

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

August 28, 2008

- I. **CALL TO ORDER** – The meeting was called to order at 1:36 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Patrick Brewer; Marie Copeland; Mike Cravens; Neill Day; Ed Holmes; Mike Owens; Frank Penn (left at 2:20 p.m.); Carolyn Richardson; Lynn Roche-Phillips; and Randall Vaughn, Chair. Absent was Joan Whitman.

Planning staff members present: Chris King, Director; Bill Sallee; Traci Wade; Tom Martin; Cheryl Gallt; Chris Taylor; Rob Hammons; and Stephanie Cunningham. Other staff members present were Rochelle Boland, Department of Law; Bob Carpenter, Division of Building Inspection; Captain Charles Bowen, Division of Fire and Emergency Services; Jeff Neal, Division of Traffic Engineering; Hillard Newman, Division of Engineering; and Tim Queary, Urban Forester.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Penn, seconded by Ms. Richardson, and carried 10-0 (Whitman absent) to approve the minutes of the July 10, 2008, and July 31, 2008, Planning Commission meetings.

Mr. Vaughn noted at this time that he would like to welcome Patrick Brewer, Marie Copeland, and Mike Owens, the three new Planning Commission members, to their first meeting.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **MULTICON DEVELOPMENT COMPANY ZONING MAP AMENDMENT & ANGLIANA SUBDIVISION (A PORTION OF) / CNO & TP RAILROAD ZONING DEVELOPMENT PLAN**

- a. MARV 2008-25: MULTICON DEVELOPMENT COMPANY (10/9/08)* - petition for a zone map amendment from a Heavy Industrial (I-2) zone to a High Density Apartment (R-4) zone, for 18.27 net (23.61 gross) acres; and from a Wholesale & Warehouse Business (B-4) zone to a High Density Apartment (R-4) zone, for 1.01 net (1.17 gross) acres, for property located at 474, 475, and 497 Angliana Avenue and 701 South Broadway (a portion of). Dimensional variances are also being requested at this location.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends Office/Warehouse (OW) and Downtown Master Plan (DTMP) future land uses. The petitioner proposes a rezoning to a High Density Apartment (R-4) zone in order to permit a group residential apartment complex with 321 dwelling units.

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

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

1. Some threshold issues have been identified that must first be addressed, including the multi-modal transportation infrastructure needs, part of which is the safe transportation to and from the University of Kentucky campus, along with the provision of necessary transit stops and pedestrian crosswalks, prior to a substantive recommendation on the appropriateness of this rezoning request.
2. The corollary development plan currently proposes a new truck access drive on private property in part of the R-4 zone requested. This use is not compliant with the R-4 zone restrictions, and may not be an exempt use either, since the property is not proposed to be owned by a railroad.

b. **REQUESTED VARIANCES**

1. Reduce the required Group Residential Project frontage yard from 70 feet to 40 feet.
2. Reduce the Group Residential Project exterior yard requirement from the height of the building (40 feet) to 5 feet.
3. Reduce the required front yard setback in the R-4 zone along Angliana Avenue and Curry Avenue from 20 feet to 5 feet.

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

- a. If the properties are re-zoned to R-4, as requested, granting these variances should not adversely affect the public health, safety or welfare, nor will it alter the character of the general vicinity. The redevelopment of these properties will be consistent with the change in character along South Broadway and Foreman Avenue, across South Broadway from the subject properties.
- b. Granting the variances will not allow a circumvention of the Zoning Ordinance, as some building setbacks will still be maintained. If approved, it will help to implement the Downtown Master Plan recommendations for the area.
- c. Special circumstances relating to the subject properties that help to justify the variances are their size and configuration, as well as the incorporation of the larger tract alongside the Norfolk-Southern Railroad line into the proposed development, all of which provide development constraints for the property.

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

- d. Strict application of the Zoning Ordinance would severely restrict the applicant's ability to redevelop the properties in an efficient manner and that would help to alleviate the need for student housing in this part of the community.
- e. The requested variances are not the result of any prior actions of the applicant that could be construed as a willful violation of the Zoning Ordinance.

This recommendation of approval is subject to the following conditions:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action for approval of these variances is null and void.
 2. Should the property be rezoned, it shall be developed in accordance with the approved Preliminary Development Plan, or as amended by the Planning Commission.
 3. A note shall be placed on the Development Plan, indicating the dimensional variances granted by the Planning Commission under Article 6-4(c) of the Zoning Ordinance.
 4. All necessary permits shall be obtained from the Division of Building Inspection prior to demolition of any structures (if applicable), grading and construction; and after certification of a Final Development Plan for the properties.
 5. Any additional variances determined to be needed for the proposed development shall be subject to approval of the Board of Adjustment.
- c. ZDP 2008-111: ANGLIANA SUBDIVISION (A PORTION OF) / CNO & TP RAILROAD (10/9/08)* - located at 474, 475, and 497 Angliana Avenue and 701 South Broadway (a portion of). **(Strand Associates)**

The Subdivision Committee Recommended: Referral to the full Commission. There were questions regarding the orientation of the buildings to Angliana Avenue, pedestrian connections, variances requested and the industrial access road.

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

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. Building Inspection's approval of landscape buffer.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Department of Environmental Quality's approval of environmentally sensitive areas.
9. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
10. Delete note number 11.
11. Correct note number 4.
12. Clarify cross-section information.
13. Correct site statistics to provide lot coverage and floor area ratio (FAR) information.
14. Delete note number 9.
15. Denote: Compliance with Article 15-7 of the Zoning Ordinance shall be determined at the time of the final development plan.
16. Denote: The location and design of a LexTran bus stop will be determined at the time of the final development plan.
17. Discuss the parking that is provided versus the minimum required.
18. Discuss the industrial access road proposed to rail spur.
19. Discuss the pedestrian bridges' accessibility to the public.

Petitioner Representation: Bruce Simpson, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendation of postponement, and requested a one-month postponement to allow the petitioner to continue to work on resolving their development plan issues.

Action: A motion was made by Mr. Cravens, seconded by Mr. Penn, and carried 10-0 (Whitman absent) to postpone MARV 2008-25 to the September 25, 2008, Planning Commission meeting.

2. MULTICON DEVELOPMENT COMPANY ZONING MAP AMENDMENT & SCOTT STREET MULTI-USE PROJECT ZONING DEVELOPMENT PLAN

- a. MARV 2008-26: MULTICON DEVELOPMENT COMPANY (10/9/08)* - petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a Mixed-Use 2: Neighborhood Corridor (MU-2) zone, for 2.07 net (3.42 gross) acres, for property located at 300, 307, 313, 315, 317, 319, 321, 322, 324, 325 & 328 Scott Street and 701 South Broadway (a portion of). Dimensional variances are also being requested at this location.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends High Density Residential (HD) for properties on the east side of Scott Street and Industrial Mixed Use (IMU) for properties on the west side of Scott Street. The petitioner proposes MU-2 zoning for a combination residential and commercial development. They propose 60 dwelling units and 10,165 square feet of commercial space.

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

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

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

1. The requested Mixed Use 2: Neighborhood Corridor (MU-2) zone is appropriate and the existing Wholesale and Warehouse Business (B-4) zone is inappropriate, for the following reasons:
 - a. The Plan recommends a mixture of High Density Residential (HD) and Industrial Mixed Use (IMU) future land use. The existing B-4 zoning does not allow either residential or industrial mixed use, as currently written.
 - b. The applicant is proposing a Mixed Use 2: Neighborhood Corridor zone, and a mixture of business and residential land use, as suggested by the Newtown Pike Extension Corridor Plan. The Newtown Pike Extension Corridor Plan recommends redevelopment strategies that promote mixed use projects and "critical mass" developments because these types of projects provide good transitions to residential developments or neighborhoods, and provide a variety of uses, which helps revive areas and extend the hours of activity in certain areas.
 - c. The proposed zone and corollary development plan are appropriate at this location in that the development will be pedestrian-oriented; provide student housing close to campus; be compatible with the immediate area; and complement the proposed University of Kentucky Law School building, as well as the "Reynolds Project," just north and east of this location, which is anticipated for a mixture of uses by the University of Kentucky.
 - d. Several of the properties have legal, but non-conforming uses that will be eliminated through this re-zoning.
2. The proposed location of the MU-2 zoning is appropriate because it is located in a commercial area of Scott Street that is recommended for a mixed use, including a residential future land use. Scott Street is planned to become an extension of Newtown Pike, which is specifically included in the current locational criteria for the MU-2 zone.
3. This recommendation is made subject to approval and certification of ZDP 2008-112: Scott Street Multi-Use Project, 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. REQUESTED VARIANCES

1. Reduce the required open space from 10% to 5%.
2. Reduce the required front yard setback from 15' to 0' for the 3rd and 4th building stories.
3. Reduce the required side yard from 10' to 2'.
4. Increase the required setback for 40% of the front building walls from 0' to 15'.
5. Reduce the required rear yard setback (adjacent to the railroad) from 10' to 5'.
6. Reduce the required landscape buffer width (adjacent to the KU substation) from 5' to 2'.

The Staff Recommends: **Approval of (1) a rear yard reduction from 10' to 5', (2) a side yard reduction from 10' to 3', and (3) elimination of the requirement that the third and fourth stories of the proposed buildings have a front yard setback of at least 15'**, for the following reasons:

- a. Granting these variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Surrounding properties, which include a railroad line, parking lots, a utility substation and a warehouse building, are not anticipated to be adversely impacted. The overall character of the neighborhood is likely to improve as a result of the proposed mixed-use development.
- b. The irregular shape of the westerly portion of the subject property, and the small size and location of the easterly portion of the subject property relative to Scott Street and the balance of the subject property, are special circumstances that contribute to justifying these variances.
- c. Strict application of the Zoning Ordinance requirements would likely compromise the overall design of the development, resulting in a less efficient use of available land and forcing certain features (such as access locations) that are less desirable from the standpoint of public health and safety.

The Staff Recommends: **Disapproval of the requested open space reduction, from 10% to 5%**, for the following reasons:

- a. A 5% reduction in the required open space does not appear to be needed for this proposed mixed-use development. The most recently submitted Preliminary Development Plan indicates that nearly 9,000 square feet of open space will be provided, with a pedestrian plaza of 550 square feet to be connected to a 6' wide walkway along Scott Street.
- b. Insufficient justification of the requested variance has been offered by the applicant. Although the proposed open space areas are small and somewhat disconnected, they do provide valuable space for at least some passive outdoor activities and should be retained.

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

1. Provided the Urban County Council rezones the property MU-2; otherwise, any Commission action of approval of these variances is null and void.

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2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by the Planning Commission.
 3. A note shall be placed on the Development Plan indicating the dimensional variances that the Planning Commission has approved for this property under Article 6-4(c) of the Zoning Ordinance.
 4. All necessary permits shall be obtained from Building Inspection prior to construction, after certification of a Final Development Plan, should this property be rezoned.
 5. A side yard of at least 5' shall be provided where the subject property adjoins the Kentucky Utilities substation, at 301 through 303 Scott Street, with a 5' wide landscape buffer to be provided there according to the provisions of Article 18-3(a)(1)6 of the Zoning Ordinance.
- c. ZDP 2008-112: SCOTT STREET MULTI-USE PROJECT (10/9/08)* - located at 300, 307, 313, 315, 317, 319, 321, 322, 324, 325 and 328 Scott Street and 701 South Broadway (a portion of). **(Strand Associates)**

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

1. Provided the Urban County Council rezones the property MU-2; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffer.
5. Urban Forester's approval of tree inventory map.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
9. Label topographic contours.
10. Denote: Access to Scott Street shall be determined at the time of a final development plan for compliance with the Newtown Pike access standards.
11. Clarify open space site statistic for each parcel.
12. Depict vehicle use area and property perimeter landscaping and buffer.
13. Provided the Planning Commission approves the requested variances, or revise the development plan accordingly.
14. Denote: Resolve the Scott Street cross-section proposed at the time of the final development plan.
15. Resolve building features at the time of the final development plan.

Petitioner Representation: Bruce Simpson, attorney, was present representing the petitioner. He stated that this request is a "companion" to the previous agenda item, and requested a one-month postponement so that both items could be heard at the same meeting.

Action: A motion was made by Mr. Penn, seconded by Ms. Richardson, and carried 10-0 (Whitman absent) to postpone MARV 2008-26 to the September 25, 2008, Planning Commission meeting.

3. ZOTA 2008-6: AMENDMENT TO ARTICLE 8 TO EXPAND THE ALLOWABLE USES INCLUDED IN THE ADAPTIVE REUSE OF BUILDINGS IN A B-4, I-1, OR I-2 ZONE - petition for a Zoning Ordinance text amendment to Article 8 to expand the allowable uses included in the adaptive reuse of buildings in a Wholesale & Warehouse Business (B-4), Light Industrial (I-1), or Heavy Industrial (I-2) zone.

INITIATED BY: Pepper Distillery, LLC

PROPOSED TEXT: Article 8-21(b) - Principal Permitted Uses in the B-4 zone
(Note: All of the proposed text would be an addition to the Zoning Ordinance. Copies of the entire text are available upon request)

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

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

1. Although this text amendment could be a very powerful tool for the adaptive reuse of buildings in warehouse and industrial areas, it also raises some concerns from the staff's perspective. Additional time is needed to assess whether this proposal, or an alternative, can achieve the desired goals of redevelopment without causing unanticipated negative changes to areas where this text amendment would apply.

Petitioner Representation: Bruce Simpson, attorney, was present representing the petitioner and requested postponement to the September 11th meeting.

Staff Comment: Mr. Vaughn asked if the staff had any objection to a two-week postponement of this item, to which Mr. Sallee replied that the staff had no objections.

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

Action: A motion was made by Mr. Owens, seconded by Mr. Day, and carried 10-0 (Whitman absent) to postpone ZOTA 2008-6 to the September 11, 2008, Planning Commission meeting.

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

- a. MAR 2007-9: TATES CREEK HEIGHTS, LLC (8/28/08)* – petition for a zone map amendment from a Neighborhood Business (B-1) zone with conditional zoning restrictions to a Neighborhood Business (B-1) zone with modified conditional zoning restrictions, for 4.19 net (5.83 gross) acres, for property located at 1093, 1097 & 1099 Duval Street.

LAND USE PLAN AND PROPOSED USE

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

The Zoning Committee Recommended: Referral to the full Commission.

The Staff Recommended: Approval, for the following reasons:

1. Conditions originally put upon the subject property were not done in anticipation of a professional office use across Duval Street from the subject property. This would constitute a change in the physical and economic nature of the area since 1996, which makes this site eligible for a revision to the very limited conditional zoning restrictions originally placed thereon.
2. The expanded uses currently requested are still consistent with the Retail, Trade and Personal Services land use recommendations of the 2007 Comprehensive Plan and the prior 2001 Comprehensive Plan.
3. This recommendation is made subject to the approval and certification of ZDP 2007-50: Pinnacle, Unit 1 (Amd.) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of any Planning Commission approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall now be subject to the following use restrictions. (with all edits shown below in italicized text from the previous conditions):
 - a. The B-1 site shall *contain a maximum of four buildings and be used only as either a sit-down restaurants without drive-through facilities or the service of “fast food,” a florist shop, and/or a use permitted in the P-1 zone other than a bank, a credit institution, a television studio or a hospital; however, notwithstanding any provision to the contrary, a single drive-through shall be permitted solely for the use of a coffee shop (the “permitted drive-through”).*
 - b. *In the event the permitted drive-through should cease to be used solely in connection with a coffee shop, or should a coffee shop cease to operate as a coffee shop (excluding any reasonable number of days necessary for repair, remodeling, or reconstruction as a result of or required by a lawful order or decree of a governmental or regulatory authority, a casualty loss, other than such a loss caused by the owner of the property), then the permitted drive-through shall be removed, no future drive-through shall be allowed on the property, and the use of the coffee shop building shall be restricted to the uses permitted herein.*
 - c. *The portion of the property used for the coffee shop shall be permitted to display on the east-facing portion of the building only a single logo, and the words may be displayed a single time on the east-facing façade, the letters of which shall not exceed 18 inches in height, and the logo shall not exceed 36 inches in height, and in no event shall the words or the logo be backlit or internally lit. Signs on the other sides of the building and on the property shall be regulated under the Zoning Ordinance.*
 - d. The existing (“**original**”) structure shall be preserved except to the extent it must be modified to permit the construction of additions and/or renovations as described below.
 - e. *An additions to the existing (“**original**”) structure shall be allowed, but shall only be in accordance with a final development plan submitted to and approved by the Planning Commission; and such additions in total shall not exceed 3,000 square feet and shall be governed by all of the restrictions and limitations that apply to the new building as described below.*
 - f. Parking will be in accordance with a final development plan submitted to and approved by the Planning Commission; *provided, however, that a visual buffer of hedges and trees shall be placed on the east-facing side of the property.*
 - g. The property owner shall preserve the existing mature trees on site except as necessary for the construction of ~~one new~~ *the office building, the additions to the existing structure, the aforementioned coffee shop and accessory parking, all as approved by the Planning Commission on the final development plan for the site and subject to all restrictions and limitations contained herein; and such trees, if removed, shall be replaced in equal number to preserve the buffer between the site and Bates Creek Road.*
 - f. ~~Signage shall be limited to the signage shown on and approved by the Planning Commission on the final development plan for the site and in accordance with the limitations contained herein;~~
 - h. Existing trees which provide a visual buffer from surrounding properties shall be preserved, *and damaged or diseased trees may be removed if also replaced. in equal number and kind on the site; and Deciduous trees shall be planted in the exterior parking lot.*
 - i. *In addition to the above-referenced coffee shop building, the construction of one a single additional new building shall be permitted (the “office building”); however, such building shall not exceed 36,000 square feet, shall not exceed 36 feet in*

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height at its highest point as measured from the existing grade level as of September 20, 2005, including all fixtures, equipment and any other materials (except that any equipment located on the roof shall be completely screened from view by parapet walls which are permitted to rise an additional 6 feet solely for that purpose), shall primarily utilize only a brick siding or masonry façade which must cover no less than 55% of the exterior surface of the building excluding the roof, windows and doors, and the roof shall vary in height with no less than three (3) articulating roof heights. ~~In addition~~ Furthermore, the easternmost edge of the office ~~such~~ building shall be ~~no closer at any point than 30 feet from the right-of-way bordering Yates Creek Road~~ at least 100 feet from the easement line on the east side of the property.

- b. ZDP 2007-50: PINNACLE, LOT 1 (AMD.) (8/28/08)* – located at 1093, 1097 and 1099 Duval Street.
(EA Partners)

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

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

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

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

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner would like to request a one-month postponement of this item, and noted that the petitioner hopes to have a revised version of this request to present at that meeting. Mr. Murphy added that he had notified neighborhood representatives of the petitioner's request for postponement, and they did not object to that request.

Action: A motion was made by Mr. Holmes, seconded by Ms. Roche-Phillips, and carried 10-0 (Whitman absent) to postpone MAR 2007-9 to the September 25, 2008, Planning Commission meeting.

5. **SOUTHERN INDUSTRIAL, LLC, ZONING MAP AMENDMENT & MEADOWTHORPE COMMUNITY BUSINESS CENTER, UNIT 1 (HALIFAX LAND CO.), ZONING DEVELOPMENT PLAN**

- a. MAR 2008-24: SOUTHERN INDUSTRIAL, LLC (10/9/08)* - petition for a zone map amendment from a Neighborhood Business (B-1) zone to a Wholesale & Warehouse Business (B-4) zone, for 1.8650 net (3.4609 gross) acres, for property located at 1447 Antique Drive.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends Retail Trade and Personal Services land use for the subject property. The petitioner proposes a restricted wholesale business/warehouse development on the subject property, to be restricted by conditional zoning.

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

The Staff Recommends: Postponement, for the following reasons:

1. The question of whether the proposed B-4 zoning (in total) is more appropriate than the existing B-1 zoning for the subject property is directly dependent upon the following issues:
 - a. The existing B-1 zoning of the subject property directly abuts existing residential uses zoned B-1 and R-1C. However, no landscaping, and no restrictions regarding loudspeakers, building openings or lighting have been offered to buffer the proposed shop of special trade from these adjacent residential uses.

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- b. Since the subject property currently has no impervious surface area, the proposed development means that some type of storm water detention or system improvements will likely be required, so as not to allow any increase in the rate of storm water runoff onto surrounding residential and commercial properties. However, the subject property is not currently proposed for any such improvements, and is technically undevelopable at the present time, as it is entirely designated as a temporary drainage easement. Until such time as a *concept* for storm water improvements is proposed, this rezoning application is premature.
- b. ZDP 2008-108: MEADOWTHORPE COMMUNITY BUSINESS CENTER, UNIT 1 (HALIFAX LAND COMPANY) (10/9/08)* - located at 1447 Antique Drive. (Foster - Roland)

The Subdivision Committee Recommended: Postponement. There were questions regarding the building location, relative to the residential structures.

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

1. Provided the Urban County Council rezones the property B-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffer.
5. Urban Forester's approval of tree inventory map.
6. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
7. Correctly label and depict the 80' easement.
8. Denote proposed detention areas.
9. Addition of topographic information per Article 21-6(a) of the Zoning Ordinance.
10. Addition of site statistics information per Article 21-6(a) of the Zoning Ordinance.
11. Addition of the tree inventory information as defined in Article 26 and as per Article 21-6(a) of the Zoning Ordinance.
12. Denote the dimensions and location of the access and parking areas per Article 21-6(a) of the Zoning Ordinance.
13. Addition of adjacent property zoning information.
14. Denote the conditional zoning restrictions.
15. Resolve the building location relative to the residential structures at the time of the final development plan.
16. Resolve the potential impact of lights and noise on the adjoining properties at the time of the final development plan.
17. Discuss the apparent drainage feature at the center of the property.
18. Discuss the proposed uses for the property.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner would like to request a one-month postponement of this item in order to allow for time to work with the Meadowthorpe Neighborhood Association on resolving some of their issues with the proposed development.

Action: A motion was made by Mr. Day, seconded by Mr. Owens, and carried 10-0 (Whitman absent) to postpone MAR 2008-24 to the September 25, 2008, Planning Commission

6. THOMAS & CORBETT, LLC, ZONING MAP AMENDMENT & THE RESERVE AT TATES CREEK (AMD.) ZONING DEVELOPMENT PLAN

- a. MAR 2008-23: THOMAS & CORBETT, LLC (10/9/08)* - petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Planned Neighborhood Residential (R-3) zone, for 7.19 net (9.60 gross) acres, for property located at 1060-1097 Bridlewood Lane, 5200-5205 Tykes Pass, 5121 Middleton Place and 5397 Bates Creek Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Low Density Residential future land use for the subject property. The petitioner proposes 38 townhouse and single family (detached) residential units in an R-3 zone.

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

The Staff Recommends: Disapproval, for the following reasons:

1. The existing Single Family Residential (R-1C) zoning, with conditional zoning restrictions, is in agreement with the 2007 Comprehensive Plan.
2. The existing R-1C zone is more appropriate than an R-3 zone for the subject property, for the following reasons:
 - a. The existing pattern of residential development in the immediately surrounding neighborhoods is well below 4.0 dwelling units per gross acre.
 - b. The predominant zoning designation in this portion of the Bates Creek Road corridor is R-1C.
 - c. R-1C zoning is much more common along the edge of the Urban Service Area than R-3, as there has been a consistent and historical precedent for lower density residential development along this boundary for decades.

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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 early 2007 that would support an argument for R-3 zoning for the subject property.
- b. ZDP 2008-109: THE RESERVE AT TATES CREEK (AMD.) (10/9/08)* - located 1060-1097 Bridlewood Lane, 5200-5205 Tykes Pass, 5121 Middleton Place and 5397 Tate Creek Road. (EA Partners)

Note: The purpose of this amendment is to depict a 38-unit townhouse and single family residential development.

The Subdivision Committee Recommended: Referral to the full Commission. There were questions regarding the location of the sanitary sewer line relative to the location of the proposed townhouses, and compliance with Floor Area Ratio restrictions.

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

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffer.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Depict the tree canopy information on plan.
8. Denote the square footage in the site statistics information and dimension units (including number of stories).
9. Denote compliance with floor area ratio requirements (townhouse portion).
10. Resolve existing conflict with the proposed townhouses and platted easements.

Petitioner Representation: Rory Kahly, EA Partners, was present representing the petitioner and requested a one-month postponement of this request.

Action: A motion was made by Mr. Penn, seconded by Mr. Holmes, and carried 10-0 (Whitman absent) to postpone MAR 2008-23 to the September 25, 2008, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, August 7, 2008, at 8:30 a.m. The meeting was attended by Commission members: Neill Day, Mike Cravens and Carolyn Richardson. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Jimmy Emmons, Traci Wade, Tom Martin, Cheryl Gallt, Chris Taylor, Denice Bullock, and Frank Boateng; as well as Rochelle Boland, Department of Law; Captain Charles Bowen, Division of Fire & Emergency Services; and Bob Carpenter, Division of Building Inspection. The Committee made recommendations on plans as noted.

General Notes

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

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

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, August 7, 2008, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Neill Day, Ed Holmes, Frank Penn, and Lynn Roche-Phillips. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS

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

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

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

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

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)

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

- (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. JFG ENTERPRISES, INC., ZONING MAP AMENDMENT & JFG ENTERPRISES, INC., ZONING DEVELOPMENT PLAN

- a. MAR 2008-21: JFG ENTERPRISES, INC. (9/11/08)* - petition for a zone map amendment from an Agricultural Rural (A-R) zone to an Interchange Service Business (B-5P) zone, for 6.70 net (9.23 gross) acres, for property located at 5191 Athens-Boonesboro Road (a portion of).

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Blue Sky Rural Activity Center) recommends Highway Commercial/Interstate Commercial (HC) future land use for the subject property. The petitioner proposes the B-5P zone in order to develop a restaurant and a hotel, with associated off-street parking.

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

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

1. The requested Interstate Service Business (B-5P) zone is in agreement with the 2007 Comprehensive Plan because the Plan recommends Highway Commercial/Interstate Commercial (HC) future land use for the subject property. The subject property is located at an interstate interchange in the Blue Sky Rural Activity Center, and the B-5P zone is intended to implement the Comprehensive Plan's future land use recommendation at this location.
 2. This recommendation is made subject to approval and certification of ZDP 2008-94: JFG Enterprises, Inc., 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. ZDP 2008-94: JFG ENTERPRISES, INC. (9/11/08)*- located at 5191 Athens-Boonesboro Road.
(Sherman/Carter/Barnhart)

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

1. Provided the Urban County Council rezones the property B-5P; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree inventory map/remove tree protection plan information.
6. Department of Environmental Quality's approval of environmentally sensitive areas (steep slopes).
7. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
8. Place site statistics in box.
9. Correct vicinity map.
10. Correct note number 9.
11. Addition of dimensions to buildings, drive aisles and access points.
12. Addition of adjoining property information.
13. Addition of detention areas being proposed.
14. Addition of conditional zoning restrictions, if required.
15. Resolve street improvements per Article 6-8(l)3 of Land Subdivision Regulations.
16. Resolve access road, throat depth and utility conflict.
17. Resolve arterial screening.
18. Resolve sanitary sewer at the final development plan stage.

Zoning Presentation: Ms. Wade began the zoning presentation by entering into the record and distributing to the Commission one letter of opposition to this rezoning request.

Ms. Wade stated that this is a rezoning request from an Agricultural Rural (A-R) zone to an Interstate Service Business (B-5P) zone, for approximately 6.7 acres of property located on Athens-Boonesboro Road. The subject property is located within the Blue Sky Rural Activity Center, on the north side of Athens-Boonesboro Road, a fraction of a mile west of

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the Interstate 75 interchange. The petitioner proposes to redevelop the subject property with a restaurant and hotel, both of which are principal permitted uses in the B-5P zone. The Blue Sky Rural Activity Center encompasses not only the subject property and surrounding area on the west side of the interstate, but also includes a large industrial development on the east side of the interstate. Several hotels and restaurants are also located on the eastern side of the Athens-Boonesboro Road/Interstate 75 interchange. There is an existing small package treatment plant located to the north of the subject property.

As part of the 1996 Comprehensive Plan process, the petitioner made a request that the subject property be added to the Rural Activity Center. At that time, there had been considerable community debate about expanding the Urban Service Area and the Rural Activity Centers. Ms. Wade said that the Urban County Council adopted Goals and Objectives, with one Goal specifically addressing the expansion of the Rural Activity Centers:

"Maintain the boundaries and soundly manage land use within the Rural Activity Centers."

The Council also adopted an Objective that stated that the Rural Activity Centers should be limited to their existing boundaries.

Through the Comprehensive Planning process, the Planning Commission considered the petitioner's request to add the subject property to the Rural Activity Center. In order to accommodate that request, the staff made a recommendation that the petitioner remove a similar number of acres on the south side of Athens-Boonesboro Road in order to create a property "swap" of 6.6 acres added to the Rural Activity Center, with a like number of acres removed. The petitioner agreed to that land swap, and agreed that they would downzone the companion parcel at such time as they decided to request rezoning for the subject property. The downzoning request for the companion parcel also appears on today's agenda, but the petitioner intends to request that that request be denied.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Highway Commercial/Interstate Commercial land use for the subject property, due its close proximity to Interstate 75. The requested B-5P zone is considered to be appropriate and in agreement with the Comprehensive Plan recommendation at this location.

The petitioner did not submit a traffic impact study with this request, although the proposed hotel and restaurant uses would generate traffic just under the threshold requirement for such a study. There was some concern among staff during the review process that the existing package treatment plant on the subject property did not have sufficient capacity to handle a full build-out of the properties on this side of the interstate, including properties located on the south side of Athens-Boonesboro Road. Ms. Wade said that this concern also provided some justification for the staff's 1996 recommendation to facilitate a land swap. The staff and Zoning Committee are recommending approval of this request, for the reasons as listed on the agenda and in the staff report.

Development Plan presentation: Mr. Taylor presented the corollary development plan for this request, briefly orienting the Commission to the location of the subject property. He stated that the petitioner proposes to develop the subject property with a three-story hotel to include 110 rooms, as well as a 7,100 square-foot restaurant. The plan includes 147 total parking spaces, with access to Athens-Boonesboro Road. The Subdivision Committee recommended approval of this request, with 18 conditions as listed on the agenda. Mr. Taylor noted that the staff had distributed to the Commission a revised set of conditions. The first 15 conditions could remain as listed on the agenda; condition #16 could be deleted, and the following changes are recommended for conditions #15 – 17:

15. Resolve street improvements per Article 11-7(a) of the Zoning Ordinance.
16. Resolve arterial screening along the Service Road at the time of the final development plan.
17. Resolve sanitary sewer at the final development plan stage.

Petitioner Presentation: Rena Wiseman, attorney, was present representing the petitioner. She entered into the record an affidavit from Phillip Wilson, declaring that the property has not been used for, or been viable for, agricultural use since 1968. She also entered a letter from Jim Buckles, TetraTech, indicating that the existing package treatment plant has a capacity of 70,000 gallons, and is currently using only 4,000 gallons. The addition of the proposed hotel and restaurant uses would bring that amount up to 10,000 gallons, which would leave adequate capacity for further development in the area. Ms. Wiseman then entered a letter from the Kentucky Energy and Environment Cabinet, certifying that the treatment plant had been inspected and was determined to be satisfactory. A note was included on the development plan that the plant operator must certify that adequate capacity exists in the treatment plant prior to any development of the property.

Ms. Wiseman stated that the petitioner is in agreement with the staff's recommendations, including the revised conditions, and she requested approval.

Commission Questions: Mr. Holmes asked if staff had had the opportunity to review the letters from TetraTech and the Energy and Environment Cabinet with regard to the inspection of the treatment plant. Mr. Martin answered that the staff had received and reviewed copies of those letters.

Zoning Action: A motion was made by Mr. Penn, seconded by Mr. Day, and carried 10-0 (Whitman absent) to approve MAR 2008-21, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Penn, seconded by Mr. Holmes, and carried 10-0 (Whitman absent) to approve ZDP 2008-94, with the 17 revised conditions as recommended by staff.

2. ROSE HILL PROPERTIES, LLC, ZONING MAP AMENDMENT & FAYETTE INDUSTRIAL PARK, LOTS 6 & 7, ZONING DEVELOPMENT PLAN

- a. MAR 2008-22: ROSE HILL PROPERTIES, LLC (10/9/08)* - petition for a zone map amendment from a Light Industrial (I-1) zone to a Planned Shopping Center (B-6P) zone, for 6.58 net (7.55 gross) acres, for property located at 3851 & 3885 Mall Road.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Retail Trade and Personal Services future land use for the subject property. The petitioner proposes a redevelopment of the property, consisting of several retail stores, a branch bank, a restaurant and associated off-street parking.

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

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

1. The requested Planned Shopping Center (B-6P) zone for the subject property, and the commercial redevelopment proposed for this site, are in agreement with the Retail Trade and Personal Services land use recommendation of the 2007 Comprehensive Plan.
 2. This recommendation is made subject to the approval and certification of ZDP 2008-107: Fayette Industrial Park, Lots 6 & 7 (Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2008-107: FAYETTE INDUSTRIAL PARK, LOTS 6 AND 7 (10/9/08)* - located at 3851 & 3885 Mall Road.
(Midwest Engineers)

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

1. Provided the Urban County Council rezones the property B-6P; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffer.
5. Urban Forester's approval of tree inventory map.
6. Addition of tree inventory information.
7. Denote existing and proposed easements.

Zoning Presentation: Ms. Wade presented the staff report, noting that this request is for rezoning from a Light Industrial (I-1) zone to a Planned Shopping Center (B-6P) zone, for approximately 6.5 acres located on Mall Road.

Ms. Wade stated that the subject properties are located on the west side of Mall Road, near the intersection of Man O' War Boulevard and Nicholasville Road, with the Norfolk-Southern railroad to the west. The properties are currently utilized for mini-warehouses on one parcel, and large vehicle storage on the other parcel. The petitioner requested this rezoning in order to redevelop the property with retail space, a small restaurant, and a branch bank. The petitioner filed nearly the same request in 2007, but withdrew that request prior to it being forwarded to the Urban County Council. At the Planning Commission's hearing on that prior request, there was a great deal of concern about sidewalks and lack of pedestrian connectivity on the subject property. The Planning Commission voted to approve the zone change, but postponed action on the development plan. Shortly thereafter, the petitioner withdrew the request completely.

Ms. Wade said that the area surrounding the subject property is commercialized, and the 2007 Comprehensive Plan recommends Retail Trade & Personal Services land use for the subject property. All of the properties from the Lexington Green shopping center, south to Man O' War Boulevard, are recommended for Retail Trade & Personal Services use. The predominant zoning in the area is B-6P, with some B-3 zoning as well.

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

The petitioner has submitted a traffic impact study along with this request. Due to the commercial nature of the proposed use, the petitioner's request met the threshold for such a study. Ms. Wade stated that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Taylor presented the associated development plan, briefly orienting the Commission to the location of the subject property. He stated that the petitioner proposes to develop the property with a 46,800-square foot retail building, as well as two 5,000-square foot buildings to possibly include a restaurant and branch bank. The petitioner is proposing two accesses to Mall Road, in the area that was formerly right-of-way for the cul-de-sac terminus of the road. The development plan includes 272 parking spaces, as well as sidewalks along the entire frontage of the proposed development. Mr. Taylor said that the Subdivision Committee recommended approval of this plan, subject to the seven conditions as listed on the agenda.

Traffic Study Presentation: Rob Hammons, Transportation Planning, presented the staff report on the Traffic Impact Study submitted by the petitioner along with this rezoning request. He distributed to the Commission copies of the traffic study summary, to which he referred during his presentation.

Mr. Hammons stated that the traffic impact study determined the existing peak-hour intersection level of service to be "F" at the signalized Nicholasville Road / Tiverton Way intersection, in both the eastbound and westbound directions. Several other intersections that were considered as part of the study had levels of service of "D," which is acceptable under the Zoning Ordinance, and level "E." The future "no-build" level of service study produced the same results at those problematic intersections, as did the 2010 "build scenario" projections.

Mr. Hammons said that the traffic impact study indicates that there are level of service issues at several of the intersections evaluated, and noted that the Transportation Planning section is committed to working with the Division of Traffic Engineering to help resolve some of those problems at intersections where levels of service are below "D."

Commission Questions: Mr. Penn asked if the intersections that received levels of service "E" and "F" designations could be resolved at some point. Mr. Hammons answered that that area is heavily congested, but the Traffic Study determined that the turning movements at the Nicholasville Road / Tiverton Way intersection are safe, and drivers are coming to a complete stop, so there is not a high-speed congestion problem. He said that there may be some options that could be explored to help resolve those issues.

Mr. Holmes asked if the Traffic Impact Study included any recommendations for improvement of those intersections where levels of service were poor. Mr. Hammons responded that the study did not include any detailed recommendations for improvement, but the staff and the Division of Traffic Engineering have been and will continue to work on improving those existing situations.

Mr. Day asked if Nichols Park Drive between Man O' War Boulevard and Mall Road is public or private. Mr. Hammons answered that there is a right-of-way for the length of Nichols Park Drive, but he was not aware of the details with regard to whether it is public or private, or what rights and responsibilities the government holds with regard to that roadway.

Mr. Brewer stated that it seemed to him that the Traffic Impact Study indicated that the traffic situation in the area will be poor whether the proposed development is constructed or not, and asked if that was an accurate assessment. Mr. Hammons agreed that that assessment was accurate.

Petitioner Presentation: Andy Holmes, Midwest Engineering, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, including the conditions for approval of the development plan. Mr. Holmes noted that the proposed development would not result in a bad traffic situation; that condition already exists in the area, and the proposed development would not generate much additional traffic.

Zoning Action: A motion was made by Mr. Brewer, seconded by Mr. Day, and carried 10-0 (Whitman absent) to approve MAR 2008-22, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Penn, seconded by Ms. Richardson, and carried 10-0 (Whitman absent) to approve ZDP 2008-109, subject to the seven conditions as listed on the agenda.

Note: Mr. Penn left the meeting at this time.

3. KEVIN CROUSE, PREMIER VILLAGES ZONING MAP AMENDMENT & OLD SCHOOL HOUSE LANE ZONING DEVELOPMENT PLAN

- a. MAR 2008-14: KEVIN CROUSE, PREMIER VILLAGES (8/28/08)* - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Planned Unit Development-1 (PUD-1) zone, for 24.88 net (27.7 gross) acres, for property located at 4500 & 4524 Old Schoolhouse Lane.

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

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Medium Density Residential future land use for the subject property. The petitioner proposes to construct 193 townhouse residential units, for a density of 6.97 dwelling units per gross acre.

The Zoning Committee Recommended: Referral to the full Commission.

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

1. The requested Planned Unit Development-1 (PUD-1) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
 - a. The Plan recommends Medium Density Residential (MD) future land use for the subject property, defined as 0–8 dwelling units per gross acre. This would suggest a maximum of 221 dwelling units on the subject property.
 - b. The applicant proposes to develop 193 townhouse units on the subject property, for a residential density of 6.97 dwelling units per gross acre.
2. The request complies with the intent of the PUD-1 zone and substantially meets the requirements of the PUD-1 zone. Although the Twain Ridge Drive connection cannot be mandated by the Planning Commission due to case law, right-of-way and an optimal roadway and bridge alignment is necessary to meet the requirements of Article 22A of the Zoning Ordinance.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following landscape and buffering restriction is recommended via conditional zoning:
 - a. A 40-foot wide landscape buffer and Tree Protection Area shall be provided along the common property line of the subject property and 4420 Old School House Lane (Stringer Property). The existing earthen berm and all trees (with a DBH greater than three inches) shall be maintained, and only dead or diseased trees may be removed within this buffer area.

This restriction is appropriate and necessary in order to protect the character of the South Elkhorn School House, an historic structure which is listed on the Kentucky state registry of historic places; to minimize the impact of future development on the structure and its surrounding property; and to maintain the existing tree stand and the existing earthen berm at this location.

- b. ZDP 2008-61: OLD SCHOOL HOUSE LANE (8/28/08)* - located at 4500 Harrodsburg Road.
(CDS Associates)

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

1. Provided the Urban County Council rezones the property PUD-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant location.
8. Division of Waste Management's approval of refuse collection.
9. Department of Environmental Quality's approval of environmentally sensitive areas (steep slopes).
10. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
11. Addition of tree inventory map (on plan face).
12. Resolve necessary access for dumpster service.
13. Resolve the need for additional Division of Fire emergency access.
14. Resolve location of stormwater detention basins and optimal street alignment for future Twain Ridge Drive extension.
15. Resolve the need for a street stub (from cul-de-sac) into adjacent church property.
16. Resolve local street terminus into floodplain area along with pedestrian access needed into that area.

Zoning Presentation: Ms. Wade began the staff's presentation by distributing copies of three letters of opposition to this request to the Commission. She noted that each Commission member also had a copy of an additional letter of opposition.

Ms. Wade stated that this request is for rezoning from an Agricultural Urban (A-U) zone to a Planned Unit Development (PUD-1) zone, for approximately 25 acres of property located on the east side of Harrodsburg Road, directly across from the Harrodsburg Road / Military Pike intersection. The subject property is comprised of two parcels: one, approximately one acre in size, and the other, approximately 24 acres in size. The existing Twain Ridge Drive, which is a collector street, stubs into the subject property from the rear. The Drive-in Tributary of South Elkhorn Creek converges with the creek itself along the rear of the subject property.

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Ms. Wade said that, in the vicinity of the subject property, there are several other properties zoned A-U to the north. Much of the other property in the area has been rezoned for residential use. Across Harrodsburg Road from the subject property is the Firebrook neighborhood, which is zoned R-3. There is a B-1 zone located to the northwest of the subject property, which contains a Ramsey's Restaurant and a small shopping center. To the south of and adjoining the subject property, there is an R-3 parcel that is used by a church. The rest of that parcel is currently vacant, but there has been proposed a preliminary subdivision plan for single-family residential use at the rear of that property. The English Station and Dogwood Trace subdivisions, as well as several other residential developments, are also located near the subject property. Across the creek to the east, along Twain Ridge Drive, lies a portion of the Waits property, which was developed for residential use by Ball Homes several years ago.

Ms. Wade stated that the petitioner is proposing to develop the subject property with 193 townhome units, at a density of 6.97 dwelling units per gross acre, or 7.76 dwelling units per net acre. The petitioner is requesting the PUD-1 zone in order to utilize the design flexibility allowed by that zone in order to create a unique community.

The PUD-1 zone was created in 1983, and allows an applicant to develop their own design standards, which are subject to review and approval by the Planning Commission. The following standards are negotiable in the PUD-1 zone: minimum lot size; minimum front yard; and the front, side, and rear yard dimensions. In addition to the design flexibility that the PUD-1 zone allows, it has the other following requirements: development plan certification by two design professionals; a site inventory; restricted covenants, if proposed, must be submitted along with the application for rezoning; the roadway system on the plan must be adequate to serve residents of the proposed development, as well as adjoining neighborhoods; extension of any collector street designated on the adopted Comprehensive Plan; the design of the development must be responsive to the site inventory information, particularly natural and historic features; and the utilization of an innovative design technique.

Ms. Wade displayed several photographs of the subject property, including: aerial views of the property itself and the Harrodsburg Road / Military Pike intersection; the historic schoolhouse located adjacent to the property; the significant bur oak located on the property; a ground-level photograph of the Military Pike / Harrodsburg Road intersection; a rendered map depicting the zoning surrounding the subject property; and a close-up of the 2007 Comprehensive Plan map for the subject property and surrounding areas.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Medium Density Residential use, defined as 0 – 8 dwelling units per gross acre or 5 – 10 dwelling units per net acre for the subject property. The petitioner's request for 193 townhome units therefore agrees with the Comprehensive Plan recommendation for the property. The Comprehensive Plan also recommends the extension of both Twain Ridge Drive and Agape Drive through the subject property, with the Twain Ridge Drive extension proposed to line up with the existing Military Pike intersection. The extension of these two collector streets would facilitate movement throughout the proposed development and the adjoining neighborhoods without accessing the nearby arterial roadway system.

Ms. Wade said that the petitioner has submitted a preliminary development plan which, the staff believes, does utilize innovative design principles. The plan proposes a large number of residential units, fronting onto common open space and accessible to vehicles only from the rear via alleys. The petitioner has developed design standards for the proposed development which are very similar to the R-1T and R-3 zones, with the exception of requiring that units access common open space from the front, rather than a public street. The petitioner has also provided the required site inventory plan and documentation that two design professionals helped prepare the plan. The site inventory documents existing natural features on the subject property, including the South Elkhorn Creek and Drive-in Tributary. The project designers propose to use the natural topography of the site to their benefit by creating some walkout basement units. The designers also designated a 7.3-acre area in the existing floodplain as open space for the proposed development. The petitioner's site inventory did not document any historic features on the property, nor did it mention the existing historic schoolhouse located near the subject property or the significant bur oak tree. The petitioner could possibly mitigate the loss of that tree to some extent during the development of the property.

Since the original filing of this request, the petitioner has submitted a revised development plan which allows for the continuation of both Twain Ridge Drive and Agape Drive. The Twain Ridge Drive connection across the floodplain is not being proposed for construction at this time, however, since it would require a large bridge to cross the creek. The petitioner contends that the construction of that bridge would constitute a disproportionate expense for their project to bear, citing case law between LFUCG and another developer in the area. The staff agreed, but asked that the petitioner provide adequate right-of-way and proper alignment for the bridge, as required by the Zoning Ordinance for the PUD-1 zone.

The proposed extension of Twain Ridge Drive to Harrodsburg Road, including its proper alignment with Military Pike, along with the existence of steep slopes in the area, would be limiting factors in keeping the bur oak tree. Ms. Wade said that the staff believes that other treed areas on the property, however, should be protected, and is prepared to recommend conditional zoning restrictions to that effect. The staff also believes that the proposed development should respect the historic features immediately adjacent to the property, including the schoolhouse; the conditional zoning restrictions are proposed to provide that protection as well. The staff originally recommended maintaining an earthen berm and providing a 40-foot buffer along the

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common property line with the old school house property. After meeting with the petitioner and further considering the topography along that property line, however, the staff is now recommending the following conditional zoning restrictions:

3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following landscape and buffering restriction is recommended via conditional zoning:
 - a. A landscape buffer, an average of 30' in width, and a Tree Protection Area shall be provided along the common property line of the subject property and 4420 Old School House Lane (Stringer Property). Existing trees within 20' of the northwestern property line (extending as far as 150' from the northwest property corner to the east) and 10' thereafter shall be preserved in this buffer. All trees (with a DBH greater than three inches) shall be maintained, and only dead or diseased trees may be removed within this buffer area.
 - b. A solid fence or wall, a minimum of 7' in height, shall be installed within this required landscape buffer if the existing earthen berm is removed from this area.

This restriction is appropriate and necessary in order to protect the character of the South Elkhorn School House, an historic structure which is listed on the Kentucky state registry of historic places; to minimize the impact of future development on the structure and its surrounding property; and to maintain the existing tree stand at this location.

Ms. Wade stated that the Zoning Committee recommended referral of this request to the full Commission, and the staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda. She displayed an aerial photograph of the subject property, and indicated where the proposed buffering would be located.

Commission Questions: Mr. Owens asked Ms. Wade to clarify the location of the existing bur oak tree. Ms. Wade used the petitioner's site inventory to point out the location of the bur oak tree near the Harrodsburg Road / Military Pike intersection.

Mr. Vaughn asked Ms. Wade to clarify the location of the solid fence proposed via conditional zoning. Ms. Wade used the site inventory map to point out the location of the recommended fence, along the property line shared with the Stringer Property.

Development Plan Presentation: Mr. Sallee presented the corollary preliminary development plan, further orienting the Commission to the location of the subject property. He noted that Old Schoolhouse Lane currently exists as a service road that terminates opposite the Harrodsburg Road / Military Pike intersection. It parallels Harrodsburg Road along the frontage of the subject property. A significant portion of the eastern section of the subject property is within a designated FEMA floodplain. That floodplain area is located at the confluence of the Drive-in Tributary, which flows from the south, into South Elkhorn Creek, which flows from east to west across the northeast corner of the subject property.

Mr. Sallee stated that the preliminary development plan proposes 193 townhouse units, mostly parallel to Harrodsburg Road. Two rows of townhouse units, however, are proposed to be constructed parallel to the property edges. One of the major design features of this development plan is the orientation of the townhouses upon green open spaces, which was the basis for the petitioner's rezoning request to PUD-1. This is the first request, in many years, for rezoning to the PUD-1 zone. Mr. Sallee said that the development plan also proposes a clubhouse, with associated pool and off-street parking, in the northwest corner of the subject property off the collector street extension. Old Schoolhouse Lane is proposed to remain along the Harrodsburg Road frontage, but the existing driveway would be abandoned under this plan. One collector street is proposed to extend eastward from the Harrodsburg Road / Military Pike intersection; a southward collector street is proposed to align with Agape Drive in the English Station subdivision.

Mr. Sallee stated that the staff is aware of only one other such development in Lexington, where townhouses front more upon open spaces than public streets; that is a very small development on Central Avenue, between Old Park Avenue and Old Lafayette Avenue. There are approximate 13 units in that development, which was built in the late 1980s, where the units front onto an open space and the parking is provided alongside the edge of the property.

Mr. Sallee said that access is proposed to most of the townhouse units in this development via a series of alleys that parallel the open spaces. That series of four alleys is included on the development plan to connect the local street proposed along the south edge of the property to the connector street proposed along the north edge of the property.

With regard to the restrictions inherent in the PUD-1 zone, Mr. Sallee said that the petitioner proposed a set of restrictions, which the staff reviewed. The staff is in agreement with the petitioner's proposed restrictions, with one exception. The staff would suggest that the petitioner alter the restrictions to denote that the lot frontage is on open spaces. That restriction would clarify that the units not proposed to orient to a public street will front to the open space, rather than the proposed alley system.

Mr. Sallee noted that the staff had distributed to the Commission members a revised recommendation regarding this development plan. This plan was reviewed by the Technical Committee, and, on at least two occasions, by the Subdivision Committee. The current plan was submitted in mid-June, and recommended for approval by the Subdivision Committee at their July 3rd meeting. The staff reviewed the revised development plan with staff from the Division of Solid Waste, and now believes

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that some of the conditions that were originally placed to satisfy their concerns, as well as some of the staff's original concerns, can now be revised as follows:

1. Provided the Urban County Council rezones the property PUD-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Department of Environmental Quality's approval of environmentally sensitive areas (steep slopes).
10. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
11. Addition of tree inventory map (on plan face).
12. Denote: "Minimum Lot Frontage – 20 feet on Open Spaces."
13. Resolve the need for additional Division of Fire emergency access.
14. Resolve location of stormwater detention basins and optimal street alignment for future Twain Ridge Drive extensions at the time of the Final Development Plan.
15. Adjust building locations to comply with front and side yard requirements.
16. Resolve local street terminus into floodplain area along with pedestrian access needed into that area.
17. Addition of conditional zoning restrictions.

Mr. Sallee stated, with regard to the significant bur oak tree on the subject property, that it is located approximately 15 feet from the current state right-of-way line along Harrodsburg Road. The staff reviewed the location of the tree to see if there may be alternatives to moving the proposed collector street in such a way that the tree may be avoided. There is no ideal or obvious means to do so that would comply with the Subdivision Regulations in terms of street geometry for a collector street. The staff, however, is still willing to work to resolve that issue should the Commission choose to do so. There is also a large elevation difference between the location of the tree and the right-of-way. It is possible that, even if the tree could be saved via relocation of the collector street, it could then be negatively impacted by the grading required to construct the street.

With regard to conditions for approval of the development plan, Mr. Sallee said that condition #11 addresses the issue of the bur oak tree. Condition #12 refers to the staff's recommendation that the frontage of the units on open space should be documented on the plan. The staff would like to ask that two additional issues be reviewed at the time of the final development plan: the location of two detention basins along the western edge of the floodplain, and the "corridor" for the possible future extension of Twain Ridge Drive. The staff would recommend the addition of condition #14 to address those issues. Condition #15 was recommended for revision by the staff due to the need for slight modifications to some side and front yards in order to meet the petitioner's proposed design requirements. Mr. Sallee said that condition #16 refers to the existing small bridge crossing on the southern end of the property, and the possible future need to coordinate pedestrian connections to the floodplain area. Condition #17 is a routine condition to require the addition of conditional zoning restrictions on the plan. The staff drafted that condition in consideration of the historic property to the northwest of the subject property. The owner of that property was originally in agreement with the staff's recommendations for conditional zoning restrictions, as listed on the agenda. However, the property owners are now concerned about the possibility of unintended consequences to their property should the Commission choose to impose the staff's new recommendations for conditional zoning.

In conclusion, Mr. Sallee noted that this rezoning request did not require a Traffic Impact Study, as the peak-hour trip generation is estimated to be between 90 and 99 trips, which is under the adopted study threshold.

Petitioner Presentation: Bill Lear, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendation, including the conditional zoning restrictions and the conditions for approval of the development plan.

Mr. Lear distributed to the Commission copies of an aerial photograph of the subject property and surrounding area. He noted that the area surrounding the subject property is largely developed, with little remaining agricultural land.

With regard to the significant bur oak tree on the subject property, Mr. Lear stated that the tree is located directly across Harrodsburg Road from Military Pike. When the petitioner approached the Department of Highways with this request, the petitioner proposed a plan that would allow access to the property at the location of the current driveway. The petitioner was advised by the Department of Highways that the access to the property needed to align with Military Pike, and extend back into the property at least 150 feet in a straight line from the access point. There is a significant elevation difference at that location, between the existing service road and the location of the tree. The other major issues for the petitioner are the possible alignment of Twain Ridge Drive as a collector street, and the extension of Agape Drive to "T" into Twain Ridge Drive. Mr. Lear said that none of these issues were "developer-created;" they came about through years of development decisions made in order to resolve connectivity problems and to create a street connector system that would connect Clays Mill Road and

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Harrodsburg Road. It would be very difficult to save the tree, and still build the roads that were recommended by the Comprehensive Plan and several government officials. The petitioner would not have chosen to threaten the tree, but he is obligated to follow the recommendations of the Plans and government bodies that have authority over such issues.

Mr. Lear stated that the proposed development is in complete agreement with the recommendations of the 2007 Comprehensive Plan. The subject property has been recommended for Medium Density Residential use in each Comprehensive Plan since 1980, and the Comprehensive Plan specifically references the use of townhomes in Medium Density Residential developments. The proposed townhome development is innovative; is a classic example of neo-traditional or New Urban development; and is the type of development that has been strongly encouraged in Lexington for years.

With regard to the concerns raised by the staff of the Division of Solid Waste, Mr. Lear said that the petitioner has requested roll carts, rather than dumpsters, to serve the proposed development. The Division of Solid Waste required that the petitioner allocate locations for dumpster pads on the development plan, and the petitioner has complied with that requirement. The petitioner believes that the future residents of the proposed development would prefer the use of roll carts over dumpsters to manage their solid waste. Currently, the regulations for townhome developments require that dumpsters be used, if the developer chooses to use LFUCG solid waste services. The developer has the freedom to provide roll carts for residents if they wish to contract for private refuse services. Should this rezoning be approved, the petitioner intends to address this issue with the Urban County Council at the Commissioner level.

Mr. Lear stated that the alleys in the proposed development were originally designed to be narrower, but were widened following meetings with the Division of Fire and Emergency Services. The Division of Sanitary Sewers calculated the impact of the proposed development, and determined that it would constitute a nominal increase in flows for the sewer system. The South Elkhorn pump station is located near the subject property, and is scheduled to be upgraded by 2010. The proposed development would not be at full build-out at that time, so sewer capacity should be sufficient.

With regard to the proposed conditional zoning restrictions, Mr. Lear said that the petitioner has no interest in removing any trees in the proposed Tree Protection Area. The petitioner has had a number of discussions with the legal counsel representing the adjoining property owners, and has agreed that the eight-foot privacy fence will not be installed at the property line. Rather, the petitioner is willing to agree to construct that fence on the inside of the Tree Protection Area. The adjoining property owners have raised some concerns about the proximity of the proposed clubhouse to their property; but, due to the grade differential, the clubhouse will sit below the historic schoolhouse. That grade differential, plus the proposed eight-foot fence, should effectively block any view of the clubhouse from the adjoining property.

Mr. Lear stated that the petitioner has worked with the staff for several months to satisfy all of the concerns that were brought forward. With regard to the Twain Ridge Drive connection, the necessary bridge over the floodplain area was projected to cost as much as three million dollars. Mr. Lear handled the case in local court that established the precedent that it is unlawful to require a single developer to bear the burden of a major infrastructure improvement intended to benefit several thousand residents in a large area. That case went to the Kentucky Supreme Court, which upheld the ruling of the local courts. LFUCG had the option, once that court case was resolved, to build the bridge, but did not undertake the project. Mr. Lear said that he had spoken to one Twain Ridge Drive resident who said that they did not want the street connected to Harrodsburg Road via a bridge. Given the large expenditure required and the neighborhood opposition to the connection, the petitioner does not believe that the bridge will ever be built. The petitioner was required by the Comprehensive Plan and the Zoning Ordinance to provide for that connection in the future, however, and has done so.

Mr. Lear said that the petitioner has met with the staff on several occasions to attempt to determine a location for the Harrodsburg Road access point that would not impact the bur oak tree. They were unable to arrive at any solution that would protect the tree, eliminate negative impacts on the historic schoolhouse, and satisfy the Department of Highways' requirements for the road alignment.

Citizen Opposition: Bruce Simpson, attorney, was present representing Jeff and Jenny Stringer, 4420 Old Schoolhouse Road, and Jonathan and Mimi Porter, 4450 Old Schoolhouse Road. He said that his clients live directly to the north of the subject property.

Commission Question: Mr. Vaughn asked Mr. Simpson to clarify the locations of his clients' homes. Mr. Simpson used the rendered development plan to point out the locations of the Stringers' and Porters' homes.

Mr. Simpson said that the Stringers reside in what has been referred to as the "old schoolhouse." The building was constructed in the late 1880s as a one-room schoolhouse, and the Stringers have spent a great deal of time and money refurbishing it in order to make it habitable. The Porters have owned and lived on their property, which is also historic, since 1972. Mrs. Porter's parents owned the property prior to that time. Both of these properties are zoned A-U, not for residential development, and have been so since the properties were rezoned by the government in 1969. The properties have remained unchanged since that 1969 rezoning; the Stringer property, in particular, has been virtually unchanged since the time Kentucky attained statehood in 1792.

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Mr. Simpson stated that, through the Comprehensive Plan update process, the community emphasized the universal desire for increased density, as reflected in the support for maintaining the existing Urban Service Area boundary. In order to maintain that boundary, more density is necessary within the Urban Service Area. Mr. Simpson said it has been difficult to convince his clients to embrace those concepts, however, since the increased density proposed on the subject property will have a negative impact on their homes, which they have enjoyed for many years. Mr. Simpson's clients do not object to the density of the proposed development. They do contend, however, that this rezoning request is not in compliance with the PUD ordinance; and that there is a need for greater protection for their historic properties than that proposed by the petitioner or the staff. For those reasons, this application cannot be approved. Should the Commission choose to approve this request, Mr. Simpson has drafted a proposal for conditional zoning restrictions that would provide more protection for his clients and their properties. Those proposed conditional zoning restrictions would provide a 30-foot buffer all along the property line that his clients and the subject property share.

Mr. Simpson said that his clients do not intend to sell their properties, despite pressure from various developers. In fact, the Porters are currently considering placing their property in a conservation easement to protect it from development in the future.

Mr. Simpson distributed to the Commission an exhibit packet, to which he would refer throughout his presentation, and displayed several of the documents contained in that packet on the overhead projector. He displayed a rendering of the proposed development plan, depicting the area proposed for development, as well as the undevelopable floodplain area. Mr. Simpson contends that the density proposed for the development is actually higher than that calculated by the petitioner, because the density calculation included the entire property, rather than just the developable area. With the 5.36 acres of floodplain removed from the total acreage of the property, the area proposed for development is 19.52 acres. The construction of 193 townhome units on 19.52 acres would result in a density of 9.89 dwelling units per acre for the subject property, rather than the 6.97 dwelling units calculated by the petitioner. That increased density on the subject property would directly impact Mr. Simpson's clients, to a much greater extent than any of the other neighborhoods in the area.

Mr. Simpson said that all of the townhome units on the subject property are proposed to be oriented toward greenspace; his clients contend, however, that that area is not true greenspace, but the properties on which they reside. Forty-one townhome units are proposed to be constructed along the common property line with the Porter and Stringer properties. The fronting of all townhome units on greenspace is being billed as an innovative feature on the subject property, since residents will see greenspace outside their homes, rather than their neighbors' garages. Mr. Simpson's clients, however, will have a direct view of the garages of 41 townhome units from their properties. The proximity of those units and their garages to the Stringers' and Porters' homes is the basis for the need for increased buffering and screening of those properties.

Mr. Simpson displayed an exhibit to demonstrate the "lack of harmonious relationship" between the subject property and his clients' properties. The graphic depicted an aerial view of the areas surrounding the subject property, with the proposed development plan superimposed. Mr. Simpson said that the Porter property has a 17-foot elevation change from the rear to the front of the property; if the townhouses are constructed at 35 feet in height, the viewshed from the Porters' property will be radically changed.

Mr. Simpson displayed photographs of the historic South Elkhorn Schoolhouse, built in 1887, which was in operation until the late 1930s; and a photograph of the schoolhouse as it exists today, in its use as the Stringer home. He displayed several photographs of the property boundary line, located 15 feet from the Stringer home; the trees proposed for removal on the current development plan; the John Higbee House, which is currently in use as the Porter home; the beehives and horses located on the Porter farm; and the 300-year-old bur oak, which would be removed according to the current development plan. Mr. Simpson noted that the buffer area recommended as part of the staff's conditional zoning restrictions would be reduced to 10 feet along the rear of the Stringer property. The Stringer property also lies very close to the location of the proposed clubhouse, pool, and associated parking lot. The pool and parking lot are proposed to be constructed approximately 36 feet away from the property line of the Stringer property. Mr. Simpson said that his clients believe that the associated increase in activity on the subject property will negatively impact their home, and would request that the Planning Commission consider requiring additional buffering as a conditional zoning restriction. Mr. Stringer is a professor in the Forestry Department at the University of Kentucky. He inventoried the trees that would be removed in the proposed 20-foot buffer area, and noted that 13 trees 1" – 3" in diameter would be destroyed; and 19 trees 5" – 16" in diameter would be destroyed. Since those trees provide a natural buffer for the Stringer property, Mr. Simpson said that it would be more equitable for his clients if the proposed buffer area was increased to 30 feet, in order to mitigate the loss of the trees.

Mr. Simpson stated that the Porters' residence, the John Higbee House, was constructed by the owner of the Higbee Mill in the late 1700s. The house is included in the Kentucky Heritage Council's inventory of historic homes. The home was extensively restored by the Porters, and includes much of the original materials. The Porters use the property for the boarding and raising of breeding stock horses, as well as beekeeping. They are concerned that the proposed detention basin on the subject property is too close to the area in which the horses are kept.

Mr. Simpson said that his clients would not oppose the construction of homes so near their property line, if those homes were proposed to be one-story rather than two-story. His clients are concerned that the decks of the two-story townhomes along the

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Stringer and Porter property lines will intrude upon the privacy of their homes; therefore, they would like to request that the Planning Commission consider restricting the height of the townhomes along the property line to one story.

Mr. Simpson's clients believe that the staff's recommendation of a buffer of 30 feet on average would leave gaps along the property boundary in which the buffer could be substantially smaller than 30 feet. He said that they believe it would be more equitable for their property, as well as easier to enforce, if a uniform 30-foot buffer was required all along the common property line.

With regard to his exhibit packet, Mr. Simpson noted that he had included a letter from the Bluegrass Trust for Historic Preservation, indicating that the Porter property is included in their register of historic properties. Mr. Simpson also included a portion of a book entitled, "Adaptive Reuse in Lexington," in which the Stringer property was praised for its design, creativity, and maintenance of the original historic character. Also included in the exhibit packet is the Kentucky Heritage Council's inventory of the John Higbee house, which has been determined to be one of the earliest homes still standing in Lexington. A 1968 *Herald-Leader* article, also included with Mr. Simpson's exhibits, posited that some evidence had been found to indicate that one of Abraham Lincoln's relatives may have owned the John Higbee house at some point. Mr. Simpson also noted that the original millstone from the Higbee Mill exists in the Porter's front yard today.

Mr. Simpson stated that, although the community has made the decision to "grow up, not out," he does not believe that the Planning Commission intended for that growth to infringe on historic sites in Lexington. He said that this is an opportunity, perhaps the last opportunity, to provide the Stringer and Porter properties with lasting protection from encroaching development.

Jeff Stringer, 4420 Old Schoolhouse Lane, stated that he and his wife purchased the former South Elkhorn schoolhouse in 1983. He said that they were attracted to the building because of its historic nature, and it has great sentimental value for them following their years of extensive renovations. The Stringers have made every attempt to be good stewards of the property, and its value has increased significantly over the years through their efforts. They lived in an RV for a year, while working on the building to make it habitable. After all of their time and expense on the property, the Stringers do not intend to sell it, and they intend to keep the original building intact. The addition they added in the 1990s was done in such a manner that no changes were made to the historic building itself, so that it could be further restored should someone choose to do so.

Mr. Stringer stated that most drivers on Harrodsburg Road were not aware of the property, prior to the recent widening project, when they lost 30 feet of frontage. He said that he and his family would like to request additional buffering on the subject property, since their historic home lies very near the property line, and they believe it needs increased protection from encroachment.

Mimi Porter, 4450 Old Schoolhouse Road, stated that her father originally purchased the property for his use after retirement. He died before he was able to retire, and Mrs. Porter inherited the property. She said that it was ironic that she and her family were initially unable to live on the property, since it was located too far from town for her father to quickly access the hospital where he worked; now, development has surrounded the property to the extent that the proposed development on the subject property is considered an infill project.

Mrs. Porter said that she and her husband have lived on their property for 35 years, and love it for its beauty, peace, and large size, which is suitable to accommodate their organic gardens. She noted that she has witnessed a great deal of wildlife habitat destruction during the construction of the surrounding neighborhoods, and believes that the proposed development could constitute "a final blow" to those habitat areas.

John Yozwiak, 4860 Bud Lane, said that he is president of the Dogwood Trace Neighborhood Association. He and his neighbors are primarily concerned with the density of the proposed development. He said that, since 36% of the acreage of the subject property is unusable, the density calculations provided by the staff are skewed. The actual density on the developable portion of the property would be 11 units per acre, which is above that recommended by the Comprehensive Plan for Medium Density Residential use.

The Dogwood Trace residents are also concerned about traffic flow, due to the proposed connection of Agape Drive to the proposed development. Mr. Yozwiak said that Agape Drive currently allows traffic into Dogwood Trace from 63 residences; if it is connected across the subject property as proposed, that number increases to 330 residences. The Dogwood Trace residents believe that a Traffic Impact Study is necessary for the subject property, although the proposed development did not meet the threshold, to address the impact of the increased traffic. Agape Drive is only 35 feet wide, which is not sufficient to accommodate the traffic from 330 residences.

Mr. Yozwiak said that he and his neighbors understand that the subject property is recommended for Medium Density residential use, but they would like to request that it be developed at a much lower density, more in keeping with the density of their neighborhood. The Dogwood Trace residents are also concerned that the proposed connection to Twain Ridge Drive will never be constructed, which would leave their neighborhood with no "relief area" for their traffic.

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Mr. Yozwiak noted that he has concerns about the sanitary sewer capacity in the area as well. He entered into the record of the meeting several petitions, with 445 signatures in opposition to this rezoning request.

Kim Crocetti, 4785 Rhema Way, stated that she is the chair of the Dogwood Park Committee. Dogwood Park is upstream from the proposed development, and serves as the trailhead for the South Elkhorn greenway system, which extends behind the subject property. Ms. Crocetti said that the neighbors have done a lot of volunteer work on the park, and solicited over \$100,000 in grant money for the park and trail system. The Dogwood Park Committee and area residents have also studied the stream carefully, and worked to improve the buffering for the stream, as well as the quality of the stream itself. The South Elkhorn Greenway is a beautiful area, with a large number of trees, wildlife habitat, and at least two natural springs that feed into the area. The area is environmentally sensitive, and could be compromised by the proposed development. The Dogwood Park Committee is particularly concerned about the density of the development, the amount of paving material, and the amount of fill, and their impact on the park and the stream. Adding fill to the property would alter the natural contours of the land, which could cause flooding in the area and impact water quality.

Ms. Crocetti stated that she is also concerned about the proposed detention basin on the subject property. The construction of the basin could result in a 25-foot-high "green wall" immediately adjacent to the stream and riparian areas, which would ruin the look of the greenway. She and her neighbors oppose this rezoning request, and the proposed development plan, because of their many concerns about the quality and appearance of the greenway system.

Beth Chambers, 4756 Rhema Way, read the following excerpt from the Article 22, Paragraph 1 of the Zoning Ordinance into the record of the meeting:

"Because customary standards are to be relaxed in the PUD zones, close government scrutiny will be necessary to ensure that the overall standards for the health, safety, and welfare of the community will be maintained."

Ms. Chambers stated that she would prefer that Lexington develop via infill rather than through an expansion of the Urban Service Area, but that infill projects must be handled responsibly. An easement runs along the rear of the Dogwood Trace neighborhood, from the park to the floodplain on the subject property. Although that area is technically considered greenspace for the neighborhood, residents do not have access to it. Access should be provided into the greenspace area, so that residents can benefit from it.

Ms. Chambers displayed an aerial photograph of the Wyndham Downs neighborhood, which was developed similarly to Dogwood Trace, with a small park. The residents of Wyndham Downs do not have direct access to the park from each street, and must drive to the park access. If easements had been used appropriately, each street in that development would have its own pedestrian and bicycle access to that park.

There is currently only one access to Dogwood Park for residents of Dogwood Hills. Ms. Chambers and her neighbors believe that requirements must be placed on the proposed development to provide sufficient bicycle and pedestrian access to the park and greenspace areas for all the residents in the area.

Marvin Mills, 2441 Dogwood Trace Boulevard, stated that he is concerned about the impact of the additional homes in the area on the public school system. He said that there is no school in this area.

Dan Danford, 4709 Scenic View, stated that he is an attorney here on his own behalf, but that he had been drafted to speak for some of his neighbors. He stated that the Planning Commission is currently faced with a "trade-off:" one 300-year-old tree which should not be disturbed, for a high-density residential development that no one wants or needs. He stated that the goal of the Planning Commission may be to increase density in infill projects, but "density for density's sake" is not good for surrounding neighborhoods, and any increase in density must be done in the appropriate location for it. It does not appear that the subject property is the appropriate location for such an increase in density.

Mr. Danford said that he has two young children, and the Dogwood Trace neighborhood is a wonderful place in which to raise them. Allowing 193 additional units on the subject property, plus the residents of the English Station subdivision and any development that may occur on the properties between that neighborhood and Dogwood Trace, would significantly increase drive-through traffic on Agape Drive. Mr. Danford believes that that increase in traffic would significantly change the character of the neighborhood. He said that now is not the time, nor is the subject property the place, for such a high-density development.

Mr. Danford read into the record of the meeting the following letter from Rob Ramsey, owner of Ramsey's Restaurant, who was not able to be present at the meeting:

"Several years back, I appeared in front of the Planning Commission opposing a zone change effecting my Harrodsburg Road restaurant location which ultimately resulted in the development of South Elkhorn Shopping Center.

I opposed the zone change out of fear of flooding of my restaurant due to drainage from shopping area running towards Elkhorn creek and having nowhere to go.

The zoning request was passed, the shopping center built, and in September 2006 my restaurant was under four feet of water. My insurance company paid because it was determined that flooding was caused by drainage backup from the center. Water was not able to drain because of the rise in the creek. The creek did not directly cause the flood.

The urban services report for the above mentioned zone change states that the "Harrodsburg Road (US 68) improvements in the immediate area most likely changed the floodplain somewhat.

This is the understatement of the year. On three occasions since 2006 I have stood in the back of my restaurant watching Bowman's Mill go further under water trying to decide whether to close my restaurant for the safety of my patrons. Each time one more inch of rise would have created the necessity.

For the Planning Commission to again allow further asphaltting and development in this area without a conclusive flood study is unimaginable to me.

As a neighbor of South Elkhorn Creek, I assure you it will flood again due to the development you approved and it will flood again sooner if you approve more development next to South Elkhorn.

Sincerely,

Robert Ramsey
Owner"

Mr. Danford added that, should the Planning Commission approve this request, it may result in his children's assignment to different school districts. He asked that the Planning Commission disapprove this request.

Jim Schaff, Kentucky Heartwood, stated that he was present out of concern for the bur oak tree on the subject property. He said that the tree is approximately 18 – 20 feet in circumference. Mr. Schaff is a certified arborist; and, having examined the tree, has determined it to be extremely healthy for its age. Judging by the size of the bur oak tree, it had probably been on the site for at least 200 years at the time the John Higbee house was built in the 1700s, and it is no less historic than that home. The staff's assertion that removal of the bur oak could be mitigated by retention of the other trees on the property is similar to stating that destruction of the Henry Clay estate could be mitigated by saving nearby homes that were constructed in the 1950s.

Mr. Schaff said that it appears that it is not the proposed development itself that would result in the removal of the tree, but the construction of the collector street. Since that road will likely not be connected due to the cost of the bridge construction, it would make the removal of the tree even more needless and regrettable. Mr. Schaff stated that, if the proposed development is determined to be necessary, it should be self-contained, and have access only to Harrodsburg Road via the existing service road. That would eliminate the need for connection of Twain Ridge Drive, which would prevent grading in the area of the bur oak and save the tree.

Mr. Schaff added that he supports the efforts of the Stringers and the Porters to maintain the natural beauty of their properties.

Christina Dudek, 2604 Water Knoll Court, stated that she was present representing the Firebrook Neighborhood Association. She submitted into the record of the meeting a letter of opposition from the board of the Firebrook Neighborhood Association, and a petition in opposition to the proposed development and removal of the bur oak tree. Ms. Dudek said that three of her four children had made posters in support of saving the bur oak tree. She believes that, if young children can understand the importance of saving the tree, adults and the Planning Commission should as well.

Fred Wohlstein, 4765 Rhema Way, said that the petitioner specifically referenced KRS 100.213 in his application, and used that statute as justification to rezone the subject property to PUD-1. Kentucky Court cases have previously determined that, "accordance with a Comprehensive Plan, in itself, is not adequate for an automatic grant of a rezoning request." Mr. Wohlstein said that one Court of Appeals opinion, which affirmed the opinion of the Fayette Circuit Court, stated the following:

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"However, just because a zone change request complies with a Comprehensive Plan or meets the criteria set forth in KRS 100.213 1(a) or (b), does not mean that the zone request must be granted.

The governing body is given authority to decide each application on its own merits and its impact on the community.

Making these decisions is the function of the appointed or elected officials. Their responsibilities include looking at the big picture and making tough decisions."

Mr. Wohlstein requested that the Planning Commission consider the relevant evidence presented by those in opposition to this rezoning request to determine the big picture, and render their decision based on all the facts presented. Key facts of the opposition are: lack of a traffic impact assessment; impact on the historic Harrodsburg Road corridor; lack of sufficient conservation of physical characteristics; no pre-blasting tests performed if necessary, which could affect the underground springs; development will affect the dynamics of the existing community; the Twain Ridge Drive connection will not be realized in the near future; floodplain issues have not been sufficiently addressed; the sewage treatment plant is over capacity during peak periods; and the greenspace and Bluegrass identity which will be destroyed, specifically the South Elkhorn greenway. Mr. Wohlstein entered a letter of opposition into the record as well, and noted the following quote from Bill Lear, which appeared in the *Herald-Leader* on the day of this hearing:

"What has happened is that a number of planning decisions have been made over the years, and they were made in ignorance of the location of the tree."

Mr. Wohlstein said that, if Twain Ridge Drive is not expected to be connected, then there would be no point to allow the removal of the tree.

Ray Waits, 2200 Old Higbee Mill Road, stated that the land he lives on has been in his family for over 150 years. He has been a caretaker of the subject property for Anne Robinson, and she allowed him to use the property to graze his cattle.

Mr. Waits said that there has been an increase in trespassing since the areas around the Robinson Property developed, including individuals "using the end of Agape Drive as a dump." He would like to request from the Planning Commission that, should they choose to approve this request, they place a requirement that a security fence be erected along all 700 feet of Mr. Waits' common property line with the subject property. If the petitioner will install a six-foot chain link security-type fence, Mr. Waits would agree to maintain it. He believes that, if there is a fence in place around his property, he will be able to have vandals on his land prosecuted if they breach that fence.

Julian Campbell, 3525 Willowood Road, stated that he has lived in Lexington for 30 years. He believes that Lexington has gone downhill in those 30 years, and is losing its natural heritage. Mr. Campbell said that the bur oak on the subject property is a symbol of the problems Lexington is facing, and will be a symbol of great loss if it is removed. He believes that there is great potential for the subject property, if it could be used for some purpose other than residential development. The Planning Commission should work to slow the process of this proposed development, in order to protect the tree, the nearby historic structures, and the greenways on the property.

Mr. Campbell noted that, some years ago, he made a map of the most attractive natural spots in the Lexington area, which included approximately 20 or 30 significant trees in the vicinity of the Firebrook neighborhood. Most of those trees are gone now; the bur oak located on the subject property is one of the very few left in the city. Mr. Campbell said that the tree itself is a chronicle of the environmental history of Lexington that goes back for centuries and it deserves protection from development.

Robert Pattie, 2500 Sungale Court, said that he can see the bur oak tree and the hillside on which it is located from the deck at the rear of his home. He believes that the removal of the tree would ruin that attractive view. He is also concerned about possible negative effects on the surrounding homes from blasting on the subject property, and from increased traffic on Harrodsburg Road.

Petitioner Rebuttal: Mr. Lear said that, in 30 years of dealing with planning and zoning law, he has marveled that the people who oppose the expansion of the Urban Service Area "never seem to be in the same room at the same time with the people who don't want us to grow up, not out."

Mr. Lear stated that most of the residents of the Firebrook neighborhood who spoke against the proposed development probably do not remember what the view of that area looked like 20 years ago. The area that is now the Firebrook neighborhood used to be a beautiful horse farm, owned by the Firestone family; their farmhouse is currently in use as the Firebrook clubhouse. Mr. Lear believes that it is hypocritical to live in a neighborhood that used to be a horse farm, but insist that the view from your home remain the same forever. The area that is now the Dogwood Trace neighborhood was also a farm in the past.

With regard to the opposition's questioning of the density calculation for the subject property, Mr. Lear said that all the developments in the vicinity of the subject property have used the same method of density calculation that the staff used in this instance. All greenway and floodplain areas are taken into consideration in those calculations.

Mr. Lear said, with regard to the comments in opposition to the proposed detention basin, that the basin was included on the plan because the staff required it. The petitioner would be content to allow water to drain naturally from the property to the creek, but the Subdivision Regulations and Engineering Manuals require that best practices be used in order to maintain water quality and preserve the greenway area. Over 30% of the subject property has been set aside for use as a greenway, which is a larger percentage than that dedicated as greenspace in any of the surrounding developments. The only feature of the proposed development that could possibly interfere with the maintenance of the greenway would be the bridge for the Twain Ridge Drive connection, and that call will be made by LFUCG, not the petitioner.

Mr. Lear stated that one of the citizens in opposition was concerned about the amount of cut and fill necessary to construct the proposed development. He said that very little cut and fill will be required on the subject property, except for any that may be needed to resolve the access situation at the front of the property near the bur oak tree. The proposed development was specifically designed to work with the contours of the land, in order to avoid excessive amounts of cutting and filling.

With regard to concerns about the impact of the proposed development on area schools, Mr. Lear said that the Comprehensive Plan takes school capacity into consideration when land use recommendations are made.

Mr. Lear stated that Mr. Simpson had made an argument that, if the proposed density on the subject property was recalculated with the floodplain area removed, the resulting density would be approximately nine units per acre. That density is still within the Comprehensive Plan's recommendation of 5 – 10 dwelling units per acre in the Medium Density Residential land use category.

Mr. Lear had previously spoken with Mr. Waits, and delivered a letter to him noting that, should this request be approved, the petitioner has agreed to construct a fence along the property line to Mr. Waits' specifications. He noted that the dumping, vandalism, and other issues incident to development have not been caused by this proposed development, but by existing development in the area.

Mr. Lear stated that a "zoning change alert" letter was distributed in the surrounding neighborhoods prior to this public hearing. The letter included a list of reasons why the residents should be opposed to this request, and the first item in the list was "decreased property values." Mr. Lear contends that many of the concerns brought forward today are "merely red herrings or stalking horses" for a concern that the proposed development will not be as nice as their homes. That is not an appropriate consideration in planning and zoning.

With regard to Mr. Simpson's proposed conditional zoning restrictions, Mr. Lear said that Mr. Simpson has claimed that his clients are not opposed to density on the subject property. Those proposed restrictions, however, would effectively eliminate 36 townhouse units from the proposed development. Requiring a 30-foot buffer area all along the property line would eliminate all of the units that are proposed on that side of the collector street, and therefore would decrease the density allowed on the subject property. The petitioner agrees that the Stringers have a legitimate concern about buffering the historic schoolhouse, and agrees with the conditional zoning restrictions proposed by staff in order to provide that buffer. The rear of the Stringer property, however, is zoned A-U and used as a field, and the Porter house lies 300 feet away from the common property line. The Zoning Ordinance has no provision for buffering between a residential development and a property zoned A-U, because it is assumed that an A-U tract will ultimately be developed. Mr. Lear said that there is a very dense hedgerow along the property line of the Porter property; the petitioner is willing to install a horse-farm grade diamond-mesh fence on the inside of the property line. There is a significant amount of screening along that property line already, however, the petitioner does not believe that it should be necessary to expand that buffer area. Also, requiring a 30-foot buffer all along the property line would adversely affect the alignment of the proposed collector street.

Mr. Simpson contended that the Stringers are concerned about negative impacts from the location of the proposed clubhouse near their property line. Due to the grade change on the property, the clubhouse will actually be lower than the Stringers' home. The petitioner has agreed to construct an eight-foot privacy fence in the area of the clubhouse, so that the Stringers' view should consist of only trees and the fence, and not the clubhouse itself.

Mr. Lear said, with regard to Mr. Simpson's suggestion that all of the townhome units along the property line be required to be one story only, that it would be unlawful to impose such a requirement as a conditional zoning restriction. Mr. Lear served as the sponsor of the conditional zoning legislation when it went before the General Assembly, and conditional zoning restrictions can only deal with architectural issues, such as building height, in areas that have a historic zoning designation. Attempting to limit the height of structures in the proposed development via conditional zoning is beyond the power of both the Planning Commission and the Urban County Council.

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Mr. Lear concluded his rebuttal remarks by saying that any time a developer proposes to construct a project that is in any way different from the existing homes in the area, particularly if the proposed density is increased, there will be opposition from residents. The only way that the Planning Commission can maintain their decision not to expand the Urban Service Boundary is to respect those residents' opinions, but not be guided by them. The guiding principle must be the Comprehensive Plan, and the significant debate and public input that went into the decision to increase density in infill areas rather than expanding into rural areas. It is imperative, if those decisions are to be respected, that all of the undeveloped parcels in the Urban Service Area be used to the fullest extent possible. The proposed development plan includes the same density that has been recommended for the subject property for the last 30 years. Mr. Lear thanked the Commission, and requested approval.

Opposition Rebuttal: Mr. Simpson began his rebuttal remarks by reading the following excerpt from the PUD portion of the Zoning Ordinance:

"It is further intended that the Planned Unit Development Zones are established to encourage innovative design and the use of qualified professionals, to provide for flexibility which would not be possible using traditional techniques, to promote the efficient use of existing and proposed facilities, to minimize land use conflicts and promote development compatible with surrounding land uses..."

"22A-6(l) – RELATIONSHIP TO SURROUNDING LAND USES – The planned unit development zone shall have a harmonious relationship to the surrounding land uses. Certain uses may be limited to specified locations within the PUD-1 zone or other restrictions or requirements may be made as necessary."

Mr. Simpson stated that his clients are not opposed to the density proposed for the subject property, insofar as it can be adequately buffered. Mr. Lear's contention that the petitioner will lose 36 units if a 30-foot buffer is required seems to imply that the petitioner is entitled to develop those units. No petitioner is entitled to any development. Kentucky case law holds that, just because an application is in compliance with the Comprehensive Plan, does not mean that the petitioner is entitled as a matter of law to get approval from the Planning Commission.

Mr. Simpson said that the proposed development constitutes a very important precedential case for the application of increased density inside the Urban Service Area. There are two undisputedly historic properties adjoining the subject property, and the Planning Commission has an obligation to institute minimal buffering requirements to protect them. The petitioner should be required to retool their development plan in any way necessary, even it means a loss of units, in order to provide protection for those historic features. The PUD zone specifically allows for creative design, which should only help the petitioner in that effort. If the petitioner's application cannot be modified by appropriate conditional zoning, Mr. Simpson contends that according to the PUD Ordinance, this proposed development is not harmonious with the surrounding area, and must be disapproved. There is no way that the presence of 41 townhomes with rear decks, located 22 feet from a horse pasture, could be considered harmonious. Mr. Simpson requested that the Planning Commission either approve this request with his proposed conditional zoning restrictions, or disapprove it.

Staff Rebuttal: Mr. Sallee stated that two more letters of opposition had been presented to the staff during the course of the hearing: one, from Ms. Patricia Ruff, who resides on Dogwood Trace Boulevard, and another from Mr. Tom Curler, who resides in Harrods Pointe Trace subdivision. Mr. Sallee submitted those letters for the record, and distributed them to the Commission for their review.

Mr. Sallee said, with regard to the sanitary sewer pump station that is located northwest of the subject property on Bowman's Mill Road, that it is scheduled for improvement in the next 12 to 18 months.

With regard to the dimension of Agape Drive, Mr. Sallee stated that a comment had been made that that is a local street. In terms of geometry, that is correct; Agape Drive has a 50-foot right-of-way and 31 feet of pavement, which is identified in the Subdivision Regulations as a local street, not as a collector street. However, the Comprehensive Plan considers the Agape Drive connection as if it were a collector street, and recommends its connection through the subject property.

Commission Questions: Mr. Cravens asked if it would be possible for the Planning Commission to make a ruling that would override the Transportation Cabinet's requirement for the alignment of Twain Ridge Drive, in order to protect the bur oak tree. Mr. Lear answered that the state government ultimately has authority over such matters, although the Planning Commission could possibly make a recommendation to the state, or require a different alignment of the roadway subject to the approval of the Transportation Cabinet.

Mr. Holmes asked if the Transportation Cabinet had determined that the current configuration of Old Schoolhouse Road was not a viable access for the proposed development. Mr. Lear responded that the Transportation Cabinet had informed the petitioner that the collector street needed to extend straight back into the subject property, rather than the curved route that the petitioner had submitted for their approval. He said that the petitioner could possibly resubmit their information to the Transportation Cabinet, but he asked that the Planning Commission not put the petitioner in a situation where they have required an access that the Transportation Cabinet will not approve.

Mr. Vaughn asked Mr. Lear to clarify the curved access to which he referred. Mr. Lear pointed the original access proposed, using an aerial photograph of the subject property.

Mr. Brewer asked if the Planning Commission could approve this request subject to the later review of that issue. Mr. Lear answered that the final decision on the access could be deferred to the time of the final development plan, with a note placed on the plan to indicate the Planning Commission's preferred access, subject to the approval of the Department of Highways. However, Mr. Lear noted that that approach is not appropriate for a collector street; it would be more appropriate for a local street. It would not be wise to require that the current access and configuration be designated a collector street and connected to Agape Drive under those circumstances.

Mr. Cravens asked if the Planning Commission could approve the rezoning request, but not the associated development plan. Ms. Boland answered that that possibility had been discussed. The Zoning Ordinance refers to the requirement that a development plan has to be certified within six months of the approved zone change, so it would be possible for the Planning Commission to make that decision. The Planning Commission would need to consider the zone change request with the proposed design guidelines, because that is a part of the PUD zone change.

Mr. Vaughn asked, should the Planning Commission choose to make such a decision, if the zoning development plan would then be postponed. Ms. Boland answered that it would.

Mr. Day asked if there was a way to change the proposed collector street to a local street, since it is presumed that the bridge will not be constructed. Mr. King answered that the Planning Commission does have the authority to make such a decision in the approval of the final development plan for the subject property. Mr. Day said that changing the street designation may help resolve some of the issues for the neighbors who are concerned about increased traffic, as well as allowing the possibility of a street alignment that would protect the bur oak tree. He said that he had reviewed the subject property, and it seemed that the existing grade for the service road may be preferable to the steep entrance that would be required near the location of the tree.

Mr. Brewer asked if the classification of the road as a local street would require the approval of the Department of Highways. Mr. King responded that, regardless of the classification of the street—even if it was intended to be a private driveway that did not connect to any other property—the state Highway Department has the ultimate authority for granting that access.

Mr. Lear read the following excerpt from the Comprehensive Plan:

“The land use plan shows appropriate locations that will be refined during the development review process. While good connectivity is essential, connectivity is not appropriate in all cases due to safety and other unique considerations.”

And the following excerpt from the PUD portion of the Zoning Ordinance:

“Where possible, the streets should follow the natural terrain.”

Ms. Roche-Phillips said that, in her 20 years of serving as a practicing planner and her understanding of the PUD concept, the primary purpose of a PUD is to relieve the developer of any kind of rigid restrictions associated with traditional Euclidian zoning. The PUD is supposed to be used on pieces of property that have important natural features or historic structures that need to be “planned around,” where traditional zoning patterns could damage those assets. Ms. Roche-Phillips stated that it appeared that the design of the proposed development was done without any acknowledgement of the natural features on the property, and with a lack of any sort of innovative design features. The only accommodation that seems to have been made for the natural features of the property is that the buildings are proposed to be constructed outside the floodplain, which is a basic requirement anyway. The rigidity and uniformity of the proposed buildings and alleys could be found in any zoning district other than a PUD zone. The members of the Zoning Committee had hoped to see a development plan that speaks to the terrain and historic features on the property, including the bur oak tree. Ms. Roche-Phillips does not believe that the proposed development plan complies with the intent of the PUD zone.

Motion: A motion was made by Ms. Roche-Phillips and seconded by Mr. Owens to disapprove MAR 2008-14, because it does not include an innovative design that speaks to the bur oak, the historic schoolhouse, the John Higbee house, or the natural water features of the property, based on the following requirements of the Zoning Ordinance:

1. The design shall not necessitate excessive grading, filling, the destruction or alteration of natural features; and, where possible, the streets shall follow the natural terrain. The design shall provide adequately for any historic feature on the site, as well as any existing structure, which is to be retained.
2. The Planned Unit Development zone shall have a harmonious relationship to the surrounding land uses. Certain land uses may be limited to specified locations within the PUD-1 zone, or other restrictions or requirements may be made as necessary.

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Discussion of Motion: Mr. Cravens said that he agreed with Ms. Roche-Phillips on many of the points she made, but he is in favor of rezoning the property to PUD-1. He is opposed to the development plan as a whole.

Mr. Vaughn stated that he is also in favor of the rezoning to PUD-1, and he believes that many attempts have been made by the staff and the petitioner to resolve this request. He believes that it would be remiss, after all that work, to not grant the rezoning request, while requiring that the petitioner produce a more appropriate development plan.

Mr. Brewer asked if he could vote in favor of the zone change request, and still have a final review of the development plan. Mr. Vaughn answered that that was correct, but noted that Ms. Roche-Phillips' motion was to oppose the zone change.

Ms. Roche-Phillips stated that denying the rezoning request would also precipitate redesign of the site.

Action: Ms. Roche-Phillips' motion failed, 6 – 3 (Owens, Richardson, and Roche-Phillips in favor; Brewer, Copeland, Cravens, Day, Holmes, and Vaughn opposed; Penn and Whitman absent).

Motion: A motion was made by Mr. Cravens and seconded by Mr. Day to approve MAR 2008-14, for the reasons provided by staff in their revised recommendation, including the revised conditional zoning restrictions.

Discussion of Motion: Mr. Holmes asked if the conditional zoning restrictions would suffice to resolve the development plan issues with regard to buffering. Ms. Boland answered that other issues could be resolved through the development plan process, but that conditional zoning restriction will require a minimum buffer of 30 feet on any development plan.

Ms. Copeland stated that it was her understanding that the PUD-1 zone would provide a lot of flexibility with regard to the proposed density on the subject property. Mr. King replied that the PUD zone would allow the Planning Commission a lot of flexibility with regard to density; they would have final control over the number of units and the arrangement of streets and structures on future development plans. Ms. Copeland asked if the PUD zone would allow the Planning Commission to respond to the site with regard to historic or natural features, and the entrance access. She asked if there were any buffer requirements in the PUD-1 zone. Mr. King answered that there are no buffer requirements inherent in the PUD-1 zone. He said that there are buffer requirements inherent in the motion that was on the floor, and those would be the minimum required; the Commission would have the ability to review and require others. Ms. Copeland asked if the Commission would be able to add to that minimum. Mr. King answered that they could add to the minimum requirements on the development plan, but not as a conditional zoning restriction.

Zoning Action: Mr. Cravens' motion carried 7 – 2 (Owens and Roche-Phillips opposed; Penn and Whitman absent).

Commission Question: Ms. Roche-Phillips asked if it would be appropriate to make a motion for indefinite postponement of the zoning development plan. Mr. King answered that that would be acceptable; if the Council grants the zone change, the Commission would have six months to have the development plan brought back and to take action on it.

Development Plan Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Cravens, and carried 9-0 (Penn and Whitman absent) to indefinitely postpone ZDP 2008-61.

Note: Chairman Vaughn declared a brief recess at 5:15 p.m. Mr. Holmes left the meeting at this time. Chairman Vaughn reconvened the meeting at 5:26 p.m.

3. JFG ENTERPRISES, INC. ZONING MAP AMENDMENT & BOONESBORO MANOR (INTERSTATE PARK) ZONING DEVELOPMENT PLAN

- a. MAR 2008-20: JFG ENTERPRISES, INC. (9/11/08)* - petition for a zone map amendment from an Interchange Service Business (B-5P) zone to an Agricultural Rural (A-R) zone, for 6.0 net and gross acres, for property located at 5354 Athens-Boonesboro Road (a portion of).

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Blue Sky Rural Activity Center) recommends Core Agricultural and Rural Lands (CARL) land use of the six-acre subject property. The petitioner has made an application requesting that the subject property be down-zoned, and that this tract be removed from the existing corollary development plan.

The Zoning Committee Recommended: Referral to the full Commission.

The Staff Recommends: Approval, for the following reasons:

1. The requested Agricultural Rural (A-R) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:

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- a. The Plan recommends Core Agricultural and Rural Lands (CARL) future land use for the subject property, which is the primary category for rural land associated with agriculture. The A-R category is the best zone to implement the Comprehensive Plan recommendation.
 - b. The property is currently being maintained and tended in an agricultural manner.
 - c. The subject property is outside of the established Blue Sky Rural Activity Center boundary. Down-zoning the subject property will implement the adjustment to the RAC boundary recommended by the Comprehensive Plan.
2. It is questionable as to whether the existing sanitary sewer package treatment plant is capable of servicing the subject property, if all of the industrial and commercial lands planned for this area were to develop as recommended by the 2007 Comprehensive Plan. In the alternative, the historical use of this property (for agricultural use) is appropriate.
3. This recommendation is made subject to approval and certification of ZDP 2008-95: Boonesboro Manor (Interstate Park) (Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2008-95: BOONESBORO MANOR (INTERSTATE PARK) (AMD) (9/11/08)* - located at 5354 Athens-Boonesboro Road. **(Sherman/Carter/Barnhart)**

Note: The purpose of this amendment is to remove a section of the B-5P land by rezoning the land to A-R.

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

1. Provided the Urban County Council rezones the property A-R; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of floodplain information.
3. Addition of purpose of amendment note.
4. Complete A-R boundaries, acreage and indicate in site statistics.

Zoning Presentation: Ms. Wade presented the staff report, noting that this request is for rezoning from an Interchange Service Business (B-5P) zone to an Agricultural Rural (A-R) zone, for approximately six acres of property located on the south side of Athens-Boonesboro Road, approximately one-half mile from the Interstate 75 / Athens-Boonesboro Road interchange. The subject property does not have frontage on a public street, but it has access via Athens-Boonesboro Road and Recreation Drive, which is a private street. Ms. Wade noted that this rezoning request is a "companion" to MAR 2008-21, which was considered earlier at this public hearing. The subject property is located within the Blue Sky Rural Activity Center. The Blue Sky Industrial area is located in the vicinity, as well as several hotels and restaurants on the east side of the interstate; two gas stations; and a Wendy's restaurant on the west side of the interstate. The development plan associated with this zone change request denotes the subject property with A-R zoning, indicating that no development is planned for the property. A request to downzone a property is not uncommon, but the petitioner's request for the Planning Commission to deny a zone change for which they have applied is unprecedented in recent times.

Ms. Wade stated that the subject property was rezoned to B-5 in 1968, and was proposed to be used as a golf course. In 1969, a revised development plan was submitted that included the proposed roads on the property, but no development. Following the city/county merger, the zoning of the subject property was updated to the B-5P zone. As part of the 1996 Comprehensive Plan, the petitioner made a request that the property on the north side of Athens-Boonesboro Road, which the Planning Commission recommended earlier today for rezoning, be added to the Blue Sky Rural Activity Center. Through the Comprehensive Plan process, the Urban County Council adopted Goals and Objectives, including Goal 18, which is to "maintain boundaries and soundly manage land use in the established Rural Activity Centers;" and Objective C, which states that, "The Rural Activity Centers should be limited to their existing boundaries."

Ms. Wade entered into the record of the meeting minutes from July 21, 1994, where the discussion centered on the Objective that states that Rural Activity Centers should be limited to their existing boundaries. At that meeting, Mr. Wilson, one of the petitioners, expressed his concern about and opposition to that restriction. Those Goals and Objectives were developed and adopted as part of the 1996 Comprehensive Plan due to pressure on the Rural Activity Centers and the Rural Service Area boundaries. The Planning Commission later considered adding 5191 Athens-Boonesboro Road to the Rural Activity Center. Mr. Wilson was the representative for that request; the staff made a recommendation that the petitioner create a "property swap." If the petitioner was agreeable to taking out the subject property, they could maintain the Rural Service Area boundary by adding in the six acres of the other property. The Planning Commission believed that that swap would accommodate the petitioner's request, while still meeting the intent of the Goals and Objectives.

Ms. Wade submitted into the record minutes of the December 6, 1995, Planning Commission meeting. On that date, the subject property was considered by the Planning Commission. The staff presented their recommendation for a property swap, and Mr. Wilson stated that he was in agreement with that concept:

"He went on to say that he believes that piece of land should be included; and in order to facilitate including it, they were willing to make an adjustment with an agreement to downsize the zoning as stated in their letter of December 6, 1995. As he understood it, if they moved to zone one portion of

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the land for interstate service type use, then they would agree to downzone the other back to agricultural rural."

Ms. Wade displayed several photographs of the subject property and surrounding area, including: an aerial view of the subject property itself; an aerial view of the two gas stations along Athens-Boonesboro road, north of the subject property; the existing zoning in the vicinity; and an enlarged graphic of the Comprehensive Plan map.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Core Agricultural and Rural Land use, which is unchanged since the time of the 1996 Comprehensive Plan. Although the requested zoning is in agreement with the Comprehensive Plan recommendation, the justification that was submitted with this application for rezoning states that the petitioner would like for this request to be denied. The petitioner contends that they should no longer be required to comply with their agreement from 1995, because the eastern edge of the Blue Sky Rural Activity Center was expanded in 2001. That year, a six-acre parcel was added to the edge of the Rural Activity Center to accommodate the Guilfoil Property. That boundary adjustment was made because the Guilfoil Property was being adversely affected by the nearby KASP auto action facility. The Guilfoil Property was rezoned, and eventually became part of the KASP facility. The addition of the Guilfoil Property was seen as an adjustment to the Rural Activity Center; the petitioner contends that that adjustment makes their original stipulation no longer valid. The staff would argue that that stipulation remains valid. In 2001, the Comprehensive Goals and Objectives were changed slightly; Goal 8 still stated, "Soundly manage land use in established Rural Activity Centers," but Objective C was amended to read, "Limit the Rural Activity Centers to their existing boundaries, except for consideration as part of the Comprehensive Plan or a Small Area Plan process and upon full consideration of issues outlined in the Rural Land Management Plan." In 2007, the Goals and Objectives were again adopted, and that Objective remained, verbatim. Rural Activity Centers can have their boundaries expanded, as the Guilfoil Property was added in 2001, as part of a Comprehensive Plan update.

Ms. Wade said that the Guilfoil Property was located on the far eastern side of the Rural Activity Center, and had a very small frontage on Athens-Boonesboro Road; it was, therefore, not similarly situated to the subject property. The petitioner included in their justification for this request the fact that the appendix note from the 1996 Comprehensive Plan does not appear in the 2001 or 2007 Comprehensive Plans. The staff would note that the lack of a very specific stipulation does not render the petitioner's agreement null and void. It was important to add that appendix note to the Comprehensive Plan in 1996 to document the decision, but it was not needed in subsequent Plans.

Ms. Wade noted that the staff also had concerns about the existing sanitary sewer package treatment plant that would serve the subject property, not at its current capacity, but as the property already zoned for B-5P develops with hotels and restaurants.

The staff contends that the petitioner's original agreement to downzone the subject property should be implemented, especially given that the subject property is still appropriate for agricultural use since it has not been developed. Ms. Wade said that, in addition, the property does not have steep slopes, which makes it suitable for agricultural use. The Zoning Committee recommended referral of this request to the full Commission, and the staff is recommending approval of the rezoning, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Ms. Gallt presented the corollary zoning development plan, further orienting the Commission to the location of the subject property. The development plan does not include any proposed development on the subject property, in accordance with the downzoning request to A-R. Ms. Gallt said that the Subdivision Committee recommended approval of this request, subject to the four conditions as listed on the agenda.

Petitioner Presentation: Rena Wiseman, attorney, was present representing the petitioner, and stated that the petitioner would like to request disapproval of this rezoning.

Ms. Wiseman said that the petitioner does not deny that they made the agreement to downzone the subject property in 1996, and they had every intention of remaining committed to that agreement. The rationale behind that agreement was to prevent the expansion of the Blue Sky Rural Activity Center, but no consideration was given to either property in terms of its suitability for either agricultural or commercial use. The petitioner is now asking the Planning Commission to consider the merits of that agreement in light of the fact that, during the next Comprehensive Plan update, it was determined that it was appropriate to add the Guilfoil Property to the Rural Activity Center. The petitioner does not contend that their situation is the same as the Guilfoil Property. However, if the only rationale for the property swap was to maintain the boundary of the Rural Activity Center, and that boundary was allowed to expand in 2001, then the Planning Commission should be willing to consider allowing the subject property to remain zoned B-5P. Ms. Wiseman noted that the petitioner brought this situation to the staff's attention when they requested rezoning of the companion parcel to the north. The only way of knowing that those two properties were tied together would have been to read Appendix D of the 1996 Comprehensive Plan, which denotes the property swap.

Ms. Wiseman stated that both the subject property and its companion property were part of a larger farm that was severed by the construction of Athens-Boonesboro Road in the 1960s. Those properties were sold in 1969, and the new

owner of the properties requested a zone change to B-5. As it was prior to the city/county merger, that request went to the Fiscal Court, who approved the request for the entire original 75 acres, based on the following finding:

"The land is unsuited for agricultural purposes, as it is on an interstate highway interchange."

At that time, the owners of the property submitted an affidavit to the Fiscal Court, noting the following:

"The 22.6-acre tract was completely severed from the large farm by I-75 and the new Athens-Boonesboro Road. It contains numerous deep ravines and depressions, and is extremely rough land, not suitable for agriculture."

That affidavit also stated that the larger 75-acre parcel also contained deep ravines and depressions, as well as limestone rock, and was unsuitable for agriculture. Ms. Wiseman read the following from that affidavit:

"Our experience and the experience of our predecessors has been that this land is not suited for agricultural purposes. This has especially been true since the advent of the use of farm machinery, instead of mules, horses, and manual labor."

Mr. Wilson has also submitted an affidavit indicating that the subject property has not been farmed during the time of the petitioner's ownership, which goes back to 1968.

Ms. Wiseman stated that the Rural Activity Centers were formalized as part of the 1980 Comprehensive Plan. A drawing from that Plan depicts most of the original larger farm, including the 75-acre parcel and the 23-acre parcel. With the exception of six acres, the entire farm was brought into the Rural Activity Center. The petitioner never understood why those six acres were left out, as the dividing line did not seem to follow a property line or any natural boundary. It was for that reason that the petitioner appealed to the Planning Commission to include that six acres during the 1996 Comprehensive Plan process.

At that time of the 1996 Comprehensive Plan, the staff was concerned about the expansion of the Blue Sky Rural Activity Center. Ms. Wiseman said that the initial response from the staff to the petitioner's request, in November of 1995, indicated that the staff would recommend denial of that request. The reason provided for that denial was that it would require expansion of the Blue Sky Rural Activity Center. When the proposal to create a property swap was presented to the petitioner, he agreed, but the minutes of the December 6, 1995, meeting read that:

"Mr. Wilson was in general agreement with what was proposed, although he initially felt that the tract could stand on its own."

Ms. Wiseman stated that the petitioner contended that the north parcel, on its own, should have been brought into the Rural Activity Center because it was severed from the farm, did not comply with the 10-acre minimum, had poor soils, and was not feasible to be farmed. It was agreed that that property could be added to the Rural Activity Center, but the six-acre subject property was "lopped off" without any sort of consideration as to the suitability of that property for agricultural use.

The Boonesboro Manor property was zoned in 1969, and has been before the Planning Commission at least 10 times, most recently in 2005. Each time that property has been brought in for a revised development plan, the subject property has been considered appropriate for development, as evidenced by its appearance on an approved development plan.

Ms. Wiseman stated that the petitioner is concerned with developing both this property and its companion parcel as a whole, and has been very conservative with the development, in order to assemble the appropriate users.

When Mr. Guilfoil brought his property in for inclusion in the Rural Activity Center, he was in a terrible situation. He and his family had lived for many years on his six-acre farm, but it had been surrounded on two sides by the KASP auto auction operation, which had made it impossible for him to live or farm on his property. Ms. Wiseman said that the Planning Commission agreed that Mr. Guilfoil needed relief, and included his property in the Blue Sky Rural Activity Center, which was the only such request that was approved as part of that Comprehensive Plan. The merits of his proposal were considered, and the petitioner is asking today that the Commission consider the merits of this proposal, rather than just the question of balance in the Rural Activity Center boundary. Ms. Wiseman said that, "planning is more than just accounting...it is whether you look at the merits of the property and whether it is appropriate or not appropriate." The petitioner's request to maintain the subject property in the B-5P zone is based on the property's unsuitability for farming. The petitioner had the soils on the subject property mapped; Ms. Wiseman read the following from that assessment:

"Although the hazard of erosion is very severe, cultivated crops can be grown occasionally."

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The Salvisa Silty Clay Loam soil is not suited to cultivated crops, because of the effects of erosion.”

Ms. Wiseman stated that the petitioner is asking that the Planning Commission consider what would be the most appropriate use for the subject property. There are five interstate interchanges in Fayette County that can be developed; most of them are fully developed at this point. Since it is unlikely that any new interchanges will be constructed, this is one of the few remaining places where facilities can be constructed to serve the traveling public. Interstate 75 is the second-longest north-south interstate in the United States; in Fayette County, it carries an average of 67,000 cars per day. Those drivers seek out hotels and restaurants, and the subject property is one of the few remaining interchange areas where such accommodations can be provided. Ms. Wiseman said that the petitioner contends that, since the subject property is unsuitable for agricultural use, it is suitable for B-5P uses.

With regard to the staff's concerns about the sanitary sewer package treatment plant, Ms. Wiseman entered into the record a letter from TetraTech, confirming that the plant has adequate capacity to serve any development proposed on the subject property. She added that there is an existing note on the development plan that requires that the petitioner monitor the treatment plant capacity and obtain the appropriate certification from the plant operator before any additional facilities can tap onto it.

Ms. Wiseman asked that the Planning Commission consider the merits of the subject property on its own, and whether the six acres are suitable for agricultural use; and, based on those considerations, deny this rezoning request. She said that she has prepared findings for disapproval should the Planning Commission choose to make such a recommendation.

Staff Rebuttal: Ms. Wade stated that the staff was not concerned with just “accounting” for acreage, but with the potential to develop on property that has limestone rock near the surface and deep ravines. The staff is also concerned about the possible precedent of allowing an urban use outside the Rural Activity Center.

Commission Questions: Mr. Cravens asked where access to the property would be located if the property was rezoned to A-R. Ms. Wiseman answered that there is a farm road off of Recreation Drive that provides access to the property. Mr. Cravens asked if the same road would provide access to the property if it were to remain zoned B-5P. Ms. Wiseman replied that the only frontage for the subject property is on Athens-Boonesboro Road, so an access to that roadway would have to be provided. Mr. Cravens asked if a house could be built on the property. Ms. Wiseman responded that the property would have to be subdivided, which would create a non-conforming parcel due to the minimum lot size of 40 acres in the A-R zone.

Motion: A motion was made by Mr. Owens and seconded by Ms. Roche-Phillips to approve this request, for the reasons provided by staff. Mr. Owens' motion failed, 6 – 2. (Owens and Roche-Phillips in favor; Brewer, Copeland, Cravens, Day, Richardson, and Vaughn opposed; Holmes, Penn, and Whitman absent.)

Commission Discussion: Mr. Cravens asked if another motion was necessary, since making no recommendation would result in the property remaining zoned B-5P. Mr. King said that the motion to keep the property zoned as B-5P would be to deny the zone change. The staff had been discussing whether another option, that was viable but would not put findings on record, would be to recommend withdrawal of the request.

Ms. Wiseman said that, frequently, zone changes are applied for and denied, which results in the current zoning category remaining.

Director Comments: Mr. King stated that the typical option for the Planning Commission in this situation is to state a motion in the positive. If the Commission chooses to do so in this case, the staff has concerns over the precedential nature of some of the proposed findings by the applicant. The staff would be glad to indicate to the Commission which those are, if the Commission should choose to do so. Mr. Vaughn indicated that the Commission would like to hear the staff's concerns. Mr. King referred to the applicant's proposed findings, noting that the staff's main concern was that some of those findings would be generally applicable to other properties as well, rather than specific to the site in question.

Ms. Boland noted that, should the Commission choose to make a motion for disapproval, staff could create a set of findings based on the petitioner's proposal.

Motion: A motion was made by Mr. Cravens and seconded by Ms. Richardson to disapprove MAR 2008-21, based on the following findings:

Based on the evidence and testimony presented, the Planning Commission finds that the application to rezone property located at 5354 Athens-Boonesboro Road (a portion of) from the Interstate Service Business (B-5P) zone to an Agricultural Rural (A-R) zone for 6.0 net and gross acres should be disapproved based on the following:

1. The proposed Agricultural Rural (A-R) zoning is inappropriate and improper because:

- A. The property is part of a larger tract which was rezoned from Agricultural (A-1) to Interchange Service Business (B-5) in 1969 based on the finding by the Planning Commission and the then-Fiscal Court that "The land is unsuited for agricultural purposes as it is on an interstate highway interchange and therefore the original zoning was inappropriate." The evidence before the Planning Commission and Fiscal Court in 1969 included an Affidavit from the then-owners of the property who attested that they had owned the property. Between 1950 and 1966, that the property was not suited for agricultural purposes.
 - B. The 6 acres contains soils which are not suited for crop production. Based on the Fayette County Soil Survey, about one-half of the property is ScE2 which is not suited to cultivated crops because of the effects of erosion and the balance is ScC2 which also has the hazard of erosion but can occasionally be used to grow crops.
 - C. The property is part of a 75-acre parcel which is subject to an approved final development plan titled Interstate Park (Boonesboro Manor). The property is shown as future development on that plan which also provides for the extension of two streets into the property. The property is adjoined on two sides by the remainder of the Interstate Park development which can be developed as hotels, restaurants, and/or service stations.
 - D. The only access to the 6 acres is through the balance of the B-5P acreage.
 - E. The proximity of commercial uses will make farming operations difficult because of security concerns, such as the increased potential for trespassing particularly since the only access to the property is through the balance of the B-5P acres.
2. The existing B-5P zoning is appropriate and proper because:
- A. The property is situated such that it can be developed as part of the 75-acre tract which is zoned B-5P as demonstrated by the approved final development plan.
3. There is no compelling need to rezone this property to A-R. Due to poor soils and topography, the property is not suitable for farming, and has not been farmed for over 40 years.

Discussion of Motion: Mr. Owens asked if the Rural Activity Center would be increased if Mr. Cravens' motion passes. Mr. King answered that the net effect of the two zone changes is to increase the non-agricultural zoning. The boundary of the Rural Activity Center can only be adjusted as part of a decision concerning the community's Comprehensive Plan. In essence, however, that might be the net result.

Zoning Action: Mr. Cravens' motion for disapproval of MAR 2008-21 carried, 6 – 2 (Owens and Roche-Phillips opposed; Holmes, Penn, and Whitman absent).

Mr. Vaughn asked what action should be taken on the development plan. Mr. Sallee answered that the normal action in such a situation would be for the Commission to consider an indefinite postponement of the development plan until after Council consideration of this rezoning.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Ms. Roche-Phillips, and carried 8-0 (Holmes, Penn, and Whitman absent) to indefinitely postpone ZDP 2008-94.

Note: Mr. Vaughn recused himself from the following item, and left the meeting. Mr. Day assumed the role of Chair at this time.

10. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT

- a. MAR 2008-27: URBAN COUNTY PLANNING COMMISSION (10/9/08)* - petition for a zone map amendment to add a Neighborhood Design Character Overlay (ND-1) zone for 134.70± net (172.0± gross) acres, to preserve existing neighborhood character for properties located at 310-395 Andover Drive; 201-299 Cassidy Avenue (odd addresses only); 300-356 Cassidy Avenue; 125-250 Chenault Road; 309-539 Chinoe Road; 180-346 Cochran Road; 401-435 Cochran Road (odd addresses only); 1394-1506 Cochran Road; 300-377 Colony Boulevard; 951-1245 Cooper Drive (odd addresses only); 323-325 Cross Lane; 305-436 Dudley Road; 300-335 Duke Road; 340-360 Duke Road (even addresses only); 131-191 Eastover Drive; 300-372 Garden Road; 201-505 Hart Road; 101-194 Louisiana Avenue; 100-165 Old Cassidy Avenue; 998-1144 Providence Lane (even addresses only); 1200-1237 Providence Lane; 303-440 Ridgeway Road; 300-315 and 340 Romany Road; 901-1015 Tate Creek Road (odd addresses only); and 1405-1491 Tate Creek Road (odd addresses only).

Proposed Design Standards:

- 1. **Rear Yard Setbacks:** Minimum of 25' or one third of the lot depth, whichever is greater.
- 2. **Building Heights:** Maximum of 28' to highest ridge and maximum eave height at 2nd floor ceiling line.
(includes dormers)
- 3. **Roof Pitch:** Minimum of 7:12 slope.
(except dormers, porches, flat roofs, and to match existing roof)

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4. **Wall Openings:** Minimum of 10% of wall area on each elevation of new construction to be windows or doors. *(excludes porch openings; no openings required if Building Code requires Fire Ratings)*
5. **Drawings:** Building floor plans and exterior elevations of all sides typical of proposed construction at a minimum 1/8" scale and scaled site plan required to secure building permit. *(includes accessory structures)*
6. **R-1T and R-3 Parking:** Garage doors shall not face the front building line. No parking in front yard. All parking in rear lot only. *(excludes detached garages)*
7. **Maximum Garage Size:** Maximum footprint of 700 square feet per lot. Maximum of 19' height to roof ridge, maximum 12' height to eave. No exterior stairs permitted.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 3) recommends a combination of residential land uses for the subject area, including high, medium and low density residential land use. The Planning Commission has initiated a zone change request to add a Neighborhood Design Character Overlay (ND-1) zone in order to regulate rear yard setbacks, building height, roof pitch, off-street parking, garage door restrictions, and accessory structures, regardless of the underlying zoning.

The Zoning Committee Recommended: **Withdrawal of 315 Romany Road, and Approval of the remainder**, for the reasons provided by staff.

The Staff Recommends: **Withdrawal of 315 Romany Road, for the following reason:**

1. The property located at 315 Romany Road is zoned Neighborhood Business (B-1) and has been used as an office for the past 14 years by the current property owner. Given the fact that the property is not zoned residentially, nor is it a non-conforming residential land use, the ND-1 zone is not appropriate and the property should be removed from the area proposed for this overlay.

The Staff Recommends: **Approval of the Staff Alternative Design Standards for the remaining properties**, for the following reason:

1. The requested Neighborhood Design Character (ND-1) overlay zone is in agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The Goals & Objectives of the Plan identify eight themes, one of which is "preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents." Further, Goal 15, Objective I states that neighborhood protection overlay zoning provisions should be implemented for establishing stability and protection in existing and, especially, older neighborhoods.
 - b. The implementation of a Neighborhood Design Character (ND-1) overlay zone is in agreement with the Comprehensive Plan's Goals & Objectives by providing specific standards that will maintain the existing character of the neighborhood, regardless of the underlying zoning.
 - c. The Chevy Chase neighborhood has completed a design character study, defined the existing character of the neighborhood, developed preservation goals, and proposed appropriate neighborhood design standards (in need of only slight modification), thus meeting the requirements of the ND-1 zone.

Staff Comment: Mr. Sallee stated that the staff had received one request for additional presentation time. That request was submitted by an attorney who is representing a total of five property owners in the area. He has requested a total of 15 minutes speaking time. Mr. Sallee noted that the alternative to granting that request for additional time would be that each of those five clients would be allowed to speak for three minutes. The staff provided a memo to the Chair recommending approval of that request for additional time.

Richard Murphy, attorney, stated that he was present representing three clients, and requested extra time for his presentation. Mr. Day answered that Mr. Murphy would normally be allowed nine minutes for that presentation, and asked how much additional time he believed he would need. Mr. Murphy replied that 12 minutes should be sufficient.

Staff Presentation: Ms. Wade began the staff's presentation by stating that this request was initiated by the Planning Commission, at the request of the Chevy Chase neighborhood, to add a Neighborhood Design Character Overlay Zone (ND-1) for the Chevy Chase area.

Ms. Wade entered into the record of the meeting and distributed to the Commission 18 letters in support of this request, and 29 letters in opposition.

The subject property is an area bounded by Bates Creek Road to the west, Cooper Drive to the south, Chinoe Road to the east, and the rear property lines along Fontaine Road and Chenault Road to the north. There are a few areas that were excluded from the request, including Morton Middle School and Cassidy Elementary School; church properties located in the center of the area; and the commercial areas along Duke Road and Romany Road. Those commercial areas include a post office, as well as some professional office uses. Ms. Wade stated that the area is

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predominantly zoned R-1C. There is one R-1D lot included, on Cooper Drive; a few properties zoned R-1T; two properties zoned R-2; and a multitude of properties that are zoned R-3. Streets in the neighborhood include Hart Road, Cochran Road, Colony Road, Duke Road, Romany Road, Andover Road, Dudley and Ridgeway, Andover and Garden Roads, Old Cassidy Avenue, Eastover Drive, Louisiana Avenue, Cross Lane, and Chenault Road. The area is comprised of over 600 individual residential properties, and over 130 net acres of property. The commercial properties, and those owned by churches or Fayette County Public Schools, were not included in the ND-1 request because that zone can only be applied to residential land use and zoning.

Ms. Wade stated that the Chevy Chase neighborhood was originally developed in the 1920s and 1930s, with additional homes built into the 40s and 50s. It was originally constructed as a mixed-use neighborhood, with both single-family and multi-family housing. The neighborhood's application to the Planning Commission for initiation of this re-zoning detailed many of the aspects of the neighborhood that are considered to be important and contribute to the unique character of the neighborhood. Ms. Wade read the following quote from the neighborhood's application:

"The streets in Chevy Chase tend to have a visual continuity with the manner in which the neighborhood was developed; almost a park-like appearance. There is a rhythm and a beauty to the manner in which the homes relate to one another, and their design cues in setback, building heights, eaves and scale that link adjoining properties into unified block faces and in creating a distinct character. This visual continuity is a critical factor that helps create the unique identity of Chevy Chase."

Ms. Wade said that the neighborhood has recently experienced some new development, including tear-downs of existing homes, and "pop-ups," which they consider to be out of character with the neighborhood. In order to protect the character of the neighborhood from incompatible development, the Design Review Committee of the Chevy Chase Neighborhood Association developed standards and requested an ND-1 overlay zone from the Planning Commission.

The purpose of the ND-1 overlay is to establish a design framework, to conserve key features, and to protect the visual and natural characteristics of a neighborhood. Although an ND-1 overlay has been previously applied to the Greenbrier neighborhood, this is the first ND-1 request in which specific design characteristics for structures have been proposed to be regulated. Ms. Wade stated that the ND-1 zone is designed to be administered in a way similar to properties that have conditional zoning restrictions. Article 29-3 of the Zoning Ordinance requires that at least one of seven provided criteria must be met by a neighborhood in order to qualify for an ND-1 overlay. The Chevy Chase petition states that the neighborhood would like to "maintain the overall character of the neighborhood, and that they have established a need to protect the visual characteristics that give their neighborhood its distinct quality."

Ms. Wade said that, as part of their request for an ND-1 overlay zone, the Chevy Chase neighborhood provided a set of seven proposed design standards, as listed in the staff report and on the agenda. One of the seven standards requested was that the Division of Building Inspection require 1/8 scale drawings for any improvements proposed within the ND-1 overlay. The staff reviewed the Zoning Ordinance, and found that that particular standard would not be allowable. The staff has therefore recommended that that standard be deleted. The neighborhood identified two conservation and design goals through their study process: first, to promote new construction that is in harmony with the scale and physical character of the original buildings; and second, to encourage the use of existing buildings through adaptive rehabilitation in a manner that is appropriate for the scale and physical character of the original buildings. The remaining six standards proposed were developed based on those goals.

Ms. Wade stated that the first proposed standard would require a rear yard setback of 25 feet, or one-third of the lot depth, whichever is greater. This restriction would help to maintain green space and building scale in the neighborhood. The rear yard setback requirement would apply only to principal structures, not to accessory structures. The second proposed standard would require a maximum building height of 28 feet at the tallest ridge, and a maximum eave height, which is generally considered to be the gutter line, of the second story ceiling height. This regulation is aimed at keeping homes in scale with the neighborhood, and will, in combination with the third proposed restriction, prevent three-story homes or two-story homes with dormers. The third proposed standard would require a minimum of a 7:12 slope for the primary roof structure. The neighborhood has defined some exceptions to this restriction to allow for some variation; those would include dormers, flat roofs on single-story additions, a pitch to match an existing roof, or a different roof pitch for projections such as bay windows and covered porches. Ms. Wade said that the fourth proposed design standard would require that a minimum of 10 percent of any wall plane in new construction have openings such as windows and doors. This restriction is similar to an existing Infill and Redevelopment standard. It would help to ensure visual continuity, and it should only apply when a wall plane is at least 150 square feet in size. The fifth standard would apply only to single-family attached dwellings (townhomes) and multi-family residential development, and would require that all parking be provided behind all buildings on the property. That restriction is proposed to prevent intrusion into the existing streetscape. This restriction would also require that garage doors not face the front building line, but excludes detached garages. The final standard proposed is to limit the size of ac-

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cessory structures to a maximum of 700 square feet in size; a maximum height of 19 feet at its tallest ridge; and a maximum eave height of 12 feet. The proposed 7:12 roof pitch restriction would not be applied to accessory structures. The neighborhood requested these restrictions in order to maintain the sense of place and the architectural integrity currently found in Chevy Chase.

With regard to the 2007 Comprehensive Plan, Ms. Wade stated that it was more appropriate, in considering a request such as this, to focus on the Goals and Objectives, rather than the Land Use element. In the 2007 Plan, the neighborhood protection overlay zoning provisions are recommended to be implemented for "establishing stability and protection in existing and especially older neighborhoods." (Goal 15, Objective I) Ms. Wade read the following, which is one of the eight overriding themes from the 2007 Comprehensive Plan:

"Preserving, protecting and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents..."

The ND-1 overlay zone in the Chevy Chase neighborhood is therefore in agreement with the Comprehensive Plan, and specifically, its Goals and Objectives.

Ms. Wade said, in conclusion, that the proposed ND-1 regulations will help to maintain the existing character of the Chevy Chase neighborhood, ensuring that new development or additions to existing homes will be compatible with the surrounding existing development. The neighborhood studied the early and current character of the neighborhood, and found that incompatible development is occurring and threatening the unique identity of the neighborhood. If the neighborhood is not protected, it may be impacted to the extent that quality of life may be threatened for the residents.

Ms. Wade stated that, in reviewing the proposed design standards, the staff found that #5 would not be allowed by the Zoning Ordinance. Following several discussions with the Division of Building Inspection, the staff found that there were several small "tweaks" that were necessary in order to clarify some issues or protect the intent of the neighborhood's design committee. The staff has recommended the following standards:

Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

Unless otherwise noted, the proposed standards shall only apply to single-family detached residential dwellings.

1. **Rear Yard Setbacks:** Minimum of 25' or one third of the lot depth, whichever is greater. (applicable to the principal structure only, excludes covered porches)
2. **Building Heights:** Maximum of 28' to highest ridge and maximum eave height (aka gutter line) at 2nd floor ceiling line. (includes dormers, but excludes new additions, which may exceed 28' in order to match existing ridge lines)
3. **Primary Roof Pitch:** Minimum of 7:12 slope. (except dormers, flat roofs on single-story additions, to match existing roofs, and for allowable projections per Article 15-5 of the Zoning Ordinance)
4. **Wall Openings:** Minimum of 10% of the wall plane on each elevation of new construction is to be windows or doors. (excludes any new constriction with a wall plane area of less than 150 square feet and side walls of dormers; however, no openings shall be required if Building Code requires Fire Ratings)
5. **Parking for Single-Family Attached and Multi-Family Dwellings:** No parking shall be permitted in the front or side yard. All parking in rear lot only. Garage doors shall not face the front building line. (excludes detached garages)
6. **Accessory Structures:** Maximum footprint of 700 square feet for all accessory structures per lot. Maximum 19' height to roof ridge, maximum 12' height to eave (aka gutter line). No exterior stairs shall be permitted. (no minimum roof pitch required on accessory structures)

Ms. Wade stated that the staff is recommending approval of these restrictions, with the exception of 315 Romany Road, which the staff is recommending be withdrawn from the request. That property is zoned B-1; it was thought at the time of filing of the application that the use of the property was residential, but the property owner came forward and indicated that the property has been in use as an office for several years. Therefore, it is a conforming use, and business zones are not appropriate for an ND-1 overlay. The staff's recommendation is made for the reasons provided by staff, as listed in the staff report and on the agenda.

Ms. Wade noted that there were questions at the Zoning Committee meeting three weeks ago about how a homeowner might appeal an ND-1 standard. Because these standards would function basically the same as conditional zoning restrictions, a zone change would be necessary to remove or change an ND-1 overlay design standard. There is no variance procedure allowed by the Zoning Ordinance that would permit a homeowner to vary any of those standards.

Ms. Wade said that, in instances where a current requirement of the Zoning Ordinance is more restrictive than the proposed design standards, the more restrictive requirement would apply. For example, there is a provision in the Zoning Ordinance that can restrict garage size to a maximum of 625 square feet; therefore, if the principal structure on the lot is small enough, the resident may only be able to obtain a building permit for a 625 square-foot garage.

Ms. Wade added that the Division of Building Inspection had asked that she state, for the record, that an ND-1 overlay zone may lengthen the time of review for a building permit application.

Commission Questions: Ms. Copeland asked if Chenault Road and Louisiana Avenue are currently in an H-1 zone. Ms. Wade answered that they are not. The Zoning Ordinance would not allow any property that was currently within an H-1 overlay to also qualify for an ND-1 overlay. Ms. Copeland asked if those two streets have any type of special zoning classification. Ms. Wade responded that they do not, and added that the nearest H-1 zoning is in the Aylesford neighborhood.

Ms. Roche-Phillips asked if there is any process in place to make an adjustment to the ND-1 standards if a homeowner could not comply with those standards. Ms. Wade answered that the homeowner would have to make an application to the Planning Commission for a zone change, and have the request go to the Council for final approval. Ms. Roche-Phillips asked if there was any provision in place for a variance at the Board of Adjustment level. Ms. Wade answered that there is not. Mr. King added that the staff explored that possibility with the Department of Law when they were creating the ND-1 zone. At that time, the opinion of the Department of Law was that, since the only way to implement an ND-1 overlay is through conditional zoning restrictions, the statutory rules regarding conditional zoning would have to apply. Those rules do not provide for conditional zoning restrictions to be revised or amended by the Board of Adjustment. Ms. Wade added that that requirement speaks to the importance of the neighborhood's study effort, and the consideration given to the design standards.

Mr. Cravens asked if the Division of Building Inspection would have to enforce the design standards proposed as part of this ND-1 zoning request. Ms. Wade responded that, presumably, any resident who was building a garage or an addition would have obtained a building permit. Mr. Cravens asked which body ensures that the garage or addition is built according to the design standards. Ms. Wade answered that the Division of Building Inspection enforces any building permit. Mr. Cravens asked if scale drawings are required to get a building permit, to which Mr. Carpenter responded that scale drawings are required. Mr. Cravens said, with regard to the staff's recommendation to eliminate the proposed design standard requiring scale drawings, that those drawings would be necessary in order for the Division of Building Inspection to enforce the design standards. Ms. Wade stated that the Zoning Ordinance does not allow that type of restriction. Part of the staff's rationale for their recommendation to eliminate that proposed restriction was that they did not feel it appropriate to require a homeowner to submit scale drawings in order to obtain a permit to build a simple structure such as a deck.

Ms. Wade stated that Rachel Phillips, Strategic Planning, had worked closely with the Chevy Chase neighborhood through the application process and the creation of their design standards. Ms. Phillips said that the ND-1 process is neighborhood-driven, but Strategic Planning is assigned to provide facilitation for any neighborhood that is interested in ND-1 zoning. The Chevy Chase ND-1 process began in June of 2006, and they worked out their ND-1 request through focus group exercises, gauging neighborhood interest, the development of design standards, and data analysis.

Citizens in Support: Brad Hawkins was present representing the Chevy Chase Neighborhood Association. He began his presentation by thanking Ms. Wade and Ms. Phillips for their assistance and support during the ND-1 process. Mr. Hawkins displayed a PowerPoint presentation as he spoke, referring to photographs of the neighborhood provided as examples of size and scale.

Mr. Hawkins stated that the Chevy Chase ND-1 process began in 2006, following a wave of neighborhood concern about recent "pop-ups" and "tear-downs" that the residents felt were out of character and scale with the existing homes. The neighborhood association became aware of Article 29 of the Zoning Ordinance, which provides requirements for ND-1 zoning, and they came to believe that it may be a way to proactively and democratically manage new development and redevelopment in the neighborhood.

Following the neighborhood association's discovery of the potential of the ND-1 process, a group of volunteers was formed to study its feasibility for the Chevy Chase neighborhood. Mr. Hawkins said that the study process began in July of 2006 with street-level focus groups, which identified the residents' concerns and their vision for the future of the neighborhood. The major issue of concern that arose from those focus groups was infill or redevelopment of properties that was out of size and scale with the existing homes.

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After narrowing down the list of the concerns through the focus group process, a series of meetings was held to discuss the ND-1 process. Each homeowner received hand-delivered notice of those meetings, as well as emails and phone calls, so that all residents were aware of the opportunity to participate in the process. Mr. Hawkins said that, during the same time period as the monthly meetings, an architectural analysis of the entire neighborhood was performed, as required by Article 29 of the Zoning Ordinance. Volunteers reviewed and photographed all of the 761 residential structures in the neighborhood, noting architectural details, through walking evaluations of the properties. All of the data collected during that analysis was organized and used to develop the proposed design standards.

Mr. Hawkins stated that, from January through April of 2008, the Design Review Committee met nightly to prepare and revise the list of proposed design standards, while attending monthly meetings to keep neighborhood residents apprised of their progress. In April and May, trained volunteers canvassed the neighborhood with petitions, seeking to gauge the residents' level of support of the ND-1 process. At least two information letters were also sent to each non-resident property owner. The neighborhood association sought to keep the process "transparent, open, and inclusive," so that they would be able to ascertain the level of support prior to requesting initiation of the zone change from the Planning Commission. In total, 675 total petitions were circulated; of those, 413 people, or 61% percent, were in support of ND-1 zoning and the proposed design standards. Seventy-seven residents, or 11.4% of those petitioned, were not in favor of ND-1 zoning. No response was given by 186 residents, or 27.5% of those petitioned. If the "no response" numbers are removed, 84.5% of the total number of residents petitioned was in support of ND-1 zoning. The neighborhood association believed that those numbers provided evidence of neighborhood-wide, overwhelming support for the ND-1 request.

Mr. Hawkins read the following into the record from Article 29-1(c) of the Zoning Ordinance, which refers to the goals of ND-1 zoning:

"Protect against destruction, degradation or encroachment upon neighborhoods, areas, or places having a special, unique or distinctive character of aesthetic, architectural or cultural significance which serves as the identity of a neighborhood.

Encourage the use of existing buildings through the use of adaptive rehabilitation.

Encourage construction that will lead to continuation, conservation and improvements in a manner appropriate to the scale and physical character of the original buildings. Assure that new construction is in harmony with the scale and physical character of the original buildings of the neighborhood through the use of design standards."

Mr. Hawkins stated that the Chevy Chase neighborhood is not unique in terms of its age, but it has played a significant part in Lexington's history. The neighborhood began as part of the Henry Clay estate in the 1920s. Over a period of 30 or 40 years, Chevy Chase was developed with modest-sized lots and homes, with fine architectural details. Mr. Hawkins displayed several photographs of homes in the area to depict those architectural details.

Article 29 specifically requires that a detailed architectural survey be performed in any neighborhood seeking ND-1 zoning. The Chevy Chase architectural survey identified 701 single-family homes, with many different architectural styles. Mr. Hawkins noted that the survey volunteers identified a particularly unusual type of Cape Cod home that they named the "Chevy Chase Cape Cod," due to its unique features and prevalence in the neighborhood. The survey focused primarily on particulars of size and scale, and did not take into account such characteristics as building materials or window materials. The design committee also tried to avoid those guidelines that they felt would make new development or redevelopment more costly. The survey determined that 450 homes in the neighborhood are 1½ story, with only 11 homes 2½ stories or taller; over 90% of the lots are 50 feet by 150 feet in size; in 2006, the average size home was less than 2,000 square feet in size; 81% of the homes are currently smaller than 2,600 square feet in size.

Mr. Hawkins said that the architectural survey process also identified some of the recent new developments and redevelopments that have interrupted the visual continuity because of their size and scale. Recent trends in construction in the neighborhood have produced both homes and accessory structures that are larger in scale than the existing residences. There were eight recent additions to homes in the neighborhood that averaged 1,600 square feet in size. The neighborhood association predicts that, with current building codes allowing larger, taller homes and garages, further inappropriate construction will occur in the neighborhood unless it can be protected via ND-1 zoning.

Mr. Hawkins read into the record the goals of the Chevy Chase ND-1 process:

- "1. Promote new construction in harmony with the scale and physical character of original buildings; and
2. Encourage the use of existing buildings through adaptive rehabilitation in a manner appropriate to the scale and physical character of original buildings."

With regard to the neighborhood's design standards, Mr. Hawkins said that the proposed rear yard setback of 25 feet or 1/3 of the lot depth is intended to prevent building up to the rear property line, in order to protect the sight lines of neighboring properties. He displayed a photograph of a home with an addition built to approximately 10 feet off the rear property line. Given the typical lot depth in Chevy Chase of 150 feet, the rear yard setback for most of the lots would be 50 feet. Under the current Building Codes, a property owner could construct a 2,380 square-foot, one-story building on the typical Chevy Chase lot, and still maintain the 50-foot setback. The design review committee believes that this guideline is generous enough to allow for sizable homes and additions, while still protecting the visual character of the neighborhood. As part of their study process, the design review committee determined that building height is also an important element in maintaining the character of Chevy Chase. The design standards propose a 28-foot maximum building height, which would prevent homeowners from constructing additions taller than two stories off the backs of their homes. The committee believes that this standard will help to address the size and scale issue, while still allowing homeowners a great deal of design flexibility with regard to roof type, etc. With regard to the proposed roof pitch standard, Mr. Hawkins stated that the standard roof pitch in the Chevy Chase neighborhood is 7:12. The committee is requesting that that standard be applied to any new or redeveloped homes in the neighborhood. The committee discovered during the neighborhood survey that many of the new additions in the neighborhood had been constructed without wall openings; many residents felt that those sheer walls lacked "human elements." The proposed standard would require that 10% of the wall plane on each elevation be windows or doors, excluding wall areas less than 150 square feet. Mr. Hawkins displayed a photograph of a home with a "sheer wall" addition, which the design review committee believes appears out of visual context with the surrounding residences. With regard to the staff's recommendation to remove the proposed design standard #5, which would require 1/8 scale drawings in order to obtain a building permit, Mr. Hawkins stated that the neighborhood was agreeable to that recommendation. However, they would hope that the Division of Building Inspection will require those plans, in order to prevent costly omissions in terms of enforcement. With regard to proposed design standard #6, to require that all parking for single-family attached and multi-family dwellings be provided in the rear yard or side yard, the Chevy Chase Neighborhood Association believes that removing parking from the fronts of those buildings will help to maintain architectural integrity and visual continuity in the neighborhood. It would also help to promote a more pedestrian-friendly environment. Proposed design standard #7, which would restrict the size of accessory structures, has been a major point of contention in the Chevy Chase neighborhood. Mr. Hawkins said that the design review committee attempted to develop a standard that would allow homeowners to construct an accessory structure larger than a traditional two-car garage, while maintaining architectural integrity and visual continuity, and protecting green spaces. Many of the Chevy Chase residents surveyed were angry about the construction of large accessory structures, particularly some garages as large as 1,600 square feet in size. The proposed 700 square-foot footprint should help to promote more creative accessory structure designs, while forcing homeowners to make decisions about how they want to use their property.

Mr. Hawkins stated that the ND-1 process has been a truly democratic one for the Chevy Chase neighborhood. The Chevy Chase Neighborhood Association (CCNA) believes that ND-1 zoning will encourage and promote new development and redevelopment in scale with the existing neighborhood, which will help to maintain the sense of place that is unique to the neighborhood.

The CCNA does, however, have several concerns with the proposed ND-1 zoning for which they are seeking clarification. The neighborhood association, as well as the Home Builders Association of Lexington (HBAL), supports the requirement of scaled drawings, and would suggest a text amendment to Article 5 of the Zoning Ordinance to that effect.

With regard to the review / appeal process for ND-1 zoning restrictions, the CCNA and Chevy Chase residents believed, until a few days before this meeting, that the review process involved filing an appeal to the Board of Adjustment for a dimensional variance, rather than requesting a zone change from the Planning Commission. Mr. Hawkins suggested that a text amendment to Article 29 could possibly address the problem and provide for a variance-type of process. He said that no one in the Chevy Chase Neighborhood Association intended, through the ND-1 process, to "handcuff homeowners into some inflexible rules that would not allow them to work with their existing properties." Requiring a zone change to change an ND-1 standard would seem to be one of those "inflexible rules." Mr. Hawkins said that he had read Article 7 of the Zoning Ordinance, and it did not appear to him that the language prohibited appeals through a variance process. He said that the CCNA believes that this issue should not stop the ND-1 process; it can be resolved separately.

Mr. Hawkins stated that several Chevy Chase residents had indicated that they were concerned about the replacement of non-conforming buildings, such as after a fire. Article 4 of the Zoning Ordinance allows property owners whose structures are non-conforming under the proposed design standards to rebuild them as they were.

Mr. Hawkins said that there has been opposition to this request; the results of the petition drive indicated an 11% response in opposition. Some of those who oppose the request are owners of multi-family properties, who are concerned about the parking restrictions; others are residents who had hoped to enlarge their homes and are concerned

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that the proposed design standards will not allow them to do so. The CCNA would like for the Planning Commission to require those individuals who would like to build additions to their homes to provide an architectural analysis to support their ideas. The neighborhood association did not become aware of much of this opposition until July 31st, which was after the rezoning request was filed and placed on the Planning Commission's agenda. The CCNA believes that the proposed guidelines are reasonable and fair, and provide ample opportunities to expand their homes or add accessory structures to their properties.

Mr. Hawkins concluded his presentation by displaying several photographs of "Chevy Chase without ND-1," or properties which have been altered in a manner which the CCNA believes is inappropriate, and "Chevy Chase with ND-1," or properties that have additions and accessory structures that were constructed similar to the proposed design guidelines. Mr. Hawkins entered into the record of the meeting letters from the Blue Grass Trust and the Home Builders Association of Lexington, which are in support of this request, and a letter from the Fayette Alliance, which supports the concept of ND-1 zoning in general. He said that the proposed ND-1 zoning would be good for Chevy Chase and for all of Lexington, and he requested approval.

Commission Question: Mr. Brewer stated that he was very impressed with the effort on the part of the Chevy Chase neighborhood that went into this request. He asked if it would be possible to approve this rezoning today, and address the neighborhood's concerns in a parallel process, or if those concerns needed to be addressed prior to the resolution of this request. Mr. Hawkins answered that the neighborhood's proposed design guidelines, with the staff's recommendation of approval, would achieve the goals of the Chevy Chase Neighborhood Association. He believes that the clarifications can be addressed while the rezoning process is ongoing, and should not prevent the Planning Commission from approving this request today.

Susan Booker, 125 Old Cassidy Avenue, stated that her parents purchased the home, in which she now resides, in 1951. She said that the Chevy Chase neighborhood was a wonderful place to grow up in the 1950s. The houses were of good quality, and each design was individualized and full of character. The neighborhood was safe, quiet, and close to good schools, shopping, churches, and entertainment venues. Ms. Booker believes that Chevy Chase is still a great place to live, but the quality of the neighborhood is being threatened by "ostentatiously enlarged, out-of-scale, remuddles" which overwhelm the existing homes with their scale.

Ms. Booker said that the new construction and redevelopment in the neighborhood has inflated property taxes, while at the same time adversely affecting the sanitary and storm sewer system. Renovations and redevelopment that are done correctly and sensitively, however, can enhance the neighborhood; and the proposed ND-1 zoning would allow that type of restoration. Ms. Booker noted that her basement has flooded on four occasions in the last 10 years, but only one time during her childhood in the home. The proposed ND-1 zoning would help to alleviate those problems, while preserving the historic scale, charm, and traditional character of Chevy Chase for future generations.

Graham Pohl, 239 South Hanover Avenue, stated that he is an architect and he has been working in the Chevy Chase neighborhood for 15 years. He has designed "dozens" of additions and remodels in the neighborhood, and is currently working with three clients there.

Mr. Pohl stated that he supports the Chevy Chase neighborhood's ND-1 zoning request. He followed the process, attending several of the neighborhood meetings, and was very impressed with the democratic nature of the process. His main concern, and the main focus of his work, is design excellence; and he believes that the requested ND-1 zoning will help to maintain a tradition of excellent design in the Chevy Chase neighborhood.

Mr. Pohl stated that he does have one concern with the proposed design guidelines, but he would support the ND-1 overlay even if no changes are made to the design guidelines in response to that concern. He believes that the proposed 7:12 roof pitch requirement would not allow for shed roof designs as the main form for an addition, which could prevent a contemporary response on a two-story addition, and force a traditional response. Mr. Pohl stated that the Historic Preservation guidelines, with which he has worked often, specifically state that a new addition to a home should be "of its own era," rather than duplicating the design of the existing home. The shed roof form is contemporary and popular at this time, but it could be used sympathetically with the existing residences in the Chevy Chase neighborhood. Mr. Pohl said that, if possible, he would like for a provision to be added to the design guidelines to allow for the use of shed roof design.

Phyllis Jeness, 360 Garden Road, stated that she has owned her home for 34 years, and she walks through the Chevy Chase neighborhood daily. When she began to notice the construction of new homes in the area, Ms. Jeness identified three qualities that make them, and other redevelopments in the neighborhood, out of character with the existing homes: first, the new structures are much larger and take up more space on the lots than the existing Chevy Chase homes; second, these new homes are too tall to be aesthetically pleasing, and the taller height blocks sunlight from existing, smaller residences; third, many of the mature trees in the neighborhood have been removed to allow space for construction of the larger residences.

Ms. Jeness said that she is very devoted to Lexington, and has tried to make a contribution to it. She is disappointed to see people putting their own self-interest before the good of the community, and does not want to see the city suffer for it. Ms. Jeness urged the Planning Commission to approve this request.

Chip Crawford, chair of the Lexington Remodelers' Council, stated that his organization understands and agrees with the overall intent of the proposed ND-1 zoning, but has some concerns about the design guidelines. He said that the lack of an appeals process in Article 29 is one of the major concerns, as it would require a homeowner to go through the zone change process in order to vary the design guidelines. Mr. Crawford and his organization are also concerned that the application of an ND-1 overlay in Chevy Chase will place more of a burden on the Division of Building Inspection. That division will be required to review every project proposed in the neighborhood, and enforce the design guidelines, which could increase their workload, particularly since several other neighborhoods are currently considering an ND-1 overlay as well.

Mr. Crawford stated that the enforcement of strict design guidelines, without an appeals process in place, could be extremely limiting for the residents and property owners in the Chevy Chase neighborhood. Other conditional zones, such as the H-1 and Courthouse Area zones, have either an appeal or review process written into the Zoning Ordinance. Mr. Crawford suggested that the Planning Commission postpone their decision on this request until such time as Article 29 could be rewritten to include a more appropriate appeal process.

David Medley, 333 Dudley Road, stated that he has lived in his home for 21 years. He believes that Chevy Chase is a great neighborhood, but it has undergone a series of changes in the last five or six years. Many of the remodeling projects that have taken place in the neighborhood have not been appropriate in size or character with the existing homes. For example, a two-bedroom bungalow near Mr. Medley's home was sold after the original owners died. The new owners elected to add on to the small bungalow by removing the roof and back of the home, and expanding it "up and back." Mr. Medley stated that, as a homeowner, he has a great deal of anxiety that inappropriate remodels of homes near his own home will decrease his property value. He asked that the Planning Commission provide homeowners in the Chevy Chase neighborhood with the security that their homes will not be negatively affected by inappropriate remodeling and redevelopment projects, by approving this request.

Kate Cannon, 373 Colony Boulevard, stated that she loves the park-like atmosphere of the Chevy Chase neighborhood. Her next-door neighbors, who had built their house in 1945, died two years ago. She was "scared to death at what would happen" on that property after their deaths, and how it would affect her home. Ms. Cannon asked that the Planning Commission help the Chevy Chase residents ensure that their properties will not be negatively impacted by inappropriate remodeling and redevelopment in their neighborhood.

Carla VanHoose, 110 Louisiana Avenue, referred to the letter in support of this request that was submitted by the Fayette Alliance, which stated that the proposed ND-1 zoning would support many of the Comprehensive Plan Goals and Objectives. She referred also to the letter submitted by the Lansdowne Neighborhood Association, reading the following excerpt into the record of the meeting:

"For that reason the Board of Directors of the Lansdowne Neighborhood Association supports the application of the Chevy Chase Neighborhood Association for the Neighborhood Design Overlay."

Ms. VanHoose displayed two photographs of her property and her neighbor's new garage. She said she is lucky that her neighbors have good taste, and their garage is attractive, tasteful, and well-designed. However, the new garage is significantly taller than her existing garage, and the increased height has interrupted the visual character of her yard and "changed the way that the homes relate to each other." Prior to the construction of the new garage, Ms. VanHoose could see all the way down the street; she is no longer able to do so. She said that one such structure does not significantly change the character of the street, but several in a row could eliminate airspace, sunlight, and the feeling of connection between neighbors. Ms. VanHoose asked that the Planning Commission approve this rezoning request, and she thanked the Commission members, as well as Ms. Wade and Ms. Phillips, for their time and support.

Paul Winther, 328 Ridgeway Road, stated that most of the homes in the Chevy Chase neighborhood are similar in size, with nice back yards. He said that, without the protection of the proposed ND-1 zoning, a developer could buy an existing small home in Chevy Chase, and redevelop the property with a "big vinyl box." A home directly across the street from Mr. Winther's was removed and replaced with such a structure, and there were no regulations in place to prevent it. Mr. Winther added that he is concerned that, with the expansion of the University of Kentucky, more developers will see the potential to redevelop for student housing in the neighborhood, and it will result in the character of the neighborhood being negatively impacted. He asked that the Planning Commission consider that the Chevy Chase neighborhood needs regulations to protect it from development, and approve this request.

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Harvey Coggin, 166 Louisiana Avenue, stated that he has lived in his home for 26 years. He is in support of the ND-1 overlay request, and believes that it will help to protect the charm and character of the neighborhood. Mr. Coggin thanked the neighborhood representatives who have worked for the past two years to get the ND-1 request to the Planning Commission.

Citizen Opposition: Richard Murphy, attorney, was present representing the following three groups of property owners who own ten multi-family housing buildings between them: Harry Jones, 310 Romany Road; Al and Charles Schubert, 258 Duke Road; and Penny and Ben Campbell, 300, 310, 320, 340 and 360 Romany Road. Mr. Murphy began his presentation by displaying for the Commission a map depicting all of his clients' properties.

Mr. Murphy requested that the Planning Commission remove the R-3 properties from the proposed ND-1 overlay zone. He said that it did not make sense to include the multi-family dwellings in the ND-1 zone, and it is also an issue of fairness to those property owners. When this rezoning request was initiated at the Planning Commission's June 26th meeting, it was recommended by staff that the multi-family properties on Cochran Road not be included in the request. Mr. Penn asked, at that meeting, why those properties on Cochran Road were not included in the ND-1 request. The answer that he was given was that those properties are multi-family, and therefore should not be included in the ND-1 request. Mr. Murphy stated that it is unfair and arbitrary to include his clients' properties, and eliminate the Cochran Road residences, particularly since Cochran Road is the "gateway to Chevy Chase." In addition to the 13 multi-family lots on Cochran Road that were not included in this request, 66 multi-family lots on Fontaine Road were exempted as well.

Mr. Murphy said that no front yard parking is allowed for multi-family dwellings; all parking must be in either the side or rear yard. The commercial properties adjacent to his clients' properties, however, are allowed to have front yard parking. Mr. Murphy stated that his clients believe that it is unfair to allow front yard parking for an adjacent property, but require his clients to provide all of their parking in the rear yards of their properties.

Mr. Murphy said that the multi-family residences owned by his clients provide a "transition area" between the commercial area and the surrounding residential properties. Transition areas generally possess some of the qualities of each of the uses for which they provide a buffer. The commercial property located immediately adjacent to Mr. Jones' property has front yard parking; therefore, it would not be inappropriate to allow side yard parking on that property, which is zoned R-3, particularly since the side yard parking would be set further back from the street.

Mr. Murphy stated that, although he was informed by the staff that there are no residential properties in the area with side yard parking, he discovered at least five instances of multi-family residential structures that provide some side yard parking. Since those properties currently provide parking in the side yard, continuing to allow that parking would not create any further intrusions or detriment to the neighborhood.

Prohibiting side yard parking can negatively affect the architecture of multi-family structures, by necessitating that the "long side" of the building would face the street. Currently, most of the multi-family structures have their "short dimension" facing the road. However, if side yard parking is prohibited, it may encourage remodels that expand further into the side yards of the properties, since that area would be useless for parking. Those remodels would then be out of character with the rhythm and style of the existing structures.

Mr. Murphy stated that the proposed design guidelines would be treated as conditional zoning restrictions under Article 29-4 (c) of the Zoning Ordinance. He read the following into the record from that Article:

"The following are categories of design standards that shall be eligible for overlay regulations, and may modify existing zoning or subdivision regulations as conditional zoning restrictions."

Mr. Murphy said that, without an appeal process in place to request a variance for side yard parking from the Board of Adjustment, his clients would be required to seek a zone change, which is a very lengthy process. Mr. Murphy's clients do not believe that it is appropriate to require a six-month process to permit a condition which currently exists, and does not negatively affect the neighborhood.

Mr. Murphy stated that the Chevy Chase multi-family transition area functions better than any other such area in Lexington. Chevy Chase has, in fact, been used as a model for many other neighborhoods in the city, because of that excellent relationship between the commercial, multi-family, and single-family areas. The apartments in the area are popular and maintain a very low vacancy rate for that reason. Mr. Murphy asked that the Planning Commission either exempt the R-3 properties from this ND-1 request, or allow side yard parking in the R-3 areas, in order to allow those properties to continue to function successfully without additional restrictions.

Tom Bunch, 402 Dudley Road, stated that he was present representing several Chevy Chase residents who are not entirely opposed to ND-1 zoning, but have some serious concerns about the proposed design guidelines.

Mr. Bunch said that he remembered, from a Planning and Zoning Law class in college, that there is no appeal process for conditional zoning restrictions, and he was concerned about the applicability of that regulation to the Chevy Chase ND-1 process. He received a letter from the Chevy Chase Neighborhood Association on August 26th, indicating that, should this ND-1 request be approved, there would be no variance or appeal process for homeowners. He believes that this request should not go forward without some type of appeal process other than a zone change request.

Mr. Bunch displayed a photograph of the remodel of a home at 331 Ridgeway Road that "started this whole process." Many of his neighbors agreed that the changes to the home were not in keeping with the character of the neighborhood, and they wanted to prevent further such projects. One of the owners of a property adjoining that residence sold his house and moved from the neighborhood, citing that home's "quadrupling in size" as his reason for selling. Many Chevy Chase residents are particularly concerned that such large residences will be used as rentals to UK students, rather than owner-occupied homes.

Mr. Bunch stated that he originally became involved in this issue after talking with Tom Burke, who is an architect and a member of the Chevy Chase neighborhood Design Review Committee. Mr. Bunch intends to build a garage on his property at some point, with a small art studio for his wife. After reviewing the proposed design guidelines, he realized that he would not be able to construct the garage he envisioned, if the ND-1 overlay request was approved.

Mr. Bunch displayed a graphic of the homes on Dudley Road, colored to depict the number of homes in favor and opposed to this request, prior to the receipt of the July 25th letter notifying residents of this rezoning request; 31 homeowners were in favor, five were opposed, and nine were unavailable. He then displayed a rendered graphic of the properties on the street depicting the numbers in support and in opposition after the receipt of that letter; 18 homeowners were in favor, 24 were opposed, and three were unavailable. Mr. Bunch circulated a petition in opposition to this request in order to obtain that data. Following the receipt of the notification letter, which contained the proposed design guidelines, there was a "major shift in thinking" for many of the homeowners. After talking with many of his neighbors and circulating his opposition petition, Mr. Bunch formed an ad hoc group, comprised of himself, Joe Lenney, Jeff England, Steve Slade, and Brian Sawyer, to study the proposed design guidelines and develop a set of alternative recommendations.

Mr. Bunch stated that his opposition group would like to propose some changes to the design guidelines that would protect the neighborhood from inappropriate development, without "stepping on other people's rights and needs." With regard to design guideline #1, Mr. Bunch stated that requiring a setback of 1/3 of the lot depth would be too restrictive. He displayed a photograph of the Jaeger home at 436 Dudley Road, noting that the lot is only 100 feet deep, rather than 150 feet, which is the depth of the other lots on that street. The result of that shallower lot depth is that the rear of the Jaegers' home is only 27.5 feet from the property line. If design guideline #1 is applied as recommended, the Jaegers could never build an addition to their home, no matter how modest. Without the proposed rear setback, however, they could construct a modest 17.5-foot addition at the rear of the home to allow space for a den or small bedroom. For that reason, Mr. Bunch would propose the addition of the words "not to exceed 40 feet" to design guideline #1. That provision would be fairly restrictive for most of the other lots in the neighborhood, but would still allow the Jaegers to build an addition if they so chose. Mr. Bunch displayed a graphic depicting the lots on Andover Drive and Garden Road, indicating the 40-foot front setback on those streets and the proposed 1/3 lot depth rear yard setback. There are several property owners on those streets that, if the proposed design guidelines are adopted, could never enlarge their homes, as the rear setback line would fall on the existing structure. Unlike some of the larger houses on Dudley Road, Chenault Road, etc., most of the homes on Garden Road and Andover Drive are smaller, one-story ranches that would be severely limited by that restriction.

With regard to design guideline #2 and #3, Mr. Bunch displayed a photograph of Tom Burke's home on the corner of Dudley Road and Hart Road, which is 30 feet high from grade to the top ridge of the roof. There are several other two-story homes on Dudley Road and Ridgeway Road that are 30 to 32 feet tall. Mr. Bunch stated that, although the Design Review Committee focused heavily on the 1.5-story homes in the Chevy Chase neighborhood, there are also a number of two-story homes as well. Since those two-story homes are taller than the proposed 28-foot height restriction, Mr. Bunch would recommend changing that height restriction to 31 feet to match the existing structures. He is concerned that a 28-foot height restriction, combined with a 7:12 pitch roof restriction, would "crunch down" the size of any addition to the existing taller homes. When the homes in the Chevy Chase neighborhood were built during the 1920s, 30s, and 40s, it was typical for siblings to share bedrooms, and for each home to have only one bathroom. Today's families need larger homes, and it is important to allow homeowners the opportunity to increase the size of their residences to fit their needs.

Mr. Bunch said that his group is in agreement with proposed design guideline #4, concerning minimum wall openings, and #6, concerning parking for multi-family dwellings. With regard to proposed guideline #7, Mr. Bunch stated that he was told by his architect that a garage constructed at 19 feet in height would not accommodate the second-floor art studio he had planned for his wife; it would need to be constructed to at least 20.5 feet in order to allow for

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the studio space. He would also need to be able to construct the garage at 830 square feet in size (rather than the 700 square feet as proposed) in order to accommodate two cars, a storage area, and a workshop space. Mr. Bunch proposed to increase the garage square footage to 800 or 850 square feet, and the height to 21 or 22 feet. He displayed several photographs of remodeled garages that have been constructed at 21 or 22 feet in height, and stated that those garages, if they are well-designed, do not appear out of character with the neighborhood.

Mr. Bunch stated that he loves living in the Chevy Chase neighborhood, and he does not want to see it damaged by inappropriate construction. He said that the small alterations to the proposed design guidelines would afford the neighborhood the protection it needs, while still providing homeowners the opportunity to alter their properties according to their needs.

John Bryce stated that he was present on behalf of the owner of 311 Duke Road. He said that his client objects to the arbitrary inclusion of the R-3 properties on Duke and Romany Roads in this ND-1 request, particularly since all of the R-3 properties on Cochran Road, Chenault Road, and Fontaine Road were excluded. Mr. Bryce contends that there is no difference between the multi-family dwellings on those three roads, and the ones on Duke and Romany Roads.

Mr. Bryce stated that his client contracted to purchase the property at 311 Duke Road in November of 2007. During the due diligence period for that purchase, Mr. Bryce attended the January 29, 2008, meeting of the Chevy Chase Neighborhood Association. At that meeting, he specifically asked if 311 Duke Road would be included in the proposed ND-1 overlay, and was told that it would not be included; there would be no restrictions proposed to the R-3 properties. Based on the information Mr. Bryce obtained at that meeting, his client closed on the property. He did not find out until one week prior to this meeting that the property was proposed to be governed by the ND-1 overlay design guidelines. Mr. Bryce said that he does not believe that he was deceived at any point, but that the process changed and his client's property was included in the overlay area without his knowledge.

Mr. Bryce said that the information submitted by the Chevy Chase Neighborhood Association for initiation of this request focused solely on the single-family residences in the area, not the multi-family dwellings. The neighborhood association is seeking to preserve the single-family residential character of the neighborhood, but that is not applicable to his client's property, which is a 13-unit apartment building surrounded by other multi-family dwellings and commercial uses.

Mr. Bryce requested that the property at 311 Duke Road be removed from this ND-1 overlay request, since his client did not petition for its inclusion or receive any notice that it would be included. He also asked that all of the R-3 properties that lie within the proposed overlay area be removed as well, in order to be fair to all of the other multi-family dwelling unit property owners. Mr. Bryce said that applying the proposed ND-1 guidelines to those multi-family properties will not foster the goals of an ND-1 area.

Susan Slade, 1405 Tates Creek Road, said that she has lived in her home, which her grandfather built in 1939, for 15 years. Ms. Slade and her husband have spent the last few years meticulously restoring the home, including replacement of the custom windows and restoration of the original slate roof. They hired an architect who had a background in historic preservation several years ago to develop a long-range plan for the home, since they would like to add a one-story, first-floor addition at some point. Unfortunately, the architect's preliminary design for the addition would not be allowed under the proposed guidelines, due to issues with the rear yard setback. Ms. Slade's property is trapezoidal in shape, and has a 60-foot front yard setback. If the proposed 1/3 lot depth setback requirement is approved, Ms. Slade would be severely limited with regard to possibilities for construction of an addition to her home.

Ms. Slade stated that she and her husband first learned of the specifics of the proposed design guidelines in April of 2008, and they have been following the process since then. Her husband asked, at a neighborhood meeting, if there would be an appeal process to allow them to vary their rear yard setback in order to construct an addition to their home. At that time, he was informed that a variance process was in place, and "it should not be a problem to get a variance." Mr. and Mrs. Slade did not feel comfortable enough with that information to sign the petition in favor of ND-1 zoning. The day before this meeting, they received the letter informing them that there was, in fact, no variance process, and they would have to hire an attorney and request a zone change for their property in order to build the proposed addition.

Ms. Slade said that she believes that the proposed addition her architect designed would be very attractive, and her neighbors would not object to it. She asked if it would be possible to slow down this ND-1 process, and reconsider the design guidelines prior to the Planning Commission's consideration of this request. Ms. Slade stated that she missed out on the earlier planning phases of the ND-1 process, and would have liked to discuss modifications to the proposed design guidelines before the request came to the Planning Commission.

Bryan Sawyer, 380 Andover Drive, stated that he has lived in Chevy Chase his whole life. He said that he is not entirely opposed to ND-1 zoning, but he believes that the proposed design guidelines need to be revisited in order to

allow more flexibility for homeowners. Andover Drive was initially platted in 1959, and the homes were mostly constructed in 1960. Very few of the homes on that street have 7:12 pitch roofs; most of the roofs have 4:12 or 5:12 pitch roofs. The homes on Andover Drive are mostly split-level or ranch style homes, with lots that are 90 feet wide, rather than the 50-foot wide lots typical to Chevy Chase. Mr. Sawyer said that, since the homes on Andover Drive are so different from the rest of Chevy Chase, "one size fits all" design guidelines may not be appropriate there.

Mr. Sawyer displayed photographs of several of the homes on Andover Drive to demonstrate their typical style and roof pitch. He said that there have been some renovations on the street, but most have been in keeping with the scale and character of the other homes. Mr. Sawyer would like to construct an addition to his home to allow for more space on the first floor, but the proposed design guidelines would allow only a very small addition on the first floor. He would also like to construct a detached garage, as he uses his existing attached garage for a woodshop and motorcycle collection. Mr. Sawyer displayed a graphic depicting the garage he would like to build, which, at 20'6" in height, would be taller than allowed under the proposed design guidelines. He then displayed a graphic depicting the garage he could build under the proposed guidelines, which he believes is much less attractive and would not add to the value of his home.

Mr. Sawyer said that he generally supports the ND-1 process, but believes that the design guidelines should be amended to address these concerns.

Joe Lenney, 341 Colony Boulevard, stated that he has lived in his home for 21 years. He believes that the ND-1 committee has done a great job throughout the ND-1 process, but supports Mr. Bunch's changes to the proposed design guidelines.

Tom Burke, 342 Dudley Road, stated that he is a member of the Design Review Committee that helped draft the proposed design guidelines, but he now believes that some of those guidelines need "tweaking." Mr. Burke believes that the proposed guideline with regard to height and roof pitch of accessory structures would result in garages with a "squashed, mashed" appearance. He displayed several photographs and graphics depicting the different types of roof treatments that would be possible under the proposed guidelines and with additional flexibility for height and roof pitch. It would be possible, under the proposed guidelines, to construct a garage with shed dormers on the front and rear of the structure, which would produce a very unattractive garage that could be out of character with the surrounding neighborhood. Mr. Burke believes that the guidelines could be altered somewhat to allow for better proportions in garages, while still affording the protection to the character of the neighborhood.

Mr. Burke said that changing the proposed height restriction to 22 feet would provide a look that is more in keeping with the character of the neighborhood, as well as more usable square footage, better insulation, recessed lighting, and mechanical duct runs. He asked that the Planning Commission consider altering the design guidelines to permit a maximum height of 22 feet with shed dormers.

Blanche Horseman, 317 Colony Boulevard, stated that she has lived in Chevy Chase for 35 years. Ms. Horseman believes that the proposed ND-1 guidelines are too restrictive. She said that there have actually been only three or four inappropriate remodels in the neighborhood, out of the 643 properties proposed for ND-1 zoning.

Ms. Horseman was recently told that prospective buyers do not want to purchase properties in an ND-1 overlay zone because of the restrictiveness of the design guidelines. She is concerned, therefore, that her property value may be negatively impacted by the proposed ND-1 zoning. She said that she has been opposed to the ND-1 process all along, and she believes that the existing restrictions of the Zoning Ordinance are adequate to protect the Chevy Chase neighborhood.

Russ Milburn, Dudley Road, stated that he heard that some of the pending sale contracts in the Chevy Chase neighborhood are "in trouble" because of the proposed ND-1 overlay zone. He believes that the proposed design guidelines are too restrictive, particularly since Chevy Chase "is not a one-size-fits-all community." Mr. Milburn believes that the Chevy Chase neighborhood does need some type of protection, but it is important to ensure that an appropriate appeals process is in place before applying such broad restrictions.

P.J. Blackburn, 200 Chenault Road, stated that she would like to increase the size of her home by adding a second story, while maintaining the same footprint, but the proposed ND-1 zoning would take away that right. She believes that the proposed ND-1 zoning is arbitrary, and she is "tired of her rights being taken away."

Citizens in Support Rebuttal: Mr. Hawkins stated that the ND-1 process has been difficult, and the Design Review Committee had to make some hard decisions. If this request is approved, property owners will have to make hard decisions about how to enlarge their homes.

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Mr. Hawkins said that the proposed design guidelines are very generous. The proposed rear yard setback is the same as is currently required in the Infill and Redevelopment area around downtown, and would allow the construction of very spacious additions to most of the homes in the neighborhood. Many of the ideas presented at this meeting have been very good, but, unfortunately, they were not presented to the Design Review Committee prior to the Planning Commission's initiation of this request.

Mr. Hawkins stated that the negative trends in the neighborhood began some years ago, and they have affected "more than just one or two houses." He said that it is time for the Chevy Chase neighborhood to use the tools provided by Article 29 in order to protect the neighborhood.

With regard to the restrictions proposed for multi-family properties, Mr. Hawkins said that the original language submitted with the ND-1 application restricted only front yard parking; the side yard parking restriction was added as a recommendation of the Planning staff. The neighborhood association would be satisfied with the original language, which may help satisfy the concerns of those multi-family property owners.

Henry Jackson, 310 Cochran Road, stated that he had participated as a member of the Design Review Committee. He said that design guideline #2 discourages third-floor construction, but does not prevent it, which may provide another option for property owners who wish to enlarge their homes.

With regard to the staff's statement that Building Inspection review time could be lengthened if the ND-1 overlay is approved, Mr. Jackson stated that he had worked with the city for several years, and was heavily involved in the implementation of the Infill and Redevelopment area. There are rules in the Zoning Ordinance that govern the Infill and Redevelopment area, which are arguably more restrictive than the proposed design guidelines, and yet Mr. Jackson never received a complaint from anyone about the length of time it took the Division of Building Inspection to review a project.

Mr. Jackson stated, with regard to roof pitch, that the proposed design guideline did not mention roof shape, so it would not prevent shed roofs.

Mr. Jackson agreed that the lots along Andover Drive are somewhat different from the rest of the neighborhood, since the houses are placed in the middle of the lots. Those residents should be eligible for a variance to the design guidelines, as should Ms. Slade, who owns property at the corner of Tates Creek Road, since it would constitute a "hardship that was not self-imposed."

Mr. Jackson stated, with regard to accessory structure roof heights, that the Design Review Committee believed that 19 feet would allow a reasonably-sized garage that would not overwhelm the neighboring structures with its mass and scale. Mr. Jackson's home is 23 feet high at the peak of the roof; a 22-foot-tall garage would be comparable in height to the principal structure, which is the type of situation that the committee was attempting to avoid.

Mr. Jackson said, with regard to the concerns about the lack of an appeal process to the ND-1 zoning, that it was assumed, when the ND-1 Ordinance was originally written, that there would be a variance process through the Board of Adjustment. It came as new information to the Design Review Committee, just a few days ago, that that was not the case. Mr. Jackson said that the committee members reviewed both the Zoning Ordinance and the Kentucky Revised Statutes, and were not able to locate the regulation that would prohibit appeals to the BOA for conditional zoning. He said that it would be preferable to the Neighborhood Association to implement an appeals process, if any means to do so could be found.

Director Comments: Mr. King stated, with regard to the issue of variances, that he would respectfully disagree with Mr. Jackson. The staff was aware that conditional zoning restrictions cannot be amended through a variance procedure with the Board of Adjustment. That is a basic, threshold requirement that came about as a result of the state statutes regulating planning and zoning. When the staff was developing the ND-1 ordinance, the Commission's former legal counsel was very clear about that issue.

Mr. King said that there is no objection on the staff's part if there is a way that, under the statutes, the process could be legally changed to give the Board of Adjustment authority over some aspects of conditional zoning restrictions. The staff would be willing to explore that possibility. There is a great concern, however, about the threshold question of the Board of Adjustment being able to vary or change conditional zoning restrictions put in place by the Urban County Council. There have been many zone changes, over a period of more than 10 years, where conditional zoning restrictions were put in place, and it was well understood and clear in the Ordinance that the only way those restrictions can be changed is through the rezoning process, including an application to the Planning Commission and approval by the Council. Mr. King noted that it will be an involved and lengthy process to complete the statutory analysis and, if it was found to be allowable, to initiate the text amendment that would allow that change to be made to the Zoning Ordinance.

Staff Rebuttal: Ms. Wade stated, with regard to the changes to the design guidelines proposed by Mr. Bunch, that the staff and the Division of Building Inspection were able to determine that there is no definition in the Zoning Ordinance for "wall area." That terminology could be problematic, so the Division of Building Inspection staff requested the use of "wall plane," since that term is defined in the Ordinance. The staff would argue that the term "wall plane" should remain in the design guidelines.

Ms. Wade stated that, in reviewing the multi-family and single-family attached proposed guideline, the original language proposed by the neighborhood association would have required "no parking in the front yard; all parking in rear lot only." In the staff's discussions with the Division of Building Inspection, some concerns arose about side yard parking. The staff determined that the proposed guideline was intended to restrict side yard parking as well, even though it was not explicitly stated. If that was not the intent of the neighborhood association, and the Planning Commission should choose to allow side yard parking for multi-family structures, the staff would suggest that the first sentence read: "No parking in front of the front wall plane of the principal structure on the lot." That language would prevent parking in front of the structure itself, but to the side of or behind it.

Ms. Wade noted, with regard to Mr. Hawkins' statement about rear yard setbacks in the Infill and Redevelopment area, that the existing small lot provisions call for 20% of the lot requirement for a rear yard. The proposed design guidelines would require either 25 feet or 33.3% of the lot depth, whichever is greater.

Commission Comments: Mr. Cravens stated that he is concerned that, without an appropriate appeal process, the Division of Building Inspection would be placed in the role of enforcing what amounts to deed restrictions. He believes that 25 feet is sufficient for a rear yard setback; most new neighborhoods only require a 10-foot rear yard setback. Mr. Cravens said that, as a real estate broker, he "hates to give away property rights." He said that he is concerned about all the different opinions expressed by the Chevy Chase residents, and would be in favor of postponement of this request in order to give the neighborhood time to resolve some of those issues.

Ms. Richardson stated that her major concern is the lack of a variance process to appeal the design guidelines. She said that she understands why there is no such process, but she believes that, given the large size of the Chevy Chase neighborhood and the many houses there, it is important to pursue some type of appeal process for the residents. Ms. Richardson said she was not sure whether postponement would be helpful, and she would like to hear the staff's opinion with regard to Mr. Bunch's proposals to alter the design guidelines.

Ms. Copeland said that it seemed that, if an appeal process could be created, most of the other issues would resolve themselves. She said that such a process would provide the concerned residents with more freedom, so that they would not feel "boxed in" by the design guidelines.

Legal Comment: Ms. Boland stated that she was not involved in drafting the portion of the Zoning Ordinance that regulates conditional zoning restrictions, but she agreed with Mr. King that the Board of Adjustment has never had jurisdiction to review a zone change decision made by the Planning Commission. She said that, if the Board is put in the position of being able to alter conditional zoning restrictions that have been imposed by the Planning Commission, it would absolutely not be authorized by the state statute. Ms. Boland noted that she would be willing to look into a possible delegation of authority or restructuring to provide for an appeal process, but this issue was researched thoroughly by legal counsel at the time of the drafting of the Ordinance. She said that she could look into the issue, but could not guarantee that any means will be found to allow for such a process.

Mr. Brewer stated that he believes that the Chevy Chase neighborhood deserves preservation, and it appears that the preponderance of people in the neighborhood agree. He said that he would be reluctant, however, to vote on an issue that is still unresolved between all of the parties in the neighborhood. Mr. Brewer stated that he does not want to "derail" the ND-1 process, because it has involved an incredible amount of effort; but he believes that there are too many questions of substance that need to be addressed.

Mr. Owens stated that it seems like many of the residents who spoke in opposition are not totally opposed to ND-1 zoning, they just had some problems with the proposed guidelines. He asked if it would be possible to continue this item to a future date, in order to allow the neighborhood association, the concerned residents, and the staff more time to create a different set of design guidelines. Ms. Boland answered that, procedurally, the Planning Commission could choose to continue this hearing so that evidence would be restricted to new evidence or testimony only. There may be an issue raised, depending on what kinds of changes are made to the proposed design guidelines, as to whether the notification process needs to be redone. If there are significant changes proposed to the design guidelines, it would be appropriate to re-notify the residents, in case they may have problems with the new proposals.

Mr. Day stated that it seemed that all of the Commission members were concerned about the lack of an ND-1 appeal process. He said that everything appeared to be in order at the time of the initiation of this request, but many people were unaware about the lack of an appeal process at that time. He noted as well that many people do not get in-

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volved in issues such as this one "until it gets down to the last minute." Mr. Day asked if it would be possible to carry this request on without having another full public hearing.

Ms. Roche-Phillips stated that she did not believe she was mentally competent, after an 8½-hour meeting, to make technical decisions. She said that it seemed that the opposition's proposed changes to the design guidelines were small enough that new notification would not be required, that all parties could easily agree on those changes, and that the staff, meanwhile, could attempt to find some sort of relief or appeal process to satisfy the rest of the residents' concerns. Ms. Roche-Phillips said that she would be in favor of a continuance of this item, and asked if 60 days or 30 days would be more appropriate. Mr. King answered that a continuance of 30 days would probably be preferable due to the potential for notice issues. The statutory notice and sign posting constitute a huge effort on the staff's part, so it would be helpful to avoid re-notification if possible. Mr. King stated that the staff could be comfortable with a 30-day continuance. He identified the following three issues that he believes need to be resolved in those 30 days: first, the appeal process, which is entirely a staff issue. The staff would do the most exhaustive research possible within that 30 days, and would let the Commission know if there are other options. In terms of the restrictions, Mr. King noted that those issues are largely neighborhood-driven. He said that the design expertise in the Chevy Chase Neighborhood Association exceeds that of the staff; there are no architects on the planning staff. The staff's role has been to help the neighborhood determine how to come up with the design guidelines, and facilitate their conversations that they have had within the neighborhood. Mr. King said that he was sure that the neighborhood would appreciate any guidance that the Planning Commission could offer as they further refine their design guidelines. He noted that the third major issue area seems to be the question of parking in the R-3 zone, which dealt mostly with side yard parking. Mr. King understood the neighborhood representative to say that they were not concerned about side yard parking, and the staff proposed a tweak that may address the concerns of the R-3 property owners, which could resolve that issue entirely.

Mr. Brewer asked if there was a motion that could encompass all those concerns, while still indicating that the Planning Commission supports the ND-1 zoning overall and avoiding another full hearing.

Mr. Day stated that for the Commission to "try to tweak things" among themselves was not fair to the neighborhood residents. He said that the Commission must choose between continuation, postponement, approval, or disapproval of this request, because it was not appropriate for them to work on the issues themselves.

Action: A motion was made by Ms. Roche-Phillips, seconded by Ms. Richardson, and carried 7-0 (Holmes, Penn, and Whitman absent, Vaughn recused) to continue MAR 2008-27 to the September 25, 2008, Planning Commission meeting. She asked that the neighborhood association try to provide the Commission members with any new information at least one week prior to the meeting, so that they would have time to review it.

Citizen Request: Mr. Lenney asked if it would be possible to hear this case early in the agenda on September 25th. Mr. Day stated that the Commission would make every effort to do so.

VI. **COMMISSION ITEMS** – No such items were presented.

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

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

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

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	September 4, 2008
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	September 4, 2008
Subdivision Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	September 11, 2008
Special Meeting – Courthouse Area Appeal , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	September 18, 2008
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	September 24, 2008
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	September 25, 2008

X. **ADJOURNMENT** – There being no further business, Chairman Day declared the meeting adjourned at 9:44 p.m.

Randall Vaughn, Chair

Frank Penn, Secretary