

**C. FULL PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMEMENDMENT**

1. ZOTA 2016-2: AMENDMENT TO ARTICLE 23A-5 TO ALLOW SCHOOLS FOR ACADEMIC INSTRUCTION IN THE EAR-1 ZONE – petition for a Zoning Ordinance text amendment to allow schools for academic instruction as a principal use in the Expansion Area Residential-1 (EAR-1) zone.

REQUESTED BY: Christian Academy of the Bluegrass, Inc.

PROPOSED TEXT: (Note: Text underlined is an addition, and text ~~stricken-through~~ is a deletion to the current Zoning Ordinance.)

**ARTICLE 23A – EXPANSION AREAS ZONING CATEGORIES AND RESTRICTIONS**

**23A-5 EXPANSION AREA RESIDENTIAL 1 (EAR-1) ZONE**

**23A-5(b) Principal Uses**

1. Single family, two-family, multi-family, and townhouse dwellings.
2. Community Residences.
3. Golf Courses and common open spaces.
4. Churches and Sunday schools, with or without associated child care, in locations where the Comprehensive Plan recommends semi-public uses.
5. Schools for academic instruction.

The Zoning Committee Recommended: Referral to the full Commission.

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

1. The proposed text amendment to the Expansion Area Residential 1 (EAR-1) zone is a timely revision to update the ordinance to be consistent with the 2013 Comprehensive Plan which no longer recommends" semi-public" land uses.
2. The amendment will also permit more flexibility and will encourage dual and efficient use of church properties, when they are in close proximity to larger collector/boulevard or arterial streets, as designated by the Expansion Area Master Plan.
3. By allowing schools for academic instruction as an accessory use to a church on the same property, the proposed text amendment would allow for a church or other religious assembly use to efficiently utilize their facilities throughout the week without increasing any burden on the public infrastructure directly adjacent to a collector street, which will promote a safe and a more desirable development.

Staff Presentation - Ms. Wade directed the Commission's attention to ZOTA 2016-2, a Zoning Ordinance text amendment to Article 23A-5 to allow schools for academic instruction as a principal use in the Expansion Area Residential-1 (EAR-1) zone.

Ms. Wade said that Christian Academy of the Bluegrass, Inc. is making a request to amend Article 23A-5 of the Zoning Ordinance. She explained that Christian Academy of the Bluegrass is a non-profit organization, and they are planning to expand an existing church to allow a school for academic instruction for property located within an Expansion Area Residential (EAR-1) zone. She said that the school is being spearheaded by the North Lexington Church of Christ, which is also located on Hume Road.

Ms. Wade said that when the applicant first came to the staff, their concern was that in the Expansion Area Residential zones, schools are listed in the EAR-2 and EAR-3 zones, but not in the EAR-1 zone. She then said that churches were added after the adoption of the 1996 Expansion Area Master Plan with very specific criteria to allow churches, Sunday schools with or without daycare facilities in locations where the Comprehensive Plan recommended semi-public uses. At that time, there were very specific notations listed in the 2001 and 2007 Comprehensive Plans that allowed a church to locate in the EAR-1 zone. Ms. Wade added that, with the exception of Hume Road, there are no other locations in the EAR-1 zone that allows churches.

Ms. Wade explained that EAR-2, EAR-3, Transition Area Overlay and Community Center zones already allow churches and Sunday schools with or without daycare as a principal use. The applicant is requesting to amend Article 23A to allow a school for academic instruction in the EAR-1 zone as a principal use. She said that in the Expansion Area Master Plan, the Boulevard and greenways are used as the backbone of the Expansion Area and were used to focus the Community Center activities in certain locations. The churches and the schools were meant to be part of the Community Center activities. She said that when the applicant submitted their request, the staff had some concern about making schools a principal use in the EAR-1 zone. She directed the Commission's attention to the Comprehensive Plan, and explained that the EAR-1 zone is permitted on the eastern side of the county near Winchester Road toward the interstate, as well as in the southern part of the county near Hays Boulevard, Richmond Road and Athens-Boonesboro Road, as well as the Armstrong Mill and Tates Creek Road area, near the edge of the Urban Service boundary.

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

Ms. Wade explained that because of the staff's concern of allowing schools in the EAR-1 zone, they are recommending an alternative text to limit churches/schools in this area. She said that, since the land use map is no longer part of the Comprehensive Plan, in the staff's estimation, the alternative text would also correct the semi-public use note that is listed in the Zoning Ordinance today. She said that the staff felt it was important to strike some of the language and replace it with the following language:

**Staff Alternative Text:**

**23A-5(b) Principal Uses**

1. Single family, two-family, multi-family, and town house dwellings.
2. Community Residences.
3. Golf Courses and common open spaces.
4. Churches and Sunday schools, ~~with or without associated child care, in locations where the Comprehensive Plan recommends semi-public uses~~ when located adjacent to a street that has the functional classification of collector/boulevard or arterial.

Ms. Wade explained that by having churches and schools restricted to collector/boulevard or arterial roads, it would lessen the impact on the nearby residential area from an increase in traffic flow that comes with schools, as well as decrease the impact from outdoor lighting used, for example for uses such as ball fields. She said that the staff felt that the proposed change would be better suited as an accessory use, and recommends adding the following language to 23A-5(c) Accessory Uses:

7. Child care facilities and schools for academic instruction (kindergarten through eighth grade) when accessory to a church on the same property.

Ms. Wade said that, at the Zoning Committee meeting, the Neighborhood Council, as well as the Committee members, raised some concerns with the staff's recommendation that led to a Supplemental Staff Report that Mr. Sallee would be presenting to the Commission today.

Mr. Sallee said that at the Zoning Committee meeting three weeks ago, there was a considerable discussion about the proposed text amendment. Primarily, the staff expressed their concern about large schools locating in the EAR-1 zone. He said that schools are permitted in the EAR-2 and EAR-3 zones, and up to now schools were not permitted in the EAR-1 zone. He then said that there is less land in EAR-1 zones versus the land that has been rezoned and developed in the EAR-2 and EAR-3 areas.

Mr. Sallee indicated at a pre-application conference for a zone change request, the staff advises the potential applicant whether or not a Traffic Impact Study is necessary with their requested zone change. He said that a school with 110 students would meet the threshold to require a Traffic Impact Study to be conducted. This affirmed the staff's initial concern with the proposed text amendment, as it was proposed, in having schools as a principal use.

Mr. Sallee said that, initially at the Zoning Committee meeting, the staff attempted to address the limitation for schools, and recommended limiting the allowable "grade levels" to only kindergarten through eighth grade. He then said that the applicant was not interested in setting those limits due to their curriculum being much broader for this facility. Mr. Sallee said that the staff did consider limiting the number of students attending the school. However, this could easily be turned into a Zoning Enforcement issue because it would cause the applicant to need to submit head counts or enrollment figures. He said that, in an attempt to resolve the Zoning Committee issues that were raised, the staff would offer to omit the restrictions of the grade levels and leave the schools as an accessory use to a church.

Mr. Sallee then said that the concept for this proposal is that if there is an existing church, this would allow that church to use their gymnasium and the Sunday school space as an academic instruction space during weekdays. He added that the staff believes this is more logical and efficient use of the land as a community and for the church. This would also allow the church to utilize their facilities not only in the evenings and on weekends, but during the day. However, for an independent school that is not part of a church, the staff would suggest adding this possibility as a new conditional use, along with the same restriction about churches being located on arterials and major collector streets that are boulevards. He said that this would be an expansion of the use; but by enabling the Board of Adjustment to review these requests on a site-by-site basis, it would involve notification to the surrounding property owners and neighborhood associations, while allowing the intent of the EAR-1 zone to remain intact. This text amendment will not impact the EAR-2 or the EAR-3 zones.

Mr. Sallee directed the Commission's attention to the conclusion of the Supplemental Staff Report, and briefly explained the following revised alternative text:

**Revised Staff Alternative Text:**

(Note: Text underlined is an addition, and text stricken-through is a deletion to the current Zoning Ordinance. More recent revisions are indicated in *italicized* text.)

**23A-5(b) Principal Uses**

1. Single family, two-family, multi-family, and townhouse dwellings.
2. Community Residences.
3. Golf Courses and common open spaces.
4. Churches and Sunday schools, ~~with or without associated child care, in locations where the Comprehensive Plan recommends semi-public uses~~ when located adjacent to a street that has the functional classification of collector/boulevard or arterial.

**23A-5(c) Accessory Uses**

7. Child care facilities and schools for academic instruction (~~kindergarten through eighth grade~~) when accessory to a church on the same property.

**23A-5(d) Conditional Uses**

6. Schools for academic instruction, except as permitted herein; but only when located on a lot adjacent to a street that has the functional classification of collector/boulevard or arterial.

Mr. Sallee said that the staff is proposing to remove "kindergarten through eighth grade" from the draft reviewed by the Zoning Committee, and add "when accessory to a church on the same property." He then said that the staff is not recommending any change under the Principal Uses from what the staff had recommended to the Zoning Committee. He explained that churches and Sunday schools will no longer be tied to the Comprehensive Plan designation, but rather to a site location on a collector/boulevard or arterial street. Mr. Sallee said that the staff is recommending a new provision under Article 23A-5(d), which will add a new conditional use for child care facilities and schools for academic instruction with the same locational criteria as a church as a permitted use.

Mr. Sallee said that the staff is recommending approval of the revised staff alternative text. He indicated that the following reasons were presented to the Zoning Committee at their last meeting:

1. The proposed text amendment to the Expansion Area Residential 1 (EAR-1) zone is a timely revision to update the ordinance to be consistent with the 2013 Comprehensive Plan, which no longer recommends "semi-public" land uses.
2. The amendment will also permit more flexibility and encourage dual and efficient use of church properties, when they are in close proximity to larger collector/boulevard or arterial streets, as designated by the Expansion Area Master Plan.
3. By allowing schools for academic instruction as an accessory use to a church on the same property, the proposed text amendment would allow for a church or other religious assembly use to efficiently utilize their facilities throughout the week without increasing any burden on the public infrastructure directly adjacent to a collector street, which will promote a safe and a more desirable development.

Mr. Sallee then indicated that the next finding is new from what the Zoning Committee had originally reviewed.

4. The addition of a new conditional use allowing schools located along major collector or arterial streets will alleviate some of the concerns expressed by the applicant, after reviewing the initial comments offered by the staff and those attending the Commission's Zoning Committee meeting on this subject.

Mr. Sallee concluded by saying that he would try to answer any questions regarding the proposed text amendment to Article 23A-5.

**Petitioner Representation** – Richard Murphy, attorney, was present, along with Tammy Lewis, who was one of the founding members of Christian Academy of the Bluegrass.

Mr. Murphy gave a brief synopsis as to why his clients were seeking the text amendment to Article 23A-5, which was initially to make schools a principal use in the EAR-1 zone. He said that they had initially spoken with the staff about the text amendment because Christian Academy of the Bluegrass is being founded by a number of members of the North Lexington Church of Christ. He explained that North Lexington Church of Christ is a new church located on Hume Road that is fairly large in size. He said that the proposed text amendment will not be limited to just North Lexington Church of Christ, but his clients thought about starting this process with this church and using the building. He then said that his clients are hopeful that eventually they will move to a free-standing building, so they were concerned with the zoning for North Lexington Church of Christ, as well as the general zoning once the school was big enough to have its own free-standing building.

Mr. Murphy said that North Lexington Church of Christ is in the EAR-1 zone, where daycare facilities were allowed as an accessory use to the church, but this church does not have either a daycare or a school at this point. If they wanted to open a 100-child daycare, they could have done so; but they could not open a 100-child school. This amendment

resolves that issue. Mr. Murphy said that they were also thinking about the time when the school moves away from the church property into a free-standing facility. He said that this text amendment resolves that concern as well.

Mr. Murphy reassured the Planning Commission that even if the text amendment was granted, the EAR-1 zone will still be the most restrictive zone out of most of the zoning categories for free-standing schools. He said that even in the Agricultural Rural and Agricultural Urban zones, schools for academic instruction are a conditional use. He then said that the proposed text amendment also states that the schools would be a conditional use, but it also places restrictions on the facility location to be only on collector/boulevard or arterial street. The A-R and A-U zones do not have these restrictions. He said that, similarly, schools in the single family zones are a conditional use, but there are no restrictions on the location of the schools.

Mr. Murphy indicated that they do not have anything further to add and confirmed their agreement with the staff's revised recommendation, as noted on the Supplemental Staff Report.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. Walt Gaffield, Fayette County Neighborhood Council, was present. He explained that because of the infrastructure problems in this area, they were initially hesitant with allowing churches to be designated as a principal use and placed anywhere in the EAR zones. However, they reviewed the staff's revised recommendations, as noted on the Supplemental Staff Report, and are in agreement with this proposal.

Action - A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-0 (Brewer, Penn & Plumlee absent) to approve the Staff Alternative Text of ZOTA 2016-2, for the reasons provided by staff.