

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION AND ZONING ITEMS**

September 9, 2021

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

Planning Commission members present: Larry Forester, Chair; Ivy Barksdale, Headley Bell; Zach Davis; Anthony de Movellan; Jan Meyer; Robin Michler; Bruce Nicol; Frank Penn; and Judy Worth. Absent was Graham Pohl.

Planning Staff members present: Jim Duncan, Tom Martin, Hal Baillie, Cheryl Gallt, and Stephanie Cunningham. Other staff members present were Stephen Parker, Traffic Engineering; Vaughan Adkins, Division of Engineering; Captain Greg Lengal, Division of Fire & Emergency Services; Tim Queary, Urban Forester; and Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – Mr. Forester stated that the July 8, 2021, minutes were not available at this time, but he would entertain a motion for approval of the minutes of the August 12, 2021, meeting.

Action: A motion was made by Mr. Penn, seconded by Mr. de Movellan, and carried 10-0 (Pohl absent; Meyer and Worth abstained) to approve the minutes of the August 12, 2021, meeting.

III. **POSTPONEMENTS OR WITHDRAWALS**

- a. **PLN-MJDP-21-00039: LFUCG, MILLCREEK SUBDIVISION, UNIT 3 & JONESTOWN (10/31/21)*** - located at 1100 ARMSTRONG MILL RD., LEXINGTON, KY.
Council District 8
Project Contact: EA Partners, PLC

Note: The purpose of this amendment is to depict development of 96 multi-family dwelling units in 4 buildings, a clubhouse and associated off-street parking.

The Subdivision Committee Recommended: **Postponement**. There were questions regarding the timing and status of the CLOMR and compliance with Article 19 of the Zoning Ordinance.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of the treatment of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
12. United States Postal Service Office's approval of kiosk locations or easement.
13. Denote specific compliance with the Multi-Family Design Standards.
14. Discuss proposed improvements on adjacent parcel that is not a part of the development plan (1028 Armstrong Mill Road).
15. Discuss proposed dumpster location.
16. Discuss improvements to Armstrong Mill Road.
17. Discuss status and timing of CLOMR.
18. Discuss pedestrian access to the greenway from the apartments.
19. Discuss greenway trail location per certified Preliminary Development Plan.

Applicant Representation: Bruce Simpson, attorney, requested a one-month postponement of this item.

Action: A motion was made by Mr. de Movellan, seconded by Ms. Barksdale, and carried 10-0 to postpone **PLN-MJDP-21-00039: LFUCG, MILLCREEK SUBDIVISION, UNIT 3 & JONESTOWN** to the October 14, 2021, meeting.

- b. **PLN-MJDP-19-00061: STONEWALL SHOPPING CENTER (AMD)** – located at 3197 CLAYS MILL RD., LEXINGTON, KY.
Council District 9
Project Contact: Banks Engineering

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

Note: The Planning Commission approved this plan on November 14, 2019, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Addition of 2 foot contour elevations.

Note: The applicant now requests reapproval.

The Subdivision Committee Recommended: **Postponement**.

Staff Comment: Mr. Martin stated that the staff had received a request from the applicant to postpone this item for one month, in order to allow more time for negotiations with adjoining property owners.

Action: A motion was made by Mr. Penn, seconded by Mr. de Movellan, and carried 10-0 to postpone **PLN-MJDP-19-00061: STONEWALL SHOPPING CENTER (AMD)** to the October 14, 2021, meeting.

IV. LAND SUBDIVISION ITEMS – The Subdivision Committee met on Thursday, September 2, 2021, at 8:30 a.m. The meeting was attended by Commission members Ivy Barksdale, Headley Bell, 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; Tom Martin; Hal Baillie; Cheryl Gallt; Samantha Castro; 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 notes automatically apply to all plans listed on this docket (unless a waiver of any section is granted by the Planning Commission).

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

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.

Mr. Martin announced the following agenda items appearing on the consent agenda:

- a. **PLN-FRP-21-00036: ROSEMONT FARM, LLC (10/31/21)*** - located at 851 MUIR STATION RD. & 5222 PARIS PIKE, LEXINGTON, KY.
Council District 12
Project Contact: Darnell Engineering, Inc.

Note: The purpose of this plat is to survey and record a portion of the property in Fayette County.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
 2. Addressing Office's approval of street names and addresses.
 3. Urban Forester's approval of tree preservation plan.
 4. Addition of all LFUCG and Subdivision Regulations certifications, as appropriate.
- b. **PLN-MJDP-19-00052: KID'S HOUSE CHILD CARE CENTER (AHLULBAYT CENTER) (AMD)** – located at 1449 & 1452 BRYAN AVE., LEXINGTON, KY.
Council District 1
Project Contact: Kentucky R&A LLC

Note: The Planning Commission approved this plan on November 14, 2019, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.

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

3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Division of Waste Management's approval of refuse collection locations.
9. Complete note #13 referencing date of variance approval.
10. Complete Tree Preservation Plan (TPP) information required by Article 26-4(b) and (c) of the Zoning Ordinance.
11. Documentation of account with Lynn Imaging to meet Article 21-7(b)(3) of the Zoning Ordinance.
12. Recordation of consolidation plat prior to plan certification.
13. Denote zone-to-zone screening per note #16 on previous plan (ZDP 2014-18).
14. Denote proposed and existing easements on plan.
15. Denote tree protection area from the previous plan (ZDP 2014-18).
16. Correct floor area ratio and lot coverage in site statistics.
17. Resolve note #15 from the previous plan (ZDP 2014-18) regarding tree planting.
18. Resolve note #15 on this plan for additional screening for change of use.

Note: The applicant now requests reapproval.

The Subdivision Committee Recommended: **Reapproval**, subject to the original conditions as listed.

- c. PLN-MJDP-21-00041: MAPLELEAF SUBDIVISION, UNIT 1, LOT 4 (AMD) (10/31/21)* - located at 3151 MAPLELEAF DR., LEXINGTON, KY.
Council District 7
Project Contact: Thoroughbred Engineering

Note: The purpose of this amendment is to redevelop the property with 220 multi-family dwelling units, open space, and associated off-street parking.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of the treatment of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
12. United States Postal Service Office's approval of kiosk locations or easement.
13. Remove construction information, sanitary manhole, catch basin and miscellaneous notation.
14. Add total square footage of Buildings #1, #2, and #3 to site statistics.
15. Remove ± from building heights.
16. Remove extraneous information such as requirements from Zoning Ordinance.
17. Resolve Multi-Modal Accommodations as required by Article 12-8(h) of the Zoning Ordinance.
18. Resolve status of LOMR.
19. Resolve surplus parking and the need for a variance from the Board of Adjustments to Article 12-8(e).
20. Resolve activation of first floor of structures.

Mr. Martin indicated that the items listed on the Consent Agenda could be considered for conditional approval at this time by the Commission, as recommended unless there was a request for an item to be removed from consideration by a member of the Commission, or the audience, to allow an opportunity for its discussion. (A copy of the Consent Agenda is attached as an appendix to these minutes).

Audience members requesting full discussion: There were none.

Action: A motion was made by Mr. de Movellan, seconded by Mr. Bell, and carried 10-0 (Pohl absent) to approve the consent agenda as listed.

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

- 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.

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

1. DEVELOPMENT PLANS

- a. PLN-MJDP-20-00061: JAMES R. MASSENGILL PROPERTY (AMD) – located at 701 & 705 E. LOUDON AVE., LEXINGTON, KY.
Council District 1
Endris Engineering

Note: The Planning Commission approved this plan on October 8, 2020, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Resolve proposed garage encroachment into street light easement.
12. Clarify proposed use of garage and sales office.
13. Revise parking statistics to document compliance with requirements and remove reference to gas pump spaces.

Note: The applicant now requests a continued discussion to resolve issues with plan revisions requested by the Division of Traffic Engineering.

Staff Presentation: Mr. Martin directed the Commission's attention to the amended final development plan and briefly explained the proposed request.

Commission Questions: Mr. Penn asked if the existing convenience store and proposed car lot would be owned by the same entity; Mr. Martin answered affirmatively. He noted that the property is covered with one development plan, but the two lots are separate.

Applicant Presentation: Kevin Phillips, Endris Engineering, stated that the convenience store and car lot are not under the same ownership, but the owners are family members. He explained that the owner of the car dealership has another facility on New Circle Road, so cars would likely be circulated through both sites in order to increase visibility.

Mr. Phillips stated that, at some point in the review process, a request was made to add a note to the plan face, restricting the use of the convenience store lot. The applicant believed that request was basically an attempt to impose a conditional zoning restriction in a situation where that was not allowed. Such a restriction would prevent the convenience store parcel from being added to the car dealership, should the convenience store no longer be in business, without coming back to the Planning Commission for their approval. Mr. Phillips said that the applicant would prefer to draft the note using different language indicating that car sales would not expand to the convenience store lot as long as that use was present, including the provision that the car sales use could be expanded in the future.

Mr. Phillips stated that one of the Technical Review Committee comments made at the time of their consideration of this plan in October, 2020, would require a "refresh" of the pavement markings on the site. He noted that the applicant had completed that re-striping, and photos had been provided to the Planning staff and the Division of Traffic Engineering. Another request made at that time by the Division of Traffic Engineering asked for the reconstruction of the Contract Street access to the property, and the replacement of the sidewalks along Contract Street. Mr. Phillips noted that he saw very few areas of the sidewalk that needed repair.

Mr. Phillips displayed a rendering of the proposed buildings on the property, noting that, at the time of the approval of the plan in 2020, a garage was being requested at the rear of the retail structure. The applicant has since removed that feature, and is now requesting reapproval of the plan as presented, with the existing retail store and a small office for the car dealership. Mr. Phillips noted that the applicant was waiting on a ruling from the Division of Traffic Engineering regarding placement of the handicap parking spaces. He displayed several photographs of the sidewalk and driveway aprons, explaining that he had been unable to find any deficiencies that needed to be corrected, and asking Traffic Engineering to weigh in on the issue.

Commission Questions: Mr. Penn asked if the applicant had considered simply placing the number of cars that were allowed on the site, rather than attempting to maximize them. Mr. Phillips answered that there was a space allocated to display cars, but the applicant had not considered a specific number. Those display cars are not accessed, so they are not required to be aligned according to typical parking regulations. Mr. Penn said that he was concerned about enforcement issues. Mr. Phillips said that the applicant would not have an issue with stating a number of cars that could be displayed. He added that the Division of Traffic Engineering staff was concerned that the display cars might be placed not on the car dealership lot, which is long and narrow, but on the larger convenience store lot. He said that, at that point, it would be an illegal activity on that site, since display of cars is not permitted for a convenience store/fuel station. Mr. Phillips noted that the parking of cars on the convenience store lot should be self-regulating, since it would result in less available parking for store customers.

Citizen Comments: No citizens were present to comment on this item.

Traffic Engineering Comments: Mr. Parker stated, with regard to Mr. Penn's question, that the Division of Traffic Engineering requested defined parking spaces for display cars specifically to limit the number of cars that can be advertised for sale. He said that he was also concerned about an area to the rear of the lot that was depicted without a specific use, which could become blighted. When Traffic Engineering requested the addition of a plan note, it was not intended to act as a conditional zoning restriction, but a defined area on each lot that would indicate exactly where cars for sale would be placed.

With regard to the pavement markings, Mr. Parker said that, in 2019, following discussions with the Division of Police, the Division of Traffic Engineering created parking lot guidelines which provide clear, consistent rules that must be followed in parking areas. He said that the pavement markings that were installed in the parking area on the subject property were not consistent with those standards. Traffic Engineering is requesting that the pavement markings be brought up to standards.

Mr. Parker stated that Traffic Engineering staff had noticed some cracks and offsets in the sidewalks bordering the subject property, and a "hump" on the driveway apron slope adjacent to Contract Street. He explained that, although the apron appears to meet the standards, it actually does not, and it needs to be brought into compliance.

Applicant Rebuttal: Mr. Phillips said that his client was not responsible for the refresh to the pavement markings, which was done by the property owner. He said he was not aware of what elements of the markings needed to be replaced, but he could work with Mr. Parker to resolve the issue. He added that he could discuss the driveway apron as well.

Commission Question: Mr. de Movellan asked what points of disagreement remained between the applicant and Traffic Engineering staff. Mr. Phillips answered that there had been a breakdown in communications with Mr. Parker, noting that he had sent several emails with no response, and no comments had been updated in the Accela development tracking system. He said that the lack of communication was the applicant's reason for bringing the plan back before the Planning Commission.

Mr. Bell asked Mr. Parker to respond to Mr. Phillips' comments. Mr. Parker said that he was unaware of any attempts by Mr. Phillips to communicate, but he had received word that the applicant was not agreeable to a plan note. He said that he had received Mr. Phillips' photographs just prior to today's meeting. Mr. Parker explained that the plan note was the primary concern for the Division of Traffic Engineering, because staff wanted to ensure that cars for sale were not displayed on the convenience store lot. He said that he had requested paint markings for the handicap spaces.

Mr. Bell asked if the Commission should postpone this plan, in order to allow the parties to resolve their issues.

Mr. Martin stated that, from the Planning staff's perspective, Mr. Phillips and Mr. Parker are both responsible professionals, and staff was comfortable that they could craft a development plan note that would address the use and number of display cars on the property. He said that staff often drafted such notes. Mr. Martin added that the only remaining issues would be technical in nature with regard to materials and basic maintenance. He said that staff was satisfied with a recommendation of approval, with the addition of a note. Mr. Bell asked if the Commission should recommend postponement. Mr. Martin answered that staff was recommending approval.

Mr. Penn stated that "this is not the way we want to do things," noting that the Planning Commission members are not design professionals, and the applicant should be able to resolve issues with the staff. He said that, however, bringing the plan back for reapproval had created a record of what the Commission wanted to see on the subject property. Mr. Penn opined that the Commission should follow the staff's recommendation of approval.

Action: A motion was made by Mr. Bell, seconded by Mr. Davis, and carried 10-0 (Pohl absent) to approve **PLN-MJDP-20-00061: JAMES R. MASSENGILL PROPERTY (AMD)**, subject to the 13 conditions as listed, adding a new condition #14 to read: "Resolve uses between properties and number of cars for sale that can be placed on the property."

- b. **PLN-MJDP-21-00032: MICHLER, JENNINGS & SHELTON PROPERTY (AMD) (10/31/21)*** - located at 2891 RICHMOND RD., LEXINGTON, KY.
Council District 7
Project Contact: Land Design & Development, Inc.

Note: The purpose of this amendment is to redevelop the site with a multi-tenant building, reconfigure off-street parking, and relocate access to Tract 2.

The Subdivision Committee Recommended: **Postponement.** There were questions regarding missing tree inventory map and tree protection areas including potential significant trees per Article 26 of the Zoning Ordinance.

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of the treatment of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. United States Postal Service Office's approval of kiosk locations or easement.
12. Addition of tree species, size, and location on property per Article 26-4(c) of the Zoning Ordinance.
13. Addition of purpose of amendment.
14. Correct plan title.
15. Addition of record plat information.
16. Denote location of construction access.
17. Addition of street cross-sections and location on plan face.
18. Addition of height of buildings in feet.
19. Clarify required parking for proposed restaurant.
20. Addition of note #10 from previous plan referencing Richmond Road Ordinance (DP 97-150).
21. Addition of notes #13, 14, 15, 16, 17 from previous plan.
22. Addition of site statistics for the other uses on the entire development plan.
23. Correct title for "project data" to "site statistics."
24. Depict all easements with width dimensions.
25. Remove miscellaneous information under "legend."
26. Addition of purpose of amendment.
27. Depict location of order point for restaurant.
28. Addition of vehicular use screening at rear of Lot 1.
29. Discuss reciprocal parking and access.

Staff Presentation: Ms. Gallt directed the Commission's attention to the amended final development plan and briefly explained the proposed request. She explained that staff continues to have concerns about the proposed access near the Lowe's property, which staff does not believe would be functional as depicted on the plan. Staff is also concerned about tree protection and the petitioner's failure to provide a tree inventory map at the time of filing of the plan.

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

Mr. Martin reiterated that Planning and Traffic Engineering staff do not believe that the proposed access would be functional. Traffic Engineering staff would be willing to discuss potential access alternatives with the applicant.

With regard to the staff's concerns about tree protection, Mr. Martin stated that the applicant had recently submitted the required tree inventory map, which depicts a heavily treed site. He noted that the applicant's initial failure to submit the tree inventory map had resulted in delayed discussions about possible alternatives to removal of the trees. There are several large trees on the property, with one particularly significant pin oak that is approximately 52-55 inches in diameter.

Mr. Martin stated that Article 26 of the Zoning Ordinance identifies standards for protection of trees, including those larger than 36 inches in diameter, as well as particular species. He explained that the applicant had submitted a letter to Tim Queary, Urban Forester, outlining their contention that the proposed plan does meet the requirements of Article 26. The applicant highlighted portions of the Ordinance that referred to their ability to replace tree canopy lost by the initial removal of trees, as well as the Ordinance's reference to maintaining trees as far as it was "reasonable and practical."

Mr. Martin stated that the applicant did not highlight the following, from Article 26-4(d):

"The basis for review of a tree protection plan shall be the design of a development so as to protect and preserve the greatest number of trees as is reasonable and practical. Individual trees should be removed only as necessary to carry out permitted development under the approved zoning of the site and/or to achieve the Objectives of the Comprehensive Plan, such as to provide continuity in the design of collector streets, stormwater facilities, or familiar infrastructure elements; and provided that the design of the development has maximized the preservation of tree stands and significant trees."

Mr. Martin said that the large pin oak on the subject property clearly fits the Zoning Ordinance definition of a significant tree, by both size and species. He noted that, although the applicant contends that tree protection standards are vague and broad, staff does not agree. Article 26 allows the Planning staff and Urban Forester to evaluate plans and address issues, while maintaining as many trees as are practical and reasonable. Mr. Martin said that there are no infrastructure conflicts on the property that should affect tree preservation; the issue is the applicant's contention that they must remove the majority of the trees on the site in order to meet the lease requirements of a specific end user. The applicant filed the proposed plan and has been unwilling to discuss any other options with the staff.

Mr. Martin said that, while the staff appreciates that the applicant has a user for the property who has signed a lease, that point is not relevant to the staff's consideration of the tree preservation regulations for the property. He noted that, had the applicant filed the required tree inventory map on time, staff would have been able to review it and offer suggestions earlier in the process. Staff also recommends that users filing major development plans consider meeting with the staff to address issues prior to the filing deadline. Mr. Martin said that, in this case, the applicant had some informal conversations, but no official meeting to address issues actually took place. The staff believes that it is important that they have the opportunity to meet with the applicant and discuss alternative designs for the property that could retain the significant trees.

Mr. Martin stated that the applicant contends that a pin oak is a common species, and is not recommended as a street tree, for a variety of reasons. He said that this pin oak, which could be up to 100 years old according to arborists, would not be a street tree, based on its location in the center of the property. Mr. Martin emphasized that the function of a tree of this size and its importance to the environment could not be overstated. He noted that sometimes there are practical and reasonable reasons for the removal of large trees, but the staff does not believe that this is one of those situations.

Mr. Martin said that the applicant had expressed concerns about visibility for the proposed tenant on the site; the staff suggested some alternatives for the placement of the building, but the applicant found them unacceptable based on their desire for a double drive-thru on the site.

Mr. Martin stated that the staff contends that there are other ways to develop this site, and they are recommending postponement in order to provide the opportunity to discuss them with the applicant.

Commission Questions: Mr. Nicol stated that he had done some quick calculations, and it appeared that the land occupied by the tree could amount to \$1.7 million. He asked if the staff could provide a viable alternative that would provide the same building square footage, along with space for a double drive-thru, parking and visible signage. Mr. Martin answered that the staff believes that they can help the applicant find such an alternative.

Applicant Presentation: Branden Gross, attorney, stated that the applicant contends that they did meet with Mr. Martin and Ms. Gallt several times prior to the filing of this plan in order to discuss the trees on the site. He said that, since the Technical Committee meeting, the applicant had spoken several times with the Urban Forester, as well as staff from the Divisions of Engineering and Traffic Engineering, but sometimes "applicants don't know who to talk to."

Mr. Gross displayed several photographs of the subject property, noting that the proposed user is not speculative; a lease arrangement has been made, and the current configuration of the plan is the result of the user's needs for the site. He stated that current tree canopy on the site is 29%, and, even with removal of the pin oak, the applicant is proposing a 30% total canopy, in excess of the 20% requirement for the B-3 zone.

With regard to the letter he submitted to the Planning Commission, Mr. Gross opined that Mr. Martin had "put a good staff spin on the facts." The applicant contends that Article 26 does not set forth any specific requirements for trees, outside of the 20% canopy requirement for the B-3 zone, and references to certain varieties as significant. Mr. Gross said that the pin oak on the subject property is not a significant species, and, according to the arborist hired by the applicant, the tree is in its maturity cycle and "every day it is dying a natural death." The applicant is concerned that, as the tree ages, it could become more hazardous due to falling limbs. Mr. Gross said that the applicant also believes that preserving the tree would result in a loss of 1/3 of the buildable area of the site. The tenant has studied the property, and has found that pushing the building to the front of the property would eliminate the double drive-thru lanes, which are necessary for the tenant; flipping the building on its axis would limit visibility of the rear lot. Mr. Gross stated that the petitioner contends that there is no way to save the pin oak tree and make their development work.

Justin Phelps, Hogan Real Estate, stated that his company had developed many sites over the last 35 years. They found that, in working around trees, the root systems tend to deteriorate over time. Mr. Hogan said that the applicant is concerned about the tree potentially becoming a safety hazard. He added that the tenant for the site would be a "high-quality, quick service restaurant" which insists that it needs the proposed site design in order to be viable.

Commission Questions: Mr. Nicol said that he agreed that the tree could limit the development of the property, given the small acreage. He asked Mr. Phelps to "put a dollar value" on the tree. Mr. Phelps opined that Mr. Nicol's earlier financial assessment was correct. He said that the existing building was "blighted" and 90% vacant, and the applicant is proposing to clean up the site.

Mr. Nicol asked if it was the applicant's contention that they could not practically develop around the tree, with which Mr. Phelps agreed. Mr. Nicol opined that it would not be financially reasonable to expect the applicant to preserve the tree.

Mr. Gross added that the proposed tenant for the site is not Starbucks, so it would not impact traffic in the area like a Starbucks would. He agreed with Mr. Phelps's assessment that moving the building on the site could reduce the viability of Tract 2.

Mr. Michler stated that the tree is only located in the middle of the lot because of the applicant's intent to subdivide. With regard to Mr. Phelps's comments, he said that the applicant is attempting to accommodate a national chain and, in the process, there was no consideration of tree protection. Mr. Michler opined that the fact that the tree was old did not mean it was dying. He said that it appeared that the applicant's only concern was whether a template design from a national chain could be implemented without removing the tree. He asked if the applicant purposefully submitted the plan without a tree inventory map. Mr. Gross answered that the applicant's engineer was from Louisville, and was unaware that a tree inventory map was necessary. He added that he did not agree with Mr. Michler's assessment that this was a national tenant design, but rather a Highway Service Business (B-3) zone design. He noted that the development on the other side of Richmond Road was typical of B-3 uses, and the proposed design would fit well with that.

Mr. Gross said, with regard to the staff's concerns about access to the property, that the applicant had moved the access points to accommodate the Divisions of Traffic Engineering and Waste Management. He stated that service roads were built so that businesses could have access to arterials while still relieving pressure along the arterial roadway itself. He read the following from the Zoning Ordinance:

"In a given block, one or no access points are provided directly to the higher classification, but multiple access points are provided onto the adjacent properties."

Mr. Gross stated that the applicant had discussed several items with Mr. Parker, including the possibility of a right-in/right-out access point onto the service road, and the possibility of two full accesses. He said that the applicant had not been able to reach an agreement with Traffic Engineering staff, so they were presenting the plan to the Planning Commission for their decision. Mr. Gross displayed several photographs of drive-thru restaurants with access to major arterials, some of which would produce significantly more traffic than the subject property. He said that the applicant understood the concerns of Traffic Engineering staff, but they did not believe that the proposed restaurant would significantly impact traffic in the vicinity of the property.

Commission Questions: Mr. Davis stated that he was having a hard time with the access examples Mr. Gross presented, noting that he drives past the subject property every morning, and the nearby Starbucks causes traffic to back up onto the service road. He said that, rather than convincing him, Mr. Gross's examples had increased his concerns about the proposed development. Mr. Gross responded that the Starbucks traffic was closer to the Old Todds Road intersection, so it should not impact the subject property. Mr. Davis stated that the traffic from Starbucks backs up toward the subject property, and he was concerned that allowing a right-in/right-out access for a busy coffeehouse would make it more dangerous. He noted that he was very disappointed in several elements of this plan.

Mr. Gross said that the applicant contends that the proposed access would not add traffic to the area during the morning rush hour. Mr. Davis disagreed, noting that the adjacent Krispy Kreme store would also add to the confusion, and he did not believe it was a good idea. Mr. Phelps said that the proposed tenant is not technically a coffeehouse, but they do serve coffee. He explained that, with a double drive-thru, it would take a great deal of traffic to stack onto the service road. The user has recently increased business in mobile ordering, which would also help to reduce traffic stacking.

Mr. Nicol asked if the proposed drive-thru meets the stacking requirements of the Zoning Ordinance. Mr. Gross answered that the plan as proposed does substantially meet the requirements for drive-thru stacking. He noted that the proposed user would likely never fill the drive-thru space on the property, let alone stack cars onto the service road.

Mr. Bell asked if drivers leaving the right-in/right-out would make a U-turn within the Lowe's parking lot. Mr. Gross answered that those leaving the property would do so by making a right turn into the Lowe's property, where they could then access Old Todds Road.

Mr. Gross noted that the drive-thru lanes provide ten stacking spaces.

Citizen Comments: Greg Doyle, member of the Tree Board, stated that the pin oak tree on the subject property was determined to be healthy by local arborist Dave Leonard, who does not believe that the tree is dying. He said that Mr. Leonard measured the tree to be over 55 inches in diameter, and over 90 feet in height. Mr. Doyle stated that the Tree Board would request that the Planning Commission consider postponing this plan, in order to allow the applicant to meet with the staff to discuss alternative designs. He noted that the tree is the largest in that section of Richmond Road, and it can help to mitigate the heat island effect in an area with few other trees. Mr. Doyle stated that the beneficial effects of one large, healthy tree could not be equally replaced with many smaller trees.

Applicant Rebuttal: Mr. Gross stated that the only evidence that had been entered into the record with regard to the health of the tree was from the applicant's arborist, who indicated a belief that the tree is dying.

Staff Rebuttal: Mr. Martin stated that the staff might have incorrectly remembered discussions with the applicant, but they were correct in their knowledge that this plan, as filed, did meet the requirements of Articles 21 and 26. He said, with regard to Mr. Nicol's comments, that "economics always wins versus trees," since the beneficial effects of trees on stormwater, air quality, and aesthetics, can be difficult to measure. Mr. Martin noted that LFUCG developed tree protection regulations so that trees would not have to lose that battle with economics.

Mr. Martin said that significant trees are listed in Article 26, not only by size, but by species, and pin oaks are included in that list. The large size of the pin oak on the subject property also qualifies it as significant.

With regard to Mr. Gross's comments about the existing building on the subject property, Mr. Martin agreed that the structure is older and the use has been declining. He explained that a traffic impact study was not required for this development, because it was not a zone change. The staff believes, however, that the proposed restaurant could have met the traffic threshold necessary to require a traffic impact study, because of the drive-thru.

Mr. Martin said that, in each of the access examples provided by Mr. Gross, staff worked with the applicant throughout the process to make the access better. He noted that access was a problem on each of those sites, largely due to the desire for corporate designers to impose their own typical designs on the properties. Mr. Martin stated that the Division of Traffic Engineering has valid concerns about the function of the proposed right-in/right-out access on the subject property. He noted that, although a restaurant with a drive-thru is an allowable use in the B-3 zone, it does not negate the staff's concerns about traffic and access.

Mr. Martin emphasized the staff's concerns about retaining the significant pin oak tree, noting that the staff was seeking an opportunity to work with the applicant on a better design for the property.

Commission Discussion: Mr. Nicol asked if the pin oak is considered a significant tree. Mr. Martin answered that it meets the definition of "significant tree" as set out in the Zoning Ordinance: it is greater than 36" in diameter, and the oak species is included on the significant species list. Mr. Nicol said that he appreciated that the Planning staff wants to preserve significant trees, but he does not believe it is practical for this site.

Mr. Penn said that he was concerned about this process, because much of the discussion that had taken place centered on issues that could and should have been resolved between the staff and the applicant following the Subdivision Committee meeting. He said that it is not the Planning Commission's purview to consider the economics of a project, or design sites on the fly; it is their responsibility to consider the requirements of the regulations, and determine whether a plan is in line with those requirements. Mr. Penn noted that there seemed to be a trend of applicants not getting the recommendation they wanted from the staff and the Subdivision Committee, and letting the Planning Commission make the decision on issues that should never reach them.

Mr. Davis said that he was in complete agreement with Mr. Penn, noting that he was “very surprised and very disappointed in the presentation” at this meeting. He opined that a plan with so many unresolved issues had made it this far in the process, and that the result was a waste of an hour of people’s time.

Mr. Michler stated that a lack of preparation or knowledge by an unfamiliar engineering firm did not seem like a sufficient reason for the Planning Commission to vote against the staff’s recommendation of postponement.

Motion: A motion was made by Mr. Bell, seconded by Mr. Davis, to postpone **PLN-MJDP-21-00032: MICHLER, JENNINGS & SHELTON PROPERTY (AMD)** to the October 14, 2021, Planning Commission meeting.

Discussion of Motion: Ms. Meyer asked if the staff and the applicant would be able to reach an agreement prior to that meeting. Mr. Martin answered that the staff was willing to meet with the applicant, but, until those meetings took place, he was unsure what the outcome would be.

Action: Mr. Bell’s motion carried, 10-0 (Pohl absent).

- C. PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Mr. Penn, seconded by Ms. Meyer, and carried 10-0 (Worth abstained; Pohl absent) to approve the release and call of bonds as detailed in the memorandum dated September 9, 2021, from Matt Hughes, Division of Engineering.

- V. ZONING ITEMS** - The Zoning Committee met on Thursday, September 2, 2021, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members: Zach Davis, Larry Forester, Robin Michler, and Bruce Nicol. Staff members in attendance were: Tom Martin, Hal Baillie, Sam Castro, and Debbie Woods. Other staff members in attendance were Stephen Parker, Division of Traffic Engineering, and Tracy Jones, Department of Law. The Committee members reviewed application and made recommendations as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS

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

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

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

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

The procedure for these hearings is as follows:

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

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

1. PLN-MAR-21-00012: ANDERSON COMMUNITIES, LLC, ZONING MAP AMENDMENT

- a. PLN-MAR-21-00012: ANDERSON COMMUNITIES, LLC (10/31/21)* – an amendment to the Montclair Neighborhood ND-1 Overlay for the property located at 633 Montclair Drive to increase the maximum building dimension of the principal structure from the front building place from 55 feet to 69 feet. The applicant also requested a dimensional variance to the side yard setback, reducing the requirement from eight (8) feet to four (4) feet.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2018 Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community’s resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. 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.

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

The applicant is requesting that one of the existing Neighborhood Design Character Overlay (ND-1) zone standards (conditional zoning restrictions) be modified for the subject property in order to allow the reduction of the rear yard building setback for the property located at 633 Montclair Drive. The proposed modification would increase the maximum building dimension from the front building plan from fifty-five (55) to sixty-nine (69) feet.

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

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

1. The requested modification of the Neighborhood Design Character (ND-1) overlay zone Design Standard #10 for this parcel will not adversely affect the public health, safety or welfare, nor will it alter the character of the neighborhood. The proposed addition is similar in character, height, and massing to other principle structures along Scoville Road. Construction of the new structure at this location will allow for the continuity of appearance in the neighborhood and will not negatively affect the character of the neighborhood.
2. The special circumstances related to this application is the tapering lot and the setback along the side street side yard along Montclair Drive. Strict adherence to the design standard would be an unfair burden and unnecessary hardship for the applicant.
3. Modifying the design standard by fourteen (14) feet will not prevent successfully achieving the Montclair neighborhood's general intent and preservation goals.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restriction is proposed to be modified for the subject property via conditional zoning as follows:
 10. Rear Yard Building Setbacks
 - a. Maximum building dimension of the principal structure from the front building plane is 65 feet (excludes allowable projections per Article 15-5 of the Zoning Ordinance).

Modification of the rear yard setback for the subject property is appropriate given the existing character of the immediate vicinity.

- b. VARIANCE REQUEST – A variance to reduce the minimum required side yard from eight (8) feet to four (4) feet, a requirement of Article 8-7(i) of the Zoning Ordinance.

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

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

- a. The applicant has not submitted sufficient information regarding the need for the variance request. For this reason the staff cannot support the request at this time. The applicant must address how the minimum side yard setback can be met on the site or why, in this case, it could not be met.

Staff Zoning Presentation: Mr. Baillie presented the staff report and recommendations for the ND-1 overlay zone modification application. He displayed photographs of the subject property and aerial photographs of the general area, noting that the Montclair ND-1 overlay zone was originally established in 2010 and amended in 2011.

Mr. Baillie stated that the Montclair ND-1 design standards focused on building materials, rooflines, landscaping requirements, window and door openings, front building features, garages and accessory structures. He explained that the applicant is seeking to orient the front of the building on the subject property toward Scoville Road, which has a variable setback from the frontage of 35 feet to 45 feet. Along this section, there is a platted building line of 40 feet, which the applicant meets with the proposed development. The design standards require a rear yard building setback of the principal structure from the front building plane of 55 feet, excluding allowable projections. Mr. Baillie noted that the applicant's proposal for off-street parking would meet the design guidelines.

Mr. Baillie stated that there was no development plan in conjunction with this request, since it affects a single property. He displayed a site plan for the property, explaining that the applicant proposes to expand the rear of the structure fourteen (14) feet beyond the 55-foot design standards. That existing structure does not meet the ND-1 design standards, as it is 72 feet in length, which extends beyond what is currently allowed. The rear yard is also non-conforming to the Zoning Ordinance requirements for the R-1C zone, which require a rear yard setback of ten (10) feet; the current rear yard setback on the subject property is approximately eight (8) feet.

Mr. Baillie stated that, after reviewing the applicant's justification, staff was able to find that the proposed structure would meet most of the requirements of the design standards and the Zoning Ordinance. The applicant is also seeking to construct a structure that would be in character with the rest of the neighborhood. Mr. Baillie said that, for these reasons and those listed in the staff report and on the agenda, staff was recommending approval of this request.

Commission Questions: Mr. Michler asked if Mr. Baillie had intended to refer to the width of the existing house as 72 feet, rather than the length, because that side of the house faces Montclair Drive. Mr. Baillie answered that the width of the house on the plan facing Montclair Drive was 72 feet. Mr. Michler asked if the existing house met the design guidelines, to which Mr. Baillie responded that it did not. Mr. Baillie added that the house also does not meet the Zoning Ordinance requirements for the rear yard setback. Mr. Michler asked if the staff had considered that the appearance of the front of a house was different from the side of a house with regard to what is visible to the neighborhood. Mr. Baillie responded that,

for that reason, fenestration and door placement will be very important on both the Montclair Drive and Scoville Drive frontages.

Mr. Michler noted that, for many of the new houses in the new neighborhood, the fenestration on the front and sides are very different. He asked if the staff was recommending that the new house meet the fenestration for the front of a structure along Montclair Drive. Mr. Baillie answered that the staff had not made that recommendation, but noted that the Planning Commission could require fenestration as percentages of the entire wall plane along either one of the frontages. Mr. Michler asked if staff had considered how much square footage could be permitted under strict interpretation of the Zoning Ordinance. Mr. Baillie said that, with the variance request and the staff's recommended restriction, it would limit the applicant's ability to maximize the square footage on the second floor of the building. He explained that staff is recommending that the applicant go no higher than one and a half stories in height for the second floor, which would reduce the square footage in order to create a step-down in intensity from Scoville Drive to Montclair Drive. He added that, if the applicant were to match the square footage of the first and second floors, without the rear portion of the property, it would be approximately 3,600 square feet.

Mr. Michler said that, in walking the neighborhood, he made note of some of the lots, many of which are tapered. He said that the applicant used a recent project in the neighborhood as a precedent in their justification of this request, opining that the precedent could be a cause for concern among the existing residents. Mr. Michler asked what figures staff considered in determining that it would be onerous or not economically feasible to limit the house size. Mr. Baillie answered that staff does not consider economic valuation of any structure, or advise how to sell a property. Mr. Michler asked how the staff determined the usability of the house. Mr. Baillie responded that the applicant had indicated in their justification that the foundation of the house had shifted, making it uninhabitable. He added that applicant opined that the cost to rehabilitate the foundation and the structure would not be economically viable, and it would be more viable to tear down the structure, regardless of the Planning Commission's decision. The staff reviews the information provided by the applicant and evaluates it against the existing design standards to determine the appropriateness of the requested change.

Mr. Michler noted that the gutters and downspouts point directly to the foundation of the existing house, and he asked what responsibility the applicant holds with regard to maintenance of the property, as it relates to their request for a change to the design standards. Mr. Baillie answered that gutter systems were not required in Kentucky by code until approximately 20 years ago. Since the existing house was constructed in 1947, it likely did not originally have gutters, and those were probably added more recently. Mr. Michler asked if staff agreed that, because of the condition of the existing house, a building that is 29 feet in width and approximately 3,000+ square feet would be too small to be usable. Mr. Baillie answered that the staff reviews the information that is provided, but they cannot make a determination as to whether the house size is usable or appropriate. The staff drafts their report based on the points set out in the applicant's justification. Mr. Baillie explained that, in this case, staff believed that the applicant's justification substantially met the intent of the ND-1 overlay zone, with the rear extension being limited to one small portion of the site, as well as the established width of the structure, which is larger than what is being proposed. Mr. Michler asked what the fenestration requirements would normally be for the front plane of a house versus the side. Mr. Baillie answered that a minimum of 10% of the wall plane on each elevation must be windows, doors, or vented openings, except along walls that require fire ratings. He noted that, in this case, the applicant will be precluded from having windows on the northern wall, which requires a fire rating. Mr. Michler explained that he was concerned about the building frontage on Montclair Drive. Mr. Baillie responded that the building plane along Montclair Drive would require a minimum of 10% fenestration, but the Planning Commission could increase that minimum by citing a specific finding or reasoning.

Variance Presentation: Mr. Baillie presented the variance request associated with this application. He explained that the applicant is seeking a dimensional variance for the side yard setback from eight (8) feet to four (4) feet within the R-1C zone. Staff's major concern when reviewing the variance request was the ability to average the side yard, and how it would apply on the site. Mr. Baillie stated that the calculations for this site resulted in a six (6) foot averaged area.

Mr. Baillie said that the applicant's supplemental justification discussed further their need for the variance on the subject property, which was requested primarily in order for the new structure to match the dimensions of the front building wall planes on some of the other properties along Scoville Road. He explained that staff reviewed the lots along Scoville Road, and found that many of the tapering sites that are on side street side yards actually taper wider toward the back of the lot; or, the properties front onto a roadway and taper to the side. Many of the smaller tapered properties do not meet the current Zoning Ordinance requirements for a lot in the R-1C zone.

Mr. Baillie explained that, since the requested variance would affect the distance between the subject site and the adjoining property, the staff was concerned. However, staff believes that the applicant is meeting some of the other elements along Scoville Road, including the front building plane. Mr. Baillie said that the staff is recommending approval of the requested variance, for the reasons as listed in the staff report and on the agenda. With regard to the staff's recommendation to limit the height of the new structure to one and a half stories, he explained that a two-story structure allows for the upstairs area to equal or exceed the square footage of the first floor, while a 1.5-story limits the square footage of the second story, but allows for the maximization of space through dormers.

Commission Questions: Mr. Michler asked if the applicant was in agreement with the staff's recommendations. Mr. Baillie responded that the applicant's representative could elaborate further, but he did believe they were in agreement with the restriction.

Applicant Presentation: Jon Strom, attorney, stated that the existing structure on the subject property is non-conforming and out of character with the other homes along Montclair Drive, noting that the home is 72 feet wide but has only an eight-foot rear yard. It shares few architectural features with the surrounding neighborhood, and it could not be built to those specifications today under the Montclair ND-1 design standards. Mr. Strom noted that the structure was originally purchased from a Sears Roebuck catalog.

Mr. Strom said that the home recently suffered some foundation damage, which left the owner to decide whether it would be better to repair a non-conforming structure, or build a new home that would be more in keeping with the character of the neighborhood. He said that the builder of the proposed home has constructed several other homes in the Montclair neighborhood, and is aware of the importance of maintaining the appropriate character and context.

Mr. Strom stated that the subject property has several unique features that make the construction of a modern, "livable" home difficult: the lot tapers from 59 feet to 46.5 feet; it is a corner lot, which requires setbacks on both road frontages; and it is located within an ND-1 overlay zone with specific design standards. He said that the builder and architect have attempted to follow the ND-1 guidelines as closely as possible, while maintaining the character of the neighborhood. In order to accommodate more modern room sizes, the proposed structure has been "flipped" to present its front plane to Scoville Road, rather than Montclair Drive. The longest edge of the home has also been moved away from the nearest neighboring property owner. With regard to the requested variance, Mr. Strom explained that the profile of the home would be 52 feet, rather than 69 feet, and would then open into the porch area. He noted that, in order to provide normal-sized rooms on a tapering lot, some changes had to be made to the dimensions.

Mr. Strom said that the designer and prospective home buyer originally proposed to build a two-story house on the property, in order to maximize the building space. They have since discovered, however, that a 1.5-story house would be a better fit for the lot and the neighborhood.

Mr. Strom thanked Mr. Baillie and the Planning staff for their assistance with this request. He stated that the applicant is in complete agreement with the staff's recommendations, and he requested approval.

Commission Questions: Mr. Nicol asked if the house is currently vacant. Mr. Strom answered that it is currently vacant due to the foundation problems, adding that there is a prospective buyer for the property who is ready to build a new home there.

Mr. Michler stated that Mr. Strom's diagram had addressed one of his concerns about the proposed structure, with sufficient fenestration on both street frontages.

Citizen Comments: Dean Baskin, 1278 Scoville Road, stated that his home is located directly behind the subject property. He said that he understands the issues that have left the home uninhabitable, but he is concerned that a larger, 1.5-story house, located 5.5 feet closer to his property line, could significantly impact his view. He is also concerned about the possible removal of several large trees. Mr. Baskin opined that it might be more appropriate to move the new structure closer to the street, or construct the driveway between his residence and the subject property to act as a buffer. He said that he is not in favor of the proposed ND-1 change and he does not believe that it will create a good result.

Charles Yellmans, 809 Cooper Drive, stated that it was incorrect to say that the house on the subject property is out of character for the neighborhood; rather, there are several Gunnison pre-fabricated houses located throughout Montclair and the Cooper Drive area. Many residents believe that those houses contribute to the architectural character of the neighborhood.

Mr. Yellmans said that the home had been used as a rental property for 20 years, and had been allowed to deteriorate over that time. He said that he does not believe that the proposed design is appropriate, despite the assertions of staff and the applicant that the style is in keeping with other new residences in the area, because those new residences themselves are not characteristic of the existing neighborhood. Mr. Yellmans noted that two of the new residences did not initially meet the ND-1 standards, and only made changes based on complaints by neighbors. He said that the neighborhood association fears that the construction process of the new home on the subject property will also "require constant attention to see that it conforms to the ND-1 standards."

Applicant Rebuttal: Mr. Strom noted that the builder had met with Mr. Baskin, and had agreed to limit the house to 1.5 stories in height to help address his concerns. He said that the applicant understands Mr. Yellmans' concerns, but they contend that the existing structure is not characteristic of the Montclair neighborhood, and the proposed new home will be more in keeping with the intent of the ND-1 overlay zone design standards.

Staff Rebuttal: The staff had no rebuttal comments.

Commission Questions: Mr. Michler stated that it appeared that the newer version of the elevations displayed by the applicant included a larger footprint for the house compared to the original application. Joey Svec, Building the Bluegrass, responded that the site plan submitted at the time of filing included an attempt to taper both sides of the home to match the lot, with a width of 33 feet. They found, however, that it was too difficult to work with the room sizes, and they enlarged

it by just over a foot to 34 feet, eight inches. Mr. Svec explained that the tapered design also impacted the averaging that was necessary for the side yard, in addition to make the rooms more usable and the home more sellable.

Ms. Worth asked if the Montclair Neighborhood Association had taken an official position on this request. Mr. Yellmans answered that he was a member of the board, but not speaking on behalf of the board. He said that the neighborhood association had elected not to take an official position on this request.

Mr. de Movellan stated that he was not in favor of averaging the eight-foot side yard. He asked if Mr. Baskin, whose property would be the most impacted by the new structure, would be able to similarly develop his property nearer to his rear property line. Mr. Baillie answered that Mr. Baskin would still be required to meet the ND-1 design standards, but he should have some flexibility to build if he so chose. With regard to moving the building closer to Montclair Drive, he explained that the platted building line gives more flexibility than what is allowed by the R-1C zone. Since the building line is platted, the property owner would need to re-plat the property in order to change the location of the property line, and it would be difficult to justify under the current Land Subdivision Regulations.

Zone Change Action: A motion was made by Mr. Penn, seconded by Mr. Nicol, and carried 10-0 (Pohl absent) to approve **PLN-MAR-21-00012: ANDERSON COMMUNITIES, LLC**, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Penn, seconded by Mr. Bell, and carried 8-2 (de Movellan and Michler opposed; Pohl absent) to approve the requested dimensional variance, for the reasons provided by staff.

Note: Mr. Forester left the meeting at this time, and Mr. Penn assumed the role of Chair.

VI. COMMISSION ITEMS

- A. **AMENDMENT TO ADOPTED MEETING & FILING SCHEDULE** – Staff will request that the Planning Commission cancel the November 18, 2021 Zoning Items Public Hearing, and convert the November 11, 2021 Subdivision and Development Items Public Meeting to a Public Hearing to include Zoning Items. The Urban County Council has revised their meeting schedule and will be meeting on November 18, 2021 in the Council Chambers. All applications that would normally be heard on November 18th, will be heard by the Planning Commission one week earlier. All notice requirements and deadlines to meet the revised public hearing date will be communicated to applicants.

Staff Comments: Mr. Duncan stated that the Council had moved their work session for the week of November 15th to Thursday the 18th at 1:30 p.m., with a Council of the Whole meeting to follow at 4:30. Since that would eliminate the ability to televise the meeting, staff is suggesting combining the two November meetings.

Action: A motion was made by Mr. de Movellan, seconded by Ms. Barksdale, and carried 9-0 (Forester and Pohl absent) to cancel the November 18, 2021, Zoning Items Public Hearing and convert the November 11, 2021, Subdivision and Development Items Public Meeting to a Public Hearing to include Zoning Items.

- VII. **STAFF ITEMS** – Mr. Martin noted that the staff had distributed to the Planning Commission a 50% Infrastructure Report on the Denton Farms, as required by the Land Subdivision Regulations.

- 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. **NEXT MEETING DATES**

Work Session , Thursday, 1:30 p.m., Phoenix Building, 3 rd Floor Conference Room	September 16, 2021
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	September 23, 2021
Technical Committee, Wednesday, 8:30 a.m., Phoenix Building, 3 rd Floor Conference Room	September 29, 2021
Subdivision Committee, Thursday, 8:30 a.m., Phoenix Building, 3 rd Floor Conference Room	October 7, 2021
Zoning Committee, Thursday, 1:30 p.m., Phoenix Building, 3 rd Floor Conference Room	October 7, 2021
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	October 14, 2021

- X. **ADJOURNMENT** – There being no further business, Mr. Penn declared the meeting adjourned at 4:44 p.m.

Larry Forester, Chair

Carolyn Plumlee, Secretary

10/13/2021

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