

PLN-ZOTA-23-00006: AMENDMENT TO ARTICLES 1, 3, 8, 9, 12, AND 17 TO IMPLEMENT THE COMPREHENSIVE PLAN (3/5/2024)* – a text amendment to the Zoning Ordinance to modernize the R-2, R-4, and R-5 zones and provide clear delineation between the B-1 and B-3 zones. The text also proposes density bonuses for affordable housing, creates a new Corridor Node (CN) zone for compact and walkable development, and updates related definitions.

Staff Presentation – Mr. Hal Baillie, Principal Planner, Long Range Planning, started his presentation by providing written comments to the Planning Commission for the record, which had been submitted to the Division of Planning. Mr. Baillie introduced the Commission to the text amendment, also known as the *Urban Growth Management Zoning Ordinance Text Amendment*. Mr. Baillie mentioned that when speaking about growth and new development, there are two different scales, one being infill and redevelopment and the other is expansion. He then outlined the differences between infill and redevelopment and expansion, referring to a PowerPoint presentation displayed on the projection screen. Mr. Baillie informed the Commission that Staff had been working on changes to upgrade the Zoning Ordinance to ensure that it is in line with best practices and community goals, since the adoption of the 2018 Comprehensive Plan. He stated that with the adoption of the Goal and Objectives in June 2023, the Urban County Council mandated expansion, which tasked the Planning Commission to accept a map for the purpose of master planning potential growth areas outside of the current Urban Service Area.

Mr. Baillie said that the proposed text amendment seeks to connect people to places, to jobs, and to each other while also promoting smart sustainable growth for the city. He spoke about the outreach and meetings that Planning Staff held regarding the text amendment while the meeting dates were displayed on the projection screen. The proposed text amendment will modify three residential zones, create one new residential zone, and also modify two of the commercial zones. He further outlined that the focus of the proposed text amendment is to realign some of the housing intensities and densities, promote affordable housing incentives, provide new housing types, meet greater transit demands within the community, and adequately differentiate between commercial zones. Mr. Baillie mentioned that the Mixed Low Density Residential (R-2) zone, Medium Density Residential (R-4) zone and High Density Residential (R-5) zone were proposed because they are in a lower percentage of the infill and redevelopment area of the Urban Service Area, while having the possibility to impact potential expansion of the Urban Service Area if expansion were to occur in the future. Mr. Baillie then discussed the current residential zoning and explained the proposed zones as they were displayed on the projection screen.

Mr. Baillie discussed the Corridor Node (CN) zone and stated that the hub-type development is dense and intense, and focused on providing housing options within the community that would attract transit and address the demand. Mr. Baillie then discussed affordable housing as it is a major component of the Comprehensive Plan. He discussed the barriers to the production of affordable housing, which are funding and land availability. He described the proposed change as a way for greater amounts of land to become available to affordable housing providers within Lexington.

Mr. Baillie then presented information about revisions to the commercial zones - the Neighborhood Business (B-1) zone and the Corridor Business (B-3) zone - and explained why the zones were addressed. Mr. Baillie shared his appreciation to those involved during the Zoning Ordinance Text Amendment outreach. He concluded his presentation by stating that modernization of the Zoning Ordinance is crucial to ensure that the most equitable and environmentally sustainable development would occur moving forward. Mr. Baillie stated that Staff recommends approval for the Zoning Ordinance Text Amendment while outlining the reasons within his presentation.

Commission Questions – Mr. Michler asked about the residential zones that currently have 30-foot setbacks and inquired on transitioning to the proposed mandate of a maximum of no more than 20 feet. Mr. Michler mentioned that he preferred alternative text to delete the maximum setback which gives the people more flexibility. He then requested for Mr. Baillie to speak more about the alternative text that had been distributed. Mr. Baillie stated that Staff would be in support of the modification, and further stated that striking the

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maximum setbacks within the Mixed Low Density Residential (R-2), Medium Density Residential (R-4), and High Density Residential (R-5) zones would allow for more flexibility and offer a more urban character.

Mr. Pohl asked how the developers would take advantage of the affordable housing density bonus. Mr. Baillie stated that an affordable housing density bonus would be applied as a deed restriction on the property in favor of the local government for ten years for any affordable housing project, and fifteen years for any mixed income housing project. Mr. Baillie then explained that this would essentially guarantee that with the turnover of housing that two households would get advantaged by that or if a household stayed in place over time, they would get full advantage of in ten years. Mr. Baillie stated that when reviewing deed restrictions, he noticed that the restrictions from the government are generally between fifteen and thirty years, while Habitat for Humanity is at five years. Mr. Baillie then informed the Commission that if there are tax credits given it is going to be much larger than what they are discussing.

Mr. Nicol wanted to discuss Article 3-6: Mixed Income and Affordable Housing Bonuses. He stated that as members of the Planning Commission, they have been trying to find ways to provide more equitable opportunities for Lexington's citizens. He stated that one way to do so is the Zoning Ordinance, and policies that are being offered by the federal government, and other programs that are geared to help affordable housing to be developed. Mr. Nicol asked for Mr. Baillie to share some of the conversations that he had with developers and to discuss Article 3-6 as it was shown on the projection screen. Mr. Baillie mentioned that currently it recommends different percentages for affordable housing (60%) compared to workforce housing (40%). Mr. Baillie stated that the alternative text displayed would eliminate the percentage difference, which would allow for developers to adjust their projects as they need. He then stated that Staff would be supportive of the change as it still allows affordable housing providers to have flexibility as it does not create a rigid percentage distance between them.

Mr. Michler stated that the workforce and affordable housing bonuses state "rental" or "purchase" and it gives a timeframe. He then asked Mr. Baillie how it would be regulated. Mr. Baillie stated that with the purchase of a house they would look at the monthly cost of the mortgage and play with the numbers like how they would for a rent. Mr. Baillie then stated that in the Lexington community, 80% of area medium income (AMI) for an individual is \$1,181 a month for rent, which could be applied to a mixed income or workforce housing type of project. He then stated that there is a document that the local government provides that displays a lot of the numbers and how they are administered.

Mr. Michler asked within the initial years if someone purchased their house, if they would be restricted by the mortgage rate of an eventual purchase. Mr. Baillie confirmed. Mr. Michler then asked if the interest rates went up, then theoretically would the price that they could sell the house for would have to go down. Mr. Baillie responded by stating that the interest rates are baked into the purchase of the property; however, most of the affordable housing providers work with other banks to lessen the interest rates so that it will not extend beyond certain elements. Mr. Baillie stated that the increase in interest rates does impact some of the bottom lines of many affordable housing providers.

Ms. Worth asked if this would be like a "balloon mortgage" and that after ten years the interest could go up. Mr. Baillie stated no, that typically these types of programs only offer fixed rate mortgage products to better protect the homeowner from rate fluctuations.

Ms. Barksdale confirmed that within most of the programs there are fixed rates, or otherwise they would not be affordable.

Mr. Nicol stated that this portion of the proposed text amendment is aimed at addressing the missing middle, which is a hard problem to solve, and that this could be an added benefit in the form of a bonus.

Mr. Forester stated that different banks may have different programs that sometimes could get the rates a bit lower than typical market rates.

Ms. Barksdale mentioned that there is program that is new to Kentucky by the Neighborhood Assistance Corporation of America (NACA). She further explained that NACA offers a negotiated rate that is below the

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market rate and makes it easier to decrease the rate as well, while featuring no down payments and closing costs. She then reiterated that it is new to Kentucky, so they are witnessing how it does.

Chair Forester then opened the floor for public comment.

Public Comment – Brittany Roethemeier, Fayette Alliance, stated that 2023 has been a difficult year for Staff and the Commission. She then expressed that she is pleased with the hard work from the Staff while working on the Zoning Ordinance Text Amendment. She stated that the question of how we utilize existing land inside of the Urban Service Area or in any potential future expansion area will be the most important question moving forward. She then stated that creating jobs, infrastructure, transit, walkability, accessibility, sustainability and protection of the prime agricultural soils can be achieved by efficiently using the land that is already available. She said that Fayette Alliance commends Staff because this text amendment represents creative and responsible policy changes to the current Zoning Ordinance to support those goals. She then stated that she hopes that this is the beginning of a series of positive changes to the Zoning Ordinance. Ms. Roethemeier proclaimed that there are a lot of areas within the current Urban Service Area that this text amendment could impact. She concluded by stating that Fayette Alliance supports these amendment and recommends adoption.

Richard Murphy, attorney, showed an excerpt of the proposed Neighborhood Business (B-1) zone principal uses on the projection screen. He then asked for automobile service stations, use #15, for sub-section (b) to say “shall not expand the number of vehicular locations for refueling beyond 8, excluding EVs unless previously approved for a greater number.” He requested the additional text to ensure that existing automobile service stations could expand up to 8 refueling locations. Mr. Murphy then stated that the Zoning Ordinance text amendment allows for neighborhood breweries and brew pubs as principal uses, use #12, but does not mention a micro-distillery. He opined that since distilleries and bourbon are a part of Lexington’s brand, it would be important that they would be allowed on an equal footing with breweries; that is, as a principal use in the B-1 zone. Ms. Worth asked Staff if micro-distilleries were defined in the ordinance. Mr. Baillie stated that micro-distilleries were added to the Light Industrial (I-1) zone, and staff is proposing to add it as a conditional use into the Corridor Business (B-3) zone. Mr. Baillie then stated that micro-distilleries were defined by the State, it is a class B license and has a certain limit on production.

Brian Clark, Executive Director for the Kentucky Petroleum Marketers Association, stated that formal written comments were filed on November 16, 2023. He stated that within his filed comments, there were specific requests for clarification, specifically in response to the proposed Zoning Ordinance Text Amendment. He then stated that he did not receive any response from the Planning and Zoning staff or Law Department. He is requesting modifications on the behalf of the trade associations that remit significant tax revenues and support local jobs in the Fayette and Lexington’s critical infrastructure. He then asked for the Commission to consider the revisions that they filed. Mr. Baillie informed the Planning Commission that Staff has not seen the comments that were shared or filed, and at this time Staff cannot speak to the specific regulations that Mr. Clark was requesting comment on. Mr. Baillie stated that Staff has worked with many commercial property owners in Lexington and have made specific changes to the proposed requirements for automobile service stations as of November 14th to ensure that all current gas stations and petroleum places in town are protected and can continue to be utilized and updated over time. Ms. Tracy Jones with the Law Department also confirmed that she has not received Mr. Clark’s comments. Mr. Clark stated that he would appreciate for the Planning Commission to review his comments.

Nick Nicholson, attorney, stated that it is imperative to move forward with the Zoning Ordinance Text Amendment. He then stated that the concerns he had are in regards to the distance requirements and encouraged the Commission to look at site restrictions for the uses to achieve the total goals, opposed to just looking at distance requirements. Mr. Nicholson then stated that he encourages that a drive-through facility should still be allowed as only a conditional use in the Neighborhood Business (B-1) zone. He stated that there are great concerns about eliminating drive-through facilities because it sends the message that a bank or pharmacy are no longer welcome in a neighborhood.

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Blake Hall, District 3, stated that he is in full support of the proposed text amendment. He stated that his neighborhood block is a mix of Accessory Dwelling Units, single family houses, duplexes and small apartment buildings. He further proclaimed that drive-through facilities and gas stations are inherently anti-pedestrian and people do not want them in their neighborhoods. He stated that the text amendment allows a neighborhood service commercial use to exist. Mr. Hall stated that the affordability aspect is a huge step forward in cutting out the 6–9-month zone change process to benefit more people.

Staff Comment – Mr. Baillie stated that drive-through facilities are the constant conversation that is had while looking at zone changes. Mr. Baillie mentioned that a drive-through or gas station is not appropriate for the middle of the neighborhood. He then identified that one of the largest issues that Staff has had with the Highway Service Business (B-3) zone is that it has not been sufficient for the corridors. Mr. Baillie stated that the Zoning Ordinance Text Amendment would promote the Highway Service Business (B-3) Zone, now proposed as the Corridor Business (B-3) zone, to something that Staff, the Comprehensive Plan, and the Planning Commission would be able to support. He then stated that Staff was comfortable with some of the revisions for the fueling stations; however, Staff is concerned with the inclusion of a micro-distillery in a neighborhood, within a Neighborhood Business (B-1) Zone, as a principal use as proposed by Mr. Murphy.

Public Comment – Mr. Murphy stated that he did not see any reason to deny a micro-distillery. He stated that tourists would not go to a Light Industrial (I-1) zone for a bourbon tasting, that they would prefer bourbon tasting in areas such as shopping centers.

Mr. Clark stated that he has proof of electronic delivery of his public comments. Mr. Baillie mentioned that Staff was not suggesting that the comments were not submitted, but he did suggest that Mr. Clark's comment was not received by Staff through electronic communication. Mr. Baillie then stated that Staff is willing to work with any and all individuals within the community that may have concerns regarding the Zoning Ordinance Text Amendment.

Motion – A motion was made by Mr. Nicol, seconded by Ms. Barksdale, to approve PLN-ZOTA-23-00006, THE AMENDMENTS TO ARTICLE 1, 3, 8, 9, 12, AND 17 TO IMPLEMENT THE COMPREHENSIVE PLAN, including Mr. Michler's recommendation to delete the maximum front yard setbacks in the R-4 and R-5 zones, Mr. Nicol's recommendation to modify Article 3-6 to use the term "workforce housing bonuses" rather than "mixed income bonuses," as well as Mr. Murphy's request regarding the fueling stations and micro-distilleries in the Neighborhood Business (B-1) zone. The motion failed 4-3 (Meyer, Pohl, Michler and Barksdale opposed; Owens, Davis and Wilson absent).

Mr. Michler stated that his concern is that Staff is trying to create is a Neighborhood Business (B-1) zone that people would feel comfortable living next to without much qualm. Ms. Meyer then asked if a distillery would still be listed as a conditional use. Mr. Baillie stated that Staff is proposing distillery to be a conditional use in the Corridor Business (B-3) zone, and it is currently not referenced within the Neighborhood Business (B-1) zone.

Mr. Pohl then asked Staff to explain the difference between a micro-distillery and microbrewery. Mr. Baillie stated that staff is not recommending a microbrewery within the Neighborhood Business (B-1) zone either, instead Staff is recommending a neighborhood brewery which would have a much smaller scale and footprint than a microbrewery.

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