

**2. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT**

- a. **MAR 2016-17: URBAN COUNTY PLANNING COMMISSION** – petition for a zone map amendment to a Neighborhood Design Overlay (ND-1) zone, for 23.33 net (29.81 gross) acres, for properties located at 201-540 Clinton Road.

**Proposed Design Standards:****1. Building Setbacks**

Building setbacks shall be as follows:

- a. 200 and 300 blocks of Clinton Road: 50 feet
- b. 400 and 500 blocks of Clinton Road (odd-numbered houses): 60 feet
- c. 400 and 500 blocks of Clinton Road (even-numbered houses): 50 feet

**2. Lot Widths**

Minimum lot widths shall be as follows:

- a. 200-400 blocks of Clinton Road: 100 feet
- b. 500 block of Clinton Road: 80 feet

**3. Floor Area Ratio**

The Floor Area Ratio (excluding basements) may not exceed 0.33.

**4. Building Heights**

Maximum of 30 feet to highest ridge line (excludes new additions which may exceed 30 feet in order to match existing ridge lines).

**5. Exterior Building Materials**

Allowable exterior finish building materials are brick, stone, finished wood, cementitious fiberboard siding, or the same material as 90 percent of the existing structure (excludes windows and doors and their respective frames). Vinyl is allowable on eaves and cornices only and is otherwise prohibited. All other materials are prohibited.

**6. Landscaping**

Front yard fences shall be limited to 36" in height. Allowable materials for front yard fences are brick, stone, wood and iron. Chain link fences are prohibited in the front yard. If a retaining wall is used, it shall be subject to a maximum height of 18" above the unbalanced fill in the front yard.

**7. Rear Yard Setbacks**

Rear yard setback shall be measured 40 feet from the rear property line, excluding accessory structures.

**8. Accessory Structures**

Maximum footprint of 800 square feet for all accessory structures per lot.

**9. Building Orientation**

The front plane and front entrance of the principal structure shall face Clinton Road.

**COMPREHENSIVE PLAN AND PROPOSED USE**

The 2013 Comprehensive Plan no longer makes a specific land use recommendation, but *Chapter 1: Goals and Objectives* does recommend "enabling existing and new neighborhoods to flourish through improved regulation, expanded opportunities for neighborhood character preservation, and public commitment to expanded options for mixed-use and mixed-type housing throughout Lexington-Fayette County." (emphasis added)

The Planning Commission has initiated a zone change request to add a Neighborhood Design Character Overlay (ND-1) zone in order to regulate front yard building setbacks; lot widths; floor area ratio (FAR); building height; exterior building materials; landscaping; rear yard building setbacks; accessory structures; and building orientation, regardless of the underlying zoning for 55 residential lots on Clinton Road.

The Zoning Committee Recommended: Approval of the staff alternative.

The Staff Recommends: Approval of the ND-1 overlay zone with the Staff Alternative Design Standards, for the following reason:

1. The requested Neighborhood Design Character (ND-1) overlay zone is in agreement with the 2013 Comprehensive Plan for the following reasons:
  - a. The Goals & Objectives of the Plan recommend "providing well-designed neighborhoods and communities" (Theme A, Goal #3) and "protecting and enhancing the natural and cultural landscapes that give Lexington-Fayette County its unique identity and image" (Theme D, Goal #3). Theme A, Goal #3.a. more specifically rec-

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- ommends enabling existing neighborhoods to flourish through expanded opportunities for neighborhood character preservation. This will be enhanced with this zoning overlay for Clinton Road.
- b. The implementation of a Neighborhood Design Character (ND-1) overlay zone is in agreement with the Comprehensive Plan's Goals & Objectives by providing specific standards that will maintain the existing character of the neighborhood, independent of the underlying zoning.
  - c. The Clinton Road residents have completed a design character study, defined the existing character of their neighborhood area, developed preservation goals, and proposed appropriate neighborhood design standards (in need of only slight modification), thus meeting the requirements of the ND-1 zone.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

**Alternative Design Standards** (Note: Additions are identified by an underline, and deletions are identified by a ~~strikethrough~~.)

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Rear yard setback shall be a minimum of measured 40 feet, as measured from the rear property line, excluding accessory structures.

**8. Accessory Structures**

Maximum footprint of 800 square feet for all accessory structures per lot.

**9. Building Orientation**

The front plane and front entrance of the principal structure shall face Clinton Road.

These restrictions are appropriate, given the extensive study undertaken to identify the existing neighborhood character by the Clinton Road residents, and are necessary to maintain that existing character in the future.

**Staff Zoning Presentation** – Ms. Wade presented the staff report on this zone change request that was initiated by the Planning Commission in February to facilitate a Neighborhood Design Overlay (ND-1) zone for 23.33 acres to be applied to properties that are located on Clinton Road. A total of 55 residential parcels are part of the application (one local park that wasn't included). She distributed a handout, which the staff had prepared since the Zoning Committee meeting, related to potential nonconformities that would be created by the overlay. She also stated that she had received 18 letters of correspondence from area residents that are in favor of this request. Clinton Road is located within the Shriners Neighborhood Association and is also part of Ashland Park in the Lakewood Estates Subdivision. It is to the southwest of Richmond Road, east of Chinoe Road, and inside of New Circle. The subject area is approximately four blocks long and connects from Cooper Drive and Prather Road, to the south, and runs north and south connecting to Clays Spring Lane, at its north end. All of Clinton Road is residentially zoned and the overlay zone won't change that; it will only change the requirements for redevelopment.

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Clinton Road was platted as part of the Ashland Park Subdivision in the mid-1950s and was originally part of the Henry Clay Estate and farm. Most of the homes are post-WWII ranch style, colonial/traditional homes on basements, and a few are more contemporary Cape Cod style homes. The area is characterized by large setbacks, mature trees and other landscaping, and the structures are primarily brick and stone. The ND-1 Overlay zone was considered by the Clinton Road residents originally because the deed restrictions that were put in place in the 1950s had expired in the mid-1980s and were not automatically renewed, as many are today. A new property owner was requested to have the front setback changed by the Planning Commission to allow an addition to be built onto their house, which was one precipitating factor. Another was that the character of the surrounding neighborhood has changed; for example, on Culpepper Road, there have been several large additions/renovations that have changed the character on that street. The neighborhood had become aware that the deed restrictions were no longer in place, which also made them aware of what changes could happen in their neighborhood. This encouraged the neighborhood consider the ND-1 Overlay and they conducted a study of the early and present character and how it has changed. They also did resident meetings and a survey about the different standards that they developed based on their studies.

Article 29 of the Zoning Ordinance gives the option to propose an overlay, zone with the intent of helping to preserve the character of a neighborhood; otherwise, that character could be lost. The Clinton Road residents submitted their request and supporting documentation to the Planning Commission, also listing their research and what they had proposed in terms of standards and goals for the neighborhood. The four goals are: 1) maintain the open, uniform, and expansive appearance of the street; 2) avoid further subdivision of corner lots; 3) preserve current building sizes and area devoted to yards/green space; and 4) maintain the consistency and quality of exterior building appearances. The Clinton Road residents proposed nine ND-1 standards for their street and agreed to the staff alternative text, which are:

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She said that implementation of an ND-1 zone is in agreement with the Comprehensive Plan. Staff does have one concern about the proposal of this overlay and that is that it is just one street of a larger neighborhood association and larger subdivi-

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sion. The residents do believe that they are a neighborhood in and of themselves. The staff does recommend approval with the minor modifications to the design standards. The Zoning Committee also recommended approval of the alternative standards that the staff presented three weeks ago.

Commission Questions: Mr. Penn asked about design standard number 8; if the structure can be two stories high and be 1,600 square feet. Ms. Wade replied that it can, but there is still a height limit in the Zoning Ordinance for accessory structures, which is generally 20 feet. Mr. Sallee added that there is a general Zoning Ordinance provision that accessory structures can only total half of the square footage of the principal structure, but they would be permitted to contain two stories.

Mr. Cravens asked what kind of uses could be in an accessory structure. Ms. Wade replied that generally they could be a pool house, a detached garage, equipment shed, or a playhouse. Mr. Cravens also asked if it could have bedroom. Ms. Wade stated that it could have guest quarters, but it can't have a kitchen and a bathroom. It can't have all three; otherwise, it will become a separate dwelling unit.

Ms. Mundy asked if it could be a granny flat. Ms. Wade replied that it could be only if the kitchen was left out.

Requestor Comments – Monica Kern, resident of 505 Clinton Road, said that Clinton Road is an established neighborhood and is one of the most desirable neighborhoods in the area, in terms of its location. The lots average just less than half an acre in size; and in the most recent PVA assessment, the homes range in value from \$345,000 to over \$1,000,000. She presented a slide show of numerous photographs of the area homes, displaying the large lots, the deep front yard setbacks, the ample green space, and the mature landscaping. The houses vary considerably in architectural style with regard to features such as porches, columns, and types of windows. She said the vast majority of the homes are constructed of brick or a brick/stone combination. Slightly over half of the homes are ranch style, with the remaining being 1 1/2 stories high. She said that the existing zoning restrictions are not adequate to preserve the distinctive character of the neighborhood.

She said that the residents of Clinton Road became interested in establishing the ND-1 overlay when they discovered that the deed restrictions that were originally attached to their homes had expired. They were alarmed by recent trends on neighboring streets where some houses were being torn down or being substantially renovated, resulting in larger houses being built and leaving no green space or distance between the houses. Some of the corner lots were being subdivided into two and three lots. She displayed an aerial photo of a corner lot on Culpepper Road and Hart Road that had been subdivided into three lots with three large, tall houses built on them, leaving no space between them. She continued to show photos of many new houses that been built, some with additions that have been built onto existing homes. She stressed that these types of houses would be suitable for larger lots, but they are out of character for this neighborhood. The residents of Clinton Road are worried that this type of construction may begin to happen on their street.

She reviewed the process that the neighborhood had undergone, noting that they had consulted with the members of the Planning staff, as well as Coleman Bush, who had spearheaded the overlay for the Meadowthorpe neighborhood; they conducted an architectural survey; they held numerous neighborhood meetings and focus groups; and they met with representatives of the Building and Home Renovation trade. She said that it is important to stress that their goal is not to discourage any kind of renovation or additions - just to specify the limits of them so that they accommodate the existing character of the street. After completing the standards, they mailed a ballot to the residents to determine if they support the overlay and to indicate whether they agree/disagree with the nine standards that were being proposed. Fifty-five ballots were sent out and forty-two were returned; of those, forty voted in favor of the overlay. The Planning staff had also sent out a mailing to property owners along Clinton Road; and of those ballots, thirty-five were returned with only three negative votes. She stated that the neighbors on Clinton Road want the ND-1 Overlay.

Citizen Comments in Favor – Linda Allin, resident of 504 Clinton Road, said that she and her husband are in full support of the overlay zone. They value the character and the distinctiveness of their street; it was the primary reason they moved to this residence. She said that the street has remained the same, for the most part, with the exception of some of the issues previously described. She also stated that she is pleased that neighbors have the ability to construct additions and build nice homes on vacant lots; they are not trying to restrict the owners from doing that. She said that some of these new homes take over the entire lot, leaving little or no yard, which is out of character with the neighborhood.

Linda Price, resident of 501 Clinton Road, a corner lot, said that she is concerned about preserving the character of Clinton Road. She said that the street is very desirable and she admires the green space. She believes that without the protection of the ND-1 Overlay, the street is in danger and the beauty and character of the neighborhood is at great risk. Without this protection, a lot like theirs would be purchased by a developer and divided into two or three lots with the same number of houses built on it, which will change the character of Clinton Road. She respects that some people may prefer larger houses on smaller lots so they don't have a lot of yard maintenance, but that is the opposite of the character of Clinton Road.

Penny Warren, resident of 208 Clinton Road, said the Clays Spring Park is a great example of how much the residents care for Clinton Road and their concern for preserving open green space. The Clays Spring Park, formerly known as Clinton Road Park, is the neighborhood jewel. It was deeded to the City from the Henry Clay heirs to remain a park and has been historically marked. Some of the Clinton Road residents contributed toward the cost of landscaping the park.

Jane Farmer, resident of 509 Clinton Road for sixteen years, said that her street is changing a lot. There has been a huge three-story high house built behind her and a solid, tall fence. She said that she doesn't like the huge houses and the diminishing yards. It doesn't create the same feeling of the neighborhood.

Catherine Donworth, resident of 512 Clinton Road, said that she is supportive of the ND-1 Overlay to preserve the street. She has a young child who spends time with the family across the street in the large green space area. She said that it is a great environment for their kids to be able to play in the safety of their front yards. She feels that if the setbacks are not preserved, the character of the neighborhood will be lost.

Anne Donworth, resident of 405 Clinton Road, said that she admired the neighborhood from visiting relatives that live there. They have renovated their home substantially because it is where they want to live for a long while. She said that the point of these restrictions is not saying that a person can't update his/her home; these restrictions would not have changed what she had updated. She said that the property values of the neighborhood are based on the lot and the existing homes; they don't need to be redeveloped with three-story houses to retain the value. She said that if residents want to build larger homes on their lot, they can do it elsewhere.

Alanson Boden, resident of 412 Clinton Road, said that she chose her home on Clinton Rd. because of the open yard with the large green space. She said there is a vacant lot next door, and is she concerned that someone will build a large house on the lot, and that it would lower the value of her home. She supports the ND-1 Overlay.

Kathy Arms, resident of 513 Clinton Road, said that she chose her home because of the large lot and its proximity to schools, and the downtown area. She supports the ND-1 Overlay.

Opposition Comments – Christopher Clendenen, attorney, was present representing the residents of 508 Clinton Road, Wayne and Linda Bussell. He said the Bussells had applied to change the setback from 50 feet to 30 feet, which was turned down by the Planning Commission. A subsequent application of 50 feet to 40 feet was also turned down by the Planning Commission, and that application is in litigation. He said that the Bussells want to build a garage that will be more accessible for them since their driveway is very narrow.

Mr. Clendenen referred to the intent, the purpose, and the policies of Article 29. They all refer to residential neighborhoods and non-residential neighborhoods. He said "words used consistently, should be consistently interpreted in a consistent manner to make sense of the statute." They are differentiating in this ordinance what a neighborhood is and what an area is. He pointed out the areas that currently have ND-1 Overlays and said that they have three things in common: they have unique and distinct characteristics that are worth preserving; multiple streets that comprise the neighborhoods; and neighborhood associations that reflect the actual neighborhood. He said that this particular overlay consists of only one street. He said that he is in favor of the ND-1 Overlay zone in general, but said that it isn't being used in the correct manner. He said that he doesn't think that this is in agreement with the 2013 Comprehensive Plan because he doesn't believe that one street constitutes a neighborhood. He also said that it could be a gateway to set a bad precedent. He showed a photo of Clays Spring Park and the said that there are five lots on Clay Spring Lane, two of which are vacant.

Mr. Clendenen asked if the ND-1 Overlay should also be given to this street. In his opinion, every street in Lexington could propose this overlay for their street; they could come before the Planning Commission and state, "this is what I love about my street...", and "this is why it needs to be preserved and protected from these people next door that have a different idea of what they want to do with their property." He said that the Planning Commission has no time limit on this decision; he would like for them to wait for the outcome of the litigation before agreeing to the ND-1 Overlay zone. He doesn't disagree with the intent of the ND-1 Overlay zone, he disagrees with their methods and so do his clients. He doesn't believe that the ND-1 Overlay zone is the appropriate way to accomplish what they are trying to accomplish. The ND-1 Overlay zone is a valuable tool and is very worthwhile; and in the other areas where it has been granted, it is appropriate. In this case, it doesn't seem appropriate for just one street. He also said that we could be inundated with street after street coming to the Planning Commission, if we set this precedent.

Commission Question - Mr. Drake asked what would be the injury to his clients if the ND-1 Overlay zone is adopted. Mr. Clendenen replied that his clients are not here on behalf of themselves in terms of the ND-1 zone. He said there wouldn't be any impact on them directly and that there are other residents on Clinton that are not in favor of the overlay zone.

Requestor's Rebuttal – Ms. Kern commented on Mr. Clendenen's objection regarding Clinton Road not being a neighborhood. She asked what constitutes a neighborhood. The Zoning Ordinance has 18 pages of definitions and various terms related to property, but it doesn't include a definition of a neighborhood. The dictionary definition of "neighborhood" is defined spatially as a specific geographic area and functionally as a set of social networks. Neighborhoods then are the spatial units in which face-to-face interactions occur. She said that by that or any definition, Clinton Road is a neighborhood. It possesses a distinct geographical identity and a distinct social identity. They have an annual Clinton Road picnic that has been held for over twenty years and is well attended by the residents. She said that they are a neighborhood because they feel and act as such. If Clinton Road is not perceived as a neighborhood, they are still eligible for the ND-1 Overlay. The Zoning Ordinance didn't in-

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clude a definition of a neighborhood in its definitions; however, it did include a definition of the ND-1 Overlay zone, describing it as a zone where key characteristics of a particular neighborhood are preserved for either new building or replacement of existing structures. She said that Article 29 states: "any area, neighborhood, or place that meets one or more of the following criteria shall be eligible for designation of a ND-1 district." Clinton Road meets most of the seven criteria that were listed.

Ms. Kern commented on the objections that Clinton Road is too small for the ND-1 Overlay. She said that the Zoning Ordinance doesn't specify a minimum number of houses or streets that must be included to qualify as an area. There is also precedent for smaller ND-1 Overlay zones; for example, the Colony consists of 75 homes on five streets, this one consists of 55 homes on four blocks. With regard to then concerns of the staff and Mr. Clendenen, she said that if their ND-1 Overlay zone is approved, the staff and Planning Commission will not be deluged with many other applications from other streets. She doesn't believe that other areas will devote the time and money to this process unless they are passionately committed to preserving their neighborhoods.

Ms. Kern also commented on Mr. Clendenen's comment that the ND-1 Overlay zone isn't necessary for Clinton Road, because the Planning Commission will not support motions to reduce setbacks on the street. To this objection, she said that just because they were successful in one particular instance doesn't mean that they will be in the future. Their proposal for the ND-1 Overlay zone is more than just the issues of setbacks; their design standards also include floor area ratio that is not addressed on the plat or in current zoning restrictions. It is needed to protect the character of their street. The residents of Clinton Road feel strongly that their street is a neighborhood, that they are eligible for the ND-1 Overlay zone, and that it is essential for preserving the unique and beautiful character of their street. She said that with all the renovations and rebuilding that is currently happening very close to Clinton Road, they don't feel that they have the time to wait for some undetermined purpose.

Opposition's Rebuttal – Mr. Clendenen said that what is relevant here is the Zoning Ordinance and the way it was crafted. Referring to Article 29, in the Intent, "area" is used in connection with non-residential; in the Purpose, "area" is used in connection with non-residential; in the Policies, "area" and "places" are used in connection with non-residential; and in the Goals, "neighborhoods", "area" and "places" are used in connection with either a residential or a non-residential area.

Staff Rebuttal – Ms. Wade said that Clinton Road does constitute a neighborhood in and of itself, but in other ways it can also constitute a place. The Zoning Ordinance doesn't make any kind of determination that one should be residential or non-residential; the word "place" is used more generically. If the Planning Commission doesn't feel that Clinton Road is a neighborhood in and of itself, it could be determined by the Zoning Ordinance definition that it is a "place." The staff doesn't believe that the Zoning Ordinance eliminates the eligibility of the ND-1 Overlay zone in this case. The staff expressed their concern that if every ND-1 zone that comes in is one street, it could be more time consuming for the staff to review.

Commission Question - Mr. Drake asked who owns Clays Spring Park. Ms. Wade replied that the City owns it. Mr. Drake asked if the 200 Clinton lot is part of the park or if it was intentionally left out of the overlay. Ms. Wade said that 200 is the address of the park.

Mr. Wilson asked if Ms. Kern was representing the neighborhood. Ms. Kern said that she is the official representative. Mr. Wilson said that the staff has made a recommendation for alternative design standards and asked if the neighborhood is in favor of the standards. Ms. Kern replied that they agree with the staff's recommendation.

Chairman's Comments – Chairman Cravens stated that the hearing was now "closed," and he opened the floor for discussion. Mr. Brewer stated that the Commission members appreciate the neighborhood's efforts in this and the amount of work it took to get this case through, congratulating them for getting it this far. He believed that the staff's comment was worth noting about "street by street" but the importance of protecting this neighborhood is much more critical than the possibility of that. He said that he supports this effort and that Clinton Road is a beautiful street and it should be preserved. He said that he drives it nearly every day.

Mr. Penn said that he feels that the ND-1 Overlay zone should have a high standard. Since the previous applications for the one resident on Clinton Road, he has traveled this street frequently. He said he does have reservations that this is too small of an area, and he would have liked for Adair Road or some other street to have also been involved in this request. Seeing the houses that are being torn down and the rebuilds in the neighborhood, he understands the urgency of this issue. He said he would let his reservation of the one street be overturned by the fact that he thinks it is needed at this time.

Ms. Mundy also thanked the citizens for the time that they put into preserving their neighborhood. She said that this is like "a bundle of sticks." When they bought their property, they got a bundle of sticks; in that bundle of sticks they give up rights in owning that property, such as taxes, zoning ordinances, etc. In doing this, not only are they preventing others from doing things in the area, but each property owner is giving up another stick or two. She cautioned them to think about their future when they get ready to sell their property and the restrictions that might be in place.

Ms. Plumlee also thanked the neighbors for coming to the hearing and for preserving the character of their neighborhood, which is unique. She said she intends to support the ND-1 zone change request.

Zoning Action – A motion was made by Ms. Plumlee, seconded by Mr. Brewer, and carried 10-0 (Owens absent) to approve MAR 2016-17: URBAN COUNTY PLANNING COMMISSION for the reasons provided by the staff for the Alternative Design Standards.

