

**5. LEX PROPERTIES, LLC ZONING MAP AMENDMENT & WINDING CREEK AT MONTICELLO**

- a. PLN-MAR-16-00015: LEX PROPERTIES, LLC (1/01/17)\* – petition for a zone map amendment from Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 10.14 net and gross acres, located at 3455 Saybrook Road.

**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 2013 Plan's Goals and Objectives emphasize the importance of growing successful neighborhoods (Theme A) by expanding housing choices (Goal #1), supporting infill and redevelopment (Goal #2) and providing well-designed neighborhoods (Goal #3). It also recommends protecting the environment (Theme B) by supporting the community's green infrastructure program (Goal #3) and by implementing the adopted environmental policy (Goal #2.a.). Lastly, the Plan advocates for compact, contiguous and/or mixed-use sustainable infill development to accommodate future growth needs and sustain the Urban Service Area concept (Theme E, Goal #1.b.)

The petitioner proposes to develop 15 detached single-family dwelling units and 17 attached single-family dwelling units (townhomes) on the site, which would yield a residential density of 3.16 dwelling units per acre.

The Zoning Committee made no recommendation on the proposal.

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

1. The requested R-3 zone is not in agreement with the 2013 Comprehensive Plan for the following reasons:
    - a. The Comprehensive Plan recommends infill and redevelopment that is compatible with and context-sensitive to its environment, and, in this case, with two established single-family neighborhoods.
    - b. The Plan also states that infill development can have a positive impact on neighborhoods, but only if it respects the scale, massing and size of surrounding buildings.
    - c. Although the petitioner is proposing a residential land use, generally compatible with the surrounding neighborhood, some of the smaller proposed lot sizes (allowable in R-3) are not compatible, nor are the townhomes lining one side of a lengthy cul-de-sac.
    - d. The 2013 Plan recommends single-loaded streets when development is adjacent to greenways and open space throughout the community. The applicant intends to locate townhomes along the floodplain and within the greenway around the creek; thus, not meeting this policy recommendation related to improving desirable communities (Theme D).
  2. The existing Agricultural Urban (A-U) zone remains appropriate for the subject property because the intent of the A-U zone is to be a holding zone until appropriate urban development is proposed.
  3. The proposed Planned Neighborhood Residential (R-3) zone is not appropriate for the subject property, for the following reasons:
    - a. An R-1D zone would be more appropriate in that it would provide lots that are more in character and similar in size to those in the adjoining neighborhood.
    - b. The site is located interior to two established low density residential neighborhoods, and there is no R-3 zoning in either surrounding neighborhood, nor are any townhomes present in the immediate area.
- b. PLN-MJDP-16-00036: WINDING CREEK AT MONTICELLO (1/01/17)\* - located at 3455 Saybrook Road.  
**(EA Partners)**

The Subdivision Committee Recommended: Postponement. The required tree inventory map has not been provided.

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

1. Provided the Urban County Council rezones the property R-3; 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. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Addition of Article 21-6 information as required for all development plans.
8. Discuss stormwater detention proposed.
9. Discuss townhome area status as a group residential project (Art. 9 requirements).

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10. Discuss townhome driveway location(s).
11. Discuss resolving sanitary sewer conflict with proposed townhome.
12. Discuss HOA maintenance of common areas.
13. Discuss plan status (Preliminary Subdivision Plan).

Staff Zoning Presentation – Ms. Wade summarized the staff report and staff recommendations of the proposed zone change. She said that an exhibit packet had been distributed to the Planning Commission, which contained a staff report of the zone change from last year; minutes from that hearing; a staff report from a 1994 zone change proposal; and an environmental report that the applicant submitted last year. She also circulated a packet of letters received from citizens in opposition and a petition in opposition to the zone change.

She displayed some photographs of the subject property and stated that only a third of the property is developable because most of the subject property is located in the 100-year floodplain. She said that an R-1D zone would be more appropriate and compatible for this property, in the staff's view.

Commission Comments – There was a question of the dimension of the building line of the subject property and another regarding the number of units allowable in a R-1D zone, which would yield approximately 22 lots instead of the 32 units possible in the R-3 zone.

Development Plan Presentation – Mr. Martin presented the staff report on the corollary development plan. He said that a new tree inventory map had been provided, which addresses the minimum Zoning Ordinance requirements. He also said that there is a building conflict proposed with the existing sewer/sanitary line, which will need to be relocated.

Commission Comments – Mr. Owens had a question regarding the lack of stormwater detention, and it will not be known if it's needed until the subdivision's design is completed and its proximity to the creek is determined. Mr. Martin displayed a map displaying the existing stormwater system in the subject area, and said that there isn't any detention provided in this immediate area and that it hasn't been required over time.

Petitioner Presentation – Jacob Walbourn, attorney, was present representing the petitioner. He believed that this application is in agreement with the Comprehensive Plan. He said that the applicant would be happy to do what the prior application proposed, which was 27 single family lots (R-3 zone), but since the Planning Commission rejected that proposal he asked the applicant to try something else that may be in accord to the Comprehensive Plan. He said that the floodplain will remain on one lot and will be maintained by the owner of that lot with the townhouses (as a group residential project).

He said that the R-1D zone would only give them 21 lots without seeking variances, which doesn't make this project financially viable. He believes that the 27 units that were proposed last year and this application would be, however.

Commission Comments – There was a question regarding the residential lots, and if they are proposed meet all the R-1D zone requirements with the exception of frontage, which is 60'. Mr. Walbourn replied that the proposed lots are 40' in width.

The following citizens were present in opposition to this application:

Evan Belt, 3439 Saybrook Road, representing the Monticello Neighborhood Association, said that they don't want the extra traffic in their neighborhood. He doesn't believe that the soil is safe and it may be contaminated. It was disturbing as to what could turn up there.

Janet Piechowski, 3451 Saybrook Road, said that they had maintained the entrance into the property until the "no trespassing" signs were posted. She said that she is opposed to this zone change and that she doesn't trust the developer because currently, the area is being neglected and unmaintained.

Walt Gaffield, President of the Fayette County Neighborhood Council, speaking on behalf of the Stonewall Community Association, said that he agrees with the staff's recommendations on this zone change.

Robin Young, 3525 Berwin Court, President of the Robinwood Homeowners Association, displayed photographs of the creek and of the path on the site. She said that she is supportive of infill but was concerned that this zone change may not have the best interest of this community.

Amy Clark, 628 Kastle Road, distributed a handout and said that she believes this area should be rezoned to R-1E zone, as said she is concerned with the density and the parking. She said that the required tree inventory hasn't been updated by the applicant.

Paul Crosmer, 3447 Saybrook Road, said that he is also concerned that once the soil is stirred up that the environmental agencies may find something different. He was concerned that developers are proposing R-3 with promises, and he suggested a legally binding agreement.

Otto Piechowski, 3451 Saybrook Road, said he concerned with the waste that was once in this ground and that the ground is still contaminated. He would like more soil testing to be provided.

Petitioner Rebuttal – Mr. Walbourn said that the subject property was tested in preparing a Phase 2 environmental study, which found no significant contaminants in this area. He said that applicant has every incentive not to increase flooding in the area. He said that single-family residential was requested and denied in the past and stated that the applicant would agree to building single-family homes on the subject property.

Citizen Rebuttal – Ms. Clark spoke on behalf of the neighborhood and suggested the applicant give the floodplain area to the city. She also said that more communication needs to be done between the developer and the neighbors.

Mr. Belt said that changing a zone based on one's economic ability is not planning. He agreed with the staff's concerns in terms of what is consistent with the neighborhood aesthetics.

Mr. Piechowski said that the developers should meet with the neighbors.

Staff Rebuttal – Ms. Wade said that the applicant is willing to restrict the uses permitted in this zone change. She said the staff's main concern is that townhouses are not compatible with this neighborhood because it is located within two neighborhoods and doesn't have the access that is needed.

Commission Comments – There was a question regarding Article 9 and the number of owners of each townhouse unit. Ms. Wade said that Article 9 provides for minimum setbacks from the exterior of the property, as well as between the buildings. There was a comment regarding the number of units that would make this project economically feasible. Mr. Walbourn said that the applicant has stated that the breaking even point of this project would be 27 lots. There was also a comment regarding the zoning restriction offered, and if the applicant would be willing to add a limitation for this project to single-family, duplex, and townhouses. Mr. Walbourn agreed and said they could also prohibit all the R-3 uses that are not single-family, townhomes, or duplexes, for the site.

Mr. Walbourn displayed the applicant's conditional zoning restrictions that were included in the application:

"We recognize the unique nature of these sites as being in an existing single family neighborhood. In order to protect the neighborhood from uses that are too intensive or out of character with the existing area, we propose the following conditional zoning restrictions:

Prohibited principal uses:

- Multi-family dwellings
- Dormitories
- Boarding or lodging houses
- Community residences

Conditional uses:

- Hospitals and nursing homes or orphanages
- Community centers
- Sorority or fraternity houses
- Boarding or lodging houses, assisted living facilities, and hospitality houses
- Bed and breakfast facilities
- Athletic club facilities".

There was a question regarding the Findings for Approval that Mr. Walbourn had submitted. Ms. Brown said that principle prohibited uses and conditional uses that are prohibited have been presented, and that the Planning Commission can impose those restrictions.

The applicant offered the following findings:

1. The proposed Planned Neighborhood Residential (R-3) zone is in agreement with the 2013 Comprehensive Plan for the following reasons:
  - a. The residential zoning and proposed mix of single family housing will expand housing choices in an existing neighborhood by providing an uncommon dwelling unit type within the immediate area (Theme A, Goal #1). Although the adjacent area has existing residential zoning, the options are entirely limited to single family dwelling units.
  - b. The proposed development of undeveloped property inside the Urban Service Boundary will support the goals of infill and redevelopment. (Theme A, Goal #2). The proposal respects the area's context and design features by proposing single family residential use that abuts existing single family residential use (Them A, Goal#2a).

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- c. The proposed development exhibits a commitment to mixed-type housing in an area of Fayette County where the variety of housing options are currently uniform (Theme A, Goal #3a).
- d. The proposed development provides for additional density in a desirable neighborhood near retail shopping and employment opportunities, which will assist in reducing Lexington-Fayette County's carbon footprint (Theme B, Goal#2).
- e. The proposed development helps to uphold the Urban Services Area concept as it encourages compact, contiguous development to accommodate future growth needs (Theme E, Goal #1b).
2. This approval is made subject to the approval and certification of PLN-MJDP-16-00036: Winding Creek at Monticello, prior to forwarding a recommendation of 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 following uses shall be prohibited on the property:
  - a. Multi-family dwellings
  - b. Dormitories
  - c. Boarding or lodging houses
  - d. Community residences
  - e. Hospitals and nursing homes or orphanages
  - f. Community centers
  - g. Sorority or fraternity houses
  - h. Boarding or lodging houses, assisted living facilities, and hospitality houses
  - i. Bed and breakfast facilities
  - j. Athletic club facilities.

These restrictions are necessary and appropriate in order to protect the neighborhood from uses that are too intensive or out of character with the existing area.

Zoning Action – A motion was made by Ms. Plumlee, seconded by Mr. Owens, to disapprove PLN-MAR-16-00015: LEX PROPERTIES, LLC, for the reasons provided by the staff. The motion failed 3-6 (Berkley, Cravens, Drake, Mundy, Richardson, Smith opposed; Brewer and Penn absent).

Commission Discussion – After much discussion, the Planning Commission asked the applicant if they would agree to adding restrictions that only single family use could be provided on each lot. Ms. Wade said that a clarification would be needed to specify if the units would be single family detached or attached. Mr. Walbourn said that the applicant would be agreeable to the R-3 zone with detached single family restrictions.

Zoning Action – A motion was made by Mr. Berkley, seconded by Mr. Cravens, and carried 8-1 (Plumlee opposed; Brewer and Penn absent) to approve PLN-MAR-16-00015: LEX PROPERTIES, LLC, for the following findings of fact, restricting the uses to single family detached and the findings as provided by the applicant, with the deletion of restrictions a. and c, as follows:

1. The proposed Planned Neighborhood Residential (R-3) zone is in agreement with the 2013 Comprehensive Plan for the following reasons:
  - ~~a. The residential zoning and proposed mix of single family housing will expand housing choices in an existing neighborhood by providing an uncommon dwelling unit type within the immediate area (Theme A, Goal #1). Although the adjacent area has existing residential zoning, the options are entirely limited to single family dwelling units.~~
  - a. b. The proposed development of undeveloped property inside the Urban Service Boundary will support the goals of infill and redevelopment. (Theme A, Goal #2). The proposal respects the area's context and design features by proposing single family residential use that abuts existing single family residential use (Them A, Goal#2a).
  - ~~e. The proposed development exhibits a commitment to mixed-type housing in an area of Fayette County where the variety of housing options are currently uniform (Theme A, Goal #3a).~~
  - b. d. The proposed development provides for additional density in a desirable neighborhood near retail shopping and employment opportunities, which will assist in reducing Lexington-Fayette County's carbon footprint (Theme B, Goal#2).
  - c. e. The proposed development helps to uphold the Urban Services Area concept as it encourages compact, contiguous development to accommodate future growth needs (Theme E, Goal #1b).
2. This approval is made subject to the approval and certification of PLN-MJDP-16-00036: Winding Creek at Monticello, prior to forwarding a recommendation of 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 subject property shall be restricted to detached single-family residential land use only.

These restrictions are necessary and appropriate in order to protect the neighborhood from uses that are too intensive or out of character with the existing area.

Development Plan Action – A motion was made by Mr. Berkley, seconded by Ms. Richardson, carried 8-1 (Plumlee opposed; Brewer and Penn absent) to postpone PLN-MJDP-16-00036: WINDING CREEK AT MONTICELLO, with the conditions by the applicant.

