

7. DR. JAMES WILHITE ZONE MAP AMENDMENT & WILHITE PARK SUBDIVISION, UNIT 1-B, SECTION 1, ZONING DEVELOPMENT PLAN

- a. MAR 2016-12: DR. JAMES WILHITE (6/5/16)* – petition for a zone map amendment from a Townhouse Residential (R-1T) zone to a Professional Office (P-1) zone, for 5.08 net (6.16 gross) acres; and from a Planned Neighborhood Residential (R-3) zone to a Professional Office (P-1) zone, for 0.40 net and gross acre, for property located at 3500 Arbor Drive (a portion of).

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The 2015 Armstrong Mill Road West Small Area Plan (AMWSAP) is a plan for the revitalization of the 1900± acre area that recommends six goals. Eight designated neighborhood associations are included in the area encompassed by the Small Area Plan. The goals focus on improving safety; improving connectivity; promoting livable neighborhoods with housing choices (while maintaining the neighborhood form) and promoting green infrastructure; improving the quality of life and health including access to affordable and healthy food; and enhancing the sense of place by creating community spaces that foster social interaction and a sense of identity.

The petitioner proposes a Professional Office (P-1) zone for the subject property in order to adaptively re-use the existing 30,000+ square-foot building on this site for offices. The R-3 zoned portion of the property will be used as a storm water detention area.

The Zoning Committee Recommended: **Approval.**

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

1. The applicant has not provided any justification that the Professional Office (P-1) zone is in agreement with either the 2013 Comprehensive Plan or the 2015 Armstrong Mill West Small Area Plan, an adopted element of the Plan.
 2. As proposed, re-zoning this location to a P-1 zone may significantly impact the nearby neighborhood with the potential for increased traffic, noise and light pollution - especially for those properties on Arbor Drive and those immediately adjoining the subject property. It is therefore inappropriate.
 3. The existing Townhouse Residential (R-1T) zone and Planned Neighborhood Residential (R-3) zone remain appropriate for the subject property because they can more fully support the 2013 Comprehensive Plan goals and policies, including the 2015 Armstrong Mill West Small Area Plan.
 4. There have been no unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in 2013, or since the Armstrong Mill West Small Area Plan was adopted in 2015, that would support the requested P-1 zoning for the subject property.
- b. ZDP 2016-46: WILHITE PARK SUBDIVISION, UNIT 1-B, SECTION 1 (6/5/16)* - located at 3500 Arbor Drive.
(Vision Engineering)

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

1. Provided the Urban County Council rezones the property P-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. Urban Forester's approval of tree inventory map.
5. Addition of building coverage and floor area ratio in site statistics, per Article 21 requirements, instead of parking floor area (85%).
6. Denote street/cul-de-sac detail on plan.
7. Resolve need for a turn-around for emergency vehicles in parking lot.

Staff Zoning Presentation - Mr. Emmons presented the staff report for this zone change request and said that this application is for a rezoning from two zones, primarily R-1T and a small portion of R-3. The applicant is requesting a P-1 zone for 5½ acres, located on Man O' War Boulevard, between Armstrong Mill Road and Trent Boulevard. It is accessed solely from Arbor Drive. The subject property is surrounded by residential zoning, which includes single family residential to the north and west; to the north there is a combination of R-1T and R-2 zones. Across Man O' War Boulevard it is zoned R-4. The property along Arbor Drive is zoned R-3 and R-1T, with a mix of single family residences and townhomes. The subject property has been home to the National Academy since 1986; and since that time, it has had a number of conditional uses approved, which are outlined in the staff report. The subject property is currently used primarily as a private club in the R-1T zone. This club has been used as an athletic facility (gymnastics, etc.) for after-school programs for kids. The Board of Adjustment allowed a childcare center as an accessory use to the private club, which as a standalone facility, is not a permitted conditional use in

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

the R-1T zone. The petitioner believes that the time for this use is ending and would like to re-purpose this property and is proposing to re-utilize this facility for office space.

Mr. Emmons stated that the staff must first consider whether the proposed zone is in agreement with the Comprehensive Plan. Mr. Emmons stated that the petitioner has said that their application is in agreement with the Comprehensive Plan but has not provided any justification that it is. The staff considered the Comprehensive Plan and found that it and the 2015 Armstrong Mill West Small Area Plan (an adopted element of the Comprehensive Plan) both encourage safe and livable communities, diversity of housing, and keeping the neighborhood character. The staff does not believe that the proposed zone change to P-1 is in agreement with the Comprehensive Plan. The petitioner believes the proposed zone change is appropriate and that the existing zoning is inappropriate at this location.

Mr. Emmons displayed an aerial photo of the property proposed for rezoning, showing an existing building on the site, which is surrounded by parking. Mr. Emmons stated that the staff disagrees with the petitioner's proposal that the requested zone change to P-1 is appropriate. The staff feels this zone change is inappropriate for the subject property. This property is visible from Man O' War Boulevard but is only accessible from Arbor Drive, which is a small local residential street. It is generally accepted as a poor planning principle to place professional offices at the end of residential streets, with the residential street as sole access. It creates unnecessary traffic traveling through neighborhoods. The petitioner stated that the gym did produce traffic; however, that was a conditional use approved by the Board of Adjustments. Mr. Emmons stated that at one point the gym was approved for up to 476 children, currently they are only approved for 200. As a conditional use, the Board of Adjustment can consider an individual case as to whether that particular use would or would not create a nuisance via traffic, noise, light, hours of operation, etc. The staff believes that the petitioner neglects regarding the traffic, such that if the proposed zone change does get approved, the athletic center and child care facility would be principal permitted uses in this zone. They would therefore not have the protection that they have as a conditional use, such as hours of operation and the total number of children. Mr. Emmons stated that the proposed zone change to a P-1 zone could potentially increase traffic and also other nuisance factors such as traffic, noise, light and disruption due to the hours of operation.

Mr. Emmons stated that the existing R-1T zone is appropriate since there are conditional uses that are permitted in that zone. The staff agrees with the petitioner regarding the list of conditional uses that are permitted in the R-1T zone that there are not many uses that could go into the existing 30,000 square-foot building on the subject property. The staff believes that other uses such as a private club, a church or religious assembly or a private school for academic instruction could also repurpose this property. The staff also believes that the land would be more appropriately used as residential since the Planning Commission has approved a portion of the property near the Arbor Drive site for approximately 20 townhouses, which are not inappropriate at this location. An R-3 zone would be more appropriate than the proposed P-1 because, in addition to the conditions that have already been mentioned with the R-1T zone, things like nursing homes, assisted living facilities, community centers, and stand-alone child care facilities would be permitted as conditional uses. An R-3 zone also would be more in compliance with the recommendations of the Comprehensive Plan. Mr. Emmons stated that the Zoning Committee had recommended approval.

Development Plan Presentation - Ms. Gallt reviewed the development plan listing the conditions for approval, noting that the staff reviewed it as if the zoning is already in place. The plan displays the 30,000 square-foot building and the parking lot in the front, as well as some additional parking to be able to meet the parking requirements for the use. The staff and the Subdivision Committee recommended approval for the reasons listed on today's agenda.

Petitioner Presentation - Dick Murphy, attorney representing the petitioner, Dr. James Wilhite, was present. Mr. Murphy stated that the subject property is currently the site of the National Academy, which is a private club for children with cheerleading, dance, child care, etc. Dr. Wilhite has been operating this facility for 30 years. The Board of Adjustment amended the approved conditional use in 2000 to allow 476 students. The petitioner opened this facility in order to assist with motor skill development for children. The public schools have discovered funding programs for after-school programs, which has impacted the attendance of this facility, and the current enrollment is down to 125 children. Mr. Murphy displayed some photos of the facility, noting that the photos had to be taken without students present due to privacy laws: 1) street frontage from Arbor Drive; 2) side view of building, which is two levels with the height of a three-story building because of the two-story gym included in the facility; 3) side view; 4) side view with a play area; 5) kitchen; 6) classroom; 7) interior gym; 8) large classroom; 9) closed KinderCare facility which is currently not being used; 10) Northpointe Healthcare at Trent Blvd. and Man O' War Blvd.; 11) New Apostolic Church; 12) Community Action Head Start in a former church building; 13) Church of God; 14) Milward Funeral Home; 15) Word of Hope Lutheran Church next door to the subject property, which is across a ravine. Mr. Murphy stated that the Wilhite building is in proximity to other educational institutions noting that they are appropriate building-wise, architecture-wise, and massing-wise with their location.

Mr. Murphy said that the existing R-1T zone provides limited options for the property. In the R-1T zone, the only viable uses are other churches or daycare facilities that would be limited to 12 years and younger. The petitioner feels that selling the proposed townhouse lots to fund the operation of the current facility is not feasible, and that they would be forced to wait for a church or school to approach him to buy the facility. Mr. Murphy stated that the P-1 zone would allow further uses, which would be fully appropriate with the institutional type uses in the area already and would also make the property more viable. Mr. Murphy stated that the property could have professional offices or charitable offices, libraries or museums, medical offices

or a wellness center, dance studios, fine-art studios, private clubs, business colleges, or adult day centers. Mr. Murphy stated that they're not a requesting B-1 zone change or anything similarly intense; they are asking for limited additional uses.

Mr. Murphy said that the staff contends that the existing building could be adapted for use as R-1T, adding that this building cannot be redeveloped for residential use. If it went to R-3, it would be difficult even for a nursing home because the building has no elevator and has several two-story staircases.

Mr. Murphy stated that with regard to the Armstrong Mill West Small Area Plan it found that this area is a third-tier or a "middle ring suburb." Those suburbs in the middle often lack public intervention and are often overlooked by private investors. Many residents in this area do not own automobiles and have difficulties getting to stores and medical services. This area has a lower household income and very few resources, such as medical offices. There is a great need for healthcare in this area. Mr. Murphy stated that Dr. Wilhite has always been interested in providing medical facilities for the health and safety of the children. This building has been on the property for 30 years, and there are no objectors present who objected to them on using it for a new use, which indicates that the facility is an accepted part of the community. The petitioner contends that the P-1 zone would help to meet the recommendations of the Armstrong Mill West Small Area Plan.

Matt Carter, Vision Engineering, commented on the traffic. He compared three different facilities similar to the subject property. The first facility was a 300-child daycare center; from the ITE trip generation manual, the peak hour traffic for the AM was 240 trips and for the PM was 246 trips. The second facility was a 200-child daycare center that had peak hour traffic of 160 trips in the AM and 164 in the PM. The third facility was a 30,000 square-foot professional office building that had peak hour traffic of 47 trips in the AM and 45 in the PM. He said if the childcare facility is compared to the 30,000 square-foot office building, it has a 57% reduction of trips in the AM and 51% reduction of trips in the PM. The proposed office building would be a significant reduction from the current child care facility.

Mr. Murphy said that there have been complaints about noise and lights. The current facility operates from 5:30 AM to 8:00 PM. The petitioner contends that the proposed P-1 zone would actually be a less intense use, and that it would be worse for the neighborhood if the existing building ends up vacant.

Commission Questions - Mr. Brewer asked Mr. Murphy if a zone change to R-3 had been discussed with his clients. Mr. Murphy stated that it had, and that a change to R-3 would allow other uses such as a nursing home, however the petitioner contends that the extra uses in the P-1 zone would be low-impact to the existing traffic.

Staff Rebuttal - Mr. Emmons said that the number of cars is not their main concern; it's the types of trips that will increase in the existing residential zone. If medical offices were to exist on the subject property, traffic would increase all day long, not just in the AM and PM peak hours. He said that if the Planning Commission agrees with the petitioner's justification, the staff would request that they delete a portion of item C (the first sentence) from the petitioner's findings for approval. The professional office use would remain a quiet use and would be compatible with surrounding uses without addressing the traffic generation that was addressed in the findings for approval. Mr. Emmons also stated that when the staff recommends items for disapproval they look at other zoning to prohibit uses such as medical offices.

Mr. Cravens commented that the building already appears as a P-1 building because it is very large and properly constructed. Mr. Cravens said that he could move for approval. Ms. Mundy commented that her daughter had attended classes when she was younger. Ms. Mundy has been in this building and understands and appreciates the construction of the structure.

Zoning Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson and carried 9-0 (Drake and Smith absent) to approve MAR 2016-12: DR. JAMES WILHITE with the petitioner's findings, revised as follows.

- a. The property and building have been designed and operated as a childcare facility, after school programs, and as a cheer-leading and gymnastics club for the last 30 years. However, changes in the provision of such services have moved many such programs to publicly-funded programs at public school, rendering the existing use no longer viable at this property.
- b. The existing building, an approximately 30,000 square-foot concrete and steel building, which is fully sprinkled, is not well-suited for residential uses, but would be suitable for many uses allowed in the Professional office zone such as offices, private or church-related schools for academic instructions, churches, libraries, museums, business college, private clubs, elder day care center and other such uses
- c. Professional office use would remain a quiet use and would be compatible with surrounding uses. The church and residential uses on the north and west have no vehicular access into the property and are separated by topography. The building and property are already constructed with appropriate utilities, drainage, and sewer service for this professional office building.

Development Plan Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson and carried 8-0 (Drake, Penn, and Smith absent) to approve, subject to the conditions as recommended by the Subdivision Committee.

