

- 2. **ZOTA 2015-6: AMENDMENT TO ARTICLE 17: CONSTRUCTION SCREENING SIGNAGE & IDENTIFICATION SIGNS IN BUSINESS & INDUSTRIAL ZONES** - a Zoning Ordinance text amendment to permit up to four identification signs to be placed on large commercial or industrial developments, as well as to permit temporary construction fence material to contain text and pictures when utilized during construction of large commercial and industrial projects.

REQUESTED BY: MIA Brookhaven, LLC

PROPOSED TEXT: (Text underlined indicates an addition to the existing Zoning Ordinance.)

ARTICLE 17: SIGN REGULATIONS

17-7(b) BASIC SIGN TYPES BY FUNCTION

- (4) **BUSINESS SIGN** - A sign which directs attention to a business, profession, product, activity, or entertainment, sold or offered upon the premises where such sign is located, and may include information as for an identification sign.
- (5) **CONSTRUCTION SIGN** - A temporary sign identifying the project name, the architect, engineer, contractor, financing company, material supplier, or others engaged in work on the construction site on which the sign is located. Leasing information, renderings and similar copy shall also be permitted.
- (11) **IDENTIFICATION SIGN** - A sign which establishes the identity of a building or building complex by name or symbol or combines name, street address, and/or management and has no direct advertising value.

17-3(c) SIGN BY MEANS OF MOUNTING OR ERECTING

- (14) **CONSTRUCTION SCREENING SIGN** - A temporary sign of fabric or mesh material attached to fencing surrounding a construction site to serve as a windbreak or privacy screen. Such signs may incorporate the information permitted for construction signs as defined in Sec. 17-3(a)(5). Construction screening signs may also include designs, artwork, logos, pictures, words and other graphic representations that do not advertise off-premise products or services. Such signs shall be in place only during construction and shall be removed simultaneously with the construction fence.

17-7(f) NEIGHBORHOOD BUSINESS ZONE (B-1) - Permitted signs may be free standing or wall mounted, as specified; signs shall be non-illuminated, indirectly illuminated, or internally illuminated unless specified otherwise. No free-standing sign shall exceed twenty (20) feet in height.

- (9) In addition to the maximum number and square footage of allowable signs on individual lots, projects governed by a unified development plan of more than 5 acres with multiple lots and structures and a cohesive identity may have a maximum of three (3) identification signs located at access points or on corners of the property subject to the development plan, with the total square footage of all signs not to exceed one-hundred and fifty (150) square feet in area, and each individual sign not to exceed seventy-five (75) square feet in area.

- (10) Construction screening signs. The sign face may contain or depict information, renderings, pictures, words, and other graphic representations related to the development or project, but shall be limited to twenty percent (20%) of the total square footage of the construction screen on all street frontages.

17-7(g) HIGHWAY SERVICE BUSINESS, WAREHOUSE/WHOLESALE, AND INDUSTRIAL ZONES (B-3, B-4, I-1, I-2) - Permitted signs may be free standing or wall mounted, as specified; signs may be non-illuminated, indirectly illuminated, internally illuminated or directly illuminated unless specified otherwise; no free-standing business sign shall exceed twenty-five (25) feet in height; no free-standing advertising sign shall exceed forty (40) feet in height.

- (9) In addition to the maximum number and square footage of allowable signs on individual lots, projects governed by a unified development plan of more than 5 acres with multiple lots and structures and a cohesive identity may have a maximum of three (3) identification signs located at access points or on corners of the property subject to the development plan, with the total square footage of all signs not to exceed one-hundred and fifty (150) square feet in area, and each individual sign not to exceed seventy-five (75) square feet in area.

- (10) Construction screening signs. The sign face may contain or depict information, renderings, pictures, words, and other graphic representations related to the development or project, but shall be limited to twenty percent (20%) of the total square footage of the construction screen on all street frontages.

The Zoning Committee Recommended: **Postponement**, for the reasons provided by staff.

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

The Staff Recommends: Postponement of the text amendment related to construction screening signs, for the following reasons:

1. The petitioner's proposal to permit a new way to display construction sign information on a mesh or fabric material attached to the construction site fence has merit, although the definition and proposed size allowances need significant modification in order to be acceptable.
2. The petitioner's proposal to permit 20% of the fence to be utilized as a sign has the potential to be far greater than any other type of sign in Lexington-Fayette County, even in excess of multiple billboards (aka advertising signs).

The Staff Recommends: Disapproval of the text amendment related to additional identification signs, for the following reasons:

1. The proposed text amendment to permit additional identification signs above and beyond those already permitted in the B-1, B-3, B-4, I-1 and I-2 zones will not further the intent of Article 17: Sign Regulations, which aims to promote legitimate signage needs without unduly distracting from the overall aesthetics of the community, which reduces intrusions, which is not unduly distracting to the motoring public and which promotes a harmonious and pleasing community image.
2. The proposal to increase sign square footage within the most permissive zones for signage (B-1, B-2, B-4, I-1 and I-2) is not necessary, given the Board of Adjustment's ability to transfer signage from one location or from one sign to another.

Request for Postponement: Jacob Walbourn, attorney, stated that the proposed text amendment has two major parts: 1) construction screening signs; and 2) identification signs in business and industrial zones. He said that he would like to request that the Planning Commission grant a one-month postponement of the identification signs portion, in order to allow the petitioner time to continue to work with the staff on the proposed text.

Mr. Owens asked if the staff was agreeable to the petitioner's request. Ms. Wade answered that the staff was in agreement, noting that the petitioner would like to move forward with the construction screening portion of this ZOTA because it relates to an in-progress project.

Mr. Owens asked if it was procedurally possible to postpone a portion of a text amendment. Ms. Wade responded that it had been done before. She explained that the Commission would need to make a motion to postpone the portion of the request dealing with identification signs. Mr. Sallee added that, in cases such as this, the staff sends two final reports to the Urban County Council.

Motion: A motion was made by Ms. Mundy, seconded by Ms. Richardson, and carried 11-0 to postpone the portion of ZOTA 2015-6 dealing with identification signs in business and industrial zones.

Staff Presentation: Ms. Wade stated that, since the Zoning Committee meeting three weeks ago, the petitioner submitted revised language for the proposed text amendment. The staff provided a supplemental report and staff alternative text to the Commission members prior to the start of the hearing.

Ms. Wade said that the proposed text amendment would create a definition for "construction screening sign," and would permit that new type of sign in several of the commercial zones. The petitioner is proposing this text amendment in order to utilize construction screening signs on their site, where construction is just beginning. Ms. Wade explained that the current sign regulations permit construction signs of up to 64 square feet in size. Those signs are typically installed on a piece of plywood, and are allowed in the office, business, and industrial zones. In addition to construction signs, real estate signs are also permitted, to advertise property for sale or lease. Construction signs can include the project name; contact information of the professionals or business involved in the work on the site; and a graphic depiction or rendering of the building being constructed. Both types of signs are considered temporary, and are permitted through the Division of Building Inspection.

Ms. Wade stated that the petitioner's proposal is to be allowed to provide signage on their property via construction screening signs, which is a new type of sign. Construction sites commonly include fencing around the entire site, in order to provide security and a windbreak; screening signs could be installed on that fencing. Construction fencing that does not contain text or graphics is not prohibited by the Zoning Ordinance. The issue at hand is not the installation of a fence, or about the blank screening. Instead, the applicant desires to use the face of the mesh screening to advertise information about the proposed development.

Ms. Wade said that, since the Zoning Committee meeting three weeks earlier, the petitioner has amended their proposed text for Article 17 in an attempt to address the staff's concerns. That amendment did alleviate some concerns, but a few issues remain, which was the basis for the staff alternative text. Ms. Wade displayed several photographs of different types of construction screening signs, some of which contained only a logo and name; while others feature text, photographs, and information about the project. The petitioner is requesting that this type of sign be allowed in addition to a typical construction sign. It would permit mesh or fabric material attached to a construction fence, to utilize up to 20% of a face of a fence along all street frontages, to provide information beyond that typically included on a construction sign. Ms. Wade noted that the proposed construction screening sign definition would include, in addition to construction information: artwork; logos, photos; words; and other graphics related to the project under construction.

Ms. Wade said that the proposed definition would also require that the sign be removed when the construction fence is removed from the site, or when a fence permit is issued, whichever occurs first. While the staff understands the desire for additional flexibility in displaying construction information on a site, they do have several concerns with the text as proposed. Ms. Wade explained that the staff was originally concerned with the timing of the temporary sign, as well as the proposed size. The staff believes that the timing of the removal of a sign is more appropriate at the issuance of a permanent sign permit, rather than the removal of the fence. The staff believes that it is possible that an applicant might need to maintain a construction fence for some period of time, while still applying for a permit for a permanent sign. The staff alternative text recommends that the language referring to the removal of construction signs simultaneously with the construction fence be deleted; and that the removal of a construction sign be tied to the issuance of a permit for permanent signage.

Ms. Wade stated that the staff was also concerned about the zones in which the petitioner originally proposed that these constructions signs should be permitted, which included the B-1, B-3, B-4, I-1, and I-2 zones. The staff felt that limiting this type of signage to those zones would eliminate a large portion of the community, including the Expansion Area. The staff suggested additional zones; the petitioner's revised text now proposes allowing construction screening signs in the R-5 and P-1 zones; all Mixed-Use and business zones, and the industrial zones. The staff still believes that these signs should be allowed in the CC and ED zones, since they are similar to other business zones; so the Staff Alternative Text proposes allowing construction signs in those two zones as well.

Ms. Wade stated that the staff is agreeable to the petitioner's proposal to allow construction screening signage on 20% of a street frontage, but they are concerned about the large amount of signage that could result. The staff recognizes that this type of sign is temporary; however, construction sites can be active for many years. In addition, the amount of signage proposed, for a large site with multiple street frontages, could result in signage the size of several billboards, which was also of concern to the staff. The staff is agreeable to the 20% allowance, only if the signage is calculated by street frontage, rather than total fence area, which would include fencing facing adjoining property. Ms. Wade noted that the staff cited the Mapleleaf Drive and the Tattersalls development areas as examples of situations where permitting signage in the manner suggested by the petitioner could result in signage directed toward adjoining business or residential uses, rather than public streets. She explained that the staff alternative text also would not provide for the combining of street frontage amounts in order to obtain a greater amount of signage.

Ms. Wade stated that the staff is recommending approval of the Staff Alternative Text, for the following reasons:

1. The petitioner's proposal to permit a new way to display construction sign information on a mesh or fabric material attached to the construction site fence will enhance the overall appearance of active construction sites while permitting announcements about future development.
2. The staff alternative text will eliminate duplication in Article 17, will be more consistent with Article 17 formatting, and also will allow this type of signage in the CC and ED zones in the Expansion Area.

Commission Questions: Mr. Penn asked if there were any provisions in the proposed text to control whether or not the signage could be used as advertising. Ms. Wade answered that, under this draft, only information related to the construction of the site or the project under construction could be included on the screening signage. The signs could also contain photographs. Mr. Penn asked if a property owner would be allowed to rent space on such a sign to another entity, so that it would become an income stream. Ms. Wade answered that she did not see an opportunity for a new income stream, since it should be only information related to a business that would be on the site or the businesses currently constructing the site.

Ms. Mundy asked how the 20% limitation was determined. Ms. Wade responded that that number was proposed by the petitioner.

Mr. Owens asked if the staff was concerned that construction screening signage would be removed prior to the completion of construction, since it would be required to be removed upon the issuance of a permit for a permanent sign. Ms. Wade answered that the staff assumed that the mesh screening could be removed, while the fence remained in place to provide security for the site, if necessary. She added that this type of signage is not being proposed in lieu of a typical construction sign, but in addition to it. The 64 square-foot construction sign could still be in place with information about the developer and contractors.

Ms. Mundy opined that she would rather see mesh signs around a construction site than the site itself, until such time as fencing would typically be removed. Ms. Wade said that the staff's assumption was that the time of application for a permanent sign would be fairly close to the completion of the project. She explained that the staff's reason for that recommendation was their preference for a clear "trigger" that is controlled by LFUCG, rather than allowing screening signage to remain until a developer chooses to remove it. Ms. Mundy expressed some concern that, once a sign permit is issued for a site (and construction screening signage is removed), it could be some time before a permanent sign is ordered and installed. Ms. Wade responded that, once a sign permit is issued, installation of a new sign is usually imminent.

Petitioner Representation: Jacob Walbourn, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with most of the staff's recommendations. He thanked the staff for their willingness to work with the petitioner on their draft text, noting that the petitioner now has only two small disagreements with the staff's recommendation.

Mr. Walbourn stated that the petitioner's property was recently rezoned. The site is located along Nicholasville Road, which is a very busy corridor, with many areas of development and redevelopment. In researching ways to create excitement and generate interest in their project, the petitioner learned about construction screening signage. The petitioner contends that this type of signage is a "fun and effective" way to get information to the public, while providing site screening and security. The signage would be installed on chain link fence sections, which are moveable to allow access to the site for construction equipment. Mr. Walbourn displayed several photographs as examples of the type of signage proposed, which is a mesh fabric material that affixes to the chain link fencing. The mesh fabric would include logos, photographs, and text.

Mr. Walbourn said that there is a desire for construction screening signage, since there are existing safety and security concerns. If construction materials are easily visible, sites can fall victim to metal and copper thieves. In addition, the petitioner believes that the proposed screening signs could be used to prevent debris from exiting the site onto Nicholasville Road. Screening signage can also provide a windbreak for gusts going through the construction site.

Mr. Walbourn stated that the petitioner is in agreement with the staff's recommended definition for construction screening signage. The petitioner had originally proposed language regarding how to calculate the type of signage that would be permitted on a site; the staff provided an alternative to that language. The petitioner now contends that there are flaws in both of those definitions. He requested that the Planning Commission consider language that would allow signage to occupy 20% of the face of the construction screen.

Mr. Walbourn said that the petitioner originally considered the proposed text amendment with regard to their site, which is zoned B-1/B-3; the lots under construction are zoned B-3. The petitioner originally considered proposing construction screening signs in these business zones, which would, based on how Article 17 is worded, also permit them in industrial zones. The staff suggested that construction screening signs might be appropriate in some other areas as well, so the petitioner added several zones to their proposed text. The petitioner agrees that the signs should be made of fabric or mesh, and that the content should consist of text, design, art, photos, and logos. Content with commercial value will be limited to 20% of the signage. Mr. Walbourn noted that the petitioner is in agreement with the staff's recommendation to require removal of screening signage at the time of issuance of a permanent sign permit, although their original proposal was different. The petitioner is also in agreement with the staff's proposal for coverage of screening signs, which is in line with what the Zoning Ordinance allows for permanent signage.

Referring to an aerial photograph of the petitioner's site, Mr. Walbourn noted the areas where construction fencing is proposed. For permanent signage, the Zoning Ordinance would allow two square feet of signage per linear foot of street frontage. The petitioner's site has approximately 1,440 linear feet of street frontage; the petitioner would therefore be allowed (subject to other limitations of the Ordinance) 2,880 gross square feet of signage. The petitioner's proposal would include approximately 1,860 linear feet of fence, at a height of six feet; the approximate total amount of fencing would be 11,160 square feet. Based on that total, approximately 2,232 square feet of construction screening signage would be allowed.

Mr. Walbourn said that the petitioner is concerned that the staff's proposed text would: 1) only allow construction screening material on street frontages; and 2) not allow transfer of signage between street frontages. Referring to an aerial photograph of the existing former Lexington Mall site (now Southland Christian Church), he explained that, under the staff's alternative, construction screening signage would be allowed only along Richmond Road and Life Lane, which runs behind the church building. The petitioner contends that, in some commercial developments, there could be situations where an internal fence is installed, or large grade changes could exist, which could further limit the amount of construction screening signage that would be permitted. Mr. Walbourn referred to the Meadowthorpe and Beaumont Centre Kroger sites as additional examples, noting that construction screening signage would not have been permitted at those locations during the construction of gas pumps, due to a lack of street frontage. He said that the petitioner contends that their proposed language is simpler, and would provide a property owner the opportunity to utilize construction screening signage where it would be most effective. The petitioner would not direct any such signage toward adjoining residential areas, since it would not be seen by as many people, and would be less effective. Mr. Walbourn asked the Planning Commission to consider approving the following language: "Construction screening signs limited to 20% of the total square footage of the face of the construction screen."

Mr. Walbourn noted that the United States Supreme Court had recently weighed in on two cases concerning sign ordinances, consistently recognizing the interests of community aesthetics and traffic safety. He said, referring to a photograph of the University of Kentucky dormitory project, that the Commission members had likely seen the type of construction screening sign proposed at that location, or the recently constructed University of Kentucky Medical Center site. The University is exempt from local zoning regulations, and has been using this type of signage on their projects for some time, with no detrimental effect on traffic in the area. Mr. Walbourn said that the petitioner also contends that those construction screening signs did not change the community aesthetic, since they are temporary in nature. Murals and other types of public art can be much larger, so the petitioner does not believe that a smaller, temporary sign should have a negative effect on the community aesthetic.

Displaying several photographs of the petitioner's construction site, Mr. Walbourn said that a 6' construction screen should not substantially alter the character of the area. He stated that construction screening material signage has become an international trend, displaying several photographs of such signage in other areas and noting that, in some areas, those signs help to offset the costs of construction.

Mr. Walbourn stated that the petitioner believes that construction screening is very important for the security and integrity of their project site, and would like for that signage to have utility and advertising value for the site. The petitioner is requesting that the Planning Commission consider the petitioner's proposed alternative text.

Mark Yates, Director of Development for M.I.A. Brookhaven, LLC, requested approval of the proposed text amendment.

Commission Questions: Mr. Cravens asked if removal of construction screening at the issuance of a sign permit would be problematic from a timing standpoint. Mr. Walbourn answered that he did not believe that it would be problematic, adding that he agreed with Ms. Wade's assessment that it would likely be only a matter of days and that he believed that the proposed timing is appropriate. Mr. Cravens said that he did not believe that removal of construction screening should be tied to the issuance of a building permit, since a developer could conceivably want to obtain a permanent sign permit at the start of a construction project. He added that some signs require foundation work or other construction elements. Mr. Walbourn stated that the petitioner's original proposal was to remove the construction screening at the time the fence is removed, but the staff had some concerns about the temporary sign and permanent sign being up at the same time. He noted that the petitioner would be in agreement with either option.

Staff Rebuttal: Ms. Wade stated, with regard to Mr. Cravens' comments, that construction of the foundation and pole for a sign could occur at any time; the issue for the staff is the actual installation of the permanent sign. The staff does not believe that it would be appropriate for permanent and temporary signage to be on a property at the same time. Mr. Cravens stated that foundation work cannot be completed for a sign unless a permit has been obtained. Ms. Wade reiterated that the staff is concerned about the overlap of a large amount of temporary signage with a permanent sign.

Ms. Wade said, with regard to the amount of signage requested by the petitioner, that temporary signage is typically allowed to be only 100 square feet in size. The proposed text would allow a far greater amount of temporary and construction signage than is permitted by the current regulations. If the petitioner would like to have the ability to transfer signage and average it across an entire property, the staff believes that it should be only for a smaller percentage.

Commission Discussion: Mr. Berkley stated that the petitioner gave good examples of areas where signage could be needed other than along street frontages. He asked if there was any way to amend the staff alternative text to limit the exposure of signage to residential areas. Ms. Wade answered that it would be complicated to do so, particularly since part of the petitioner's property is adjacent to a residential zone. She said that an appropriate compromise could be to reduce the percentage of signage, and allow averaging. The staff would be concerned that, without a percentage limit, a transfer of signage could result in 80% of the construction screening being used for signage along only one side. Ms. Wade stated that the staff would argue that 80% coverage of construction screening could negatively affect the aesthetics of the community, albeit temporarily.

Petitioner Rebuttal: Mr. Walbourn stated, with regard to the comments about directing signage toward residential areas, that there is no incentive for a developer to do so. He said that most sites have very obvious high-traffic areas where construction screening signage could be most beneficial. He added that the petitioner contends that the staff's proposal would not be a workable solution at many sites in Lexington-Fayette County.

Ms. Mundy stated that she did not believe that construction screening signage should be directed toward residential areas.

Ms. Richardson asked if street frontage would be required for construction screening signage, or if a construction project in the middle of a shopping center could use that type of signage as well. Ms. Wade answered that the petitioner's original proposal included text about street frontage; the staff amended that original proposal, then became concerned that moving signage from one location to another could result in 100% coverage. Mr. Walbourn opined that there are problems with both proposals. He said that the petitioner originally proposed allowing construction screening signage along street frontages because it would suit their site, but then realized that sites might exist where such signage was needed but no frontage was available. Ms. Wade added that construction fences are not always going to be located on street frontages, and the staff's proposed text addresses street frontage. Ms. Richardson asked what a developer's options would be to provide signage on a site with no street frontage. Ms. Wade responded that, in that case, a developer would need to rely on a typical construction sign; mesh construction screening could be used, but it would not be allowed to contain signage.

Mr. Wilson stated that the two sets of proposed text seem very close, and asked if their differences could be resolved. Mr. Walbourn answered that the staff and the petitioner had attempted to resolve those issues up until two days ago. The petitioner would like to get construction underway, and does not want to wait any longer. Mr. Walbourn thanked the staff for their input, and said that the petitioner would like to go forward at this time. Mr. Wilson stated that he did not have any concerns about the proposed text for this project, but he is concerned that other developers might abuse the signage

allowance. Ms. Wade stated, in response to Mr. Wilson's question, that the staff acknowledges that street frontage could be an issue; but they are still concerned about the transfer of signage to different sides of a property, so they asked that any modification to the text include a provision that signage could not be combined.

Note: Chairman Owens declared a brief recess at 2:40 p.m. The meeting reconvened at 2:51 p.m.

Ms. Wade stated that the staff met with the petitioner during the recess, and drafted a compromise that should address some of the Commission members' concerns. The staff would recommend striking the proposed text for the R-5 zone, in limiting the direction of signage toward residential areas; and adding the following language: "Signage shall not be displayed along an agriculturally or residentially-zoned property boundary." Ms. Wade explained that, with that language, construction screening signs could still face a parking lot or right-of-way along a joint property line.

Mr. Walbourn stated that the petitioner was agreeable to that language.

Action: A motion was made by Ms. Plumlee, seconded by Mr. Wilson, and carried 11-0 to approve a portion of the Staff Alternative Text of ZOTA 2015-6, including the language as revised by Ms. Wade.