

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky November 17, 2014

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on November 17, 2014 at 5:00 P.M. Present were Vice-Mayor Linda Gorton in the chair presiding, in the absence of Mayor Gray, and the following members of the Council: Council Members Beard, Clarke, Ellinger, Farmer, Ford, Henson, Lawless, Mossotti, Myers, Scutchfield, and Akers. Absent were Council Members Kay, Lane, and Stinnett.

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Ms. Gorton reviewed the names of the parties intending to represent each side: Mr. John Talbott representing the Petitioner (Caller Properties, LLC), and Mr. Mark Barker and Ms. Amy Clark representing the Opponents. Ms. Gorton asked if both parties would agree to a forty-five minute time limit for each side.

Ms. Gorton asked whether Ms. Clark would be able to testify on behalf of the opponent if she arrived late, and whether a Council Member could arrive late and still participate. Ms. Tracy Jones, Dept. of Law, stated Ms. Clark would need to be present for the entire presentation, as would the Council Member. The issue regarding the Council Member became moot as the Council Member arrived.

Upon motion of Mr. Ellinger, seconded by Ms. Mossotti, and approved by unanimous vote, the Council limited each side's presentation to forty-five minutes.

An Ordinance changing the zone from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.588 net (0.852 gross) acres, for property located at 626-634 Euclid Avenue (Caller Properties, LLC; Council District 3) was given second reading.

Ms. Gorton opened the hearing at 5:11 pm. She swore in the witnesses and reviewed the procedures for the hearing. Ms. Gorton asked if it would be appropriate to proceed without of the presenters for the Opponents. Ms. Jones advised to proceed.

Mr. Bill Sallee, Div. of Planning, gave his presentation and filed the following exhibits: (1) Legal Notice of Hearing to be Held; (2) Affidavit of Notices Mailed; (3) MAR 2014-16: Recommendation of the Urban County Planning Commission; (4) Communications Received by Div. of Planning Staff regarding MAR 2014-16; (5) Signed Petition in Objection to the Zone Change at 626-263 Euclid Avenue; (6)

Communications Received at the Planning Commission Public Hearing; (7) 2013 Comprehensive Plan with Goals and Objectives; (8) LFUCG Land Subdivision Regulations as Amended; (9) 1983 LFUCG Zoning Ordinance as Amended; (10) Map of Preliminary Development Plan for 634 Euclid Avenue; (11) Map of Subject Area MAR 2014-16; (12) 2 Aerial Photographs of Subject Area; and (13) Zoning Map of Subject Area.

The Petitioner and the Opponent stated they had no cross examination at the close of Mr. Sallee's presentation.

Ms. Gorton swore in Ms. Amy Clark, Kastle Road, as a witness.

Mr. John Talbott, representing Caller Properties, LLC, gave his presentation on behalf of the Petitioner and filed the following exhibits: (1) Affidavit of Signs Posted; (2) Witness List; and (3) 6 Photographs of the Chevy Chase Plaza, Saratoga Center, Ashland Venture Building, and Houses in Subject Area.

Mr. Talbott asked if he could be allowed to present an architectural rendering to show the scale of the proposed development.

Ms. Mossotti made a motion, seconded by Mr. Beard, to allow the presentation of the architectural rendering.

Mr. Ellinger asked if viewing an architectural rendering would violate the Council's rules. Ms. Jones responded that it would be allowable if the Council moved to view it, but that the developer would not be bound to follow the drawing.

Ms. Lawless stated her concern that the rendering could be prejudicial.

Mr. Myers and Ms. Mossotti asked questions regarding the architectural rendering. Ms. Jones responded.

The motion **failed to pass** by a vote of 4-8 (Ellinger, Ford, Gorton, Henson, Lawless, Myers, Scutchfield, and Akers voted **no**). Viewing of the architectural rendering was disallowed.

Mr. Talbott continued his presentation on behalf of the Petitioner, and filed the following exhibit: (4) Preliminary Development Plan for Chevy Chase Shoppes, 634 Euclid Avenue.

Ms. Clark asked questions of Mr. Talbott about the scale and size of the building and height of the roof line. Mr. Talbott responded.

Ms. Clark asked if she could submit the development plan as an exhibit. Ms. Jones stated the Council could not consider the development plan while determining appropriate zoning for the property, though the development plan could be viewed.

Mr. Mark Barker, President of Columbia Heights Neighborhood Association, gave his presentation on behalf of the Opponents, and filed the following exhibit: (1) 11 Photographs of Houses and Buildings, Alleys, and Traffic in the Subject Area.

Ms. Clark gave her presentation on behalf of the Opponents, along with a Powerpoint Presentation, and filed the following exhibits: (1) Petition Against Zone Change at 626-634 Euclid Avenue at Marquis Avenue along with Photographs of Subject Area; and 2) Slides from Powerpoint Presentation.

Mr. Talbott and Mr. Sallee stated that they did not wish to cross examine Ms. Clark.

The following citizen spoke in favor of the requested zone change: (1) Mr. Graham Pohl, Fincastle Road, Managing Partner of 620 Euclid.

The following citizens spoke against the requested zone change: (1) Mr. Melvin Cosby, Woodland Avenue, who also showed presented pictures of buildings in the area; (2) Ms. Kate Savage, Columbia Avenue; (3) Ms. Leanne Parker-Greathouse, South Ashland Avenue, who was sworn in by Ms. Gorton; (4) Ms. Rosa Brown, employed on Marquis Avenue, who filed the following exhibit (1) Map of Subject Area; and (5) Mr. Jonathan Kern, South Ashland Avenue.

Mr. Sallee stated he had no rebuttal.

Mr. Talbott stated he would like to call two rebuttal witnesses on behalf of the Petitioner, Mr. Tony Barrett and Mr. Steve Caller.

Mr. Tony Barrett, Barrett Partners Landscape Architects, spoke about the turning radius in the ingress and egress from the property as rebuttal to prior testimony. Mr. Talbott asked Mr. Barrett to discuss the B6P and the B1 zones in the area.

Mr. Steve Caller, East High Street, spoke about his past developments, planting trees and housing in the area in question.

Mr. Talbott reserved the rest of his time for a closing statement.

Ms. Gorton asked if it was appropriate to set a time limit for closing statements. Ms. Jones responded that the Council could set a time limit.

Upon motion of Ms. Lawless, seconded by Mr. Beard, and approved by unanimous vote, the time for closing statements was limited to ten minutes for each party.

Ms. Gorton recognized Ms. Clark to make her closing statement. Ms. Clark spoke about possible conditional uses to impose should the zone change be approved.

Ms. Gorton recognized Mr. Talbott to make his closing statement.

At 7:04 p.m., Ms. Gorton recessed the meeting.

At 7:12 p.m., the Council returned with the same members present.

Ms. Gorton opened the floor to the Council to ask questions.

Mr. Ellinger asked questions of Mr. Sallee about the storm water issues. Mr. Sallee responded. Mr. Ellinger asked additional questions about the plan for water retention. Mr. Barrett responded. Mr. Ellinger continued to ask questions of Mr. Barrett.

Mr. Ellinger asked Mr. Barker and Mr. Cosby to respond to questions about storm water trouble in the subject area. Ms. Clark also responded.

Mr. Talbott stated the petitioner planned to address this issue when permitted to move forward with a change in zoning.

Ms. Clark made additional comments about storm water.

Mr. Ellinger asked Mr. Sallee if he could comment on a B1 vs. P1 land limitation. Mr. Sallee responded.

Mr. Myers asked questions of Mr. Sallee and Ms. Clark.

Mr. Clarke asked Mr. Kern to indicate the location of his business on a map. He did. Mr. Clarke asked questions of Mr. Barrett about plans for the trees on the lot in question, and ingress and egress from the parking areas. Mr. Barrett responded, as did Mr. Sallee.

The Council continued to ask questions of Mr. Barrett, Mr. Talbott, Mr. Sallee and Ms. Clark.

Mr. Farmer asked for background on the potential drive-thru on the subject property. Mr. Brett Caller, Caller Properties, responded.

The Council continued to ask questions of Mr. Talbott, Mr. Sallee, Ms. Clark, and Mr. Pohl.

Mr. Myers asked questions regarding parking in the subject area. Mr. Barrett responded, as did Ms. Brown.

The Council continued to ask questions of Mr. Sallee, Mr. Barrett, Mr. Talbott, and Mr. Caller.

Ms. Gorton closed the public hearing.

Ms. Lawless spoke about the character of the neighborhood in which the zone change would take place. She spoke about retail businesses and nearby zones. She stated she could not support a zone change.

Mr. Farmer made a motion, seconded by Mr. Myers, to adopt the following Findings of Fact for Conditional Approval from the Planning Commission, with the addition of a drive-through as a prohibited use:

1. The proposed Neighborhood Business (B-1) zone is in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. The Plan recommends compact, contiguous, and/or mixed-use sustainable development within the Urban Service Area to accommodate future growth needs in order to uphold the Urban Service Area concept (Theme E, Goal #1, Obj. b.). The petitioner's development will be in keeping with the character of the Euclid Avenue corridor, which is a near downtown commercial area that is pedestrian-friendly.
 - b. The Plan recommends identifying opportunities for infill, redevelopment and adaptive reuse that respects the area's context and design features whenever possible (Theme A, Goal #2, Obj. a.). The petitioner desires to redevelop the subject property, which is comprised of three parcels that are considered underutilized along this commercial corridor. The petitioner now proposes a redevelopment that is sensitive to the surrounding properties and will improve the commercial corridor.
 - c. The proposed B-1 zone is compatible with the immediately adjoining B-6P and P-1 zoning.
2. This recommendation is made subject to approval and certification of ZDP 2014-65: Chevy Chase Shoppes 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 subject property shall be restricted with the following restrictions via conditional zoning:
 - Prohibited Uses**
 - a. Schools for academic instruction.
 - b. Funeral parlors.
 - c. Liquor stores.
 - d. Automobile services stations.
 - e. Banquet facilities.
 - f. Cocktail lounges, nightclubs or bars.
 - g. Live entertainment.

These restrictions are necessary and appropriate in order to restrict the most intense land uses on the subject property. Such uses could have a negative impact on the nearby neighborhoods related to noise and/or traffic congestion.

Mr. Clarke spoke about issues that he perceives with the design of the project, and use of the Euclid Avenue corridor.

Ms. Lawless made a motion to include gas pumps as a prohibited use in the Findings of Fact for Conditional Approval. Ms. Gorton asked Mr. Sallee to clarify whether the Findings of Fact already included gas pumps. Mr. Sallee stated his belief that 'Automobile services stations' included gas pumps as well, and confirmed by checking his materials. Ms. Lawless withdrew her motion.

The Council discussed the motion.

The motion to approve the Findings of Fact for Conditional Approval from the Planning Commission with the addition of a drive-through as a prohibited use was approved by the following vote:

Aye: Beard, Clarke, Ellinger, Farmer, Ford,
Gorton, Henson, Lawless, Myers, Scutchfield-----10

Nay: Mossotti, Akers-----2

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*****At this time, the amended ordinance was given second reading without a motion to suspend the rules for second reading, therefore negating any motions to approve the ordinance beyond this point. The ordinance was moved forward to the November 20, 2014 Regular Council Meeting for second reading.*****

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The Ordinance was given second reading. Upon motion of Mr. Farmer, and seconded by Mr. Myers, the ordinance was approved by the following vote:

Aye: Beard, Clarke, Ellinger, Farmer, Ford,
Gorton, Henson, Lawless, Mossotti, Myers,
Scutchfield, Akers-----12

Nay: -----0

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Upon motion of Mr. Farmer, seconded by Mr. Myers, and approved by unanimous vote, the meeting adjourned at 8:33 p.m.

Deputy Clerk of the Urban County Council