

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

February 10, 2022

- I. **CALL TO ORDER** - Chair Larry Forester called the meeting to order at 1:30 p.m. **via video teleconference** from the Division of Planning, 7th Floor, 101 E. Vine Street, Lexington, KY 40507. Due to the COVID-19 State of Emergency, this meeting was held via live video teleconference pursuant to 2021 Senate Bill 25, and in accordance with KRS 61.826.

II. **ATTENDANCE**

Planning Commission Members present **via video teleconference** were: Ivy Barksdale, Headley Bell, Zach Davis, Anthony de Movellan, Larry Forester, Bruce Nicol, Graham Pohl, and Judy Worth. Janice Meyer, Robin Michler and Frank Penn were absent.

Planning staff members present – Jim Duncan; Traci Wade; Autumn Goderwis; Tom Martin; Harold Baillie; Stephanie Cunningham and Donna Lewis. Other staff members in attendance were: Vaughan Adkins, Division of Engineering; Stephen Parker, Division of Traffic Engineering; Tim Queary, Division of Environmental Services; Captain Greg Lengal, Division of Fire and Emergency Services, and Tracy Jones, Department of Law.

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

IV. **POSTPONEMENTS AND WITHDRAWALS**

- a. PLN-MJDP-21-00073: KINGSTON HALL, UNIT 1, LOT 10 & KINGSTON HALL, UNIT 2, LOTS 14-18 (EAST BRIDGEFORD LAND & DEVELOPMENT CO.) (05/03/22)* - located at 2175 RUSSELL CAVE RD., LEXINGTON, KY.
Council District 12
Project Contact: Accurus Engineering

Note: The purpose of this amendment is to depict development of a building and associated parking on the site.

The Technical Committee and Staff Recommended: **Postponement**. There are questions regarding access, transportation infrastructure, and compliance with the Expansion Area Master Plan, tree canopy requirements and the proposed use.

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. 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. Correct plan title to match staff report.
14. Denote: Exactions to the approval of the Division of Planning.
15. Delete preliminary drainage information.
16. Revise contour information to 2' intervals.
17. Delete Note #12.
18. Denote review by the Royal Springs Aquifer Committee and any recommendation.
19. Provided the Planning Commission finds the plan complies with the Expansion Area Master Plan.
20. Clarify proposed use and parking generator.
21. Discuss 1" to 120' scale and inclusion of adjacent lots for context.
22. Discuss pedestrian access.
23. Discuss vehicular access.
24. Discuss proposed road closure.
25. Discuss timing of construction of local street and Providence Place Parkway.
26. Discuss compliance with tree canopy requirements.

Applicant Representation: Richard Murphy, attorney, stated that the applicant was reconfiguring this plan, and he requested a one-month postponement.

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

Action: A motion was made by Ms. Barksdale, seconded by Ms. Worth, and carried 8-0 (Meyer, Michler, and Penn absent) to postpone **PLN-MJDP-21-00073: KINGSTON HALL, UNIT 1, LOT 10 & KINGSTON HALL, UNIT 2, LOTS 14-18 (EAST BRIDGFORD LAND & DEVELOPMENT CO.)** to the March 10, 2022, Planning Commission meeting.

- b. **PLN-MJDP-21-00050: RAMSEY/SULLIVAN PROPERTY, LOT 4 (AMD) (02/10/22)*** - 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 October 14, 2021, November 11, 2021, December 9, 2021, and January 13, 2022, meetings.

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. Discuss regional detention basin.
25. Discuss landscape buffer against railroad.

Applicant Representation: Rory Kahly, EA Partners, requested a one-month postponement of this item in order to resolve additional items with the staff.

Action: A motion was made by Mr. de Movellan, seconded by Mr. Pohl, and carried 8-0 (Meyer, Michler, and Penn absent) to postpone **PLN-MJDP-21-00050: RAMSEY/SULLIVAN PROPERTY, LOT 4 (AMD)** to the March 10, 2022, Planning Commission meeting.

- c. **PLN-MJDP-21-00067: NEWTOWN SPRINGS, UNIT 1, LOT 2 (AMD) (02/10/22)*** - located at 1449 NEWTOWN CENTER WAY, LEXINGTON, KY.
Council District 1
Project Contact: Banks Engineering

Note: The purpose of this amendment is to revise the development on Lot 2 to add an automobile service station. The Planning Commission postponed this item at their December 9, 2021, and January 13, 2022, meetings.

The Subdivision Committee Recommended: **Postponement.** There were questions regarding compliance with conditional zoning restriction 3C, the proposed site access, and compliance with the B-1 setback.

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

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. 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. Denote Royal Springs Aquifer committee recommendation.
13. Denote revised layout in overall Newtown Springs development plan.
14. Discuss compliance with conditional zoning restriction 3C.
15. Discuss the quantity of proposed parking.
16. Discuss proposed access locations.
17. Discuss ice machine potential conflict with easement.
18. Discuss compliance with B-1 setback.

Applicant Representation: Greg Smorstad, Banks Engineering, requested a one-month postponement in order to allow the applicant to continue working to address the conditions for approval.

Action: A motion was made by Mr. Pohl, seconded by Ms. Barksdale, and carried 8-0 (Meyer, Michler, and Penn absent) to postpone **PLN-MJDP-21-00067: NEWTOWN SPRINGS, UNIT 1, LOT 2 (AMD)** to the March 10, 2022, Planning Commission meeting.

- V. **LAND SUBDIVISION ITEMS** – The Subdivision Committee did not meet on Thursday, February 3rd, due to inclement weather. Subdivision Committee recommendations from previous meetings may be noted.

General Notes

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

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

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

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

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

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)

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- (c) staff comments (5 minute maximum)
- Commission discusses and/or votes on the plan.

1. **FINAL RECORD PLATS**

- a. PLN-FRP-21-00056: DON JACOBS PROPERTY, BLK A, LOTS 6 & 7 (AMD) (04/03/22)* - located at 2691 NICHOLASVILLE RD., LEXINGTON, KY.
Council District: 10
Project Contact: CAM Surveying

Note: The purpose of this plat is to depict Lots 6 and 7 and create an access easement.

The Technical Committee and Staff 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.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: This property shall be developed in accordance with the approved final development plan.
8. United States Postal Service Office's approval of kiosk locations or easement.
9. Add Lot 3 to the plat to create the access easement and add signature line to Owner's Certification.
10. Denote monument locations per Article 6 of the Land Subdivision Regulations.
11. Denote access easement maintenance responsibility.
12. Discuss physical barrier between Lots 6 & 7 for use of access easement.
13. Provided the Planning Commission grants a waiver for provision of sanitary sewer to Lot 7.
14. Provided the Planning Commission makes a finding for access easement to be the sole source of access for the lots.

Staff Presentation: Mr. Martin directed the Commission's attention to the final record plat and briefly explained the proposed request, noting that revised conditions had been provided to the Commission. He stated that the staff was recommending approval of this request, 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.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: This property shall be developed in accordance with the approved final development plan.
8. United States Postal Service Office's approval of kiosk locations or easement.
9. Denote setback along New Circle Road.
10. Denote monument locations per Article 6 of the Land Subdivision Regulations.
11. Revise Notes 4 & 5 to state there **shall** be reciprocal parking and access between the applicable lots.
12. Submit executed reciprocal parking and access agreements prior to recordation of plat.
13. Provided the Planning Commission grants a waiver for provision of sanitary sewer to Lot 7.
14. Provided the Planning Commission makes a finding for access easements to be the sole source of access for the lots under Article 6-8(m) of the Land Subdivision Regulations.

Mr. Martin explained that the applicant had filed a waiver request to the sanitary sewer requirements, based on the existing use of the property as a parking lot. He noted that Lot 6 had ready access to an existing manhole, should the property need to be sewer, but the nearest connection to Lot 7 was much further away. Should sewer service need to be provided to Lot 7, the applicant would be required to provide that connection. Mr. Martin said that, therefore, Lot 7 cannot be developed without an amended final development plan that depicts the necessary sanitary sewer connection. He said that the staff was recommending approval of the waiver request, for the following reasons:

1. The requested waiver would relieve an exceptional financial hardship for the applicant associated with constructing a public sanitary sewer line and a lateral line, which is currently unnecessary to serve the parking lot.
2. Granting the waiver will not negatively impact public health and safety since the property is currently utilized as part of the parking lot and cannot be redeveloped without a Final Development Plan amendment. To ensure no building activity can occur, the plat shall include the standard note regarding a development plan amendment as well as one related to the waiver and provision of sanitary sewer service to Lot 7.

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

This recommendation is made subject to the following requirements:

- a. Denote the waiver as granted by the Planning Commission on the face of the final record plat.
- b. Denote: No Building Permit for Lot 7 shall be issued until sanitary sewer service is provided to the Kentucky State Plumbing Code and accepted by the Division of Engineering and the Division of Water Quality.

Mr. Martin directed the Commission's attention to an aerial photograph of the subject property, and explained that Lot 7 has several access points, but Lot 6 has access via only an easement. The applicant has proposed a reciprocal parking and access agreement to go along with the easement, but the Commission is required to make a finding to allow sole access to be provided via the easement. Mr. Martin stated that the staff is recommending approval of that finding, as well.

Applicant Presentation: Gary Roland, CAM Surveying, stated that the applicant was in agreement with the staff's recommendations.

Citizen Comments: There were no citizens who wished to comment on this request.

Action: A motion was made by Mr. Pohl, seconded by Mr. Bell, and carried 8-0 (Meyer, Michler, and Penn absent) to approve **PLN-FRP-21-00056: DON JACOBS PROPERTY, BLK A, LOTS 6 & 7 (AMD)**, subject to the 14 conditions as listed in the revised staff recommendation, and including findings for the requested waiver and use of access easements as sole access.

2. DEVELOPMENT PLANS

- a. PLN-MJDP-21-00039: LFUCG, MILLCREEK SUBDIVISION, UNIT 3 & JONESTOWN (02/10/22)* - 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, October 14, 2021, November 11, 2021, December 9, 2021, and January 13, 2022, 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.

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

Staff Presentation: Mr. Martin directed the Commission's attention to the final development plan and briefly explained the proposed request for multi-family residential and an accessory clubhouse. With regard to condition #14, he explained that the plan depicts sidewalk and entrance road improvements on the adjacent residential property; the applicant has a private agreement and recorded easement to provide those improvements.

Mr. Martin said, with regard to condition #15, that the applicant has had numerous discussions with the Division of Engineering about the need for and timing of the Conditional Letter of Map Revision (CLOMR). He explained that the timing of the CLOMR was important because the required 25' floodplain setback impacted the accessory clubhouse that is depicted on the plan. If the clubhouse is approved by the Division of Engineering, it would be as a special permit use, and would require extensive flood proofing and other measures for safety purposes. The proposed parking would also be considered a special permit use, and the covered portion would require the approval of a variance to the 25' setback. Mr. Martin noted that approval of both of those special uses would be predicated on the applicant's commitment to maintain the floodplain as it currently exists. The proposed pool associated with the clubhouse is not allowed in the floodplain, and could only be constructed if a CLOMR is approved by FEMA. Mr. Martin said that the applicant had indicated that they would add a note to this plan to address the Article 19 requirements and the timing of the CLOMR.

Mr. Martin stated, with regard to the timing of the greenway trail, that the trail would be part of a major extension of the city's trail system. The Planning and Law Department staff have reviewed a proposed note that would address the timing and construction of the trail, as well as the required easement, and they believe it should be sufficient to address condition #19.

Applicant Presentation: Rory Kahly, EA Partners, stated that the applicant was in agreement with the revised conditions. Bruce Simpson, attorney, added that the applicant had drafted a note with regard to the Article 19 requirements, and that the staff was in agreement with it. The note will read as follows: **INCLUDE NOTE FROM BRUCE SIMPSON HERE**

Citizen Comments: There were no citizens who wished to comment on this request.

Action: A motion was made by Mr. de Movellan, seconded by Mr. Nicol, and carried 8-0 (Meyer, Michler, and Penn absent) to approve **PLN-MJDP-21-00039: LFUCG, MILLCREEK SUBDIVISION, UNIT 3 & JONESTOWN**, subject to the first 13 conditions as listed, changing the discussion items #15-#19 to read "Resolve," and adopting the note language as proposed and read into the record by Mr. Simpson.

- b. **PLN-MJDP-20-00073: LIBERTY ROAD SERVICE CENTER (1/31/21)*** - located at 1833, 1837 & 1865 LIBERTY RD., LEXINGTON, KY.
Council District 5
Project Contact: Vision Engineering

Note: The Planning Commission originally approved this plan at their December 10, 2020, meeting, 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. United States Postal Service Office's approval of kiosk locations or easement.
12. Addition of property boundaries in solid dark lines.
13. Resolve location of pedestrian doors and overhead doors to verify compliance with Article 8-21(o) of the Zoning Ordinance.
14. Resolve stormwater management plan and delete note #7.

Note: The applicant later requested a continued discussion to add building square footage and revise the parking layout and circulation. The Planning Commission approved the continued discussion on March 11, 2021, subject to the original conditions and adding one condition, as follows:

15. Resolve parking and dumpster near access at Liberty Road.

Note: The applicant has now requested another continued discussion in order to discuss the existing detention basin on the property.

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

Staff Presentation: Mr. Martin directed the Commission's attention to the final development plan and briefly explained the proposed request. He explained that the existing detention basin on the property has a history of issues, and the previous property owner compounded the problems by leaving items associated with his demolition business, which now partially block the basin.

Mr. Martin stated that the applicant was now requesting relief from the requirements of the Stormwater Manuals, but the staff does not believe that the Planning Commission has the authority to grant such relief. The staff believes that the Stormwater Manuals clearly state that the Urban County Engineer is the final arbiter of those standards, and only they can grant relief. Mr. Martin stated that this plan could be granted an extension, since its approval expires in a month.

Commission Questions: Ms. Worth stated that she would like to get the opinion of the Division of Engineering staff, following the applicant's presentation.

Applicant Presentation: Bruce Simpson, attorney, stated that this plan had been revised, with some additional protective and screening provisions regarding the detention basin. He said that the applicant is requesting that the Planning Commission approve this plan, subject to the approval of the Division of Engineering.

Ms. Wade explained that the approval of the Division of Engineering is already included as a condition on this plan. She said that the only change to the plan was the addition of a note about the basin. The Division of Engineering typically provides the necessary language for such a note to the applicant, and the staff would not recommend that the Commission approve this plan with the new note that Engineering has not had the opportunity to review.

Mr. Simpson stated that the applicant had also added a fence around the basin, as well as some additional landscaping. He said that the note was proposed, but not meant to be adopted at this time. Ms. Wade stated that the staff would recommend an extension of the Planning Commission's approval, since the plan has not yet expired.

Ms. Worth asked what the length of time would be for the extension. Mr. Martin answered that extensions are always granted for one year.

Citizen Comments: There were no citizens who wished to comment on this request.

Action: A motion was made by Mr. de Movellan, seconded by Ms. Worth, and carried 8-0 (Meyer, Michler, and Penn absent) to extend the Planning Commission's approval of **PLN-MJDP-20-00073: LIBERTY ROAD SERVICE CENTER** for one year.

- c. **PLN-MJDP-22-00001: JERRICO, INC., LOT 1-B (04/03/22)*** - located at 3475 RICHMOND ROAD, LEXINGTON, KY.
Council District 7
Project Contact: Vision Engineering

Note: The purpose of this amendment is to expand parking on Lot 1-B.

The Subdivision Committee made no recommendation.

The Technical Committee Recommended: **Postponement**. There were questions about the proposed road-way and trail improvements, potential impacts to the existing detention basin, and compliance with the Richmond Road Landscape Ordinance.

The Staff 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. Urban Forester's approval of tree preservation plan.
5. Bike & Pedestrian Planner's approval of the treatment of bike trails and pedestrian facilities.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. United States Postal Service Office's approval of kiosk locations or easement.
8. Addition of missing information from previous plan.
9. Depict area of amendment on vicinity map.
10. Depict access point for construction vehicles.
11. Delete Notes # 22 & 23.

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

12. Document/verify compliance with Note #18.
13. Discuss compliance with the Richmond Road Landscape Ordinance.
14. Discuss compliance with Note #17.

Staff Presentation: Mr. Martin directed the Commission's attention to the final development plan and briefly explained the proposed request. He explained that there were concerns at the Technical Committee meeting about the number of easements toward the front of the property, which led to a postponement recommendation. The applicant has since submitted a revised plan, which led the staff to recommend 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.
4. Urban Forester's approval of tree preservation plan.
5. Bike & Pedestrian Planner's approval of the treatment of bike trails and pedestrian facilities.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. United States Postal Service Office's approval of kiosk locations or easement.
8. Document/verify compliance with Note #18.
9. Resolve compliance with the Richmond Road Landscape Ordinance.
10. Resolve compliance with Note #17.

Mr. Martin noted that this plan proposes a relatively small parking lot expansion, but, due to the number of existing easements and the Richmond Road Landscape Ordinance, it is important to ensure that the requirements will be met.

Applicant Presentation: Matt Carter, Vision Engineering, stated that the applicant was in agreement with the staff's revised recommendations, and he requested approval.

Citizen Comments: There were no citizens who wished to comment on this request.

Action: A motion was made by Mr. de Movellan, seconded by Mr. Pohl, and carried 8-0 (Meyer, Michler, and Penn absent) to approve **PLN-MJDP-22-00001: JERRICO, INC., LOT 1-B**, subject to the 10 conditions as listed in the revised staff recommendation.

- d. **PLN-MJDP-22-00002: GIBBS PROPERTY (04/03/22)*** - located at 424 W. MAXWELL ST., LEXINGTON, KY.
Council District 1
Project Contact: Thoroughbred Engineering

Note: The purpose of this amendment is to depict development of the site for nine townhouses.

The Subdivision Committee made no recommendation.

The Technical Committee Recommended: Postponement. There were questions about open space, pedestrian circulation on the site, and compliance with Article 15 of the Zoning Ordinance.

The Staff 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. 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. Correct plan title to match staff report.
13. Correct property address in site statistics/notes.
14. Denote conditional zoning restrictions (Ordinance 217-2005).
15. Denote areas of open space provided to meet Article 8-19(k) of the Zoning Ordinance.
16. Denote compliance with Article 15-7 of the Zoning Ordinance.

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

Staff Presentation: Mr. Martin directed the Commission's attention to the final development plan and briefly explained the proposed request. He explained that, when the plan was originally submitted, the applicant had not documented compliance with the open space requirements. There were also concerns at the Technical Committee meeting about pedestrian access to the site. The applicant submitted a revised plan that depicts the pedestrian access, as well as the addition of balconies to meet the open space requirement. The revised plan also includes additional greenspace and sidewalks with an activated streetscape. Mr. Martin stated that, based on the revised plan, the staff offered 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.
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. 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. **Denote there shall be no access to 430 West Maxwell Street unless an amended final development plan is approved and certified.**
13. Correct property address in site statistics/notes.
14. Denote conditional zoning restrictions (Ordinance 217-2005).
15. Denote that the plan shall comply with Article 15-7(a) of the Zoning Ordinance.

Mr. Martin noted that condition #12 was added to address concerns that the applicant might attempt to offer cross access to an adjoining property at some point in the future.

Applicant Presentation: Fred Eastridge, Thoroughbred Engineers, stated that the applicant was in agreement with the staff's recommendations, and he requested approval. He explained that, although the applicant does also own 430 West Maxwell Street, they have no intention to provide cross-access with the subject property.

Commission Questions: Mr. Pohl asked if the two buildings to the west side of the proposal would be adjacent to the two buildings on Spring Street. Mr. Eastridge answered affirmatively. Mr. Pohl asked how far the proposed buildings would be from those existing structures, to which Mr. Eastridge responded that the distance was approximately six to eight feet. Mr. Baillie noted that there would be 2.5 feet between the proposed buildings and the property line.

Citizen Comments: There were no citizens who wished to comment on this request.

Action: A motion was made by Mr. Pohl, seconded by seconded by Mr. de Movellan, and carried 8-0 (Meyer, Michler, and Penn absent) to approve **PLN-MJDP-22-00002: GIBBS PROPERTY**, subject to the revised recommendation with 15 conditions.

- C. PERFORMANCE BONDS AND LETTERS OF CREDIT** – A motion was made by Mr. Bell, seconded by Mr. Pohl, and carried 8-0 (Meyer, Michler, and Penn absent) to approve the bond memo dated February 10, 2022, from Matthew Hughes, Division of Engineering.

V. ZONING ITEMS - The Zoning Committee did not meet on Thursday, February 3, 2022, due to inclement weather.

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

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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. COWGILL, INC. ZONING MAP AMENDMENT & CANDIA CORPORATION ZONING DEVELOPMENT PLAN

- a. PLN-MAR-21-00020: COWGILL, INC. (AMD) (01/30/22)*- an amended petition for a zone map amendment from a Neighborhood Business (B-1) zone to a High Rise Apartment (R-5) zone, for 1.5956 net (1.7176 gross) acres, for property at 340 Legion Drive (a portion of). A conditional use permit has also been requested to allow a stand alone parking lot in a B-1 zone.

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 a portion of the subject property from a Neighborhood Business (B-1) zone to the High Rise Apartment (R-5) zone in an effort to construct a five-story multi-family residential structure.

The Zoning Committee Recommended: **Postponement**.

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

1. The zone change application for the subject property, as proposed, does not completely address the development criteria for a zone change within the Corridor Place Type, and the Medium-High Density Residential Development Type. The following criteria require further discussion by the applicant to address compliance with the Comprehensive Plan:
 - a. A-DS3-1: Multi-family residential developments should comply with the Multi-family Design Standards in Appendix 1.
 - 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. A-DS7-2: Any non-residential or multi-family parking not buffered by a building should be screened from the streetscape view and adjacent properties.
 - f. B-SU11-1: Green infrastructure should be implemented in new development. (E-GR3)
 - g. D-CO2-1: Safe facilities for all users and modes of transportation should be provided.
 - h. 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.
- b. CONDITIONAL USE PERMIT REQUEST – To allow a stand alone parking lot within the Neighborhood Business (B-1) zone.

The Zoning Committee made no recommendation.

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

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

1. The proposed parking lot should not have an adverse influence on existing or future development of the subject property or the surrounding area. The proposed design of the parking lot facilities meets the requirements of Article 16 and will allow for future development.

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

- a. Provided the Urban County Council approves the requested zone change to the R-5 zone, otherwise the requested conditional use shall be null and void.
 - b. The development shall be constructed in accordance with the approved Final Development Plan, or as amended by the Planning Commission.
 - c. The B-1 zoned portion of the property shall not have direct access to Legion Drive.
 - 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.
- c. PLN-MJDP-21-00065: CANDIA CORPORATION (01/30/22)* - located at 340 LEGION DRIVE, LEXINGTON, KY
Project Contact: Carman

The Subdivision Committee Recommended: **Postponement**. There are questions regarding compliance with storm-water requirements, tree inventory, proposed B-1 use, and building orientation.

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

1. Provided the Urban County Council rezones the property R-5; 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 Office's approval of kiosk locations or easement.
9. Dimension access point at northeast corner of site.
10. Dimension the proposed building.
11. Depict construction access point.
12. Depict street cross-section on plan face.
13. Addition of tree inventory map (TIP) per Article 26.
14. Discuss stormwater detention.
15. Discuss compliance with Multi-Family Design Standards.
16. Discuss building orientation to right-of-way.
17. Discuss need for a conditional use permit for parking lot in a Neighborhood Business (B-1) zone.
18. Discuss Placebuilder criteria.
 - a. A-DS3-1: Multi-family residential developments should comply with the Multi-family Design Standards in Appendix 1.
 - 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. A-DS7-2: Any non-residential or multi-family parking not buffered by a building should be screened from the streetscape view and adjacent properties.
 - f. B-SU11-1: Green infrastructure should be implemented in new development. (E-GR3)
 - g. D-CO2-1: Safe facilities for all users and modes of transportation should be provided.
 - h. 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.

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 that the application was submitted under the Corridor Place Type and a Medium-High Density Residential Development type categories, based on the 2018 Comprehensive Plan. The applicant proposes to construct a four-story residential building and associated parking, with 91 one-bedroom units, for a total density of 57 dwelling units per acre. The subject property is surrounded by various zones, including the Neighborhood Business (B-1) and Highway Service Business (B-3) zones along South Broadway and Waller Avenue; Single Family Residential (R-1D) along American and Burley Avenues; and High Density Apartment (R-4) zoning closer to the subject property. Mr. Baillie explained that the

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applicant proposes to keep the existing B-1 zoning on a portion of the property, and rezone only the easternmost portion to the R-5 zone, while removing the existing building. The applicant is also seeking a conditional use permit to allow the B-1 zoned portion of the property to be used as a parking lot for the proposed residential development.

With regard to the development plan for the site, Mr. Baillie stated that applicant proposes to locate the building along the easternmost property line, with parking on the western portion, closer to S. Broadway. The building is proposed to have an entry point facing the parking area, as well as an exit door along the portion of the building adjacent to Legion Drive.

Referring to a rendering provided by the applicant, Mr. Baillie explained that the staff had several concerns about how the applicant intends to address the Multi-Family Design Standards. Based on those concerns, the staff recommended postponement of this zone change request, for the reasons as listed in the staff report and on the agenda. The staff is concerned about the proposed orientation of the building entrance to the parking area, rather than to the street, as well as the safety of the proposed side-facing entrance on the Legion Drive side of the building; lack of an active façade along Legion Drive; and the safety of the proposed open space area. Mr. Baillie said that the staff is recommending that at least 40% of the building wall plane be fronted on Legion Drive, shifting primary activity for the building along that frontage, and requiring that 25% of the front wall plane be transparent. The staff is also recommending that the rear open space provide increased transparency to allow for greater natural surveillance. Mr. Baillie stated that the staff is recommending approval of this zone change, with those modifications.

Commission Questions: Mr. Pohl stated that he was in agreement with the staff's recommendations on this zone change, but he was concerned that the renderings provided by the applicant were vastly different from how the building would appear based on the staff's proposed modifications. He said that he believed that the modifications would produce a far superior development, but asked if it was appropriate to approve a zone change with a development plan that was so different. Mr. Baillie answered that the applicant and the staff had discussed the proposed modifications several times, and the applicant was concerned about the topography of the site and how it could affect the operation of the proposed building. The applicant indicated that they would prefer for the Planning Commission to hear both arguments and determine which option would be more appropriate.

Staff Development Plan Presentation: Ms. Wade directed the Commission's attention to the final development plan and briefly explained the proposed request. She noted that, although the applicant indicated that they would like to retain the B-1 zoning on a portion of the property for possible future development, they currently need all of the parking spaces depicted on that portion to meet their parking requirement.

Ms. Wade stated that, based on the staff's recommendations for modifications of the rezoning request, the staff was also proposing changes to the development plan, both at this stage and at the final development plan stage, as listed in the revised staff recommendation, as follows:

1. Provided the Urban County Council rezones the property R-5; 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. United States Postal Service Office's approval of kiosk locations or easement.
8. **Resolve stormwater detention at time of a Final Development Plan.**
9. **Resolve compliance with Multi-Family Design Standards at time of a Final Development Plan, to include:**
 - a. **Provide the primary building entrance/exit oriented to Legion.**
 - b. **Provide a minimum of 25% transparency or fenestration along the front wall plane.**
 - c. **Break up building mass with façade articulation on all sides by using varying roof shapes, exterior wall setbacks, material and color changes, and landscaping.**
 - d. **Modify open space at rear of site to allow for easy access and greater natural surveillance.**
10. **Modify building orientation to ensure a minimum of 40% of the length of the structure is parallel to the right-of-way to provide a pedestrian-oriented and activated ground level.**
11. **Provided the Planning Commission grants a conditional use permit for a parking lot in a Neighborhood Business (B-1) zone.**

Referring to a rendered version of the development plan, Ms. Wade explained that the staff believes that constructing a standard L-shaped building could accommodate all of the concerns; in particular, it would allow for building orientation to Legion Drive, which would provide the necessary activation. The staff is also recommending that the applicant relocate the office associated with the residential use to the portion of the building along Legion Drive, which would further enhance street activation and provide for greater pedestrian accessibility. The staff is recommending approval of the development plan, subject to the revised conditions.

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Staff Conditional Use Presentation: Mr. Baillie presented the staff report on the requested conditional use, explaining that the applicant had originally submitted a variance request. Since that time, the applicant amended their application and withdrew the variance request, but submitted a request for a conditional use for a parking lot in the B-1 zone.

Mr. Baillie explained that the applicant proposed to retain the B-1 portion of the property in order to meet their parking requirement under the current standards, with the hope that the standards might change at some point in the future and that the commercial portion of the property could then be redeveloped. The applicant is proposing to provide pedestrian access from the parking area to the building, as well as access to the Legion Drive right-of-way. They are also proposing to share an access point to the property along Legion Drive and close the access along a shared access easement adjacent to the fast food restaurant. Mr. Baillie stated that the staff was recommending approval of this request, for the reasons as listed on the agenda, and subject to the conditions as listed.

Commission Questions: Mr. Pohl asked the staff to clarify their recommendations on the zone change and variance request. Mr. Baillie answered that the variance request had been withdrawn. With regard to the zone change, he explained that the staff believes that some development plan modifications could bring the zone change request into agreement with the recommendations of the Comprehensive Plan. The staff is recommending approval, but only with the modifications as described in the staff's presentation. Mr. Pohl asked if the applicant had made those changes to the development plan. Mr. Baillie responded that the applicant had not made those modifications to the plan, and it would be up to the Commission to determine whether or not the applicant was required to do so. He noted that, in order for a zone change to be forwarded to the Urban County Council, the associated development plan must be certified within two weeks of the hearing. If the applicant in this case was not willing to make the modifications to the development plan, the zone change would be null and void.

Applicant Presentation: Zach Cato, Billings Law Firm, stated that the applicant believes that this rezoning request is in agreement with the Comprehensive Plan, which they consider a guide and not a set of restrictions. The applicant contends that this rezoning request supports several Themes, Goals and Objectives of the Comprehensive Plan, by providing needed housing in the area, increasing density on the subject property, and adding pedestrian connections. The applicant addressed the neighborhood engagement recommendations of the Comprehensive Plan by conducting several meetings with area residents, which resulted in two letters of support from members of the community. Mr. Cato noted that the applicant was not aware of any neighborhood objection to the zone change.

Mr. Cato stated that the applicant contends that the Comprehensive Plan language includes the word "should" rather than "shall," which means that its recommendations are not mandates that must be followed. The petitioner also contends that the Placebuilder criteria referenced by the staff in their report are all related to building design and site conditions, which do not affect the issue of whether the proposed zone is appropriate for the property.

Mr. Cato said that the applicant cannot agree to meet some of the staff's proposed modifications to the development plan. The applicant contends that the preliminary development plan that is filed with a zone change is intended to depict the major aspects of the development without requiring final design work that would be premature for a property that has not yet been through a successful rezoning. The applicant believes that the site is constrained by surrounding multi-family uses, unscreened parking in the vicinity, an active car wash and fast food restaurant in the area, and a significant grade change.

Mr. Cato stated that the applicant hopes that modifications will be made to the R-5 and B-1 zone parking requirements at some point in the future that would allow them to reduce the amount of parking on the site, at which time the B-1 zoned portion could be redeveloped. The applicant believes that the proposed configuration of the building and parking would be consistent with the other multi-family developments in the area. Mr. Cato noted that the existing access to the B-1 zoned portion of the property is proposed to be removed, with access provided solely on the residential portion.

Mr. Cato stated that the applicant contends that the proposed development plan will enhance pedestrian connectivity in the area, with sidewalks provided throughout the property. With regard to the staff's suggestion to orient more of the building to Legion Drive, he explained that the tenancy of the proposed development is likely to include health care professionals, due to the property's proximity to the University of Kentucky. The applicant believes that it is important to provide 24-hour controlled access along that street frontage, since health care professionals often do not work standard work hours. Mr. Cato said that the applicant is also proposing to provide additional landscaping, as well as a plaza area that could serve as a gathering place for the residents.

With regard to the staff's suggestion that the building should be shaped differently and/or oriented more toward Legion Drive, Mr. Cato stated that the applicant believes that changing the orientation would render the B-1 zoned portion of the property undevelopable. An L-shaped building could also result in a loss of dwelling units, and provide construction challenges given the grade change on the property. The applicant contends that the proposed plaza area, increased parking screening, and open space all serve to meet the Multi-Family Design Standards. The applicant does not believe

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that the tenants of the proposed development will want walkout, ground-level access and multiple entrances. Mr. Cato stated that the applicant has found, through managing other multi-family developments, that tenants prefer indoor, controlled access points for security. Mr. Cato added that the applicant does not believe it is appropriate to discuss windows and exterior treatments at the preliminary development plan stage.

Kevin Warner, Carman, directed the Commission's attention to an exhibit that depicts the grade change on the subject property, explaining that the topography was one of the main reasons for locating the building perpendicular to Legion Drive, rather than parallel. He said that, if the building was constructed parallel to Legion Drive, the entire site would require at least 6 foot of fill to compensate for a 4% slope. The applicant also does not believe it would be feasible to step down the site elevation, since the proposed one-bedroom units would be only 18 feet wide and the result would be a number of ramps.

Mr. Warner said that the applicant believes that the proposed building orientation would provide the greatest distance between the building and the existing adjacent car wash and Arby's restaurant. With regard to the staff's proposed L-shaped building, he noted that the applicant could lose a number of dwelling units due to the "dead space" located in the corner of the "L."

With regard to the staff's concerns that the proposed open space area would be dark or unsafe, Mr. Warner said that the area was proposed to be controlled with a fence, and would include sufficient lighting and a direct access door to the building.

Mr. Cato stated that there were over 100 different multi-family design criteria, but only 13 of them were currently under debate between the applicant and the staff, the most important of which was the building orientation. He said, with regard to the conditional use request, the applicant would request that condition "c" be revised to read: "For so long as the B-1 zoned portion of the subject property is utilized to meet the parking requirements of the R-5 use on the property, there shall not be direct access to Legion Drive from the B-1 zoned portion unless an amended development plan is first approved." Mr. Cato thanked the Planning Commission for their consideration, and he requested approval.

Commission Questions: Mr. Pohl stated that the rendering shown by the applicant includes a six-foot retaining wall along the back side of the building; he asked how tall that wall would be at the far corner of the building. Mr. Warner answered that the retaining wall does not extend across the entirety of the property; rather, it diminishes to zero feet. Mr. Pohl asked if the wall would be adjacent to the open space amenity. Mr. Warner responded that the wall would not be located adjacent to the open space.

Mr. Bell asked how old the adjoining multi-family developments were. Mr. Cato answered that the Belmont Run development was constructed in 1975; The Studios at Belmont were built in 1984.

Mr. Nicol asked if this plan was being reused after originally being developed for another site. He said that, due to the need for affordable housing, developers need projects that are compliant with standards and do not need many design modifications. He also asked how long it would take to re-tool this plan to meet the staff's recommendations. Carson Baughman, Cowgill, Inc., stated that this project was ready to be released for preparation of construction documents. He noted that all building plans and site layouts were complete, and bids had been acquired for construction documents. Mr. Nicol asked if this was the same design as the applicant's previous project in downtown Lexington, and, if so, how many units were included and the occupancy rate of the development. Mr. Baughman stated that the building design for this project is similar to what the applicant used for the Studios 180 development downtown. The previous development included 119 studio apartments with similar layouts, with flexible leasing terms. The current occupancy of that development is between 95% and 100%.

Citizen Comments: Peter Brown stated that his law office was located at 389 Elaine Drive. He asked how many parking spaces would be provided in the proposed development. Mr. Baillie answered that the applicant is proposing 130 parking spaces, after the use of some parking reductions. Mr. Brown stated that two, four-story hotels were currently under construction on Elaine Drive, and he was concerned about overflow parking.

Mr. Brown asked if the B-1 zoned portion of the property could be developed with a structure. Mr. Baillie answered that, at this time, the applicant is required to use that portion of the property to meet their parking requirement. Mr. Brown suggested adding a restriction so that the B-1 zoned portion be required to remain as parking.

Commission Comments: Mr. Davis stated that he did not believe that Mr. Brown's questions were appropriate at this point in the hearing. Further comments should be addressed to the Planning Commission.

Applicant Rebuttal: Mr. Cato stated that the applicant did not anticipate that overflow parking would be an issue, given the number of parking spaces on the site.

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Staff Rebuttal: Mr. Baillie stated that the staff had previously recommended postponement of this request. He explained that the staff was supportive of the applicant's proposed density, housing type, tree protection, and several other elements, but there were real concerns about lack of agreement with the Comprehensive Plan and public health, safety, and welfare.

Mr. Baillie noted, with regard to Mr. Nicol's question about the applicant's other downtown developments, that the applicant had constructed several multi-family developments that included L-shaped structures.

Mr. Baillie said, with regard to Mr. Cato's comments about the appropriateness of addressing windows and other design elements on a preliminary plan, that the staff was concerned that large portions of the structure were depicted with no windows or other openings, which could limit natural surveillance and create unsafe spaces. Mr. Baillie explained, with regard to the comments about grading the property, that the Land Subdivision Regulations define a steep slope as a 15% slope, while Americans with Disabilities Act (ADA) requirements call for 5% slope. Should the applicant choose to follow the staff's recommendation to construct an L-shaped building, grading on the site would be at less than 4%.

Mr. Baillie stated that the staff was supportive of the increased density of this project, but they believe it is important to accomplish that density in ways that are in the best interest of the community and that support the Comprehensive Plan.

Commission Discussion: Mr. Pohl stated that he was in complete agreement with the staff. He said that he was not sure how the Commission should proceed, since it did not appear that the applicant was willing to follow the staff's recommendations. He opined that the applicant's existing designs might be more appropriate on some of their other sites, where the building would not be located partially underground. Mr. Pohl added that "pretending that a fire stair entrance and exit was a significant ingress/egress for the building was somewhat insulting" since it was obvious that pedestrian traffic would likely not use that entrance. He noted that street activation was critical to create welcoming public spaces and a humane environment, and that the applicant could use the "dead space" of an L-shaped building for closets or mechanical spaces. Mr. Pohl stated that the city has a Comprehensive Plan that is a superb document, and the public needs developers who are willing to step up and create designs that meet the criteria of the Plan.

Mr. Baillie answered that, with the staff's recommendation, it would be a condition of the development plan that the proposed development come into greater compliance with the Comprehensive Plan. The staff's proposed modifications would allow the applicant to create that compliance. However, if the applicant chose not to alter the plan to include those modifications, it would not be signed within two weeks, and the zone change would become null and void. Mr. Pohl asked if a motion for approval should include a condition that the development plan be brought into compliance with the Comprehensive Plan. He explained that the requirement could be more flexible using "resolve" conditions, or could be prescriptive, and require that the applicant follow the staff's recommended modifications.

Ms. Worth asked if the applicant had seen the staff's proposed modifications prior to this meeting. Mr. Cato answered that there had been discussion about an L-shaped building, but the staff had not presented anything specific, and the applicant had never seen the written recommendation prior to this meeting.

Mr. de Movellan stated that he would support the rezoning request, as well as the conditional use, but he was in agreement with the staff's recommendations on the development plan.

Ms. Barksdale stated that it seemed that there was still a lot of work to be done on the development plan, and she asked if just the rezoning was being considered at this meeting. Mr. Baillie responded that the zone change was tied to the development plan, and the Planning Commission was considering them both as separate actions. Ms. Barksdale asked if the applicant was willing to consider the staff's proposed modifications. Mr. Cato responded that, if the zone change was approved at this meeting with the staff's recommendations, the applicant would be required to completely redesign the site within two weeks, which might not be possible. Mr. Baillie added that the applicant would not necessarily need to completely redesign the site, just the internal systems of the proposed building. He added that it was premature for the applicant to pursue construction drawings for the project at this point. Mr. Baillie explained that the applicant could also seek a continuance of this public hearing, in order to redesign the development plan, but the staff could not request that, because this application is at the 90-day deadline by which the Commission must act.

Ms. Worth stated that the applicant appears to be treating the Comprehensive Plan with a "mudsill" approach, but that is not really enough. She said that it appeared that the applicant should be prepared to either request a continuance, or present a development plan that complies with the recommendations of the Comprehensive Plan.

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Mr. de Movellan asked if the Planning Commission could push for a continuance, but the applicant would have to request it, since the application was against its deadline. Should the applicant not request a continuance, the applicant would have to act at this meeting.

Mr. Bell asked if the applicant would be open to a continuance. Mr. Cato answered that the applicant had not considered that this might be a possible outcome, so he was not sure if the applicant would agree. Mr. Bell noted that he was prepared to make a motion for disapproval should the applicant not be willing to request continuance, because he did not believe that this plan should move forward without significant modifications. Mr. Cato responded that the applicant would likely consider a continuance if the only other option was disapproval.

Mr. Baughman stated that the applicant had evaluated this site extensively, and they would prefer to move forward with this design. He said that, if continuance was the only option besides disapproval, the applicant would agree to try to work with the staff, but they had already made significant changes to the development plan based on staff's recommendations and they believe that the proposed design is the most appropriate.

Mr. Bell said that he would like for the applicant and the staff to have time to fully discuss the possibilities of an L-shaped building. Mr. Forester noted that the applicant would need to request a continuance. Mr. Cato requested a continuance of this item to the March 10, 2022, Planning Commission meeting.

Motion: A motion was made by Mr. Bell, seconded Mr. Pohl, and carried 8-0 (Meyer, Michler, and Penn absent) to continue **PLN-MAR-21-00020: COWGILL, INC. (AMD)**, including the associated conditional use application and development plan, to the March 10, 2022, Planning Commission meeting.

VI. COMMISSION ITEMS – Mr. Bell stated that he appreciated Mr. Pohl's insight and opinions.

VII. STAFF ITEMS

A. ARTICLE 4-5(b) IMPROVEMENT PLAN PROGRESS REPORT - When the project engineer has completed approximately fifty percent (50%) of the infrastructure design for the development, the project engineer shall submit a preliminary report to the Planning Commission informing the Commission of how stormwater, sanitary sewer and environmental conditions imposed by the Commission at the time of the approval of the preliminary subdivision plan will be addressed in the improvement plan. The report shall be distributed to the Commission at the next convenient meeting. The report is for information only, and no action by the Commission shall be taken; however, there shall be no issuance of the Notice To Proceed, as outlined in section 4-5(d), until the Planning Commission meeting is complete.

1. PLN-FRP-21-00049: MASTERSON STATION CENTER (CITATION VILLAGE) (CITATION FLATS) (AMD) – located at 129 FERNDAL PASS, LEXINGTON, KY.
Project Contact: EA Partners, PLC
2. PLN-FRP-21-00054: HILLENMEYER PROPERTY & SFH PROPERTIES, UNIT 2-G - located at 744 GREENDALE RD. & 2405 SANDERSVILLE RD., LEXINGTON, KY.
Project Contact: EA Partners, PLC
3. PLN-FRP-21-00055: HILLENMEYER PROPERTY & SFH PROPERTIES, UNIT 2-H – located at 745 GREENDALE RD. & 2405 SANDERSVILLE RD., LEXINGTON, KY.
Project Contact: EA Partners, PLC

Staff Comments: Ms. Wade stated that the above listed improvement progress reports had been submitted and made available to the Planning Commission for their review.

B. CANCELLATION OF UPCOMING MEETING – Ms. Wade stated that there were no items scheduled for the Planning Commission's February 24th meeting, and asked for a motion to cancel the meeting.

Action: A motion was made by Mr. Bell, seconded by Ms. Barksdale, and carried 8-0 to cancel the Commission's February 24, 2022, meeting.

VIII. AUDIENCE ITEMS – No such items were presented.

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

IX. MEETING DATES FOR MARCH 2022

Work Session, Thursday, 1:30 p.m., Video Teleconference	February 17, 2021
Technical Committee, Wednesday, 8:30 a.m., Video Teleconference	February 23, 2021
Zoning Items Public Hearing , Thursday, 1:30 p.m., Video Teleconference	February 24, 2021
Subdivision Committee, Thursday, 8:30 a.m., Video Teleconference	March 3, 2021
Zoning Committee, Thursday, 1:30 p.m., Video Teleconference	March 3, 2021
Subdivision Items Public Hearing , Thursday, 1:30 p.m., Video Teleconference	March 10, 2021

X. ADJOURNMENT – There being no further business, Chairman Forester declared the meeting adjourned at 4:45 p.m.

TLW/AG/TM/CG/sc

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