

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

October 24, 2024

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

Planning Commission members present: Larry Forester, Robin Michler, Mike Owens, Bill Wilson, Frank Penn, Bruce Nicol, Graham Pohl, and Judy Worth.

Planning staff members present: Jim Duncan, Traci Wade, Daniel Crum, Cheryl Gallt, James Mills, Shaun Denney, and Bill Sheehy. Other staff members present were Tracy Jones and Brittany Smith, Department of Law. Captain Greg Lengal, Division of Fire and Emergency Services; and David Filiatreau, Division of Traffic Engineering.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Michler, seconded by Ms. Worth for the approval of the minutes of the September 12, 2024, public hearing, and carried 8-0 (Barksdale, J. Davis, and Z. Davis absent).

- II. **POSTPONEMENTS AND WITHDRAWALS** - Requests for postponement and withdrawal will be considered at this time.

1. **PLN-MAR-22-00016: REALTY UNLIMITED BLUE GRASS, LLC** – a petition for a zone map amendment from a Single-Family Residential (R-1C) zone to a Townhouse Residential (R-1T) zone, for 0.520 net (0.836 gross) acres, for property located at 940 Higbee Mill Road.

Staff Comment – Mr. Daniel Crum indicated that the applicant was requesting a one month postponement to the November 21, 2024 public hearing.

Action – A motion was made by Mr. Wilson and seconded by Mr. Owens and carried 8-0 (Barksdale, J. Davis, and Z. Davis absent) to postpone PLN-MAR-22-00016: REALTY UNLIMITED BLUE GRASS, LLC until the November 21, 2024 public hearing.

2. **PLN-ZOTA-24-00006: REVISIONS TO ARTICLE 23A-10 FOR THE ECONOMIC DEVELOPMENT (ED) ZONE** – a text amendment to modify the Economic Development (ED) zone.

Staff Comment – Mr. Daniel Crum indicated that the applicant was requesting a one-month postponement to the November 21, 2024 public hearing.

Action – A motion was made by Ms. Worth and seconded by Mr. Owens and carried 8-0 (Barksdale, J. Davis, and Z. Davis absent) to postpone PLN-ZOTA-24-00006: REVISIONS TO ARTICLE 23A-10 FOR THE ECONOMIC DEVELOPMENT (ED) ZONE until the November 21, 2024 public hearing

3. **PLN-BOAR-24-00002: KEVIN EAGEN & ADAM WHEELER** – a petition for an appeal to the decision of the Board of Architectural Review to deny a certificate of appropriateness for property located at 439 Fayette Park.

Staff Comment – Mr. Daniel Crum indicated that the applicant was requesting a postponement to the November 14, 2024 public hearing.

Action – A motion was made by Mr. Pohl and seconded by Ms. Worth and carried 8-0 (Barksdale, J. Davis, and Z. Davis absent) to postpone PLN-BOAR-24-00002: KEVIN EAGEN & ADAM WHEELER until the November 21, 2024 public hearing.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, October 3, 2024 at 8:30 a.m. The meeting was attended by Commission members Ivy Barksdale, Mike Owens, Judy Worth, and Frank Penn. Other Committee members present were Vaughan Adkins, Division of Engineering; and David Filiatreau, Division of Traffic Engineering. Staff members in attendance were Traci Wade, Daniel Crum, Cheryl Gallt, Paula Schumacher; Greg

Lengal and Embry Beaty; Division of Fire and Emergency Services; and Tracy Jones and Brittany Smith, Department of Law. The Committee made recommendations on plans as noted.

General Notes

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

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

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

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

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

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Commission discusses and/or votes on the plan.

1. Development Plans

- a. PLN-MJDP-24-00068: ZEE FAULKNER PROPERTY (AMD) (12/2/24)*** - located at 509 EAST MAIN STREET, LEXINGTON, KY
Council District: 3
Project Contact: EA Partners

Note: The purpose of this amendment is to reflect revised conditional zoning restrictions adopted by the Urban County Council.

Note: The Planning Commission postponed this item at the October 10, 2024, meeting.

The Subdivision Committee Recommended: **Postponement**, in order for the BOAR to renew the plan prior to commission action.

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

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

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

5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Division of Waste Management's approval of refuse collection locations.
7. Documentation of Division of Water Quality's approval of Capacity Assurance Program requirements, prior to plan certification.
8. United States Postal Service Office's approval of kiosk locations or easement.
9. Denote: All buildings, paving, signs, fences, walls, and retaining walls that are depicted, described, or required on this development plan shall require a separate review and building permit from the Division of Building Inspection prior to construction.
10. Correct conditional zoning restrictions.
11. Dimension garage, covered porches, garden area, parking spaces, sidewalks, vehicular access point, and landscape buffers.
12. Denote floor area ratio, provided vehicular and bicycle parking, open space, and proposed use.
13. Remove Note #1 which duplicates conditional zoning restrictions.
14. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
15. Denote existing and proposed easements.
16. Discuss possible 15' tall landscape screening along rear and side yards.

Staff Presentation - Ms. Wade oriented the Planning Commission to the property, and informed them that there were citizen comments that they could see via Granicus. She said that the applicant was granted a zone change recently to revise the strict conditional zoning restrictions. She reminded the Commission of the notes that they had added to the plan as well as a modification by the Council. She explained that the applicant had postponed the plan so that it could be heard by the Board of Architectural Review (BOAR) before the Planning Commission made their decision. The BOAR approved the plan with a green screen that would include bamboo planting. Ms. Wade explained that the Staff recommended approval, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and landscaping buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water control Office's approval of the locations of fire hydrants, fire department connections, and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of Capacity Assurance Program requirements, prior to plan certification.
12. United States Postal Service Office's approval of kiosk locations or easement.
13. Dimension garden area, parking spaces, and vehicular access point, and landscape.
14. Denote bicycle parking and proposed use.
15. Denote a minimum of one (1) ride share parking space within the rear parking lot, and establish signage designating such one site.
16. Modify Note #11 to replace "service hours" with "business hours."
17. Modify Note #12 to read: There shall be no outdoor speakers permitted on the property.

Applicant Representation – Rory Kahly, EA Partners, and owner Tyler Bromagen, were present to represent the application. Mr. Kahly told the Planning Commission that they were in agreement to all of the conditions, except they would like to be able to have low volume speakers on the patio.

Commission Question – Mr. Michler voiced concerns of the safety of some mature trees in an area where root barrier would be placed to contain the bamboo plantings. Mr. Kahly replied that he didn't believe the trench for the barrier would be surrounding the trees in question. Ms. Jones added that the Council wanted a buffer there, but left the type of barrier up to the BOAR. She did not know if there could be any leniency for a particular area.

There was some discussion about a discrepancy between the color version being presented and black and white version of the plan regarding the agreed upon plantings that was approved by the BOAR. Mr. Kahly asked if the plan could be approved and signed off by the Historic Preservation Office before certification rather than postponing the plan for another month. Mr. Michler was comfortable with the concession, but he preferred the black and white version of the plan, which protected the existing trees.

Mr. Wilson asked the applicant about the outdoor speakers. Mr. Kahly replied that the applicant requested low volume background music, no greater than 70 decibels.

Opposition Representation – Attorney Bruce Simpson was present to represent the Bell Court Neighborhood. He informed the Planning Commission that they were opposed to the changes that were made on the notes. He distributed a handout to outline them. Their concerns were centered around the business hours/service hours, special events, and outdoor speakers.

Applicant Comments – Mr. Bromagen told the Planning Commission that they had negotiated with the neighbors for over a year and made considerable concessions. He said he was happy to change the business hours language and provide the rideshare parking space. He added that their only request was low volume ambient music. He felt that the traffic noise was extremely loud, so the music would not be an impact.

Opposition Comments – Mr. Simpson proposed language for the plan that said, “No speakers shall be placed inside any structure on the property for the purpose of amplifying sound outside the structure”.

Applicant Comments – Mr. Bromagen reiterated that they would not exceed the proposed 70 decibels.

Citizen Comments – Marcie Deaton, close neighbor, displayed some photographs that depicted the proximity of the patios and the neighboring properties. She requested that there be no outdoor speakers. She opined that the applicant’s proposal to allow 12 special events per year was excessive and that there would be no way to monitor them.

Commission Questions – Mr. Wilson asked the developer about the three outstanding issues. Mr. Bromagen restated that they were willing to change the business hours language and create a rideshare drop off location. He only requested the low background music on the patio. He added that he was motivated to not have issues with the neighbors.

Mr. Michler said the outdoor music was discussed and the Planning Commission decided to prohibit it during the preliminary development stage, and should not be re-discussed at this time. Mr. Bromagen replied that this is allowed in any other B-1 businesses, and they would be strictly monitoring it.

Citizen Comments - Megan Winfield, 505 E. Main Street, felt that people would try to talk over the speakers, so the noise level would increase. She requested that the Commission not allow any outdoor speakers. She said that enforcement of the extra 12 events would be difficult and confusing.

Commission Questions – Ms. Worth asked if the applicant had agreed to strike the extra 12 events. Mr. Forester replied that he had not. Ms. Wade said that staff was supportive of the special events. Mr. Bromagen reminded the Commission that the previous language regarding special events was not specific, so they had clarified their request for 12 special events.

Mr. Owens inquired about the enforcement of the extra events and felt that it could be problematic. Ms. Wade suggested that the applicant would be given a notice of violation from Zoning Enforcement if they had more than 12 events. Mr. Owens informed the Commission that he was not supportive of special events.

Ms. Barksdale suggested that the applicant could inform the Bell Court Neighborhood Association of each special event ahead of time for accountability. Mr. Wilson agreed that that would be a good compromise.

Mr. Michler recommended that the patio still be closed at 10 p.m. during a special event.

Mr. Nicol stated that he agreed with Ms. Barksdale regarding the notification to the neighborhood. There was considerable discussion among the Commission members and staff regarding the wording of a motion.

Mr. Owens made a motion, seconded by Ms. Worth, and carried 10-0 (J Davis absent) to approve PLN-MJDP-24-00068: ZEE FAULKNER PROPERTY (AMD) with the 17 conditions recommended by staff, clarifying Note #11 to read: "The business hours for the property shall be Sunday-Thursday from 8:30 a.m.-10:00 p.m. and Friday-Saturday from 9:00 a.m.-12:00 a.m. The outside patio areas shall close for service at 10:00 p.m. daily, except for up to 12 special events per year which, which may extend to business hours. The property owner shall notify the Bell Court Neighborhood Association 1 week prior to any special event.", and that the discrepancy between the submitted plan and the plan approved by the BOAR be resolved prior to certification.

- V. **ZONING ITEMS** – The Zoning Committee met on October 3, 2024, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members Larry Forester, Johnathon Davis, Zach Davis, Graham Pohl, and William Wilson. Staff members present were Traci Wade, Daniel Crum, and James Mills and Tracy Jones, Brittany Smith and Will Razor, Department of Law.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS**

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

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

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

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

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) Proponents (10 minute maximum OR 3 minutes each)
 - (b) Objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) Petitioner's comments (5 minute maximum)
 - (b) Citizen objectors (5 minute maximum)
 - (c) Staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s).

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **L.O.P.1, LTD ZONING MAP AMENDMENT AND LANCASTER & KEISER PROPERTY DEVELOPMENT PLAN**

- a. **PLN-MAR-24-00016: L.O.P.1, LTD (12/24/24) *** – a petition for a zone map amendment from a Neighborhood Business (B-1) zone to a Planned Neighborhood Residential (R-3) zone for 0.075 net (0.095 gross) acres for property located at 223 E Seventh Street. The applicant is also seeking a variance to reduce the required property perimeter landscaping buffer from 15 feet to 0 feet where the property adjoins business zones.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2045 Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community's resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. This will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

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The petitioner is proposing the Planned Neighborhood Residential (R-3) zone in order to utilize an existing 1,250 square-foot commercial structure for a single-family residential use. The applicant is not proposing any physical changes to the site at this time.

The Zoning Committee Recommended: **No Recommendation**, due to lack of quorum.

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

1. The requested Neighborhood Business (B-1) zone is in agreement with the 2045 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The proposal identifies the properties as an opportunity for reuse and future redevelopment (Theme A, Goal #2.a).
 - b. The proposal will give the subject properties the ability to intensify in the future in a manner that is still compatible with the neighborhood context along Springhurst Drive (Theme A, Goal #2.b).
 - c. The request will result in a well-designed neighborhood, that provides for safe connections to the adjoining residential areas.(Theme A, Goal #3.b).
 - d. The request would enhance the area with neighborhood-serving businesses (Theme A, Goal #3.b).
 2. The requested Neighborhood Business (B-1) zone is in agreement with the 2045 Comprehensive Plan's Policies, for the following reasons:
 - a. The proposal provides an opportunity for redevelopment in the future that could increase utilization of the site without making the site incompatible with the adjoining single-family residential uses (Theme A, Design Policy #4).
 - b. The request will expand opportunities for neighborhood-serving businesses (Theme A, Design Policy #12)
 - c. Then request will be walkable from the adjoining neighborhood, and is pedestrian-friendly (Theme A, Design Policy #5).
 3. The justification and corollary development plan are in agreement with the policies and development criteria of the 2045 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Land Use, as the request would allow for neighborhood scale commercial uses and services (A-DS12-1; E-ST8-2), provides connections to nearby transit stops (A-DS1-2), and would allow for increased intensity and density with any future redevelopment of the site (D-CO3-1).
 - b. The proposed rezoning meets the majority of criteria for Transportation, Connectivity, and Walkability, as it provides pedestrian connections to nearby transit stops (A-DS1-2), utilizes shared parking arrangements (C-PS10-1), and is connected to the adjoining residential neighborhood (A-DS4-1).
 - c. The proposed rezoning addresses the Environmental Sustainability and Resiliency development criteria, as the proposal does not impact any environmentally sensitive areas (B-PR2-1), and maintains existing trees and tree canopy (B-PR7-1).
 - d. The proposal addresses the criteria for Site Design as it locates parking to the rear of the site (A-DS7-1), avoids overparking (C-PS10-2), and provides for connected neighborhood scale commercial development (C-LI8-1).
 - e. The proposed rezoning meets the criteria for Building Form, as the development's scale remains compatible with the adjoining single-family residential development to the rear (A-DN-2-2), reuses existing buildings (E-GR4-1), and would allow for future redevelopment that could intensify the site while allowing for a compatible transition to the neighborhood (A-EQ5-1).
 4. Under the provisions of Article 6-7, the following restriction is recommended via conditional zoning:
 - a. Outdoor loudspeakers shall be prohibited.
These conditions are appropriate and necessary in order to protect the single-family residential uses within the Springhurst neighborhood.
 5. This recommendation is made subject to approval and certification of PLN-MJDP-24 00065: Springhurst Subdivision, Unit 2 (Brooke Properties, LLC) (AMD) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. **VARIANCE** – The applicant is also requesting a dimensional variance to reduce the property perimeter screening requirement from 15 to 0 feet.

The Zoning Committee Recommended: No Recommendation, due to lack of a quorum.

The Staff Recommends: **Approval of the requested variance for the following reasons:**

1. Approval of the landscape variances should not adversely affect the public health, safety, or welfare, nor should it create a hazard or nuisance to the public. The property adjoins a nonconforming residential use east, and there is sufficient distance to the commercial structure to the west to ensure that the commercial and proposed residential uses are adequately separated.
2. Providing landscaping within the narrow side yards would likely not thrive or grow to maturity to create the buffer prescribed by the ordinance.
3. The narrow lot shape and the location of the site's existing structure represent special circumstances unique to the subject property that justify the need for a variance.
4. Removing the existing structure present on the site to accommodate the required landscaping buffer would unreasonably restrict the applicant's use of the property.
5. The circumstances of this variance are not a result of actions taken by the applicant subsequent to the adoption of the Zoning Ordinance.

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

- a. Provided the Planning Commission and Urban County Council approve the requested zone change to the R-3 zone, otherwise the requested variance shall be null and void.
- b. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
- c. Action of the Planning Commission shall be noted on the Subdivision Plan for the subject property.

- c. **PLN-MJSUB-24-00007: LANCASTER & KEISER PROPERTY, BLOCK 25, LOTS 22 & 24 (PORTIONS OF) (12/24/24)** * - located at 223 EAST SEVENTH ST, LEXINGTON, KY.
Council District: 1
Project Contact: Barrett Partners Inc.

Note: The purpose of the plan is to depict a lot for a single-family dwelling unit, in support of the requested zone change from a Neighborhood Business (B-1) zone to a Planned Neighborhood Residential (R-3) zone.

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

1. Provided the Urban County Council approves the zone change to R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree preservation plan.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote review and recommendation of the Royal Springs Aquifer Committee.
7. Discuss building line setback.
8. Discuss Placebuilder criteria.

Staff Presentation – Mr. Daniel Crum presented the staff report and recommendations for the zone change application. He displayed photographs of the subject property and the general area. He stated that the applicant was seeking a zone map amendment from a Neighborhood Business (B-1) zone to a Planned Neighborhood Residential (R-3) zone for 0.075 net (0.095 gross) acres for property located at 223 E Seventh Street. Mr. Crum indicated that the applicant is seeking to convert an existing structure for single-family residence use with the Enhanced Neighborhood Place-Type and the Low Density Residential Development Type. Mr. Crum indicated that Staff was in agreement with those selections.

Mr. Crum indicated that the majority of the neighborhood is zoned the requested R-3 and that the subject property began as a residential unit, before transitioning into a neighborhood business and now the applicant wished to bring back the original use. Mr. Crum indicated the applicant would renovate the subject property.

Mr. Crum concluded by stating that Staff is recommending approval of the subject application, and could answer any questions from the Planning Commission.

Mr. Michler asked if the B-1 zone requires ground level business and Mr. Crum confirmed that.

Subdivision Presentation – Ms. Cheryl Gallt stated that the applicant is showing a 20 foot building line and noted that there was a condition to discuss the building line and that can be resolved. Ms. Gallt indicated

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that the 20 foot building line is non-conforming and should this structure be removed, it must be rebuilt at that setback.

Ms. Gallt concluded by stating that Staff is recommending approval of the subject application, and could answer any questions from the Planning Commission.

Variance Presentation – Mr. Crum stated that the applicant was seeking a variance from a 15 foot landscape buffer to 0 foot buffer. Mr. Crum indicated that due to the built environment it would be detrimental to the applicant to not allow the variance and indicated that Staff is recommending approval of the variance and would not be detrimental to the health and safety of the community.

Mr. Crum concluded by stating that Staff is recommending approval of the variance, and could answer any questions from the Planning Commission.

Applicant Presentation – Mr. Chris Clendenen, attorney for the applicant, stated that they are in agreement with Staff's conditions and recommendations, and could answer any questions from the Planning Commission.

Action – A motion was made by Mr. Pohl, seconded by Ms. Barksdale and carried 9-0 (J. Davis and Z. Davis absent) to approve PLN-MAR-24-00016: L.O.P.1, LTD for reasons provided by Staff.

Action – A motion was made by Mr. Pohl seconded by Ms. Worth and carried 9-0 (J. Davis and Z. Davis absent) to approve the request for a variance.

Action – A motion was made by Mr. Pohl seconded by Ms. Barksdale and carried 9-0 (J. Davis and Z. Davis absent) to approve PLN-MJSUB-24-00007: LANCASTER & KEISER PROPERTY, BLOCK 25, LOTS 22 & 24 (PORTIONS OF) with the Staff conditions.

2. SUBTEXT ACQUISITIONS, LLC ZONING MAP AMENDMENT AND HAZEN PROPERTY, MOUNTMULLIN STREET SUBDIVISION, AND J.A.PRALL PROPERTY DEVELOPMENT PLAN

- a. **PLN-MAR-24-00014: SUBTEXT ACQUISITIONS, LLC (11/3/24)*** – a petition for a zone map amendment from a Single Family Residential (R-1E) zone, a Planned Neighborhood Residential (R-3) zone and a Neighborhood Business (B-1) zone to a Corridor Node (CN) Zone, for 2.13 net (2.80 gross) acres for properties located at 545-549, 553, 563 S. Limestone; 121-123, 127, 129, 131, 133 Prall Street; 118, 120, 124, 128, 134, 138, 140, 142, 146, 150, and 154 Mountmullin Street.

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The petitioner is proposing the Corridor Node zone to establish a high-density mixed-use building. The proposed development consists of a 101-foot tall mixed-use structure, with an integrated 484 space parking structure. The applicant is proposing six stories of multi-family residential units, for a total of 251 units, with 799 bedrooms, and a density of 117.8 dwelling unit per net acre. The request includes 1,700 square-feet of first floor retail space, located along the S. Limestone frontage. A rooftop amenity and pool area is proposed on the top floor of the structure, and courtyard space is proposed within the interior of the structure.

Note: The Planning Commission continued this application at the September 26, 2024 meeting.

The Zoning Committee Recommended: **No Recommendation**, due to lack of quorum.

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

1. The requested Corridor Node (CN) zone is in agreement with the 2045 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The proposal will address a need for housing, and emphasizes the proposed increase in residential density along a major corridor (Theme A Goal #1.d & 1.d; Theme E, Goal #1.d). S. Limestone and

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Nicholasville Road are high-volume roadways that connect downtown to major employment and community activity areas.

- b. The proposed development will be well connected, especially because it is located adjacent to future transit improvements and will improve the pedestrian facilities along Prall Street, Montmullin Street, and S. Limestone (Theme A, Goal #3.b).
 - c. The density and intensity of the proposed development will strengthen demand for transit along the corridor (Theme D, Goal #1.b).
2. The requested Corridor Node (CN) zone is in agreement with the 2045 Comprehensive Plan's Policies, for the following reasons:
 - a. The activation of the first floor with retail, landscaping, and amenity spaces creates a people first/pedestrian friendly design that will create inviting streetscapes. (Design Policy #1, #5, and #6).
 - b. The request responds to the context of the corridor, providing additional density and intensity (Design Policy #4; Density Policy #1 and #2).
 - c. By locating the parking internally, within parking structures, the proposed development enhances walkability and bikeability (Design Policy #7).
 - d. The request will provide additional housing options for this area, which is predominately characterized by student housing in single family structures (Design Policy #8).
 - e. The proposed amenities and open space areas will provide neighborhood-focused open spaces with the interior courtyard and neighborhood-focused retail on the first floor, facing S. Limestone (Design Policy #9 and #12).
 3. The justification and corollary development plan are in agreement with the policies and development criteria of the 2045 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Land Use, as the request significantly increases the residential density on-site (A-DN-2-1; E-ST8-1), provides for pedestrian-oriented first floor commercial uses along the S. Limestone frontage (A-DN3-1), and helps encourage the success of transit by increasing the residential base near a proposed transit node (E-GR10-1; D-CO3-1).
 - b. The proposed rezoning meets the criteria for Transportation, Connectivity, and Walkability as the request provides connectivity to the adjacent transit stop (A-DS1-2) improves the sidewalk connections along Montmullin and Prall Streets, provides for street trees and commercial uses to create a pedestrian friendly streetscape (A-DS5-2), and is transit-oriented (A-EQ5-2).
 - c. These proposed rezoning meets the criteria for Environmental Sustainability and Resiliency development criteria, as the site does not impact any environmentally sensitive areas (B-PR2-1), does not remove any significant trees (B-PR7-1), and provides for the addition of street trees along all three street frontages (D-SP10-1).
 - d. The proposal addresses the criteria for Site Design, provides activated first-floor uses and to create an activated streetscape (A-DS5-4), locates the parking within internal parking structures (A-DS7-1), and provides sidewalk connections to the surrounding neighborhood (C-LI8-1).
 - e. The proposed rezoning meets the criteria for Building Form, as it creates a high-density mixed-use development that is in line with the intensification of our corridors called for within the 2045 Imagine Lexington Comprehensive Plan and Imagine Nicholasville Road Corridor Study (A-DS4-2), and creates active first-floor uses along S. Limestone (D-PL2-1; A-DS5-3).
 4. This recommendation is made subject to approval and certification of PLN-MJDP-24-00062: Hazen Property, Mountmullin Street Subdivision, and J. A. Prall Property (Verve Lexington) 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. PLN-MJDP-24-00062: HAZEN PROPERTY, MONTMULLIN STREET SUBDIVISION, & J.A. PRALL PROPERTY (VERVE LEXINGTON)** (11/3/24)* - located at 118-154 (even only) MONTMULLIN STREET, 121-133 (odd only) PRALL STREET, and 553, 563, & 545 S. LIMESTONE, LEXINGTON, KY.

Council District: 3

Project Contact: EA Partners

Note: The purpose of this plan is to depict a mixed-use development with 251 dwelling units and 1,700 square feet of retail space, in support of the requested zone change from a Neighborhood Business (B-1) zone, Single Family Residential (R-1E), and Planned Neighborhood Residential (R-3) zone to a Corridor Node (CN) zone.

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

The Subdivision Committee Recommends: **Postponement**. There are questions regarding compliance with meeting the Floor Area Ratio (FAR) requirement for the proposed zone.

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

1. Provided the Urban County Council approves the zone change to CN; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Correct plan title to match staff report.
5. Addition of record plat information.
6. Addition of tree inventory map.
7. Discuss proposed maximum Floor Area Ratio of 3.6.
8. Clarify 8-foot offset of building along South Limestone.
9. Submit building elevations.
10. Addition of FAR statistics box.
11. Dimension parking garage aisles and parking spaces.
12. Denote parking garage entrances and dimensions.
13. Denote no vehicular access to South Limestone.
14. Denote location of public transit stop or facilities.
15. Discuss Placebuilder criteria.

Staff Presentation – Mr. Daniel Crum reintroduced the Planning Commission to the specifics of the proposed development and noted the updates proposed by the applicant since the continuance. Mr. Crum indicated that the applicant has proposed an increase from 15 to 30 feet of buffer area from the nearest residential home, they have reduced the height of the building from six to five floors, and increased the amount of commercial space. Additionally, the applicant committed to improve the neighborhood by giving \$1.5 million dollars to the Lexington Affordable Housing Trust Fund or adding 16 affordable housing units to the development, and giving \$150,000 to improve the nearby Lou Johnson Park. In addition to those concessions, Mr. Crum indicated that the development plan reflected a change that included the applicant's improvements to pedestrian safety.

Mr. Crum concluded by reiterating that Staff is still recommending approval and could answer any questions from the Planning Commission.

Commission Questions – Mr. Nicol asked for confirmation on if the applicant was proposing \$1.5 million dollars or 16 affordable housing units. Mr. Crum indicated that that was the case.

Applicant Presentation – Mr. Nick Nicholson, attorney for the applicant, handed over the presentation to Mr. Mitchell Korte who gave a brief overview of what they are proposing along with an update on their neighborhood engagement. Mr. Korte stated that they went back to drawing board and meet with the neighborhood two more times to get to the "ambitious" and "impactful" resolution that they are bringing forward today.

Mr. Korte indicated that the changes included increased setbacks, reduced heights, more retail space, parking and smart alternatives, and either 16 affordable housing units on the property or a \$1.5 million dollar contribution to the Lexington Affordable Housing Trust Fund, as well as \$150,000 updates to the neighborhood park, and walk out units with stoops on Montmullin Street.

Mr. Korte concluded by stating that he was happy to answer questions from the Planning Commission.

Commission Questions – Mr. Pohl asked what the outside of the building would be comprised of and Mr. Korte indicated that it was early, but right now it is a mix of brick, fiber cement and metal paneling.

Mr. Wilson asked who manages the Affordable Housing Trust Fund that the applicant mentioned and would that be earmarked for Pralltown. Mr. Korte stated that it was the City of Lexington's fund and that the funds could be potentially earmarked, because it's more about the availability of a site than a specific neighborhood.

Ms. Worth asked if there was a discussion about placing solar panels on the roof of this building. Mr. Nicholson stated that there was not, because they are using green infrastructure on the roof that would conflict with doing solar.

Mr. Penn asked Mr. Korte who the four bedroom units would be marketed for. Mr. Korte stated that there were a variety of types of apartments, but the four bedroom/four bathroom units would be marketed to students, but there was some opportunity to market the four bedroom/two bathroom to families. Mr. Korte continued by stating they had various types of apartments, even though he did think it would ultimately be predominantly students.

Public Comment – Bruce Simpson, attorney representing the Pralltown Neighborhood Association, began by having all the members of the audience who were against this development to stand, and a majority of the room stood in opposition. Mr. Simpson stated that he was not disputing that the development was handsome and nice, but the neighborhood has a problem with the location. Mr. Simpson made the assertion that the University of Kentucky did not want to build student housing, so they rely on private developers to make up the difference. Mr. Simpson argued that Pralltown is a target rich environment, and allowing this development to come, means that it is only a matter of time before there will be similar developments on Montmullin and Prall Street. Mr. Simpson stated that this case sets a dangerous precedent and that the donation to the Affordable Housing Fund was legally impermissible. Additionally, Mr. Simpson stated that the parking concerns by the neighborhood had not been dealt with.

Mr. Simpson concluded by stating that this development was “gentrification on steroids” and by approving this, the Planning Commission is assisting in Pralltown’s extinction.

Applicant Rebuttal – Mr. Nick Nicholson stated that they are not displacing anyone and are taking what is already student housing and expanding it. Additionally, Mr. Nicholson stated that this corridor was specifically identified in the Comprehensive Plan and a private developer saw that and proposed this development. Speaking on the donation to the Affordable Housing Trust Fund, Mr. Nicholson argued that it happens all the time and disagrees with Mr. Simpson assertion that it was legally impermissible. Mr. Nicholson stated that times change and the way people commute changes, and the research shows that this generation just does not drive as much. Mr. Nicholson stated that this development makes significant improvements to pedestrian facilities and articulated the many changes they had made after talking with the neighborhood. Mr. Nicholson concluded by stating he could answer any questions from the Planning Commission.

Public Comment – Teresa Forbes-Lopez, 174 Colfax St, stated her opposition and that the community does not agree with the changes due to the lack of equity and that the University of Kentucky should deal with their student housing problem on university land.

Duval Headley stated he had concerns about the due diligence of this project and the parking. Noting that he’s had six cars parked in his yard by people who should not be there.

Eric Burton, 513 Lin-Wal Road, stated his opposition because he’s been a part of Pralltown for four generations and begged the Planning Commission to disapprove the application.

Larry Price, 133 Montmullin St, stated he did not mind progress, but the price for this is at the expense of Pralltown.

Dylan Mears, 545 S Limestone, re-affirmed their opposition to the development and noted that people their age do not have cars because they cannot afford them.

Mary Finn, stated her opposition because she thought that this development would destroy the neighborhood and noted her family’s ties to Pralltown going back 140 years.

Walt Gaffield, 2001 Bamboo Drive, stated his opposition because Lexington has a history of eliminating African American neighborhoods, and this would do just that.

Richard Moloney, former councilmember, stated his opposition because it does not fit with the context of the neighborhood and took issue with the \$1.5 million dollar donation.

Timothy Mitchell, 1087 Oakwood Drive, asked the Planning Commission to reject this proposal because the people of Pralltown would not be able to afford the affordable housing, and took issue with the developer not knowing how much a unit would cost.

Jacques Wigginton, 442 Elm St, stated his opposition and compared developers to piranhas who will exploit African American communities.

Margaret Ann Harris, Colfax Street, stated her opposition because she has seen projects displace families and is afraid that this will happen if this development is built.

Rolanda Woolfork, Lexington Historical Black Neighborhood Association, stated her opposition because she was displaced, and that the money proposed would not be used for Pralltown.

Commission Questions – Ms. Barksdale stated that she appreciated hearing from the neighborhood, and she understood the significance of Pralltown. She stated they have been tasked with a difficult choice and asked what they can do to protect homeownership in Pralltown and how do we stop more from coming into the neighborhood.

Mr. Nicol stated he agreed with Ms. Barksdale and commended the passionate neighbors for coming to the meeting and stating their case. Additionally, Mr. Nicol stated that he did not think that this development would encroach on the neighborhood, but stated he had concerns about the parking for the neighbors.

Mr. Wilson stated that the Comprehensive Plan called for the protection of communities and for that and other reasons he was going to stand with the people of Pralltown and vote against this development and that the people of Pralltown are doing the right thing.

Mr. Michler stated that this was a difficult decision and hearing all the neighbors here was a testament to that community. Mr. Michler stated that this property is at a turning point and that the Comprehensive Plan is truly trying to make more equitable, safe, and walkable neighborhoods, and no matter how he votes, he will have regrets either way. Additionally, Mr. Michler stated he appreciated the changes made by the applicant and he valued the opportunity for new people to be able to live in this community, if approved.

Mr. Pohl stated that he agreed with Mr. Michler and that this was one of the most difficult proposals he's ever dealt with. Mr. Pohl stated that he wished that the developer had looked at Pralltown as an amenity and worked with them as closely as they did with the University of Kentucky. Mr. Pohl stated that he thought the proposal today was closer to what he would have liked, the development would not penetrate into the neighborhood, and the development is perfectly aligned with the CN zone.

Mr. Owens stated that he thought that the changes made by the applicant and that they were better for the neighborhood. Mr. Owens stated that Pralltown may not look the same as it did 50 years ago, but the history there will be there forever. Additionally, Mr. Owens stated that he thought it was in line with the Comprehensive Plan for all of Lexington and a similar property was just approved on Maxwell Street.

Ms. Worth Ms. Worth stated that the Comprehensive Plan talks a lot about equity, but the city government has not passed an ordinance to protect rural hamlets and other communities. She stated that she is torn because she believes that the plan is well designed but stated she was going to have to vote no on this application because she values the sense of community that Pralltown residents have and the proposed development is in the wrong place.

Mr. Penn stated that at some point the city has to look at the University of Kentucky and say enough is enough and that it is up to the university to build their own housing. Mr. Penn indicated that he would be voting against this development.

Mr. Pohl stated there was a reason for our housing shortage and it is because we make it so difficult to build housing nationwide.

Action – A motion was made by Mr. Owens, seconded by Nicol and failed 4-5 (Z. Davis and J. Davis absent) to approve PLN-MAR-24-00014: SUBTEXT ACQUISITIONS, LLC for reasons provided by Staff.

Action – A motion was made by Mr. Wilson, seconded by Ms. Barksdale and carried 6-3 (Z. Davis and J. Davis absent) to disapprove PLN-MAR-24-00014: SUBTEXT ACQUISITIONS, LLC because the requested Corridor Node (CN) zone does not agree with the 2045 Comprehensive Plan's Theme A, Goal 2, Objective B because it does not respect the context and design of the area's surrounding development project. The requested Corridor Node (CN) zone does not protect existing housing affordability for all and expand low and middle income housing across the city, and specifically in this surrounding neighborhood. The requested Corridor Node (CN) zone increases density far past the major corridor negatively impacting density within the existing residential neighborhood. (Theme A, Goal 1, Objective B).

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENTS

VI. COMMISSION ITEMS - The Chair will announce that any item a Commission member would like to present will be heard at this time.

VII. STAFF ITEMS

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 and November 2024

Urban Growth Management Plan Public Hearing , Thursday, 1:30 p.m., Council Chamber.....	October 31, 2024
Subdivision Committee, Thursday, 8:30 a.m., in 3 rd Floor Conf Room, Phoenix Building.....	November 7, 2024
Zoning Committee, Thursday, 1:30 p.m., in 3 rd Floor Conf Room, Phoenix Building	November 7, 2024
Subdivision Items Public Hearing , Thursday, 1:30 p.m. in Council Chambers, 2 nd Floor, Gov't Center.....	November 14, 2024
Zoning Items Public Hearing , Thursday, 1:30 p.m., in Council Chambers, 2nd Floor, Gov't Center.....	November 21, 2024
Technical Committee, Wednesday, 8:30 a.m., in 3 rd Floor Conf Room, Phoenix Building.....	November 27, 2024

Larry Forester

Robin Michler

TW/DC/RS-10/21/24

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