

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, June 7, 2012, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Mike Cravens, Carla Blanton, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. **ZOTA 2012-7: AMEND THE NOTIFICATION REQUIREMENTS FOR CONDITIONAL USE PERMIT APPLICATIONS (6/18/12)*** – petition for a Zoning Ordinance text amendment to modify the notification requirements for Conditional Use Permit applications to the Board of Adjustment by increasing the notification area to a distance of 800 feet from the subject property, and requiring notice to the nearest neighborhood association or homeowner's association, regardless of distance.

INITIATED BY: Urban County Council

PROPOSED TEXT: (Note: Underlined text indicates an addition, ~~text dashed through~~ indicates a deletion to the current Zoning Ordinance.)

7-5 NOTICE - The Board shall fix a reasonable time for hearing an action or appeal and shall give public notice in accordance with KRS Chapter 424, as well as written notice as set forth more fully herein. Any person may appear at the hearing personally or by attorney. All applications shall be decided by the Board within sixty (60) days from the date of the application, unless postponement is granted pursuant to the Board's bylaws.

When an application is made for a variance, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to the owner of every parcel of property within two hundred (200) feet of the property to which the application applies. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a 200-foot radius of the subject property, but to the next two properties beyond those included in the 200-foot radius; but in no event shall notice be required for property more than twenty-four hundred (2,400) feet from the subject property.

When an application is made for a conditional use permit, administrative review, non-conforming use or structure appeal, or any other appeal, written notice shall be given at least twenty-one (21) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to owners of parcels of property within eight hundred (800) feet ~~four hundred (400) feet~~ of the property to which the application applies. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within an 800-foot ~~400-foot~~ radius of the subject property, but to the next two properties beyond those included in the 800-foot ~~400-foot~~ radius; but in no event shall notice be required for property more than one (1) mile from the subject property. In addition, notification shall also be given by first class mail to the neighborhood or homeowner's association which is nearest to the subject property, regardless of distance. Such association must be duly registered with the government through its Division of GIS.

All written notice shall be by first-class mail, with certification by the Board's Secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the Board the name and address of an owner of each parcel of property as described in this section and of the nearest neighborhood or homeowner's association. Records maintained by the Property Valuation Administrator may be relied upon to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group that administers property commonly owned by the condominium or cooperative owners.

STAFF ALTERNATIVE TEXT: (Note: Underlined text indicates an addition, ~~text dashed through~~ indicates a deletion to the current Zoning Ordinance.)

7-5 NOTICE - The Board shall fix a reasonable time for hearing an action or appeal and shall give public notice in accordance with KRS Chapter 424, as well as written notice as set forth more fully herein. Any person may appear at the hearing personally or by attorney. All applications shall be decided by the Board within sixty (60) days from the date of the application, unless postponement is granted pursuant to the Board's bylaws.

When an application is made for a variance, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to the owner of every parcel of property within two hundred (200) feet of the property to which the application applies. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U),

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

Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a 200-foot radius of the subject property, but to the next two properties beyond those included in the 200-foot radius; but in no event shall notice be required for property more than twenty-four hundred (2,400) feet from the subject property.

When an application is made for a conditional use permit, administrative review, non-conforming use or structure appeal, or any other appeal, written notice shall be given at least twenty-one (21) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to owners of parcels of property within five hundred (500) ~~four hundred (400)~~-feet of the property to which the application applies. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a 500-foot ~~400-foot~~-radius of the subject property, but to the next two properties beyond those included in the 500-foot ~~400-foot~~-radius; but in no event shall notice be required for property more than one (1) mile from the subject property. Notification shall also be given by first-class mail to any neighborhood or homeowner's association within the 500-foot radius of the subject property. Such association must be duly registered with the government through the Division of Planning and the Office of Geographic Information Systems (GIS). In addition, for any conditional use permit, notice of the public hearing shall be posted on the subject property for fourteen (14) consecutive days prior to the hearing.

All written notice shall be by first-class mail, with certification by the Board's Secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the Board the name and address of an owner of each parcel of property as described in this section and of any neighborhood or homeowner's association located within the required notice area. Records maintained by the Property Valuation Administrator may be relied upon to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group that administers property commonly owned by the condominium or cooperative owners.

The Zoning Committee Recommended: **Approval of the Staff Alternative Text.**

The Staff Recommends: **Approval of the Staff Alternative Text,** for the following reasons:

1. The staff alternative text amendment is supported by Goal #1 of the 2007 Comprehensive Plan, which endorses providing planning processes which enable widespread citizen participation and benefit the community.
2. The text amendment would increase the notice to nearby property owners, require notice to neighborhood or homeowner's associations within the required notice area, and would require a sign to be posted on the subject property associated with a conditional use application well in advance of the Board of Adjustment's public hearings.

Staff Presentation - Ms. Wade directed the Commission's attention to the staff's packet of information, and noted that the packet contains the staff report, the Kentucky Revised Statutes 100.237 (conditional use permits) and the staff's case study that illustrates the mailings required by a notification distance of 400' and the staff's proposed notification distance (500'), and the Council proposal (800').

Ms. Wade said that the Lexington-Fayette Urban County Council initiated the text amendment to Article 7-5 of the Zoning Ordinance in order to increase the notification area for Board of Adjustment conditional use permits and administrative appeals, as well as to notify the nearest neighborhood or homeowner's association. She then said that KRS 100.237, subsection 6, requires mail notification to be sent to the property owners that are adjoining the subject property. However, the Zoning Ordinance requires notification to be sent to the property owners located within a 400-foot radius from the property, for which the conditional use permit is required. Ms. Wade then said that, once a text amendment has been initiated, the Planning Commission has 60 days to review the proposed amendment and make their recommendation to Council. She noted that the Council had initiated this text amendment in April, 2012, and the Commission's deadline is June 18, 2012.

Ms. Wade stated that the proposed text amendment is to expand the written notification area from 400' to 800', and to provide a written notification to the neighborhood or homeowner's association regardless of the distance, as well as to notify only the associations that are "duly registered" with the LFUCG through the Geographic Information System (GIS).

Ms. Wade said that the Division of Planning has established a neighborhood association database for Lexington. The purpose of this database is to notify the neighborhood associations that are near the areas subject to a zone change, text amendment, conditional use and variance applications, as well as to provide notification for the Comprehensive Plan updates. Along with the Division of Planning, other government divisions use this database for notification purposes regarding surrounding activities. She added that this database is available online for public use. Ms. Wade said the neighborhood association database has approximately 250 registered neighborhood associations, and at least 10 percent of these registered associations have not established a boundary for their neighborhood. She noted that, in looking at the neighborhood association map, some neighborhood associations overlap each other; but in some places there are gaps between the neighborhood associations. Ms. Wade noted that, as for the homeowner associations, these areas have not

yet been established with their neighborhood association and are not included in the LFUCG database to receive notification. She said that the county-wide organizations that are notified include the Fayette Alliance and the Fayette County Neighborhood Council. Ms. Wade indicated that, in the past, some neighborhood associations were formed to oppose a particular zone change or conditional use permit; then once that case has been considered, the association(s) became inactive.

Ms. Wade said that since the 1970s, as a courtesy, the Lexington-Fayette Urban County Government provides neighborhood association's notice of pending requests, as well as providing property owners notice of conditional use permits and zone changes within a 400-foot radius. She then said that in the 1980s, that notice requirement was specifically added to the Zoning Ordinance and has remained unchanged.

Ms. Wade then said that the staff is supportive of expanding the notice area; however, there were several concerns associated with the text amendment as proposed. First, there were concerns with increasing the cost of the mailed notification with the increase of property owners. She said that the cost of the mailing is the applicant's responsibility; and in many of these cases, the applicant is an average resident of Lexington. Most of these types of applications submitted are for day care facilities or in-home businesses, and increasing the mailing costs would pose a hardship on some of these applicants. Ms. Wade said that a second concern is that the Zoning Ordinance currently treats the notification for a zone change and a conditional use application equally, and the proposed text amendment would give greater importance to conditional use applications, which is not what the staff wants to convey to neighborhoods and to future applicants. The next concern of the staff is establishing what is the nearest neighborhood or homeowner's association. She said that this can be a subjective assessment, since requested zone changes may have multiple neighborhood associations near the property in question. She then said that only requiring notice to one neighborhood association that is closest to the request could create a situation where errors could occur, adding that the Planning Staff does their best in providing notification to the appropriate neighborhood association with regard to zone changes. Lastly, the staff has a concern with the formation of the neighborhood associations and the inconsistencies with their boundaries. The Division of Planning maintains the database to provide information to the community as a whole, but the mapping and database is not a perfect system, which is a requirement of "legal" notice.

Ms. Wade directed the Commission's attention to the staff exhibit, and explained that when the staff reviewed the conditional use applications submitted in 2011 and applied the Council's proposal of an 800 feet radius, it resulted in a 172 percent increase in the mailing cost borne by the applicant due to the additional number of properties being notified. For example, case C-2011-1 had required 7 properties to be notified with the current 400-foot radius. This cost the applicant \$3.29 in first-class postage. When applying the Council proposal of the 800-foot radius, the number of properties increased to 10, costing the applicant \$4.70 in postage handling. Another example was case C-2011-11, which had required 77 properties to be notified with the current 400-foot radius. This cost the applicant \$36.19 in postage handling. When applying the Council's proposal of an 800-foot notification radius, the properties increased to 236, which would have cost the applicant to pay \$110.92 in postage handling.

Ms. Wade said that the staff is suggesting the notification area to be increased to 500 feet, rather than 800 feet. She noted that the increase to 500 feet would be reasonable and would not be unbearable to the applicant and the cost of postage. She then said that when applying the staff's proposal for the 500-foot notification radius, there would be an increase of 32 percent in the cost and the number of properties being notified.

Ms. Wade said that the staff was also concerned with the notification applying to only associations that are "duly registered" with the LFUCG through GIS. She then said that the neighborhood associations would need to be registered with the Division of Planning as well as GIS. The staff is recommending that the notification area to increased from 400' to 500'; notify any "duly registered" neighborhood or homeowner's association within 500' of the subject property; and post a notice sign on the property at least 14 days prior to the public hearing for a conditional use permit. She noted that the sign posting is more visible to the community and it will be an efficient method to notify the nearby property owners, renters and so forth.

Ms. Wade concluded by saying that the staff is recommending approval of the Staff Alternative Text, for the following reasons:

1. The staff alternative text amendment is supported by Goal #1 of the 2007 Comprehensive Plan, which endorses providing planning processes which enable widespread citizen participation and benefit the community.
2. The text amendment would increase the notice to nearby property owners, require notice to neighborhood or homeowner's associations within the required notice area, and would require a sign to be posted on the subject property associated with a conditional use application well in advance of the Board of Adjustment's public hearings.

Planning Commission Questions – Ms. Plumlee asked what is the current requirement for the posting of a sign. Ms. Wade said that the current requirement for a zone change is 14 days prior to the hearing. She then said that the proposed text amendment would allow consistency with the zoning requirement.

Mr. Owens said that the mailing notification is required to be 21 days prior to the hearing, and asked if the requirement for posting of the sign is only 14 days prior to the hearing. Ms. Wade explained that there is a tiered approach in the

notification of a pending request. She said that notice is sent via USPS 21 days prior to the hearing, a sign is posted 14 days prior to the hearing and legal notice is placed in the newspaper about 7 days prior to the hearing. She then said that any longer than the 14 days would pose a problem for the sign to remain in good condition and remain posted on the property. Mr. Sallee added that KRS 100 requires a zone change sign to be posted 14 days prior to the hearing and the staff believed that this proposal should be consistent with that statute.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Penn, and carried 8-1 (Cravens opposed; Berkley and Roche-Phillips absent) to approve the staff alternative text for ZOTA 2012-7, for the reasons provided by staff.

Staff Comments - Ms. Wade noted that, if this proposal is accepted by the Lexington-Fayette Urban County Council, the staff would be requesting that the Commission initiate a text amendment to match the Map Amendment Request notice to the Board of Adjustment notice, whether it is approved at 500 feet or 800 feet.