

REVISED SUPPLEMENTAL STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

**ZOTA 2012-9: AMENDMENT TO ARTICLES 1, 8 & 12 FOR MODIFICATIONS TO THE
NEIGHBORHOOD BUSINESS (B-1) ZONE**

TATTOO PARLORS

ARTICLE 8: SCHEDULE OF ZONES

8-19 LEXINGTON CENTER BUSINESS (B-2B) ZONE

8-19(d) Conditional Uses

11. ~~Tattoo parlors.~~

8-19(e) Prohibited Uses

13. ~~Tattoo parlors.~~

REHABILITATION HOMES

ARTICLE 8: SCHEDULE OF ZONES

8-15 PROFESSIONAL OFFICE (P-1) ZONE

8-15(b) Principal Uses

~~20. Assisted living facilities and rehabilitation homes, but only when more than five hundred (500) feet from a residential zone.~~

8-15(d) Conditional Uses

~~5. Assisted living facilities and rRehabilitation homes, when located closer than five hundred (500) feet from a residential zone.~~

8-16 NEIGHBORHOOD BUSINESS (B-1) ZONE

8-16(b) Principal Uses

~~16. Rehabilitation homes, but only when more than five hundred (500) feet from a residential zone.~~
Re-number remaining

8-16(d) Conditional Uses

~~10, 11. Assisted living facilities and rRehabilitation homes, but only when more than five hundred (500) feet from a residential zone.~~

8-17 DOWNTOWN BUSINESS (B-2) ZONE

8-17(d) Conditional Uses

~~6. Assisted living facilities and rRehabilitation homes, when located closer than five hundred (500) feet from a residential zone.~~

ARTICLE 12: PLANNED SHOPPING CENTER (B-6P) ZONE

12-5 12-4 ~~CONDITIONAL USES~~

~~f. Assisted living facilities and rRehabilitation homes, when located closer than five hundred (500) feet from a residential zone.~~

STAFF REVIEW:

The Planning Commission held a public hearing in January 2013 on a package of Zoning Ordinance text amendments related to revisions to the Neighborhood Business (B-1) zone (ZOTA 2012-9), and the staff forwarded the Commission's recommendation for approval to the Urban County Council in February 2013. Since that time, the Council referred the ZOTA to their Planning and Public Works Committee, which discussed the proposed changes several times. In June, the Committee voted to make two changes to the package of text amendments; one of which had not been discussed previously by the Commission. For this reason, the Department of Law advised the Council that the Planning Commission should hold another public hearing and make a formal recommendation on the Committee's proposed changes.

The proposed revisions to the text amendment revolve around two identified B-1 land uses – tattoo parlors and rehabilitation homes. First, the Planning Commission's recommended text made tattoo parlors a prohibited use in the Lexington Center Business (B-2B) zone; however, the Council's Planning Committee proposed making them a conditional use. In reviewing this proposed change, the staff sees no significant issues associated with this change.

Second, the Commission's recommended text made no changes to the regulation of rehabilitation homes; however, following the Council's Planning and Public Works Committee review, the Council now proposes regulating rehabilitation homes as a conditional use in the P-1, B-1, and B-6P zones, which would have similar implications in the B-2 and B-2A zones. The current Zoning Ordinance allows for rehabilitation homes to be a principal permitted use if located more than 500 feet from a residential zone, and a conditional use if located 500 feet or less from any residential zone. Implementing the Council's recommendation would result in their being no zone where a rehabilitation home would be a principal use, except the Community Center zone in the Expansion Area, which is limited to five locations. In reviewing this proposed change, the staff believes an issue related to fair housing practices is raised.

The regulation of rehabilitation homes was last reviewed in 2004, also at the request of the Urban County Council. At that time, the definition was updated to clarify that uses regulated by KRS 100.982 (housing for persons with disabilities) were excluded from the population served by a rehabilitation home. Additionally, the current spacing from residential zones was recommended by the staff, as opposed to making the use conditional in these same business zones.

In reviewing the previous 2004 case file, some of the information from the staff report bears repeating. Rehabilitation homes can come in many forms. Some rehabilitation homes serve people with psychiatric or behavioral disorders, while others serve individuals recovering from the effects of alcohol or drug abuse or as a condition of their parole or probation. Rehabilitation homes can range in size from one housing a few people, to a larger institutional facility; and operational style has just as much variety. A decade ago, the staff cited the large variety of facilities that would qualify as rehabilitation homes as a reason for making them conditional in some cases, especially when located closer to residential neighborhoods. On the other hand, most land uses are permitted "by right" in at least one zone in our Zoning Ordinance, even possibly with restrictions, especially land uses that provide services to some of the community's disadvantaged populations.

One of the primary issues discussed a decade ago was compliance with the federal Fair Housing Amendments Act (FHAA) of 1988 and its amendments. In reviewing the Act and researching its implications, the staff found that those individuals who suffer from alcohol or drug addiction are considered disabled, and, are therefore considered "a protected class" by the FHAA and the Americans with Disabilities Act (ADA). While local governments have the authority to protect the health, safety and welfare of its citizens through land use regulations, that authority has at times around the country been used to restrict the ability of individuals with disabilities to live in communities. "The Act [FHAA] is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice." (*Association of Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth, N.J.*, 876 F. Supp. 614 (1994)) Given current case law centered around fair housing practices, it is imperative that any ordinance changes balance a legitimate government purpose, such as protecting the general welfare or safety of children, while not excluding housing choices for a "protected" class of citizens.

In terms of our local land use regulations, the definition of "rehabilitation homes" covers both a protected group (those recovering from addiction) and a group that does not have any coverage by these federal laws (those on parole after committing a crime). At the Council's Planning and Public Works Committee meeting in June, several Councilmembers voiced concern about the possibility of rehabilitation homes for paroles being located near

schools for academic instruction or child care centers. At least one member opined that rehabilitation homes that house individuals who were convicted of a violent or sex offense should not be allowed to live near a school or day care center because of the potential threat to young children. The staff believes this is a legitimate government purpose.

Since this item was initially postponed last month by the Commission, the staff has met with the Department of Law to review the suggested change by the Council. As a result of the meeting, the staff has very serious reservations about overly restricting a class of citizens that is protected by the Fair Housing Amendment Act and the Americans with Disabilities Act. The staff continues to recommend that there be at least some opportunity for a rehabilitation home as a principal permitted use in our community. That being said, adding a 500-foot setback from schools for academic instruction and child care centers would be rational and logical.

Alternative Text for Rehabilitation Homes:

ARTICLE 8: SCHEDULE OF ZONES

8-15 PROFESSIONAL OFFICE (P-1) ZONE

8-15(b) Principal Uses

20. ~~Assisted living facilities and r~~Rehabilitation homes, but only when more than five hundred (500) feet from a residential zone, school for academic instruction or a child care center.

8-15(d) Conditional Uses

5. ~~Assisted living facilities and r~~Rehabilitation homes, when located closer than five hundred (500) feet from a residential zone, school for academic instruction or a child care center.

8-16 NEIGHBORHOOD BUSINESS (B-1) ZONE

8-16(b) Principal Uses

16. ~~Rehabilitation homes, but only when more than five hundred (500) feet from a residential zone,~~ school for academic instruction or a child care center.

8-16(d) Conditional Uses

- ~~10-11.~~ ~~Assisted living facilities and r~~Rehabilitation homes, but only when located closer more than five hundred (500) feet from a residential zone, school for academic instruction or a child care center.

8-17 DOWNTOWN BUSINESS (B-2) ZONE

8-17(d) Conditional Uses

6. ~~Assisted living facilities and r~~Rehabilitation homes, when located closer than five hundred (500) feet from a residential zone, school for academic instruction or a child care center.

ARTICLE 12: PLANNED SHOPPING CENTER (B-6P) ZONE

12-5 ~~12-4~~ CONDITIONAL USES

- f. ~~Assisted living facilities and r~~Rehabilitation homes, when located closer than five hundred (500) feet from a residential zone, school for academic instruction or a day care center.