

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

November 17, 2011

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Will Berkley; Carla Blanton; Marie Copeland (arrived at 1:33 p.m.); Mike Cravens, Chair; Mike Owens; Frank Penn; and Lynn Roche-Phillips. Absent were Eunice Beatty, Patrick Brewer, Derek Paulsen, and William Wilson.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Traci Wade; Tom Martin; Chris Taylor; Rob Hammons; and Stephanie Cunningham. Other staff members present were: Rochelle Boland, Department of Law; Jeff Neal, Division of Traffic Engineering; Hillard Newman, Division of Engineering; and Tim Queary, Urban Forester.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Penn, seconded by Mr. Owens, and carried 6-0 (Beatty, Brewer, Copeland, Paulsen, and Wilson absent) to approve the minutes of the October 13, 2011, and October 27, 2011, Planning Commission meetings.
- III. **POSTPONEMENTS AND WITHDRAWALS** – No such items were presented.
- IV. **LAND SUBDIVISION ITEMS** - No such items were presented.
- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, November 3, 2011, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Patrick Brewer, Mike Cravens, and Lynn Roche-Phillips. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

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

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

1. **SRC OF LEXINGTON, INC., ZONING MAP AMENDMENT & EASTLAND SUBDIVISION, BLOCK A, ZONING DEVELOPMENT PLAN**

- a. MARV 2011-17: SRC OF LEXINGTON, INC. (12/31/11)* - petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a Light Industrial (I-1) zone, for 3.18 net (3.82 gross) acres, for property located at 1133 Industry Road. A dimensional variance has also been requested with this zone change.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Wholesale and Warehouse (WW) land use for the subject property. The Central Sector Small Area Plan, an adopted amendment to the 2007 Plan, recommends the same land use for this location, but also (in Subarea "E") identifies the subject property as in a "mix of light industrial" uses as one travels west of Winchester Road. The existing building on the subject property is proposed to permit rebuilding and refurbishment of engines and transmissions for large mining and industrial machinery.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reason:

1. In this instance, a restricted Light Industrial (I-1) zone for the subject property is in substantial agreement with the 2007 Comprehensive Plan, and with the Central Sector Small Area Plan, which is an adopted amendment to that Plan, for the following reasons:
 - a. The use proposed for the subject property is generally permitted (except for the size of the machinery) in the B-4 zone, and is located in a "cluster of business/light industrial activities" more recently identified by the adopted Small Area Plan. The applicant's proposed use closely aligns with the Wholesale and Warehouse (WW) land use category recommended at this location by the Plan.
 - b. Wholesale and Warehouse land use anticipates dealerships (and their corollary repair facilities) for trucks, airplanes, ships, boats and "goods which are extremely large, noisy, or inappropriate to other business zones." The engines and transmissions to be serviced and refurbished at this location are similar in size and in operation to this description, and would be clearly inappropriate to be located in any business zone.

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- c. Several objectives to Goal 11 of the adopted Comprehensive Plan would be advanced by the proposed use of the subject property for the manner proposed by the applicant, instead of as a warehouse under the current zoning of the property.
2. This recommendation is made subject to the approval and certification of ZDP 2011-93: Eastland Subdivision, Block "A" prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of any Planning Commission approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

ALLOWABLE USES:

- a. Principal permitted uses in the B-4 zone.
- b. Establishments and lots for the display, rental, sale, service or repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, tractor-trailer trucks, travel trailers, mobile homes, or supplies for such items.
- c. Car and truck washing establishments.
- d. Major or minor automobile and truck repair, including the repair, refurbishment and rebuilding of engines and transmissions of all sizes, provided that it is conducted within completely enclosed buildings.
- e. The manufacturing, compounding, assembling, processing, packaging and similar treatment of sheet metal, ceramics, electrical parts, electronic instruments, radios, rubber and metal stamps, rubber products, clocks, engine parts, wire and materials ordinarily used in internal combustion engines.
- f. Other industrial and manufacturing uses, such as auto parts rebuilding, battery manufacturing, box and crate assembly, carpet cleaning, heating equipment manufacturing, and tool manufacturing.
- g. Conditional uses in the I-1 zone (provided the necessary permit is approved by the Board of Adjustment).

These restrictions are appropriate and necessary for the subject property to limit uses of the subject property to those more closely recommended by the Comprehensive Plan and/or the adopted Small Area Plan for this location and vicinity.

b. REQUESTED VARIANCE

1. Reduce the zone-to-zone perimeter screening requirements from 15 feet to 0 feet and to eliminate the requirement for trees and shrubs.

The Zoning Committee did not make a recommendation on this variance request.

The Staff Recommended: **Postponement** of the requested landscape variances, for the following reasons:

- a. The Landscape Review Committee is scheduled to meet on November 8, 2011, and may make a substantive recommendation on the requested landscape variances prior to the Commission's scheduled public hearing on this request.
 - b. As of the date of this report, the applicant has not provided a justification in accordance with Article 7-6(b)(1) of the Zoning Ordinance to substantiate the requested elimination of all zone-to-zone screening required for this site.
- c. ZDP 2011-93: EASTLAND SUBDIVISION, BLOCK A (12/31/11)* - located at 1133 Industry Road.

(EA Partners)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property I-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Correct plan title.
7. Denote tree preservation areas.
8. Clarify required parking (add # of employees on maximum shift to site statistics).
9. Clarify street cross-section (does not match plat).
10. Resolve proposed use of gravel areas and the need for fencing.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property on Industry Road, in the vicinity of New Circle Road and its intersection with Winchester Road. She stated that Industry Road intersects with Winchester Road to the south of the subject property as well. The property is surrounded by industrial uses, with I-1 zoning to the north and west, and B-4 zoning to the east and southeast. The petitioner's existing 32,000 square-foot building is currently used as a warehouse. The petitioner proposes to re-zone the subject property in order to extend their operations there.

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Ms. Wade stated that the Division of Building Inspection determined that a zone change would be necessary in order for the petitioner to expand onto the subject property because of the scope and scale of the petitioner's business, which involves refurbishing engines and transmissions for mining and industrial equipment. The expansion of that operation would result in larger-scale industrial uses than those typically appropriate in the B-4 zone. Although major automobile repair is a permitted use in the B-4 zone, the size and scale of the work proposed by the petitioner would be much larger than typical repairs, even for tractor trailers.

Ms. Wade said that the 2007 Comprehensive Plan recommends Warehouse & Wholesale land use for the subject property, which corresponds to the existing B-4 zoning. The subject property, however, was also included as part of Sub-Area "E" in the Central Sector Small Area Plan. The Small Area Plan recognizes the clustering of business and light industrial uses in this area, noting the mixture of industrial uses along Eastland Drive and Floyd Drive, but it does not include any specific recommendations for change for the area. Of significance to the staff in determining whether the proposed rezoning was in agreement with the Comprehensive Plan was that the basic use of refurbishing or reconditioning engines is allowed in both the B-4 and I-1 zones. In addition, the staff considered Goal 11 of the Comprehensive Plan: "To provide diverse business and employment opportunities for Lexington-Fayette County," and the staff believes that several of the Objectives of that Goal would be furthered by the expansion of the petitioner's operation. Ms. Wade stated that the staff concluded, therefore, that the proposed rezoning could be found to be in substantial agreement with the 2007 Comprehensive Plan and the Central Sector Small Area Plan. She referred to the findings for approval on the agenda, noting that there was an error in the wording of 1 a and b; the land use category should read "Warehouse and Wholesale," rather than "Wholesale and Warehouse."

Ms. Wade stated that the Zoning Committee and the staff are recommending approval of this request, for the reasons as listed in the staff report and on the agenda, subject to the proposed conditional zoning restrictions, as listed in the staff report and on the agenda. The proposed conditional zoning restrictions would generally allow the principal permitted uses in the B-4 zone, plus six additional uses in the I-1 zone.

Commission Questions: Ms. Roche-Phillips stated that she had asked at the Zoning Committee meeting if there would be any noise associated with the proposed operation, and was told that there would be no noise; but now it appeared that there were some concerns about noise impact. Ms. Wade answered that the general land use description refers to uses that could be noisy, but she did not believe that the proposed use of the subject property would generate additional noise.

Mr. Penn asked why the property was being proposed for rezoning, since the proposed use of the property is permitted in both the B-4 and I-1 zones. Ms. Wade responded that the scope and scale of the engines and the repairs performed by the petitioner are not in line with the typical uses in the B-4 zone.

Development Plan Presentation: Mr. Taylor presented the associated final development plan for the subject property, noting that it depicts the existing 32,000 square-foot structure on the property, with 40 parking spaces. He said that the Subdivision Committee recommended approval of this plan, subject to the 10 conditions as listed on the agenda, the first nine of which are standard "clean-up" conditions. Condition #10 refers to the gravel areas which are denoted on the plan to the rear and side of the existing building. Under the requirements of the Zoning Ordinance, those areas would be required to either be paved, or fenced and screened as outdoor storage. Mr. Taylor said that condition #10 is worded such that the finishing of those gravel areas would be handled in conjunction with the Division of Building Inspection's sign-off for the plan. The petitioner will have to clarify whether or not the area will be paved; and, if not, how it will be fenced and screened, prior to certification of the plan.

Variance Presentation: Mr. Sallee presented the revised staff report on the requested variance, explaining that the petitioner is proposing to eliminate the landscaping (trees and shrubs) from the required 15' landscape buffer. The variance involves the north and northeast sides of the subject property. Since the adjacent properties will remain zoned B-4, zone-to-zone screening would otherwise be required.

Mr. Sallee stated that the subject property was developed in the 1960s, and has remained largely unchanged since that time. At the Zoning Committee meeting, the staff recommended postponement of the variance request, since the Landscape Review Committee had not yet had an opportunity to review this request. That Committee met last week, reviewed this application for the variance, and voted to recommend approval of it to the Planning Commission, with no conditions.

Mr. Sallee displayed several photographs reviewed by the Landscape Review Committee in order to familiarize the Commission members with the areas proposed for the variance: 1) aerial photograph of the subject property from the direction of Industry Road, noting the property line proposed for the variance and the close proximity between the existing building and a small, covered shed; 2) a view of the driveway to the property from the street frontage, noting the existing gate, the property line, and the topographic difference; 3) a view from the rear of the property, looking toward the front, noting the shed, some of the outdoor equipment storage, and the location of the building on the adjacent property; 4) a view of the same location, looking toward Industry Road from the north; 5) a view from the sub-

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ject property to the adjoining property on the east, noting the existing retaining wall and the elevation difference; 6) a view of the rear of the property, including the retaining wall and the existing screening around the railroad spur, which will also be zoned I-1 if the proposed rezoning is approved; and 7) an example of one of the large pieces of machinery which the petitioner proposes to refurbish on the subject property.

Mr. Sallee said that, since the applicant has provided a revised justification for the variance to the staff, the staff has revised their recommendation to the Commission to reflect the action of the Landscape Review Committee.

The Staff Recommended: **Approval** of the requested landscape variances, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, create a nuisance to the general public, nor alter the character of the general vicinity. This portion of the subject site is devoid of any existing vegetation, and topographic differences ($\pm 5'$) between the site and the adjoining property to the north, including an existing retaining wall, will remain as they currently exist today.
- b. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The granting of this variance will allow the continued use of the existing building overhang, and an area of compacted gravel that is ill-suited for landscaping. The adjacent property to the north, including a railroad spur, is significantly lower than the subject property, and would not derive any significant benefit from installation of the otherwise required landscaping.
- c. Besides the topography, the special circumstances that apply to the subject property justifying the landscape variance are the close proximity of the adjacent building, the nearly 50-year old overhang on the subject building in the area of the required landscaping, and the existence of the retaining wall along the edge of the subject property.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant because it would require the razing and relocation of part of the existing building, and would likely require the elimination of the compacted gravel area for necessary equipment storage.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance in 1983, as the existing conditions have largely been unchanged since that time.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property I-1; otherwise, any Commission action of approval of this variance is null and void.
2. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
3. Prior to any occupancy for any new light industrial use, the applicant shall obtain all applicable permits from State and local agencies, including the LFUCG Divisions of Building Inspection and Fire & EMS.

Commission Questions: Ms. Copeland asked how many trees the public would be denied if the requested landscape variance was approved. Mr. Sallee answered that the Landscape Ordinance requires one tree for every 40 linear feet of boundary. The property line is 467 feet in length, so approximately 12 or 13 trees would ordinarily be required. Ms. Copeland said that she would like to note that, although those 12 or 13 trees will not be planted on the subject property because it is not "suitable," trees serve many purposes other than just screening. She asked if the Landscape Review Committee considered the loss of those trees to the overall canopy for the city, and whether those 12 or 13 trees could be planted in some location other than on the subject property. Mr. Sallee responded that he did not recall any extensive discussion about tree canopy at that meeting. Ms. Copeland said that it would have been the "green thing to do." She opined that it was a "glitch in the system" to deny the public the benefit of the 13 trees.

Petitioner Presentation: Glenn Price, attorney, was present representing the petitioner. He said that the reason for this rezoning request is that, although the existing B-4 zoning permits automobile engine refurbishing and the like, the petitioner refurbishes heavy mining and industrial engines and equipment, which is outside the scope of the permitted uses of that zone. All of the engine refurbishment will take place indoors, so there will be no noise impact to the surrounding area. Mr. Price said that the petitioner believes that Goal 11 of the Comprehensive Plan, to which Ms. Wade referred in her presentation, supports the proposed refurbishing use in both the existing B-4 zone and the proposed I-1 zone.

With regard to the requested variance, Mr. Price stated that the existing structure on the subject property was constructed in 1963, before landscaping requirements were added to the Zoning Ordinance. He noted that the 15' where the landscape buffer would typically be planted is either located under the overhang of the structure, or filled with heavily compacted gravel, so it would be unsuitable for plant life. In addition, that gravel helps to support the retaining wall, which is necessary due to the grade change between the subject property and the adjoining parcel.

Rory Kahly, EA Partners, stated, with regard to Ms. Copeland's questions about the possible loss of the tree canopy, that there will still be a canopy requirement on the subject property if the variance is granted. The required canopy trees will be planted elsewhere on the property.

Commission Question: Ms. Copeland asked if those trees would be planted on the subject property. Mr. Kahly answered that they would be. Ms. Copeland noted that the development plan does not depict the location of the trees elsewhere

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on the property. Mr. Kahly responded that a landscaping plan is not typically included on development plans. Ms. Copeland asked if the plantings would be trees, or small shrubs. Mr. Kahly answered that the tree plantings would meet the requirements of the Zoning Ordinance.

Citizen Comments: There were no other citizens present to speak to this request.

Zoning Action: A motion was made by Ms. Blanton, seconded by Mr. Owens, and carried 7-0 (Beatty, Brewer, Paulsen, and Wilson absent) to approve MARV 2011-17, for the reasons provided by staff.

Variance Action: A motion was made by Ms. Blanton, seconded by Mr. Owens, and carried 7-0 (Beatty, Brewer, Paulsen, and Wilson absent) to approve the requested variance for MARV 2011-17, for the reasons provided by staff, subject to the three conditions as recommended by staff.

Development Plan Action: A motion was made by Mr. Penn, seconded by Mr. Owens, and carried 7-0 (Beatty, Brewer, Paulsen, and Wilson absent) to approve ZDP 2011-93, subject to the 10 conditions as listed on the agenda.

B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS – Following abbreviated hearings, the remaining petitions will be considered.

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)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. HALLMARK STUDENT DEVELOPMENT CO., LLC, ZONING MAP AMENDMENT & TATTERSALL APARTMENT DEVELOPMENT ZONING DEVELOPMENT PLAN

- a. MAR 2011-16: HALLMARK STUDENT DEVELOPMENT CO., LLC (12/31/11)* – petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a High Rise Apartment (R-5) zone, for 8.54 net (8.83 gross) acres; and from an Agricultural Urban (A-U) zone to a High Rise Apartment (R-5) zone, for 2.06 net and gross acres, for property located at 843 South Broadway and 1200 Red Mile Road (a portion of).

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends a Commercial Residential Mixed Use (MU) land use for a majority the subject property, and Semi-Public Facilities (SP) for the rear portion of the site along the race track. The property was also included in the study area of the Red Mile Development Plan, which was formulated for The Red Mile property during the spring and summer of 2009, and was accepted by the Planning Commission. This Plan was consciously substituted for a Small Area Plan for the property. The petitioner proposes R-5 zoning in order to construct 4 multi-family buildings with 272 dwelling units (832 bedrooms), a clubhouse for residents, and associated off-street parking.

The Zoning Committee Recommended: **Postponement**, for the reasons provided by staff.

The Staff Recommends: **Postponement**, for the following reasons:

1. The 2009 Red Mile Development Plan identified very specific goals, principles and redevelopment recommendations. The proposal appears to be contrary to some of the stated and agreed upon redevelopment goals for the subject property.
 2. The staff would like to further assess the demand for student housing in this corridor, given the University of Kentucky's recent announcement that new dormitories are planned on the main campus.
- b. ZDP 2011-92: TATTERSALL APARTMENT DEVELOPMENT (12/31/11)* - located at 843 South Broadway.
(Vision Engineering)

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