners to produce some food products on their property to be sold to the public. She said that the Zoning Ordinance has historically prohibited catering and home cooking as home-based business, because of the need for a commercial kitchen. In 2019, the state added flexibility for individuals, not on a farm and who don't have a commercial kitchen to produce certain food items in their homes to sell. These food items include:

- a) Foods listed in KRS 217.015(56); including but not limited to dried herbs, spices, nuts, candy, dried grains, whole fruit and vegetables, mixed-greens, jams, jellies, sweet sorghum syrup, preserves, fruit butter, bread, fruit pies, cakes, or cookies, and who has a gross income of no more than sixty thousand dollars (\$60,000) annually from the sale of the products;
- b) Dried or freeze dried whole fruits or vegetables;
- c) Candy that shall be:
 1. Produced without added alcohol; and
 2. Made with no bare-hand contact;
- d) Maple syrup;
- e) Pecan pies;
- f) Granola that may be made with dried grains;
- g) Trail or snack mix that may be made with dried fruit, nuts, or seeds; and
- h) Popcorn that may be plain or have added seasonings.

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Ms. Goderwis said that home-based microprocessing, which includes but is not limited to acid foods, formulated acid food products, acidified food products, or low-acid canned foods. She said that the following foods shall not be processed or offered for sale by a home-based processor or home-based microprocessor:

- a) Crème filled pies;
- b) Custard;
- c) Custard pies;
- d) Pies with meringue topping;
- e) Cheesecake;
- f) Cream, custard, or meringue pastries;
- g) Raw seed sprouts;
- h) Garlic-in-oil products; and
- i) Pureed baby foods.

Ms. Goderwis said that the proposed text also includes a provision which says that a home occupation may include the pick-up of pre-ordered items or drop-off of items to be repaired, which will not be considered as a customer visiting the home because they won't be spending any length of time at the house. She said the proposed text also provides a provision that firearms being modified or repaired on the premises as part of a home occupation shall be located in a locked safe and shall never be discharged on site, which is related to an ATF regulation that requires licenses to ensure that all firearms are accounted for at all times. She added that the staff is recommending approval of this text amendment.

Commission Question – Mr. de Movellan asked if there is a limit of the number of people that can work inside of the home. Ms. Goderwis said that only the individuals that reside in the home can work there. She said that there are no employees coming to the home to work.

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

Motion – A motion was made by Ms. Meyer, seconded by Mr. Pohl, and carried 9-0 (Penn absent) to approve PLN-ZOTA-21-00004: AMENDMENT TO ARTICLE 1-11 AND 3-10: HOME-BASED BUSINESSES AND HOME OCCUPATIONS, for the reason provided by the staff.

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

VII. STAFF ITEMS – Mr. Duncan reminded the Planning Commission of the Work Session next Thursday, July 29, 2021, in the Phoenix Building in the 3rd Floor conference room, this will be our first in person meeting since the Pandemic began.

Mr. Bell asked if the Committee meetings will remain on Zoom. Mr. Duncan said that the Committee meetings will remain via Zoom. However, the Planning Commission meeting and hearings will begin to be in person, beginning on August 12, 2021. He added that these meetings must be attended in person in the Council Chambers, per Kentucky Statute.

Ms. Meyer asked if the Work Sessions will be in person or via Zoom. Mr. Duncan said the Work Sessions are scheduled to be in person in the Phoenix Building, and they will not be televised. He said that he will verify if Planning Commission members could be able to participate via Zoom, since there are not any decisions being made at those sessions.

Mr. Davis asked if any public comments could be accepted via telephone or Zoom during public hearings. Mr. Duncan said that the Planning Commission will be returning to pre-Pandemic procedures. The public could submit comments in advance, which are reviewed at the meetings; or if they wish to speak on the record, they would need to attend the public meetings or hearings.

The Planning Commission members and staff continued an open discussion regarding the public participation in future public meetings.

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

IX. MEETING DATES FOR JULY AND AUGUST 2021

Technical Committee, Wednesday, 8:30 a.m., via teleconference	July 28, 2021
Work Session, Thursday, 1:30 p.m., 3 rd Floor Conference Room, Phoenix Building	July 29, 2021
Subdivision Committee, Thursday, 8:30 a.m., via teleconference	August 5, 2021
Zoning Committee, Thursday, 1:30 p.m., via teleconference	August 5, 2021
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers, Government Center	August 12, 2021
Work Session, Thursday, 1:30 p.m., 3 rd Floor Conference Room, Phoenix Building	August 19, 2021

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Technical Committee, Wednesday, 8:30 a.m., via teleconference August 25, 2021
Zoning Items Public Hearing, Thursday, 1:30 p.m., 2nd Floor Council Chambers, Government Center **August 26, 2021**

- X. **ADJOURNMENT** - There being no further business, Chairman Owens declared the meeting adjourned at 2:13 p.m.

Larry Forester, Chair

Janice Meyer, Secretary

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