

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky April 13, 2021

Due to the COVID-19 pandemic and State of Emergency, this meeting is being held via live video teleconference pursuant to 2020 Senate Bill 150, and in accordance with KRS 61.826, because it is not feasible to offer a primary physical location for the meeting.

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on April 13, 2021 at 5:00 p.m. Present were Vice Mayor Kay in the chair presiding, in the absence of Mayor Gorton, and the following members of the Council: F. Brown, J. Brown, Ellinger, Kay, Kloiber, Lamb, LeGris, McCurn, Moloney, Reynolds, Sheehan, Worley, Baxter, and Bledsoe. Absent was Council Member Plomin.

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At 5:05 p.m., Vice Mayor Kay opened the hearing.

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An Ordinance changing the zone from a Two Family Residential (R-2) zone to a High Rise Apartment (R-5) zone, for 0.655 net (.717 gross) acre, for property located at 325, 329 and 333 Blackburn Ave. (Blackburn Development, LLC; Council District 2) received second reading.

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Vice Mayor Kay swore in the witnesses, and reviewed the procedures and order of proceeding for the meeting including procedures and specifications related to the virtual teleconference format.

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At 5:11 p.m., Mr. Worley departed the meeting.

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At 5:13 p.m., Mr. Worley rejoined the meeting.

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Ms. Traci Wade, Div. of Planning, introduced Tracy Jones, Dept. of Law, and Hal Baillie, Dept. of Planning. She gave a presentation on the recommendation of the

Planning Commission and filed the following exhibits: (1) Legal Notice of Public Hearing; (2) Affidavit of Notices Mailed; (3) Copy of Planning Commission Final Report and Recommendation; (4) Copies of Applicant Presentation and Letter of Opposition from Planning Commission Public Hearing; (5) Copies of the 2018 Comprehensive Plan and Appendix; (6) Copies of Lexington Central Sector Small Area Plan, Downtown Lexington Masterplan and the 4th St. Zoning Study; (7) Copy of National Register of Historic Places Listing for Northside Historic Residential District; (8) Copy of the Zoning Ordinance; (9) Copy of the Land Subdivision Regulations; and (10) Copy of Staff PowerPoint Presentation.

Ms. Wade described the subject property and surrounding property, and the various uses that have been applied to it in the past. She displayed photographs and maps of the subject property and described its physical characteristics. Ms. Wade also discussed the proposed development and the reasons for the Planning Staff's and the Planning Commission's recommendations.

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Vice Mayor Kay requested the Council hold all questions until after all presentations were given. No objections were made.

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Chris Clendenen, Murphy and Clendenen, PLLC, appeared as counsel for the Petitioner and introduced various representatives of the Petitioner. Mr. Clendenen, filed the following exhibits: (1) Zone Change Request PowerPoint Presentation; (2) Affidavit of Posting Signs; and (3) Supplement Information PowerPoint Presentation.

Carson Baughman, Cowgill Inc., gave a presentation on the Site Plan and talked about the requested zone change. Mr. Clendenen talked about the requested zone change, displayed photographs of the subject property, and discussed the location and proposed uses, as well as historical uses that have applied.

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Jessica Winters appeared as counsel for the Opposition (Livable West Lex and others) and filed the following exhibits: (1) PowerPoint Presentation; (2) Blackburn Zone Change Position Statement; (3) Petition Signatures of Opposition; (4) Letters Submitted to Dept. of Planning in Opposition; and (5) Findings of Fact of Denial.

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Mr. Moloney notified the Vice Mayor that technical issues had occurred, causing him to miss the majority of Ms. Winters' presentation, and inquired if he should excuse himself from the remainder of the meeting, as a result. Vice Mayor Kay responded that he would discuss the matter with the Dept. of Law.

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At 7:04 p.m., the meeting stood at recess.

At 7:21 p.m., the meeting reconvened with Mr. Moloney absent.

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The following persons spoke in opposition: (1) Jennifer Littrell-Hesseldenz, Elsmere Park; (2) Tony Roccanova, W. 6th St. (who filed Opposition Exhibit (6) Powerpoint Presentation); (3) Faith Harders, W. 3rd St.; (4) Robert Summe, W. 3rd St.; (5) Casey Mather, W. 3rd St.; (6) Daniel Durick, Blackburn Ave.; (7) Walt Gaffield, Fayette County Neighborhood Council; (8) Amy Clark, Kastle Rd.; (9) Mark Klar, Blackburn Ave.; and, (10) Evelyn Knight, W. 3rd St. (who filed Opposition Exhibit (7) PowerPoint Presentation.)

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Richard Levine, Kiddville Lane, submitted a written comment in opposition.

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The following persons spoke in support: (1) John Cirigliano, E. High St. and (2) Eric Shockey, W. 3rd St.

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Ms. Wade offered rebuttal comments.

Mr. Clendenen and Mr. Baughman made rebuttal comments on behalf of the Petitioner.

Ms. Winters made rebuttal and summation comments on behalf of the Opposition.

Mr. Clendenen offered summation for the Petitioner.

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Vice Mayor Kay opened the floor for questions from the Council Members.

Mr. McCurn asked about the developments landscaping, fencing and tree canopy. Kevin Warner, CARMAN Landscape Architecture responded. Mr. McCurn asked

questions about the current buffer and greenspace. Mr. McCurn asked Ms. Winters to clarify an earlier statement regarding the buffer, fencing and tree line. Ms. Winters responded.

Ms. Reynolds asked if there was a minimum requirement of green space per square footage. Ms. Wade responded. Ms. Reynolds asked about the preservation of historically significant structures. Ms. Wade responded.

Mr. J. Brown asked about the opportunities presented for neighborhood engagement. Mr. Baughman responded. Mr. J. Brown asked if there was a process in which a site development plan could be approved prior to the approval of a zone change. Vice Mayor Kay ruled the question out of order, noting the development plan was irrelevant to the purview of the hearing.

Ms. Lamb asked questions pertaining to the map on page 18 of Planning Exhibit (6) 4th St. Study. Ms. Wade responded. Ms. Lamb asked about calipers of the trees. Mr. Warner responded.

Ms. Sheehan asked about parking restrictions and quantity of parking. Ms. Wade responded.

Ms. LeGris asked for clarification on the projected monthly rent and if the occupants would be allowed to purchase units. Mr. Baughman responded. She inquired about the types of zoning that were encompassed under the medium density category. Ms. Wade responded.

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Ms. Baxter departed the meeting.

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Mr. Ellinger asked about buffering requirements and potential contingencies that could be imposed by the Council. Ms. Wade relayed a response from Tracy Jones, Dept. of Law. Mr. Ellinger stated the process in the event of a material change. Ms. Wade confirmed.

Vice Mayor Kay requested a review of the zones which are conditioned as appropriate for the property location. Ms. Wade responded. Vice Mayor Kay asked about other uses. Ms. Wade responded. Vice Mayor Kay inquired about the procedural process. Ms. Wade responded.

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Ms. Baxter rejoined the meeting.

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Mr. McCurn asked about potential compromises to the proposed buffers. Mr. Clendenen responded. Mr. Baughman responded. Mr. McCurn asked about the timeframe of speed table installation. Mr. Baughman responded.

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At 9:13 p.m., the meeting stood at recess.

At 9:28 p.m., the meeting reconvened with the same persons present.

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Ms. Lamb asked about the types of buffering options that could be used on the property. Ms. Wade responded. Ms. Lamb inquired about imposing a height condition. Ms. Wade responded.

Ms. Wade corrected a statement made during her response to Ms. Sheehan's question earlier.

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At 9:32 p.m., Vice Mayor Kay closed the hearing.

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Mr. J. Brown spoke about the 4th St. Corridor and the increased diversity in the types of housing developments in the area. He talked about potential concerns and benefits of the proposed development. Mr. J. Brown noted that while he concurred with some of the comments made by Mr. Shockey, he also shared some of Mr. Klar's concerns.

Mr. McCurn spoke about density, diversity and demographics. He talked about the positive impact the Flats at 345, located at 345 Blackburn Ave., had on the neighborhood.

Vice Mayor Kay spoke about the unique mixture of zones located on Blackburn and the complexities associated with the proposed zone change. He emphasized the importance of contextually appropriate infill and development.

Ms. Lamb concurred with Vice Mayor Kay's comments, mentioning the properties in discussion were currently vacant lots.

Mr. Worley thanked Mr. McCurn accommodating all parties throughout the several postponements of the Public Hearing over the past several months. He spoke about the context of the proposed development to the neighborhood and utilization of the vacant, available land. Mr. Worley spoke in support of the proposed zone change.

Ms. Bledsoe talked about traffic considerations and the challenge of maintaining context in neighborhoods with historical homes. She spoke in support of the proposed zone change.

Ms. Reynolds spoke about the importance of aesthetics in a neighborhood, remarking on the nearby apartment structures. She acknowledged the concerns from the neighbors. Ms. Reynolds spoke in support of the proposed zone change.

Mr. J. Brown expressed appreciation with Vice Mayor Kay's comments about context in developments. He suggested the Council add a conditional height restriction, as previously mentioned by Ms. Lamb. He inquired about the possibility of expanding the 18 foot buffer. Mr. J. Brown thanked the constituents for their participation and voicing their concerns.

Ms. LeGris expressed concerns about context in the neighborhood and potentially implementing a more appropriate buffer.

Mr. McCurn thanked the Council and all involved parties for their participation. He spoke in support of the proposed zone change.

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Mr. McCurn moved to adopt the Findings of Fact, as recommended by the Planning Commission. Mr. Worley seconded the motion.

Upon motion by Ms. Lamb, seconded by Mr. J. Brown and approved by majority vote (Mr. F. Brown voted no, and Mr. Moloney was absent), the Findings of Fact were amended to include additional conditional restrictions limiting the height to three floors.

Mr. J. Brown expressed his intention to amend the Findings of Fact and increase the buffer. He asked how that would be determined. Ms. Wade responded.

Ms. Bledsoe expressed concerns regarding the impact increase the buffer may have on the housing cost per unit.

Mr. J. Brown concurred with Ms. Bledsoe's remarks.

Mr. McCurn asked for the typical buffer for R-5 Zones. Ms. Wade responded.

Mr. Ellinger assumed the chair.

Vice Mayor Kay spoke about the potential impacts of increasing the buffer, and the need to increase the transition between properties.

Upon motion by Vice Mayor Kay, seconded by Mr. Ellinger, the Findings of Fact were amended to add an additional 10 feet to the conditional 18 foot landscape buffer, for a total of 28 feet, between the development and the adjacent property. The motion failed by majority vote (Mr. F. Brown, Mr. Kloiber, Ms. Lamb, Mr. McCurn, Ms. Reynolds, Ms. Sheehan, Mr. Worley, Ms. Baxter, and Ms. Bledsoe voted no, and Mr. Moloney was absent.)

Ms. Jones asked a clarifying question. Vice Mayor Kay responded. Mr. Ellinger responded.

Mr. Worley spoke against the amendment.

Ms. Lamb spoke against the amendment.

Vice Mayor Kay resumed the chair.

Upon motion by Mr. J. Brown, seconded by Mr. Ellinger, the Findings of Fact were amended to add an additional 2 feet to the conditional 18 foot landscape buffer, for a total of 20 feet, between the development and the adjacent property. The motion failed by majority vote (Mr. F. Brown, Mr. Kloiber, Ms. Lamb, Mr. McCurn, Ms. Reynolds, Ms. Sheehan, Mr. Worley, Ms. Baxter, and Ms. Bledsoe voted no, and Mr. Moloney was absent.)

Mr. McCurn asked if it would be inappropriate to ask questions of Mr. Clendenen regarding the proposed amendment. Vice Mayor Kay responded. Mr. McCurn spoke against the amendment.

Mr. Kloiber concurred with Mr. McCurn's remarks.

Mr. Ellinger asked if it would be inappropriate to ask the Opposition if they thought the proposed amendment was agreeable. Vice Mayor Kay responded.

Ms. Bledsoe proposed that the developer use landscaping to create a softer transition as an alternative to increasing the number of feet as a setback.

Vice Mayor Kay inquired as to if the adoption of Findings of Fact was a roll call vote. Mr. Ellinger asked if the amendment to the Findings of Fact constituted a material change. Ms. Jones responded.

Mr. Worley clarified a point regarding parliamentary procedure.

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Upon motion by Mr. McCurn, seconded by Mr. Worley, the Council approved the amended Findings of Fact, as follows, by the following vote.

Aye: F. Brown, J. Brown, Ellinger, Kloiber, Lamb, -----12
LeGris, McCurn, Reynolds, Sheehan,
Worley, Baxter, Bledsoe

Nay: Kay -----1

Absent: Moloney -----1

1. The requested High Density Apartment (R-5) zone is in agreement with the 2018 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The proposed rezoning will expand housing choice (Theme A, Goal #1) by accommodating the demand for housing in Lexington responsibly, prioritizing higher-density and a mixture of housing types (Theme A, Goal #1.b). The proposed development prioritizes higher density housing by adding 36 dwelling units to a two-family residential area presently zoned for a total of six (6) dwelling units on the three existing lots.
 - b. The proposed development will support Infill and Redevelopment throughout the Urban Services Area as a strategic component of growth (Theme A, Goal #2) through the infill of two vacant parcels of land and increasing the utilization of an underutilized structure (Theme E, Goal #1.d).
 - c. The proposed rezoning will prioritize multi-modal options through the establishment of an enhanced transit stop (Theme B, Goal #2.d), while also prioritizing a pedestrian-first design that accommodates the needs of bicycle, transit and other vehicles through the increased infrastructure along the frontage of the property (Theme D, Goal #1.a).
2. The requested Development Type and proposed development is in agreement with the Fourth Street Zoning Study, which recommends medium density residential for this area.
3. The justification and corollary development plan are in agreement with the policies and development criteria of the 2018 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Site Design, Building Form and Location as the site creates a residential development that supports pedestrian mobility, while also complementing the existing structures along Blackburn Avenue.
 - b. The proposed rezoning includes safe facilities for the potential users, through the incorporation of enhanced pedestrian facilities along the property frontage and the establishment of an enhanced transit stop. These improvements address the Transportation and Pedestrian Connectivity development criteria of the 2018 Comprehensive Plan.
 - c. The proposed rezoning meets the criteria for Greenspace and Environmental Health as it works with the current landscape, limits the impacts on the surrounding environment, and increases tree canopy coverage.

4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following buffering restriction is recommended via conditional zoning:
 - a. There shall be no external light along the southwest portion of the structure, which is adjacent to the property located at 321 Blackburn Avenue.
 - b. There shall be an 18 foot landscape buffer yard adjacent to the property located at 321 Blackburn Avenue for the length of any principal structure on the subject property.
5. This recommendation is made subject to approval and certification of PLN-MJDP-20-00019: Yellman's Subdivision (Powerhouse Church of God) (Blackburn Development), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

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Upon motion by Mr. McCurn, seconded by Mr. Ellinger, and approved by unanimous vote, the rules were suspended and the ordinance received second reading.

Upon motion by Mr. McCurn, and seconded by Mr. Ellinger, the ordinance was approved by the following vote:

Aye:	F. Brown, J. Brown, Ellinger, Kloiber, Lamb, McCurn, Reynolds, Sheehan, Worley, Baxter, Bledsoe	-----11
Nay:	Kay, LeGris	-----2
Absent:	Moloney	-----1

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Vice Mayor Kay thanked the participants for their involvement.

Upon motion by Ms. Bledsoe, seconded by Ms. Baxter, and approved by unanimous vote, the meeting adjourned at 10:22 p.m.

Deputy Clerk of the Urban County Council