

3. **ZOTA 2012-14: INCREASE NOTIFICATION REQUIREMENTS FOR MAP AMENDMENT REQUEST (ZONE CHANGE) APPLICATIONS** – petition for a Zoning Ordinance text amendment to increase the notification requirements for a zone map amendment request (aka zone change application) for properties a distance of 500 feet from the subject property.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: Underlined bold text below indicates an addition, ~~dashed-through~~ text indicates a deletion to the current Zoning Ordinance.

#### ARTICLE 6: AMENDMENTS

**6-4(b) NOTICE OF PUBLIC HEARING BEFORE THE PLANNING COMMISSION** – Before voting upon any proposed text amendment, zone map amendment, or binding condition or restriction amendment, notice of the time, place and reason for holding a public hearing shall be given by one publication in the newspaper of highest circulation in Fayette County, Kentucky, not earlier than twenty-one (21) days or later than seven (7) days before the public hearing. In addition, for any map amendment, or binding condition or restriction amendment, notice of the public hearing shall be posted on the subject property for fourteen (14) consecutive days prior to the hearing, and notice shall be given by first-class letter at least twenty-one (21) days in advance to owners of all property within a ~~500~~**400**-foot radius of the subject property. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a ~~500~~**400**-foot radius of the subject property, but to the next two properties beyond those included in the ~~500~~**400**-foot radius; but in no event shall notice be required for property more than twenty-four hundred (2,400) feet from the subject property for a zone change request or more than one (1) mile from the subject property for a conditional use or variance request in conjunction with a zone change as allowed in Article 6-4(c). For any Council- or Commission-initiated map amendment, notice by first-class letter shall be given to all owners of property, the classification of which is proposed to be changed, at least thirty (30) days prior to the public hearing.

#### Staff Alternative Text:

**6-4(b) NOTICE OF PUBLIC HEARING BEFORE THE PLANNING COMMISSION** – Before voting upon any proposed text amendment, zone map amendment, or binding condition or restriction amendment, notice of the time, place and reason for holding a public hearing shall be given by one publication in the newspaper of highest circulation in Fayette County, Kentucky, not earlier than twenty-one (21) days or later than seven (7) days before the public hearing. In addition, for any map amendment, or binding condition or restriction amendment, notice of the public hearing shall be posted on the subject property for fourteen (14) consecutive days prior to the hearing, and notice shall be given by first-class letter at least twenty-one (21) days in advance to owners of all property within a ~~500~~**400**-foot radius of the subject property. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a ~~500~~**400**-foot radius of the subject property, but to the next two properties beyond those included in the ~~500~~**400**-foot radius; but in no event shall notice be required for property more than twenty-four hundred (2,400) feet from the subject property for a zone change or variance request, or more than one (1) mile from the subject property for a conditional use ~~or variance~~ request in conjunction with a zone change as allowed in Article 6-4(c). For any Council- or Commission-initiated map amendment, notice by first-class letter shall be given to all owners of property, the classification of which is proposed to be changed, at least thirty (30) days prior to the public hearing.

The Zoning Committee Recommended: Approval of the staff alternative text, for the reasons provided by staff.

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

1. The staff alternative text amendment is supported by Goal #1 of the 2007 Comprehensive Plan, which endorses providing planning processes which enable widespread citizen participation and benefit the community; as well as Theme F.1. of the 2012 Comprehensive Plan's Goals and Objectives, which encourages engaging the residents of Lexington-Fayette County in the planning process, especially through constructive communication. The amendment expands mailed notice by twenty-five (25%) and will provide a detailed notification letter to a greater number of property owners near the location of a proposed zone change.
2. Until earlier this year, the Zoning Ordinance treated the notification for a zone change (Planning Commission) and a conditional use (Board of Adjustment) application equally; that is, notification to property owners within 400 feet of the subject property. However, the recently approved change to Article 7 now gives deference or greater importance to conditional use applications. The proposed text amendment would equalize these notification requirements again, as each can have an equal impact to surrounding property owners.

**Staff Presentation:** Ms. Wade presented the staff report on this requested text amendment, noting that a staff exhibit had been distributed to the Commission members prior to the start of the hearing. She said that this proposed text amendment would amend the notification requirements for map amendment requests (zone changes). This request was initiated by the Planning Commission earlier in 2012 at the request of the staff.

Ms. Wade stated that the proposed change is to Article 6-4 of the Zoning Ordinance, which regulates the requirements for notification when a zone change application is filed. Currently, there are three ways in which citizens are notified of a requested zone change: 1) mailed notice to property owners within 400 feet; 2) a sign posted on the property; and 3) a legal advertisement in the *Herald-Leader*. This text amendment would change the mailed notice requirement for first-class mail from 400 feet to 500 feet in order for it to be consistent with a recent change to the notification requirements for conditional use applications, which was approved by the Planning Commission and adopted by the Urban County Council. In that case, the staff made a recommendation that the proposed zone change met Goal 1 of the 2007 Comprehensive Plan, which endorses, "Provided planning processes which enable citizen participation and benefit the community." This proposed zone change would also support that Goal, as well as theme F.1 of the 2012 Comprehensive Plan, which encourages, "engaging residents of the county in the planning process, especially through constructive communication."

Ms. Wade said that the enacted change to Article 7 of the Zoning Ordinance gave deference to conditional use applications over zone change requests by increasing the notification requirement to 500 feet, while notification for a zone change remains at 400 feet. The staff did not want to convey the message to neighborhoods, citizens, and applicants that conditional use permits have more impact or are more important than a zone change. The staff contends that a zone change could potentially have more impact on a neighborhood. This proposed text amendment would equalize notification requirements for zone changes and conditional use permits.

Ms. Wade noted that the staff drafted an alternative text, which made an additional small change to move the words "or variance" up one line in the paragraph, in order to make the requirements more consistent with those that would have to be followed by an applicant for the Board of Adjustment.

With regard to the staff exhibits previously distributed, Ms. Wade said that one document included cost estimates for the required notification mailings for conditional use and zone change applications. The staff's research indicated that the new 500-foot notification requirement could result in a 32% cost increase for Board of Adjustment applicants. The same estimate for zone change notification indicated that postage cost would increase, on average, by less than \$10, so the impact would be minimal to most applicants. Ms. Wade stated that the staff and Zoning Committee recommended approval of the staff alternative text, for the reasons as listed in the staff report and on the agenda.

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

**Commission Comments:** Mr. Cravens stated that he does not believe it is necessary for the notification requirements for zone changes and conditional use applications to match, particularly since notification is also provided via signs and legal advertisements. He said that the proposed text amendment would "tighten up the Zoning Ordinance," which would make development more difficult. Mr. Cravens opined that a zone change can be a "\$50,000 craps-shoot," and that developers would like to have some certainty when they file zone change requests. He said that he is opposed to this request, and he would be willing to make a motion for disapproval.

Mr. Owens stated that a conditional use permit application following a rezoning could be difficult, since some citizens could receive notice of the conditional use application without having been notified of the zone change. He said that he believes that citizens need to be aware of these issues, and notification should be consistent.

**Motion:** A motion was made by Mr. Cravens, and seconded by Mr. Berkley, to disapprove ZOTA 2012-14. Mr. Cravens' motion failed, 6-4 (Blanton, Brewer, Owens, Plumlee, Roche-Phillips, and Wilson opposed; Penn absent).

**Action:** A motion was made by Ms. Plumlee, seconded by Ms. Roche-Phillips, and carried 7-3 (Berkley, Cravens, and Mundy opposed) to approve the staff alternative text of ZOTA 2012-14, for the reasons provided by staff.