

1. LEXINGTON TROTS BREEDERS ASSOCIATION, LLC, ZONING MAP AMENDMENT & RED MILE MIXED-USE DEVELOPMENT (AMD.) ZONING DEVELOPMENT PLAN

- a. MAR 2012-4: LEXINGTON TROTS BREEDERS ASSOCIATION, LLC (6/28/12)* - petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a Mixed-Use Community (MU-3) zone, for 2.12 net (3.39 gross) acres, for property located at 1200 Red Mile Road (a portion of); and 439, 441, 445, 451, 455, 459, 461, 463 and 471 Nelms Avenue.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends Commercial Residential Mixed Use (MU) land use for the parcels on the northeast side of Nelms Avenue, and Greenspace/Open Space (GS) on its southwest side. The properties were 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 MU-3 zoning, to be incorporated into the larger MU-3 zoning on the Red Mile property, for a mixed-use entertainment project. The revised preliminary development plan proposes a mixed-use building and associated off-street parking.

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

The Staff Recommended: Approval, for the following reason:

1. The proposed Mixed-Use Community (MU-3) zone can be found to be in substantial agreement with the 2007 Comprehensive Plan, for the following reasons:
 - a. The north side of Nelms Avenue is recommended for Commercial Residential Mixed Use (MU) future land use by the Comprehensive Plan. The petitioner is proposing a mixed-use zone and a mixed-use building on the site.
 - b. The south side of Nelms Avenue is recommended for Greenspace/Open Space (GS) land use by the Comprehensive Plan, and is proposed as a gateway entrance to the Red Mile Mixed-Use Project by the Red Mile Development Plan, a detailed study of the site accepted by the Planning Commission in 2009.
 - c. The petitioner is substantially meeting the Greenspace/Open Space land use recommendation by maintaining about two-thirds of the existing open space, and ensuring a clear sight line to the Standardbred Stable of Memories on the Red Mile property.
2. This recommendation is made subject to approval and certification of ZDP 2012-13: Red Mile Mixed-Use Development (Amd.) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses and buffering shall be restricted on the subject property via conditional zoning:
 - a. Between South Broadway and the extension of an existing concrete apron along Red Mile Road, and between Nelms Avenue and Red Mile Road, an open space shall be maintained. The open space may continue to have a sign for the Red Mile property (as permitted by Article 17) and fencing, but shall be devoid of any other structures.
 - b. Between the extension of the existing concrete apron along Red Mile Road and the Red Mile property entrance, an open space and landscape buffer, a minimum of twenty-five feet (25') from the Red Mile Road right-of-way, shall be maintained. Trees planted within the landscape buffer shall be placed to maintain the sight line to the Standardbred Stable of Memories from the Red Mile Road and South Broadway intersection.

These restrictions are appropriate and necessary for the subject property to ensure agreement with the Comprehensive Plan's land use recommendation, to create a gateway entrance to the Red Mile Mixed-Use Entertainment Project, and to maintain the sight line from South Broadway to the Standardbred Stable of Memories as recommended by the Red Mile Development Plan.

- b. ZDP 2012-13: RED MILE MIXED-USE DEVELOPMENT (AMD.) (6/28/12)* - located at 439 - 471 Nelms Avenue and a portion of 1200 Red Mile Road. **(Vision Engineering)**

Note: The purpose of this amendment is to add 34 townhouses along Red Mile Road.

The Subdivision Committee Recommended: Postponement. There are inconsistencies with an open space area in the Red Mile Study, and this plan.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property MU-3; 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.

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6. Greenspace Planner's approval of treatment of greenways and greenspace.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
9. Addition of pedestrian connections to public sidewalk system.
10. Denote number of bedrooms in site statistics.
11. Discuss need for private open space (decks/balconies).
12. Discuss front/rear orientation of units to Red Mile Road.
13. Discuss orientation of Units 26-34 to Nelms Avenue.
14. Discuss the need for sidewalks and widening on Nelms Avenue.

Zoning Presentation: Ms. Wade presented the staff report, explaining that the petitioner is proposing to rezone the subject properties from B-4 to MU-3. She explained that the subject property is located at the northern corner of the intersection of Red Mile Road with South Broadway. It includes the entrance sign for the Red Mile property; all of the area between Nelms Avenue and Red Mile Road, to the first entrance to the Red Mile property; and 10 parcels along the northeast side of Nelms Avenue. Other zoning and uses in the vicinity include the Red Mile property and racetrack, which are zoned MU-3 and A-U; a hotel, restaurant, and convenience store located to the east; a B-4 parcel on Nelms Avenue, which is the location of the Bryant Rent-All facility; P-1 and B-4 zoning across the intersection, for a medical equipment rental and sales company; and a gas station and commercial uses on the southeast side of South Broadway. Ms. Wade noted that the Red Mile Road and South Broadway corridors have experienced extensive redevelopment during the past decade, as mixed-use and residential development replaced unused tobacco warehouses.

Ms. Wade stated that the petitioner is proposing to rezone the subject property to MU-3 in order to incorporate the small area of the property into the larger Red Mile Mixed-Use Entertainment project. The petitioner is proposing to construct two small, three-story buildings, for a total of 86,000 square feet, and associated off-street parking. The petitioner is also the owner of the Tattersalls property to the northeast, which was recently rezoned as well. Ms. Wade displayed an aerial photograph of the subject property, noting for the Commission the location of the hotel to the northeast; the Standardbred Stable of Memories, near the subject property; Bryant Rent-All; a fraternity office across Red Mile Road from the subject property; and the gas station across the intersection of Red Mile Road and South Broadway. She also noted the location of the sight line from South Broadway to the Stable of Memories, explaining that the staff believes it is important to maintain the view of that iconic structure, which is mentioned in both the Comprehensive Plan and the Greenspace Plan. Ms. Wade then displayed the following photographs of the subject property: a view from the property toward South Broadway, across Red Mile Road; the existing curb cut and driveway apron on Red Mile Road, midway between the South Broadway intersection and the Red Mile property entrance; the entrance to the Red Mile property that is nearest to South Broadway, noting the extensive landscaping and white fences; the Stable of Memories barn; a view from the entrance of the Red Mile property toward South Broadway; a view taken directly across from the 10 parcels along Nelms Avenue; the dense vegetative buffer and utility easement between Nelms Avenue and the Red Mile property; and Fennell's, which provides horsemen's supplies and leather goods, at the intersection of Nelms Avenue and the Red Mile entrance road.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Commercial/Residential Mixed Use for the properties on the northeast side of Nelms Avenue. The area between Nelms Avenue and Red Mile Road is recommended for Greenspace and Open Space. The Commercial/Residential Mixed Use land use category encourages combinations of retail, office, and residential uses, typically located where older commercial areas are intended for redevelopment. The Greenspace/Open Space designation identifies undeveloped, open space land. Ms. Wade explained that the LFUCG Greenspace Plan also identifies the entire Red Mile property as an urban open space site, specifically as a resource cluster and trail link. The South Broadway Corridor Plan from 1990, which was adopted as part of the 1988 Comprehensive Plan, first identified the northeastern properties along Nelms Avenue for mixed-use development. More recently, the Red Mile Development Plan, which was drafted in 2009, includes a concept plan for the property as well as a specific rendering for the entrance corridor from South Broadway. Ms. Wade stated that, in that plan, much of the area between Nelms Avenue and Red Mile Road was depicted as greenspace, with a multi-use trail. The parcels on the northeast side of Nelms were not included in the overall concept plan approved for the larger Red Mile property. The content of the Red Mile Development Plan emphasized the entrance from the South Broadway/Red Mile Road intersection as the "front door" to the Red Mile development. There was a desire, therefore, to preserve the visual character of the approach to the Stable of Memories. These concepts were supportive of the Greenspace/Open Space land use recommendation as included in the Comprehensive Plan.

Ms. Wade stated that this proposed zone map amendment was reviewed by the staff in light of the Comprehensive Plan, the Red Mile Development Plan, and the Greenspace Plan. The staff originally recommended postponement; but, since that time, the petitioner has significantly revised their development plan. The petitioner is now proposing a mixed-use development near the northeast edge of the property, away from Red Mile Road, and they have agreed to maintain open space from the existing unused access point to South Broadway. In addition, the petitioner is

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proposing to maintain a strip from that access point toward their entrance. In assessing whether the proposed zone map amendment was in agreement with the Comprehensive Plan recommendation and would maintain the sight line to the Stable of Memories, the staff concluded that the visibility of that historic structure would be maintained. Ms. Wade explained that the petitioner submitted a rendering of the development, which identifies the proposed buildings as being located away from that sight line. The staff is now recommending approval of this request, for the reason as listed on the agenda; the Zoning Committee also recommended approval at their meeting three weeks ago. Ms. Wade noted that the staff is recommending conditional zoning restrictions in order to ensure that the Greenspace/Open Space recommendations and a clear sight line to the Stable of Memories are maintained. The staff, in working with the petitioner, is recommending one edit to the proposed conditional zoning restrictions. The first restriction is to maintain the large green area of land between South Broadway and the first Red Mile access point as completely open, with the exception of the existing sign or a replacement sign, if such a sign is permitted by Article 17. The second conditional zoning restriction is proposed to maintain the open space at a specific setback from the face of the existing sidewalk between the extension of the existing concrete apron to the Red Mile entrance. That restriction would require an open space and landscape buffer not less than 15 feet at any point, which must average at least 25 feet overall. Ms. Wade stated that those restrictions were proposed in order to provide the petitioner with the flexibility to accommodate their buildings and required parking, without compromising the sight line to the Stable of Memories. Only trees, shrubs and a sidewalk would be permitted in that open space area.

Commission Question: Mr. Penn asked if the petitioner intends to use Nelms Avenue as an entrance and exit point for the proposed development. Ms. Wade answered that she would defer that question to Mr. Martin, who would be presenting the zoning development plan.

Ms. Copeland stated that she laid out a straight line from the intersection of South Broadway and Red Mile Road to the right-hand side of the Stable of Memories. She said that if any trees, particularly larger species, are planted in that area, it could block the view of the structure. Ms. Wade answered that the staff had attempted to address that concern by recommending a conditional zoning restriction that would maintain the sight line, without specifying tree species that could be planted. The staff believes that the petitioner could either plant small trees, or group larger trees, in order to satisfy that requirement.

Mr. Owens asked, referring to the rendered zoning map of the property, what the uncolored rectangular area represents. Ms. Wade answered that that area is recommended to be maintained as open space.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, noting that revised conditions had been distributed to the Commission members. Using a copy of the overall development plan for the Red Mile development, Mr. Martin explained that the rendered portion indicates the area of the proposed zone change. He noted that the proposed development would be located to the south of the Tattersalls portion of the property and to the east of the proposed street connection to Curry Avenue and the Stable of Memories. The petitioner is proposing to construct two three-story buildings, 43,000 square feet each in size, with 32 residential units located on the top two floors of each building. As part of the mixed-use development requirements, the bottom floor of each building would be occupied by commercial uses. With regard to Mr. Penn's question, Mr. Martin said that Nelms Avenue will remain in place. The petitioner proposes to connect it to the existing concrete apron area along Red Mile Road, and use it as a right-in/right-out access point for the development. The petitioner is also proposing a parking bay with a circulation aisle in the front of the buildings, to serve the commercial uses, with 45 on-site parking spaces. Mr. Martin noted that some cars will need to park offsite at other locations included in the overall Red Mile development plan. However, since the staff views this proposed development as a small part of that overall plan, they believe that that parking arrangement will be sufficient. Mr. Martin also noted for the Commission the location of the proposed open space area recommended by the staff to preserve the line of sight to the Stable of Memories.

Mr. Martin said that the current iteration of this plan represents its fifth revision. The staff has spent a considerable amount of time meeting with the petitioner and attempting to resolve the issues, one of the results of which is the revised conditions for approval, which were distributed to the Commission members. With regard to those conditions, Mr. Martin stated that the first six are standard. Condition #7 would require that the petitioner depict on the plan the internal sidewalk system that will connect to the public system, which is shown. Condition #8 refers to the necessary improvements to Nelms Avenue. Mr. Martin explained that this condition could be resolved at the time of the Final Development Plan for the property, due to the timing of the TIF requirements for the Red Mile Entertainment District. He noted that a portion of Nelms Avenue will need to be removed by that time; once that decision has been made, any improvements needed to that right-of-way can be determined. Condition #10 refers to the improvements to Red Mile Road with regard to the proposed right-in/right-out access point. The TIF improvements could have an impact on Red Mile Road as well, so it would be appropriate to defer that decision to the time of the Final Development Plan. Mr. Martin stated that condition #11 would require the revision of a building line at the rear of the property adjacent to Tattersalls Road, since the current plan depicts a building across a lot line. He added that, should the Planning Commission approve the conditional zoning restrictions recommended by staff, those will need to be denoted on the development plan as well.

Commission Questions: Mr. Berkley asked if Nelms Avenue is a public street. Mr. Martin answered that it is a dedicated right-of-way, and part of the public street system. Mr. Berkley asked if the petitioner or staff has had any conversations with the owners of the Bryant Rent-All property. Mr. Martin responded that the staff has not had any discussions with those property owners, but the petitioner might have.

Mr. Penn asked if any access is proposed that would allow for left-hand turns from the subject property onto Red Mile Road, and whether those cars would need to use an access to the Red Mile development that has not yet been constructed. Mr. Martin answered that it would be preferable for drivers to make the left-hand turn onto Red Mile Road via the proposed new entrance to the property. He added that drivers would also have the option of using Tattersalls Road, once it is constructed, to access Curry Avenue and make a left turn onto South Broadway at the signalized intersection there. Mr. Penn asked if Tattersalls Road would therefore need to be constructed prior to the completion of the proposed development. Mr. Martin answered that the scope of all of those improvements would be best determined at the time of the Final Development Plan.

Ms. Blanton asked if the staff had any concerns about the possibility of drivers exiting the subject property via a left-hand turn from the proposed Tattersalls Road to Red Mile Road, given the curvature of Red Mile Road in that vicinity. Mr. Martin responded that the exact alignment of that access point will require further review, since it might change based on the necessary TIF improvements for the property. Mr. Sallee added that the current access point at that location is very wide, and the proposed plan would bring it to a more standard configuration.

Ms. Roche-Phillips asked if the staff believed that there could be some problems if drivers attempt to use Tattersalls Road to access South Broadway behind the existing hotel. Mr. Martin said that those drivers will be able to access Curry Avenue, and its signalized intersection with South Broadway, via Tattersalls Road. Ms. Roche-Phillips asked if there are any plans to improve Curry Avenue, since the proposed development could result in a significant increase in traffic on that roadway. Mr. Martin answered that there are currently no plans for improvements to Curry Avenue, although construction of the proposed development could result in increased traffic there. Mr. Sallee added that there are some improvements proposed on the north side of Curry Avenue, in conjunction with a residential development there, to widen the right-of-way where it will connect to Angliana Avenue on the north side of Curry Avenue.

Mr. Cravens asked how many off-site parking spaces will be available. Mr. Martin, noting that one of the conditions for approval of this plan would require correction of some of the site statistics, said that the staff determined the required number of parking spaces for the proposed development to be 125. The petitioner's calculations equaled 99 required spaces on their plan, so those figures will have to be reconciled. Mr. Martin stated that the petitioner is depicting 45 parking spaces on the plan, so the remainder will need to be offsite.

Mr. Cravens asked how Nelms Avenue should be resolved, since it would be a public street running into private property. Mr. Martin answered that, if the property is developed as proposed on this plan, Nelms will remain a public street and will curve into Red Mile Road. At that time, the old right-of-way will be closed.

Mr. Owens asked if condition #8 is proposed to address the issue of sidewalks on Nelms Avenue. Mr. Martin responded that that condition would require that the need for sidewalks on that roadway be re-evaluated at the time of a Final Development Plan for the property.

Ms. Copeland asked how the petitioner, a private entity, can construct two buildings on Nelms Avenue, which is an existing public right-of-way. Mr. Martin responded that closure of Nelms Avenue will have to be requested of, and granted by, the Urban County Council in order for the proposed development plan to come to fruition.

Ms. Blanton asked if the open space proposed on this plan is a "trade-off" for one of the previous iterations of the Red Mile development plan, which was unable to meet the open space requirement. Mr. Martin answered that Ms. Blanton's assessment was correct. As part of the negotiations for the required greenspace, the plan has changed. Now, in order for the petitioner to optimize the use of the site, the Nelms Avenue right-of-way will have to be closed.

Ms. Roche-Phillips asked, since the proposed development will have to share parking with other areas within the Red Mile, if it is well-connected with sidewalks to those adjoining lots. Mr. Martin responded that the proposed development will be incorporated into the overall Red Mile development, where several large parking areas and pedestrian systems are proposed.

Petitioner Presentation: Christine Westover, attorney, was present representing the petitioner. She stated that the petitioner is in agreement with the staff's recommendations on the rezoning request and the development plan, and she requested approval. The petitioner met extensively with the staff to resolve their concerns, and they now believe that this iteration of the plan will be beneficial for the community, since it will establish a large open space area and 10' sidewalk, and will maintain the historic features of the Red Mile, including the Stable of Memories.

Commission Questions: Mr. Berkley asked if the owners of Bryant Rent-All, located on Nelms Avenue, had been informed of the proposal to close that right-of-way. Ms. Westover responded that the entirety of Nelms Avenue is not proposed for closure; rather, only the portion of the street where the petitioner owns both sides of the right-of-way are proposed to be closed. In exchange, the petitioner is proposing to build the continuation of Nelms Avenue to Red Mile Road. The portion of Nelms immediately adjacent to the Bryant Rent-All facility will not be affected by the closure. Ms. Westover noted that she has not personally been involved in discussions with the owners of that business, but they are aware of the requested rezoning. The owners have indicated that they have no concerns about the proposal, and intend to continue doing business at their current location as they have for many years. Mr. Berkley said that, once Nelms Avenue is closed, it does not appear that drivers exiting the Bryant Rent-All property will have a means by which to make a left-hand turn onto Red Mile Road in order to drive toward downtown. Ms. Westover responded that drivers exiting that property will be able to make a right-hand turn onto the proposed new Tattersalls Lane, via which they can access Curry Avenue and its existing signalized intersection with South Broadway. Mr. Berkley asked if those drivers would be traveling through the parking lot of the proposed development. Ms. Westover answered that they would not; and, using the rendered map, noted the location of the access point to which she referred. She noted that public right-of-way will be available for those drivers, and that the necessary portion of Tattersalls Lane will be constructed very soon, as part of an adjacent development.

Mr. Berkley asked Ms. Boland to explain the legal process involved in the closure of public right-of-way, and whether adjacent property owners, such as Bryant Rent-All, would be involved. He said that the proposed development plan seems premature, given the amount of work that still needs to be done around the site. Ms. Boland answered that the standard procedure for a road closure requires approval by the Urban County Council, and each adjoining property owner would receive half of the right-of-way that is abandoned through the road closure. She said that she is not aware of any special agreement that might have been made with the owner of the Bryant Rent-All property, but noted that such an agreement might exist as a private issue among the property owners. Mr. Berkley asked if Nelms Avenue could be closed without the agreement of the Bryant property owners. Ms. Boland responded that it could, but she did not believe that Council would approve a road closure that would leave an existing business with a nearly impossible access situation. She added that those Council procedures would be carried out in open public meetings, where adjoining property owners would have an opportunity to comment. Mr. Berkley said that he is concerned that closing Nelms Avenue without the agreement of the adjoining property owners might subject LFUCG to some liability in the future. Ms. Boland answered that the Bryant Rent-All property would still be accessible by means of South Broadway, so she does not believe that the owner would have any issues with the proposed road closure.

With regard to Mr. Berkley's questions, Ms. Westover stated that that issue was resolved by an LFUCG legal case involving Comer's Lounge. The property owner in that case contended that they had been denied access to their property in a reverse-condemnation situation. The courts determined that property owners have a right to have some access to their property. Ms. Westover noted that, in this situation, the owner of the Bryant Rent-All property has one access point to South Broadway, another to Red Mile Road, and will have an access to the new Tattersalls road. She added that Nelms Avenue currently stubs into the Red Mile property, which is private right-of-way, so anyone accessing that portion of the property is technically trespassing. Therefore, the Bryant property will actually have more public right-of-way options if the subject property is developed as proposed on this plan.

Mr. Penn asked if one or both of the new access points on Red Mile Road will be constructed prior to the issuance of any occupancy permits for the proposed development. Ms. Westover answered that it did not seem possible that the proposed buildings could be built without first having the necessary public improvements in place. She added that the buildings in the development cannot be constructed unless and until LFUCG closes Nelms Avenue, because its existing right-of-way is in the location proposed for construction. Ms. Westover said that the petitioner will not be able to proceed until the Council closes the Nelms right-of-way, then they can pursue a Final Development Plan for the property.

Mr. Owens said that he would like for the petitioner to create a connection to the adjoining hotel property. Ms. Westover responded that the petitioner would be willing to explore that possibility, although it will require an agreement with the hotel owners, as well as a modification to their development plan and a maintenance agreement for the shared access. Mr. Owens asked if the existing drive aisle to the hotel and convenience store is public or private. Ms. Westover answered that it is currently private right-of-way.

Mr. Brewer commended the petitioner for incorporating the proposed buildings into the overall Red Mile development, although he is uncomfortable with the idea of creating more traffic on Curry Avenue and he would like to encourage the petitioner to find alternatives to that access.

Ms. Copeland stated that she would like for the Planning Commission to create some type of documentation to protect the top 50% of the Stable of Memories, and its view from South Broadway. She suggested that the Commission add language to the development plan to review the planting plan and signage proposal in order to protect that viewshed. Referring to a photograph from the Red Mile study, which was distributed to the Commission members earlier in this hearing, Mr. Sallee stated that the "before" image depicts that portion of Red Mile Road as it exists currently. He said that the Red Mile sign and Stable of Memories are visible in both that image and the "after"

photo. It is easy to see that, in the "after" photo, the area between the light pole and the treeline has thicker vegetation and a wider sidewalk, but the proposed landscaping does not obscure the view of the Stable of Memories. The staff has already worked closely to ensure that that viewshed is protected, including recommending conditional zoning restrictions. Mr. Sallee said that, in addition, the record of this hearing will serve as a reminder of the importance of those issues at the time of a Final Development Plan for the property. Ms. Copeland stated that that photograph was not taken from South Broadway, which is the vantage point at which she is most concerned about protection of the viewshed. Mr. Sallee responded that the staff believes that the view from South Broadway will not be impeded by the proposed buildings, although drivers will have to look across the parking lot.

Mr. Owens asked Ms. Westover if she had any recommendations with regard to the wording of a possible condition to require that the viewshed of the Stable of Memories be preserved. Ms. Westover answered that the petitioner has no intention of blocking the view of an iconic structure on its property, so she did not believe it would be necessary to add language to that effect. She added that the petitioner would be willing to work with LFUCG staff to develop the best possible landscape plan to address those concerns.

Zoning Action: A motion was made by Ms. Blanton, seconded by Mr. Brewer, and carried 10-0 (Beatty absent) to approve MAR 2012-4, with the modification to the conditional zoning as agreed to by the applicant, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Mr. Brewer, and carried 10-0 (Beatty absent) to approve ZDP 2012-13, subject to the 11 conditions as listed in the revised staff recommendation.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

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