

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

November 11, 2021

- I. **CALL TO ORDER** - The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Ivy Barksdale (arrived at 1:40 p.m.); Zach Davis; Anthony de Movellan; Larry Forester, Chair; Janice Meyer; Bruce Nicol; Graham Pohl (arrived at 1:35 p.m.); and Judy Worth. Absent were Headley Bell, Robin Michler, and Frank Penn.

Planning Staff members present: Jim Duncan, Traci Wade, Tom Martin, Hal Baillie, Cheryl Gallt, and Stephanie Cunningham. Other staff members present were: Stephen Parker, Traffic Engineering; Vaughan Adkins, Division of Engineering; Embry Beatty, Division of Fire & Emergency Services; and Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – None at this time.

- 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) (12/30/21)* - 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.
- b. PLN-MJDP-18-00088: BRYAN PROPERTY, LOT 2 (AMD) (12/30/21)* - located at 1800 BRYANT ROAD, LEXINGTON, KY
Project Contact: Vision Engineering

The Subdivision Committee Recommended: **Postponement**. There are concerns with Bryant Road.

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.

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

4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Modify parking lot to meet zone to zone and vehicle use area screening requirements in Article 18.

Applicant Representation: Bruce Simpson, representing the petitioner, said that they would like to withdraw this zone change and the associated preliminary development plan.

Action: A motion was made by Mr. de Movellan, seconded by Ms. Meyer, and carried 7-0 (Barksdale, Bell, Michler, and Penn absent) to withdraw PLN-MAR-18-00023: LATA, LLC (AMD) and PLN-MJDP-18-00088: BRYAN PROPERTY, LOT 2 (AMD).

2. PLN-MJDP-21-00050: RAMSEY/SULLIVAN PROPERTY, LOT 4 (AMD) (12/06/20)* - located at 2671 KEARNEY RIDGE BLVD., LEXINGTON, KY.
Council District 12
Project Contact: EA Partners, PLC

Note: The purpose of this amendment is to depict revised buildings and parking layout. The Planning Commission postponed this application at their and October 14, 2021, meeting.

The Subdivision Committee Recommended: **Postponement.** There were questions regarding the missing tree information per Article 26 of the Zoning Ordinance, lack of public street access to the proposed development, and fire safety requirements per the National Fire Code.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping 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. United States Postal Service Office's approval of kiosk locations or easement.
12. Addition of record plat designation M-824.
13. Addition of street cross-section with median.
14. Dimension sidewalks.
15. Correct reference location to Article 3-7 of the Zoning Ordinance.
16. Addition of any proposed or existing easements.
17. Clarify exact location of cemetery and document compliance with state requirements for disinterment and relocation prior to certification.
18. Denote property located in Royal Springs Aquifer Recharge Area.
19. Discuss tree protection plan and compliance with Article 26 of the Zoning Ordinance.
20. Discuss need for secondary entrance per the approved Preliminary Development Plan.
21. Discuss conditional zoning requirement for a two-acre park.
22. Discuss Note #11 from DP 2008-27 referencing the restriction on total number of dwelling units for Ramsey/Sullivan Property until a second access is complete.
23. Discuss lack of public street access to this development.
24. Discussion regional detention basin.
25. Discuss landscape buffer against railroad.

Applicant Representation: Branden Gross, attorney, stated that the applicant would like to request postponement of this item in order to continue to discuss several issues with the staff.

Action: A motion was made by Mr. Davis, seconded by Ms. Worth, and carried 7-0 (Barksdale, Bell, Michler, and Penn absent) to postpone PLN-MJDP-21-00050: RAMSEY/SULLIVAN PROPERTY, LOT 4 (AMD) to the December 9, 2021, meeting.

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

3. CERVANTES & ASSOCIATES, LLC ZONING MAP AMENDMENT & WM. SHELY SUBDIVISION, UNIT 2 & HOLLOW CREEK SUBDIVISION UNIT 1 ZONING DEVELOPMENT PLAN

- a. PLN-MAR-21-00008: CERVANTES & ASSOCIATES, LLC (11/11/21)*- a petition for a zone map amendment from a Highway Service Business (B-3) zone to a Neighborhood Business (B-1) zone, for 1.5 net (1.66 gross) acre, for properties located at 505 and 519 W. New Circle.

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.

The applicant is seeking to rezone the subject property from the Highway Service Business (B-3) zone to the Neighborhood Business (B-1) zone in an effort to convert a currently vacant retail establishment to a banquet facility.

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

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

1. The requested rezoning to Neighborhood Business (B-1) zone is not in agreement with the 2018 Comprehensive Plan for the following reasons:
 - a. The requested zoning is not a recommended zone within the Comprehensive Plan and the applicant has not provided sufficient information as to how the zone fits in the context of the area,
 - b. The requested rezoning is not in agreement with the Goals, Objectives, and Policies of the 2018 Comprehensive Plan,
 - c. The requested rezoning does is not in agreement with the Development Criteria of the 2018 Comprehensive Plan.
 2. There have been no major unanticipated changes of an economic, social or physical nature in the area of the subject property since the adoption of the 2018 Comprehensive Plan.
 3. The existing Highway Service Business (B-3) zone remains appropriate for the following reasons:
 - a. The location of the subject properties along West New Circle Road is more conducive to access from the traveling public and the subject properties are oriented to those facilities.
 - b. The existing zoning are compatible with adjacent land uses.
 - c. New uses that allow for the intensity and density intended for the properties context can be met within the current building.
- b. PLN-MJDP-21-00035: WM. SHELY SUBDIVISION, UNIT 2 & HOLLOW CREEK SUBDIVISION UNIT 1 (11/11/21)* - located at 505 & 519 WEST NEW CIRCLE ROAD, LEXINGTON, KY
Project Contact: Vision Engineering

The Subdivision Committee Recommended: **Postponement**. There are questions regarding the required parking location and tree canopy.

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. United States Postal Service Office's approval of kiosk locations or easement.
8. Denote review by the Royal Springs Aquifer Committee.
9. Remove "easement" from 25' setback notation.
10. Denote FAR and height of building per Article 21 of the Zoning Ordinance.
11. Discuss zone-to-zone screening.
12. Discuss dumpster location in the floodplain.
13. Discuss off-site parking proposed and possible variance.
14. Discuss substantial improvements per Article 19 relative to proposed change in use.
15. Discuss Placebuilder criteria.
 - a. A-DS4-2: New construction should be at an appropriate scale to respect the context of neighboring structures; however, along major corridors, it should set the future context in accordance with other Imagine Lexington corridor policies and Placebuilder priorities.

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- b. A-DS5-3: Building orientation should maximize connections with the surrounding area and create a pedestrian-friendly atmosphere.
- c. A-DS5-4: Development should provide a pedestrian-oriented and activated ground level.
- d. A-DS7-1: Parking should be oriented to the interior or rear of the property for non-residential or multi-family developments.
- e. B-PR9-1: Minimize disturbances to environmentally sensitive areas by utilizing the existing topography to the greatest extent possible.
- f. B-SU11-1: Green infrastructure should be implemented in new development. (E-GR3)
- g. C-LI6-1: Developments should incorporate multifamily housing and walkable commercial uses into development along arterials/corridors.
- h. C-LI7-1: Developments should create mixed-use neighborhoods with safe access to community facilities, green-space, employment, businesses, shopping, and entertainment.
- i. C-PS10-2: Developments should explore options for shared and flexible parking arrangements for currently underutilized parking lots.
- j. D-PL7-1: Stakeholders should be consulted to discuss site opportunities and constraints prior to submitting an application.
- k. E-GR4-1: Developments should incorporate reuse of viable existing structures.
- l. E-GR9-4: Development should intensify underutilized properties and develop vacant and underutilized gaps within neighborhoods. (E-GR6)
- m. E-GR10-2: Developments should provide walkable service and amenity-oriented commercial spaces.
- n. A-DS1-2: Direct pedestrian linkages to transit should be provided.
- o. A-EQ3-2: Development on corridors should be transit-oriented (dense & intense, internally walkable, connected to adjacent neighborhoods, providing transit infrastructure & facilities). (B-SU3)
- p. C-PS10-1: Flexible parking and shared parking arrangements should be utilized.
- q. D-CO2-1: Safe facilities for all users and modes of transportation should be provided.
- r. D-CO2-2: Development should create and/or expand a safe, connected multi-modal transportation network that satisfies all users' needs, including those with disabilities.
- s. A-DS4-3: Development should work with the existing landscape to the greatest extent possible, preserving key natural features.
- t. B-PR2-1: Impact on environmentally sensitive areas should be minimized within and adjacent to the proposed development site.
- u. B-PR2-3: Floodplains should be incorporated into accessible greenspace, and additional protection should be provided to areas around them.
- v. B-RE1-1: Developments should incorporate street trees to create a walkable streetscape.
- w. E-GR3-2: New focal points should emphasize geographic features unique to the site.

Applicant Representation: Matt Carter, representing the petitioner, said that they would like a postponement of this zone change to the December 16, 2021 meeting. He said that they are meeting with the staff and would like to request more time to do so.

Action: A motion was made by Ms. Worth, seconded by Mr. de Movellan, and carried 8-0 (Bell, Michler, and Penn absent) to postpone PLN-MAR-18-00008: CERVANTES & ASSOCIATES, LLC and PLN-MJDP-18-00035: WM. SHELY SUBDIVISION, UNIT 2 & HOLLOW CREEK SUBDIVISION UNIT 1 to the December 16, 2021 meeting.

4. PLN-FRP-21-00039: STEELE PROPERTY (01/02/22)* - located at 3844 BRIAR HILL RD., LEXINGTON, KY.
Council District 12
Project Contact: AIM3D

Note: The purpose of this plat is to subdivide a 173-acre lot into three separate lots.

Note: This plan requires the posting of a sign and an affidavit of such.

The Subdivision Committee Recommended: Postponement. There were concerns about the applicant's need to submit a cemetery boundary study per Article 3-7(b) for the subject property.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Addressing Office's approval of street names and addresses.
4. Department of Environmental Quality's approval of environmentally sensitive areas.
5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. Denote Health Department's approval of septic tanks at time of Building Permits.
7. Denote non-build areas.

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8. Denote farm road from Lot 2 to Lot 1 as an access easement and add maintenance note.
9. Addition of private utility providers.
10. Addition of easement maintenance note per Article 5-4(g) of the Land Subdivision Regulations.
11. Correct zoning in site statistics.
12. Denote private family cemetery protection area and access per Article 3-7 of the Zoning Ordinance for Lot 2.

Staff Comments: Mr. Martin stated that the applicant had requested a one-month postponement of this final record plat in order to allow additional time to complete their required cemetery study.

Action: A motion was made by Mr. de Movellan, seconded by Ms. Meyer, and carried 8-0 (Bell, Michler, and Penn absent) to postpone **PLN-FRP-21-00039: STEELE PROPERTY** to the December 9, 2021, Planning Commission meeting.

5. **PLN-MJDP-21-00039: LFUCG, MILLCREEK SUBDIVISION, UNIT 3 & JONESTOWN (11/11/21)*** - 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 Planning Commission postponed this application at their September 9, 2021, and October 14, 2021, meetings.

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.

Staff Comments: Mr. Martin stated that the applicant had requested a one-month postponement in order to allow additional time to address the floodplain issues on the property.

Action: A motion was made by Ms. Meyer, seconded by Mr. de Movellan, and carried 8-0 (Bell, Michler, and Penn absent) to postpone **PLN-MJDP-21-00039: LFUCG, MILLCREEK SUBDIVISION, UNIT 3 & JONESTOWN** to the December 9, 2021, meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, November 4, 2021, at 8:30 a.m. The meeting was attended by Commission members Ivy Barksdale, Headley Bell, Janice Meyer, and Judy Worth. Committee members in attendance were: Vaughan Adkins, Division of Engineering; and Stephen Parker, Division of Traffic Engineering. Staff members in attendance were: Traci Wade, Tom Martin, Hal Baillie, Cheryl Gallt, Samantha Castro, and Stephanie Cunningham; Captain Greg Lengal and Firefighter Embry Beatty, Division of Fire and Emergency Services; and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

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

General Notes

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

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

A. 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.

Ms. Wade announced the following agenda items appearing on the consent agenda:

- a. PLN-MJDP-20-00059: GATEWAY LOFTS (GROGAN & GROGAN) (11/11/21)* - located at 1016 S. BROADWAY, LEXINGTON, KY.
Council District 3
Project Contact: Palmer Engineering / Edge

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. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Denote location of mass transit enhancements to the approval of Lextran.
12. KYTC's approval of access to Virginia Avenue.
13. Provided the Planning Commission makes a finding, the plan complies with Article 8-16 (o)(3) of the Zoning Ordinance.
14. Resolve timing of right-of-way dedication on S. Broadway.

Note: The plan was not certified within one year of the Planning Commission's approval action. The applicant now requests reapproval.

The Subdivision Committee Recommended: **Reapproval**, subject to the 14 conditions as listed.

- b. PLN-MJDP-21-00056: PINNACLE LOT 3 (AMD) (1/2/22)* - located at 1093, 1097 & 1099 DUVAL ST., LEXINGTON, KY.
Council District 8
Project Contact: Banks Engineering

Note: The purpose of this amendment is to increase wall sign square footage and increase the number of free standing signs by one.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of the treatment of bike trails and pedestrian facilities.

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

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. United States Postal Service Office's approval of kiosk locations or easement.
10. Addition of site statistics for all the property on the Development Plan.
11. Document compliance with tree count per conditional zoning restrictions, including canopy statistics and location.
12. Resolve proposed signage changes.

- c. PLN-MJDP-21-00058: LAKEVIEW ESTATES, UNIT 2-E, BLK K, LOT 2 (AMD) (01/02/22)* - located at 519 LAKETOWER DR., LEXINGTON, KY.
Council District 5
Project Contact: Barrett Partners

Note: The purpose of this amendment is to revise building 6 reducing the number of units; revise building layout for building 9, add a pool and pool deck, add a dog park, and add a golf cart storage and dog wash building.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of the treatment of bike trails and pedestrian facilities.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. United States Postal Service Office's approval of kiosk locations or easement.
11. Denote dimensions for pool and pool deck.
12. Add square footage of proposed golf cart storage and dog wash building to site statistics.

- d. PLN-MJDP-21-00061: CADENTOWN – GENTRY FAMILY SUBDIVISION, LOT 1 (AMD) (01/02/22)* - located at 2833 CADENTOWN LN., LEXINGTON, KY.
Council District 6
Project Contact: Vision Engineering

Note: The purpose of this amendment is to revise building and parking layout.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of the treatment 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. United States Postal Service Office's approval of kiosk locations or easement.
10. Department of Highway's approval of access to Liberty Road.
11. Clarify purpose of amendment note.
12. Addition of pedestrian trail access per PLN-MJDP-19-00026 as a paved sidewalk.
13. Remove Note #12 from PLN-MJDP-19-00026 about consolidation of 2853 Liberty Road because it is not part of this plan.
14. Correct label of 50' building setback to denote it was approved as a variance (not conditional zoning).
15. Denote: The Planning Commission approved a variance to reduce the setback from 100' to 50' along the northeast and northwest property lines for the proposed animal hospital and kennel on October 22, 2015.
16. Depict access point to 2853 Liberty Road through the subject property.
17. Easement minor plat to match constructed shared emergency access easement shall be filed prior to building occupancy.

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Ms. Wade 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 Ms. Worth, and carried 8-0 (Bell, Michler, and Penn absent) to approve the items on the consent agenda as listed.

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.

1. DEVELOPMENT PLANS

- a. PLN-MJDP-21-00057: ETHINGTON & ETHINGTON PROPERTY, TRACT 1, LOTS 2 & 3 (AMD) (01/02/22)*
- located at 4235 HARRODSBURG RD., LEXINGTON, KY.
Council District 10
Project Contact: Vision Engineering

Note: The purpose of this amendment is to revise building sizes, lots sizes and vehicular circulation.

The Subdivision Committee recommended: **Postponement.** There are questions regarding the configuration of the access from Harrodsburg Road.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
12. Denote canopy height in feet.
13. Discuss access configuration and parking between Lots 2 & 3.
14. Discuss canopy lighting.
15. Discuss plan status.

Staff Presentation: Mr. Martin directed the Commission's attention to the final development plan and briefly explained the proposed request. He stated that the staff was now recommending approval, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscape buffers.

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4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
12. Denote the type of recessed lighting fixtures to be utilized in the canopy.

Commission Questions: Mr. Pohl asked if the applicant had agreed to a permanent closing time of 11:00 p.m. for the fuel center. Mr. Martin answered that staff had not recommended that as a condition, but it could be addressed. He added that it was a standard practice for the company to close their fuel centers at 11:00 p.m.

Petitioner Presentation: Matt Carter, Vision Engineering, stated that the applicant had worked with staff to resolve most of the issues that were brought up at the Technical and Subdivision Committee meetings.

Commission Questions: Mr. Pohl asked if the applicant would be willing to agree to set a permanent closing time of 11:00 p.m. for the fuel center.

Kerry King, Kroger Company, stated that Kroger had no plans to operate the fuel center after 11:00 p.m., but he would need to discuss that with the Louisville region operations headquarters prior to agreeing to that restriction.

Mr. de Movellan asked if any products other than gasoline would be sold. Mr. King responded that the fuel center would also sell basic sundries and some landscaping merchandise, but no perishable items.

Mr. Forester asked if the proposed fuel center would be similar to the standalone Kroger fuel station located in northern Kentucky. Mr. King answered that it could be similar, but that location falls under the leadership of the Cincinnati market division, which does run some fuel centers as 24-hour unattended operations. He noted that the Louisville market leadership does not use that business model in this area.

Staff Comments: Mr. Martin stated that the Planning Commission could consider adding a condition to resolve the hours of operation, which would allow the staff to continue to engage in discussions with the applicant as part of the sign-off process.

Citizen Comments: There were none.

Action: A motion was made by Mr. de Movellan, seconded by Ms. Barksdale, and carried 8-0 (Bell, Michler, and Penn absent) to approve **PLN-MJDP-21-00057: ETHINGTON & ETHINGTON PROPERTY, TRACT 1, LOTS 2 & 3 (AMD)**, subject to the 12 conditions as listed in the revised staff recommendation, adding a new #13 to resolve hours of operation.

- b. **PLN-MJDP-21-00059: COLUMBIANS, INC. (VERSAILLES ROAD PROPERTY) (AMD) (01/02/22)*** - located at 1604 VERSAILLES RD., LEXINGTON, KY.
Council District 11
Project Contact: Barrett Partners, Inc.

Note: The purpose of this amendment is to develop 35 multi-family units and 26 duplexes.

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

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

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

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 location of proposed and existing easements.
14. Remove dashed line from Lots 1-4.
15. Provided the BOA grants requested variance to the building line setback for the duplexes.
16. Resolve required open space for R-3 zoned area.
17. Resolve stormwater management on Lot A.
18. Provided the Planning Commission grants the requested waiver(s) for Concord Drive and Street A.

Staff Presentation: Mr. Martin directed the Commission's attention to the final development plan/preliminary subdivision plan and briefly explained the proposed request, noting that several waivers had also been requested for this property.

Mr. Martin explained that the staff was recommending approval of the requested waivers to street geometrics and spacing, and disapproval of the request not to extend Concord Drive, for the following reasons:

The Staff Recommends: Approval of the requested waivers to Article 6-8(a), 6-8(n)(1), 6-8(p), and 6-8(q)(2)(e), for the following reasons:

1. Granting the requested waiver(s) to the street geometric and access standards will not adversely affect public health, welfare and safety in compliance with the intent of the Land Subdivision Regulations. A reduced right-of-way width and elimination of the sidewalk along one side of Street A allow for a landscape buffer to the parcel to the west and safely serve the pedestrian and cyclist needs.
2. The granting of the waivers is consistent with the intent to Article 1-5(a) of the Land Subdivision Regulations for Exceptional Hardship.

The Staff Recommends: Disapproval of the requested waiver to Article 6-8(b), for the following reasons:

1. The applicant has not demonstrated that the connection of Concord Drive is an exceptional hardship as required by Article 1-5(a) of the Land Subdivision Regulations.
2. The connection of Concord Drive is important to public health and safety per the intent of the Land Subdivision Regulations, specifically to provide for safe, convenient and efficient traffic circulation.
3. The connection of Concord Drive will substantially complete a local road system deemed necessary to the safe and orderly development of the properties in the immediate area, which is consistent with the intent of the Land Subdivision Regulations.

Commission Questions: Mr. Nicol asked if the plan should have been filed depicting the completion of Concord Drive. Mr. Martin responded that the applicant had filed their waiver request in order to not complete the street at this time, but they had provided an exhibit indicating that the street could be constructed and completed as required by the Land Subdivision Regulations.

Applicant Presentation: Branden Gross, attorney, stating that he was representing the Lexington Housing Authority in this request. With regard to Mr. Nicol's question, he stated that the applicant brought this plan forward without the Concord Drive extension in order to save money on construction and avoid conflict with residents in the adjoining neighborhood. He said that, after conversations with Planning, Traffic Engineering, and Division of Fire staff, the applicant was proposing to construct a pedestrian trail and a crash gate with bollards. The applicant will construct Concord Drive should the Planning Commission choose to disapprove the waiver request. Mr. Gross added that the applicant has proposed a step-down development, with the least intensive uses near the existing single-family neighborhood in order to provide buffering.

Citizen Comments: There were none.

Commission Questions: Ms. Meyer asked if the applicant's street connection exhibit included the pedestrian walkway. Mr. Martin answered that the exhibit included the complete street. Ms. Meyer opined that the street should be completed.

Mr. Pohl agreed with Ms. Meyer's comments.

Development Plan Action: A motion was made by Ms. Meyer, seconded by Ms. Worth, and carried 8-0 (Bell, Michler, and Penn absent) to approve **PLN-MJDP-21-00059: COLUMBIANS, INC. (VERSAILLES ROAD PROPERTY) (AMD)**, subject to the 18 conditions as listed on the agenda.

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Waiver Action: A motion was made by Ms. Meyer, seconded by Ms. Worth, and carried 8-0 (Bell, Michler, and Penn absent) to approve the requested waivers to Article 6-8(a), 6-8(n)(1), 6-8(p), and 6-8(q)(2)(e), and disapprove the requested waiver to Article 6-8(b), for the reasons provided by staff.

C. PERFORMANCE BONDS AND LETTERS OF CREDIT – A motion was made by Ms. Worth, seconded by Mr. de Movellan, and carried 6-0 (Barksdale, Bell, Michler, Penn, and Pohl absent) to approve the release and call of bonds as detailed in the memorandum dated November 11, 2021, from Matt Hughes, Division of Engineering.

V. ZONING ITEMS - The Zoning Committee met on Thursday, November 4, 2021, to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members: Zach Davis, Larry Forester, and Graham Pohl. Staff members in attendance were: Traci Wade, Hal Baillie, Tom Martin, 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.

1. BROADWAY TWELFTH LLC ZONING MAP AMENDMENT & TWELFTH STREET ADDITION ZONING DEVELOPMENT PLAN

- a. PLN-MAR-21-00014: BROADWAY TWELFTH LLC (12/06/21)* - a petition for a zone map amendment from a Single Family Residential (R-1C) zone to a High Density Apartment (R-4) zone, for 0.517 net (0.742 gross) acres, for properties located at 1114 N. Broadway and 1118 N. Broadway. A dimensional variance to reduce the side street yard from twenty (20) feet to five (5) feet was also requested with this application.

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.

The applicant is seeking to rezone the subject properties from a Single Family Residential (R-1C) zone to the High Density Apartment (R-4) zone in an effort to construct three (3) multi-family residential structures with a total of sixteen dwelling units.

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

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

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

1. The requested Neighborhood Business (B-1) zone is in agreement with the 2018 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The proposed rezoning will accommodate the demand for housing in Lexington responsibly, prioritizing a mixture of housing types (Theme A, Goal #1), while also supporting infill and redevelopment (Theme A, Goal #2) by constructing on two parcels of land that have no evidence of historic construction (Theme A, Goal #2.a).
 - b. The proposed project will add to a well-designed neighborhood and community (Theme A, Goal #3), enabling existing and new neighborhoods to flourish by expanding options for mixed type housing (Theme A, Goal #3.a), providing positive and safe social interactions for pedestrians and all modes of transportation (Theme A, Goal #3.b), and minimizing the disruption of natural features on site (Theme A, Goal #3.c).
 - c. The proposed rezoning will allow for the maintenance of the urban service area concept (Theme E, Goal #1), by addressing the goal of absorbing vacant and underutilized land within the Urban Service Area (Theme E, Goal #1.a).
 2. The justification and corollary development plan are in agreement with the policies and development criteria of the 2018 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Site Design, Building Form and Location as the site creates a safer development that supports pedestrian mobility, while also including well designed, higher density residential development along the Corridor.
 - b. The proposed rezoning is situated within an area that allows for safe and positive interactions for all forms of Mobility. The area meets the goals of the Transportation and Pedestrian Connectivity development criteria of the 2018 Comprehensive Plan.
 - c. The proposed rezoning meets the criteria for Greenspace and Environmental Health as it will maintains the natural features of the site and tree canopy, while adding tree canopy coverage along the eastern property boundary.
 3. This recommendation is made subject to approval and certification of PLN-MJDP-21-00047: Twelfth Street Addition, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. VARIANCE REQUEST – One dimensional variance to reduce the side street side yard from twenty (20) feet to five (5) feet was also requested with this application.

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

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

- a. The applicant has not provided an application that indicates a reason for the proposed reduction in the side street side yard. No evidence has been provided regarding: Special circumstances which do not generally apply to land in the general vicinity or in the same zone.
 - b. What provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; or
 - c. The circumstances that are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
- c. PLN-MJDP-21-00047: TWELFTH STREET ADDITION (12/06/21)* - located at 1114 & 1118 NORTH BROADWAY, LEXINGTON, KY.
Project Contact: CMW, Inc.

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

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
8. United States Postal Service's approval of kiosk locations or easement.
9. Revise Tree Protection Plan to the required Tree Inventory Map.
10. Dimension proposed walkways, sidewalks and balconies.
11. Provided the Planning Commission approved the requested side street side yard variance.
12. Discuss Placebuilder criteria and lack of sufficient information for evaluation.

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Staff Zoning Presentation – Mr. Baillie presented the staff report and recommendations for the zone change application. He displayed photographs of the subject property and aerial photographs of the general area. He said the applicant is seeking to construct three separate apartment structures and associated parking. He said that the primary zoning in the area is Neighborhood Business (B-1) zone, Single Family Residential (R-1C) zone, with a lesser amount of Professional Office (P-1) zone. He said that in the area there are some non-conformity uses that have been grandfathered in, such as tri-plex within the R-1C zone. He said that the subject properties are currently vacant, and there hasn't been any historical development, according to the Sanborn Fire Insurance Maps. He said that the petitioner submitted their application under the Corridor Place-Type and a Medium Density Residential Development Type of the 2018 Comprehensive Plan. He added that North Broadway is an identified corridor within the Comprehensive Plan, and the proposed development will face that corridor.

Mr. Baillie said that the applicant is seeking to construct three separate, 3-story buildings and will have sixteen (16) dwelling units, which is a total density of 31 units per net acres. They are seeking a total of 26 bedrooms on the entire site. He added that the applicant stated in their letter of justification that this development is intended to match some of the context of the surrounding area by not having one monolithic building, and by tying into the historic development that has occurred in this area, specifically along N. Broadway. The development meets the intensity and density requirements of the corridor, while also meeting the descriptive nature of the Medium Density Residential Development Type. He said that the applicant is seeking to rezone the property to the High Density Apartment (R-4) zone, which is a recommended within the Corridor Place-Type and Medium Density Residential Development Type. He said that the applicant has supplied renderings of the proposed development, which displays the front, rear and side views of the three buildings. He added that initially there were concerns regarding the open space of this development, but the applicant included balconies, which meet those requirements. He then displayed the development plan and said that during the November 4, 2021, Zoning Committee meeting, there was discussion regarding the location of parking near the neighboring single family residential zone, which has been resolved since that meeting. He also identified the location of a six-foot fence proposed to be placed along the property line.

Mr. Baillie said that the staff is recommending approval for this zone change for the following reasons:

1. The requested High Density Apartment (R-4) zone is in agreement with the 2018 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The proposed rezoning will accommodate the demand for housing in Lexington responsibly, prioritizing a mixture of housing types (Theme A, Goal #1), while also supporting infill and redevelopment (Theme A, Goal #2) by constructing on two parcels of land that have no evidence of historic construction (Theme A, Goal #2.a).
 - b. The proposed project will add to a well-designed neighborhood and community (Theme A, Goal #3), enabling existing and new neighborhoods to flourish by expanding options for mixed type housing (Theme A, Goal #3.a), providing positive and safe social interactions for pedestrians and all modes of transportation (Theme A, Goal #3.b), and minimizing the disruption of natural features on site (Theme A, Goal #3.c).
 - c. The proposed rezoning will allow for the maintenance of the urban service area concept (Theme E, Goal #1), by addressing the goal of absorbing vacant and underutilized land within the Urban Service Area (Theme E, Goal #1.a).
2. The justification and corollary development plan are in agreement with the policies and development criteria of the 2018 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Site Design, Building Form and Location as the site creates a safer development that supports pedestrian mobility, while also including well designed, higher density residential development along the Corridor.
 - b. The proposed rezoning is situated within an area that allows for safe and positive interactions for all forms of Mobility. The area meets the goals of the Transportation and Pedestrian Connectivity development criteria of the 2018 Comprehensive Plan.
 - c. The proposed rezoning meets the criteria for Greenspace and Environmental Health as it will maintains the natural features of the site and tree canopy, while adding tree canopy coverage along the eastern property boundary.
3. This recommendation is made subject to approval and certification of PLN-MJDP-21-00047: Twelfth Street Addition, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

Development Plan Presentation – Mr. Martin presented a revised rendering of the preliminary development plan associated with this zone change. He said that there are revised conditions, which were distributed to the Planning Commission, as follows:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.

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7. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
8. United States Postal Service's approval of kiosk locations or easement.
9. Revise Tree Protection Plan to the required Tree Inventory Map.
10. Dimension proposed ~~walkways, sidewalks and balconies~~.
11. Provided the Planning Commission approved the requested side street side yard variance.
12. ~~Discuss Placebuilder criteria and lack of sufficient information for evaluation. Delete Note #18.~~

He then reviewed the color rendering and identified the three independent, three-story buildings located with a setback 20 feet off North Broadway. He also identified the location of the balconies and said that they meet the open space requirement. He said that setbacks serve a different function and can't be utilized as open space. Setbacks are for air, light, and relationship to the road, whereas the required open space is for private activities. He then said that the parking will be accessed off of Twelfth Street, in the rear of the property, and the applicant is meeting the parking requirement. He identified the area of discussion for the variance that Mr. Baillie will address. He said that the side-street side yard requirement is 20 feet, but the applicant is requesting a 5-foot side-street side yard. He said that the applicant submitted an exhibit that demonstrates the square footage of the open space. He said that the Subdivision Committee had recommended approval of this development plan with the revised conditions.

Commission Questions – Mr. Pohl asked if the balconies will be constructed from pressure-treated lumber and why that is eligible to meet the open space requirements. Mr. Martin said that the Zoning Ordinance requirements recognize balconies as meeting the open space requirements regardless of the materials being utilized. There have been many discussions, regarding the open space requirements and that any amendments to those requirements would require a Zoning Ordinance text amendment. Mr. Pohl said that off-setting the balconies could make them more pleasant to use. Mr. Martin said that there will be a Final Development Plan and the applicant could make that change, if they chose to.

Variance Presentation – Mr. Baillie presented the supplemental staff report for the variance request associated with this application. He said this variance request is to reduce the side street, side yard setback from 20 feet to 5 feet, for the portion of the properties that are along the Twelfth Street frontage, which he indicated on the development plan. He said that the variance request is specifically for the building and the parking area, which there is not meant to be parking, except for behind the building line. He said that the staff reviewed some of the building character that has been established along North Broadway. He said that within the applicant's supplemental justification for the variance, they stated they intended to match the character of an infill and redevelopment area, which they described their intention to meet or transition from different areas into an established residential character. The staff had found that many of the buildings within this area have a front yard or side yard setbacks of 10 feet to 30 feet, unless they border another driveway. He added that the proposed development will meet the front yard setback of the requested zone along N. Broadway. He said that the Board of Adjustment (BOA) has made allowance for the transition from a higher intensity corridor into a lower intensity single family neighborhood and recommended various setbacks that work in this type of area. He said that the staff is recommending a lesser variance for the reduction of the side street side yard from 20 feet to 10 feet, which would be in line with the 50% extension rule within the side yard setback associated with projections for structures. He added that the staff was also concerned with the proposed 5-foot setback, because any 6-foot fence line would need to be placed 3 feet away from the public right-of-way, and with the 5-foot setback, there would be only 2-feet of side yard for open space. He said with a 10-foot setback, there would be greater distance from the building and more open space in that location. However, the staff is recommending that the applicant install a 4-foot fence or hedge along the side of the building rather than 6-foot tall, to avoid the feeling of being pushed to the right-of-way area. He said that the staff recommends approval of the lesser variance to the property side street side yard, from twenty (20) feet to ten (10) feet, for the following reasons:

1. Granting a lesser variance of ten (10) feet should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity, as the proposed project will transition from the higher intensity roadway to the established character of the residential neighborhood located to the east.
2. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process for this project and has requested the variances prior to commencing construction.

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

- a. Provided the Planning Commission and Urban County Council approve the requested zone change to the R-4 zone, otherwise the requested variances shall be null and void.
- b. Along the side street side yard there shall be a planted continuous hedge no taller than four feet.
- c. The development shall be constructed in accordance with the approved Final Development Plan, or as amended by the Planning Commission.
- d. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
- e. Action of the Planning Commission shall be noted on the Development Plan for the subject property.

Commission Questions – Mr. Nicol asked if the applicant could work with the staff to come to an agreement on the open space requirements or a parking variance, in order to keep the same number of units. Mr. Baillie said that the open space requirement

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could be brought to the Board of Adjustment (BOA) at a later date. However, since the subject property is located outside of the Infill and Redevelopment area, the request for a parking reduction is not available. Mr. Nicol then stated that if the development was affordable housing, they would qualify for a parking reduction. Mr. Baillie said that the applicant could have a parking reduction if they chose to utilize that option. Mr. Nicol said that he believes that a parking variance would better meet the applicant's marketing plan. Mr. Baillie said that the applicant has the option to change their variance request and/or to go to the BOA to request other variances.

Applicant Presentation – Mr. Bruce Simpson, attorney, and Mike Tuttle, Broadway Twelfth LLC, were present representing the petitioner. Mr. Simpson said that they are in agreement with the staff's recommendations, with the exception of the variance. He said that their request for the 5-foot side yard setback is needed, as opposed to staff's recommended 10-foot setback. He said that they would have to construct a smaller building and would lose 3 bedrooms, which would make it less marketable. He added that with the 5-foot variance, the buildings would all be equal in size and oriented towards North Broadway.

Mr. Simpson said that they met with the neighborhood in July, and their main concerns were that an apartment development would lessen the values of their homes, increase traffic, and add additional parking on Twelfth Street. He said that he informed the neighborhood that they would have all of the required parking for an apartment community on the site. He said that there was concern regarding stormwater and he said that there is underground storage for stormwater. He said the neighborhood was concerned for and against two existing trees currently located on the property. He said that one neighbor stated that the trees are in the line of sight of turning vehicles, and another neighbor would like those trees to remain. Mr. Simpson said that they will be supplementing the trees on North Broadway and on Twelfth Street. He said that they disclosed all of the trees on the property when they submitted their application and that there is a large Sycamore tree currently located on the property. He said that the Urban Forester has been to the site. He said that they would like to preserve that tree, if possible, but the development may be encroaching within the dripline of that tree. He said that this will be in more detail at the time of the Final Development Plan. The neighborhood also had concern about underground streams. He said that this area is located within the Royal Springs Aquifer, which requires the applicant to have this project reviewed by the Royal Springs Aquifer Committee, prior to the Final Development Plan. They have not found any underground streams at this location. He said that they believe that they meet all of the criteria of the Comprehensive Plan and that this proposal does fit within the Comprehensive Plan's goals to increase residential density along the corridors.

Mr. Simpson said in regards to the variance that this neighborhood has a number of non-residential buildings along North Broadway and Twelfth Street, which he then displayed photos of examples. In the context of the whole neighborhood, they believe that the variance request of the 5-foot side yard setback is reasonable, since it won't have any adverse effect on residential properties. In regards to Mr. Pohl's comment about offsetting the balconies, he said that could be addressed at the time of the Final Development Plan. He also said in regards to the staff's concern about the 6-foot fence, that it can be removed and replaced with a 4-foot hedge.

Commission Question – Ms. Worth asked if there was any discussion of the variance with the neighborhood. Mr. Simpson said that they didn't discuss the variance at the neighborhood meeting because it wasn't requested at that time.

Mr. de Movellan asked if the variance is approved with the 10-foot side yard setback, will the applicant proceed with this development if they will be losing 3 bedrooms. Mr. Tuttle said that losing 3 bedrooms will make a significant difference. He also said in regard to Mr. Pohl's comment about the balconies that they could reconfigured, as well as a potential change to the roofline.

Mr. Nicol asked why three separate buildings were proposed for this site. Mr. Tuttle said that he believes it will be more marketable to multi-generational families that prefer to be in one building. Mr. Nicol then said that if it were one building, a variance would not be needed. Mr. Tuttle affirmed.

Mr. Pohl asked if there are windows on the sidewalls of the proposed buildings. Mr. Tuttle said that there are windows. Mr. Pohl then asked if those windows are critical to egress requirements. Mr. Tuttle said that they are not. Mr. Pohl said that having the separation between the buildings would allow for light and air to be accessed. Mr. Tuttle said that he envisions the facades changing before the Final Development Plan.

Mr. Nicol said that he believes that there can be greater density with the recommended 10-foot setback than with a 20-foot setback. Mr. Tuttle said that his goal is higher density. Mr. Nicol then said that there are other things that can be relocated to help the site geometry, such as the parking requirements and the open space requirements. He said that a 10-foot side yard setback would provide more walkability and continuity along Twelfth Street.

Mr. Simpson said that most of the discussion is with the design of the structure in terms of increasing the density or eliminating the setback. He reiterated that this is a preliminary development plan and it will be reviewed again as a final development plan. At that time, they will deal more with the Multi-Family Design Guidelines. He believes that the higher priority of this project is in granting this zone change and variance to be able to move along with higher density. He said that in terms of financing, it is

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important to keep the 3 bedrooms. He added that the project will contribute to this area and asked for approval of this zone change and variance.

Citizen Comments – Jim McKeegan, said that he supports this zone change and that he represented Cora Kerrick when these lots sold and that this lot is the remaining land from their family is horse farm. He said that one of the reasons that the Kerrick family sold this land to Mr. Tuttle was that he was a graduate from the University of Kentucky, School of Architecture. They were concerned with the Urban Service Boundary being protected and wanted to see more density along North Broadway, in order to protect other farm land. They were fond of other projects in the area, such as Hampton Court, and wanted to beautify the North Broadway corridor.

Jenifer Bentley, 146 Twelfth Street, said that she didn't receive notification of the neighborhood meeting that Mr. Simpson mentioned. She is concerned with the traffic and believes that there should be a traffic signal at that intersection. She is also concerned that this development may lower her property value.

Applicant Rebuttal – Mr. Simpson said that the notice for the neighborhood meeting was sent to the neighbors within 500 feet of the subject property. He added that he states in these letters to invite anyone else that may be interested in this proposal. He said that much of today's discussion is about the design of the buildings, which is still conceptual and can be changed. This proposal is to increase density on a piece of vacant land and how much more density could be achieved by constructing one building that would be less attractive and more out of context with the neighborhood. He asked if it will really be noticed traveling along Twelfth Street, the 5 feet of difference in the side yard. He said that this is a balance of the Comprehensive Plan, the Zoning Ordinance, and the Land Subdivision Regulations, to see what works and what the applicant wants to achieve. Also, the applicant is being flexible to the staff's and the Planning Commission's recommendations, in terms of the design. He reiterated that the 5-foot side-street side yard setback is necessary to not compromise what has been planned as a major asset on this corridor.

Staff Rebuttal – Mr. Baillie said in regards to the variance, the staff is recommending flexibility, which is allowing a 10-foot setback, when the requirement is 20 feet. He said that the 10-foot setback is associated with the transition to the adjoining residential and the context of North Broadway and Twelfth Street. He said that the focus of the 2018 Comprehensive Plan is that when reviewing projects to increase density in areas, that there must also be proper transitions between different contexts or places. He said that there was a statement regarding relocating an entrance to the side of the property, which will force the applicant to meet the front yard setback, because it would now become a frontage for the property. This would then require another variance that would go before the BOA.

Commission Questions – Mr. Pohl asked if the Planning Commission could approve the variance with the staff's recommendations and not the applicant's request. Mr. Baillie said that because it is a lesser variance, there is the ability for the Planning Commission to approve it, which is part of the recommendation that is associated with the supplemental variance report. He said that the Planning Commission would not be able to grant a variance for more than advertised, but this is still within the range of their request.

Commission Discussion – Mr. Nicol believes that more than 16 units could be built without the 5-foot setback. With the staff's recommendation of the 10-foot setback, there will be relief, but if more is needed the applicant could apply for parking or open space variances. He said that he would like to protect the neighbors along Twelfth Street, which could impede the future development of more dense units on other vacant sites.

Mr. Pohl said that he agrees with Mr. Nicol's comments. He said that the staff's recommendation of the 10-foot setback shows context sensitivity to the area. He said that the design and the layout of the development could be questionable.

Zoning Action – A motion was made by Mr. Pohl, seconded by Mr. de Movellan, and carried 8-0 (Bell, Michler, and Penn absent) to approve PLN-MAR-21-00014: BROADWAY TWELFTH LLC, for the reasons provided by the staff.

Development Plan Action – A motion was made by Mr. Pohl, seconded by Mr. de Movellan, and carried 8-0 (Bell, Michler, and Penn absent) to approve PLN-MJDP-21-00047: TWELFTH STREET ADDITION, as presented by the staff, as follows:

Variance Request Action – A motion was made by Mr. Pohl, seconded by Mr. de Movellan, and carried 8-0 (Bell, Michler, and Penn absent) to approve of a lesser variance to the property side street side yard, from twenty (20) feet to ten (10) feet, for the reasons provided by the staff with the recommended conditions, as follows:

- a. Provided the Planning Commission and Urban County Council approve the requested zone change to the R-4 zone, otherwise the requested variances shall be null and void.
- b. Along the side street side yard there shall be a planted continuous hedge no taller than four feet.
- c. The development shall be constructed in accordance with the approved Final Development Plan, or as amended by the Planning Commission.
- d. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.

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

- e. Action of the Planning Commission shall be noted on the Development Plan for the subject property.

- 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, November 18, 2021, in the Phoenix Building, at 1:30 p.m.

Mr. Martin stated that Mr. Duncan was not present at the time of the tribute to our veterans, and that he is a veteran of the armed forces.

- 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 NOVEMBER AND DECEMBER 2021

Work Session, Thursday, 1:30 p.m., 3 rd floor Phoenix Building	November 18, 2021
Technical Committee, Wednesday, 8:30 a.m., via video teleconference	November 24, 2021
Subdivision Committee, Thursday, 8:30 a.m., via video teleconference	December 6, 2021
Zoning Committee, Thursday, 1:30 p.m., via video teleconference	December 6, 2021
Subdivision Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	December 9, 2021
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers, Government Center	December 16, 2021
Technical Committee, Wednesday, 8:30 a.m., via video teleconference	December 22, 2021

- X. ADJOURNMENT** - There being no further business, Chairman Forester declared the meeting adjourned at 3:30 p.m.

Larry Forester, Chair

Janice Meyer, Secretary

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TLW/TM/HB/sc/dw

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