

V. **ZONING ITEMS** - The Zoning Committee met on October 5, 2023, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members Larry Forester, Robin Michler, Graham Pohl, Zach Davis, and Bruce Nicol. Staff members present were; Traci Wade, Autumn Goderwis, Daniel Crum, Tom Martin, Chris Taylor, and Brittany Smith; Department of Law.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS** - Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
  - (a) Proponents (10 minute maximum OR 3 minutes each)
  - (b) Objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
  - (a) Petitioner's comments (5 minute maximum)
  - (b) Citizen objectors (5 minute maximum)
  - (c) Staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s).

**Note:** Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **509 E MAIN, LLC ZONING MAP AMENDMENT AND ZEE FAULKNER PROPERTY (AMD) DEVELOPMENT PLAN**

- a. **PLN-MAR-23-00012: 509 E MAIN, LLC** – a petition for a zone map amendment from Neighborhood Business (B-1) zone with conditional zoning restrictions to Neighborhood Business (B-1) zone with no conditional zoning restrictions, for 0.485 net (0.666 gross) acres, for property located at 509 E. Main Street.

**COMPREHENSIVE PLAN AND PROPOSED USE**

The 2018 Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community's resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. This will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The applicant is seeking to remove the existing conditional zoning restrictions on the subject property to establish a private club use. The use will consist of a membership-only space that will include restaurant and event space, without live entertainment. The applicant is not proposing any external modifications to the existing 10,047 square-foot structure at this time. The site's 2,000 square-foot third floor residential dwelling unit will remain in operation.

**The Zoning Committee Recommended: Postponement.**

The Staff Recommends: **Postponement**, for the following reasons:

1. The applicant should provide information regarding neighborhood outreach regarding new conditional zoning use restrictions at this location.
2. The applicant should provide greater information regarding the economic feasibility of the other permitted uses at this location.
3. The applicant should provide information regarding physical or social changes in this portion of the Main Street corridor since the initial 1990 rezoning.

Mr. Crum began his presentation by informing the Planning Commission that he had given them handouts that included several support and opposition letters. He oriented the Planning Commission to the site location and the surrounding zoning. He indicated that the property was included in an H-1 overlay area so it would need approval from the Division of Historic Preservation. He described the details of the request to change the conditional zoning restrictions of the property that were placed on it during a previous zone change in 1990. Mr. Crum stated that the applicant had three separate meetings with the Bell Court Neighborhood Association, of which staff was present for two.

The neighbors had concerns with parking and other use-specific requirements. He listed previous uses of the building, and displayed photographs of the subject property, as well as the development plan. Mr. Crum described the type of use that the applicant was seeking, a private, social, art-based club, and mentioned some similar clubs in Lexington. He stated that staff felt the conditional zoning that was placed on the property was very specific and not how Planning would approach conditional zoning now. Mr. Crum stated that the applicant had made an economic argument to justify the request for a change in the conditional zoning, and staff agreed with their position. He shared the applicants list of proposed restrictions, and listed the following alternative list to address potential equity issues.

A. The permitted uses on the property, as regulated by Section 8-16 of the Zoning Ordinance for the Neighborhood Business (B-1) zone, shall be:

1. Professional services including, but not limited to, financial services, legal services, business offices, medical, and dental offices.
2. Schools for academic instruction.
3. Libraries, museums, art galleries, and reading rooms.
4. Studios for work or teaching of fine arts.
5. Community centers and private clubs.
6. Ticket and travel agencies.
7. Kindergartens, nursery schools and childcare centers.
8. Restaurants and brew-pubs.
9. Establishments for the retail sale of merchandise.
10. Beauty shops and barber shops.
11. Shoe repair, clothing alterations, and tailoring services.
12. Dwelling units.
13. Athletic club facilities.
14. Banquet facilities.
15. Adult day care facilities.
16. Places of religious assembly.
17. Nursing homes, personal care facilities and assisted living facilities.
18. Rehabilitation homes.
19. Day shelters.
20. Establishments for the retail sale of food products.
21. Accessory parking areas.

B. No merchandise for sale will be displayed on the building's porch or in the front or side yards.

- C. The Parking lot will be screened from Forest Avenue by the brick wall and landscaping shown on the submitted development plan.
- D. Business signage on the property shall be limited to one freestanding sign, with indirect illumination, not to exceed 3 1/2 feet in height, to be constructed of natural materials such as wood and be consistent with the architecture of the principal structure.

Mr. Crum concluded by stating that staff did recommend approval of the staff alternative list of conditional zoning restrictions.

Commission Questions – Mr. Michler asked why there a list of allowable uses rather than restricted uses. Mr. Crum stated that while staff usually does recommend restricted uses, a list of allowable uses was used for clarity in this situation because the original conditional zoning was formatted in this way.

Mr. Michler stated that several neighbors were concerned that the club would restrict access to the neighborhood, and asked Mr. Crum to speak to the concern. Mr. Crum stated that the private club use is a principally permitted use in the B-1 zone, and felt that there was no way to control the type of club. He added that the use could be neighborhood serving, and the Bell Court residents could be part of the club. Staff had to make its recommendation based on the appropriateness of the land use.

Mr. Nicol asked for some clarity on the history of the property. He wanted to know if the fraternity house that was in the location before the conditional zoning was implemented was a legal use of the property at the time. Mr. Crum said that it was his understanding that the fraternity house was operating legally.

Mr. Pohl asked for more information about the neighborhood outreach as well as the physical and social changes on the street. Mr. Crum offered information of the neighborhood meetings that took place. He said the meetings were well attended and the concerns were oriented to the particular use being requested. He further stated that while staff hoped to obtain some guidance on a list of allowable uses, the neighbors were more focused on the timeline of the project and procedural elements of the plan. Mr. Crum added that there was no discussion of the physical or social changes in the area because there only needed to be one change, and the applicant used the economic changes as their justification.

Mr. Nicol asked if there were too many art galleries and suggested that maybe our market could not support more. Mr. Crum said the staff presentation covered macro-level trends in the market, not Lexington specifically, but staff felt that this level of information was sufficient.

- b. **PLN-MJDP-23-00052: ZEE FAULKNER PROPERTY (AMD)** (11/5/2023)\* - located at 509 E. MAIN STREET, LEXINGTON, KY  
Council District: 3  
Project Contact: Baron Gibson Design, LLC

Note: The purpose of this plan is to revise conditional zoning restrictions in an existing Neighborhood Business (B-1) zone.

Note: The applicant submitted a revised plan on October 3, 2023. Based on that submittal, staff can offer the following revised recommendation.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council approves the revised conditional zoning restrictions; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers, and floodplain information.

3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree preservation plan.
5. Correct note #6, deleting word "resolution."
6. Discuss on-site drop off location for members and deliveries.

Staff Presentation - Ms. Gallt shared the Development Plan with the Planning Commission and stated the sign-offs that were needed for approval. She mentioned drop-off and pick-up locations were a discussion item that needed to be addressed.

Applicant Representation – Attorney Nick Nicholson was present to represent the applicant. He mentioned that there were several members of the applicant team present as well. He began by displaying a photograph of the subject property and stated that the application came about because the gallery use of the project was insufficient to maintain the building in the manner it deserved. The applicants wanted to find a use that was art-related but make it economically possible.

Field Ladd, co-owner of the property, shared his personal history with the property, and described it as a legacy in his family. He told the Planning Commission the efforts that had been made to preserve the legacy of the property. He stated that the preservation of the property was extremely important to the family, as well as respecting Bell Court.

Tyler Bromagen, spoke about the historic aspect of the building and said that it must be maintained. He described the proposed club to be a culturally diverse, art based social club. He said that there would still be art displayed in the building that would be maintained by Crossgate Gallery. He listed several social events that they envisioned taking place at the club.

Mr. Nicholson continued the presentation. He expressed their complete agreement with the staff alternative list of permitted uses. He said that they were only asking for conditional zoning that would be comparative to most B-1 zoned property in an historic district. He reemphasized the shift in retail sales to online purchasing and how it had affected his client's ability to maintain the property as they had done previously. He displayed several statistics to back up their position, and he stated that the Crossgate Gallery had to move to a smaller, more maintainable space to be economically viable. He pointed to several properties that could be used for the proposed club, by right, in the immediate area because they did not have the strict conditional zoning. Addressing traffic concerns, Mr. Nicholson said that the owners anticipated only 40-60 trips being added per day, and also mentioned that they had dedicated parking agreements with other nearby properties. He also shared that the Kentucky Transportation Cabinet was planning pedestrian improvements to East Main Street. He stated that the neighborhood mentioned a desire for enhanced landscaping and displayed some renderings of landscaping that they planned to submit to the Board of Architectural Review. He reiterated that they wanted the Bell Court neighbors to enjoy and utilize this property.

Mr. Nicholson discussed the neighborhood engagement including scheduled meetings as well as several emails and phone calls. He said that they wanted to activate an underutilized property and include many of the ideals of the Comprehensive Plan including ridesharing, multi-modal, and an infill type use. He again asked for approval.

Commission Question – Mr. Wilson asked if there was any set criteria for members of the club. Mr. Nicholson said that there was no criteria that he was aware of, and they had no desire to be a country club, but a nice co-working space with multiple learning opportunities.

Mr. Wilson inquired about the number of parking spaces at the property. Mr. Nicholson replied that there were 17 spaces on site, and parking arrangements for over 100 more nearby.

Ms. Worth asked if there would be rental spaces for artists, and Mr. Nicholson said that there would be nothing for rent, rather it would be covered in the membership fee.

Mr. Michler asked what the hours of operation would be. Mr. Nicholson replied that it would be 8:30a.m. – 10p.m. on weekdays and 9 a.m. to midnight on the weekends. He added that they chose those hours to correspond with the hours of the Bell House, and that he could add that as a note to the development plan.

Opposition Representation – Attorney Bethany Baxter was present to represent the Bell Court Neighborhood Association. She submitted and handed out a position statement. She began by sharing the background and objectives of the neighborhood. She said that they wanted to keep the border of the neighborhood preserved. Slides were displayed to point out the amenities within the Bell Court Neighborhood. She shared concerns over increased traffic, pedestrian safety, and drop-off locations. Ms. Baxter stated that the applicant did not meet the burden of significant economic, physical or social change. She believed that the Planning Commission of 1990 made the restrictions to buffer the property from residential neighbors. She disputed the economic data given by the applicant, and said it was not applicable to the area in question. She mentioned several businesses close by that fell under the restrictions that had been placed and would work at the subject property. She stated that there has been no economic change here, and the sale of art was economically viable. She mentioned that the intent of the B-1 zone was to serve the neighborhood and this private club would not do so. She disputed the applicant's claims of neighborhood outreach, and stated that they had not answered the questions that had been submitted. She suggested the list of proposed uses would cause traffic, pedestrian, and nuisance issues. She stated her frustration at the late additions to the proposed uses that were added by staff, and felt that they had no time to consider them. She felt that there would be no time to appeal the development plan if it was approved. She requested that the Planning Commission disapprove the zone change and development plan.

Citizen Comment – Dan Elkinson, 520 Sayre Avenue, shared his love of the Bell Court area. He wanted to protect the neighborhood from homes being turned into businesses. He said that his home backed up to the subject property and asked that the Planning Commission respect the families that live there.

Megan Winfield, 505 E. Main Street, said she lived next door to the property and felt that neighborhood engagement was contradictory to information that she asked before the development plan was filed.

Trish Smith, 212 Bell Court, shared her love of the neighborhood, and stated that she owned units in Clay Villa. She was concerned about the traffic aspects of the plan, especially regarding the residents of Clay Villa and other pedestrians.

Marcy Deaton, 116 Forest Avenue, stated that she lived close to the subject property. She said that it would personally impact her home with too much noise and smell of trash.

Will Coffman, 1460 Grissom Lane, was supportive of the plan. He said that the trend of business on Main Street was going to continue and should be supported.

Ginny Daley, 136 Burley Avenue, spoke for the Fayette County Neighborhood Council. She said that they support the concerns of Bell Court Neighborhood Association and asked the Planning Commission to disapprove the zone change. She was concerned that there would be short term rentals in the property as well.

Keith Lovan, 524 Sayre Avenue, was uncomfortable with the proposed zone change, and felt that traffic issues were his biggest concern.

Kevin Murphy, 141 W. Bell Court, shared his enjoyment of living in the Bell Court neighborhood. He was concerned about the potential conditional uses in the B-1 zone.

Maureen Peters, 535 Russell Avenue, felt that the previous zone change would not have happened without the conditional zoning, and she was concerned about expanding the list.

Bob Babbage, 3013 Tates Creek Road, #104, spoke in support of the project. He compared this project to one in Louisville that had been very successful. He said that there were not going to be 500 members, and there was a parking plan in place. He said that the plan would keep Bell Court special.

Bo Bromagen, 442 N. Limestone, was supportive of the plan. He said it was a group of local residents who wanted to continue investing in the community. He said it would preserve the property.

Greg Ladd, 1101 Fincastle Road, and owner of the property, said the building was wonderful and they wanted to preserve it. He felt that the interior plan that they had planned would be beautiful.

Andrea Mandella, 101 Swigert Avenue, said that the type of retail that had been in use was not maintainable. She supported the zone change, because they would do the right thing with the property.

Jonathan Nunley, 145 Old Cassidy Avenue, was excited about the club and the social aspects that would be offered.

Amy Clark, 628 Kastle Road, felt that if the property was re-zoned, it should go back to the prior zone. She felt there was no demonstrated change to the property. She wanted no transient rental allowed and was concerned about the hours of operation.

Brady Barlow, 505 E. Main Street, was concerned about the number of members that would be in the club, and that it would not serve the neighborhood.

William Meng, 125 Forest Avenue, said that the zoning restrictions were unfathomable and that the antiques market was extremely difficult. He supported the plan.

Applicant Rebuttal – Mr. Nicholson reiterated that this was a property in an H-1 Overlay, so it would have additional protections. He clarified that the rear parking lot would be used for ride sharing and deliveries. He said that there have been changes to the business model for the better, because of the neighborhood interactions. He also reminded the Planning Commission that there would be no exterior building changes. Mr. Nicholson repeated the reasons why they could claim a significant economic change, and also listed several changes that had been made due to neighborhood concerns, such as no smoking and limited outdoor hours. He asked that the Planning Commission take staff's recommendation and approve the restriction changes.

Opposition Rebuttal – Ms. Baxter said that there was too much inconsistent information being provided and other information not provided at all. She believed that the applicant had not presented sufficient evidence that there had been significant economic change. She asked that the Planning Commission protect the neighborhood and reject the proposed zone change.

Staff Rebuttal – Mr. Crum clarified that the plan has not been presented to the Board of Architectural Review and they would have to sign off on issues such as the preservation of tree canopy and additions such as kitchen ventilation. He reiterated that the staff was recommending approval because of the significant economic change, and that they felt the restrictions were unreasonable. He said that the Commission could place conditional zoning requirements regarding hours of operation and outdoor loudspeakers. As proposed, this plan would not allow for any short term rentals.

Commission Questions – Mr. Michler asked for clarification regarding outdoor amplification. Mr. Crum stated that indoor and outdoor live entertainment would not be allowed at all. Mr. Michler

asked if that included requesting a conditional use permit from the Board of Adjustment. Mr. Crum confirmed that they could not.

Mr. Pohl shared his thoughts regarding the plan as he had to leave the meeting soon. He said that this is a difficult decision, but felt that there was a significant economic change. He believed that the applicant communication with the neighborhood had been lacking and hoped that it would be improved. He called for strict limitations on noise and hours of operation.

Mr. Pohl left the meeting at this time.

Mr. Michler asked Mr. Nicholson if he was comfortable adding restrictions on the hours of operation. Mr. Nicholson stated that they would be willing to include such a note on the development plan. Mr. Nicholson restated the hours of operation and added that the outdoor areas would be closed at 10 p.m. daily. Mr. Michler also asked Mr. Nicholson to restate that they would not have any short term rentals on the property. Mr. Nicholson did so, for the record.

Mr. Michler stated that he did feel the conditions were very restrictive and that the retail environment had changed considerably since they were imposed. He felt that there needed to be flexibility, and hoped that the neighborhood could be considered more moving forward.

Mr. Owens wished that the supplemental staff report had come sooner, but he did agree with it. He said that the art business was difficult at this time.

Ms. Worth asked if the club could be opened to outside groups or the neighborhood. Mr. Nicholson said that they did want a strong membership from the surrounding neighbors and welcomed them. Ms. Worth stressed that the neighborhood needed to have their questions answered and Mr. Nicholson agreed.

Mr. Davis felt that the conditions that had been imposed were extremely restrictive and the plan was intriguing, but he had reservations, especially regarding the homes that were neighboring the property. He thought there was a path to a yes, but did not think the plan was there yet.

There was some discussion regarding the proper time and place to add restrictions. Ms. Jones clarified the Planning Commission's ability to change the zoning restrictions. She continued by saying that the place to add restrictions would be on the Development Plan.

Ms. Meyer stated that she wished the neighborhood would get more benefit from the redevelopment of the site. She agreed that the conditions were restrictive, but was unsure about the development.

Ms. Barksdale asked if they would see the development plan again. Ms. Jones replied that since it was a final, they would not. Mr. Nicholson said that it was a final development plan, but that the Board of Architectural review would still have to approve it. Mr. Nicholson said that if something was added as a condition, they would have to include it as a note before staff certified the plan.

Ms. Baxter asked the Planning Commission if the development plan could be postponed.

There was some discussion between Ms. Jones and the Planning Commission about the timeline and a postponement.

Mr. Nicholson interjected with a suggestion that they make the development a preliminary plan instead of a final or they could postpone the development plan until after Council voted on the zone change. He said they were happy to bring the plan back so they could discuss the items that had been mentioned.

Ms. Jones and Mr. Martin confirmed that the plan could be changed to a preliminary plan so that the details could be worked out at a later time.

Action – Mr. Nicol made a motion, seconded by Mr. Wilson, and carried 6-2 (Meyer and Davis opposed, Pohl and Forester, absent) to approve the alternative list of conditional zoning restrictions for PLN-MAR-23-00012: 509 E MAIN, LLC with the 21 allowable uses, as listed in the supplemental staff report, and with the findings proposed by staff.

Mr. Nicholson again offered a postponement suggestion on the development plan until after Council had heard the zone change. Ms. Jones stated that it would be difficult to put a date on a postponement because they were unsure of when Council would act.

Action – Mr. Owens made a motion, seconded by Mr. Nicol, and carried 7-1 (Meyer opposed, Pohl and Forester absent) to approve PLN-MJDP-23-00052: ZEE FAULKNER PROPERTY (AMD) as a preliminary development plan, changing condition number 6 and adding two more conditions as listed:

6. Denote on-site drop off location for members and deliveries.
7. Denote: Business hours will be 8:30 a.m. – 10 p.m. on weekdays and 9 a.m. to midnight on the weekends with outdoor spaces closing at 10 p.m. nightly.
8. Denote: There shall be no outdoor speakers.

Before the final vote was taken, Ms. Jones asked Mr. Nicholson to affirm that this was being changed to a preliminary plan and he did so.