

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

September 25, 2008

- I. **CALL TO ORDER** – The meeting was called to order at 1:35 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; Neill Day; Ed Holmes; Mike Owens; Frank Penn; Carolyn Richardson (arrived at 3:12 p.m.); Lynn Roche-Phillips; Joan Whitman; and Randall Vaughn, Chair. Absent was Mike Cravens.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; Cheryl Gallt; Chris Taylor; Rachel Phillips; Sharon Buford; Rob Hammons; and Stephanie Cunningham. Also present were Rochelle Boland, Department of Law; Captain Charles Bowen, Division of Fire and Emergency Services; Chuck Saylor, Division of Engineering; Bob Carpenter, Division of Building Inspection; Jeff Neal, Division of Traffic Engineering; and Tim Queary, Urban Forester.

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

III. **POSTPONEMENTS AND WITHDRAWALS**

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

- a. MAR 2007-9: TATES CREEK HEIGHTS, LLC (9/25/08)* – 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

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- 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 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 Bates Creek Road at least 100 feet from the easement line on the east side of the property.*
- b. [ZDP 2007-50: PINNACLE, LOT 1 \(AMD.\)](#) (9/25/08)* – 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 said that the petitioner is still attempting to resolve the issues associated with this zone change, but would like to request an indefinite postponement at this time.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Penn, and carried 9-0 (Cravens and Richardson absent) to indefinitely postpone MAR 2007-9 and ZDP 2007-50.

2. 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.

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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.
 - 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 said that the petitioner would like to request a one-month postponement of this item, due to some meeting scheduling difficulties with the Meadowthorpe Neighborhood Association.

Action: A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 9-0 (Cravens and Richardson absent) to postpone MAR 2008-24 and ZDP 2008-108 to the October 23, 2008, Planning Commission meeting.

3. 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

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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.
- 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.

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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 said that the staff has recommended postponement of this request. The petitioner believes that good progress has been made toward resolving the staff's concerns, but some additional time is needed. Mr. Simpson requested a one-month postponement of this item.

Action: A motion was made by Mr. Owens, seconded by Ms. Whitman, and carried 9-0 (Cravens and Richardson absent) to postpone MARV 2008-25 and ZDP 2008-111 to the October 23, 2008, Planning Commission meeting.

4. 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.

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'.

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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.
 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, stated that this request is a "companion" zone change with MARV 2008-25, which the Commission just postponed, and requested a one-month postponement of this item.

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Action: A motion was made by Mr. Owens, seconded by Mr. Penn, and carried 9-0 (Cravens and Richardson absent) to postpone MARV 2008-26 and ZDP 2008-112 to the October 23, 2008, Planning Commission meeting.

5. **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 Tates 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 Tates 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.
 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 Tates 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 item.

Action: A motion was made by Mr. Holmes, seconded by Ms. Whitman, and carried 9-0 (Cravens and Richardson absent) to postpone MAR 2008-23 and ZDP 2008-109 to the October 23, 2008, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, September 4, 2008, at 8:30 a.m. The meeting was attended by Commission members: Neill Day, Mike Cravens, Marie Copeland, Mike Owens and Carolyn Richardson. Committee members in attendance were: Chuck Saylor, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Denise Bullock, Chris Taylor, Cheryl Gallt, Tom Martin, Kenzie Gleason, Rob Johnson and Frank Boateng; as well as Rochelle Bolland, Department of Law; Captain Charles Bowen, Division of Fire & Emergency Services; Bob Carpenter, Division of Building Inspection; and Jim Rebmann, Department of Environmental Quality. The Committee made recommendations on plans as noted.

General Notes

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

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

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

A. DEVELOPMENT PLANS

1. DP 2008-114: MITCHELL PROPERTY (A PORTION OF COPE, MITCHELL, COOPER) (10/29/08)* - located at 1290 & 1340 Deer Haven Lane. (Council District 12) **(Sherman/Carter/Barnhart)**

Note: This plan requires the posting of a sign and an affidavit of such. The Commission continued their consideration of this item at their September 11, 2008, meeting.

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

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscape buffers.
4. Urban Forester's approval of tree preservation plan.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Approval of street names and addresses per the street addressing office.
7. Correct note number 5.
8. Denote a temporary turnaround on the end of the stub street.
9. Complete 100' USA boundary setback and denote required USA landscaping.
10. Revise note numbers 11 and 13.
11. Correct FEMA floodplain information and identify stormwater basin location(s) proposed.
12. Identify driveway locations or access concept from street.
13. Denote: The property at 1340 Deer Haven Lane shall be required to connect to the sanitary sewer system at the time 1290 Deer Haven Lane develops.
14. Remove buildable areas from environmentally sensitive areas and identify required 25' vegetative buffer from floodplain areas.
15. Denote allowable density transfers (D.T.R.s) on plan face.
16. Identify exaction information.
17. Denote one dwelling unit per buildable area on plan face.
18. Denote whether or not 1340 Deer Haven Lane will have driveway access to new street in the future.
19. Resolve street cross-section proposed (50'/31').
20. Resolve buildable areas and required (80%) open space areas.
21. Resolve proposed construction in identified wetland areas.

Development Plan Presentation: Mr. Sallee presented this final development plan, which was originally presented at the September 11th meeting, where the Commission engaged in a 45-minute discussion, and then voted to continue this item for two weeks. There are a number of issues with this development plan, which includes a five-acre lot and a 10-acre tract on the south side of Deer Haven Lane. The 10-acre tract is proposed to be used for a total of eight dwelling units. The issues mainly involve the floodplain, wetlands, and buildable area on the property.

Mr. Sallee stated that, in the two weeks since this plan was last discussed, the staff has received a revised submission for this plan. The petitioner still proposes eight dwelling units for the development; but the floodplain area has been revised, and the buildable areas for the units have been moved out of the environmentally sensitive areas. The street that is proposed for the development is in essentially the same location, and a temporary turnaround is proposed near the end of the stub street. The property into which that street will stub is also a 10-acre tract, and is located in the Urban Service Area, but it is still zoned agricultural.

Based on the revised development plan, the staff has drafted a revised recommendation. The staff is now recommending approval of this plan, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscape buffers.
4. Urban Forester's approval of tree preservation plan.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Approval of street names and addresses per the street addressing office.
7. Complete USA landscaping and fencing information [Art. 23A-2(f) & (o)].
8. Identify driveway locations or access concept from street.
9. Denote allowable density transfers (D.T.R.s) on plan face.
10. Identify exaction information.

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

11. Denote whether or not 1340 Deer Haven Lane will have driveway access to new street in future.
12. Resolve street cross-section proposed (50'/28' vs. 30'/23').
13. Document required (80%) open space areas.

Mr. Sallee stated, with regard to condition #7, that there is still a need to complete information on landscaping and fencing along the Urban Service Area boundary. The Zoning Ordinance offers four different options for landscaping, and two options for fencing, and the staff would like for the plan to delineate which of those options will be used. With regard to condition #12, Mr. Sallee said that the street cross-section does not contribute to the open space total. Since the property is located in a Scenic Resource Area, there is a requirement for this development to have 80% of the land area accounted for open space. A narrower street, which is allowable with buildable areas that have at least 100 feet of frontage, would allow a street as small as 23 feet with a 30-foot right-of-way. Not all of the street may qualify for that cross-section; but a good portion of it would, and that would help with the open space calculation. The staff would recommend that that issue be resolved prior to certification of this plan. Mr. Sallee stated, with regard to condition #13, that the staff would like documentation added to the plan that the 80% open space requirement is being met.

Commission Questions: Ms. Roche-Phillips asked, with regard to condition #5, if the staff believes that that condition is general enough to specify the need for a wetlands crossing permit for the driveway. Mr. Sallee said that he believed that it would be. It would affect not only the floodplain area, but also the setback associated with the identified wetlands area. The staff would look to the Environmental Planner, and his approval of the plan, to ensure that any necessary permits have been allocated.

Mr. Penn asked if the revised development plan is the result of the new FEMA floodplain maps. Mr. Sallee answered that that was correct. He said that the floodplain area is slightly different on the revised plan, following the recent release of those new maps.

Ms. Copeland asked if the existing house on the subject property would be demolished. Mr. Sallee responded that, under the revised development plan, there is a difference between the allowable buildable area and the location of the existing house. Ms. Copeland stated that it appeared that the footprints of the dwelling units were considerably different from those on the original plan. She asked what size the dwelling units are proposed to be on the revised plan. Mr. Sallee answered that some of the lots are proposed to be 70' by 75' feet in size; three lots are proposed to be 50' by 75'; and the lot on the five-acre tract is proposed to be 100' by nearly 300' in size. There is a note on the plan restricting each of those buildable areas to one single-family unit. Ms. Copeland asked what the setback is on the four lots that are proposed to lie in a row. Mr. Sallee responded that the front setback is a 10-foot building line, identified from the sidewalk; the rear setback is approximately 15 feet from the rear property line. Ms. Copeland noted that the proposed setback is closer than that included on the original development plan. She asked if that setback would be adequate, to which Mr. Sallee replied that it would meet the minimum requirements of the EAR-1 zone. He noted that the Commission could require modifications to that design standard if they wished.

EAMP Compliance Report Presentation: Mr. Martin presented the revised Expansion Area Master Plan compliance report. He said that the future land use and density requirements are limited to eight dwelling units, because the subject property is located in a scenic overlay area. The revised development plan includes eight units, so the density and land use requirements are being met according to the Expansion Area Master Plan. Mr. Martin noted that the revised floodplain information on the new development plan also brings the plan into compliance with the community design element of the EAMP. With regard to the infrastructure element requirement of the EAMP, Mr. Martin said that there are no major sewers required on the subject property; it will be served by a local sewer system. The dwelling unit on the large tract is proposed to be served by a septic tank until such time as the remainder of the property develops, when the petitioner will be required to add that unit onto the sewer system. The previously submitted development plan did not include a regional detention basin, which was added to the revised plan. Detention basins are a major infrastructure element, and the inclusion of that basin brings the plan into compliance with that portion of the EAMP requirements.

Mr. Martin stated, in conclusion, that the revised development plan meets and complies with all the provisions of the Expansion Area Master Plan.

Commission Questions: Mr. Holmes asked if the seven units proposed on the smaller lots would be connected to a local sewer system. Mr. Martin answered that, at the time of the construction of those units, a local sewer line will be constructed to tap into the existing system in the area, to serve those units. Mr. Holmes asked if the dwelling unit on the larger tract will be required to tap into that system as well. Mr. Martin responded that, at the time of the construction of the system to serve the seven units, the unit on the larger tract will be required to tap into that system. Until that time, the dwelling unit on the five-acre tract will be served by a septic tank.

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

Mr. Penn asked if the septic tank would be allowed on the five-acre tract on a temporary basis. Mr. Martin stated that the five-acre lot is existing, and the Health Department will have to approve the septic system on it. That situation meets the requirements of the Subdivision Regulations, with the approval of the Health Department.

Ms. Copeland stated that the area where the proposed septic tank would be constructed is to be on top of a rocky hill.

Petitioner Representation: Fred Eastridge, Sherman/Carter/Barnhart, stated that the purpose of the revised development plan is to transfer 1.5 dwelling units to the 10-acre tract, in order to keep the density allowable under the EAMP requirements. He noted that the five-acre tract contains a single-family dwelling unit, for which a building permit could be issued today.

With regard to Ms. Copeland's questions about the buildable areas included on the plan, Mr. Eastridge said that it is common practice to maximize the buildable areas, so that home designs can be "moved around" within that area to accommodate different floor plans. Those buildable areas do not necessarily indicate the size of the completed structure. The petitioner is allowing the developers of each lot to decide what type of home to build there, so the plan has been kept as "free and loose" as possible to allow for those variations.

Mr. Eastridge stated that the petitioner has spoken with representatives from the Health Department about the proposed septic tank. The Health Department will review the site, and establish the preferred location for the tank, the length of the fill lines, and the other specifications for the system. The petitioner understands the requirements of that situation, and that all of the units will have to tie into the sanitary sewer system upon construction of the seven smaller-lot units. Mr. Eastridge said that the petitioner has made the necessary changes to the development plan according to the requirements of the Zoning Ordinance and Subdivision Regulations, and he requested approval.

Action: A motion was made by Mr. Day, seconded by Ms. Whitman, and carried 9-0 (Cravens and Richardson absent) to approve DP 2008-114, noting acceptance of the EAMP compliance report, subject to the 13 conditions as recommended by staff.

2. DP 2008-126: MILLER BIRD COMMERCIAL PARK SUBDIVISION, BLOCK A, UNIT 1, LOTS 1 – 6 (CURRY SHOES)
(11/25/08)* - located at 2555 Nicholasville Road. (Council District 4) **(The Roberts Group)**

Note: The purpose of this amendment is to redevelop the property with a 3,500 square-foot restaurant to include a drive-through lane, and a 13,390 square-foot retail building. The Commission postponed this development plan at their 9/11/08 meeting.

The Subdivision Committee Recommended: Postponement. There were questions regarding the maintenance and location of the proposed parking.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of service road cross-section.
8. Addition of existing and proposed easements.
9. Addition of building dimensions.
10. Addition of standard development plan notes.
11. Addition of entrance dimensions.
12. Denote the detention areas.

Staff Presentation: Mr. Martin presented the final development plan, noting that the adjacent property to the north was re-zoned for retail use approximately a year ago. The Planning Commission recently approved a new development plan for the Wendy's restaurant, located across the street from the subject property, as well as a new plan to increase the number of units in the nearby townhouse development.

Mr. Martin said that the petitioner proposes to construct a new Raising Cane's restaurant, approximately 3,500 square feet in size, with an associated drive-through. The petitioner also proposes to construct a 15,000 square-foot retail building on the property, which will contain the Curry Shoes store after their relocation from Southland Drive. The two structures are proposed to front on the existing service road, with a new access proposed on the service road in addition to the two existing access points to Moore Drive on the property. The petitioner has provided on-site parking for the proposed restaurant and retail uses, with an overage of approximately six spaces.

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

Mr. Martin stated that the Subdivision Committee reviewed a previous version of this plan, and recommended postponement, as listed on the agenda. This plan was revised, based on the Committee's concerns. One of those concerns from the previous plan was the inclusion of parking in the service area. The revised plan has addressed that issue, but has raised another concern: the existing access point near the service road at the Moore Drive intersection, which was added by the petitioner with the latest revision. The staff is concerned about the functionality of that access point, given its proximity to the very busy Moore Drive / Nicholasville Road intersection. The staff believes that left turns out of the property, in particular, could provide a source of conflict at that location.

With regard to the conditions for approval of this plan, Mr. Martin said that most of them are standard sign-off requirements. Condition #12, however, would require that the petitioner denote the areas of detention on the plan. As the petitioner works through the pre-construction process with the Division of Engineering, they may discover that there will not be a need for on-site detention. The staff added condition #12 to ensure that, should on-site detention be required, it will be noted on the plan.

Mr. Martin displayed three aerial photographs of the subject property, noting the difficult intersection at Moore Drive and Nicholasville Road and the traffic stacking there. He said that traffic often stacks on Moore Drive even during low-volume times. The previously submitted plan eliminated the access point nearest Moore Drive, but it included parking along the service road, which the staff and Committee also believe to be problematic. The staff believes that the intersection would function much better if that access point was eliminated.

Commission Comments: Mr. Holmes stated that he agreed with the staff's concerns about the access point.

Ms. Copeland asked Mr. Martin to explain the potential traffic conflicts at the service road. Mr. Martin used the rendered development plan to demonstrate for the Commission members the staff's concerns about conflicts between traffic on Moore Drive, and cars making left-hand turns out of the access point nearest the service road. He noted that the service road itself is currently signed for right turns only, which has helped the situation somewhat; but the staff is still concerned about the intersection as a whole.

Petitioner Presentation: Bob Cornett, The Roberts Group, was present representing the petitioner. He said that the access point nearest the service road is existing, and the petitioner believes that it is necessary for the function of the parking area for the proposed restaurant. The petitioner is concerned that eliminating that access will create a "dead-end parking" situation, as well as additional traffic back-ups and conflicts with cars using the drive-through window. There are nearly identical situations all along Nicholasville Road, and the petitioner believes that some of the staff's concerns could be addressed with appropriate signage at the access, for right turns only. The petitioner has also spoken with Jeff Neal, Division of Traffic Engineering, about other possible modifications to the access to make it more functional.

Mr. Cornett stated that the parking requirement is being met; the drive-through area and stacking space comply with the Zoning Ordinance requirements; and the petitioner has made considerable compromises on this plan since the Subdivision Committee meeting three weeks ago. There are some issues to be addressed, but most of those could be resolved through corrections to the construction drawings.

Mr. Cornett said, with regard to recommended condition #12, that the detention area on the subject property is existing. It is not included on the current plan, but Mr. Cornett displayed a revised site plan that does include it, in case the Commission should wish to review that option.

Mr. Cornett stated that the petitioner has made a good-faith attempt to satisfy the staff's concerns, and will commit to working with Mr. Neal in order to resolve the identified traffic issues. The petitioner believes that similar issues exist at the location of the new Taco Bell restaurant, near the Nicholasville Road / Regency Road intersection. That location includes a right-turn only onto the service road, and it functions very well. The petitioner believes that the access issues on the subject property can be easily resolved, and this restaurant site can also work very well.

Division of Traffic Engineering Comments: Mr. Neal stated that, if the Planning Commission should choose to approve this development plan with the existing access near the service road, the Traffic Engineering staff would like for the petitioner to agree to some public infrastructure improvements, as well as making the access right-turn only. He displayed a graphic rendering depicting the proposed improvements to the existing site access. Mr. Neal said that the staff would like for the driveway to be modified, in order to encourage drivers to turn right only. That modification could be reinforced through the addition of thermo-plastic striping on the driveway. In addition, the staff would like to request that the petitioner add a ramp and crosswalk across the service road, as well as sidewalk and ramps to the intersection, as there are no pedestrian facilities at the Moore Drive / Nicholasville Road intersection.

Commission Questions: Mr. Vaughn asked if left turns would be allowed into the site from Moore Drive. Mr. Neal answered that left turns into the site would be allowed. Mr. Vaughn asked if the cross-section width would be sufficient to accommodate those turns. Mr. Neal responded that he believed that the driveway cross-section was sufficient, but if it was not, it could be enlarged somewhat.

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Mr. Day stated that he was more concerned about left turns onto the property than any of the other issues. He said that the Nicholasville Road / Moore Drive intersection is extremely congested, and he fears that allowing left-hand turns into the site from Moore Drive could create more conflicts at the site.

Commission Questions: Mr. Penn asked if Mr. Neal's preferred option would be to require the removal of the access point nearest the service road. Mr. Neal answered that it would be the best option for the traffic flow on Moore Drive and the service road. Mr. Penn asked if the Moore Drive / Nicholasville Road intersection would function better overall if drivers accessed the subject property via an access to the service road, rather than from Moore Drive. Mr. Neal responded that it would probably help to maintain the current level of service of the intersection, rather than making it worse.

Mr. Vaughn asked if the petitioner had any issues with Mr. Neal's suggestions for improvements to the site. Mr. Cornett answered that the petitioner does not have any problems with Mr. Neal's suggestions. The petitioner agrees that signage and pavement striping may help control traffic flow, but it is impossible to make drivers follow those guides. He noted that the petitioner proposes to add another access to the service road, as a "relief point" to allow the restaurant or store patrons another means to enter or exit the property, while avoiding the busy Nicholasville Road / Moore Drive intersection.

Mr. Vaughn asked if Mr. Neal's sign-offs on the plan would be sufficient to address the issues discussed at this meeting. Mr. Neal answered that, under his regular sign-off and without additional guidance from the Commission, only his suggested modifications to the driveway would be included. He would not have the ability to require the sidewalk improvements, ramps, and crosswalk. Mr. Cornett stated that the petitioner had no problem with constructing the sidewalk improvements, ramps, and crosswalk to Nicholasville Road.

Mr. Owens asked why Mr. Neal had suggested using thermo-plastic striping for the access driveway, rather than curbing or an island. He said that it seemed that curbing or an island would completely prevent unwanted left-hand turns into the property. Mr. Neal answered that there have been mixed results with the use of curbing to discourage traffic movements. In some instances, it has caused more problems than it solved. Mr. Owens asked if it would be possible to make that access a right-turn only exit, with no traffic allowed to enter at that location. Mr. Neal replied that that would be an option, but he had not considered it.

Ms. Copeland asked if it would be possible to exit the subject property, then cross Moore Drive and access Nicholasville Road further south. Mr. Neal responded that that is possible, and noted that the service road also forms a loop with Regency Road, so a driver could exit that way as well.

Mr. Penn asked why the Planning Commission should consider allowing the access to Moore Drive nearest the service road to remain, since one access to the service road and one to Moore Drive should be sufficient for traffic circulation. He said that the community has been "making do" on Nicholasville Road for many years, and a bad situation should not be allowed to continue just because there are other similar situations along the Nicholasville Road corridor. Mr. Penn asked Mr. Neal why, if it would be better to have only two accesses, one each to Moore Drive and the service road, his recommendation did not reflect that. Mr. Neal answered that eliminating the access point to Moore Drive nearest the service road would be the best recommendation for the property, but he did not know how the Planning Commission would proceed with their discussion. He said that, should the Commission choose to allow that access to remain open, he would ask that they require the sidewalk improvements, ramps, and crosswalk that he discussed.

Mr. Vaughn asked if the recommended sidewalk improvements would require the addition of another condition to the plan. Mr. Martin stated that Mr. Neal would need the Commission specific recommendation with regard to the sidewalk and other pedestrian improvements, should they choose to do so.

Mr. Cornett said that the petitioner believes that the existing access nearest the service road is absolutely necessary for the success of this project, even if it has to be configured as right-out only. He said that, if that access is closed, drivers leaving the front parking spaces will conflict with cars exiting the drive-through. The petitioner does not believe that the restaurant and drive-through will work at this location without that access.

Mr. Holmes stated that Mr. Martin had noted that the site has six parking spaces over the required number. He asked if it would be possible to remove some of those spaces, in order to allow for a turnaround area. Mr. Cornett said that it seems that, whenever he submits a plan with just the minimum number of parking spaces, it is not enough. The original plan had parking along the service road, and eliminated the access nearest the service road. The staff, however, determined that allowing parking along the frontage road would create an unsafe condition, so the petitioner reworked the plan to the current parking configuration. Mr. Cornett said that limiting the number of parking spaces to the minimum requirement would also prevent a small restaurant from locating in the new retail building proposed.

Tom Johnston, 270 South Limestone Street, is the franchise owner for the proposed restaurant. He said that the franchise requires some parking in front of the building, so they need to maintain those parking spaces at the front of the building. The franchisor was also concerned about the possibility of the closure of the access nearest the service road, since they believe

that the parking area needs an additional "relief valve" rather than a dead-end parking area. Mr. Johnston would be agreeable to having that access signed for exiting right-turns only, but he believes that it is critical to the restaurant's success.

Mr. Vaughn asked Mr. Neal to clarify his recommendation for the access and sidewalk improvements. Mr. Neal responded that he would recommend the requirement of the sidewalk improvements and "right-turn only" signage only if the access nearest to the service road is allowed to remain. Mr. Vaughn asked if Mr. Neal was recommending the closure of that access. Mr. Neal replied that he agreed with the Planning staff; it would be best for the vehicular movement at the Moore Drive / Nicholasville Road intersection if the access was closed. He said that could create problems internal to the site, however.

Ms. Copeland requested clarification as to where stormwater detention will be provided on the property. Mr. Cornett answered that there is an existing detention easement on the property. He said that the petitioner will review that location with the Division of Engineering staff to ensure that it is appropriate.

Action: A motion was made by Mr. Penn, seconded by Ms. Copeland, and carried 9-0 (Cravens and Richardson absent) to approve DP 2008-126, closing the access point nearest the service road, and subject to the 12 conditions as listed on the agenda.

ZONING ITEMS - The Zoning Committee met on Thursday, September 4, 2008, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Patrick Brewer, Frank Penn, Lynn Roche-Phillips, Randall Vaughn, and Joan Whitman. 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)
 - (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. JOHN P. ELIAS ZONING MAP AMENDMENT & BERRY CREST SUBDIVISION, LOT 7, ZONING DEVELOPMENT PLAN

- a. MAR 2008-28: JOHN P. ELIAS (11/13/08)* - petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Professional Office (P-1) zone, for 0.2259 net (0.2604 gross) acre, for property located at 223 Pasadena Drive.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 4) recommends Professional Service (PS) future land use for the subject property. The petitioner proposes to remove the existing residential use and expand the adjacent day care center.

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

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

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

1. The requested Professional Office (P-1) zone is in agreement with the 2007 Comprehensive Plan's recommendation for Professional Services future land use for the subject property. The proposed land use and zoning further the Plan's recommendations for this immediate area.
 2. This recommendation is made subject to the approval and certification of ZDP 2008-123: BERRY CREST SUBDIVISION, LOT 7, 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 2008-123: BERRY CREST SUBDIVISION, LOT 7 (11/13/08)* - located at 223 Pasadena Drive.
(Foster - Roland)

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

1. Provided the Urban County Council rezones the property P-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. Denote: There shall be no development of the property until the Planning Commission approves a final development plan.
7. Correct plan title.
8. Addition of access dimensions.
9. Denote access across rear of this property to the adjacent property.
10. Addition of street cross-sections.
11. Revise note number 6.

Zoning Presentation: Ms. Wade presented the staff report, noting that this rezoning request is from a Single Family Residential (R-1C) zone to a Professional Office (P-1) zone. She said that the subject property is located on the north side of Pasadena Drive, with Regency Road to the west, and Nicholasville Road and Huguenard Drive to the east. The general zoning in the immediate vicinity is P-1, with one remaining R-1C lot just to the west of the subject property. The nearby Regency Shopping Center is zoned B-6P; a smaller shopping center along Pasadena Drive is zoned B-1; and other B-1 parcels are located on Dennis Drive.

Ms. Wade stated that the petitioner proposes to rezone the subject property in order to expand an existing daycare center that is currently located on the property immediately to the east, which is already zoned P-1. The 2007 Comprehensive Plan recommends Professional Services land use for the subject property, so the requested P-1 zone is in agreement with the Comprehensive Plan. Rezoning the subject property to P-1 will help bring this portion of Pasadena Drive more into compliance with the Comprehensive Plan's recommendations. Ms. Wade said that the staff and the Zoning Committee are both recommending approval of this request, 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. She said that the petitioner proposes a small expansion to the existing daycare center, and described the proposed access and parking arrangements. The Subdivision Committee recommended approval of this plan, subject to 11 conditions as listed on the agenda.

Petitioner Representation: Myke Robbins, Foster-Roland, stated that the petitioner is in agreement with the staff's recommendations, and requested approval.

Action: A motion was made by Mr. Brewer, seconded by Mr. Owens, and carried 9-0 (Cravens and Richardson absent) to approve MAR 2008-28, for the reasons provided by staff; and ZDP 2008-123, with the 11 conditions as listed on the agenda.

2. TOWNE PROPERTIES ASSET MANAGEMENT COMPANY ZONING MAP AMENDMENT & MERRICK PLACE (MERRICK INN / OLDE TOWN OF LEXINGTON) (AMD.) ZONING DEVELOPMENT PLAN

- a. MAR 2008-29: TOWNE PROPERTIES ASSET MANAGEMENT COMPANY (11/13/08)* - petition for a zone map amendment from a Planned Neighborhood Residential (R-3) zone to a restricted Neighborhood Business (B-1) zone, for 1.79 net (3.66 gross) acres, for property located at 3380 Bates Creek Road (a portion of).

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 3) recommends High Density Residential (HD) future land use for the subject property. The petitioner proposes to rezone the subject property in order to expand the Merrick Inn, an existing, non-conforming use on the site.

* - 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 restricted Neighborhood Business (B-1) zone is appropriate for the Merrick Inn restaurant for the following reasons:
 - a. The Merrick Inn restaurant has operated at this location for over 40 years and the existing structure has been modified to accommodate a restaurant use over this time period.
 - b. Restaurants are a principal permitted use in the B-1 zone; therefore, rezoning the subject property will make the existing use conforming to the current Zoning Ordinance.
 - c. A restricted B-1 zone would allow the existing use to remain, but allow for other appropriate uses within a well-established residential community.
2. The existing Planned Neighborhood Residential (R-3) zone is no longer appropriate for the subject property for the following reasons:
 - a. Over time, the Merrick Inn structure has been converted to a restaurant use, and such improvements render the structure substantially inadequate for residential purposes. The restaurant could not be readily adapted to residential use without prohibitively costly renovation.
 - b. The Merrick Place apartments have constructed a new clubhouse facility elsewhere on the property to accommodate the needs of the residents.
3. This recommendation is made subject to approval and certification of ZDP 2008-122: Merrick Place (Merrick Inn/Olde Towne of Lexington)(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.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the use of the subject property shall be limited to the following uses via conditional zoning:
 - a. No freestanding signage shall be allowed of any type. Wall mounted business signs, and any canopy or awning signs shall only be indirectly illuminated.
 - b. Restaurant, except as prohibited under Article 8-16(e)(14) and (15), with or without live entertainment or dancing.
 - c. Libraries, museums, art galleries, and reading rooms.
 - d. Community centers and private clubs.
 - e. Schools for academic instruction.
 - f. Kindergartens, nursery schools and child care centers for four (4) or more children.
 - g. Athletic club facilities.
 - h. Swimming pools, tennis courts, putting greens, and other similar non-commercial recreational uses.
 - i. Banquet facilities.
 - j. Offices, other than for medical or dental offices.
 - k. Satellite dish antennas, as further regulated by Article 15-8.

These use restrictions are appropriate and necessary to protect the established residential development from the most intrusive and intense land uses otherwise available in the B-1 zone.

- b. ZDP 2008-122: MERRICK PLACE (MERRICK INN/OLDE TOWNE OF LEXINGTON) (AMD) (11/13/08)* - located at 1074 Merrick Drive.
(Wheat and Ladenburger)

Note: The purpose of this amendment is to allow an expansion of the Merrick Inn restaurant.

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

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, 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. Correct plan title.
7. Addition of typical parking space dimensions.
8. Addition of drive aisle dimension and access points.
9. Document parking in the proposed B-1 zone and residential requirements.
10. Resolve zone-to-zone and/or vehicular use area screening.

Zoning Presentation: Ms. Wade began the staff's presentation by stating that this request is for rezoning from a Planned Neighborhood Residential (R-3) zone, to a Neighborhood Business (B-1) zone, for a portion of the property located at 3380 Bates Creek Road. The subject property is located on Merrick Drive, inside the Merrick Place apartment complex, just off Bates Creek Road to the north and east of the Bates Creek Road / New Circle Road interchange. Zoning in the vicinity includes an R-3 zone for the Merrick Place apartments; R-2 zoning to the east; and R-1C and R-1T zoning across New Circle Road to the south.

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Ms. Wade stated that the petitioner proposes to rezone the subject property in order to bring the Merrick Inn restaurant, which is a non-conforming use, into a conforming status with respect to the Zoning Ordinance. The requested B-1 zone allows restaurants as a principal permitted use. The petitioner has a desire to expand the restaurant, and would need to bring the property into conformance in order to do so. In 1986, the Board of Adjustment found the Merrick Inn restaurant to be a non-conforming use.

Ms. Wade said that the 2007 Comprehensive Plan recommends High Density Residential land use for the subject property, so the existing R-3 zone is in agreement with the Plan. The requested B-1 zone, therefore, would not be in agreement with the recommendation of the Plan. The petitioner contends that the proposed zoning is appropriate and the existing zoning is inappropriate at this location, for the following reasons: the restaurant has operated at this location for more than 40 years; the existing structure has been modified significantly to accommodate the restaurant use; and the rezoning would bring the property into conformance with the Zoning Ordinance. The petitioner contends that the R-3 zone is inappropriate because the modifications to the property have left it unsuitable for residential use, and converting it back to a residential configuration would be costly. The Merrick Place apartment complex recently constructed a new clubhouse for its residents, so the restaurant building is no longer needed for that purpose, for which it was originally intended.

Ms. Wade stated that the staff agrees with the petitioner's contentions that the proposed B-1 zone is more appropriate than the existing R-3 zone. The petitioner proposed several conditional zoning restrictions for this location, and the staff believed that it would be appropriate to add some additional restrictions to those, which are listed on the agenda and in the staff report. Ms. Wade noted that the proposed conditional zoning restriction regarding signage was based on the 1986 Board of Adjustment decision, which also restricted signage on the property. The staff and the Zoning Committee are recommending approval of this request, for the reasons provided in the staff report and on the agenda, and including the conditional zoning restrictions as listed on the agenda.

Commission Questions: Ms. Copeland asked if the streets in the Merrick Place development are private. Ms. Wade answered that those streets are private. Ms. Copeland asked if rezoning the subject property to B-1 would cause the business owners to believe they are entitled to a separate address and a public street system. Ms. Wade responded that the B-1 zone does not have a minimum lot frontage requirement, so the petitioner does not need to have public street access. The existing use has been maintained at this location for 40 years without public streets, so the staff does not believe that they would argue for that at this point. Ms. Copeland asked, if the restaurant is sold, the new owners could request those services. Ms. Wade said that the property owners, if they chose, could bring the private streets up to public street standards and dedicate them to the government in order to make them public streets. Ms. Copeland asked if the property on which the restaurant is located is an isolated parcel, to which Ms. Wade responded that it is not; it currently exists as part of a larger parcel.

Development Plan Presentation: Mr. Taylor presented the corollary preliminary development plan, noting that the Planning Commission, if the property is rezoned, would review a final development plan at some point in the future. The petitioner proposes to expand the existing restaurant use and building by approximately 460 square feet in two locations. No other changes are proposed to the structure with this development plan. The Subdivision Committee recommended approval of the plan, subject to the 10 conditions as listed on the agenda. Mr. Taylor said that, should the Planning Commission choose to adopt the proposed conditional zoning restrictions, another condition would need to be added to note the addition of those restrictions.

Petitioner Presentation: Bruce Simpson, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, including the conditional zoning restrictions, and he requested approval.

Action: A motion was made by Mr. Brewer, seconded by Mr. Day, and carried 9-0 (Cravens and Richardson absent) to approve MAR 2008-29, for the reasons provided by staff, adding the conditional zoning restrictions as listed on the agenda; and ZDP 2008-122, with the 10 conditions as listed on the agenda, adding condition #11 to read: "Addition of conditional zoning restrictions."

Note: Chairman Vaughn declared a brief recess at 2:53 p.m. The meeting reconvened at 3:12 p.m. Ms. Richardson arrived at this time. Upon the reconvening of the meeting, Mr. Holmes, Mr. Penn, Mr. Vaughn, and Ms. Whitman recused themselves from the following item. Mr. Day assumed the Chair for the remainder of the meeting.

A. CONTINUATION OF HEARING ON ZONING MAP AMENDMENT

1. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT

- a. MAR 2008-27: URBAN COUNTY PLANNING COMMISSION (10/9/08)* - continuation of a public hearing on a 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 Coch-

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ran 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 Bates Creek Road (odd addresses only); and 1405-1491 Bates 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)*
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 Presentation: Ms. Wade began the staff's presentation by noting that this item was a continuation of a zone change hearing that began on August 28th. Since that time, the staff has received several more letters from residents with regard to this request; Ms. Wade entered those letters into the record, and circulated copies to the Commission members for their review.

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Ms. Wade stated that, at the end of the Commission's public hearing on August 28th, there were three main issues left to be resolved: the language of the multi-family and single-family attached restriction; the possible changes to the remaining restrictions; and refinement of an appeal process.

With regard to the language of the multi-family and single-family attached parking restrictions, Ms. Wade said that the staff had prepared a revised recommendation. She distributed that recommendation, noting that #5 on the staff's exhibit was the language that the staff submitted during rebuttal at the August 28th hearing. The representatives of the multi-family property owners, who were in objection to the staff's original language, approached the staff and indicated that they were agreeable to the revised language, which is as follows:

- 5. Parking for Single-Family Attached and Multi-Family Dwellings:** No parking in front of the front building plane of the principal structure on the lot. Garage doors shall not face the front building line. (Excludes detached garages)

Ms. Wade said that the staff, the neighborhood, and the multi-family property owners agree that that issue has been resolved, with the proposed change to the ND-1 restriction.

With regard to the remaining ND-1 restrictions proposed for single-family uses, the Planning Commission at their August 28th hearing encouraged the neighborhood and those in opposition to get together and try to come to an agreement on the necessary "tweaks" to the restrictions. The two groups met, drafted proposed changes and forwarded them to the staff, which were included in the exhibit packet distributed to the Commission members prior to the start of this hearing. The staff reviewed that proposed language, and made some additional tweaks in order to make the language more consistent and to respond to concerns from the Division of Building Inspection. The following is the language proposed by the staff, based on the neighborhood's revised submission:

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:**
 - A.** Measured 70' from the Front Building Plane (excludes porches) or 10' from the Rear Property Line, whichever is greater. Applies to all properties except those on Andover Drive, Garden Road, and Bates Creek Road.
 - B.** Measured 80' from the Front Building Plane (excludes porches) or 10' from the Rear Property Line, whichever is greater. This applies to all properties on Andover Drive, Garden Road, and Bates Creek Road.
- 2. Building Heights:** Maximum of 30' to highest ridge and maximum eave height (aka gutter line) at 2nd floor ceiling line, including dormers. (Excludes new additions which may exceed 30' in order to match existing ridge lines; eave height measured at top of fascia board)
- 3. Roof Pitch:** Minimum 7:12 slope for Gabled Primary Roofs (Excludes dormers, single story flat roofs, roofs built to match existing roof pitches, 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, doors and/or vented openings; however, no openings shall be required if Building Code requires Fire Ratings. (Excludes any new construction with a wall plane area of less than 150 square feet, chimneys, and side walls of dormers)
- 5. Parking for Single-Family Attached and Multi-Family Dwellings:** No parking in front of the front building plane of the principal structure on the lot. Garage doors shall not face the front building line. (Excludes detached garages)
- 6. Accessory Structures:** Maximum footprint of 800 square feet for all accessory structures per lot. Maximum 22' height to roof ridge, maximum 12' height to eave (aka gutter line). No exterior stairs shall be permitted. Maximum 50 percent of roof square footage allowed to be shed dormer. (Eave height measured at top of fascia board and does not apply to dormers, and no minimum roof pitch required on accessory structures)

Ms. Wade said, with regard to rear yard setbacks, that the neighborhood had come up with a measurement that, in some cases, amounts to the same number as the previously proposed percentage standard. The majority of the properties in the neighborhood are 150 feet deep, which would require a rear yard of 50 feet with the original restriction. The neighborhood maintained that idea, but approached it from the front of the property rather than the rear, when they developed the new proposed restriction. Some of the properties in the neighborhood are not 150 feet deep, and the new proposal would allow those property owners more flexibility to expand their homes to the rear. Andover Drive, Garden Road, and Bates Creek Road, which have shallower lots, are proposed to have 80 feet to work with, rather than 70'.

With regard to the remaining restrictions, Ms. Wade stated that the staff's changes to the proposed restriction on building heights were intended to address the Division of Building Inspection's concerns about eave measurements.

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She displayed a graphic rendering to help explain those changes. The changes to roof heights exempted roof types other than gabled roofs from the requirements. The suggested change to the restriction on wall openings was to add an accommodation for vented openings, and an exception for chimneys. Ms. Wade said, with regard to the restriction on accessory structures, that the neighborhood had reached a compromise of 800 square feet in size and 22 feet tall, after discussions with the opposition. They also had proposed a provision allowing a maximum of 50 percent of the roof square footage to be a shed dormer. Ms. Wade displayed a rendering of an accessory structure to help clarify the proposed changes for the Commission, and noted that the staff understands that the neighborhood is generally in agreement with these proposed changes to the ND-1 restrictions.

Ms. Wade said that the third issue that remains for the Commission's consideration is an appeal process. The staff has reviewed the Zoning Ordinance and K.R.S. 100, and found that conditional zoning restrictions are only allowed to be applied by urban county governments; and they have to be applied, varied, or amended by the Planning Commission, not by the Board of Adjustment. The BOA is not given the power to make changes to conditional zoning restrictions, so that responsibility will still need to rest with the Planning Commission. The staff found, however, that it was possible to amend the process by which an applicant could come before the Commission to request an amendment to ND-1 restrictions. The usual procedure for changing conditional zoning restrictions involves filing an application for a zoning map amendment, which typically takes four to six months, including a decision by the Urban County Council. The staff considered what could be done to help ND-1 applicants amend conditional zoning restrictions in a manner that would not be as onerous as a more typical map amendment changing zoning categories.

Ms. Wade stated that Ms. Phillips would review the proposed process for the Commission. The staff has also prepared a new application, and has begun work on drafting a text amendment that they will ask the Planning Commission to consider at their October work session.

Ms. Phillips displayed an exhibit for the Commission, entitled "Planning Application Review Time." She said that the staff's goal was to provide a process that would meet the requirements of both K.R.S. 100 and Article 6 of the Zoning Ordinance. The result was a "hybrid" process between a standard zone change application and that necessary for a dimensional variance, which is usually reviewed by the Board of Adjustment. Ms. Phillips referred to the exhibit, which explained the timeline, fee schedule, and submittal requirements for both zone map amendments, dimensional variances, and the proposed ND-1 amendment process. The staff's focus in creating this process was to keep it more in line with the Board of Adjustment fee schedule and submittal requirements.

Ms. Phillips stated that the timeframe proposed for the modified ND-1 amendment process is from 27 to 41 days from the filing date. She noted that, although a map amendment process would still have to be followed, it would be more expedited than a more typical map amendment filing. Property owners would be required to follow the same filing schedule as other zone change applications, but the request could probably be heard at the Commission's subdivision items meeting on the second Thursday of the month, rather than the zoning public hearing held on the fourth Thursday of each month. No development plan would be required with a modified ND-1 amendment, but a building elevation and/or site plan would be required. A modified ND-1 amendment would also be required to follow the same notification requirements as a more typical zone change request, which requires mailed notice to property owners within 400 feet of the property.

Ms. Phillips displayed a flowchart of the proposed ND-1 map amendment process. She said that an applicant would be required to complete a pre-application conference, just as for a zone map amendment; the applicant would then file their application, including a building elevation or site plan and notification to surrounding property owners; the staff would prepare a legal advertisement for the request; the Zoning Committee would consider the staff's report on the request; and, if the Planning Commission so chose, they could hear the request at their monthly subdivision meeting. In most circumstances, modified ND-1 amendments would not be forwarded to the Urban County Council following Planning Commission action, unlike most zoning map amendments. The staff believes that following this procedure would reduce the length of the process from four to six months to four to six weeks.

With regard to the procedural elements of the proposed modified ND-1 amendment, Ms. Phillips said that an amendment to Article 6 of the Zoning Ordinance would be necessary to change the types of findings required for the modified process. Also, the staff would need to create a new application and amend the fee schedule, which would require Urban County Council approval. Ms. Boland would also need to work with the Council on the ordinance for each neighborhood requesting ND-1 zoning, so that Council approval would not be required. Ms. Phillips stated that the staff is currently working on the draft text amendment, and will be prepared to present it at the October 16th work session, for possible initiation at the October 24th Planning Commission meeting.

Ms. Wade said that there had been some questions since the August 28th hearing about whether the Planning Commission or the Council could make this zone change effective on a certain date, after the modified ND-1 amendment process is in place. The Department of Law advised that an effective date can be added to the ordinance, but it would have to be a specific date; it could not be contingent on another action. The staff feels that an ef-

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fective date for sometime in the spring of 2009 would be an appropriate time frame to allow the Planning Commission to vet the text amendment, initiate it, have a hearing, and send it to the Council.

Chair Comments: Mr. Day stated that the public comment portion of the hearing would be continued at this time. He noted that this portion of the meeting is for response to new material entered into the record or presented today only, not for information that was presented at the August 28th hearing. It would be most appropriate to begin with comments about the appeal process, since that issue generated the most concern from the residents at the August 28th hearing. Mr. Day noted that the same time limit procedure used at the August 28th hearing would be in place for this portion of the continued public hearing.

Audience Comments: Brad Hawkins, Dudley Road, stated that he was once again present representing the Chevy Chase Neighborhood Association. He said that the two issues with the proposed design guidelines themselves had been resolved, and he commended his neighbors on their time and effort to achieve that resolution. Some residents in the neighborhood are simply philosophically opposed to any type of overlay; but, of the residents who were receptive to ND-1 zoning but opposed to specifics of the guidelines, there is overwhelming support for the proposed changes.

With regard to the proposed appeal process, Mr. Hawkins said that he would like to commend Ms. Wade and Ms. Phillips, and all the other Planning and Law staff involved, for their hard work in such a brief time span. He believes that the proposed appeal process will allow homeowners who have unique situations to seek relief.

Mr. Hawkins asked that the Planning Commission approve the staff's recommendation for the design guidelines, and use their collective wisdom to decide if an effective date should be applied for the appeal process. He believes that it would be difficult to take this request to the Urban County Council without some resolution of the appeal process, so he asked that the Planning Commission consider, if possible, moving that issue forward along with the rezoning request.

Tom Bunch, Dudley Road, said that he was gratified that the ad hoc opposition group was able to work with the CCNA to produce guidelines that he believes are superior to those originally presented with the rezoning application. With regard to the appeal process, he believes everything is in order, but he is concerned about the following language: "The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence." Mr. Bunch said that, in legal terminology, there can either be "preponderance of the evidence" or "clear and convincing evidence," but it should not read "a clear preponderance."

Mr. Bunch urged the Planning Commission to use their wisdom with regard to setting an effective date for the appeals process, as long as it can somehow go forward.

P.J. Blackburn, 200 Chenault Road, stated that, in her opinion, there is no general consensus of the neighborhood in support of ND-1 zoning. She said that, following the August 28th hearing, she asked to be included in the meetings to discuss the changes to the design guidelines, but she was not included. She sought to communicate with several different individuals about the issue, but no one answered her phone calls or emails. Therefore, Ms. Blackburn read the following statement into the record:

"Years ago, the city of Lexington did use great wisdom in laying down the building parameters for Chevy Chase. Those parameters were strong enough to protect us, but not so strong that we lost our liberties. While ND-1 restrictions are well-intended, they do nothing to guarantee the look and feel of Chevy Chase. However, they do take away the liberties provided by the wisdom that came before us all. Houses can still be painted any bright, garish color; be built in a contemporary design; be hexagon- or A-frame shaped; anyone could submit yard art in their front yards, etc. When I asked petitioners why these aforementioned restrictions were not listed in ND-1, I was told, "You can't legislate good taste." But, this is exactly what the proponents of ND-1 are trying to do: legislate or force the taste of a small group of people on the rest of us, while taking away our liberties, yet failing to preserve the look and feel of Chevy Chase. Further, if a full zone change is required for any remodeling outside the ND-1 proposed restrictions, I submit to this Commission, empowered for your experience and your wisdom, that getting a zone change is far too great a burden to place on a single homeowner to achieve, not to mention probably cost-prohibitive. Therefore, I respectfully ask you to vote against the ND-1 overlay for Chevy Chase. This initiative is unprecedented in the state of Kentucky, and a slippery slope to venture down without knowing all of the unintended and intended consequences it will result, which you will have to deal with in the future. Relative to that, has the Commission, since August 28th, researched all the additional burden in time and cost placed on the City's building inspectors, to facilitate exact compliance, relative to all the new idiosyncrasies of ND-1? Surely, the petition, signed by less than half of the 800 affected homeowners, was considered null and void at the close of the August 28th hearing, since it was clear to the Commission members that homeowners had signed it based on misstatements to them.

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Please know that throughout all ND-1 meetings, homeowners were told that all we had to do to build outside ND-1 restrictions was get a simple variance from the Board of Adjustment. This probably is the reason they gathered as many signatures as they did. Even at the final ND-1 meeting, after presenting signatures on the petition, the same question was asked and answered the same way. Residents I have spoken to did not understand the huge, negative implications of what they were signing and how it would adversely affect the future sale of their property. This was because some of us do not want to remodel again, but were not aware of the exorbitant costs of a zone change required by future buyers. Then, at the eleventh hour, two days before the August 28th hearing, the proponents of ND-1 circulated the brief letter in our mailboxes, letting us know that, 'in a recent meeting with Planning staff, we learned that the process for appealing ND-1 standards requires a complete zone change.' The brief letter proceeded to gloss over a few very general steps and listed some very minimal costs involved with the zone change process, as if getting a zone change was no big deal. Why did it happen, if proponents for ND-1 had been working on this for two years prior to circulating that petition? Simple due diligence would have revealed that a complete zone change was always, and the only option Chevy Chase residents ever had from the onset. Further, I believe any petition on an issue of this magnitude should be signed by two-thirds of all affected homeowners prior to placing it before this esteemed Commission, with frequently asked questions and answers circulated to all who cannot attend the meetings. Anything less wastes homeowners' and the Commission's time and money. Many of us do not belong to the Chevy Chase Neighborhood Association. I could not attend the meetings prior to the 28th hearing, so I used the email address they gave us to get questions and objections addressed about the ND-1 overlay. I emailed a simple question, asking the names of those who were leading this initiative, so I could voice those objections. I never received any response, nor, as I repeated before, was I allowed to attend any meetings to iron out differences in today's vote. So much for open neighborhood communication to address objections. You, our Commission, are empowered in your experience and wisdom to prevent this mistake from harshly affecting 800 homeowners. I again call on you to vote 'no' on ND-1 and fulfill your obligation to your fellow homeowners, for it is too burdensome and a single appeal procedure must be in place before any ND-1 initiative in the city of Lexington is ever passed."

Bryan Sawyer, Andover Drive, stated that he is agreeable to the revisions to the design guidelines. He said, with regard to the appeals process, that it would be preferable to require only a 200-foot notification, as for a BOA action, rather than a 400-foot notification. Mr. Sawyer noted that he would like for the appeals process to be in place before the enactment of the ND-1 rezoning.

Steve Slade, Tates Creek Road, stated that he participated in the process of "tweaking" the design guidelines. He said that the changes made to the guidelines were done so that the potential for appeals should now be minimal. The group took a great number of situations into consideration, and he does not believe that there will be many appeals. The committee was open with the CCNA, and Mr. Slade appreciated that.

Commission Comments: Mr. Day asked if it would be appropriate to approve the ND-1 overlay, and then focus on the appeal process; and whether it would be appropriate to "tie the two issues together." Ms. Boland answered that it is not legally possible to pass an ordinance contingent upon another action. The Commission could recommend that this zone change not go into effect until a specific date, because each ordinance passed by Council ends with an effective date.

Mr. Brewer said that he believes that an extraordinary amount of work has gone into this process, and this request needs to move forward, even though the zone change cannot be approved contingent upon the revisions to the appeals process. He said that it seemed like, since the staff, the CCNA, and the opposition had reached a consensus, there should not be a large number of appeals. Mr. Brewer stated that this request should be moved forward with a date certain as recommended by the Law Department staff.

Ms. Roche-Phillips stated that she agrees with Mr. Brewer, and she believes that an effective date of January 1 or February 1, 2009, would be appropriate.

Ms. Phillips stated that the staff had done enough work to date that the proposed text amendment could be presented at the Commission's October 16th work session. Ms. Phillips asked if it would be possible to hear that presentation at the Zoning Committee meeting on October 2nd, rather than at the October 16th work session, particularly since some of the Commission and staff members will be at the KAPA conference on that day. She said she does not believe that a January effective date would be an unreasonable goal.

Ms. Wade stated that Council generally takes a holiday break from approximately December 10th through the New Year's holiday.

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Action: A motion was made by Ms. Roche-Phillips, seconded by Ms. Richardson, and carried 6-0 (Cravens, Holmes, Penn, Whitman, and Vaughn absent) to approve MAR 2008-27, as proposed by staff, and recommending an effective date of January 1, 2009.

Staff Comment: Mr. Saltee noted that the staff could put this new process on the Zoning Committee agenda for next week; and then, depending on the Committee's review, present it at the work session or proceed to place it on the Commission's agenda.

VI. COMMISSION ITEMS

VII. STAFF ITEMS

- A. HB 55 TRAINING OPPORTUNITY** – Ms. Rackers stated that there will be an APA audio conference on Wednesday, October 8, from 4:00 p.m. – 5:00 p.m. in the Division of Planning Conference Room. The title of the presentation is “Renewable Local Energy” and it will count toward 1.5 hours of training for Planning Commission and Board of Adjustment members, as well as staff. Planning Commission members should please let Ms. Rackers know by Tuesday, October 7, if they plan to attend.

- VIII. AUDIENCE ITEMS** – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will NOT be heard are those requiring the Commission's formal action, such as zoning items for early rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

IX. MEETING DATES FOR OCTOBER, 2008

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	October 2, 2008
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	October 2, 2008
Subdivision Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	October 9, 2008
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	October 16, 2008
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	October 23, 2008
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	October 29, 2008
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	October 30, 2008

X. ADJOURNMENT

TLW/TM/JWE/BJR/BS/src

Randall Vaughn, Chair

Frank Penn, Secretary