

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

May 28, 2009

- I. **CALL TO ORDER** – The meeting was called to order at 1:35 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Patrick Brewer; Marie Copeland; Neill Day, Chair; Ed Holmes; Mike Owens; Frank Penn; Carolyn Richardson; Lynn Roche-Phillips; and Joan Whitman. Absent were Mike Cravens and Randall Vaughn.

Planning staff members present: Chris King, Director; Bill Sallee; Jimmy Emmons; Traci Wade; Tom Martin; Chris Taylor; and Stephanie Cunningham. Other staff members present were: W.L. Wilson, Department of Law; Captains Charles Bowen and Allen Case, Division of Fire and Emergency Services; Bob Carpenter, Division of Building Inspection; Paul Hockensmith, LFUCG Addressing Office; and Jeff Neal, Division of Traffic Engineering.

II. **POSTPONEMENTS AND WITHDRAWALS**

1. **ZOTA 2009-1: AMEND ARTICLE 9 : GROUP RESIDENTIAL PROJECTS** - petition for a Zoning Ordinance text amendment to Article 9 to simplify existing regulations regarding open space and yard setbacks, and to provide for pedestrian accommodation and bicycle parking.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: (Copies of the latest draft for this text are available upon request)

The Zoning Committee Recommended: **Postponement**.

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

1. The proposed text amendment to Article 9 of the Zoning Ordinance, which regulates Group Residential Projects, will allow for more appropriately scaled and designed Group Residential Projects by reducing the required Project perimeter yards, allowing indoor recreational facilities to meet open space requirements, requiring adequate pedestrian connections, limiting over-building of surface parking and requiring bicycle parking spaces.
2. These changes will allow for slightly more dense development of our urban land without compromising open space and recreation amenities that benefit the residents of such Projects.
3. The proposed amendments to Article 9 will simplify Group Residential Project regulations for those designing townhouse and apartment development plans, as well as for the Planning Commission and the LFUCG staff who administer the Zoning Ordinance.

Staff Comments: Mr. Sallee stated that, although the staff is continuing to work on this item, they would like to request a one-month postponement at this time. He noted that the staff would be able to provide an update to the Commission at either the Zoning Committee meeting or the work session prior to their June hearing date.

Action: A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 9-0 (Cravens and Vaughn absent) to postpone ZOTA 2009-1 to the June 25, 2009, Planning Commission meeting.

- III. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, May 7, 2009, at 8:30 a.m. The meeting was attended by Commission members: Neill Day, Mike Cravens, Mike Owens, Marie Copeland and Carolyn Richardson. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Denise Bullock, Chris Taylor, Tom Martin, Cheryl Gallt, Barbara Rackers, and Rob Johnson, as well as Capt. Charles Bowen and Capt. Allen Case, Division of Fire & Emergency Services. 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. **DP 2009-26: BEAUMONT FARM, UNIT 1, SECTION 5 (AMD.) (6/22/09)*** - located at 3194 Beaumont Centre Circle. (Council District 10) **(EA Partners)**

Note: The Planning Commission postponed this plan at its April 9, 2009, and May 14, 2009, meetings. The purpose of this amendment is to revise parking, access and the building layout; and to add a drive-through to lot 3.

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

The Subdivision Committee Recommended: Postponement. There were questions regarding the proposed access into lot 3 and the internal access between lots 3 and 4.

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 parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Urban Forester's approval of tree preservation plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Solid Waste's approval of refuse collection.
7. Addressing Office's approval of street names and addresses.
8. Addition of dimensions for typical parking space, drive aisle and access points.
9. Denote temporary construction easement.
10. Denote: Provided the Board of Adjustment grants the conditional use for the drive-through.
11. Review by Technical Committee prior to plan certification.
12. Discuss the proposed access.
13. Discuss the proposed internal circulation.
14. Discuss note #10.

Staff Presentation: Mr. Taylor presented the amended final development plan, briefly orienting the Commission to the location of the subject property at the corner of Beaumont Centre Circle and Governors Lane with the use of a rendered plan. The purpose of this proposed amendment to the development plan is to add a drive-through and revise the lot layout.

Mr. Taylor stated that the applicant proposes to add the new drive-through on the northwestern side of the proposed building. An access point is also proposed to be added near the southeastern corner of the property. The building is proposed to be three stories in height, be 30,000 square feet in size, and have 122 parking spaces. The proposed access point is approximately 250 feet from the centerline of Beaumont Centre Circle.

The Subdivision Committee recommended postponement of this plan at their meeting three weeks ago, primarily due to concerns about the site layout and access changes with regard to Lot 4. Mr. Taylor stated that, with this revised submission, Lot 4 is no longer included on the plan. He displayed the currently certified plan on the overhead projector, noting that Lots 3 and 4 on that plan have continuous circulation throughout, with an open access between the two lots and shared parking. The staff had concerns about closing the open circulation between the lots, which are now owned by two separate parties. In an effort to maintain the circulation, the applicant removed Lot 4 from the plan, and is now proposing the new access point at the southeast corner of the property. That location was determined to be the most appropriate for the access, since it is located at the furthest point from the Beaumont Centre Circle / Governors Lane intersection.

Mr. Taylor said that the staff had drafted a revised recommendation, based on the submission of a revised plan. The staff is now recommending approval of this development plan, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Urban Forester's approval of tree preservation plan.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Division of Solid Waste's approval of refuse collection.
7. Addressing Office's approval of street names and addresses.
8. Addition of dimensions for typical parking space, drive aisle and access points.
9. Denote temporary construction easement.
10. Denote the Board of Adjustment's approval of the conditional use for the drive-through.
11. Label canopy located in drive-through lane.
12. Delete Monarch Street information from plan face, prior to certification.
13. Remove building envelope from the proposed drive-through lane.
14. Delete note #10.

Commission Question: Mr. Brewer asked what is currently located on the property. Mr. Taylor answered that the subject property is currently vacant, and there is an approved, certified plan for the building and layout. The revision that was presented at the Subdivision Committee included a revised layout that altered the circulation pattern on the property, and eliminated the shared access point. The access point that was originally proposed to Monarch Drive has been removed, and access is now proposed to Governors Lane. Mr. Taylor noted that it is a bit unusual for the staff to request that information be removed from a plan, but they did so in this case in the interest of keeping a better plan for both Lots 3 and 4.

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

Petitioner Representation: Dick Murphy, attorney, was present representing the applicant, Jimmy Ball, who is the owner of Lot 3. He noted that the applicant does not have the authority to propose changes to Lot 4, so they removed it from their plan. The applicant has worked with the staff to revise the proposed layout, and is in agreement with the revised conditions recommended for approval.

Citizen Comment: There were no citizens present who wished to discuss this plan.

Action: A motion was made by Ms. Roche-Phillips, seconded by Ms. Whitman, and carried 9-0 (Cravens and Vaughn absent) to approve DP 2009-26, with the 14 conditions as noted on the staff's revised recommendation.

IV. **ZONING ITEMS** - The Zoning Committee met on Thursday, May 7, 2009, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Frank Penn, Randall Vaughn, and Joan Whitman. The Committee reviewed applications, and made recommendations on zoning items as noted.

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

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

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

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

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

The procedure for these hearings is as follows:

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

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

1. **TODDS ROAD DEVELOPMENT COMPANY, LLC, ZONING MAP AMENDMENT & CAUDILL PROPERTY, LOT 2 & TODDS ROAD DEVELOPMENT, LLC, ZONING DEVELOPMENT PLAN**

- a. MAR 2009-6: TODDS ROAD DEVELOPMENT COMPANY, LLC (7/8/09)* - petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone, for 1.36 net (1.83 gross) acres, for property located at 2981 Cadentown Road and 3097 Old Todds Road (a portion of).

The Zoning Committee Recommended: Referral to the full Commission.

The Staff Recommends: Disapproval, for the following reasons:

1. The requested rezoning to a Neighborhood Business (B-1) zone cannot be found to be in agreement with the 2007 Comprehensive Plan, which recommends Medium Density Residential (MD) land use, defined as 5-10 dwelling units per net acre, for the subject property. For a majority of the subject property, the existing Single Family Residential (R-1D) zone could be developed in keeping with the residential recommendation of the Plan. The remainder of the subject property has already been developed with a commercial drive aisle to serve the CVS Pharmacy with Board of Adjustment approval; therefore, there is no need to re-zone the property at this time.
2. Re-zoning at this location may significantly impact the nearby neighborhoods within the area, especially the established Cadentown Historic District.
3. Although the subject property is situated at the edge of a defined commercial area, and along a recently improved roadway, no justification exists for expansion of business zoning for the subject property. KRS 100 and Article 6 of the Zoning Ordinance require a two-fold justification to support a zone change if it is not in agreement with the Comprehensive Plan, that both the existing zoning is inappropriate AND that the proposed zoning is appropriate.

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

4. There have been no unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in early 2007 that would support B-1 zoning for the subject property. The improvements to and the re-alignment of Liberty Road have been planned for many years and were completed to meet the transportation needs in this vicinity.
- b. ZDP 2009-28: CAUDILL PROPERTY, LOT 2 & TODDS ROAD DEVELOPMENT, LLC (7/8/09)* - located at 2981 Cadentown Road & 3097 Old Todds Road. **(Endris Engineering)**

The Subdivision Committee Recommended: Postponement. Not all of the property that is subject to the rezoning request is within the boundary of this development plan.

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

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscape buffer.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Addressing Office's approval of street names and addresses.
9. Include all properties proposed for rezoning.
10. Denote all existing and proposed easements.
11. Resolve the use restrictions relative to the proposed access to Liberty Road.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property at the intersection of Liberty Road and Old Todds Road. She noted that this rezoning request is for the northern portion of 3097 Old Todds Road, and the western portion of 2981 Cadentown Road. The Liberty Road re-alignment project bisected 2981 Cadentown Road, and the portion that is now located on the eastern side of Liberty Road is not currently proposed for rezoning. The nearby Cadentown Historic District is zoned R-1D with an H-1 overlay; there is also R-3 and R-1T residential zoning in the vicinity of the subject property, as well as B-1 zoning that fronts onto Man O' War Boulevard and one small B-3 parcel. Ms. Wade displayed several aerial photographs of the subject property and surrounding area.

Ms. Wade stated that the petitioner is requesting to expand the existing B-1 zoning. The 2007 Comprehensive Plan recommends Medium Density Residential use for the property at 2981 Cadentown Lane, and Retail Trade for the portion of 3097 Old Todds Road. The petitioner is proposing a B-1 zone in order to construct a 7,500 square-foot building for use by a veterinarian's office, which would also require a conditional use permit to be approved by the Board of Adjustment. With the Comprehensive Plan recommendation of primarily residential land use for the subject properties, the staff could not find that this request is in agreement with the Plan. Therefore, the Planning Commission should consider whether there have been any unanticipated changes in the immediate vicinity of the subject property, and whether the existing zoning is inappropriate and the proposed zoning is appropriate for the subject property.

Ms. Wade said that the petitioner contends that the existing R-1D zoning is inappropriate for the subject property, and that the proposed B-1 zoning is more appropriate, due to the irregular shape of the property and its orientation to Liberty Road rather than Cadentown Road; the property's inability to be divided into 6,000 square-foot lots, which would be the required minimum size under the existing R-1D zone; the inappropriateness of locating single-family homes so near a commercial area; and the location of the CVS pharmacy drive aisle, which indicates that at least a portion of the property is already in use for commercial purposes.

In their review, the staff primarily considered the appropriateness of the proposed B-1 zoning, since that was the basis for the petitioner's rezoning request. Ms. Wade stated that the staff believes that the existing R-1D zone on the property could accommodate the residential density as recommended by the Comprehensive Plan. The staff acknowledges that locating single-family residences near a commercial area may not always be appropriate, but believes that residential use on the subject property would be appropriate given the proximity of other residential areas near the subject property. The vacant parcel is oddly-shaped, but is similarly-shaped to the property immediately to the north, which accommodated the construction of townhomes.

Ms. Wade said that the staff does not believe that an adequate justification has been provided to expand the B-1 zoning in this area, although the petitioner has provided several reasons why the property is not appropriate for residential use. KRS 100 and the Zoning Ordinance both require a twofold finding that the existing zoning is inappropriate **and** that the proposed zoning is appropriate. With regard to the existing drive aisle on the CVS pharmacy property, Ms. Wade stated that the staff acknowledges that the Board of Adjustment granted the expansion of business use 50 feet into the R-1D zone, but the staff does not believe that there is a need to rezone that property to B-1 at this time. The staff is also concerned about the impact that expanding the commercial zoning in the area might have on the nearby Cadentown Historic District, as well as the existing resi-

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

dential parcel to the east along Cadentown Road. The staff would also like to note that there have been no unanticipated changes in the area of a physical, social, or economic nature since the 2007 Comprehensive Plan. The widening of Liberty Road has altered the area, but its expansion was anticipated by the Comprehensive Plan for several years. Ms. Wade stated that the staff is recommending disapproval of this request, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Penn asked if access to the subject property would be onto Old Todds Road or Cadentown Road. Ms. Wade answered that the petitioner is proposing one access point onto Liberty Road, which would be shared with the CVS Pharmacy.

Ms. Roche-Phillips asked for clarification about the lotting of the two parcels proposed for rezoning. Using the overhead projector, Ms. Wade clarified the boundaries of the parcels proposed for rezoning. Ms. Roche-Phillips asked if the parcel across Liberty Road is proposed for rezoning. Ms. Wade responded that it is not proposed to be rezoned at this time.

Development Plan Presentation: Mr. Taylor presented the corollary development plan. He used the rendered development plan to indicate the location of the proposed 7,500 square-foot office and retail building, as well as the proposed access. Mr. Taylor stated that the Subdivision Committee had recommended postponement of this plan, due to the staff's concern about the entirety of the property not being depicted on the plan. Since the Subdivision Committee meeting, the petitioner has submitted a revised plan, which met the technical reason for their postponement recommendation. With this revised plan, the staff can now recommend approval of this plan, subject to the 11 conditions as listed on the agenda, deleting condition #9.

Petitioner Presentation: Rena Wiseman, attorney, was present representing the petitioner. She said that, since the time of the Subdivision and Zoning Committee meetings, the petitioner had proposed a set of conditional zoning restrictions designed to eliminate the most intense uses allowed in the B-1 zone. The petitioner contends that the subject property is not appropriate for development of single-family residences, but it is appropriate for Neighborhood Business uses. The petitioner also contends that a restricted B-1 zone is more appropriate for the subject property because it has over 300 feet of frontage on Liberty Road; it is part of a parcel that was severed by the re-alignment of Liberty Road; and it adjoins the CVS Pharmacy along the southern property line for over 200 feet, and is dominated by the drive aisle for the pharmacy. The parcel at 2981 Cadentown Road has only 18 feet of frontage, which is not wide enough to construct any sort of street to provide vehicular access to that roadway. If the property was developed for residential use, it would not be appropriate for it to share access to Cadentown Road with the pharmacy property. Therefore, the subject property is virtually cut off from Cadentown Road. It would also be difficult to construct single-family residences with frontage on Liberty Road.

Ms. Wiseman stated that the petitioner proposes to construct one 7,500 square-foot, one-story building on the subject property. The petitioner anticipates that part of the building will be occupied by a veterinary clinic that is not proposed to board animals. The petitioner does not have a possible tenant for the remainder of the building at this time, but it could be occupied by a small office, sandwich shop, barber shop, florist, or other such use.

Ms. Wiseman noted that the petitioner has proposed the following conditional zoning restrictions for the subject property, which would prohibit the listed uses:

1. Shoe repair, self-service laundry or laundry pick-up station, including clothes cleaning establishments using a closed-system process.
2. Automobile service stations.
3. Parking lots and structures.
4. Repair of household appliances.
5. Outdoor miniature golf or putting courses.
6. Circuses and carnivals on a temporary basis.
7. Indoor theaters.
8. Arcades, including pinball and electronic games.
9. Pawn shops.
10. Athletic facilities exceeding 4,000 square feet.
11. Banquet facilities.
12. Drive-through facilities.
13. Pool or billiard tables.
14. Self-service car washes.
15. Restaurants offering live entertainment and/or live dancing, cocktail lounges, brew pubs or nightclubs.
16. Upholstery shops.
17. Mining.
18. Gasoline pumps.
19. Assisted living facilities and rehabilitation homes.
20. Funeral parlors.
21. Hospitals, nursing homes, and rest homes.
22. Cable television signal distribution centers and studios.

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

Ms. Wiseman stated that the petitioner views the subject property as a transitional area between the commercial uses to the south, and the residential uses to the west. The petitioner recognizes, therefore, that the subject property would not be appropriate for high-intensity B-1 uses such as fast-food restaurants. By proposing to restrict all drive-through facilities, the petitioner is effectively limiting not only restaurants, but banks and dry cleaners as well. The petitioner believes that, by limiting the uses on the property via conditional zoning, the staff's concerns about the possible impact on the adjoining residential development should be mitigated.

Ms. Wiseman said that the petitioner has been involved in several discussions about the proposed access to Liberty Road. The proposed access would be located 468 feet from the centerline of the Old Todds Road / Liberty Road intersection. Ms. Wiseman displayed on the overhead projector a photograph of the subject property, noting the location of the proposed access. She stated that that location was chosen based on a formula from the Subdivision Regulations which determines the optimal distance between access points and intersections. The petitioner retained the services of Wilbur Smith to perform a traffic study, which determined that the Liberty Road access would be used by 50% of the trips from the CVS Pharmacy. If this rezoning request is approved, along with the development plan as proposed, the pharmacy and the subject property would both be able to utilize the Liberty Road access, while the existing access to Cadentown Road would not change. The traffic study also indicated that, should the subject property be developed for an office use, 75% of the traffic would use the Liberty Road access and the distance from the intersection would still be adequate. If the property were developed as a fast-food restaurant, however, there would not be sufficient distance between the proposed access and the intersection. Therefore, the petitioner has determined that the proposed use is the most appropriate for the subject property, and the proposed access meets the requirements of the Subdivision Regulations.

Ms. Wiseman displayed several photographs of the subject property and surrounding area, noting that the property is oriented toward Liberty Road, rather than any of the nearby residential uses. She noted that Liberty Road is classified as a principal arterial, and single-family residences are not supposed to have direct access to principal arterials. Any homes constructed on the subject property would be required to share a common driveway to Liberty Road, with all of the homeowners contributing to the maintenance of it. The petitioner cites this concern as one of the reasons why R-1D zoning is not appropriate for the subject property. The subject property is also isolated from any of the nearby residential uses, and would not be able to be a part of any existing neighborhood. Ms. Wiseman stated that the following qualities make the subject property inappropriate for residential use, and more appropriate for commercial use: the location of the property on an arterial roadway; the size and shape of the property, which is particularly suitable for an office building with one entrance; the opportunity to create an affordable location for a small business, as a "true neighborhood center;" the existence of the reciprocal access with the CVS pharmacy, which could limit traffic on Cadentown Road; and the consistency of the proposed B-1 zoning with the Land Use principles in the 2007 Comprehensive Plan, including, "to cluster like intensity land uses," "to relate the intensity of the land use to the street functional classification," and "to transition effectively or buffer between different intensities of adjacent land uses."

Ms. Wiseman stated that, if the subject property develops as proposed, with conditional zoning restrictions and additional landscape buffering between it and the adjacent residential uses, it could provide a "step-down" land use buffer for the Cadentown neighborhood from the more intense commercial uses in the area. The petitioner contends that any single-family homes constructed on the subject property would require much more significant buffering from the existing pharmacy. In conclusion, Ms. Wiseman distributed possible findings of approval to the Commission members, and requested approval.

Commission Questions: Mr. Holmes asked if the petitioner had considered the possibility of a right-in/right-out access onto Liberty Road, rather than an open access. Ms. Wiseman answered that there is no median in that section of Liberty Road. Mr. Holmes stated that there is a great deal of peak-hour traffic at that location, particularly making left turns from Liberty Road onto Man O' War Boulevard. He said that he is concerned that development of the subject property may increase the traffic congestion at that location. Kevin Phillips, Endris Engineering, stated that there is a middle turn lane in front of the subject property that could allow for some stacking of cars. He acknowledged that the traffic situation at that intersection is bad, but there are plans underway to improve the congestion by relocating utilities and constructing a right-turn-only lane onto Man O' War Boulevard from Liberty Road.

Mr. Penn stated that he did not see a turn lane on the photos that Ms. Wiseman displayed. Mr. Phillips replied that there is currently a middle lane, and indicated the location of that lane to Mr. Penn. He said that there are currently no markings on the lane, but it could be restriped with left turn markings. That striping has not been necessary up to this point since there is no entrance to the subject property at that location.

Mr. Holmes asked how much stacking space would be available in that turn lane. Mr. Phillips answered that there would be approximately 230 feet of stacking available in each direction for the turn lane.

Ms. Roche-Phillips asked if the staff could prepare a list of the B-1 uses that would still be permitted at this location should the Commission choose to adopt the proposed conditional zoning restrictions. Ms. Wade said that the staff would prepare that list immediately.

Ms. Copeland asked, with regard to the petitioner's contentions about step-down zoning, if it would be possible to locate the proposed veterinary office nearer the existing townhouse development, and the commercial use at the other end of the building, to ensure that the highest intensity uses are further away from the residences. She stated that she is also concerned that rezoning the subject property to B-1 may create a "domino effect" that would result in 2963 Liberty Road being brought in for rezoning as well. Ms. Wiseman responded that the property to which Ms. Copeland is referring is 2963 Cadentown Road, rather than Liberty Road. She answered that there is a line of fencerow trees along the property line between the subject property and 2963 Cadentown Road. A 15-foot zone-to-zone screening buffer would also be required between the two properties. Gary Joy, petitioner, stated that the veterinary office had expressed a preference to locate in the end of the building nearest the residential uses, but the deal was not complete at this point. He noted that he is open to exploring that possibility.

Citizen Opposition: Alami Abdulqader, 2963 Cadentown Road, stated that he would like for the subject property to remain zoned R-1D. He stated that traffic exiting the CVS pharmacy often drives through his yard to access Cadentown Road. He was also promised, when the townhouses were constructed next to him, that a sidewalk would be extended to his property, but it has not been built.

Mr. Abdulqader stated that, when he purchased his home 20 years ago, he loved the rural nature of the area. He does not like living so near a commercial development, and does not want additional commercial uses to be constructed so near his home. He is also concerned about the construction of taller buildings near his property, and said he fears that people may be able to see into his windows. Mr. Abdulqader asked that the Planning Commission consider the negative impact that rezoning the subject property could have on his property, and disapprove this request.

Petitioner Rebuttal: Ms. Wiseman stated, with regard to drivers cutting through Mr. Abdulqader's property, that a new access to Liberty Road could reduce the traffic exiting the pharmacy onto Cadentown Road by half. With regard to the possibility of someone seeing into Mr. Abdulqader's windows, she said that development of the subject property for business use could actually mitigate that concern, as the proposed commercial building would be only one story tall with no rear windows. Additionally, the veterinary office would be used only on weekdays, which would result in much less activity than a residential use.

Staff Rebuttal: Per Ms. Roche-Phillips' request, Ms. Wade listed the remaining uses that are proposed to be permitted in the B-1 zone on the subject property based on the petitioner's proposed conditional zoning restrictions. With regard to the petitioner's contention that the subject property could serve as a transitional land use, Ms. Wade stated that the Comprehensive Plan does not dictate what such a transition should be when commercial and residential zones adjoin one another; there is a range of land uses that could be more appropriate as a transition. The staff does not believe that it is appropriate to expand the B-1 zoning at this location.

With regard to the shared access with the pharmacy, the staff is still concerned, although the petitioner has proposed to limit the use of the property via conditional zoning restrictions. Ms. Wade stated that the petitioner acknowledged, however, that the CVS parcel could redevelop at any time with a more intense use, which would result in an increased amount of traffic traveling through the subject property to Liberty Road. Thus, the development pattern on the subject property could be significantly changed, and without the Planning Commission's approval, because the CVS parcel is already zoned B-1 with no development plan controlling it; and a potential owner could simply apply for a building permit for any B-1 use on that property.

Commission Discussion: Mr. Brewer stated that he is reluctant to support changing an area from residential to commercial use, but noted that the subject property "does not look or feel residential." He said that he cannot see how the subject property could feasibly be used for residential development, noting his belief that the case has been made that the existing zoning is inappropriate for the subject property, and the proposed B-1 zoning, with conditional zoning restrictions, is appropriate.

Ms. Richardson agreed with Mr. Brewer and remarked that, should the CVS pharmacy decide to leave their location and a more intense use locate there, it would be even more important to not have residences on the subject property.

Mr. Penn stated that he is concerned about the possibility of allowing additional traffic to access Liberty Road from the CVS property, which could exacerbate a situation that is already bad. He also believes that the subject property could become a cut-through between Liberty Road and Cadentown Road.

Mr. Holmes stated that he also has concerns about allowing additional traffic on Liberty Road. He said that, if the subject property must be developed, he would prefer to see all of the access traffic directed toward Cadentown Road, rather than Liberty Road. He noted that he would rather see the property develop for residential use, in keeping with the surrounding area, than a commercial use, which could generate even more traffic in the area.

Mr. Owens stated that he also has concerns about the traffic on Liberty Road. He agreed that the subject property is not well-suited to residential development, but he believed that rezoning the property to B-1 could change the character of the entire area from residential to commercial. Mr. Owens noted that he would not vote in favor of rezoning the property.

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

Mr. Day asked if there are any direct accesses to Liberty Road in this area, other than the new elementary school. Mr. Neal stated that Mickey Lane, which is a small residential street, connects from Liberty Road to Cadentown Road. He said that that is how most of the Cadentown Road residents access the new street. Mr. Day asked if there is any specific reason why there are so few accesses to Liberty Road. Mr. Neal answered that he did not believe that situation was planned, but it simply occurred as the various properties developed. He noted that the traffic situation in the area is already problematic, so the Division of Traffic Engineering staff did not believe that the additional traffic from the subject property would make a major difference. He noted that developing the subject property with the proposed access to Liberty Road could "take some of the heat off" of the troublesome intersection at Liberty Road and Man O' War Boulevard.

Ms. Roche-Phillips stated that she does not agree that the changes to the subject property and surrounding area due to the Liberty Road widening project were anticipated by the 2007 Comprehensive Plan. She said that it had been known for years that the improvements would be made, but it was impossible to gauge the impact of the project without actually seeing the effects on the ground.

Ms. Roche-Phillips noted that she also had problems with the fact that the Board of Adjustment allowed the creation of an access easement for the CVS pharmacy in a residential zone. She believed that this situation is typical of allowing the "creep" of commercial uses into residential areas. Ms. Roche-Phillips stated, therefore, that she would support rezoning the property at 2981 Cadentown Road, which serves as the access easement for CVS pharmacy, to B-1. Ms. Wade stated that the address of the property with the existing access easement is actually 3097 Old Todds Road.

Ms. Whitman stated that she would agree with the applicant that the subject property is not suitable for residential development, and that the subject property "fits in" with the adjacent B-1 zoning better than the residential zoning. She noted that she does not believe that there is much opportunity for "commercial creep" in the area, as all of the surrounding properties are already developed. Ms. Whitman stated that she would be comfortable voting in favor of this request.

Zoning Action: A motion was made by Mr. Penn and seconded by Mr. Owens to disapprove MAR 2009-6, for the reasons provided by staff. The motion failed, 5 – 4 (Brewer, Copeland, Richardson, Roche-Phillips, and Whitman opposed; Cravens and Vaughn absent).

Zoning Motion: A motion was made by Ms. Roche-Phillips and seconded by Mr. Brewer to approve the rezoning to B-1 for the property at 3097 Old Todds Road (a portion of) **only**, including the proposed conditional zoning restrictions, for the following reasons:

1. There has been an unanticipated change of a physical, social, or economic nature in the community area since the Comprehensive Plan was adopted in 2007.
2. The existing R-1D zoning is inappropriate, and the proposed B-1 zoning is more in agreement with the Comprehensive Plan.

And to leave the property located at 2981 Cadentown Lane zoned R-1D.

Discussion of Motion: Mr. Brewer stated that he did not understand the reasoning behind rezoning only the property at 3097 Old Todds Road.

Ms. Roche-Phillips stated that the intent of her motion is to "clean up" the Board of Adjustment action by rezoning the drive aisle for the CVS pharmacy to B-1, so that the commercial use will have commercial zoning.

Mr. Owens asked if rezoning 3097 Old Todds Road would allow the property at 2981 Cadentown Road to remain zoned residential, to which Ms. Roche-Phillips answered that it would.

Ms. Wiseman stated that Ms. Roche-Phillips' motion must include the disapproval of the property at 2981 Cadentown Road, and Ms. Roche-Phillips must include findings that support that decision.

Mr. Brewer stated that Ms. Roche-Phillips' motion would not address the concerns of Mr. Abdulkader, the owner of the adjoining property, or satisfy the petitioner's desire to rezone the property. He noted that he would not be in support of this motion.

Zoning Action: Ms. Roche-Phillips' motion passed, 6 – 3 (Brewer, Richardson, and Whitman opposed; Cravens and Vaughn absent).

Discussion of Action: Ms. Copeland stated that the Commission would need to address the rest of the property at 2981 Cadentown Lane.

Petitioner Comment: Ms. Wiseman noted that the prevailing side in the original motion could make a motion to reconsider, if they so chose.

Chair Comment: Mr. Day noted that the motion had been made and acted upon. He believed that, if there is any other action to be taken, it would be more appropriate to take it at another time.

Director Comment: Mr. King stated that the Commission had taken an action on **all** of the property that had been submitted for rezoning. He said that, if the Commission is going to reconsider that action, it would be most appropriate to do so today; otherwise, the staff will forward that recommendation, which was a final action by the Commission, to the Urban County Council for their consideration. He agreed that, should the Commission wish to reconsider their decision, someone from the prevailing side would need to put a "motion to reconsider" before the Commission. That motion would have to be seconded, and the Commission would need to vote to reconsider before the floor could be opened for a different motion on the property.

Motion to Reconsider: A motion was made by Ms. Copeland, and seconded by Ms. Richardson, to reconsider Ms. Roche-Phillips' motion. That motion failed, 5 – 4 (Day, Holmes, Owens, Penn, and Roche-Phillips opposed; Cravens and Vaughn absent.) Therefore, the action taken previously was not reconsidered, and stood.

Director Comment: Mr. King stated that, since a portion of the zone change was recommended for approval and was reflected on the development plan, that the Planning Commission could take action on the development plan to approve it with a condition that the area that was recommended for disapproval would be subject to further review, if the Council rezoned it. The portion recommended for approval, however, would be subject to the conditions on the development plan. Mr. King noted that the Commission could also choose to postpone the development plan pending action by the Council.

Development Plan Action: A motion was made by Mr. Penn, seconded by Mr. Owens, and carried 9-0 (Cravens and Vaughn absent) to indefinitely postpone ZDP 2009-28.

Note: Chairman Day declared a recess at 3:17 p.m. The meeting reconvened at 3:28 p.m.

C. PUBLIC HEARING ON ZONING ORDINANCE TEXT AMENDMENT REQUEST

- 1. ZOTA 2007-5: AMENDMENTS RELATED TO INFILL AND REDEVELOPMENT** – petition for Zoning Ordinance text amendments to Articles 1, 3, 4, 7, 8, 9, 12, 15, 16, 18, 22, 26, 28, and 29, to clarify and modify regulations in the defined Infill and Redevelopment Area. These amendments will expand the limits of mixed uses, change parking requirements, add accessory dwelling units, and increase the flexibility of the design of the Neighborhood Character Design Overlay (ND-1) zone.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: (Copies of the latest draft for this text are available upon request)

The Zoning Committee Recommended: **Approval of the proposed changes to Articles 1, 4, 7, 8, 9, 12, 15, 16, 18, 22, 26, and 29; and Referral to the full Commission of the proposed changes to Articles 3 and 28.**

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

1. This is a timely (third overall) text amendment to the Zoning Ordinance devoted to promotion of greater infill and redevelopment in Lexington-Fayette County. This proposal has had extensive review over nearly a two-year period of time, by a steering committee comprised of Council members and other citizens dedicated to this purpose.
2. The text amendments related to parking reductions (portions of Articles 7, 8, 16 and 28) are necessary and appropriate because they will permit a decrease in impermeable surface areas and decrease in stormwater runoff, will increase the use of shared parking arrangements, will respond to a more pedestrian-friendly environment, will help avoid demolition for surface parking lots, and will promote the reuse of neighborhood-oriented businesses inside the Infill & Redevelopment Area.
3. One of the recommendations of the Infill & Redevelopment Steering Committee Task Force process was to find ways to provide more affordable housing. Provision of accessory dwelling units has been used nationwide as a source of affordable housing, as well as a means to allow persons to age in place, and can be appropriate, if correctly developed and implemented, here in Lexington-Fayette County.
4. Providing for accessory dwelling units as part of the Infill & Redevelopment regulations will be a benefit to both property owners and potential tenants, as it will be a source of additional income to the property owner and a source of affordable housing for our community.
5. Expanding ND-1 to include non-residential development(s) will provide a design regulating tool to coincide with and implement the Non-Residential Infill Study that has recently been completed.
6. Adding the two proposed design standards that can be regulated or imposed through the ND-1 Overlay zoning process will help to maintain consistency with the changes proposed to Article 3 (accessory dwelling units). Being able to regulate floor area ratio through the ND-1 process will provide a measure of control, should property owners choose to allow accessory dwelling units as one of the ND-1 design standards for their neighborhood.

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

7. Minor changes proposed to Article 29 (clarification with regard to “applicant” vs. “requesting party” and deletion of the requirement that significant neighborhood support be demonstrated prior to initiation of a request for ND-1) are to simplify the ND-1 zoning process and make it more understandable for those who are interested in pursuing ND-1, as well as those who implement the process.
8. The provisions for the Mixed-Income Housing Bonuses will give developers an incentive to provide affordable housing units in their developments.
9. The proposed changes to the mixed use zones will increase the potential number of properties that could request a mixed use zone, while, at the same time, slightly increasing the density within those zones. The proposed changes are also expected to reduce the number and type of variances that have been consistently requested in mixed use zones, over the past few years.

Staff Presentation: Mr. Emmons began the staff's presentation by thanking former staff member Rachel Phillips, Ms. Rackers, and Ms. Wade for all of their hard work during the I/R text amendment process. He entered the Infill and Redevelopment Steering Committee report and Goal 8 of the Comprehensive Plan into the record of the meeting.

Mr. Emmons stated that the proposed set of text amendments comprise the third round of major Infill and Redevelopment text amendments since 2000, when the I/R area was first implemented. These text amendments are the culmination of two years' work, and are based on the recommendations of the I/R Steering Committee, the Underutilized Property Survey, and nationally-recognized smart growth planning principles. He reviewed the 10 major principles of smart growth with the Commission, which are: 1) mix land uses; 2) take advantage of compact building design; 3) create a range of housing opportunities and choices; 4) create walkable neighborhoods; 5) foster distinctive, attractive communities with a strong sense of place; 6) preserve open space, farmland, natural beauty, and critical environmental areas; 7) strengthen and direct development towards existing communities; 8) provide a variety of transportation choices; 9) make development decisions predictable, fair, and cost-effective; and 10) encourage community and stakeholder collaboration in development decisions.

Commission Question: Ms. Copeland asked if the members of the I/R Steering Committee were appointed by the mayor. Mr. Emmons responded that they were not. The I/R Steering Committee was initially created as an ad-hoc committee of the Urban County Council in the late 1990s, and was the driving force for the first Residential Infill Study in Fayette County. The Committee met periodically through the early 2000s, but underwent a resurgence of interest after the Planning Commission decided not to expand the Urban Service Area boundary in 2007. That year, the I/R Steering Committee began meeting regularly again, grew to over 40 members, and was eventually broken down into three task forces. Those task forces drafted over 100 action item recommendations, which are the basis for many of the changes proposed in this text amendment.

Mr. Sallee presented the portion of the staff report relating to proposed text changes in the mixed-use zones, which make up a significant portion of this text amendment. The changes that deal with mixed uses are primarily to Article 28 of the Zoning Ordinance, where the three mixed-use zones are contained. Some changes are also included in the definitions section of the Ordinance, as well as the P-1 and B-1 sections, the B-6P section, and Article 26, which includes the tree canopy standards.

Mr. Sallee said that one of the most significant changes in this text amendment is to broaden the locational criteria in which mixed-use zones may be requested. The current limit for mixed-use zones is within New Circle Road, but this text amendment would broaden to areas outside New Circle Road. The locational criteria in MU zones would also be amended to include Medium Density Residential and High Density Residential land use categories of the Comprehensive Plan. Another portion of this text amendment, however, would further limit mixed uses in Medium and High Density residential areas so that no more than 50% of their floor area could be commercial, which is a change from the current mixed-use standards. Also, those mixed uses would only be eligible if the minimum density recommended by the Comprehensive Plan is being proposed.

Mr. Sallee noted that several other changes to the locational criteria are also proposed for the mixed-use zones, one of which is to expand the roadway locations where mixed-use projects are eligible. Three of the roadways that would become eligible under this text amendment are Georgetown Road, Citation Boulevard, and Man O' War Boulevard. Most of those areas are outside of New Circle Road, with the exception of a small portion of Georgetown Road. Mr. Sallee identified these areas on a map display. Many of the other arterials in the community are currently eligible for mixed use zoning, under the current Article 28 provisions.

One of the changes proposed to the MU-1 zone, which permits mixed uses on lots less than one half an acre in size, is to expand its locational criteria to include collector streets. Currently, MU-1 zones are only allowed along arterial roadways, and there has only been one approved.

Mr. Sallee said that another significant change proposed deals with third-story setbacks, or the “bulk plane.” Currently, all of the mixed-use zones require the third floor of a structure to be set back from the right-of-way. Under this new proposal, that provision would still be applicable in two cases: first, if the street is narrow, with 50 feet or less of right-of-way; and second, if it is located directly across the street from a residential use. Otherwise, under this text amendment, there would be the ability for a mixed-use building not to have to follow that setback for the third and higher floors. This proposal is based on the large number of variance requests for the third floor and above, in all but one of the MU-2 and MU-3 zone applications that have been filed.

Mr. Sallee stated that one of the hallmarks of our mixed-use zones is the required 0' setback for a significant portion of these buildings. Mr. Sallee stated that, under this text amendment, the Planning Commission, if they require additional sidewalk width adjacent to a street right-of-way, that building may be set back at that point, rather than forcing it to be at the right-of-way line.

The building height requirements are proposed to change in the MU-3 zone as well. The MU-3 zone is the most intensive mixed-use zone, and is only eligible for properties three acres or larger in size. The proposed text amendment would allow buildings at the intersection of either two arterials, or an arterial with a collector street, to have an additional ten feet in height, up to 80 feet; and a building height limit of 70 feet would now apply in all areas that do not meet that locational criterion.

Mr. Sallee stated that there are other related changes proposed throughout the Zoning Ordinance. One is to reduce the minimum lot size in the MU-1 zone, since there has been some interest in mixed-use zoning for properties less than 7,500 square feet in size. In addition, drive-throughs are proposed to be prohibited in MU-1 zones. The staff is also proposing the insertion of tree canopy requirements for mixed-use zones into Article 26 of the Ordinance, as well as providing a definition of mixed use zones as MU-1, 2, or 3 zones in Article 1-11. Changes have been proposed to promote mixed-use projects in the P-1 and B-1 zones, including: lessening the open space requirement in those zones from 20% to 10%; allowing residential use in the B-6P zone; and establishing an off-street parking requirement that would encourage the use of shared parking in those zones.

Mr. Sallee said that the staff is recommending approval of these changes to the Zoning Ordinance, for the reason provided in finding #9 in the staff report and on the agenda.

Commission Questions: Ms. Copeland asked how the residential and commercial uses would be configured when both are included in a mixed-use project. Mr. Sallee answered that that question had been debated several times in front of the Planning Commission over the years. In the mixed-use zones, that question was addressed early on by establishing the provision that at least one building in a mixed-use project must have a mixture of uses in it. There is no automatic requirement that the remainder of the buildings must have a mixture of uses.

Mr. Owens asked if a mixture of uses will be required in only one building. Mr. Sallee responded that the mixed-use zone requires that the minimum 15% mix be in a mixed-use building, which is usually the largest building. Beyond that, an applicant has the ability to request segregated-use buildings in a project. Mr. Owens asked if there is any existing requirement with regard to a percentage of floor space. Mr. Sallee answered that, except for the 50/50 change that is included as a portion of this text amendment, a limitation of at least an 80/20 mix of uses was initially required. Currently, that requirement is an 85/15% mix of uses. Mr. Sallee noted that an exception was made for large projects and commercial use some years ago. In those situations, a minimum amount of commercial use, usually 10,000 or 15,000 square feet, would eliminate the percentage requirement for commercial space in a mixed-use building.

Ms. Roche-Phillips asked, using the Distillery District project as an example, if it will be possible to have a horizontal integration in a mixed-use project, as opposed to a vertical integration. She also asked if allowances would be made to accommodate distinctive uses, rather than just requiring a mixture of uses. Mr. Sallee responded that most of the buildings in the Distillery District are zoned Industrial, and would fall under the provisions of either industrial mixed-use or adaptive reuse. None of the changes proposed under this text amendment will affect those restrictions. There will still be development plan requirements for those as well. Mr. Emmons answered that a mixed-use project must still meet the minimum commercial/residential mixture in one building, and then a horizontal mixture would be allowed. Mr. Sallee noted that a 50/50 mixture would be allowed if a property before the Commission for rezoning is recommended for Medium or High Density Residential use. If it is recommended for mixed use or non-residential uses, the mixture can go as high as 85/15.

Action: A motion was made by Ms. Copeland, seconded by Mr. Penn, and carried 9-0 (Cravens and Vaughn absent) to approve the mixed-use portion of the proposed text amendments, for the reason provided by staff in finding #9 in the staff report and on the agenda.

Ms. Wade presented the portion of the staff report regarding proposed parking reductions. She said that these changes are proposed to Articles 7, 8, 16, and 28.

Ms. Wade stated that the first change proposed deals with restaurant parking requirements. Currently, restaurants are required to provide one parking space per four seats, which sometimes creates confusion if an applicant proposes outdoor seating. Requiring an applicant to provide parking based on outdoor seating can result in an excess amount of parking spaces, particularly since the smoking ban has led more restaurants to create outdoor seating areas. The staff is recommending a change to the P-1, B-1, B-3, B-6P, and CC zones to reduce the parking required for outdoor seating to one-half of the normal requirement. This would also apply to bars, cocktail lounges, restaurants with live entertainment, and adaptive reuse projects.

With regard to the mixed-use zones, the staff felt that there should be no parking required for outdoor seating, since shared parking is allowed in the MU-2 and MU-3 zones. The staff has proposed a reduction in parking for residential units, which is

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

currently required at one space per residential unit. For the MU-1 zone, the staff is proposing to reduce that number to ½ of a space per residential unit, which would provide for shared parking in that mixed-use zone as well. In the MU-2 and MU-3 zones, the staff's original proposal was to change the requirement, which involves the calculation of a complicated formula, to a requirement of one space per 300 square feet, with additional parking for any restaurant over 2,000 square feet. At the Zoning Committee meeting, however, the Division of Building Inspection staff suggested further simplifying that requirement, to which the Committee was agreeable. The staff is now proposing the Zoning Committee's recommendation to further simplify the requirements in the MU-2 and MU-3 zones, which is a simple calculation of one parking space per 300 square feet of floor area, without any additional required spaces for particular uses. Ms. Wade stated that another proposed change to the parking requirements in the mixed-use zones is to count on-street parking at one space per 22 linear feet of frontage. Also, the staff is proposing that no parking be required for mixed-income units.

Commission Questions: Mr. Holmes asked if the on-street parking calculation would be based on a radius from a given site. Ms. Wade answered that the parking requirement would be based on the frontage of the lot. If parking already exists along the frontage of a lot in a mixed-use project, that parking could be counted toward the requirement as well.

Ms. Wade said that the other parking reductions proposed with this text amendment fall within Article 16, which deals primarily with parking and vehicular use areas. In the past, a developer could reduce parking in a development if bicycle parking spaces were also provided, up to a 5% limit. These text amendments propose moving that provision to a separate section wherein bicycle parking reductions would still be permitted on a one-to-one basis up to 5%, but also allowing a reduction in parking of up to 5% for adjacency or nearness of up to 300 linear feet from a transit stop. If a transit shelter is located on the property or within 300 feet, a 10% parking reduction would be allowed. Collectively, bicycle parking and transit adjacency could provide up to a 15% reduction in parking on a development plan. Those reductions would be permitted only through the development plan process, which would require review by the Planning Commission. This proposed reduction would be restricted to townhouses and multi-family units, as well as P-1 and B-1 zones inside the defined I/R area.

The third major change proposed with regard to parking reductions involves increasing the flexibility for joint parking areas. Ms. Wade stated that, currently, there must be no overlap in the time those parking spaces are utilized, and no residential uses are allowed to take advantage of joint parking. The staff has proposed that those restrictions be relaxed, with some residential developments being allowed to participate, and allowing an overlap time of one hour.

Ms. Wade noted that the staff has also proposed a change to parking maximums so that they would only apply to surface parking. That would allow developments to utilize either underground or structure parking and have that not count against their maximum parking limitation.

The staff is also proposing to allow the Board of Adjustment to vary parking requirements, which they were allowed to do until 1983. Ms. Wade stated that the I/R text amendments enacted since 2000 have given the BOA back some ability to vary maximums of parking, but this would be the first time that they could vary a minimum parking. This would only be allowed inside the I/R area, and it would have a cap of 50%, including any other allowable parking reductions. The staff felt that this proposal could have a significant impact on the areas near South Limestone Street and North Limestone Street, where there are several businesses but limited parking areas.

Ms. Wade stated that the staff believes that parking can be a very important consideration in the development process. There is a general principle in planning that 50% or more of the land area for a development, particularly for commercial use, is often devoted to parking. If the parking requirements can be reduced, it could result in less impervious surface, which in turn means an improvement in stormwater management. Land could be utilized more efficiently, which would support Lexington-Fayette County's growth management goals and principles. Reducing required parking could also promote the reuse of existing neighborhood business areas, allow for more walkable and pedestrian-friendly environments, possibly prevent demolition of buildings for the provision of surface parking, and more fully utilize the community's existing on-street parking. Ms. Wade stated that the staff and the Zoning Committee are recommending approval of these changes to the parking requirements, for the reason listed in finding #2 in the staff report and on the agenda.

Commission Question: Ms. Richardson asked, with regard to the proposed changes to Article 16, if a transit stop must have a shelter in order to qualify for the proposed parking reduction. Ms. Wade responded that a transit stop without a shelter could have a 5% parking reduction, while a stop with a shelter could use a 10% reduction in parking under this draft.

Action: A motion was made by Mr. Holmes, seconded by Ms. Richardson, and carried 9-0 (Cravens and Vaughn absent) to approve the parking portion of the proposed text amendments, including the revised recommendations as submitted by staff, for the reason provided by staff.

Note: Ms. Roche-Phillips left the meeting at this time.

Mr. Emmons entered into the record of the meeting and distributed to the Commission a letter from Bill Lear, who supports most of the changes proposed in these text amendments. Mr. Lear would like for the allowable building height in the R-2 zone inside the Infill & Redevelopment Area to be increased, however.

Mr. Emmons stated that changes are proposed to Articles 1 and 16 with regard to driveways for single-family and two-family dwellings. In most suburban areas, driveway width is limited to 50% of the lot width; in the I/R area, that width was reduced to 25% of the lot width or 10 feet, whichever is greater. For most lots that are located mid-block, that width is acceptable. However, corner lots have a larger amount of frontage. Consequently, allowing driveways up to 25% of the lot width in those areas has resulted in several large driveways that the staff believes are inappropriate for the use. The staff proposes changing the Ordinance so that, in the I/R area, driveway width would be limited to a maximum of 10 feet.

Mr. Emmons said that another change proposed with these text amendments pertains to the calculation of floor area ratio. Currently, the method of calculation of floor area ratios results in a disincentive for developers to provide public streets. The proposed change would require that floor area ratio be calculated based on pre-development net acreage, which would provide developers with more of an incentive to construct public streets, as opposed to private streets or access easements.

As part of the recent emphasis on affordable housing in Lexington, the staff is proposing a new definition of mixed-income housing as part of this series of text amendments. The target demographic for this classification is individuals who do not qualify for federal assistance, yet are unable to afford the market rate for home purchases. Mr. Emmons said that that number would be determined based on the median income for the Lexington area; anyone who falls 80% or below the median income would qualify for federal assistance. The staff is proposing incentives for developers to construct affordable housing by providing a new definition and incentives including parking reductions and open space bonuses. Occupancy of the mixed-income units would be restricted to five years, as opposed to the 10-year period typical of most affordable housing programs.

Mr. Emmons noted that another proposed change to the Zoning Ordinance would clarify the definition of a townhouse. Currently, the Ordinance defines a townhouse as three or more attached units. The staff believed that it would be appropriate to allow two attached townhouse units in the R-1T zone. The R-3 and R-4 zones allow both duplexes and townhouses, and the duplex regulations are much stricter than the townhouse regulations. In the past, some developers sought to avoid those tighter regulations by constructing large duplexes, and referring to them as two-unit townhouses. This proposed text amendment would clarify the definition of a townhouse, but would not change the regulations in the R-3 or R-4 zones.

The staff is also proposing to include with this text amendment a requirement that any developer who wishes to redevelop a property in the downtown area must meet the provisions of the Downtown Streetscape Master Plan. These changes apply to several Articles of the Ordinance.

Mr. Emmons said, with regard to proposed changes for non-conforming uses, that the staff is proposing a requirement that those uses must adhere to the Infill and Redevelopment standards if they are within the defined I/R area. If a building has been constructed over an existing property line, any development on that property would be considered as a consolidation of the two properties.

The staff is also proposing to allow fences to be constructed to a height of eight feet along an alley. Currently, fences along an alley are only permitted to be six feet in height.

Mr. Emmons stated, with regard to commercial setbacks, that the staff is proposing to allow buildings in the B-1 or P-1 zones within the Infill & Redevelopment area to match the setbacks on either side. Currently, such a building would be required to meet a 20' minimum front setback, which is more suburban in character and may not be as appropriate for the I/R area.

Mr. Emmons said that the staff is recommending approval of these proposed changes, for the reasons listed in findings #1 and #8 in the staff report and on the agenda.

Commission Questions: Ms. Whitman asked how lots with irregular frontage would be regulated under the proposed text amendments. Mr. Emmons answered that the proposed changes to the R-2 zone should address lots with irregular frontage, as well as prevent some of the odd driveway configurations that have been constructed in the past.

Mr. Emmons stated, with regard to the letter the staff received from Bill Lear, that the R-2 zone currently has a height limit of 28' in the I/R area. Mr. Lear has requested that that height be increased to 35'. Mr. Emmons said that the 28' height limit was originally included as part of the 2001 I/R text amendments as a compatibility standard. The majority of the single-family developments located inside the I/R area are comprised of one- and two-story residences. As the staff considered Mr. Lear's proposal, they determined that, since there is very little existing R-1T zoning located in the I/R area, that a 35' height limit would be appropriate for new townhouses as they are developed, which is reflected in these proposed text amendments. With regard to the Two-Family Residential zones, however, the staff is not recommending an increase in allowable height to 35'. The staff is concerned about the large number of single family homes with R-2 zoning located within the I/R area, and a lack of compatibility between those existing homes and the possibility of 35' tall homes nearby. Mr. Emmons noted that, should a developer wish to construct a residence at 35' in height in an R-2 zone, they can appeal to the Board of Adjustment for a variance. The staff does recognize that two Comprehensive Plans have been completed since this height limit was imposed in

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

2001, and that the focus of the community has shifted in recent years to maintaining the Urban Service Area boundary and increasing density in existing residential areas.

Commission Questions: Mr. Penn asked if the staff was concerned that Mr. Lear's requested height increase is intended as a "push-back" to existing neighborhoods. Mr. Emmons answered that that was one of the staff's concerns, but he noted that Mr. Lear did not propose to increase building height in the single-family zones, just in the R-2 zone.

Mr. Owens asked, with regard to the proposed changes to the floor area ratio calculations, if that is intended to increase density. Mr. Emmons answered that those changes could possibly increase density, because a developer may be able to construct more buildings on a lot. However, the changes are intended to take away a developers' incentive to use private access easements. Mr. Owens asked how density can be increased, if incentives are provided to developers for increased open space. Mr. Emmons responded that, under these text amendments, developers could build taller buildings, as well as constructing mixed-income housing units, which would not require parking spaces. The staff is proposing to reduce the open space requirements in the P-1 and B-1 zones from 20% to 10%, if the developer provides residential units as part of the development. The "bonus" density, however, begins with an open space provision of 20%. Mr. Emmons noted that open space can be created as courtyard areas, balconies, or rooftop gardens, as well as grass spaces on the ground. Mr. Owens asked if any incentives would be provided for stormwater management as part of these text amendments. Mr. Emmons replied that no such changes are proposed as part of this text amendment, but the LFUCG staff has been researching possible changes to the stormwater regulations.

Ms. Whitman asked if the staff had a reason for not proposing a height increase to 35' in the R-2 zone. Mr. Emmons responded that the existing 28' height limit was part of the original residential I/R study concluded years ago.

Mr. Holmes asked if a developer could seek a variance for height, to which Mr. Emmons answered that the Board of Adjustment does have the ability to grant variances for height in the R-2 zone.

Mr. Brewer said that Mr. Lear's letter indicates that a height of 35' feet would be consistent with existing neighborhoods. Mr. Emmons answered that the height proposed by Mr. Lear would be consistent with the height requirements outside the I/R area. Mr. Brewer stated that it does not make sense, if incentives are being provided for infill and redevelopment, to limit building height in the I/R area.

Ms. Whitman stated that she believed that the whole purpose of infill and redevelopment was to be able to make changes such as this to existing policy. She said that there are many small, shotgun-type houses in the I/R area that could be used for infill and redevelopment if the regulations were relaxed. Mr. Sallee stated that the staff has not made many adjustments to the height of duplexes and single-family residences with this set of text amendments. In the original Infill and Redevelopment study, on which the first set of text amendments was based, many recommendations were made to relax the side and front yard setbacks, lot size restrictions, etc., but they were done with the understanding that there would be a reduced building height in the I/R area. The concept was created as a "package" to allow flexibility on many of the other requirements, with the additional height restriction from 35' to 28' at the same time.

Director Comments: Mr. King stated that the staff was "balancing two desires" when they drafted the first set of I/R text amendments: first, to allow more development and increased density; and second, to create standards to protect the character of the existing neighborhoods in which the infill and redevelopment initiatives would be taking place, and ensure compatibility with the new development. Whether seven feet of additional height in the R-2 zone would compromise that compatibility is a decision that the Planning Commission will have to make, but the current height restriction was based on a recommendation made by Norrie Winter as part of the initial Residential Infill and Redevelopment study recommendations.

Action: A motion was made by Mr. Brewer, seconded by Ms. Whitman, and carried 7-1 (Cravens, Roche-Phillips, and Vaughn absent; Holmes opposed) to approve the portion of the text amendments just described by Mr. Emmons, and changing the height requirement in the R-2 zone from 28' to 35' in the Infill and Redevelopment area.

Ms. Wade entered into the record of the meeting two letters, dating from 2007, at the time when Mr. Emmons and Ms. Phillips presented the original versions of these text amendments to the Fayette County Neighborhood Council. These responses were concerns about the proposed changes to the ND-1 zone.

Ms. Wade stated that, currently, Article 29 is allowed to apply to only residential zones. The recent Non-Residential Infill Study indicated that it may be appropriate to implement a non-residential ND-1 type of overlay zoning. The staff felt that expanding the ND-1 zone to include non-residential areas would accommodate the recommendations of that study, while allowing for some regulatory means to implement the study results.

The major change now proposed to the ND-1 zone would be to implement these non-residential design character overlay recommendations, which would be similar to the existing residential overlay requirements. Non-residential overlays could be suggested by either a neighborhood or the Planning Commission, as opposed to the required neighborhood origin requirements

of the existing ND-1 overlay zone. Also, ND-1 could be implemented to define a new character or protect an existing character.

Ms. Wade said that the other changes proposed to the ND-1 overlay zone provide for clarifications to the language of the text, to change the term "applicant" to "requesting party" as it applies to the ND-1 zone. The applicant is typically the Planning Commission or the Council. The staff is also proposing to delete a requirement for "significant neighborhood support," in part due to an amendment to the Planning Commission's by-laws which would require that the staff mail out postcards to property owners in order to gauge the level of support at an early phase in the process. That mailing could either take the place of, or be in addition to, the petitions that are typically filed as part of an ND-1 application.

Commission Question: Mr. Brewer asked what percent of property owners would be considered "significant support." Ms. Wade answered that, typically in the past, the staff and the Planning Commission have suggested that a neighborhood obtain the support of at least 50% of the property owners prior to beginning the ND-1 rezoning process.

Ms. Wade said that the proposed text amendment to the ND-1 overlay zone would also add new design standards. There are currently 15 possible design standards in the ND-1 package, and the staff felt that it would be appropriate to add: a) whether a neighborhood could restrict accessory dwelling units; b) the ability to restrict floor area ratios; and c) the ability to restrict signage for non-residential ND-1 overlay zones. Ms. Wade stated that the staff is recommending approval of the ND-1 changes, for findings #5, 6, and 7 as listed in the staff report and on the agenda.

Commission Question: Mr. Day asked if ND-1 overlay zones would still be initiated by the Planning Commission, to which Ms. Wade responded that they would. She noted that there would be an ND-1 request on the June Zoning Committee meeting agenda for the Westmorland neighborhood. If the Planning Commission by-laws amendment is approved at this meeting, the Zoning Committee would consider whether or not the Commission should initiate that ND-1 zoning. If the Zoning Committee decides that the neighborhood has sufficient support to initiate ND-1 overlay zoning, the staff would send out a mailing to all of the property owners in the Westmorland neighborhood; receive the postcards back; and place the ND-1 overlay zoning request on the Planning Commission's next agenda for initiation.

Action: A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 8-0 (Cravens, Roche-Phillips, and Vaughn absent) to approve the ND-1 portions of the proposed text amendments.

Mr. Emmons began the portion of the staff's presentation on accessory dwelling units by distributing to the Commission copies of a recent *Herald-Leader* article on "guest houses." He noted that, currently, guest houses are not allowed in Fayette County. However, there are provisions in the single-family zones to allow guest "living quarters" without a kitchen, and that is not allowed to be rented.

Mr. Emmons stated that an accessory dwelling unit (ADU) is a secondary housing unit on the same property as the main residence. The staff is proposing to allow accessory dwelling units only for single-family homes. The ADU must be clearly secondary to the main residence, and no greater than 30% of the size of the principal residence, or 750 square feet in size, whichever is less. The owner of the property would be required to live on the property, although they would not be required to live in the principal residence. The accessory dwelling units allowable under this text amendment proposal would be allowed to have a kitchen, and could be rented by the property owner.

Mr. Emmons said that the staff is proposing to allow ADUs at this time in response to the needs of shrinking households and an aging population. It has been suggested that allowing accessory dwelling units can contribute to neighborhood stability, by providing homeowners with another means to generate income or reside with family members. Accessory dwelling units can be a benefit to the environment by reducing utility costs. Mr. Emmons stated that the Lexington-Fayette Urban County Government could benefit from allowing ADUs by taking advantage of increased property tax revenue; minimizing subsidies for affordable housing; and maximizing the use of existing infrastructure. Accessory dwelling units could also allow growing and / or aging families to remain together, which could provide greater stability for the population.

The staff is proposing that accessory dwelling units be permitted only in conjunction with single-family homes. The ADU could be an apartment inside a single-family home; an exterior addition to the home; conversion of a garage or barn; a free-standing cottage; or, it could be designed into new construction. With regard to this proposed regulation of accessory dwelling units, Mr. Emmons stated that the owner of the property would be required to reside there. The property would have to be a minimum of 4,000 square feet in size. In addition, the staff is proposing a size limitation of 750 square feet or 30% of the size of the principal residence, whichever is less, for the ADU, and it would be limited to one bedroom only. Access to ADUs is also proposed to be controlled via front door limitations. Anyone wishing to construct a new ADU would be required to obtain a building permit, while existing ADUs (such as those described in the recent article) would have the opportunity to become a legal use. Those existing ADUs would be regulated by the Division of Code Enforcement. Mr. Emmons noted that accessory dwelling units would become conditional uses on lot sizes between 4,000 and 8,000 square feet (most of the I/R area), and permitted uses on lots larger than 8,000 square feet.

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

Commission Question: Mr. Holmes asked why basement accessory dwelling would not be allowed. Mr. Emmons responded that basement ADUs would be allowed under this text amendment.

Mr. Emmons stated that, in other communities where accessory dwelling units are currently allowed, regulations range from very liberal to very conservative. With the first draft of this text amendment, the staff attempted to suggest regulations that would be neither too conservative nor too liberal. The staff is proposing, however, the most liberal parking regulation as possible, i.e., no additional parking required for ADUs. The property owner would have the choice of either providing a parking space for their ADU, or allowing the tenant to use the home's existing parking area or driveway.

Mr. Emmons stated that the staff is recommending approval of these proposed changes to the Zoning Ordinance, for the reasons as listed in findings #3 and #4 in the staff report and on the agenda.

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

Commission Questions: Mr. Day asked if accessory dwelling units would be allowed in the defined I/R area only. Mr. Emmons answered that ADUs would be allowed for all single-family residences under this draft proposal.

Mr. Holmes stated that he believed that it would be a "stretch" to consider accessory dwelling units as affordable housing.

Ms. Richardson asked how the staff determined that 750 square feet would be an appropriate size for an ADU. Mr. Emmons replied that that is the size of a typical one-bedroom apartment.

Mr. Owens asked if any open space would be required for lots with accessory dwelling units. Mr. Emmons answered that there are no minimum open space requirements for our single-family zones, just building (yard) setbacks. Mr. Owens asked if the ADU would be required to follow those setback requirements, to which Mr. Emmons replied that they would. Mr. Owens asked if the neighborhood associations had offered any comments with regard to ADUs. Mr. Emmons responded that he had not spoken with anyone personally, but he suspected that they may have some concerns. Mr. Owens asked if the proposed text amendments should be formally presented to the neighborhood associations so that they would have an opportunity to respond. Mr. Emmons noted that, if the Planning Commission was not comfortable addressing accessory dwelling units at this time, they could be separated out into a separate text amendment, and proceed under a different timeline.

Mr. Day asked how accessory dwelling units are currently controlled. Mr. Emmons answered that, currently, guest accommodations are only allowed to exist in residential and agricultural zones without a kitchen, and they cannot be rented to a tenant. Mr. Day asked if the proposed text amendment is intended to promote the use of ADUs, or limit them. Mr. Emmons responded that the staff attempted to strike a balance between limiting and promoting ADUs. Mr. Day noted that he believes that there are many unregulated guest houses in Lexington at this time.

Mr. Penn asked if the staff was comfortable with the proposed text amendments, or if they believed it would be more appropriate to discuss the proposal further with the neighborhood associations. Mr. Emmons responded that the staff is recommending approval of this portion of the proposed text amendments; but, if the Commission is not comfortable approving this portion at this time, they could make a motion to withdraw it and initiate it as a separate text amendment.

Director Comments: Mr. King suggested that, rather than a motion to withdraw this portion of the text amendment, they make a motion to indefinitely postpone this section if they are not comfortable voting on it at this time. That would keep the application alive, and the staff could discuss it further with the Council's Planning Committee and Councilmember Gorton, as it is a very important community issue.

Mr. Penn stated that he believed that it would be more appropriate to discuss the issue fully first, and receive feedback, than to approve it at this point and then be forced to defend it.

Mr. King noted that all of the neighborhood associations had received notification that these text amendments were being considered, but the staff had not received much feedback. He said that he was surprised about that, because most proposed changes produce some amount of discussion within the community.

Ms. Copeland stated that she had done some research on this issue, and found that the conservation guidelines for Chapel Hill, NC, address some of the concerns about accessory dwelling units. She stated that part of her concern relates to the definition of what comprises a "single family" use.

Action: A motion was made by Ms. Whitman, seconded by Ms. Richardson, and carried 7-0 (Brewer, Cravens, Roche-Phillips, and Vaughn absent) to indefinitely postpone the text amendments related to accessory dwelling units.

V. COMMISSION ITEMS

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

- A. ZONING ORDINANCE TEXT AMENDMENT INITIATION** – The staff will request Commission initiation of a text amendment to Article 27 of the Zoning Ordinance. This text amendment is to prohibit demolition, building, or other permits from being issued by the LFUCG in the instance of an appeal of a decision by the Courthouse Area Design Review Board to the Planning Commission until after the Planning Commission holds a public hearing and takes action on the appeal. If initiated, the requisite public hearing could be held next month.

Director Comments: Mr. King stated that the staff would request that the Planning Commission initiate a text amendment to Article 27, the need for which arose from the “fallout” of the CentrePointe project and the question of appeals from the Courthouse Area Design Review Board. The CHADRB approved the project, and objectors appealed that decision to the Planning Commission. There was a question whether or not the fact that an appeal had been filed could stop the demolition of those structures, which went to court. The local court ruled that, since the Ordinance did not specifically say that demolition could be stopped, the developer would be allowed to begin demolition of the buildings. It was clear to the staff, however, that the legislative intent of an appeal process to the Planning Commission should not allow that appeal to become moot through the demolition. The staff believes that it is appropriate at this time to initiate a text amendment to make the Ordinance clear that, if an appeal is filed, a developer could not proceed with the action that brought about the appeal during the appeal period. Mr. King stated that the Council took an action to request a similar text amendment, but he was unsure as to whether they had formalized that action. The consensus seems to be widespread, however, that this text amendment should be considered. The staff is requesting, therefore, that the Planning Commission officially initiate this request, and they have drafted the text to address the issue. Should the Commission choose to initiate this text amendment, the staff will be prepared to present it at the zoning public hearing in July.

Action: A motion was made by Mr. Penn, seconded by Ms. Whitman, and carried 7-0 (Brewer, Cravens, Roche-Phillips and Vaughn absent) to initiate a text amendment to Article 27 per the staff's request.

- B. PLANNING COMMISSION BY-LAWS AMENDMENTS** – The Commission will consider making a few changes to their By-laws, to 1) allow for some reapproval requests to be placed on their consent agenda, and 2) require advance notification to property owners in areas requested for overlay zoning. The Commission reviewed and discussed these changes at two work sessions earlier this year.

Staff Comment: Mr. Sallee stated that the staff had distributed copies of the proposed by-laws to the Commission members at the beginning of this meeting. There are two major changes proposed to the by-laws: first, to allow reapproval and extension items that were approved by the Commission in the last three years to appear on the consent agenda; and second, to require advance notification to property owners in areas requested for overlay zoning. Approval of this change to the by-laws would formalize that process, and set in place the procedure for that mailing. Mr. Sallee asked that the Commission consider adopting these by-laws at this time, along with the corollary changes proposed to the table of contents.

Action: A motion was made by Mr. Owens, seconded by Mr. Holmes, and carried 7-0 (Brewer, Cravens, Roche-Phillips, and Vaughn absent) to approve the changes to the by-laws as recommend by the staff.

VI. STAFF ITEMS

- VII. 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.

VIII. MEETING DATES FOR JUNE, 2009

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	June 4, 2009
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	June 4, 2009
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	June 11, 2009
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	June 18, 2009
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	June 24, 2009
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	June 25, 2009

- IX. ADJOURNMENT** – There being no further business, Chairman Day declared the meeting adjourned at 5:26 p.m.