

V. **ZONING ITEMS** - The Zoning Committee met on Thursday, October 3, 2013, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Patrick Brewer, Mike Cravens, David Drake, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **FULL PUBLIC HEARING ON ZONING ORDINANCE TEXT AMENDMENT**

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

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)

1. **ZOTA 2013-9: FLEX SPACE PROJECTS IN THE WHOLESALE AND WAREHOUSE BUSINESS (B-4) AND LIGHT INDUSTRIAL (I-1) ZONES** – petition for a Zoning Ordinance text amendment to create a "flex space project" in the Wholesale and Warehouse Business (B-4) and Light Industrial (I-1) zones.

REQUESTED BY: The Howser Group, LLC

PROPOSED TEXT: (Note: Underlined text indicates an addition to the current Zoning Ordinance.)

ARTICLE 8-21 WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE

8-21(b) Principal Uses

- 21. Office uses, limited to a maximum square footage of 60% of the floor area in the building in which the use is located.
- 22. Office/warehouse mixed-use project, as further regulated by Article 8-21(o)(3).
- 23. Adaptive Reuse Projects, as further regulated in 8-21(o)4.
- 26. Flex Space Project. Flex space projects may be permitted by the Planning Commission upon the approval of a final development plan, subject to the following requirements:
 - a. The property must be the site of an existing building with substantial lot coverage which does not allow substantial expansion of the building or parking facilities.
 - b. The existing building must remain on the property.
 - c. Principal uses in flex space projects shall include:
 - 1. Any of the principal uses permitted in the underlying zone.
 - 2. Schools; libraries; museums; art galleries; studios for work or teaching of fine arts, metal work, photography, dance, drama or theater.
 - 3. Community centers, churches and private clubs.
 - 4. Establishments for the retail sale of merchandise, food and food products.
 - 5. Restaurants.
 - 6. Offices.
 - 7. Health clubs, athletic clubs and spas.
 - d. Accessory uses that are clearly incidental and subordinate to the principal uses.
 - e. Conditional uses:
 - 1. Drive-through facilities.
 - f. Prohibited uses:
 - 1. All adult uses, as listed in Section 8-16 (e)(14 through 17).
 - g. Parking.
 - 1. Restaurants. As set forth in the B-1 zone.
 - 2. All other uses, one space per 600 square feet.
 - h. Signage, lot, yard and height requirements shall be as set forth in the underlying zone.
 - i. The applicant shall submit a statement with the development plan that shall address the compatibility of the flex space project with the surrounding area. This statement may address the following:
 - 1. Whether restaurant uses, which require a higher number of parking spaces, will be allowed in the project.

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2. Whether the project is located on a major arterial; and if it is, whether additional parking needs to be provided to accommodate "impulse" customers.
3. Whether the project is located in an area of mixed uses and zones.
4. Whether the area has historically had a mixture of retail and wholesaling types of uses.
5. Whether the project is located in a block front which contains residential zoning.

The Zoning Committee Recommended: Approval.

The Staff Recommends: Postponement, for the following reasons:

1. The proposed text amendment to create a "flex space project" in the B-4 and I-1 zones may be addressing a community need; however, more edits are needed to take this proposal into a final form that the staff can support.
2. The staff would like to research other alternatives to the approach suggested by the petitioner to meet the same outcome – more flexibility in the B-4 zone.

Staff Presentation: Ms. Wade presented the staff report for this proposed text amendment, explaining that the petitioner is proposing to create a new principal use, called a "flex space project," in the B-4 zone, which would carry forward to the I-1 and I-2 zones as well.

Ms. Wade stated that the petitioner is proposing this text amendment in order to create additional flexibility in the B-4, I-1, and I-2 zones, with the stated purpose of assisting in growing small businesses without adversely affecting surrounding areas. The proposed text would require the filing of a development plan with a flex space project, which would be reviewed by the Planning Commission. In addition, the proposed text would allow schools; libraries; museums; art galleries; churches and private clubs; establishments for retail sale of merchandise and food; restaurants; offices; and athletic clubs; and similar uses. The petitioner is also proposing some additional criteria for the Planning Commission to consider in evaluating requests for flex space projects.

Ms. Wade said that, in their justification, the petitioner identified some areas within Lexington-Fayette County that are zoned B-4 or I-1 and that they believe are underperforming in terms of job creation. They believe that providing additional zoning flexibility would allow for the creation of business incubation areas. The petitioner currently owns property in the Regency Road/Moore Drive area, which has a mixture of several different zoning categories and land uses. Ms. Wade stated that that area includes businesses that are involved in warehousing, processing, storage and distribution, and retail sales. The petitioner believes that the percentage of space used for a particular function shifts over the lifetime of a business; often, a business begins with only wholesale operations, then branches out to retail sales. The Zoning Ordinance, however, sometimes does not allow those types of shifts. The petitioner contends that, as those businesses mature, they are often forced to choose between conforming with the requirements of the Zoning Ordinance, and moving to another location or closing because they are unable to expand. Ms. Wade stated that the staff also identified the Fortune Drive and Creative Drive areas, which have a similar mixture of uses, including warehouses in close proximity to retail uses.

Ms. Wade noted that the staff had distributed an exhibit, which outlined some of the other means by which to achieve a mix of uses on a property in the B-4 zone. She said that, in the past, office uses have been permitted to be mixed with warehouse uses, in some cases occupying up to 75% of the space. In addition, retail sales are permitted as accessory to some uses in these zones for some types of sales. For the sales of certain products, such as lumber and furniture, retail sale is allowed as a principal use.

Ms. Wade stated that the 2012 Comprehensive Plan Goals & Objectives, Theme C, refers to creating jobs and prosperity. The petitioner cited that Theme as one of the primary reasons for the appropriateness of the proposed text amendment. They also believe that the proposed text amendment will help to support and encourage the growth of local businesses, which is identified as a Goal in the 2012 Goals & Objectives.

Ms. Wade said that the staff initially had some concerns about the petitioner's proposed text, and they recommended postponement to the Zoning Committee based on those issues. The Zoning Committee understood that the staff was in support of the concept, but had issues with the proposed text; so they recommended approval of this text amendment at their meeting three weeks ago, with the understanding that the staff and the petitioner intended to meet and resolve those concerns. The staff met with the petitioner, who addressed some of their concerns, particularly with regard to the more technical issues involved in the proposed text amendment. The staff conducted some additional research into the subject, and determined that the petitioner's proposal is equally as good as some of the other approaches that could address the flex space issue.

Ms. Wade stated that the following revised text, submitted by the petitioner, was included in the supplemental staff report, which was distributed to the Commission members:

ARTICLE 8-21 WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE

8-21(b) Principal Uses

21. Office uses, limited to a maximum square footage of 60% of the floor area in the building in which the use is located.
22. Office/warehouse mixed-use project, as further regulated by Article 8-21(o)(3).
23. Adaptive Reuse Projects, as further regulated in 8-21(o)4.
- ...
26. Flex Space Project, as further regulated in Section 8-21(o)5.

8-21(o) Special Provisions:

5. Flex space projects may be permitted by the Planning Commission upon the approval of a final development plan, subject to the following requirements:
 - a. The property must be the site of an existing building with substantial lot coverage which does not allow substantial expansion of the building or parking facilities.
 - b. The existing building must remain on the property.
 - c. Principal uses in flex space projects shall include:
 1. Any of the principal uses permitted in the underlying zone.
 2. Schools; libraries; museums; art galleries; studios for work or teaching of fine arts, metal work, photography, dance, drama or theater.
 3. Churches and private clubs.
 4. Establishments for the retail sale of merchandise, food and food products.
 5. Restaurants, if under 4,000 square feet in area.
 6. Offices.
 7. Health clubs, athletic clubs and spas.
 - d. Accessory uses that are clearly incidental and subordinate to the principal uses.
 - e. Conditional uses:
 1. Drive-through facilities.
 - f. Prohibited uses:
 1. All adult uses, as listed in Section 8-16(e)(14 through 17).
 - g. Parking.
 1. Restaurants. As set forth in the B-1 zone.
 2. All other uses, one space per 600 square feet.
 - h. Signage, lot, yard and height requirements shall be as set forth in the underlying zone.
 - i. The applicant shall submit a statement with the development plan that shall address the following locational and compatibility factors, as well as other issues the applicant may wish to address:
 1. A Flex Space Project shall generally not be located on a major arterial. (If the Project is located on a major arterial, the applicant shall address whether additional parking needs to be provided to accommodate "impulse" customers).
 2. The Project shall generally be located in an area of mixed uses and zones.
 3. The Project shall generally be located in an area which has historically had a mixture of retail and wholesaling types of uses.
 4. The Project shall generally be located in a B-4 or I-1 area in which, due to small lot size, adjacent uses, or condition or status of roads, it would not be appropriate to construct larger B-4 or I-1 uses, such as truck terminals, manufacturing facilities or large warehousing facilities.
 5. The project shall generally not be located in a block front which contains residential zoning.
 6. If the Project is proposed to include restaurant uses, the applicant shall demonstrate that any additional parking needed for restaurant uses is available and accessible.

Ms. Wade stated that the staff did not agree with the petitioner's assertion that it is necessary to maintain the building on a lot for a flex space project. The staff did believe, however, that it is important that flex space projects be permitted only outside of the defined Infill & Redevelopment (I/R) Area, so that they will not compete with adaptive reuse projects, which must be located inside the I/R Area. The flex space project would be similar to the adaptive reuse project concept, except they would allow fewer uses, and would require fewer necessary criteria and improvements to the property. Ms. Wade said that the staff was also suggesting adding a phrase to the intent of the zone regarding flexible use of sites outside the I/R Area, and limiting establishments for retail sale of merchandise, food, and other food products to 8,000 square feet. The petitioner has agreed to restrict restaurants to just 4,000 square feet, and the staff believed that a similar restriction was important to prevent the use of a flex space property from becoming just a retail establishment. Ms. Wade stated that the staff is recommending approval of the following staff alternative text:

Staff Alternative Text**ARTICLE 8-21 WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE**

8-21(a) Intent – This zone is intended primarily for wholesaling, warehousing, storage operations and establishments whose activity is of the same general character as the above. To a lesser extent, this zone is also intended to provide for the

mixture of professional offices and warehouses that promote reuse and redevelopment of older warehouses, allowing businesses to combine their entire operation in one building, as recommended for the Office/Warehouse land use category in the Comprehensive Plan. This zone is also intended to encourage the adaptive reuse of older structures in or adjoining the Infill and Redevelopment Area to promote revitalization of these buildings, and the flexible use of sites outside of the Infill and Redevelopment Area. The Comprehensive Plan should be used to determine the appropriate locations for this zone. Consideration should be given to the relationship of this zone to the surrounding land uses and the adequacy of the street system to serve the anticipated traffic needs.

8-21(b) Principal Uses

- ...
- 21. Office uses, limited to a maximum square footage of 60% of the floor area in the building in which the use is located.
- 22. Office/warehouse mixed-use project, as further regulated by Article 8-21(o)(3).
- 23. Adaptive Reuse Projects, as further regulated in 8-21(o)4.
- ...
- 26. Flex Space Project, as further regulated in Section 8-21(o)5.

8-21(o) Special Provisions:

- ...
- 5. Flex space projects may be permitted by the Planning Commission upon the approval of a final development plan, subject to the following requirements:
 - ~~a. The property must be the site of an existing building with substantial lot coverage which does not allow substantial expansion of the building or parking facilities.~~
 - a. The existing building site must be located outside of the defined Infill and Redevelopment Area remain on the property.
 - b. Principal uses in flex space projects shall include:
 - 1. Any of the principal uses permitted in the underlying zone.
 - 2. Schools; libraries; museums; art galleries; studios for work or teaching of fine arts, metal work, photography, dance, drama or theater.
 - 3. Churches and private clubs.
 - 4. Establishments for the retail sale of merchandise, food and food products, if under 8,000 square feet in area.
 - 5. Restaurants, if under 4,000 square feet in area.
 - 6. Offices.
 - 7. Health clubs, athletic clubs and spas.
 - c. Accessory uses that are clearly incidental and subordinate to the principal uses.
 - d. Conditional uses:
 - 1. Drive-through facilities.
 - e. Prohibited uses:
 - 1. All adult uses, as listed in Section 8-16(e)(14 through 17).
 - f. Parking.
 - 1. Restaurants. As set forth in the B-1 zone.
 - 2. All other uses, one space per 600 square feet.
 - g. Signage, lot, yard and height requirements shall be as set forth in the underlying zone.
 - h. The applicant Planning Commission shall, with the approval of any submit a statement with the development plan, consider that shall address the following locational and compatibility factors, as well as other issues the applicant may wish to address:
 - 1. A Flex Space Project shall generally not be located on a major arterial. (If the Project is located on a major arterial, the applicant shall address whether additional parking needs to be provided to accommodate "impulse" customers).
 - 2. The Project shall generally be located in an area of mixed uses and zones.
 - 3. The Project shall generally be located in an area which that has historically had a mixture of retail and wholesaling types of land uses.
 - 4. The Project shall generally be located in a B-4 or I-1 area in which, due to small lot size, adjacent uses, or condition or status of roads the nature of the roadway system, it would not be appropriate to construct larger B-4 or I-1 uses, such as truck terminals, manufacturing facilities or large warehousing facilities.
 - 5. The property is the site of an existing building with substantial lot coverage that does not allow substantial expansion of the building or parking facilities.
 - 6. The project shall generally not be located in a block front which that contains residential zoning.
 - 6. If the Project is proposed to include restaurant uses, the applicant shall demonstrate that any additional parking needed for restaurant uses is available and accessible.

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

1. The proposed text amendment to create a "flex space project" in the B-4 and I-1 zones addresses a community need to promote more of a mixture of business uses in some appropriate locations outside of the defined Infill and Redevelopment Area.

Commission Question: Mr. Penn asked if the proposed text amendment would be applicable to all of the B-4 areas, except for those located in the I/R Area, to which Ms. Wade answered affirmatively. Mr. Penn asked if that would, in essence, create a new B-4 or I-1 zone. Ms. Wade responded that it would allow more flexibility in those areas. She said that the staff believes that the petitioner's proposed criteria would help the Planning Commission in deciding if a flex space project is appropriate for a particular property. The petitioner is suggesting that flex space projects be generally located in an area of mixed uses and zones, which would eliminate many of the existing B-4 areas.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner appreciated the staff's willingness to work with them since the Zoning Committee meeting three weeks ago.

Mr. Murphy stated that the petitioner owns a building on Moore Drive, which is zoned B-4. He said that Moore Drive is an amalgam of B-3, B-4, and I-1 zoning, all located in close proximity to one another; the building directly adjoining the subject property is split by the B-3/B-4 zone line. The subject property is currently occupied by the J & H Lan-Mark store; Porter Paint store; and Re-Kid, which is a pre-owned children's clothing store with warehouse use. The building has been occupied in the past by several different retail uses, a physical therapy office, and a radio station, all in the B-4 zone. Mr. Murphy stated that many of the retail establishments in the Moore Drive area are "destination stores," where customers shop for specific items, rather than stores where shoppers browse for recreation.

Mr. Murphy said that the businesses located on the petitioner's property have been constrained by the limitations on retail sales in the B-4 zone, and the parking restrictions in that zone. The petitioner has owned the subject property for 35 years, and has never received a complaint due to parking issues. With regard to the retail limitations of the B-1 zone, the petitioner has in the past had to move walls on the interior of the building in order to meet the required percentages of wholesale, retail, and office use. Mr. Murphy stated that the petitioner contends that those types of constraints do not benefit start-up businesses, where the nature of the operation could change rapidly as it becomes successful. The J & H Lan-Mmark store started out with approximately 10,000 square feet of space, and expanded to add another store bay; its owners are currently considering another expansion. The store owners like their current space, and believe that the location is perfect for their business, which does not need arterial roadway exposure. Mr. Murphy said that the proposed text amendment will allow them to expand their operation at their current location.

Mr. Murphy stated that he has been working on the proposed text amendment for approximately a year, during which time he has met with Mr. King, Mr. Sallee, Ms. Wade, and Jim Duncan, manager of Long Range Planning. He said that, prior to his work on the proposed text amendment, the Moore Drive area had already been identified as a business incubator area. Mr. Murphy proposed a change to the Comprehensive Plan, but was informed by Mr. Duncan that those types of changes would not be incorporated into the 2012 Comprehensive Plan update. He therefore proposed this text amendment, which he modeled on the adaptive reuse section of the Zoning Ordinance. The petitioner's property would not qualify as an industrial mixed use project, because it lacked the required residential element, which would not be appropriate given the location of the property. The property also could not be considered as an adaptive reuse project, since the property is located outside the defined I/R Area. Mr. Murphy said that he added criteria requirements to the proposed text amendment so that the Planning Commission, in reviewing proposed flex space projects, could assess the appropriateness of restaurant uses.

Mr. Murphy stated that the petitioner's only objection to the proposed staff alternative text was the 8,000 square-foot limitation on retail sale areas. He said that he did not propose such a limitation in his draft because he believed that the location of flex space projects away from arterial roadways "would take care of itself." Mr. Murphy stated that the petitioner and the staff now both agree that a limitation on retail sale areas of 20,000 square feet is acceptable. He asked that, should the Commission choose to adopt a limitation, they specify 20,000 square feet, rather than the 8,000 square feet proposed in the staff alternative text. With that change, Mr. Murphy said that the petitioner is in general agreement with the staff alternative text, and that both sides recognize the practicality of the proposed text amendment and the need to help local business grow.

Commission Questions: Mr. Penn asked if the proposed text amendment would create more commercial and retail uses in the I-1 zone. Mr. Murphy answered that flex space projects would be a principal use in the B-4 zone, and would carry over to the I-1 zone. He added that, in that regard, it would be similar to adaptive reuse projects, which also carry over to the I-1 zone. Mr. Murphy said that one of the proposed criteria for approval of a flex space project would be the location in an area where small lot size could preclude the construction of larger B-4 or I-1 uses, such as truck terminals, manufacturing facilities, or large warehouse facilities. That criterion was added to prevent industrial land from being "used up" by commercial uses. Mr. Penn stated that he was concerned about allowing too many retail uses in the I-1 zone as an unintended consequence.

Mr. Berkley stated that the square footage issue would need to be resolved. Mr. Cravens said that the Zoning Committee discussed that issue at their meeting three weeks ago. He opined that there are several areas that are "trapped" and

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businesses that are unable to expand because they do not have the appropriate percentages of retail and warehouse uses, and that the proposed text amendment would provide a good solution for that problem.

Mr. Penn asked if the staff was comfortable with Mr. Murphy's request to change the allowable retail uses from 8,000 square feet to 20,000 square feet. Ms. Wade replied in the affirmative.

Citizen Comments: There were no citizens present to comment on this request.

Action: A motion was made by Mr. Berkley, seconded by Mr. Drake, and carried 7-0 (Beatty, Brewer, Owens, and Plumlee absent) to approve the staff alternative text for ZOTA 2013-9, for the reasons provided by staff, changing 5.b.4. to read: "Establishments for the retail sale of merchandise, food and food products, if under 20,000 square feet in area."

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