

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky November 28, 2023

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on November 28, 2023 at 5:32 p.m. Present were Vice Mayor Wu in the chair presiding, in the absence of Mayor Gorton, and the following members of the Council: LeGris, Monarrez, Plomin, Reynolds, Sevigny, Sheehan, Worley, Wu, F. Brown, J. Brown, Ellinger, Fogle, and Gray. Absent were Council Members Lynch and Elliott Baxter.

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At 5:32 p.m., Vice Mayor Wu opened the hearing.

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An Ordinance modifying conditional zoning restrictions in a Neighborhood Business (B-1) zone for 0.485 net (0.666 gross) acres, for property located at 509 East Main St. (509 E. Main, LLC; Council District 3.) received second reading.

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Vice Mayor Wu swore in the witnesses, and reviewed the procedures and order of proceedings for the meeting.

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Traci Wade, Div. of Planning, gave a presentation on the recommendation of the Planning Commission and filed the following exhibits: (1) Legal Notice of Public Hearing; (2) Affidavit of Notices Mailed; (3) Copy of Planning Commission Final Report and Recommendation; (4) Exhibits from October 12, 2023 Planning Commission Public Hearing; (5) Copy of the 2018 Comprehensive Plan; (6) Copy of the 2023 Goals and Objectives; (7) Copy of the Zoning Ordinance; (8) Copy of the Land Subdivision Regulations; (9) Copy of Staff Presentation; (10) Zoning Ordinance Section 8-16 – Neighborhood Business (B-1) Zone; and, (11) Emails received after Planning Commission Public Hearing.

Daniel Crum, Div. of Planning, described the subject property and surrounding property, and the various uses that have been applied to it in the past. He displayed photographs and maps of the subject property and described its physical characteristics.

Mr. Crum also discussed the proposed development and the reasons for the Planning Staff's and the Planning Commission's recommendations.

Jessica Winters, counsel for the Opposition, cross-examined Mr. Crum.

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Nick Nicholson appeared as counsel for the Petitioner and filed the following exhibits: (1) Affidavit of Posting Signs; (2) Presentation Packet; (3) Witness List; and, (4) Statements from Local Business Owners.

Mr. Nicholson introduced various representatives for the Petitioners; he talked about the requested zone change, displayed photographs of the subject property, and discussed the location and proposed uses, as well as historical uses that have applied.

Field Ladd spoke about his family's history with the subject property. He shared his intentions to preserve the building while being economically sustainable.

Tyler Bromagen, spoke about the subject property and the economic changes to local retail businesses and antiques dealing.

Caroline Bromagen, spoke about the development plan for the subject property and addressed concerns expressed by neighbors about the development.

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Jessica Winters appeared as counsel for the Opposition (the Bell Court Neighborhood Association) and filed the following exhibits: (1) Witness List; (2) Presentation Packet; (3) Position Statement with Supporting Documentation; and, (4) Bell Court Neighborhood Association Findings of Fact and Alternative Findings of Fact.

On direct examination, Ms. Winters questioned expert witnesses Dr. Darshak Patel, University of Kentucky, and Daniel Elkinson, The Brokerage Real Estate Advisors.

Mr. Nicholson cross-examined Dr. Patel and Mr. Elkinson.

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At 6:54 p.m., the meeting stood at recess.

At 7:03 p.m., the meeting reconvened with the same persons present.

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The following persons spoke in opposition: (1) Marcy Deaton, Council District 3 (who filed Opposition Exhibit #5 - photographs); (2) Becka Bralts (who filed Opposition Exhibit #6 – PowerPoint Presentation); (3) Kevin Murphy, Council District 3; (4) Elizabeth

Elkinson, Council District 3; (5) Megan Winfield; Council District 3; (6) Ginny Daley (Fayette County Neighborhood Council), Council District 10; (7) Tracy Hawkins, Council District 3; (8) Mike Smith, Council District 3; (9) Maureen Peters, Council District 3; and, (10) Trish Smith, Council District 3 (who filed Opposition Exhibit #7 – PowerPoint Presentation).

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The following persons spoke in support: (1) Field Ladd, Council District 5; (2) Greg Ladd, Council District 5; (3) Laura Babbage, Council District 3; (4) Stephen Davis, Council District 12; (5) Sylvia Cerel-Suhl, Council District 5; (6) Bob Babbage, Council District 3; (7) Bill Meng, Council District 3; and, (8) Parker Deppen, Council District 1.

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Mr. Crum offered rebuttal comments.

Mr. Nicholson made rebuttal comments on behalf of the Petitioner.

Ms. Winters made rebuttal and summation comments on behalf of the Opposition.

Mr. Crum offered summation.

Mr. Nicholson offered summation for the Petitioner.

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At 8:30 p.m., the meeting stood at recess.

At 8:37 p.m., the meeting reconvened with the same persons present.

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Vice Mayor Wu opened the floor for questions from the Council Members.

Ms. LeGris asked questions about the Proposed Conditional Zoning Restrictions submitted previously by the Petitioner and the Alternative Findings of Fact presented by the Opposition. Mr. Crum responded. Ms. Wade responded. Ms. Winters offered a correction to the proposed Alternative Findings of Facts.

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Ms. Sheehan asked for clarification on a remark made during the Staff's Presentation relating to the permitted property uses. Mr. Crum responded. She inquired about noise barriers, and potential uses of the attached property. Mr. Nicholson responded.

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Ms. Fogle spoke about developments in various historical districts across downtown Lexington and their impact on neighborhood residents.

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Mr. Sevigny inquired about other use restrictions and the development plan for the subject property. Mr. Crum responded.

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Mr. J. Brown thanked community members for attending and sharing their thoughts and concerns. He asked about residential parking permits and economic changes mentioned in the staff report. Mr. Crum responded. Mr. J. Brown asked about building capacity and parking. Mr. Nicholson responded. He asked about acceptable buffering for the Opposition. Ms. Winters responded. Mr. Nicholson offered a correction to his earlier statement regarding capacity.

Mr. Worley discussed the interpretation of Conditional Zoning Restriction Process Section 1.a. (Staff Exhibit #3) regarding the “clear preponderance of evidence” as it related to the application in consideration. Tracy Jones, Dept. of Law, responded. He inquired about the various conditional restrictions and the potential impact the on the H-1 overlay if the applicant was approved. Mr. Crum responded.

Vice Mayor Wu asked about the H-1 overlay, and the prohibited uses and conditional restrictions contained in the Alternative Findings of Fact. Mr. Crum and Ms. Wade responded. He requested clarification between the two proposed Alternative Findings of Fact submitted by Ms. Winters, before asking questions about their proposed restrictions. Ms. Winters responded. Ms. Bralts responded.

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At 9:12 p.m., Vice Mayor Wu closed the hearing.

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Mr. Sevigny thanked community members for attending and sharing their thoughts and concerns before sharing his reasons for supporting the modification of conditional zoning restrictions.

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Ms. LeGris thanked community members for attending and sharing their thoughts and concerns. She addressed the issue of remarks being taken out of context and

expressed concerns with the application request. She emphasized her dedication to advocating for community members before stating she would not be supporting the modification.

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Vice Mayor Wu explicated that in order to remain impartial, Council Members do not speak or engage in discussions regarding applications in the zoning change process.

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Mr. Worley acknowledged the economy had changed since the subject property had received its current conditional zoning restrictions and spoke about the importance of maintaining viable uses for historic buildings to ensure they remain preserved.

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Mr. J. Brown spoke about preserving the Bell Ct. neighborhood's history and culture. He acknowledged concerns expressed by others, shared some of his concerns and stated he would likely vote in support of the modified conditional zoning restrictions. Mr. J. Brown encouraged the developers to engage more with the neighborhood if the application was approved.

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Ms. Fogle echoed Mr. J. Brown's remarks. She emphasized to the developers, the importance of creating and maintaining a transparent, communicative relationship with the neighborhood throughout the zoning process.

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Mr. F. Brown motioned to approve the Findings of Fact. The motion was seconded by Ms. Fogle.

Mr. J. Brown inquired if it was an appropriate time to amend the Findings of Fact to include additional buffering. Ms. Jones responded. He asked if requiring ten-to-fifteen feet of buffering on each side could be accommodated by the H-1 overlay. Ms. Jones responded. Mr. Nicholson responded. Mr. J. Brown clarified he was inquiring about buffering height, not width.

Ms. LeGris asked about amending the Findings of Fact to include a restriction on all outside bar, music, or speakers of any kind. Ms. Jones responded. Ms. LeGris asked

if there was a prohibition on outdoor speakers in the development plan and how it would apply to future uses of the property. Ms. Jones responded.

Ms. Gray requested clarification regarding the motion on the floor. Vice Mayor Wu responded.

Mr. J. Brown rephrased his prior question to clarify the additional restriction of ten-to-fifteen of screening height, not width. Ms. Jones responded.

Mr. Worley inquired if landscaping requirements between adjacent properties were already included in the Zoning Ordinance or Findings of Fact. Ms. Jones responded.

Mr. Ellinger asked Ms. Jones for potential motion language for the amendment to include buffer height. Ms. Jones responded.

Upon motion by Mr. Ellinger, seconded by Ms. Plomin, the Findings of Fact were amended to include in Section C, the additional condition of a buffer or screen up to fifteen feet in height as approved by the Planning Commission on a final development plan and to be consistent with the findings of the Board of Architectural Review. The motion was approved by the following vote:

Aye: LeGris, Plomin, Reynolds, Seigny, Sheehan, -----9
Wu, J. Brown, Ellinger, Gray

Nay: Monarrez, Worley, F. Brown, Fogle -----4

Mr. Worley offered a point of clarification that the motion was to add the language to the current language in Section C, and not replace. Ms. Jones responded.

Ms. Gray requested the Dept. of Law to restate the amendment for clarification. Ms. Jones responded.

Mr. Seigny asked about Section 3.B. and posited potentially removing the restriction. Ms. Jones responded.

Mr. F. Brown called point of order, stating the development plan is not in the Council's purview. Vice Mayor Wu responded.

Mr. Ellinger inquired if the amendment was a material change that would require a new first reading. Ms. Jones responded.

The Council approved the Findings of Fact, as amended, as follows, by the following vote.

Aye: Monarrez, Plomin, Reynolds, Sevigny, -----12
Sheehan, Worley, Wu, F. Brown, J. Brown,
Ellinger, Fogle, Gray

Nay: LeGris -----1

Having considered the above matter on October 12, 2023, at a Public Hearing, and having voted 6-2 that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **CONDITIONAL APPROVAL** of this matter for the following reasons:

1. There have been significant changes in the retail trends for the industries permitted under the original conditional zoning restrictions, and these represent a major economic change that was not anticipated in 1990.
2. The current conditional zoning restrictions unreasonably restrict the utilization of the subject property, and the ability to maintain the historic structure on-site.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions shall apply:
 - A. The permitted uses on the property, as regulated by Section 8-16 of the Zoning Ordinance for the Neighborhood Business (B-1) zone, shall be:
 1. Professional services including, but not limited to, financial services, legal services, business offices, medical, and dental offices.
 2. Schools for academic instruction.
 3. Libraries, museums, art galleries, and reading rooms.
 4. Studios for work or teaching of fine arts.
 5. Community centers and private clubs.
 6. Ticket and travel agencies.
 7. Kindergartens, nursery schools and childcare centers.
 8. Restaurants and brew-pubs.
 9. Establishments for the retail sale of merchandise.
 10. Beauty shops and barber shops.
 11. Shoe repair, clothing alterations, and tailoring services.
 12. Dwelling units.
 13. Athletic club facilities.
 14. Banquet facilities.
 15. Adult day care facilities.
 16. Places of religious assembly.
 17. Nursing homes, personal care facilities and assisted living facilities
 18. Rehabilitation homes
 19. Day shelters
 20. Establishments for the retail sale of food products
 21. Accessory parking areas
 - B. No merchandise for sale will be displayed on the building's porch or in the front or side yards.
 - C. The Parking lot will be screened from Forest Avenue by the brick wall and landscaping shown on the submitted development plan. A buffer/screening of up to fifteen feet in height shall be planted along the sides and rear of the property as approved by the Planning Commission on a

final development plan and consistent with findings of the Board of Architectural Review.

- D. Business signage on the property shall be limited to one freestanding sign, with indirect illumination, not to exceed 3 1/2 feet in height, to be constructed of natural materials such as wood and be consistent with the architecture of the principal structure.

Staff finds that these restrictions are appropriate and necessary to allow for reasonable utilization of the property, and to protect the character of the Bell Court Historic Area and the Main Street corridor.

- 4. This recommendation is made subject to approval and certification of PLN-MJDP-23-00052: Zee Faulkner Property {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.

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Upon motion by Mr. Sevigny, and seconded by Ms. Monarrez, the ordinance was approved by the following vote:

Aye: Monarrez, Plomin, Reynolds, Sevigny, -----12
Sheehan, Worley, Wu, F. Brown, J. Brown,
Ellinger, Fogle, Gray

Nay: LeGris -----1

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Vice Mayor Wu thanked the staff and participants for their involvement.

At 9:51 p.m. the meeting adjourned.

Deputy Clerk of the Urban County Council