

Note: Chairman Owens declared a brief recess at 3:15 p.m. The meeting reconvened at 3:24 p.m.

3. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT

- a. MAR 2012-17: URBAN COUNTY PLANNING COMMISSION - petition for a zone map amendment to a Neighborhood Design Character Overlay (ND-1) zone for 52.68± net (59.72± gross) acres, for properties located at 1200-1280 Colonial Drive; 4009-4021 John Alden Lane; 4004-4025 Mayflower Lane; 1228-1273 and 1290 Standish Way; and 2492-2516 Versailles Road (even addresses only).

Proposed Design Standards:

- 1. One new accessory structure, not exceeding a maximum of 180 sq. ft. with a 12 ft. maximum roof height limitation, shall be permitted to be located and constructed in the rear yard area of each home.

(Note: All existing accessory structures shall be deemed approved and permitted to remain. Said existing structures may be improved and/or replaced by new structures so long as the improvements do not exceed the existing footprint or alter the general character of the existing structures.)

- 2. No new front yard fencing shall be permitted with the exception of those homes fronting on Versailles Road.

(Note: "Front Yard" shall be deemed to mean all that yard area located between the nearest points of the front of the house to its frontage roadway's right-of-way line. New and existing side and rear fencing shall continue to be approved in accordance with existing zoning restrictions.)

- 3. Floor area to lot size ratio shall be limited to 25% maximum.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 4) recommends Low Density Residential (LD) land use for the neighborhood. The Planning Commission has initiated a zone change request to add a Neighborhood Design Character Overlay (ND-1) zone in order to regulate accessory structures, fencing and floor area ratio (FAR) regardless of the underlying zoning.

The Zoning Committee made no recommendation on this item.

The Staff Recommends: Approval of the ND-1 overlay zone with the Staff Alternative Design Standards, for the following reason:

- 1. The requested Neighborhood Design Character (ND-1) overlay zone is in agreement with the 2007 Comprehensive Plan and the Goals and Objectives of the 2012 Comprehensive Plan for the following reasons:
 - a. The Goals and Objectives of the 2007 Plan identify eight overriding themes, one of which is "preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents." This will be enhanced with this zoning overlay for The Old Colony neighborhood. Further, Goal 15, Objective I states that neighborhood protection overlay zoning provisions should be implemented for establishing stability and protection in existing and, especially, older neighborhoods.
 - b. The Goals and Objectives of the 2012 Comprehensive Plan support the development of ND-1 Overlay zones to enable neighborhoods to flourish (Theme A.3.a).
 - c. The implementation of a Neighborhood Design Character (ND-1) Overlay zone is in agreement with the Comprehensive Plan's Goals & Objectives by providing specific standards that will maintain the existing character of the neighborhood, independent of the underlying zoning.
 - d. The Old Colony neighborhood has completed a design character study, defined the existing character of the neighborhood, developed preservation goals, and proposed appropriate neighborhood design standards (in need of only slight modification), thus meeting the requirements of the ND-1 zone.
- 2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

Alternative Design Standards (Additions are identified by an underline, and deletions to the original proposal are identified by a ~~strikethrough~~.)

- 1. One new accessory structure, not exceeding a maximum of 180 sq. ft. with a 12 ft. maximum roof height limitation, shall be permitted to be located and constructed in the rear yard area of each home.

~~*(Note: All existing accessory structures shall be deemed approved and permitted to remain. Said existing structures may be improved and/or replaced by new structures so long as the improvements do not exceed the existing footprint or alter the general character of the existing structures.)*~~

* - Denotes date by which Commission must either approve or disapprove request.

2. No new front yard fencing shall be permitted, with the exception of those homes fronting on Versailles Road.

(Note: "Front Yard" shall be deemed to mean all that yard area located between the nearest points of the front of the house to its frontage roadway's right-of-way line. New and existing side and rear fencing shall continue to be approved in accordance with existing zoning restrictions.)

3. Floor area to lot size ratio ~~Lot coverage~~ shall be limited to a maximum of 25% maximum.

These restrictions are appropriate, given the study undertaken to identify the existing neighborhood character by The Colony Neighborhood Association (Residents, Inc.), and are necessary to maintain that existing character of the neighborhood in the future.

Staff Presentation: Ms. Wade began the staff's presentation by distributing to the Commission members a letter from The Colony Neighborhood Association and two letters from citizens.

Ms. Wade stated that the Old Colony Neighborhood Association submitted a request that the Planning Commission act as the applicant in their pursuit of ND-1 zoning; the Commission then initiated this rezoning request in July of 2012. The Old Colony neighborhood is comprised of 72 individual parcels, for a total of just over 50 acres in size. It is located on the south side of Versailles Road just east of New Circle Road. The neighborhood has access to Versailles Road via Colonial Drive, which provides a loop traffic system. There is a newer portion of the neighborhood, which is served by the same access point on Versailles Road and a loop traffic system created by the continuation of John Alden Drive. The new part of the neighborhood is not included as part of this request for ND-1 zoning. Ms. Wade stated that the subject area is zoned entirely for Single Family Residential use; the majority of the property is zoned R-1A, with four parcels, located on Colonial Drive at Standish Way, zoned R-1B. All of the surrounding property is also zoned for Single Family Residential use of varying densities: to the north, across Versailles Road, is R-1C zoning, with R-1A and R-1B zoning immediately adjacent to The Colony neighborhood south of US 60.

Ms. Wade displayed an aerial photograph of the subject area, explaining that The Colony was developed in the 1940s, 50s, and 60s. It was platted in four units, one of which is developed as the New Colony and is not included as part of this request. This request for ND-1 zoning includes Units 1 and 2, and a portion of Unit 3 located along Colonial Drive. The homes in the neighborhood are a mix of mid-century modern, classic ranch, and traditional colonial style architecture. The distinguishing character of the neighborhood is the large lots, most of which are between ½ acre and one acre in size, along with the existing mature trees and pockets of greenspace that provide for an open feel.

Ms. Wade stated that The Colony Neighborhood Association (TCNA) requested that the Planning Commission initiate a rezoning to ND-1 in order to maintain the distinguishing features, character, and style of their neighborhood. Article 29 of the Zoning Ordinance includes a requirement that any neighborhood seeking ND-1 overlay zoning must meet at least one of the Overlay District designation criteria. In this case, the proposed ND-1 overlay meets Criterion 7, which denotes that the proposed area must be well-established, with a geographically defined area, united by culture or plan of development. The Colony neighborhood was planned and platted with a consistent design for low-density residential development.

Ms. Wade said that, at the beginning of the ND-1 process, the neighborhood set forth two preservation goals: to preserve open space in front of and behind the residences, and to prevent the overdevelopment of individual lots beyond the historical building pattern in the neighborhood. TCNA then began a four-year process to determine which of the possible ND-1 standards might be the most applicable to their neighborhood. They discovered that the underlying R-1A zone limits the allowable density on the lot, which helped to ease their concerns somewhat; but they still believed that the neighborhood needed protection. Based on those concerns, they proposed three Design Standards, related to accessory structures, fencing, and floor area ratio (FAR).

With regard to proposed Design Standard #1, Ms. Wade said that would limit each property to one new accessory structure, not to exceed a maximum of 180 square feet in size, with a maximum roof height limitation of 12 feet, to be constructed only in the rear yard. This restriction is proposed primarily to limit the construction of detached garages or carports, which, for the most part, do not exist in The Colony. In reviewing the neighborhood's proposal and conducting site visits, the staff determined that there are six existing accessory structures that exceed the 180 square-foot limit proposed, or just over 8% of the properties. Displaying photographs of those structures, Ms. Wade explained that two of them are detached garages, located to the rear of the primary structures. She added that proposed Design Standard #1 included a note; the staff would suggest deleting that information. The Planning Commission initiated the rezoning with that language, but the staff believes that it essentially duplicates information that is included in the Zoning Ordinance.

Ms. Wade stated that proposed Design Standard #2 would prohibit new front yard fencing, with the exception of properties that have frontage along Versailles Road. She said that all of the homes that have front or side yards that face Versailles Road currently have fencing. The staff determined through their research that there is only one other property in the neighborhood that has a front yard fence, and it would become non-conforming if the proposed Design Standards were approved. Ms. Wade added that the note that TCNA included with that proposed Design Standard is not applicable, and it should be deleted.

Ms. Wade said, with regard to proposed Design Standard #3, that it would establish a maximum FAR of 25% for The Colony. After meeting with TCNA and the Homebuilders Association, the staff determined that the data submitted to the staff for their review actually detailed lot coverage statistics, rather than FAR. TCNA intended for that Standard to regulate lot coverage, not FAR, so the staff would suggest alternative language in order to correct that issue. The result would be a 25% lot coverage limit, which would give all of the properties in the neighborhood room for expansion. The average existing lot coverage in the neighborhood is 10%, and the maximum is 18%.

Ms. Wade stated that the staff typically documents the location of any properties that will become non-conforming. She displayed for the Commission members a graphic depicting the location of each property that will become non-conforming with regard to accessory structures and front yard fencing.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Low Density Residential land use for The Colony neighborhood, which is consistent with its existing zoning. She said that that Plan, as well as the adopted Goals & Objectives for the 2012 Comprehensive Plan, support the use of ND-1 zoning. One of the overriding Themes of the 2012 Comprehensive Plans refers to "preserving, protecting and maintaining neighborhoods in a manner that ensures stability and the highest quality of life for all residents." Goal 15, Objective I also encourages providing stability and protection, particularly for older neighborhoods. Ms. Wade stated that there are also several other Goals & Objectives that support ND-1 overlay zoning. Therefore, the staff believes that the proposed ND-1 overlay zone is in agreement with the 2007 Comprehensive Plan recommendations for The Colony, and the specific Standards provided by TCNA will help to maintain that existing character. With regard to the recommendations of the 2012 Comprehensive Plan Goals and Objectives, Ms. Wade stated that Theme A.3.A "encourages well-designed neighborhoods by enabling existing neighborhoods to flourish through expanded opportunities for neighborhood character preservation."

Ms. Wade noted that the staff report refers to the Hal Price Headley House, at 1236 Standish Way, as being listed on the National Register of Historic Places as a single Property Landmark. She said that Article 29 of the Zoning Ordinance prohibits the inclusion of a historic district in an ND-1 overlay zone. Since that house and lot are not technically part of a historic district, the staff believes that the property should remain part of the ND-1 overlay boundary, because the intent of the Zoning Ordinance is to avoid conflicting regulations that overlap. The proposed standards do not refer to the character or physical characteristics of the property itself, so the staff does not believe that they conflict with the National Register requirements. Ms. Wade stated that the staff is recommending approval of the alternative Design Standards, for the reasons as listed in the staff report, including a change to Standard #2 to address an issue that was raised at the Zoning Committee meeting two weeks ago. At that time, neighborhood representatives were asked if they had considered whether retaining walls should be permitted. TCNA representatives said that they had not considered the issue of whether or not to permit retaining walls, so they met to discuss it, and determined that Design Standard #2 should be altered to that effect. The staff made the change to that Standard, as reflected in the supplemental staff report, and they are recommending approval of this request.

Neighborhood Presentation: Mike Hart, Chair of the The Colony Neighborhood Association's ND-1 committee, stated that the neighborhood was developed in 1947, with deed restrictions that included the Design Standards currently being proposed. The deed restrictions expired in 1979; and, since that time, most of the neighborhood has continued to exist in accordance with the restrictions. The TCNA's primary reason for the proposed ND-1 overlay zone is to continue to preserve the neighborhood in its current state, as it is facing increasing development pressure. Mr. Hart read the following quote from Professor Clyde Carpenter into the record of the meeting:

"The Colony is a significant model of neighborhood development, uniquely still retaining its original architectural integrity. It is, in my opinion, potentially threatened by the possibility of insensitive and inappropriate future development, unless strategies for the protection and preservation are enacted."

Mr. Hart stated that, four years ago, the TCNA Board of Directors chose to pursue ND-1 zoning in order to protect the character of their neighborhood. He said that the process has been grueling, but it has also been "a positive journey into the history, makeup, and function" of the neighborhood.

With regard to the proposed Design Standards, Mr. Hart stated that the three proposed restrictions would help to protect the character of The Colony. He said that the intent of Standard #3 is to prevent the construction of "McMansions" which could disrupt the view and harmony of the neighborhood, and possibly cause the removal of some of the mature trees.

Mr. Hart said that he is aware that there are residents who oppose the proposed ND-1 overlay, but many residents have noted that they were raised in The Colony and ended up returning there because they loved the neighborhood. He believes that the proposed restrictions are reasonable and fair, and they make sense with the intent of the ND-1 zone, which is to preserve an established neighborhood. Mr. Hart added that The Colony is a "gateway to Lexington;" and, as such, its preservation is important.

Citizen Support: Michael Harrison, 1293 Standish Way, stated that he is the President of the Board of The Colony Unit 4 Community Association, aka the New Colony and Residents, Inc.. He said that the Board of Residents, Inc. unanimously voted in support of TCNA's proposal for ND-1 zoning. The Board received no negative comments from their members about the proposed ND-1 overlay zone.

Mr. Harrison stated that he represents 85 homes in the New Colony, 54 of which are directly affected by the proposed ND-1 overlay due to their shared ingress and egress through The Colony. He noted that there are six houses on Standish Way that are not included in this request, since they are part of the New Colony. Mr. Harrison believes that The Colony is "one of Lexington's unique treasures," due in part to its large lots, greenspace, and open areas.

Mr. Harrison said that, in the time that he has lived in The Colony, a number of the houses have been renovated or updated. There are also some rental properties, and Mr. Harrison believes that one of the absentee owners "shows no sense of community" in getting along with the other property owners.

With regard to the proposed Design Standards, Mr. Harrison stated that they included only three "common-sense restrictions," compared to the 40 use requirements in the deed restrictions for the New Colony. He added that the proposed Design Standards are also much less restrictive than those enacted in Chevy Chase and some of the other areas in Lexington with H-1 or ND-1 overlays. The New Colony deed restrictions prohibit all sheds, shacks, or accessory structures, and permit only four-plank black horse fences and safety fences around swimming pools.

Mr. Harrison said that, when a wire fence was installed in the front yard of 4014 John Alden Lane, he received more than 30 phone calls from concerned homeowners in the New Colony. He and his neighbors believe that that fence detracts from the beauty and character of The Colony, and he believes that the proposed restriction can help to eliminate possible changes to properties that could destroy the fabric of the neighborhood. Mr. Harrison also believes that, given the large lot sizes in The Colony, the residents of the New Colony are also concerned about the possible loss of property values if homes are torn down and replaced by "mega-mansions." He said that he and his neighbors believe that the proposed Design Standards are reasonable, and that they should be approved by the Planning Commission in order to preserve the unique character of The Colony.

Dave Kessler, 1228 Standish Way, stated that he is the Treasure of TCNA and a 15-year resident of the neighborhood. He said that he was a part of the ND-1 process from its inception, and he believes that it was transparent and inclusive.

Mr. Kessler said that the concept of ND-1 zoning was introduced to TCNA members at their annual meeting in June of 2009. ND-1 brochures and handouts were distributed, and a recommendation was made to form a study committee. Later that summer, Ms. Rackers attended a meeting at a TCNA member's home and answered questions about ND-1 zoning and the process. In the fall of 2009, the study committee was formed, and they began moving forward with the required research and considering options for design standards. At the annual meeting in June of 2010, the study committee presented a progress report, along with several handouts, but the design standards were not decided upon. Around that time, Tom Wade took office on the Board, and encouraged the Board to facilitate the ND-1 process and attempt to determine if there was sufficient interest to pursue ND-1 zoning. The Board sent out to each property owner a letter outlining the three proposed Design Standards; a survey to determine the level of interest in ND-1 zoning; and an invitation to an informational meeting.

Perry Bozarth, 1233 Colonial Drive, said that he is the current President of TCNA. He said that he would like to concede the remainder of his time to Mr. Hart, in order for him to present the statistics with regard to the residents in support of and opposition to the proposed ND-1 zone.

Mr. Hart displayed an updated map of the neighborhood, noting the areas of support and opposition. He said that, while more property owners are now in favor, there are still some residents who are opposed. Mr. Hart stated that 75.9% of the property owners now support the proposed ND-1 zone, and 24% are opposed.

Citizen Opposition: Walt Whitlow stated that he has owned property in The Colony since the 1970s, and he had his home built there in 1989. He said that he was President of The Colony in 1994 at the time of the rezoning that resulted in the development of The Colony Unit 4.

Mr. Whitlow stated that he believes that the paperwork submitted by TCNA along with this ND-1 request reflects "extreme inaccuracies." He said that, according to his calculations, there are actually 26 accessory structures in the neighborhood that would become non-conforming upon approval of the proposed ND-1 standards. In addition, there are at least two detached garages, 1 detached carport, and approximately 15 or 20 front yard fences.

With regard to the entity known as Residents, Inc., Mr. Whitlow said that he is not a member, and he never has been. He said that, although the group claims to be inclusive, any new members must submit a request and be voted in by a group of existing members.

Mr. Whitlow stated that he was "extremely offended" when he read the TCNA reference to The Colony Covenants & Restrictions, which he believes is "one of the most racist documents" he has ever seen. He entered a copy of that document into the record of the meeting, noting that it was included as part of the ND-1 application, although "it should have been buried 60 years ago."

Mr. Whitlow said that he was a member of the ND-1 committee; but, to his knowledge, there has only been one meeting since 2009. He stated that he and several other members met at Tom Wade's house on October 2, 2010, and had a "lively discussion," but nothing was decided. He read the following quote from Mr. Wade at that meeting: "We certainly don't have a proposal. I think, after discussing, it's going to be very difficult for the neighborhood to reach consensus." Mr. Whitlow maintains that the neighborhood has never reached consensus on this issue, noting that the one mailing, which was done in November of 2010, included a cover letter that had multiple inaccuracies designed to convince residents to vote in favor of ND-1 zoning.

Mr. Whitlow stated that The Colony has existed for 66 years, and he believes that the proposed ND-1 overlay is "the most divisive thing to ever happen to it." He said that many residents have put hundreds of thousands of dollars and work into their properties, and he does not believe that the neighborhood is at risk.

Jerry Nicholson, 1252 Colonial Drive, stated that he is a former Vice-President of TCNA. Mr. Nicholson stated that he has a severely disabled child and, before he bought his property, he researched the restrictions very carefully to ensure that he could make the desired improvements to the property. He said that he does not believe it is fair to "change the rules in the middle of the game."

Mr. Nicholson said that the fence that caused concern for many of the residents was installed because the resident does not have much of a back yard, and needed somewhere to let her dogs out; he does not believe the fence is as unattractive as some residents contend. He noted that the rear portion of the historic Hal Price Headley house lot was sold off in recent years, and "McMansions were built in back of it," but there was no public opposition at the time.

Mr. Nicholson stated that, when he first moved to The Colony, the biggest issue of concern was whether or not to form a committee to maintain the flowers in the neighborhood; now, one group of residents is "trying to impose a zone change" on their neighbors. He said that he does not believe that a "dog fence" is reason enough for the proposed ND-1 overlay zone. Mr. Nicholson added that he believes that issues like ND-1 zoning empower property owners to challenge other people's property rights.

Mr. Nicholson said that he would like to enter into the record a letter from one neighbor who did not receive a survey postcard, and he noted that he also did not initially receive a postcard.

Jennifer Hamm-Blakely stated that she has lived in The Colony for 43 years. She said that, in reviewing the ND-1 materials submitted by TCNA, she does not see overwhelming support for the proposed ND-1 zoning. Ms. Hamm-Blakely served on the TCNA Board for two years, until May of 2012. She stated that she believes that "this fight was brought to her door" partly by residents of the Chinquapin section of the neighborhood, which has its own by-laws and restrictions.

Ms. Hamm-Blakely stated that, contrary to the assertions of TCNA members, she does not believe that the ND-1 process has been transparent. She also believes that many of the relationships in the neighborhood have been destroyed, and that the process has been deeply divisive. Ms. Hamm-Blakely stated that Mr. Hart, while working the polling place on election day, spoke to residents about ND-1 zoning, and followed up by visiting residents at their homes.

Ms. Hamm-Blakely stated that one of her neighbors was recently told that the proposed rezoning was already a "done deal," and said that she hoped that was not true. She said that the information the residents received was

misleading, with residents being informed at first that an approval rate of 75% of the property owners in the neighborhood was necessary for approval of the proposed ND-1 zone, then the figure was changed to 51%. Ms. Hamm-Blakely stated that she does not believe the ND-1 process has been accurate, fair, or objective.

Brandon Stinnett, 1252 Standish Way, said that he believes that Mr. Whitlow has an overwhelming amount of evidence, and he respectfully requested that the Planning Commission members consider it carefully prior to making a decision on this request.

Mr. Stinnett said that the TCNA Board did put a great deal of time and effort into the ND-1 process, but he does not believe the information submitted is entirely accurate, and he is concerned that it does not truly reflect the wishes of the property owners. He added that he is also concerned about the use of a map that depicts which owners voted in favor of or opposition to this request, since it could "open those residents up to pressure and bullying."

Mr. Stinnett displayed a pie chart he had prepared, explaining that only 24 property owners supported going forward with the ND-1 proposal in November of 2010, and not all of those 24 households agreed to all three of the proposed Design Standards. He said that the process went forward, however, with only 34% of the property owners in support. With regard to the postcard survey conducted by the staff, Mr. Stinnett said that there were only 29 votes in support, or 40% of the property owners, and four of those are in contention since the owners reside in Chinquapin rather than The Colony. He read the following into the record from the LFUCG informational brochure about the ND-1 overlay zone:

"The initiation process requires significant neighborhood support, usually in the form of a petition with a minimum of 51% of owners' signatures."

Mr. Stinnett stated that he believes that the inaccuracies of the information submitted by TCNA, coupled with the lack of majority support, should effectively invalidate this proposal. He said that a property adjoining that owned by the head of the ND-1 committee has a fence made of heavy-duty farm wire, but it has never been mentioned as detracting from the character of the neighborhood. Mr. Stinnett said that he does not believe that the TCNA Board actually represents the entirety of the neighborhood, and that the proposed Design Restrictions would not protect the character of the neighborhood, but rather "a small interest group's aesthetic preferences."

Jeremy Ford, 2512 Versailles Road, stated that, when he purchased his property four years ago, he intended to reside there, raise a family, and construct a detached garage. He said that one of the reasons he chose that property was that it offered the opportunity to own an acre of land inside New Circle Road, which is difficult to find, and he would like to be able to make alterations to that property without restrictions such as those proposed in the Design Standards.

Mr. Ford said that, according to most of the property owners with whom he spoke about the proposed ND-1 overlay, their primary concern was the unattractive fence that was installed on one resident's property. He noted that, since approval of this request would not require the removal of that fence, he would ask that the Commission disapprove this request, and allow the homeowners to use their land as they see fit.

Stella Moore, 4017 John Alden Lane, stated that she was forced to make alterations to her home in order to accommodate the needs of her husband, who is a disabled Vietnam veteran. She said that she added an outbuilding and pool as part of an extensive, eight-month long remodeling process that was completed prior to her family moving into the home. Ms. Moore noted that none of her neighbors approached her during that process to express disapproval, or indicate that the alterations were contrary to regulations.

Ms. Moore said that her home is located across the street from the fence that has caused concern for so many residents, and she does not find it sufficiently offensive to justify animosity between neighbors. She opined that The Colony is a beautiful neighborhood, the homes are well-kept, and she does not see the need for the protection of the proposed Design Standards.

Phillip Cassidy, 1256 Colonial Drive, stated that, although his home was depicted on the map as having no vote, he is opposed to the proposed ND-1 overlay. He does not believe that there has been an effective canvass of the homeowners, and he believes that some of the information provided was misrepresented.

Mr. Cassidy opined that the proposed ND-1 overlay is "a solution in search of a problem," since The Colony is a wonderful neighborhood that has seen no out-of-character construction. He also does not believe that the fence about which many residents are concerned is offensive in any way.

Kathleen Whitlow, 1249 Standish Way, said that she moved to The Colony because she loves the neighborhood, its diversity, and the neighbors. She said that there were more residents present in opposition to this request than those who chose to speak; she asked those residents in the audience to stand.

Ms. Whitlow read into the record of the meeting the following letter, which was given to her by a neighbor:

"Had we known when we bought our house that the neighbors were going to attempt ND-1 zoning, we would have continued to look for a home elsewhere. When we moved into our home in The Colony, we did so with plans for repairs, renovations, windows, plumbing, and an addition in five to ten years when we could afford it. The addition we planned on when we bought the house is a two-story addition of a room and a garage on ground level, and a master bedroom and bath. The zoning changes would limit what we want to do for an addition. It might also mean that we have to get the okay from neighbors on a committee of what is or isn't acceptable for an addition. Those who would be on the committee are most likely those who are pushing for the ND-1 zoning.

I'd also like to say a few words about the value of people over property. When we moved into our house, our youngest son was not quite four months old. Our other boys were 22 months and five. Moving into a new house, unpacking, was no small task, especially when there were no relatives close to help. That summer, when our lawn got a little long, one of these neighbors put a sticky note on our mailbox with the words 'mow your lawn.' Not 'welcome to the neighborhood,' 'is there something we could do to help you,' but 'mow your lawn.' It brought me to tears. I was brought up in such a way that neighbors helped each other out. Neighbors helped families with babies or the elderly, and not made them feel bad about the appearance of their lawn at one time. I've also heard talk about a wire fence, and of the neighbor with dogs. It's been repeatedly called an 'eyesore,' and talked about as if it were some kind of a scandal. As if the fence had stolen or murdered the dignity and the beauty of the neighborhood. It's the talk, and the gossip, and the disrespect of some of the people for their neighbors. The Colony has an array of different houses with different architecture. That diversity can only live if different people continue to bring their ideas, interests, and love into the neighborhood without the restrictions of a few who think their ideas and beliefs are what is acceptable."

Ms. Whitlow said that that resident would also like it noted that she did not believe it was appropriate for the residents who worked at the polling place on election day to express their interest and lobby for ND-1 while residents were trying to vote.

Junior Odom, 1212 Colonial Lane, stated that he came to Lexington 50 years ago, and he wanted to live either in The Colony, or on The Lane. He said that he was able to purchase a house that became available in The Colony, and he has lived there for 45 years. He would like to continue to live there with the same sense of peace he has had for decades.

Frank Robey, 2504 Versailles Road, stated that he is probably the newest resident of The Colony. He said that, when he first looked at his home, he asked the Realtor for a copy of the neighborhood association's rules, since he did not want to live in an area with a lot of restrictions. Mr. Robey explained that he is a contractor, and he has seen firsthand that everyone has different ideas about what is aesthetically pleasing. When he received a copy of the original regulations, however, he noticed the following language from Article 2:

"No lot hereby conveyed nor any part thereof shall be sold or leased to any negro, or mulatto; or any organization or association of negroes or mulattos; nor shall any negro or mulatto be permitted to occupy said property, provided that this restriction shall not prevent any owner or lessee from having his negro or mulatto servant reside on the premises while employed as such."

Mr. Robey stated that he realized that the Federal government restricts such prejudices today, but there are still those in the community who seek to restrict others' freedom to do with their properties what they choose. He said that he believes that the LFUCG regulations with regard to zoning and property maintenance are sufficient now, although some legitimate issue might arise in The Colony in the future. Mr. Robey stated that the homeowners in The Colony do not want to reduce their property values; they want to ensure that everything is well-maintained and looks nice.

Commission Question: Mr. Brewer asked how Residents, Inc. is related to The Colony Neighborhood Association. Ms. Wade answered that that is the legal name of the homeowners association that requested Planning Commission initiation of this request. Mr. Brewer asked who makes up that organization, and whether all residents of The Colony are members. Ms. Wade responded that it is a voluntary organization.

Supporters' Rebuttal: Mr. Hart confirmed that Residents, Inc. is a voluntary neighborhood association; the only qualification for membership is to live in The Colony, and pay the annual \$125 dues. Mr. Brewer said that one of the citizens had referred to being ineligible for that organization, to which Mr. Hart reiterated that the only eligibility requirement is to live in the neighborhood and pay the dues. He noted that some residents choose not to participate. Mr. Brewer asked how many residents are members of Residents, Inc. Mr. Hart answered that 52 of the 72 homes are represented.

Objectors' Rebuttal: Mr. Whitlow said that Residents, Inc. was incorporated by a group of residents of The Colony in 1961. He said that, to the best of his knowledge, the by-laws of the organization have never been followed, so he does not believe that there are any legitimate or legal members of the corporation. Mr. Brewer asked how Mr. Whitlow would justify the 52 homes that Mr. Hart indicated are included in that organization. Mr. Whitlow responded that many of his neighbors have never officially joined Residents, Inc., but were just sent a bill and they paid it. He said that only a handful of individuals have ever seen the by-laws, but many of the residents believe that membership is mandatory. Ms. Wade noted that language in the by-laws indicates that fees were not to be assessed for membership.

Linda Birk, current TCNA Board member, said that she would like to clarify that Residents, Inc. is intended to represent all of the residents of The "Old" Colony, as well as four homes on Colonial Drive. She added that the by-laws specifically state that the neighborhood organization can include any resident; that dues are not obligatory; and that approximately 75% of the members choose to pay the dues. Ms. Birk explained that the neighborhood lights and landscaping are paid for with the dues.

Ms. Birk said that she was a Board member in 2008 when the ND-1 proposal was introduced, but has not served the entire time since then. She stated that former TCNA President Tom Wade was currently out of the country, but he sent a letter and asked her to state for the record that the ND-1 process was intended to be a fair, transparent, and inclusive process.

Terry Morse, 1245 Colonial Drive, said that he pays dues as a member of Residents, Inc. because he wants to do his fair share in paying for the lights and landscaping in the neighborhood.

Mr. Bozarth stated that Residents, Inc. signed an agreement with the developer, Jay Williams, to create the "new" Colony.

Staff Rebuttal: Ms. Wade stated, with regard to the proposed language referring to retaining walls, that "18 inches above the unbalanced fill in the front yard" would mean that the wall itself would be some distance higher than the ground that it holds back. She noted that the height of the wall itself is not as important as its limit above the unbalanced fill.

Chairman Question: Mr. Owens asked if Ms. Wade had any comments with regard to the number of possible non-conforming structures or fences in the neighborhood. Ms. Wade answered that she did not see Mr. Hart's fence when she was on the site, but she did see some side yard fences. Since those fences did not surround the front yards, they were not included as non-conformities, nor were the additional accessory structures that were less than 180 square feet in size.

Chairman Comment: Mr. Owens stated that the hearing was now closed.

Commission Discussion: Mr. Penn stated that he was dubious about this request when the Planning Commission initiated, and he informed Mr. Hart at the time that the neighborhood "would have a hard time selling this." He said that he was disappointed in this hearing, because "an ND-1 hearing was supposed to be about a common threat that the majority of the neighborhood is concerned about," and how the Commission can act to allay those fears. Mr. Penn said that he believes that this was the most contentious ND-1 hearing during his time on the Commission, and he does not believe that today's hearing has satisfied the intent of the ND-1 overlay.

Mr. Brewer said that he is generally a supporter of ND-1 overlay zoning, since it can help to preserve the good aspects of a neighborhood, but he believes it can only work if there is a consensus of the neighborhood. He stated that it appears that there is not sufficient support among the property owners for the proposed overlay zone, and he will not be able to support it.

Ms. Plumlee stated that she appreciates the concerns of the residents who spoke at today's hearing, but she will support the staff's recommendation of approval. She said that the Planning Commission members want to do what is best for each neighborhood; but they have guidelines in the Comprehensive Plan, as well as other regulations and by-laws, and they must follow them.

Mr. Cravens stated that he had made a comment at the time of the initiation for this request that the proposed Design Standards were so minor that they would "not be worth the effort and all the trouble" that the neighbor-

hood went through. He said that, after he pointed out at the Zoning Committee meeting that the Design Standards did not address walls, the neighborhood "rushed to change" the Standards, even though he was actually referring to landscape walls, rather than retaining walls. Mr. Cravens stated that the proposed Design Standards for accessory structures are vague, and the Standards overall do not go far enough to actually protect the neighborhood from anything. He added that most deed restrictions prohibit accessory structures completely, and he does not believe that anyone would attempt to exceed the lot coverage requirements inherent in the existing zone.

Mr. Cravens stated that he does not like to have his rights taken away, and he cannot understand why anyone else would choose to have ND-1 restrictions imposed upon their property. He concluded that he cannot support this request.

Ms. Roche-Phillips stated that, at the recent hearing for the Ashland Park neighborhood H-1 overlay, she opined that "planners are supposed to be forward-thinking, and not reactionary to threats." She said that she supports the proposed ND-1 overlay; but she is very concerned about the process, since she is not convinced that the numbers in support are as impressive as the Commission was originally led to believe.

Mr. Penn stated that he is not against the ND-1 zone in general, but he does not believe that the neighborhood has made a case for it in this instance. He added that he has not seen the evidence that the neighborhood knows what it wants.

Mr. Wilson stated that he shares his colleagues' opinions about the Commission's role in resolving these divisions among neighbors. He opined that the neighborhood appears to have gone through a lot of trouble for three relatively minor restrictions. Conversely, since the proposed Design Standards do appear to be minor, Mr. Wilson said that he cannot understand why the community has not been able to come to some agreement on them. He added that he is generally in favor of ND-1 zoning, but he will have to think about this request.

Mr. Owens stated that he agreed that the proposed Design Standards appear to be relatively minor. He declared the discussion closed, and asked for a motion.

Action: A motion was made by Ms. Plumlee, and seconded by Ms. Roche-Phillips, to approve MAR 2012-17 for the reasons provided by staff. The vote on this action was tied, 4-4 (Berkley, Blanton, and Mundy absent; Beatty, Brewer, Cravens, and Penn opposed).

Director Comments: Mr. King stated that there are special rules regarding tie votes for map amendment requests.

Legal Comments: Ms. Jones stated that, according to KRS 100.211, the Planning Commission is required to reconsider the item within 30 days.

Commission Questions: Mr. Owens asked if that meant that the Commission would need to take another vote on this item within 30 days. Ms. Jones read the following from KRS 100: "A tie vote shall be subject to further consideration by the Planning Commission for a period not to exceed 30 days. At the end of which, if the tie has not been broken, the application shall be forwarded to the legislative body without a recommendation of approval or disapproval."

Mr. King stated that the Commission would typically, at their next public hearing on December 13th, put this matter on the docket, but without a new hearing. Mr. Owens, as Chair, would open the matter up again for a reconsideration of the vote, and only those members present at today's hearing would be able to vote.

Mr. Brewer stated that he did not believe that this matter should be put off, but he would understand if the regulations require such action. He said that is concerned, however, about what would happen should one of the members who are present at this meeting not be present at the next. Mr. King responded that the statute does not speak to that issue.

Mr. Owens asked if another motion could be entertained at this hearing.

Ms. Roche-Phillips asked if the three members who are not present at this hearing could review the record and vote on this item at the next meeting. Ms. Jones said that she was not sure at this time; but, if it was determined that those members could vote, they would be required to review the entire hearing.

Ms. Beatty asked if the Commission could put a motion on the floor for continuation in order to allow the neighborhood association to work with the staff to address some of the concerns. Mr. Owens answered that the Commission does not have a deadline by which to consider this item, so that should be allowable. Mr. Wilson,

* - Denotes date by which Commission must either approve or disapprove request.

as Parliamentarian, stated that, once a motion dies, another motion for the same action cannot be made in the same session. Under parliamentary procedure, the Commission could make a motion for reconsideration; but such a motion would have to be made by the prevailing side, and there was no prevailing side in the tie vote. Mr. Wilson explained that the only way a new motion could be considered at this point would be if it were a "significantly new" motion.

Ms. Beatty asked if a continuation would entail a significantly new motion. Mr. Wilson answered that, by his interpretation, a motion for reconsideration would be significantly new.

Mr. Brewer said that he does not believe that making a motion for reconsideration would be the best solution, and he added that he has serious concerns about permitting members to vote who were not present for the hearing. He also noted that he is concerned about the possibility that one of the members present at this hearing might not be present when the item is reconsidered.

Motion: Mr. Cravens made a motion to disapprove MAR 2012-17.

Parliamentarian Comment: Mr. Wilson stated that, according to parliamentary procedure, Mr. Cravens' motion was out of order. He said that a motion of disapproval would not qualify as "significantly different," but would be classified as a "dilatatory motion."

Discussion: Ms. Plumlee agreed that only the Commission members present at this hearing should be able to vote on this item.

Ms. Beatty stated that she believed that the Commission should follow the advice of legal counsel and reconsider this item within 30 days.

Mr. Owens asked if a motion could be made at this point to send this item forward to the Council without a recommendation. Ms. Jones answered that it could not.

Mr. King said that this item would be placed on the Commission's December 13th agenda, since that is their only public hearing scheduled within the next 30 days. At that time, the Commission can reconsider the item, or choose to send it on to the Council with no recommendation.

Mr. Brewer asked if the Commission members' votes from this hearing would stand if they are not present at the December 13th hearing. Ms. Jones answered that that depends on the action the Commission decides to take at that time. She said that, if the decision is to not reconsider, but to send the item on to the Council, the Commission members' votes would stand. However, if the Commission comes up with some other solution at that time, she could not be sure.

Mr. Owens stated that the Commission would move on at this time, and vote on this item at their hearing on December 13th, although no new information will be presented at that hearing.

Ms. Jones stated that, because of the 30-day period, the Commission's *ex parte* rules would still apply.

Mr. Cravens said that, if one of the Commission members who voted at this hearing is not present on December 13th, it could change the will of the Commission based on attendance. Mr. Owens replied that KRS states that this is the procedure that must be followed, and reiterated that this item will be reconsidered on December 13th.