

3. CAPKY BLUEGRASS PROPERTIES, LLC, ZONING MAP AMENDMENT & STOREY BUSINESS SUBDIVISION, LOT 6 (WALLER AVENUE SELF STORAGE) ZONING DEVELOPMENT PLAN

- a. MAR 2015-17: CAPKY BLUEGRASS PROPERTIES, LLC (11/1/15)\* - petition for a zone map amendment from a Professional Office (P-1) zone to a Wholesale & Warehouse Business (B-4) zone, for 3.05 net (3.29 gross) acres, for property located at 353 Waller Avenue. A dimensional variance is also requested.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that 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 petitioner proposes to construct a self-storage facility, with one multi-story structure, and seven one-story buildings. The proposed facility will be approximately 95,700 square feet of space, with a small off-street parking lot along the Waller Avenue frontage. The petitioner has offered to restrict the zoning of the property via conditional zoning restrictions.

The Zoning Committee Recommended: Referral to the full Commission.

The Staff Recommends: Disapproval, for the following reasons:

1. The requested rezoning to a Wholesale and Warehouse Business (B-4) zone is not in agreement with the 2013 Comprehensive Plan, for the following reasons:
    - a. The Goals and Objectives and policy statements of the Plan encourage the consideration of how proposals relate to existing development in the immediate vicinity, and focus on protecting neighborhoods and residential areas from incompatible land uses. No B-4 zoning exists along the Waller Avenue corridor, and a self-storage facility is not a neighborhood-oriented land use.
    - b. The Goals and Objectives encourage creating jobs and prosperity (Theme C), but the proposed self-storage facility will generate very few jobs in support of this idea.
    - c. Policy statements in the Plan focus on the need for the development of land in the most appropriate relationships, compatibility of land uses and creating neighborhood nodes of commercial development or a focal point. Waller Avenue has been that neighborhood node that provides necessary goods and services to the adjoining neighborhoods in this immediate vicinity.
  2. The existing Professional Office (P-1) zone remains appropriate at this location because it offers many land uses that would be considered compatible within the character of the corridor and the adjoining neighborhood. While there is no demand for the former nursing home building, there has been steady interest in redevelopment of the property over the past five years.
  3. The proposed B-4 zone is not appropriate for the subject property, for the following reasons:
    - a. Statistical information would indicate that our community already has the right amount (more than the national average of 32% for urban facilities) of self-storage facilities inside New Circle Road, especially given the knowledge that two additional facilities of similar characteristics are planned/proposed for completion in the near future.
    - b. There is no other B-4 zoning or land use compatible with B-4 uses in the immediate vicinity, including the professional office, multi-family and single-family residential uses.
    - c. Lower traffic generation is not vitally important for a parcel of land that is situated on a minor arterial roadway.
  4. There have been no unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in 2013 that would justify a B-4 zone for the subject property.
- b. REQUESTED VARIANCE

1. To reduce the required 100' setback for the portion of the buildings that have overhead doors in a Wholesale & Warehouse (B-4) zone to 25 feet from an adjacent residential zone.

The Zoning Committee Recommended: Referral to the full Commission.

The Staff Recommends: Disapproval, for the following reasons:

- a. The requested variance does not arise from a special circumstance that does not generally apply to other land in the B-4 zone. There are no unique physical characteristics, such as topography or neighborhood character, that would serve as a justification to approve the requested variance.
- b. Granting the requested variance will potentially cause a nuisance to the nearby residential neighbors, especially if different and more intense uses occupy the buildings.
- c. Strict application of the Zoning Ordinance will not deprive the applicants of a reasonable use of their property. It is possible to redesign the proposed facility on this 3-acre property to accommodate the required 100-foot setback for overhead doors (and not necessarily buildings) from the adjacent residential zones.

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

- c. ZDP 2015-83: STOREY BUSINESS SUBDIVISION, LOT 6 (WALLER AVENUE SELF STORAGE) (11/1/15)\* -  
located at 353 Waller Avenue. **(EA Partners)**

The Subdivision Committee Recommended: Postponement. There were questions regarding detention and the possible need for a variance.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property B-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
6. Correct plan title.
7. Provided the Planning Commission grants a variance to Article 8-21(o)(1) requirements.
8. Addition of gate access information, to the approval of the Division of Fire & Emergency Services.
9. Revise internal drive aisles to be 30' minimum.
10. Addition of tree inventory information required by Article 26.
11. Delete "maximum height of building" information in site statistics.
12. Denote estimated building heights on plan.
13. Discuss need for water quality improvements, on site.
14. Discuss architectural details for Building A.
15. Discuss nearest storm water detention location(s).
16. Discuss access to and/or termination of Camden Avenue.
17. Discuss need for truck parking in front of facility.

Zoning Presentation: Ms. Wade presented the staff report on this requested zone change, noting that the staff had received one email in opposition. She distributed a copy of the email to the Commission members for their review, along with a staff exhibit detailing the provisions of the P-1 zone and the petitioner's proposal for the B-4 zone, including the proposed conditional zoning restrictions.

Ms. Wade oriented the Commission to the location of the subject property on the north side of Waller Avenue, which connects from Harrodsburg Road to Nicholasville Road. The subject property is located close to the railroad tracks, and is surrounded on three sides by P-1 zoning to the west, south, and east. The property is adjoined by single-family residential zoning to the north in the American Avenue neighborhood; and to the west, by a group of multi-family buildings on Royalty Court. The petitioner is requesting the B-4 zone in order to locate nearly 100,000 square-foot self-storage facility on the property. The facility is proposed to include several one-story buildings and a multi-story structure.

Ms. Wade displayed the following photographs of the subject property: 1) an aerial view; 2) a view from Waller Avenue, noting that there are several existing structures that formerly comprised the Kenton Healthcare nursing facility, which are proposed to be removed; 3) a view along Waller Avenue toward the railroad tracks and Nicholasville Road; 4) a view down Waller Avenue toward Harrodsburg Road; 5) a view of the existing structure from the southwest corner of the site; 6) a view from the southeast corner of the property, along the eastern property line; 7) some of the large, multi-story Professional Office buildings in the area, as an example of the character of the area; 8) a view of the western and northern property boundaries, which are proposed for variances.

Ms. Wade stated that the petitioner originally proposed to prohibit two uses via conditional zoning restrictions; since the Zoning Committee meeting three weeks ago, they have added to that list. The current proposed conditional zoning restrictions would limit all but about six of the existing B-4 uses. The subject property was rezoned in 1993 in order to accommodate the expansion of the nursing home; but prior to that time, it had been zoned R-4 since 1969.

With regard to the recommendations of the 2013 Comprehensive Plan, Ms. Wade said that it encourages land use decisions to be made based on Small Area Plans, policy statements, and the Goals & Objectives. The petitioner is of the opinion that this request is both in agreement with the Comprehensive Plan, and that the B-4 zone is more appropriate than the existing P-1 zone. The Planning Commission must look to the Comprehensive Plan for guidance as to the appropriateness of the proposed B-4 zone; the Plan encourages the consideration of how proposals relate to existing development in the immediate vicinity, and compatibility with the adjoining land uses. The Comprehensive Plan also discusses protecting neighborhoods and residential areas from incompatible land uses. The Goals &

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

Objectives encourage creating jobs and support infill and redevelopment that are respectful of an area's context, but policy statements also focus on the need for development to have appropriate relationships and create neighborhood nodes and focal points. Ms. Wade said that Waller Avenue has historically been a neighborhood node for the adjoining residential areas, offering several neighborhood-oriented uses. A self-storage facility, as proposed by the petitioner, would generate only 3.5 jobs on the site (or one job per acre). The petitioner contends that the proposed use would be a community support facility, while the staff opines that the Comprehensive Plan's reference to community support facilities is geared more toward health care facilities, libraries, schools, and other uses that are truly necessary. The staff is of the opinion that a self-storage facility is more of a convenience use than a necessity; and that the proposed B-4 zoning is not compatible with the nearby land uses, or consistent with the zoning in the Waller Avenue corridor. The staff cannot find, therefore, that the proposed B-4 zone is in agreement with the Comprehensive Plan.

Ms. Wade stated that the staff must consider whether the proposed zoning is appropriate, and the existing zoning is inappropriate for the subject property. The petitioner contends that Professional Office zoning is no longer appropriate at this location, for two reasons: the property has been vacant for six years, and there has been little demand for redevelopment for the property. The petitioner also contends that the B-4 zone is appropriate for the subject property, because there is an unmet demand for self-storage facilities inside New Circle Road, and that the proposed storage facility will generate less traffic and noise than the health care facility that was previously located there. Ms. Wade said that the staff found that there are 20 existing self-storage facilities in Lexington-Fayette County, eight of which (or 40%) are located inside of New Circle Road. The national average for such facilities is 32% in an urban environment; 52% in suburban environments; and 16% in rural environments. The staff is aware that two additional self-storage facilities are planned in the near future within the urban core area, so the staff does not agree that there is a demand for additional such services. There is no B-4 zoning along the Waller Avenue corridor; and, although there has not been a great deal of demand for the existing facility or building, the staff has received several enquiries about redeveloping the site. Ms. Wade noted that the existing P-1 zoning allows several principal and conditional uses that could fit within the Waller Avenue corridor and be more appropriate than B-4 uses. She said that the staff finds that the existing P-1 zone is not inappropriate at this location, and it is in keeping with the commercial zoning in the area. The staff also determined that there have been no changes of a physical, social, or economic nature in the immediate area that would constitute a change since the adoption of the Comprehensive Plan in 2013. The Zoning Committee recommended referral of this zone change to the full Commission; and the staff is recommending disapproval, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, noting that the staff had distributed to the Commission members revised conditions for approval of the plan. He stated that the petitioner is proposing to construct single-story storage units along the perimeter of the property; two rows of single-story units toward the rear of the property; and a three-story, climate-controlled structure in the center of the property. The three-story structure is proposed to contain 19,600 square feet per floor, for a total of over 58,000 square feet of floor area. The total square footage proposed is 93,700 square feet. Two access points are proposed to Waller Avenue, with landscaping and buffering, and two stormwater detention areas.

Mr. Martin stated that the staff is recommending approval of this plan, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property B-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. ~~Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.~~
6. ~~Correct plan title.~~
7. ~~7.7. Provided the Planning Commission grants a variance to Article 8-21(o)(1) requirements.~~
8. ~~8.8. Addition of gate access information, to the approval of the Division of Fire & Emergency Services.~~
9. ~~9. Revise internal drive aisles to be 30' minimum.~~
10. ~~10. Addition of tree inventory information required by Article 26.~~
11. ~~11. Delete "maximum height of building" information in site statistics.~~
12. ~~12. Denote estimated building heights on plan.~~
13. ~~13. Discuss Denote that the need for on-site water quality improvements will be considered at the time of Final Development Plan.~~
14. ~~14. Discuss Denote that architectural details for Building A will be determined at the time of Final Development Plan.~~
15. ~~15. Discuss nearest storm water detention location(s).~~
16. ~~16. Discuss access to and/or termination of Camden Avenue.~~
17. ~~17. Discuss need for truck parking in front of facility.~~

Mr. Martin stated, with regard to condition #6, that the self-storage facility is proposed to be gated, and the Division of Fire and Emergency Services will have final approval of the gate access. He said that, at the time of a final development plan for the property, there will need to be discussions about water quality. The subject property is

large, and a significant amount of impervious surface is proposed; so it will be essential to address water quality according to the requirements of the Stormwater Manuals. Also at the time of the final development plan, the petitioner will need to address the architectural details of the three-story structure, in order to create attractive features for the orientation to Waller Avenue. The petitioner displayed a rendering at the Subdivision Committee meeting that depicted an example of the types of features that are likely to be used. Mr. Martin stated that the requested dimensional variance to the location of the overhead doors is critical, since the staff believes it could have significant impact on the adjoining neighborhood. In addition, the staff is recommending a discussion of the need for truck parking in front of the building at the time of the final development plan. The plan does depict 30' drive aisles, so the staff believes there should be sufficient room for internal vehicle circulation throughout the site.

Variance Presentation: Mr. Emmons presented the requested variance, explaining that the petitioner originally requested a variance to the location of the overhead doors from the nearest residential area, of 100' to 25'. With the revised development, the petitioner is now requesting a variance from 100' to 55'. When the original plan was filed, one door was proposed to be located within 25' of the residential area, with the remaining doors further away.

Mr. Emmons stated that the staff is recommending disapproval of the requested variance. He said that, in considering a variance request, the staff must first determine if there are special circumstances that apply to the subject property that do not apply to other properties in the same zone or the general vicinity. In this case, there are no special circumstances for the subject property. It is rectangular in shape, and has no unique physical characteristics.

Mr. Emmons said that the staff must also consider whether strict application of the Zoning Ordinance regulations would cause an unnecessary hardship on the petitioner. Because the property is regular in shape, there is no reason why the proposed development could not be designed to accommodate the 100' setback. In addition, the staff is concerned that, since a dimensional variance runs with the property, another B-4 use could locate there that would create more of a nuisance for the surrounding residential areas. The petitioner could also present a final development plan that is different from the configuration that is depicted on the current plan.

Mr. Emmons noted that the staff would also like to emphasize that the Commission should first consider whether or not the subject property should be rezoned to B-4, rather than first considering the appropriateness of the requested variance. He reiterated that the staff is recommending disapproval of the variance, for the reasons as listed in the staff report and on the agenda.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He displayed a rendering of the proposed self-storage facility, noting its modern appearance and attractive architectural features, and its similarity in massing and scale to the other Professional Office buildings along Waller Avenue. The petitioner contends that the facility will be intended to appeal to professionals who need an off-site location to store samples, records, and other items related to their businesses.

Mr. Murphy stated that the petitioner is willing to invest \$10 million in the proposed development, which will not be a "typical" self-storage facility, but a modern, open glass structure with plantings. The buildings are designed to be climate-controlled and attractive, geared toward professionals, particularly in the medical field, who need to store records, samples, or similar items. Mr. Murphy displayed several photographs of self-storage facilities owned by the petitioner, noting the plantings and attractive facades, which the petitioner believes will be compatible with the existing buildings in the Waller Avenue corridor.

Mr. Murphy stated that the petitioner completed a market study of the Lexington-Fayette County area, and found a population of 17,000 residents within a one-mile radius of the subject property; however, there are no self-storage facilities located within that area. Within a two-mile radius of the property, there are two self-storage facilities, serving a population of over 63,000 people. Mr. Murphy contended that the staff's relationship of the number of self-storage facilities to residents as a proportion is not relevant. Rather, the market demand for the use, and the location of the demand, is important to consider.

Mr. Murphy read the following excerpt from the Comprehensive Plan:

"While the land use map served an important purpose in the past, reliance on the map may inhibit the kind of visioning that can lead to the best land development decisions in a constrained growth environment. Zone change applications should address the recommendations of the Comprehensive Plan as thoroughly as possible, not simply match a color on a map. The Planning Commission and staff should monitor how development is reviewed and implemented to ensure all needs are being considered."

He said that, when the Comprehensive Plan moved away from map-based land use recommendations, it was mandated to maintain flexibility and consider each use on its own merits. The petitioner contends that the proposed

development should be approved, since it will provide "accessible community facilities and services to meet the health, safety and quality of life needs of Lexington-Fayette County's residents and visitors." The petitioner contends that storage facilities provide a service to residents and professional offices, particularly of the type located along Waller Avenue, and that those facilities need to be located as closely as possible to their users. Mr. Murphy added that the proposed facility could help to reduce the city's carbon footprint by providing necessary services close to areas where they are needed, as described in Goal B.2. The Comprehensive Plan also encourages infill and redevelopment inside the Urban Service Area in order to avoid expanding the boundary of that area. With regard to the existing EPA Consent Decree, the proposed development will generate less sewage and traffic than the previous use on the property.

Mr. Murphy stated that there is a large amount of available office space in the Waller Avenue corridor. Referring to his exhibit packet, he displayed photographs of several of the real estate signs in the area, advertising office space for lease. The subject property has been vacant for six years, because, the petitioner contends, there is no demand for additional Professional Office space in the general vicinity. The petitioner believes, however, that there is a need and a demand for off-site storage facilities to serve those Professional Office uses, particularly given the location near the "biggest medical community in the area."

Mr. Murphy said that the petitioner originally proposed conditional zoning restrictions, then added several more restrictions following the Zoning Committee meeting three weeks ago. The result is that most of the uses in the B-4 zone would be restricted, in order to reassure neighbors of the property that some of the more disruptive uses would not be permitted to locate there. The proposed conditional zoning restrictions would also prohibit the outdoor storage of recreational vehicles, campers, and boats, unlike typical self-storage facilities.

With regard to the proposed variances, Mr. Murphy said that the subject property is bounded by residential uses along the northern and western property boundaries. The B-4 zone requires that any type of opening other than an unmovable window or pedestrian door must be located at least 100' from a residential zone. The petitioner has redesigned the proposed development since the Subdivision and Zoning Committee meetings three weeks ago in order to make the buildings around the perimeter of the facility solid, with no openings, in order to ensure that all overhead doors are located at least 55' from the residential zones. The rear wall is proposed to have architectural details, but will have no windows or openings, so all noise and activity will be insulated by landscaping and the walls of the buildings themselves.

Mr. Murphy stated that the petitioner had received a letter of support from the owner of three of the adjoining apartment buildings, and obtained verbal support from another property owner. He said that the former nursing home on the property was very busy, with delivery trucks, large numbers of employees coming and going, and outdoor break areas for employees. The proposed facility will be located the same distance from the adjacent residential uses, but will have significantly less activity, located 55' from the property line. Mr. Murphy said that the petitioner believes that it is important to support the nearby Professional Office uses, rather than displace them, and he requested approval.

Dave King, Wentworth Property Company, stated that his company provides state-of-the-art storage space for high-caliber clients. He said that his company is interested in the Lexington-Fayette County market, because they believe that there is need for and lack of self-storage in the area. They intend to spend a great deal of money on the subject property, despite the fact that they would not normally locate in a city this size. Mr. King stated that the proposed development, however, could be his company's entry into the Lexington market for other projects as well.

Mr. King stated that the petitioner is willing to work with the staff to resolve some of their concerns about the proposed development, including reconfiguring the property to eliminate the need for variances for the overhead doors. He explained that the building around the property perimeter will be tall, with pitched roofs that could accommodate a car or boat. The petitioner is not committed to maintaining the design, and would be willing to restructure the site, if the Planning Commission chooses to approve the proposed restricted B-4 zone.

Mr. Murphy added, with regard to condition #9 on the development plan, that the petitioner does not believe truck parking will be necessary in front of the building. Trucks will be admitted into the rear of the property, where they will be accommodated by wide drive aisles. Mr. Murphy suggested that the Planning Commission change that condition to read "resolve," in order to provide the petitioner an opportunity to work out those issues with the staff.

Citizen Support: No citizens were present in support of this request.

Citizen Opposition: Gene Lear, 1324 Camden Avenue, stated that his property directly adjoins the northern boundary of the subject property. He asked if the proposed rezoning would affect his property, including the easement that provides rear parking to some of his neighbors. Mr. Lear also asked if the petitioner could be required to clean up the fencerow at the rear of his property. Mr. Murphy responded that there are some easements along the northern boundary of the subject property, some of which have been closed over the years. He explained that the petitioner

does not intend to use those easements as part of the proposed development, and noted that the petitioner could clean up the fencerow.

*Note: Chairman Owens declared a brief recess at 3:36 p.m. The meeting reconvened at 3:41 p.m.*

Citizen Opposition (con't.): Jacob Walbourn, attorney, was present representing the owners of 333, 343, and 354 Waller Avenue. He stated that those three entities object to the requested rezoning, and would ask that the Planning Commission recommend disapproval.

Mr. Walbourn said that his clients have a substantial presence on Waller Avenue, having owned property there, in some instances, for over 40 years. His clients have four primary objections to this request: 1) they believe it is inefficient use of employment land; 2) they do not believe the proposed self-storage facility will effectively serve the community; 3) they believe that rezoning the subject property to B-4 will cause dramatic changes in the existing neighborhood; and 4) they believe that the existing P-1 zoning is appropriate, and that the property could be developed under that zoning.

Mr. Walbourn stated that, in researching this request, he reviewed the Comprehensive Plan, particularly Theme A, which encourages redevelopment that respects the context and design of an area; Theme C, which discusses encouraging infill and redevelopment that creates jobs; and Theme E, which refers to upholding the Urban Service Area boundary. He noted that the 2013 Comprehensive Plan estimates that all available employment land within the Urban Service Area could be exhausted within 11 years, so it is important for the Commission to carefully consider the quality of the employment developments they review.

Mr. Walbourn stated that the subject property is approximately three acres in size, with buildings that total approximately 56,000 square feet of floor area. The proposed development could nearly double the square footage, while providing only 3.5 jobs. The Waller Avenue area is located in Fayette County Census Tract 18, which averages 12 residents per acre. The Census data breaks down the different types of jobs held by Fayette County citizens; warehousing/transportation jobs employ approximately 5,100 people, or 3% of residents, while P-1 uses employ nearly 40% of residents. Mr. Walbourn noted that 343 Waller Avenue has approximately 82 employees on site, or 43 jobs per acre; 354 Waller Avenue has approximately 72 jobs per acre. The proposed development would provide only 1.15 jobs per acre, which Mr. Walbourn's clients contend is not an efficient use of space.

Mr. Walbourn stated that the subject property is in the "medical triangle" of Lexington-Fayette County, surrounded by University of Kentucky, Central Baptist, and St. Joseph Hospitals. The petitioner contends that the prospective users of the proposed self-storage facility include medical facilities in close proximity to the property. Mr. Walbourn stated that his clients do not agree, however, because medical users can only store records in certain locations due to HIPAA and HI TECH medical records retention regulations. The HI TECH act, which was passed in 2009, seeks to make all medical records electronic, rather than paper; HIPAA protects the confidentiality of medical records. HIPAA requires three layers of security for medical records, which Mr. Walbourn is not convinced that the proposed facility could provide. He and his clients contend, therefore, that one of the primary markets for the facility might not viable. In addition, best practices in records storage suggest that records should not be retained in close proximity to the facility itself in case of natural disaster.

Mr. Walbourn said that climate-controlled self-storage facilities are often marketed as being perfect for the storage of family heirlooms, fine wines, antiques, and photographs. Census Tract data, however, indicates that the area around the subject property is occupied primarily by students, who are 11 years younger on the average than the population of Lexington-Fayette County on the whole. His clients contend that the area does not have the population makeup to support a high-end storage facility. The businesses that have developed successfully in the area over the years support the existing residents, offering gas stations, restaurants, tanning salons, and other services that students use. Other businesses in the area offer support for medical uses, including pharmacies, additional office space, and parking. Mr. Walbourn said that, "the businesses support the neighborhood, and the neighborhood supports the businesses." With regard to Mr. Murphy's comments about the need for a self-storage facility in the area, he displayed a map of the existing facilities in Lexington-Fayette County. Of those facilities, all 20 have space available, and 14 of them offer climate-controlled storage. Mr. Walbourn stated that these facts do not support the assertion that there is an unmet demand for self-storage, and that the self-storage use will not serve the community in the immediate vicinity.

Mr. Walbourn said that the Waller Avenue corridor is comprised primarily of three uses: residential; professional office; and a commercial shopping center. He displayed photographs of some of the other facilities owned by the petitioner, as well as several other types of self-storage businesses, opining that the neighborhoods in which those businesses are located are very different in context from the Waller Avenue area. Mr. Walbourn's clients believe that the proposed facility will not be context-sensitive, or compatible with the existing area. In addition, with regard to Mr. Murphy's comments about the proposed architectural details of the facility, he said that there is no means by which to compel adherence to those details under the Zoning Ordinance. The building owned by one of Mr. Walbourn's clients

is set back further from Waller Avenue, and could have a much less-appealing view of the part of the subject property that does not feature architectural details.

Mr. Walbourn stated that the existing P-1 zoning allows a class of uses that provide community support, including churches, hospitals, offices, banks, schools, and other similar facilities. The B-4 zone permits some very intense uses, including kennels, lumber yards, and machine shops. The petitioner is proposing a long list of conditional zoning restrictions for the subject property, which would leave only a handful of allowable uses on the property. Mr. Walbourn's clients are concerned that, should the proposed self-storage facility not be successful, the result will be a heavily constrained B-4 property on which not much could be done. Three of the uses the petitioner is proposing to retain for the subject property would also be allowable in the existing P-1 zone. Mr. Walbourn stated that developments heavily constricted by conditional zoning have a history of being unsuccessful, requiring the removal of some or all of the restrictions. He said that, in the last 15 years, the Planning Commission has been asked to remove or amend conditional zoning restrictions on a property 17 times. Fifteen of those requests were approved by the Planning Commission, and the other two were approved by the Urban County Council following a recommendation of disapproval from the Commission. Mr. Walbourn said that his clients do not believe that conditional zoning is sufficient to protect the character of the neighborhood. They believe that B-4 uses are too intense for the neighborhood, and that no special circumstances exist to justify the granting of the requested variance.

Mr. Walbourn stated that his clients also disagree with the petitioner's contention that there is too much P-1 land in the area. His research found that six P-1 properties on Waller Avenue are outperforming the Lexington market on the whole for occupancy rates by 7.5%. Several properties in the vicinity have sold recently, one for \$2 million, and many of the P-1 buildings are 100% occupied. Mr. Walbourn's clients believe that the P-1 zone is adaptable enough to accommodate a wide variety of businesses, including mixed-use student housing, which has proven to be very successful near the University of Kentucky campus.

Mr. Walbourn stated that, although the subject property has been vacant for more than six years, there is no indication that the P-1 zoning is the reason for the lack of redevelopment. The subject property was vacated during the recent recession, and some information has been provided to indicate that the prior property owner was not willing to agree to zoning contingencies, which could have contributed to its inability to redevelop. It would also be difficult to adapt the existing nursing home building, and expensive to raze it and rebuild. Mr. Walbourn said that his clients do not believe the P-1 zoning is the reason for the failure of the subject property to redevelop; they believe that P-1 zoning is working in the area, there is a market for it, and that the Planning Commission should recommend disapproval of the requested B-4 zoning.

Commission Question: Mr. Drake asked what negative effect the proposed development would have on Mr. Walbourn's clients. Mr. Walbourn answered that his clients do not believe the proposed development will be successful in the long term, and the risk of unrestricted B-4 zoning in a P-1 corridor is substantial to their property values. His clients are also concerned about the appearance of the proposed development, and the effect that it could have on their ability to rent space in their buildings.

Petitioner Rebuttal: Mr. Murphy stated that it "is possible to make a good-sounding argument against any use with numbers and statistics about demand." He opined that there is a market for the proposed development in the area, noting that statistics and numbers can be laid out in a way that could provide proof for either side of an argument. Mr. Murphy said that there have been requests to change conditional zoning restrictions, but there has been less than one per year on average. He noted that anyone could request to change the zoning or conditional zoning restrictions on any property, at any time in the future.

Mr. Murphy reiterated that the subject property has been vacant for six years, and has generated no jobs during that time. The petitioner is willing to make a substantial investment in the property, which they contend would be the best self-storage facility in Lexington-Fayette County, and would generate jobs. Mr. Murphy asked the Planning Commission members to consider the big picture in this case, and focus on the investment and creation of jobs.

Citizen Rebuttal: Mr. Walbourn stated that he believed that it would be irresponsible to ignore the statistics provided, since they represent concrete information. He said that he provided numerous reasons why the property has been vacant, even though P-1 zoning is flourishing in the Waller Avenue corridor.

Mr. Walbourn stated that the proposed development would cap the number of jobs generated on the property at 3.5, with no concrete guarantee that the \$10 million discussed would actually be spent in the community. He said that Mr. Murphy asked the Planning Commission to consider this request from a global perspective, and he believed that he had provided information with which to inform their decision.

Staff Rebuttal: Ms. Wade stated that, even if there is, as Mr. Murphy suggests, too much P-1 zoning and vacant offices in the Waller Avenue corridor, there are a large number of other allowable uses in the P-1 zone that could be successful on a three-acre site, and still be compatible with the surrounding area. She stated that the staff could support change and redevelopment along Waller Avenue, but not of this nature, since the proposed development

would be out of character and would set a negative precedent. In addition, the threshold question is not whether the petitioner could rework their plan to appear attractive or eliminate the need for a variance. Ms. Wade said that the threshold issue, rather, is whether the proposed B-4 zone fits along the Waller Avenue corridor, which is where the Comprehensive Plan recommendation comes in, and where the Planning Commission must decide what is appropriate for the community in the long run.

Commission Questions and Comments: Mr. Owens stated that the hearing was now closed, and he opened the floor for Commission questions and/or comments.

Mr. Drake stated that he had made a motion to recommend approval of this request at the Zoning Committee meeting three weeks ago, but that motion failed for lack of a second. He said that the Committee discussed all the issues that had been brought forward at this hearing, but he still believes that the "investment multiplier" of the proposed development could be very significant.

Mr. Drake said that this is the first development proposal that has been brought forward for the subject property in six years. He said that he is not comfortable with "usurping the market's determination of whether or not the community has an adequate amount of a given goods or service." Mr. Drake said he learned early in his career that economic, business, and cultural linkages with other areas can be important; he believes that the proposed development could establish a linkage with a large, successful company located in Phoenix, Arizona. He reviewed the company's website following the Zoning Committee meeting, and he believes that the company has several impressive developments and a management team with extensive experience. Mr. Drake noted that, unless a fellow Commissioner could convince him otherwise, he intended to move for approval of this request.

Ms. Plumlee stated that she believed that the staff had adequately addressed the reasons for disapproval, and she would support the staff's recommendation. She opined that company success and economic impact are not the question in this case; rather, the Commission should be attempting to determine whether the proposed B-4 zoning is appropriate for the subject property. The staff has made that determination, and Ms. Plumlee indicated that she intended to support their decision.

Mr. Wilson stated that the Commission knew, when they agreed to focus on infill and redevelopment rather than expansion of the Urban Service Area boundary, that it would involve some difficult decisions. He said that he was concerned about a prime piece of land producing only 3.5 jobs, and that he believed that asking price could have been a factor in the failure of the property to redevelop. Mr. Wilson said that he appreciated the petitioner's interest in investing in Lexington-Fayette County, and asked that they consider other opportunities should the proposed rezoning be disapproved.

Mr. Berkley stated that he had no financial interest in the subject property, but he believed that approval of "spot zoning" must have good reasons. He said that evidence had been presented to indicate that the office space in the Waller Avenue corridor is 90% occupied, and no proof was provided of demand for the self-storage facility. Mr. Berkley said that he was also concerned about the small number of jobs to be generated, and suggested that the petitioner consider other P-1 uses for the subject property. He noted that he would not vote to approve this request.

Mr. Brewer stated that compelling arguments had been presented on both sides, but he would support the staff's contention of the inappropriateness of the requested B-4 zone.

Mr. Owens agreed that all the arguments presented were compelling, but he believed that the staff had done an admirable job of explaining why the B-4 zone is inappropriate at this location. He said that, at the Subdivision Committee meeting, he saw the rendering presented and thought the proposed development was attractive, but he feels differently after considering the appropriateness of the zone. Mr. Owens noted that he would like to see the proposed self-storage facility developed somewhere in Lexington-Fayette County, but he does not believe this is the appropriate location.

Zoning Motion: A motion was made by Mr. Drake to approve MARV 2015-17, for the reasons discussed in his comments, including: 1) significant economic impact; 2) economic linkages to other areas; and 3) investment in the community. Mr. Drake's motion failed due to lack of a second.

Zoning Action: A motion was made by Mr. Wilson, seconded by Ms. Plumlee, and carried 8-1 (Drake opposed; Penn and Smith absent) to disapprove MARV 2015-17, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Wilson, seconded by Ms. Plumlee, and carried 8-1 (Drake opposed; Penn and Smith absent) to disapprove the requested variance, for the reasons provided by staff



Development Plan Action: A motion was made by Mr. Wilson, seconded by Ms. Plumlee, and carried 8-1 (Drake opposed; Penn and Smith absent) to indefinitely postpone ZDP 2015-83.