

**MINUTES**  
**URBAN COUNTY PLANNING COMMISSION**  
**SUBDIVISION & ZONING ITEMS**  
**November 14, 2024**

- I. **CALL TO ORDER** – Vice Chair Zach Davis called the meeting to order at 1:30 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.
- II. **ATTENDANCE** – Planning Commission members present were Zach Davis, Judy Worth, William Wilson, Bruce Nicol, Ivy Barksdale, Frank Penn, and Mike Owens. Planning staff members present were Jim Duncan, Traci Wade, Daniel Crum, Chris Chaney, Cheryl Gallt, and Paula Schumacher. Other staff present were Brittany Smith, Department of Law; David Filiatreau, Division of Traffic Engineering; Vaughan Adkins, Division of Engineering; Greg Lengal and Embry Beatty, Division of Fire and Emergency Services.
- III. **APPROVAL OF MINUTES** – Ms. Worth made a motion, seconded by Mr. Wilson, and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent) to approve the September 19, 2024 Special Meeting minutes.
- IV. **POSTPONEMENTS AND WITHDRAWALS**

- A. **PLN-MJDP-24-00079: THE MAXWELL (LYNHURST SUBDIVISION)** (1/5/25)\* – located at 201-235 E. MAXWELL STREET & 245-251 STONE AVENUE, LEXINGTON, KY  
Council District: 3  
Project Contact: Vision Engineering

Note: The purpose of this amendment is to depict the development of a six-story residential complex with associated parking.

The Subdivision Committee Recommended: **Postponement.** There are questions regarding timing of roadway dedication and closure, and site functionality.

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. Correct zoning in site statistics.
14. Correct open space total in site statistics.
15. Documentation of lighting plan per Article 30 of the Zoning Ordinance.
16. Correct Conditional Zoning format.
17. Discuss location of dumpster/mechanics areas.
18. Discuss changes to site access and traffic impact study.
19. Discuss street trees and landscaping along Maxwell Street.
20. Discuss changes to townhouse units along Stone Avenue.
21. Discuss buffer around 40" black walnut tree adjoining 260 Lexington Street.
22. Discuss timing of closure of existing and dedication of new Hagerman Court right-of-way and consolidation of separate lots.
23. Discuss multi-family design standard rendering/elevation changes.

Applicant Representation – Attorney Jon Woodall was present to represent the applicant. He requested a one-month postponement.

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Action – Mr. Owens made a motion, seconded by Mr. Penn and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent) to postpone PLN-MJDP-24-00079: THE MAXWELL (LYNHURST SUBDIVISION) to the December 12, 2024 meeting.

- B. PLN-MJDP-24-00074: HOOVER & FORD PHILPOT EVANGELISTIC ASSOCIATION PROPERTY, LOT 4 (THE FOUNTAINS OF PALOMAR) (AMD) (12/2/24)\* - located at 3855 FOUNTAINBLUE LANE, LEXINGTON, KY  
Council District: 9  
Project Contact: Vision Engineering

Note: The purpose of this amendment is to add building square footage and revise parking circulation.

The Subdivision Committee Recommended: Postponement. There are questions regarding compliance with Section 16-6 of the Zoning Ordinance.

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. 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. Discuss compliance with Section 16-6 of the Zoning Ordinance for corner lots.

Applicant Representation – Matt Carter, Vision Engineering, was present to represent the applicant. He requested a one-month postponement.

Action – Mr. Wilson made a motion, seconded by Ms. Barksdale and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent) to postpone PLN-MJDP-24-00074: HOOVER & FORD PHILPOT EVANGELISTIC ASSOCIATION PROPERTY, LOT 4 (THE FOUNTAINS OF PALOMAR) (AMD) to the December 12, 2024 meeting.

- C. PLN-MJDP-24-00056: RED MILE MIXED-USE DEVELOPMENT (AMD) (11/14/24)\* - located at 1101 WINBAK WAY, LEXINGTON, KY  
Council District: 11  
Project Contact: Vision Engineering

Note: The purpose of this amendment is to depict a new hotel and entertainment building and revise parking circulation.

The Subdivision Committee Recommended: Postponement. There are questions and concerns regarding the removal of significant trees from tree protection plan on previous plan, compliance with Article 28-6 and adherence to conditional zoning restrictions.

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

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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 driveways, walkways, parking spaces, drive aisles, and ingress/egress.
14. Addition of height of Building 36 in feet.
15. Label trees in tree protection areas per Article 26 of the Zoning Ordinance.
16. Addition of any proposed or existing easements.
17. Clarify proposed "entertainment" land use for Building 36.
18. Clarify site statistics totals and purpose of amendment.
19. Remove drive aisle from required landscape buffer per conditional zoning restrictions.
20. Discuss the removal of tree protection areas from previous plan.
21. Discuss compliance with Article 28-6 of the Zoning Ordinance for building features.
22. Discuss compliance with Article 28-6 for location of provided off-street parking.

Applicant Representation – Matt Carter, Vision Engineering, was present to represent the applicant. He requested a one-month postponement.

Action – Mr. Penn made a motion, seconded by Ms. Worth and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent) to postpone PLN-MJDP-24-00056: RED MILE MIXED-USE DEVELOPMENT (AMD) to the December 12, 2024 meeting.

- D. PLN-MJSUB-24-00008: PATCHEN WILKES, UNIT 1, PHASE 2 (1/5/25)\* – located at 1811 WINCHESTER ROAD, LEXINGTON, KY  
Council District: 6  
Project Contact: EA Partners

Note: The purpose of the plan is to revise street layout and lot configuration.

The Subdivision Committee Recommended: Postponement. There are questions regarding the floodplain on buildable lots, re-configuration of lotting/layout from previous plan, and length of blocks within the proposed subdivision.

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. Landscape Examiner's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
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

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9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Discuss access easement on the rear of new lots.
11. Discuss the length of proposed street blocks in excess of 1,000-foot length per Article 6-4(a) of the Land Subdivision Regulations.
12. Discuss revised lotting layout, removing the proposed alleys from previous layout and depicting access easement on the rear of Lots 35-37, and 70-73, as shown on plat M-639.
13. Discuss rear of Lots 20-24 in the 100-year Zone AE Floodplain.

Applicant Representation – Rory Kahly, EA Partners, was present to represent the applicant. He asked the Planning Commission for a one-month postponement.

Action – Mr. Owens made a motion, seconded by Mr. Wilson and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent) to postpone PLN-MJSUB-24-00008: PATCHEN WILKES, UNIT 1, PHASE 2 to the December 12, 2024 meeting.

- E. PLN-MJSUB-24-00009: PATCHEN WILKES, UNIT 2 (1/5/25)\* – located at 1811 WINCHESTER ROAD, LEXINGTON, KY  
Council District: 6  
Project Contact: EA Partners

Note: The purpose of the plan is to revise street layout and lot configuration.

The Subdivision Committee Recommended: **Postponement.** There are questions regarding compliance with conditional zoning restrictions.

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. Landscape Examiner's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
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. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Document conditional zoning restrictions per Ordinance #307-2004.
11. Discuss compliance with conditional zoning restrictions.
12. Discuss layout changes to previous plan and need for a final development plan.
13. Discuss proposed split zoned lot.

Applicant Representation – Rory Kahly, EA Partners, was present to represent the applicant. He asked the Planning Commission for a one-month postponement.

Action – Mr. Owens made a motion, seconded by Mr. Wilson and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent) to postpone PLN-MJSUB-24-00009: PATCHEN WILKES, UNIT 2 to the December 12, 2024 meeting.

- F. PLN-MJDP-24-00078: FRITZ FARM, TRACT C (AMD) (1/5/25)\* – located at 250 HARRISON, LEXINGTON, KY  
Council District: 4  
Project Contact: HDR Engineering

Note: The purpose of this amendment is to depict new development of buildings and parking on Tract C.

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The Subdivision Committee 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. United States Postal Service Office's approval of kiosk locations or easement.
12. Addition of record plat information for development (R-977).
13. Documentation of lighting plan per Article 30 of the Zoning Ordinance.
14. Documentation of elevations of structures to depict building features per Article 28-6(c) of the Zoning Ordinance.

Staff Comments – Ms. Wade informed the Planning Commission that the applicant had reached out to staff regarding some changes they were considering, so they had requested a one-month postponement.

Action – Mr. Penn made a motion, seconded by Ms. Barksdale and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent) to postpone PLN-MJDP-24-00078: FRITZ FARM, TRACT C (AMD) to the December 12, 2024 meeting.

- VI. LAND SUBDIVISION ITEMS** – The Subdivision Committee met on Thursday, November 7, 2024 at 8:30 a.m. The meeting was attended by Commission members Bruce Nicol, 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, Chris Chaney, 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.

Ms. Wade read the consent agenda at this time.

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1. PLN-MJDP-23-0040: SOUTH BROADWAY PLACE, PHASE IIC (AMD) (1/19/2025)\* - located at 1080 EXPORT STREET, LEXINGTON, KY  
Council District: 10  
Project Contact: Carman

Note: The purpose of this amendment is to revise development of Phase IIC to a proposed hotel and associated parking.

Note: The applicant requested re-approval on October 21, 2024. The Planning Commission approved this plan on August 10, 2023.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
  2. Urban County Traffic Engineer's approval of street cross-sections and access.
  3. Landscape Examiner's approval of landscaping and landscaping buffers.
  4. Addressing Office's approval of street names and addresses.
  5. Urban Forester's approval of tree preservation plan.
  6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
  7. Greenspace planner's approval of the treatment of greenways and greenspace.
  8. Division of Fire, Water control Office's approval of the locations of fire hydrants, fire department connections, and fire service features.
  9. Division of Waste Management's approval of refuse collection locations.
  10. Documentation of Division of Water Quality's approval of Capacity Assurance Program requirements, prior to plan certification.
  11. United States Postal Service Office's approval of kiosk locations or easement.
  12. Consolidate site statistics into one table.
  13. Document compliance with Article 12-8(h) and (i) for multi-modal accommodations and transit facilities.
2. PLN-MJDP-24-00073: MILESTONE HEIGHTS PROPERTY (12/2/24)\* - located at 309, 315, 317, & 321 EAST HIGH STREET, LEXINGTON, KY  
Council District: 3  
Project Contact: Milestone Design Group

Note: The purpose of this plan is to create 10 buildable lots for townhouse dwelling units.

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

The Subdivision Committee 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. Denote engineer, registered landscape architect, or community planner responsible site design.
14. Remove "proposed" from alley cross section.
15. Denote location of access for construction vehicles on the face of the plan.

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16. Provided the Planning Commission makes a finding for the use of access easement for access and frontage.
17. Resolve compliance with Article 15-7.
18. Resolve compliance with Article 20 of the Zoning Ordinance.

3. PLN-MJDP-24-00077: GIVENS PROPERTY, OUTLOT 1 (AMD) (1/5/25)\* – located at 2305 REMINGTON WAY, LEXINGTON, KY  
Council District: 2  
Project Contact: CMW

Note: The purpose of this amendment is to depict building with parking, circulation, and access for a convenience store and gas station.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and 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. United States Postal Service Office's approval of kiosk locations or easement.
12. Use updated site statistics box per the Division of Planning.
13. Remove signage from plan face.
14. Denote lots on vicinity map to locate area of amendment.
15. Denote location of access for construction vehicles.
16. Addition of information for Outlot 5 per MJDP-24-00046.
17. Addition of Note #26 from previous plan.
18. Addition of zoning boundaries and zone category labels.
19. Addition of all street cross-sections and location on plan face.
20. Denote boundary changes on Outlots 6 & 7 per plat S-550.
21. Document lighting plan per Article 30 of the Zoning Ordinance.
22. Document compliance with Articles 16, 18, 20, & 26 of the Zoning Ordinance.
23. Resolve conflict between dumpster and sanitary sewer easement.
24. Denote recommendations of the Royal Springs Wellhead Protection Committee.

4. PLN-MJDP-24-00082: LEXMARK INTERNATIONAL, SECTION 2, LOT 2 (AMD) (1/5/25)\* – located at 751 FREIGHT BOULEVARD, LEXINGTON, KY  
Council District: 1  
Project Contact: Banks Engineering

Note: The purpose of this amendment is to depict improvements on Section 2, Lot 2, including building square footage, associated parking, and outdoor storage for construction equipment and location of fuel tank.

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

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

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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. United States Postal Service Office's approval of kiosk locations or easement.
12. Depict other streets in the vicinity to clarify location of lot.
13. Use updated site statistics box for all of development per the Division of Planning.
14. Addition of Lot 7 information, if plan is certified.
15. Denote review and recommendations of Royal Springs Wellhead Protection Committee.
16. Documentation of lighting plan per Article 30 of the Zoning Ordinance.
17. Denote all parking areas and driveways shall be paved with concrete, asphalt, or other suitable hard surface per Article 16-3(f) of the Zoning Ordinance.

Action – Mr. Wilson made a motion, seconded by Ms. Barksdale, and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent) to approve the consent agenda, including the finding report for PLN-MJDP-24-00073: MILESTONE HEIGHTS PROPERTY, but removing PLN-MJDP-24-00078: FRITZ FARM, TRACT C (AMD).

- 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. Final Subdivision Plans**

- a. PLN-MJSUB-19-00006: TUSCANY, UNIT 15 (1/19/25)\* - located at 1970 WINCHESTER ROAD (A PORTION OF) LEXINGTON, KY  
Council District 6  
Project Contact: EA Partners

Note: The applicant requested an extension on October 7, 2024. The Planning Commission approved this plan on November 14, 2019, subject to the conditions listed below.

The Subdivision Committee Recommended: **No Recommendation.**

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.

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8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
10. Resolve traffic calming details.

Staff Presentation – Ms. Wade oriented the Commission to the plan and stated that the applicant had requested an extension of approval. She explained that the applicant was required to detail the work that has been accomplished at the site already. Ms. Wade pointed out several features of the development, and shared a list of completed work that had been provided by the applicant. She told the Planning Commission that staff recommended approval of a one-year extension.

Applicant Representation – Rory Kahly, EA Partners was present to represent the applicant, and requested approval for the one-year extension request.

Action – Mr. Penn made a motion, seconded by Ms. Worth, and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent), to approve the one-year extension of PLN-MJSUB-19-00006: TUSCANY, UNIT 15.

## 2. Development Plans

- a. PLN-MJDP-24-00080: ARTHUR E. ABSHIRE PROPERTY (LEXINGTON CUT STONE AND MARBLE CO.) (MIDLAND STATION) (1/5/25)\* – located at 262-276 MIDLAND AVENUE & 604-610 WINCHESTER ROAD, LEXINGTON, KY  
Council District: 3  
Project Contact: Prime AE

Note: The purpose of this amendment is to depict the construction of two apartment buildings with a total of 258 dwelling units with associated parking.

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

1. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Landscape Examiner's approval of landscaping and 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. Provide cross-sections for Winchester Road and Owens Avenue.
14. Use updated site statistics box per the Division of Planning.
15. Documentation of lighting plan per Article 30 of the Zoning Ordinance.
16. Resolve Note #15 regarding 15" sanitary sewer main below Building A to be relocated based on approval of the Division of Engineering.

Staff Presentation – Mr. Chaney presented the development plan for apartment buildings. He told the Planning Commission that the applicant had already submitted a revised plan that addressed most

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of the remaining conditions and they planned on working with the Division of Engineering to resolve the sanitary sewer issue.

Ms. Wade added that the plan had originally been on the consent agenda, but staff had removed it because there had been a change in the sidewalk widths that would need to be discussed. The applicant subsequently alerted staff that they planned to go back to their original design and would not change the sidewalks.

Applicant Representation – Katie Beard, Prime AE, was present to represent the applicant. She echoed Ms. Wade's comments regarding the sidewalks. She stated that they were in agreement with the conditions and asked for approval.

Commission Questions – Mr. Owens asked how many parking spots there would be both inside the building and in the surface lot. Ms. Wade said that the first floor of both buildings would primarily be a parking garage with 159 spots, and 111 spaces would be outside for a total of 270.

Mr. Nicol said this was a wonderful redevelopment opportunity.

Action – Mr. Nicol made a motion, seconded by Ms. Barksdale, and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent), PLN-MJDP-24-00080: ARTHUR E. ABSHIRE PROPERTY (LEXINGTON CUT STONE AND MARBLE CO.) (MIDLAND STATION) as presented by staff.

5. PLN-MJDP-24-00083: GEORGE WEST ESTATE PROPERTY (HOWARD PROPERTY) (AMD) (1/5/25)\* – located at 4538, 4568, & 4578 GEORGETOWN ROAD, LEXINGTON, KY  
Council District: 12  
Project Contact: Vision Engineering

Note: The purpose of this amendment is to depict new building, sidewalks, and parking.

The Subdivision Committee Recommended: **Postponement.** There were questions regarding compliance with Articles 19, 21, & 26 of the Zoning Ordinance.

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. 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. United States Postal Service Office's approval of kiosk locations or easement.
12. Addition of proposed and existing easements.
13. Addition of tree inventory map per Article 26 of the Zoning Ordinance, including tree location, species and size on plan face.
14. Use updated site statistics box per the Division of Planning (Depict 3 lots, showing breakdown for acreage in each zone).
15. Resolve dumpsters in the floodplain/floodplain setback.
16. Discuss the timing of LOMR process.
17. Discuss the lot coverage per Articles 2-4 and 8-20 of the Zoning Ordinance.

Staff Presentation – Ms. Gallt oriented the Commission to the amended development plan. She described the split zoning of the property. She said that the applicant had submitted a revised plan

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and informed the Commission that the Staff was still recommending postponement at this time because the applicant had not yet submitted a complete Tree Inventory Map. Staff recommended Postponement, with 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. United States Postal Service Office's approval of kiosk locations or easement.
12. Addition of tree inventory map per Article 26 of the Zoning Ordinance, including tree location, species and size on plan face.
13. Denote the lot coverage per Articles 2-4 and 8-20 of the Zoning Ordinance in site statistics box.

Applicant Representation – Matt Carter, Vision Engineering, was present to represent the applicant. He stated that they were in agreement with the conditions. He pointed out that the area of amendment had no significant trees. He asked the Planning Commission to approve the plan as is, and that he would submit a complete tree map before certification.

Commission Questions – Mr. Penn stated that the trees had been discussed at committee, and asked why they had not been added to the revised plan. Mr. Carter said that the existing trees were too dense to map and there had not been time to do so. Mr. Penn asked if there were significant trees in the dense area. Mr. Carter said that, under the new regulations, there could be.

Ms. Worth said that she would rather wait for the information to be added to the plan before they approved it, because the firm's track record with tree preservation was inadequate. Mr. Carter disagreed and said that no trees had been removed at this time, on this project.

Mr. Nicol asked Mr. Carter what his process would be if given an approval recommendation. Mr. Carter replied that he would find the best way to identify the significant trees to depict them on the development plan, but it would be difficult because of the density of the undergrowth. Mr. Carter reiterated that a postponement recommendation due to tree preservation would significantly delay the project. Mr. Nicol asked if the applicant would be willing to meet with the Urban Forester on site before he cleared anything, and Mr. Carter was agreeable to that condition.

Ms. Wade clarified that staff was concerned about the trees that are in the proposed development area. The significant trees had not been identified there. Staff was not concerned with the trees in the densely wooded area of the agriculturally zoned portion of the property.

Mr. Wilson stated that he was in favor of the staff's position at this time.

Action – Ms. Worth made a motion, seconded by Mr. Penn, and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent), to continue PLN-MJDP-24-00083: GEORGE WEST ESTATE PROPERTY (HOWARD PROPERTY) (AMD) to the December 12, 2024 meeting for reasons provided by staff.

Ms. Barksdale asked the applicant if one-month sufficient time to get the tree inventory map prepared. Mr. Carter affirmed that it was.

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- b. **PERFORMANCE BONDS AND LETTERS OF CREDIT** – Mr. Penn made a motion, seconded by Ms. Worth, and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent) to approve the performance bonds and letters of credit as presented.

#### **IV. STAFF ITEMS**

- A. **PLN-MNDP-24-00025: ETHINGTON & ETHINGTON, TRACT 1 (CHICK-FIL-A) (AMD) (12/15/24)\*** - located at 4275 HARRODSBURG ROAD, LEXINGTON, KY  
Council District:  
Project Contact: GBC Design

Staff Presentation - Ms. Gallt oriented the Commission to the minor development plan. She reminded the Planning Commission that while most minor plans are approved administratively, sometimes it is necessary to bring them to the Planning Commission. She explained that the applicant was requesting a widening of the Cocos Way access point, from 30 feet to 36 feet, but the Division of Traffic Engineering was not in agreement.

Mr. Filiatreau told the Planning Commission that there are some examples of 36-foot driveways to accommodate large truck deliveries, but Traffic Engineering did not feel that that was needed at this site.

Commission Question – Mr. Owens asked for clarification of a rendering that had been presented. Mr. Filiatreau replied that it was depicting space for a much larger delivery truck than was expected.

Applicant Presentation – Alan Wiley, GBC Design, was present to represent the applicant. He displayed some diagrams to depict the current conditions as well as the proposed conditions. He said that his client needed the wider access point because of the narrow width of Cocos Way and parking spaces proposed there. He opined that would prevent the large delivery trucks from getting onto the site. He added that the Kroger gas station had a 36-foot driveway, and the applicant was asking for the same consideration.

Commission Question – Mr. Z. Davis asked for clarification about why Cocos Way was narrower than originally expected. Mr. Filiatreau stated that the Division of Traffic Engineering had requested that the Cocos Way cross-section be wider, but the developer went with the smaller width, private street that was subsequently approved by the Planning Commission.

Mr. Penn opined that this could have been prevented by building Cocos Way wider at the time of development, and that this request could be granted because of this. Mr. Filiatreau replied that they try to adhere to the 30-foot width. He added that they had denied the original request because their justification had been the ingress and egress of customers, not the delivery trucks.

Mr. Z. Davis said he saw some hardship on the part of the applicant.

Mr. Nicol stated that using on street parking was good for the townhomes across Cocos Way, but considered that this might add difficulty to the applicant's entrance point.

Mr. Penn made a motion, seconded by Ms. Barksdale, and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent), to approve **PLN-MNDP-24-00025: ETHINGTON & ETHINGTON, TRACT 1 (CHICK-FIL-A) (AMD)** with the requested access point width of 36 feet on Cocos Way.

- B. **PLN-MNDP-24-00032: WIGGINS & COMPANY (CHICK-FIL-A) (AMD) (12/15/24)\*** - located at 2514 NICHOLASVILLE ROAD, LEXINGTON, KY  
Council District: 3  
Project Contact: Interplan, LLC

Staff Presentation - Ms. Gallt oriented the Commission to another minor development plan. She stated that the applicant had been communicating with the Division of Traffic Engineering to try to resolve issues with their drive-thru lanes. Mr. Filiatreau said that the drive-thru lanes had been causing backup onto Nicholasville Road during peak hours. He said that the applicant had agreed to make improvements to the parking lot,

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and they were in agreement with the revised application, because it made the site better overall, especially because the adjoining property owner was not agreeable to other changes.

Commission Questions - Mr. Z. Davis asked Mr. Filiatreau if he had any safety concerns regarding the new layout. Mr. Filiatreau pointed out the new safety features that would be added because they could not get one of the entrance points to Nicholasville Road closed.

Mr. Owens asked if there was still access to the rest of the development, and if there would be too much vehicle conflict. Mr. Filiatreau said that due to the constraints of the site, this was a good solution.

Mr. Owens asked if all of the property owners in the development were in agreement. Ms. Wade replied that letters had been sent out to all of the neighboring business owners, and had not received any correspondence from them. She added that the applicant had been working with the owner of the shopping center, who was in agreement.

Applicant Representation – Richard Scott, Interplan, was present to represent the applicant. He said there is significant history on this site. He briefly described the existing conditions and issues, as well as the solution that they have proposed.

Commission Comment – Ms. Worth stated that at the Subdivision Committee, they heard that the applicant had made the best possible effort to work with all the parties involved, but were having difficulty communicating with one of the parties. She felt this was the best possible solution, under the circumstances.

Action – After asking for clarification of what the proper motion should be, Mr. Owens made a motion, seconded by Mr. Wilson, and carried 7-0 (Forester, J. Davis, Michler, and Pohl absent), to approve PLN-MNDP-24-00032: WIGGINS & COMPANY (CHICK-FIL-A) (AMD), as presented.

- V. ZONING ITEMS** – The Zoning Committee met on November 7, 2024, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members Johnathon Davis, Zach Davis, Graham Pohl, and William Wilson. Staff members present were Traci Wade, Daniel Crum, and James Mills; Tracy Jones, 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)

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- 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.

### **C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMEMENDMENTS**

1. **PLN-ZOTA-24-00007: AMENDMENT TO UPDATE SHORT-TERM RENTAL REGULATIONS** – a text amendment to update Articles 3, 8, and 23, to update regulations relating to Short Term Rentals.

INITIATED BY: Urban County Council

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: **Approval** of staff alternative text.

The Staff Recommends: **Approval of the proposed text amendment with staff alternative text** to the Zoning Ordinance, for the following reasons:

1. The proposed text amendment with staff alternative text provides for greater protections against overconcentration of short-term rentals within neighborhood areas.
2. The proposed text amendment with staff alternative text provides enforceable limitations on hosted and un-hosted short-term rentals in order to prevent adverse impacts on the health, safety, and welfare of the local community and visitors to the Urban County.

Staff Presentation – Mr. Crum presented the suggested update to short-term rentals (STR) regulations. He gave a brief history and description of the original regulations that had passed in 2023. He explained that there had been a large number of Board of Adjustment (BOA) cases for un-hosted STR's since the regulations were passed. He stated that the BOA had asked for more guidance on how to interpret the language. He described the text that was initiated by the Urban County Council and the changes that were proposed including reduction of total occupancy, number of units in commercial zones, and the number of STR units in the surrounding area. He said the spacing requirements would be a rule rather than something to consider. He also described some considerations that could be made for relief regarding the spacing requirements, and displayed some maps to depict potential situations for the relief. Mr. Crum concluded by giving a brief overview of the staff alternative language.

Commission Questions – Mr. Z. Davis requested to know the difference between entertainment areas and entertainment uses. Mr. Crum replied that "entertainment uses" was the preferred language.

Mr. Owens asked for clarification regarding maximum occupancy and Mr. Crum detailed the proposed change, which would reduce the maximum number to 10 guests.

Mr. Nicol inquired about agricultural tourism and natural areas. Mr. Crum replied that there would be another text amendment coming that would address STR's in the agricultural zones.

Ms. Barksdale asked about the grandfathering process, and Mr. Crum explained the dates that that had occurred.

Ms. Worth asked if a new owner would have to request permission from the BOA. Mr. Crum confirmed that an STR use would not transfer to a new owner.

Ms. Worth further inquired if complaints referencing STR's were being tracked so the BOA would have that information when making their decisions. Mr. Crum replied that the city would soon be using an STR hotline to help citizens report issues. He added that this information, along with reports from Police, Code Enforcement, and Zoning Compliance, would be included in staff reports to the Board of Adjustment.

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Ms. Worth asked if there was a comprehensive database with all of the complaint/enforcement information. Ms. Wade replied that the Division of Revenue would be compiling all of the information in a database that would be up and running very soon.

Mr. Penn asked how revocation would work if there were too many complaints about an approved STR. Ms. Wade explained that the Division of Revenue would have the authority to nullify the business license, and then Planning would nullify the Conditional Use Permit.

Ms. Barksdale suggested that language restricting STR's in areas prone to displacement or Neighborhoods in Transition, could hinder low-income homeowners' ability to use their property for more income. Mr. Crum stated that it was not a hard and fast restriction, but a factor to consider. He added that a low-income house used as an STR would be taking a home away from a long-term resident. Ms. Barksdale cautioned that consideration should be made no matter the location of the dwelling unit.

Staff Comments – Ms. Wade briefly reiterated the difference between a hosted and un-hosted STR, and that these regulations will only be applied to the un-hosted STR's.

Commission Question - Mr. Nicol asked if the blue text was in addition to the Council's original text, and if Council could change the language again after the Planning Commission made their recommendations. Mr. Crum confirmed this.

Public Comment – Judith Humble, 144 Lincoln Avenue, passed out a packet by Fayette County Neighborhood Council. She was concerned about short-term rentals because they decrease home values and housing stock. She felt that her efforts to oppose STR's have been futile.

John Grimes, 272 Sherman Avenue, was concerned about the number of STR's in the Kenwick neighborhood. He said there were too many. He displayed some maps of the Kenwick neighborhood with the STR's marked. He wanted the short-term rental data available to the public.

Trish Smith, 212 E. Bell Court, was concerned that some operators had applied as a hosted unit, but have been operating as an un-hosted. She also asked that the STR data be available to citizens.

Walt Gaffield, President of the Fayette County Neighborhood Council, made some suggestions to the Planning Commission including increasing the buffer distance and eliminating the relief provisions recommended.

Kayla Preston, 130 Arthur Jackson Lane, supported short-term rentals. She operated a short-term rental and told the Planning Commission that it was a valuable source of income for her. She appreciated staff helping her through the application process.

Lynne Flynn, 518 Springhill Drive, was representing the Picadome Neighborhood Association. She was concerned about the number of STR's in her neighborhood, and that several of them are unlicensed. She said they support the changes recommended by the FCNC. She also read comments from the Hill-N-Dale Neighborhood Association with similar concerns.

Kyna Koch, 3262 Gondola Drive, spoke on behalf of the Harrods Hill Neighborhood Association. She said there have been problems with some of the STR's in their neighborhood. She was concerned about the loss of long-term housing units.

Janet Cabaniss, 704 Cumberland Drive, spoke on behalf of the Stonewall Community. They did not want short term rentals, and they supported the suggestions made by the FCNC. She asked for more enforcement.

Mike Brower, 114 Shady Lane, spoke for the Southern Heights Neighborhood Association. He supports the recommendations of the FCNC. He was concerned with trash and party issues.

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Terry Lennie, 324 S. Mill Street, opposes the addition of more STR's in the downtown neighborhoods. He said that the BOA should consider the effects of STR's on neighbors more than any other regulations. He wanted to keep the safety of the neighbors a priority.

Danny Albertson, 1211 Jessamine Station Road, was in support of the STR industry. He stated that he had invested time and money into old homes for STR's. He stated that his homes were used for more than vacationers. He added that he wanted his units to be safe, and he supported local businesses. He said that operators were valuable members of the community. He was concerned that the new complaint hotline would be over used to try to get rid of the STR's.

Patty Draus, Allen Court, was representing the Joyland Neighborhood Association. She said they supported the recommendations by the FCNC.

Alex Narramore, 528 W. Third Street, stated that there was a house next door that was a STR and there had never been an issue. She would like to be an operator as well to make additional income. She said the process is too complicated.

Tom Eblen, 52 Mentell Park, opposed the exceptions for density requirements. He said the downtown neighborhoods need to be protected.

Mr. Reyes, owner of Master Clean, supported the STR industry and said that his business had grown significantly because it. He said he has already seen reduced business since the first requirements were made.

Tee Bergman, Mitchell Avenue Neighborhood Association, was concerned about how STR's affect affordable housing.

Daniel Rogers, no address given, owns property and rents to healthcare professionals and international students. He said that there is a need for short-term rentals for these people. He is supportive of regulations to keep operators responsible, but stated that STR's are important for our economy.

Vincent Frillicci – Airbnb representative, said that most communities do not regulate STR's the way that Lexington does. He said there is less than 1% of homes are used as short-term rentals, but have generated over 50 million dollars of economic activity. He encouraged the Commission to look at how other cities regulate the STR's.

Amy Clark, 628 Kastle Road, passed out a hand out. She stated that STR's are a commercial use in residential units. She told the Planning Commission that the BOA and residents are feeling overwhelmed with the number of units being processed, and suggested a monthly limit of cases to be heard by the BOA.

Commission Questions – Mr. Z. Davis asked for the definition of "hosted". Ms. Wade read the definition from the Zoning Ordinance.

Ms. Worth asked for the definition of "primary residence". Ms. Wade replied that the definition was in the Code of Ordinances and defined it to the best of her recollection.

Ms. Barksdale asked if the owner had to be present for a hosted stay, or if they just had to keep the property as their primary residence. Ms. Wade clarified that the host, who does not have to be the owner, had to be on the property during the time of rental.

Mr. Z. Davis inquired about duplexes. Ms. Wade explained that if a duplex was on the same parcel, you could live in one unit, and rent the other as a hosted unit. If each side is on a separate parcel, it would be considered un-hosted.

Mr. Owens asked if the maximum occupancy applied to hosted units. Mr. Crum verified that it did apply, but any unit that wanted a larger occupancy would have to make the request to the BOA.

Mr. Owens asked for clarification about units that were adjacent to a non-residential zone. Mr. Crum further explained this and the other reasons that relief might be granted by the Board of Adjustment on a limited basis.

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Mr. Nicol asked staff how they felt about the regulations being handled from a policy aspect rather than as a land use aspect. Mr. Crum stated that in 2023 there were no regulations regarding short-term rentals at all. He added that these commercial uses in the residential areas were impacting neighborhoods and residents, and staff did not necessarily agree that they should be regulated just by a policy. Mr. Crum said there needed to be a balanced approach to the regulations.

Mr. Nicol asked if long term rental was considered a commercial use. Mr. Crum said it was not. Mr. Nicol further asked when STR's began being defined as a commercial use. Mr. Crum replied that it was at the time of the first regulations in July of 2023.

Ms. Worth inquired about the reason why the 500 foot area was chosen, when other surrounding cities use 600 feet. Mr. Crum replied that the 500 foot number came from the required notice area of Conditional Use Permits.

Mr. Crum also stated the Commission had the ability to change that requirement.

Mr. Wilson asked how STR compliance would be enforced. Mr. Crum replied that it would be a collaboration between Planning, Division or Revenue, Code Enforcement, Zoning Compliance, and the Police, and that violations would be mostly complaint driven.

Note: The Chair called for a 5-minute break at this time.

After reconvening, Ms. Worth asked about citations, and Ms. Smith explained differences of citations and notice of violations. Ms. Worth clarified that there are many issues that go on but do not make it to the level of a violation. There was considerable discussion among staff and the Commission about notice of violations.

Mr. Z. Davis asked for clarification regarding the definition of adjacent and contiguous. Ms. Wade opined that either word could be used, but adjacent was a broader term.

Mr. Nicol suggested not having a maximum number of units for dwelling units in some business and mixed-use zones. Ms. Wade said that hotels are limited in those zones, and the limitations prevent multi-use buildings from side-stepping other regulations. She said that staff would not be comfortable having more than 25% in those zones.

Opposition Rebuttal – Mr. Gaffield reiterated that there should be no question that STR's are commercial uses, and again asked that there be no exceptions to the distance requirement. He said there was a problem with the police not reporting parties.

Ms. Humble reiterated her previous statements and wanted to avoid too many STR's.

Ms. Clark also restated previously mentioned concerns regarding the commercial use in residential areas.

Support Rebuttal – Mr. Rogers was concerned that the new hotline would be used prejudicially by those that wanted the operators out of their neighborhoods. He said that operators were ambassadors for Lexington and good citizens.

Commission Discussion – Ms. Worth stated that she could support staff recommendations, but wanted to expand the distance requirement to 600 feet.

Mr. Penn said that it was important to give the BOA specific guidelines to help them make consistent decisions. He supported the staff alternative language.

Mr. Owens supported the idea of a 600 foot buffer and the staff alternative language. He also felt they need to give some relief to the BOA.

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Ms. Barksdale supported the staff alternative and thought that the 500-foot buffer was sufficient. Mr. Nicol concurred.

Mr. Z. Davis supported the staff alternative and the 600-foot buffer.

Action – Ms. Worth made a motion, seconded by Mr. Owens, and carried 5-2 (Forester, Pohl, J. Davis, and Michler absent, Barksdale and Nicol opposed) to approve the staff alternative language, but increasing the spacing requirement to 600 feet.

Note – At this time, Vice Chair Davis called for a 15-minute recess so that the meeting could relocate to the Phoenix Building.

Note – The meeting re-convened in the 3<sup>rd</sup> Floor Conference Room of the Phoenix Building.

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

A. 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.

The Staff Recommends: **Disapproval of the inclusion of the limestone edging, and that the decision of the BOAR be upheld**, for the following reasons:

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review is consistent with Design Guideline III.6.A,B,E and F established by the local Historic Preservation Commission.

Staff Presentation – Mr. Crum began by briefly describing de novo public hearing procedures. He oriented the Commission to the property and the area. He displayed photographs of the other houses on the street and their features, as well as photos of bricks that were found underground during excavation of the front yard. He described the modifications to the front yard that had been made by the applicant, and subsequently denied by the Board of Architectural Review. The changes included a brick sidewalk, knee wall pavers, brick steps, and limestone edging around the yard. He described the case history with the Division of Historic Preservation, and their reasons for denial of the Certificate of Appropriateness. Mr. Crum explained the review of staff, and the reasons why staff was recommending disapproval of the appeal.

Amelia Armstrong and Bettie Kerr were present to represent the Office of Historic Preservation. Ms. Armstrong presented a file of the meeting of the Board of Architectural Review regarding this application, for the record. She displays some photographs of the project in question as well as photographs before the work was done. She described the work that had been approved as well as what was not approved. She also briefly discussed other houses in the neighborhood and their features. She urged the Commission to uphold the decision of the Board of Architectural Review (BOAR).

Commission Questions – Mr. Z. Davis asked for clarification regarding the items in question, and Ms. Armstrong relisted them. He then asked when concrete walkways became common in neighborhoods like this one. Ms. Armstrong said that concrete for walkways was used as early as the 1910's, and was consistent in this neighborhood. Ms. Kerr added that concrete sidewalks were used as early as the 1890's, so the houses on this street probably had concrete from the time of construction.

Mr. Davis asked Ms. Kerr how she felt the bricks underground came to be, if they had not been used as sidewalk. Ms. Kerr replied that the bricks that were found underground did not seem to have a pattern to them, which indicated they might have just been dumped there. Ms. Kerr admitted that there could have been a brick walkway at one point, but that could not be proven unless further study was done.

Applicant Presentation – Nathan Billings, Billings Law Firm, was present to represent the applicant. He extensively presented the site improvements, photographs of similar brick and other elements in the neighborhood, and reasons why the Commission should overturn the disapproval of the BOAR. He discussed the timeline of the applications and how the applicant got to the point of appeal. He opined that the letters that

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were sent to the applicant only addressed the pedestals and knee wall, but not the brick sidewalk or stairs. He further suggested that since the bricks were found in two locations during excavation, they could have been used as a sidewalk. Several of the displayed pictures included brick sidewalks, limestone edging and curbing, planters, and a knee wall within the Fayette Park neighborhood.

Mr. Billings stated that there were several support letters for the applicant. Vice Chair Davis read one support letter from a neighbor for the record. Mr. Crum and Mr. Billings also passed out two more letters of support.

Commission Questions – Mr. Wilson asked if a Certificate of Appropriateness (COA) had been acquired. Mr. Billings responded that the certificate had been acquired to remove and rehabilitate the sidewalk, but was not specific on the material to be used to do so. They also had acquired permission to remove the concrete steps, but had replaced it with brick, not concrete. Mr. Billings admitted that a COA had not been received for all the work that had been done.

Mr. Billings said that it was wrong to say no to the application because they did not file first.

Mr. Nicol summarized the process and decision that they were being asked to make and Mr. Billings agreed with his summation, but added that the use of brick in the sidewalk should not have been included in the BOAR decision because the applicant was never notified that it would be. There was further legal discussion regarding the future process based on the Planning Commission's decision.

Mr. Penn said that, after seeing the photographs of the neighborhood, the use of bricks seemed appropriate.

Ms. Worth asked if there were other examples in Fayette Park of brick sidewalks leading to the street. Mr. Billings displayed photographs of at least one other brick sidewalk.

Staff Rebuttal – Mr. Crum reiterated staff's recommendation, and that they agreed with the BOAR. He said that the issue was not that they used brick or limestone, but how they used it.

Ms. Smith addressed the due process argument of the applicant. She told the Planning Commission that the staff report by the BOAR was more detailed than the letter the applicant received, and the work had already been done at the time of the BOAR hearing. She also told the Commission that the BOAR hearing, as well as the current appeal, was the due process. She also did not see any jurisdictional issues. Ms. Smith said that from her prospective, both the BOAR decision, as well as any decision made by the Planning Commission could be defensible in court.

Ms. Kerr briefly described how the BOAR came to their unanimous decision to deny the COA to the applicant. She reiterated the comments made by Mr. Crum regarding the use of the materials in question, not the materials themselves. She added that there were probably several elements of the neighborhood that had changed over time, even before the H-1 Overlay was adopted. She then addressed the letter that was sent to the applicant regarding the replacement of the sidewalk. She said that it is generally understood to mean replaced "in kind". There was no expectation that brick replacement was ever intended by the Historic Preservation Office. Ms. Kerr said that the permit that was issued to the applicant was a part of the notification to them, and that she believed the intent of the notice was sufficient.

Applicant Rebuttal – Mr. Billings reiterated that due process was not given to his client because there was not sufficient notice given of each violation. He submitted a letter from the Historic Preservation Office that only addressed violations regarding the knee wall and limestone curbing, and that his client applied for a COA for those two items listed. He felt that the Historic Preservation Office should have included the brick sidewalk and steps in the violation letter, so that the applicant could have addressed them at the BOAR hearing in July. He also said that while the staff report does include the brick sidewalk and steps, it was only given to his client the day of the hearing.

Ms. Kerr stated that the staff reports are always sent out the Monday before the Wednesday hearing. Mr. Billings said that he has not seen a copy of a staff report sent on that Monday.

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Mr. Billings restated several rehabilitation guidelines and standards for the rebuilding of stairs. He also said that out of 16 homeowners on Fayette Park, three sent letters of support and no one has opposed the changes made to the property. He mentioned that the center of Fayette Park, owned and maintained by the City, also used these elements in question. He opined that if the City was allowed to use these elements, his client should be as well. Ms. Smith interjected that the City was not subject to the rules of the Historic District Overlay. He said that there is a large amount of subjectivity in the BOAR, and what his clients have done has not hurt the character of the neighborhood. He asked that the Planning Commission to overturn the decision of the BOAR.

Commission Comments – Mr. Owens said that he felt the use of brick was appropriate and enhanced the house and character of the neighborhood.

Ms. Worth said that this was more of an aesthetic question rather than the materials being used. She said that the yard did seem more formal than the rest of the neighborhood.

Mr. Wilson felt that this came down to one side saying the process was done correctly and the other side saying it was done incorrectly. He asked for further legal clarification. There was discussion between the Commission and the Law Department. Ms. Smith said that the Commission should either approve or deny the appeal about the four design elements in question.

Mr. Penn asked if the Historic Preservation Office had an obligation to fully list the items that would be discussed at the hearing. Ms. Kerr replied that HPO staff does not enumerate every item in a letter of violation. Mr. Penn said that they should not be discussing items that were never included in the notice letter. Ms. Kerr replied that the BOAR felt they were important to the appeal.

Ms. Barksdale asked Ms. Kerr why all the items were not listed specifically, especially since they had already been completed. Ms. Kerr said that two items were done with permission, but incorrectly, and the other two items were done without a permit. For this reason, they included all of them in their presentation to the BOAR. She said they were very particular about giving sufficient legal notice.

Mr. Z. Davis asked to see the staff report with four items and the notice letter with two items. Mr. Billings produced both. Ms. Kerr said it is not unusual for notifications to have only some of the violations listed.

Ms. Worth asked if there was a copy of the email sent to the applicant the Monday before the meeting available. Ms. Kerr could not produce the email.

Mr. Owens asked for clarification regarding a motion to approve the applicant's appeal. Ms. Smith said that that was an option, but would need a finding.

Action – Mr. Owens made a motion, seconded by, Mr. Nicol, and carried 6-1 (Wilson opposed, Forester, Pohl, J. Davis, and Michler absent), to approve the appeal PLN-BOAR-24-00002: KEVIN EAGEN & ADAM WHEELER, for the following reason:

1. The changes made by the applicant are compatible with Design Guideline III.6.B.

This approval is subject to the following condition:

- a. Any additional changes shall be brought to the BOAR for review.

Mr. Duncan reminded the Planning Commission that they will have the Zoning Items meeting next week.

**X. ADJOURNMENT** – Vice Chair Davis adjourned the meeting at 7:57p.m.

TW/DC/CC/CG/PS

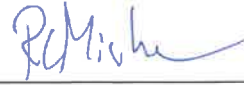
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\* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.



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Larry Forester



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Robin Michler

