

ORDINANCE NO. 55 -2013

AN ORDINANCE CHANGING THE ZONE FROM A SINGLE FAMILY RESIDENTIAL (R-1D) ZONE TO A TOWNHOUSE RESIDENTIAL (R-1T) ZONE FOR 0.95 NET (1.28 GROSS) ACRES, FOR PROPERTY LOCATED AT 4145 HARRODSBURG ROAD (PATRICIA DONOGHUE; COUNCIL DISTRICT 10).

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WHEREAS, at a Public Hearing held on April 25, 2013, a petition for a zoning ordinance map amendment for property located at 4145 Harrodsburg Road from a Single Family Residential (R-1D) Zone to a Townhouse Residential (R-1T) Zone for 0.95 net (1.28 gross) acres, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change by a vote of 9-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a change in zone for property located at 4145 Harrodsburg Road, from a Single Family Residential (R-1D) Zone to a Townhouse Residential (R-1T) Zone for 0.95 net (1.28 gross) acres; being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - That the granting of this zone change is made subject to the following use restrictions as conditions of granting the zone change:

Under the provisions of Article 6-7 of the Zoning Ordinance, the following use and buffering restrictions are proposed for the subject property via conditional zoning:

1. Existing trees shall be preserved for the area within thirty (30) feet of the southern and eastern property lines in the R-1T zone; and
2. Within these areas, only damaged or diseased trees may be removed, but only with the permission of the Urban Forester. If removed, they shall be replaced in equal number to preserve the existing tree canopy and buffer.

These conditional zoning restrictions are appropriate and necessary for the following reasons:

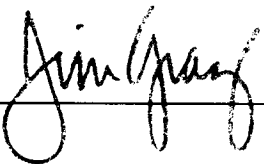
1. Preservation of the existing tree canopy located adjacent

- to the Ethington & Ethington property will be ensured;  
and
2. These conditions will minimize the impacts of new development on the remaining agricultural use adjacent to the subject property.

Section 3 - That the Lexington-Fayette Urban County Planning Commission is directed to show the amendment on the official zone map atlas and to make reference to the number of this Ordinance.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: June 6, 2013

  
MAYOR

ATTEST:

  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: June 13, 2013-1t

523-13 X:\Cases\PLANNING\13-LE0001\LEG\00392598.DOC

LEGAL DESCRIPTION

P A T R I C I A   D O N O G H U E   P R O P E R T Y

Zone Change From R-1D to R-1T

4145 Harrodsburg Road  
Lexington, Fayette County, Kentucky

ALL THAT TRACT OR PARCEL OF LAND SITUATED ON THE NORTHWESTERLY SIDE OF THE HARRODSBURG ROAD, SOUTHWEST OF PALOMAR BOULEVARD, IN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND MORE FULLY DESCRIBED AND BOUNDED AS FOLLOWS, TO-WIT:

Beginning at a point in the center line of the Harrodsburg Road, said point being in line with the northwesterly property line extended of Ethington & Ethington; thence  $N56^{\circ}42'32''W$  226.1 feet to a point; thence  $N31^{\circ}50'55''E$  78.7 feet to a point; thence  $N58^{\circ}09'05''W$  151.7 feet to a point; thence  $N31^{\circ}50'55''E$  121.3 feet to a point; thence  $S58^{\circ}09'05''E$  176.05 feet to a point; thence  $S37^{\circ}08'48''E$  228.86 feet to a point in the aforesaid center line of the Harrodsburg Road; thence with said center line of the Harrodsburg Road  $S36^{\circ}12'11''W$  121.83 feet to the beginning, containing a gross area of 1.28 acres and a net area of 0.95 acre.

Rec'd by [Signature]  
Date: 5/10/13

**RECOMMENDATION OF THE**  
**URBAN COUNTY PLANNING COMMISSION**  
**OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY**

**IN RE: MARV 2013-3: PATRICIA DONOGHUE (AMD.)** - an amended petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Townhouse Residential (R-1T) zone, for 0.95 net (1.28 gross) acres, for property located at 4145 Harrodsburg Road (a portion of). Dimensional variances were also requested with this zone change. (Council District 10)

Having considered the above matter on **April 25, 2013**, at a Public Hearing, and having voted **9-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **CONDITIONAL APPROVAL** of this matter for the following reason:

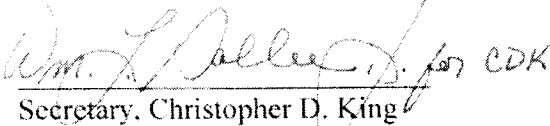
1. The requested Townhouse Residential (R-1T) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
  - a. The Plan recommends Low Density Residential (LD) future land use for the subject property, defined as 0-5 dwelling units per net acre. This would suggest a maximum of 4 dwelling units for the subject property.
  - b. The applicant proposes 3 townhouse dwelling units on the 0.95-acre subject property, at an overall residential density of 3.16 units per net acre.
2. This recommendation is made subject to approval and certification of ZDP 2013-15: Ethington & Ethington Property (Bowman House) (Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the property shall be subject to the following use and buffering restrictions via conditional zoning:
  - a. Existing trees shall be preserved for the area within thirty (30) feet of the southern and eastern property lines in the R-1T zone.
  - b. Within these areas, only damaged or diseased trees may be removed, but only with the permission of the Urban Forester. If removed, they shall be replaced in equal number to preserve the existing tree canopy and buffer.

These conditional zoning restrictions are appropriate and necessary for the following reasons:

1. Preservation of the existing tree canopy located adjacent to the Ethington & Ethington property will be ensured.
2. These conditions will minimize the impacts of new development on the remaining agricultural use adjacent to the subject property.

Note: Variances to the front, side, and rear yard setbacks were approved by the Planning Commission for this property, subject to the rezoning being granted.

ATTEST: This 10<sup>th</sup> day of May, 2013.

  
Secretary, Christopher D. King

MIKE OWENS  
CHAIR

Note: The corollary development plan, ZDP 2013-15: Ethington & Ethington Property (Bowman House) (Amd.), was approved by the Planning Commission on April 25, 2013, and certified on May 9, 2013.

K.R.S. 100.211(7) requires that the Council take action on this request by July 24, 2013.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Richard Murphy, attorney**.

OBJECTORS

- None

OBJECTIONS

- None

VOTES WERE AS FOLLOWS:

AYES: (9) Beatty, Brewer, Cravens, Mundy, Owens, Penn, Plumlee, Roche-Phillips, Wilson

NAYS: (0)

ABSENT: (2) Berkley, Blanton

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **APPROVAL** of **MARV 2013-3** carried.

Enclosures: Application  
Plat  
Staff Report  
Applicable excerpts of minutes of above meeting

AMENDED

**GENERAL INFORMATION: MAP AMENDMENT REQUEST (MAR) APPLICATION**

**1. ADDRESS INFORMATION (Name, Address, City/State/Zip & PHONE NO.)**

APPLICANT:	Patricia Donoghue, 1340 Mumford Lane, Lexington, KY 40513
OWNER:	same
ATTORNEY:	Richard V. Murphy, PLC, Lexington Financial Center, 250 West Main Street, Suite 2510, Lexington, KY 40507, Telephone 859-233-9811

**2. ADDRESS OF APPLICANT'S PROPERTY (Please attach Legal Description)**

4145 Harrodsburg Road (portion)

**3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY (Use attachment, if needed--same format.)**

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
R-1D	Abandoned Residence	R-1T	Townhouses	0.95	1.28

**4. SURROUNDING PROPERTY, ZONING & USE**

Property	Use	Zoning
North	Residential (Palomar subdivision)	R-1D
East	Multi-family residential	R-3
South	Field	A-U
West	Field	A-U

**5. EXISTING CONDITIONS**

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
c. Are these units currently occupied by households earning under 40 % of the median income? If yes, how many units? If yes, please provide a written statement outlining any efforts to be undertaken to assist those residents in obtaining alternative housing.	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO _____ Units

**6. URBAN SERVICES STATUS (Indicate whether existing, or how to be provided.)**

Roads	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Storm Sewers	<input type="checkbox"/> Existing	<input checked="" type="checkbox"/> To be constructed by	<input checked="" type="checkbox"/> Developer	<input type="checkbox"/> Other
Sanitary Sewers	<input type="checkbox"/> Existing	<input checked="" type="checkbox"/> To be constructed by	<input checked="" type="checkbox"/> Developer	<input type="checkbox"/> Other
Curb/Gutter/Sidewalks	<input type="checkbox"/> Existing	<input checked="" type="checkbox"/> To be constructed by	<input checked="" type="checkbox"/> Developer	<input type="checkbox"/> Other
Refuse Collection	<input checked="" type="checkbox"/> LFUCG	<input type="checkbox"/> Other		
Utilities	<input checked="" type="checkbox"/> Electric	<input checked="" type="checkbox"/> Gas	<input type="checkbox"/> Water	<input checked="" type="checkbox"/> Phone <input checked="" type="checkbox"/> Cable

**7. DESCRIBE YOUR JUSTIFICATION FOR REQUESTED CHANGE (Please provide attachment.)**

This is in ...  in agreement with the Comp. Plan  more appropriate than the existing zoning  due to unanticipated changes

**8. APPLICANT/OWNER SIGNS THIS CERTIFICATION**

I do hereby certify that to the best of my knowledge and belief, all application materials are herewith submitted, and the information they contain is true and accurate. I further certify that I am  OWNER or  HOLDER of an agreement to purchase this property since September 21, 2012.

APPLICANT Richard V. Murphy, Attorney DATE 2/1/13

OWNER Patricia Donoghue DATE \_\_\_\_\_

FUCG EMPLOYEE/OFFICER, if applicable \_\_\_\_\_ DATE \_\_\_\_\_

## 7. Justification for amended application

The applicant, Patricia Donoghue, is requesting approval of a zone change from the single-family residential zone (R-1D) to the townhouse residential zone (R-1T) for 0.95 net (1.28 gross) acres located at 4145 Harrodsburg Road in Lexington. The property is located just past Palomar Boulevard. Ms. Donoghue purchased the property five months ago, in September, 2012.

The application has been amended to allow one proposed house to be constructed in the R-1D zone (the current category). This will allow the unit to be detached from nearby units, as this unit faces a different street.

This property was part of a larger zone change application which was approved by this Planning Commission in 2007. At that time, 14 townhouse units were approved to be constructed around the existing house on the property. The existing house was built in 1940, according to PVA records. Unfortunately, since the grant of the previous zone change (and prior to the purchase by the applicant) the house has fallen into a state of disrepair. There are structural issues relating to the foundation. Also, contents and mechanical systems of the house have been torn out by unknown persons. Exterior decay issues are present. For all these reasons, it is impossible to preserve the house.

We plan to replace the house with four townhouse units. They will be located on the site of the current house, and we will be able to preserve an important grove of trees which is located between the house and Harrodsburg Road. We have engaged arborist Dave Leonard to evaluate the trees. A specimen ginkgo tree will remain, along with a significant pin oak, at least two hemlock trees, along with other trees in the grove. In addition, we are retaining the 30 foot wide tree preservation area on the south and east side of the tract (along with a 10 foot tree preservation area on the west side of the tract which was previously zoned R-1T).

In light of the poor condition of the 1940 house, the townhouse zoning will be more appropriate for the property than the existing single-family residential zoning. The townhouse zoning will allow us to construct townhouses which are similar to the other townhouses which have been approved on the rest of the parcel. The street system will be simplified, and we will be able to have front entrances to the townhouses which back up to single-family homes on Palomar Boulevard. This will provide a better buffer and transition between the townhouse zoning on this property and the single-family residential zoning to the north. In addition, townhouses provide a transition to the new three and four story condominium buildings located across Harrodsburg Road from this development. The four additional townhouse units will help provide a greater variety of housing types in the Palomar subdivision.

Alex Donoghue has had a number of meetings with the Palomar Neighborhood Association and has received a favorable reception for these plans.

The unit density on the parcel which is the subject of the zone change will be approximately 3.15 units per net acre, which is well under the comprehensive plan's low density recommendation of five units per net acre. The overall development, including the portion which is already zoned, will have a density of approximately 6.1 units per net acre, which is about one unit per acre above the low density category. The slight increase in density for the project as a whole is appropriate and in keeping with the Comprehensive Plan's Goals and Objectives. The 2012 Goals and Objectives (Goal 2) call for support of infill and redevelopment throughout the Urban Service Area as a strategic component of growth. Goal 2a calls for identifying areas of opportunity for infill and redevelopment that respect the area's context and design features whenever possible. By adding four townhouse units to the existing townhouse development, we are providing additional density while respecting the character of the development on the rest of the parcel and the neighborhood as a whole.

In addition, this proposal agrees with the Goals and Objectives of the 2007 Comprehensive Plan, which recognize the need for infill to reduce pressure on the Urban Services Area Boundary (Goal 7 and associated objectives). Objectives E and J under Goal 7 call for new development to be compact and contiguous, and for new development which maximizes efficient use of existing adequate essential facilities. Goal 8 encourages redevelopment of established developments and neighborhoods. Objectives H and J under Goal 8 call for redevelopment and infill projects which are compatible with and complementary to existing development, and for projects which ensure that necessary infrastructure improvements accompany all projects. Goal 13 calls for housing opportunities to meet the needs of all citizens, and Objectives F and I encourage infill to accommodate the increased population of Fayette County inside the Urban Service Boundary. Goal 13 calls for housing opportunities to meet the needs of all citizens, and Objectives F and I encourage infill to accommodate the increased population of Fayette County inside the Urban Service Boundary. Goal 16, Objective D, encourages medium- and high- density residential uses that respect the character of existing neighborhoods and developments and are compatible with proposed development areas.

Thus, we are requesting your approval of this zone change application for the following reasons:

1. The existing R-1D zoning is inappropriate and the proposed R-II zoning is appropriate because four additional townhouse units would be constructed which are compatible with the development that was approved in 2007. Townhouses will provide additional housing choice for empty-nesters and others who desire a lifestyle without yard maintenance requirements. The existing 1940 house on the property is in a bad state of repair. All tree preservation areas as shown on the 2007 Comprehensive Plan will remain, and the grove of significant trees in the front of the property will be retained. The townhouse units proposed are compatible with the townhouses previously proposed on the remainder of the property. They will be compatible and complementary to the existing single-family residential homes in the Palomar



neighborhood. The new units will serve as a transition to the three and four story condominium buildings on the other side of Harrodsburg Road.

2. The unit density on the subject property agrees with the low density recommendation of the comprehensive plan. When we add in the area which was approved in the 2007 zone change, the entire property is in agreement with the Goals and Objectives elements of the 2013 and 2007 Comprehensive Plans. The overall density on the property which is the subject of this zone change and the previous 2007 zone change will be just over six units per acre, approximately one unit per acre above the low density category. A slight increase in density is justifiable for this property because it will meet the comprehensive plan goals and objectives of allowing increases in density in areas where such an increase is compatible with surrounding development and neighborhoods. In this case, the surrounding development is already approved for townhouses, and townhouses will supply an additional housing choice for persons who wish to live in the Palomar neighborhood area.

In addition, we are requesting side- and rear-yard setback variances at locations where the existing property, already zoned R-IT, is adjacent to property which is zoned agricultural urban (A-U). The more restrictive A-U setbacks apply at places where the R-IT zone is adjacent to the A-U zone. On the western edge of the property, we are requesting a variance from 25 feet to 10 feet. The proposed 10 foot tree protection area, as approved in 2007, will remain. Thus, the 307 foot long rear property line will continue to have a 10 foot tree preservation to buffer the A-U zone. We are requesting a variance from 25 feet to 15 feet for one unit, Unit 8, which is adjacent to the A-U zone. In both the rear and side yards of the townhouse units, we are modifying the 2007 development plan to eliminate driveways which were close to the A-U property line. Thus, granting the variances will reduce vehicular traffic in close proximity to the agricultural zone.

Also, we are requesting a variance in the front yard setback for the one lot which will remain in the R-ID zone. That unit, on Lot 8, has an eastern orientation, as opposed to the northern orientation of three nearby units on Lots 10, 11 and 12. This will make it difficult architecturally to attach it to the nearby units. It will have the same front yard setback (10 feet) as the other units. Also, because it is on the "bubble" of the cul de sac, it will actually be set back a greater distance. Any greater setback would push the unit into the grove of trees which we are trying to preserve.

In summary, we are requesting these variances for the following reasons:

1. Granting these variances will not adversely affect the public health, safety or welfare and will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public because granting these variances will allow the project to be redesigned to remove driveways close to the agricultural zone. The 10 foot tree

- preservation area on the west property line will remain as a buffer. The adjacent agricultural property is a field. All units will have a consistent front yard setback.
2. Granting this variance will not allow an unreasonable circumvention of the requirements of the zoning ordinance because the A-U zone is designated as a holding zone for future urban development. The comprehensive plan designates the adjacent property to be developed for residential purposes.
  3. The special circumstances which apply to this property in which do not generally apply to land in the general vicinity or the same zone are that this property is adjacent to land zoned A-U which is designated for future residential development. The tree preservation area along the west property line will remain. The amount of pavement near the A-U property will be reduced.
  4. Strict application of the requirements for the zoning ordinance would deprive the applicant of a reasonable use of its land or create an unnecessary hardship because the adjacent property is designated for residential development. Granting the variances will allow for a better design on the subject property.
  5. The circumstances surrounding the request variance are not the result of the actions of this applicant taken subsequent to the regulation from which relief is sought. No construction has commenced on this property.

Thank you for your consideration of this zone change and variance request.

  
Richard V. Murphy  
Attorney for Applicant



**STAFF REPORT ON AMENDED PETITION FOR ZONE MAP AMENDMENT**

**MARV 2013-3: PATRICIA DONOGHUE (AMD.)**

**DESCRIPTION**

**Zone Change:** From a Single Family Residential (R-1D) zone  
To a Townhouse Residential (R-1T) zone

**Acreage:** 0.95 net (1.28 gross) acres

**Location:** 4145 Harrodsburg Road (a portion of)

**EXISTING ZONING & LAND USE**

<b><u>Properties</u></b>	<b><u>Zoning</u></b>	<b><u>Existing Land Use</u></b>
Subject Property	R-1D	Single-Family Residential
To North	R-1T & R-1D	Vacant & Single-Family Residential
To East	R-1T & R-4	Vacant & Multi-Family Residential
To South	R-1D & A-U	Vacant & Agricultural
To West	R-1D & R-1T	Vacant

**URBAN SERVICES REPORT**

**Roads** – The subject property is bordered to the southeast by Harrodsburg Road (US 68), a major arterial highway that has been improved in the past decade to serve this portion of Fayette County. Harrodsburg Road is one of two major commuter routes connecting Jessamine and Fayette Counties; it continues northward into downtown and becomes South Broadway. In front of the subject property, Harrodsburg Road has been widened to a four-lane, divided highway with a boulevard-style median. Harrodsburg Road intersects Man o' War Boulevard at a signalized intersection northeast of the site, and Military Pike (KY 1966) at a signalized intersection to the southwest. Syringa Drive, an existing stub street from the Palomar Subdivision to the north, is proposed to continue as a local residential street into the site. Because of this connection to the adjacent neighborhood, the existing residential driveway access to Harrodsburg Road is proposed to be eliminated as the subject property redevelops.

**Curb/Gutter/Sidewalks** – Harrodsburg Road does not have a curb, gutter or sidewalks along the frontage of this property, as it is a typical rural state highway arterial cross-section, and none are planned in the future. Syringa Drive and other residential streets in the adjacent Palomar subdivision do have curb, gutter and sidewalks; these same facilities will need to be continued and constructed by the developer at the time of development, unless a waiver of these standards is granted by the Planning Commission.

**Storm Sewers** – This property is located within the South Elkhorn watershed. No known flooding problems exist in the immediate area; although, historically, problems have been documented to the southwest of this location, along South Elkhorn Creek. Storm water detention may be required for the entire development to prevent additional storm water runoff onto surrounding properties.

**Sanitary Sewers** – This property is located in the South Elkhorn sewershed and is served by the West Hickman Wastewater Treatment Facility, in northern Jessamine County. Extension of the sanitary sewer system will need to be built by the developer in accordance with the adopted Engineering Manuals. Additionally, the larger site, like several other properties along Harrodsburg Road in this vicinity, has a topographic ridge that delineates two sub-sewersheds within the South Elkhorn sewershed. Based on existing topography, the rear one-third of the property should flow by gravity to a trunk line to the west in the Palomar subdivision. The portion of the site currently being proposed for a zone change is within the front two-thirds of the property, which should flow by gravity to a trunk on the opposite side of Harrodsburg Road in the Plantation and Grasmere subdivisions. The South Elkhorn pump station has experienced overflow problems during peak flow times in the past, although recent improvements as a result of the EPA Consent Decree, have significantly diminished, if not eliminated, the prior overflow problems.

**Refuse** – This area is served by the Urban County Government with refuse collection on Mondays.

**Police** – The nearest police station is the West Sector Roll Call Center, located approximately 6 miles to the north of the subject property on Old Frankfort Pike, near New Circle Road.

**Fire/Ambulance** – The nearest fire station (#20) is located on Harrodsburg Road and Arrowhead Drive, approximately 1½ miles northeast of the subject property.

**Utilities** – All utilities are available to serve the site, including natural gas, electric, streetlights, telephone, water, and cable television service. Utilities should be able to be extended from the adjacent Palomar subdivision to serve the development of the property.

### LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Low Density Residential future land use for the subject property. The petitioner proposes to remove the existing residence and construct three townhouse units, for a density of 3.16 dwelling units per net acre.

### CASE REVIEW

The petitioner has requested a zone change from a Single Family Residential (R-1D) zone to a Townhouse Residential (R-1T) zone for approximately one acre of property located on a portion of 4145 Harrodsburg Road.

The subject property is located on the north side of Harrodsburg Road between its signalized intersections with Man o' War Boulevard and Old Higbee Mill Road. The property is a portion of a 3-acre tract that was rezoned in 2007 to permit a townhouse development to flank an existing single-family residence to the side and rear. The plan in 2007 was to retain the large home and many significant trees surrounding it, while allowing a denser development along the north and west edges of the parcel. Thus, the subject property is bounded to the north and west by a significant portion of the remaining tract, which is already zoned for townhouse development. The property is also bordered to the south by a portion of the parcel that is planned to remain in a Single Family Residential (R-1D) zone, and by agricultural land. The subject property is bordered to the east by Harrodsburg Road, and is across the road from the Higbee Mill Reserve apartments and townhouses (zoned R-4).

The petitioner proposes to rezone the subject property in order to develop three additional townhouse units in the area originally planned to retain the existing single family residence, known as the Bowman House. Besides one new single-family detached residence, 19 townhouses are now proposed for the entire site. The proposed residential development in whole is still planned to be connected to the adjacent Palomar Subdivision, via Syringa Court.

The 2007 Comprehensive Plan recommends Low Density Residential (LD) future land use for the subject property, defined as 0–5 dwelling units per net acre (or up to 4 units per gross acre). The petitioner's proposed residential density for the subject property is 3.16 residential units per net acre or 2.34 units per gross acre. The proposed development for the subject property is within the range recommended by the Comprehensive Plan, and thus is in agreement with the Plan. The existing conditional zoning restriction for a tree preservation buffer is recommended to remain in order to protect the existing mature trees on the site – specifically those trees between the new townhouse units and adjoining property, including Harrodsburg Road. This proposed conditional zoning restriction is appropriate in order to maintain the existing tree canopy and minimize the impacts of new development in the vicinity.

The Staff Recommended: **Approval**, for the following reason:

1. The requested Townhouse Residential (R-1T) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
  - a. The Plan recommends Low Density Residential (LD) future land use for the subject property, defined as 0–5 dwelling units per net acre. This would suggest a maximum of 4 dwelling units for the subject property.
  - b. The applicant proposes 3 townhouse dwelling units on the 0.95-acre subject property, at an overall residential density of 3.16 units per net acre.
2. This recommendation is made subject to approval and certification of ZDP 2013-15: Ethington & Ethington Property (Bowman House)(Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the property shall be subject to the following use and buffering restrictions via conditional zoning:
  - a. Existing trees shall be preserved for the area within thirty (30) feet of the southern and eastern property lines in the R-1T zone.
  - b. Within these areas, only damaged or diseased trees may be removed, but only with the permission of the Urban Forester. If removed, they shall be replaced in equal number to preserve the existing tree canopy and buffer.

These conditional zoning restrictions are appropriate and necessary for the following reasons:

1. Preservation of the existing tree canopy located adjacent to the Ethington & Ethington property will be ensured.
2. These conditions will minimize the impacts of new development on the remaining agricultural use adjacent to the subject property.

TLW/BJRWLS  
2/7/13

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1. PATRICIA DONOGHUE ZONING MAP AMENDMENT & ETHINGTON AND ETHINGTON PROPERTY (BOWMAN HOUSE) (AMD.) ZONING DEVELOPMENT PLAN

- a. MARV 2013-3: PATRICIA DONOGHUE (AMD.) (4/25/13)\* - an amended petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Townhouse Residential (R-1T) zone, for 0.95 net (1.28 gross) acres, for property located at 4145 Harrodsburg Road (a portion of). Dimensional variances are also requested with this zone change.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends Low Density Residential future land use for the subject property. The petitioner proposes to remove the existing residence and construct three townhouse units, for a density of 3.16 dwelling units per net acre.

The Zoning Committee Recommended: Approval, for the reason provided by staff.

The Staff Recommended: Approval, for the following reason:

1. The requested Townhouse Residential (R-1T) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
  - a. The Plan recommends Low Density Residential (LD) future land use for the subject property, defined as 0-5 dwelling units per net acre. This would suggest a maximum of 4 dwelling units for the subject property.
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1. Preservation of the existing tree canopy located adjacent to the Ethington & Ethington property will be ensured.
2. These conditions will minimize the impacts of new development on the remaining agricultural use adjacent to the subject property.

b. REQUESTED VARIANCES

1. Reduce the required rear setback from 25 feet to 10 feet along the northwestern edge of the property.
2. Reduce the required side setback from 25 feet to 15 feet along the southwestern edge of the property for Lot 8.
3. Reduce the required front setback from 30 feet to 10 feet for Lot 9.

The Zoning Committee Recommended: Approval of the requested variances, for the reasons provided by staff.

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. In particular, granting the requested front yard variance for Lot 9 will allow the character to be consistent between the single family home and the surrounding townhouses. Adequate vegetative buffers will remain to mitigate the need for an increased setback along the northwestern and southwestern property lines.
- b. Granting these requests will not allow an unreasonable circumvention of the Zoning Ordinance, but rather a design response to the existing site characteristics, such as the existing tree line along the shared property boundary.
- c. The special circumstances that apply to the subject property that serve to justify the variances are the existing trees and the fact that the one detached unit will be of similar size and layout as the surrounding townhomes, except that it will not share a common wall with another dwelling unit.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would not likely lead to a better design of the property. Approval of the requested variances will actually lessen the impact on the adjoining agricultural property by eliminating the approved driveways which were originally proposed at the rear of the new structures.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance, as both the subject and surrounding properties are currently vacant in this vicinity.

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This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property R-1T; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).

- c. ZDP 2013-15: ETHINGTON & ETHINGTON PROPERTY (BOWMAN HOUSE) (AMD) (4/25/13)\* - located at 4145 Harrodsburg Road. **(Wheat & Ladenburger)**

Note: The Planning Commission postponed this plan at their February 28 and March 28, 2013, meetings. The purpose of this amendment is to rezone the property and add six additional townhouse units.

The Subdivision Committee Recommended: Postponement. There were questions regarding the detached dwelling unit proposed in the R-1T zone.

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

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
7. Division of Waste Management's approval of refuse collection.
8. Correct notes #6 and #7.
9. Indicate that this is an amended plan in the title block.
10. Add purpose of amendment note.
11. Denote variances approved by the Commission, as necessary, prior to plan certification.
12. Clarify existing and provided tree canopy information and calculations.
13. Addition of conditional zoning restrictions, as necessary.
14. Discuss proposed driveway widths.
15. Discuss proposed screening along R-1D property line.
16. Discuss sidewalks and possible need for waiver.

Zoning Presentation: Ms. Wade presented the staff's zoning report, briefly orienting the Commission to the location of the subject property on the north side of Harrodsburg Road, across from the Higbee Mill Reserve apartment complex and near Stedman Drive and Palomar Boulevard. To the west of the subject property is the Palomar subdivision, with an existing A-U zone to the south and west, and R-4 zoning across Harrodsburg Road for the apartment complex. With the exception of the agricultural tract, all of the zoning in the immediate vicinity of the property is residential.

Ms. Wade stated that the subject property is approximately one acre in size, and it was part of a 2007 zone change to R-1D and R-1T for the larger three-acre parcel. At that time, part of the property was rezoned to R-1T; that existing R-1T area flanks the subject parcel to the west and north. The remainder of the property was rezoned to R-1D at that time in order to maintain an existing residence on the property. Since that time, the subject property has not been developed, and now the petitioner is proposing to rezone a majority of the R-1D portion to R-1T in order to construct a residential development made up of mostly townhouses. Ms. Wade said that the petitioner is proposing a total of 19 townhouses and one single-family residence for the entire three-acre tract. On the subject property, the petitioner is proposing to construct three new townhouses, with access from Syringa Drive, rather than from Harrodsburg Road. Displaying an aerial photograph of the subject property, Ms. Wade noted the location of the residential structure on the property, with its driveway access to Harrodsburg Road, and the adjoining A-U parcel.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Low Density Residential land use, or 0 – 5 dwelling units per acre, for the subject property. The petitioner's proposed three units on the one-acre property would result in a residential density of 3.16 units per acre, which does fall within the recommended range. Therefore, the staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Ms. Wade said that there are existing conditional zoning restrictions along the boundary of the Ethington property, which is zoned A-U, as well as along the southern property line. With the proposed rezoning to R-1T, some of that conditional zoning restriction language would be removed. The staff, however, would like to ensure that those restrictions are maintained, so they are proposing two new conditional zoning restrictions, as listed in the staff report and

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on the agenda. Those restrictions are proposed to protect the view from Harrodsburg Road of the existing trees on the property, and protect the trees along the Ethington property line.

Development Plan Presentation: Mr. Martin presented the corollary amended preliminary subdivision plan and zoning development plan, further orienting the Commission to the location of the subject property. Using a rendered copy of the development plan, he noted the location of the proposed extension of Syringa Drive, which would terminate in a cul-de-sac similar to the layout depicted on the previously approved plan for the property. This amended plan also depicts the proposed 19 townhouses and one single-family residence. Mr. Martin also noted the location of a large, park-like area on the property, where most of the existing significant trees are located. The petitioner is also proposing an area of stormwater detention, and private open space to the rear of the townhouse units.

Waiver Presentation: Mr. Martin stated that the petitioner has also requested a waiver of the Land Subdivision Regulations, to eliminate the requirement for sidewalks near the cul-de-sac area.

Mr. Martin stated that the staff is recommending approval of the development plan and waiver request, subject to the following 16 revised conditions, which were distributed to the Commission members prior to the start of the hearing:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
7. Division of Waste Management's approval of refuse collection.
8. Correct notes #6 and #7.
9. Indicate that this is an amended plan in the title block.
10. Add purpose of amendment note.
11. Denote variances approved by the Commission, as necessary, prior to plan certification.
12. Clarify existing and provided tree canopy information and calculations.
13. Addition of conditional zoning restrictions, ~~as necessary.~~
14. ~~Discuss proposed driveway widths~~ Revise driveways on Lots 12, 19 & 20 to meet Article 1-11 and Article 16-4(b)(2) requirement.
15. ~~Discuss proposed screening along R-1D property line~~ Revise Unit 1 to meet required building setback requirements.
16. ~~Discuss sidewalks and possible need for~~ Provided the Planning Commission grants the requested waiver to Article 6-8(n)(1)

Mr. Martin said that the staff would like for the petitioner to clarify the tree canopy calculation, since there are a number of significant trees on the property. Condition #14 relates to a considerable discussion at the Subdivision Committee meeting about the large driveway areas proposed for the townhouse units. Condition #15 would require a slight adjustment to one of the building setbacks in order to meet the Zoning Ordinance requirements.

With regard to condition #15, Mr. Martin stated that one of the requested waivers to the Land Subdivision Regulations would allow the petitioner to construct the sidewalks at a width of four feet, to the back of the curb, in most of the proposed development. Typically, sidewalks constructed to the back of the curb are six feet in width.

Mr. Martin said that the petitioner is also requesting waivers to the sidewalk requirements near the heavily treed open space area in order to help reduce the impacts of construction on the existing trees. The petitioner is proposing to construct trails to serve as a pedestrian system in that area. In addition, the petitioner is requesting a waiver to the sidewalk requirements on the northern side of the property, in order to minimize the impact of sidewalk construction on the adjoining property. Mr. Martin stated that the staff is recommending approval of one portion of the waiver request, and disapproval of the other portion, for the following reasons:

The Staff Recommended: Approval of a portion of the requested waiver (Josie Trace), for the following reasons:

1. Not granting the waiver would constitute an exceptional hardship for the applicant due the significant trees on the property, the topography and small area of the proposed development.
2. Granting the waiver will not negatively impact public health and safety, as the applicant is constructing a pedestrian system consistent with the intent of the Land Subdivision Regulations.

This recommendation is subject to the following condition:

- a. Prior to the issuance of a building permit, the pedestrian system will be designed to the approval of the Pedestrian Planner, the Division of Traffic Engineering and the Division of Engineering.

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on the agenda. Those restrictions are proposed to protect the view from Harrodsburg Road of the existing trees on the property, and protect the trees along the Ethington property line.

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8. Correct notes #6 and #7.
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14. ~~Discuss proposed driveway widths~~ Revise driveways on Lots 12, 19 & 20 to meet Article 1-11 and Article 16-4(b)(2) requirement.
15. ~~Discuss proposed screening along R-1D property line~~ Revise Unit 1 to meet required building setback requirements.
16. ~~Discuss sidewalks and possible need for~~ Provided the Planning Commission grants the requested waiver to Article 6-8(n)(1).

Mr. Martin said that the staff would like for the petitioner to clarify the tree canopy calculation, since there are a number of significant trees on the property. Condition #14 relates to a considerable discussion at the Subdivision Committee meeting about the large driveway areas proposed for the townhouse units. Condition #15 would require a slight adjustment to one of the building setbacks in order to meet the Zoning Ordinance requirements.

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Mr. Martin said that the petitioner is also requesting waivers to the sidewalk requirements near the heavily treed open space area in order to help reduce the impacts of construction on the existing trees. The petitioner is proposing to construct trails to serve as a pedestrian system in that area. In addition, the petitioner is requesting a waiver to the sidewalk requirements on the northern side of the property, in order to minimize the impact of sidewalk construction on the adjoining property. Mr. Martin stated that the staff is recommending approval of one portion of the waiver request, and disapproval of the other portion, for the following reasons:

The Staff Recommended: Approval of a portion of the requested waiver (Josie Trace), for the following reasons:

1. Not granting the waiver would constitute an exceptional hardship for the applicant due the significant trees on the property, the topography and small area of the proposed development.
2. Granting the waiver will not negatively impact public health and safety, as the applicant is constructing a pedestrian system consistent with the intent of the Land Subdivision Regulations.

This recommendation is subject to the following condition:

- a. Prior to the issuance of a building permit, the pedestrian system will be designed to the approval of the Pedestrian Planner, the Division of Traffic Engineering and the Division of Engineering.

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the significant trees. He said that there are a couple of trees very near to the location of the proposed townhomes that will need to be removed because they would be severely impacted, but they are not significant trees. Mr. Leonard explained that, using modern practices, the petitioner should be able to completely preserve the root zone of one of the two most significant trees, and only slightly impact the root zone of the other tree.

Zoning Action: A motion was made by Mr. Cravens, seconded by Mr. Penn, and carried 9-0 (Berkley and Blanton absent) to approve MARV 2013-3, for the reasons provided by staff, including the conditional zoning restrictions as recommended by staff.

Variance Action: A motion was made by Mr. Cravens, seconded by Mr. Wilson, and carried 9-0 (Berkley and Blanton absent) to approve the requested variances, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 9-0 (Berkley and Blanton absent) to approve ZDP 2013-15, including the 12 conditions as listed in the revised staff recommendation, approving the requested waiver for sidewalk construction along the proposed Josie Trace.

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