

2. A & M HAMBURG, LLC, ZONING MAP AMENDMENT & HAMBURG EAST, LOT 2, ZONING DEVELOPMENT PLAN

- a. MARV 2014-13: A & M HAMBURG, LLC (10/5/14)\* – petition for a zone map amendment from an Expansion Area Residential-3/Transition Area (EAR-3/TA) zone to a Community Center (CC) zone, for 14.82 net (16.49 gross) acres, for property located at 2500 Polo Club Boulevard (a portion of). A height variance is also requested with this zone change.

COMPREHENSIVE PLAN AND PROPOSED USE

The adopted Expansion Area Master Plan (Expansion Area 2a) recommends Expansion Area Residential-3 (EAR-3) future land use, which is defined as 6-18 dwelling units per gross acre (and up to 24 dwelling units per gross acre with transferable development rights) for the subject property.

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. In addition, the Plan encourages a mixture of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; and provision of land for a diverse workforce.

The petitioner proposes a Community Center (CC) zone in order to expand the existing CC zoning and development on the western side of Polo Club Boulevard, which will permit additional commercial land uses, such as restaurants, retail establishments and offices. A companion text amendment has also been filed by the petitioner, which hopes to expand the size limitations of the CC zone.

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

The Staff Recommended: Approval, for the following reasons:

1. The requested Community Center (CC) zone is appropriate, and the existing Expansion Area Residential-3 with a Transition Area Overlay (EAR-3/TA) zone is inappropriate, for the following reasons:
  - a. As currently configured, the EAR-3/TA overlay zone is located between a Community Center (CC) zone and an Economic Development (ED) zone, which is inconsistent with what was originally planned for in the EAMP in 1996. The land use relationship desired by utilizing the TA overlay, creating a sense of place that transitions from a more intense zone to a less intense zone, cannot be accomplished when located between two more intense zoning categories.
  - b. The proposed CC zone will still allow for the mix of uses anticipated in both the CC and TA zones, including civic and community uses, churches, nursing homes, schools and child care establishments, and residential uses.
  - c. Expanding the CC zone at this location will allow for the required residential component (40% of the gross floor area within the CC zone) to be more appropriately located along the greenway, rather than adjacent to the interstate corridor as currently approved.
  - d. Several basic elements of the proposed land use change are consistent with the land use policies of the 2013 Comprehensive Plan. It is acknowledged that large retail establishments do contribute employment opportunities to the community (over 200 jobs are anticipated for the Cabela's store alone); the proposed land use enhances and is more compatible with the surrounding land uses; the proposed land use will not impair environmental conditions of the site; the existing utility and transportation networks can accommodate the proposed land use category; and the proposed development will provide for a more appropriate mix of land uses than previously planned.
2. This recommendation is made subject to approval and certification of ZDP 2014-68: Hamburg East, Lot 2 prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED VARIANCES

1. Increase the maximum allowable height from 48 feet to 56 feet.

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested height variance will not adversely affect the public health, safety or welfare. Furthermore, it will not alter the character of the general vicinity, which is primarily vacant and will be commercial in nature, once developed.
- b. Granting the requested height variance will not result in an unreasonable circumvention of the Zoning Ordinance because the CC zone promotes the use of mixed-use buildings, and tall buildings are anticipated to be developed northeast of this location in the future.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is the location of the mixed-use building near the greenway, constructed on the slope and overlooking a stream and into an area of Economic Development zoning, which allows buildings up to 90 feet tall.

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- d. Strict application of the Zoning Ordinance would likely result in the loss of commercial space or dwelling units in the mixed-use building and require a re-design of the preliminary development plan to provide the lost residential square footage elsewhere on the property. It would not necessarily result in a more desirable development outcome for this area.
- e. Although associated with the proposed zone change, the height variance is requested in an effort to accomplish an efficient design and place the tallest building(s) in the most appropriate location on the subject property.

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

1. Provided the Urban County Council rezones the property CC; 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; or as amended by a future Development Plan approved by the Commission.
  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 2014-68: HAMBURG EAST, LOT 2 (10/5/14)\* - located at 2500 Polo Club Boulevard.  
(Vision Engineering)

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

1. Provided the Urban County Council rezones the property CC; 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. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Provided the Planning Commission grants the requested height variance to the mixed-use building.
7. Denote that compliance with Art. 23A-2(1) shall be determined at the final development plan.
8. Resolve parking orientation to Polo Club Boulevard.
9. Resolve pedestrian connection and vehicular access across Polo Club Boulevard.
10. Resolve compliance with open space requirements, per Article 23A-(k)(1) of the Zoning Ordinance.

Zoning Presentation: Ms. Wade presented the staff report on this requested rezoning, briefly orienting the Commission to the location of the subject property on Polo Club Boulevard, north of Man O' War Boulevard. To the north of the subject property is a large tract that is zoned ED and planned and approved for a regional medical campus; to the east is property owned by the applicant and zoned EAR-3, which is planned for High Density Residential development; to the south, across Man O' War Boulevard, is the Gleneagles neighborhood; and, on the opposite side of the interstate, is the Hamburg Pavilion shopping area. The subject property for this zone change is a portion of a larger tract, which is currently split-zoned CC and EAR-3/TA, and is currently vacant.

Ms. Wade displayed the following photographs of the subject property and surrounding area: 1) a view from Polo Club Boulevard toward the existing adjacent Costco store; 2) a view toward the greenway, which shares a property line with the ED-zoned property; 3) a view toward the greenway and Interstate 75; 4) the existing development within the CC area at the intersection of Man O' War Boulevard and the interstate; and 5) a view from the end of Fitzgerald Court toward Polo Club Boulevard.

Ms. Wade stated that the petitioner is proposing an expansion of the existing CC zone in order to develop a big-box retail establishment, a mixed-use building, and several outlots for commercial and civic uses. The proposal includes 161,400 square feet of non-residential development, and 222,000 square feet of residential floor area for 150 dwelling units. The existing Costco development, with its gas station and two outlots, totals another 171,656 square feet of retail use, for a combined total of over 600,000 square feet in this entire CC development. Ms. Wade explained that the current text of the Zoning Ordinance does not permit a second large retail establishment at this location, unless it is a grocery store; but the applicant has filed a companion text amendment along with this rezoning request in order to make modifications to that section of the Ordinance. The petitioner has also requested a height variance in conjunction with this rezoning request.

Ms. Wade said that the staff had distributed to the Commission members an exhibit from the Expansion Area Master Plan (EAMP), depicting Expansion Area 2A, within which the subject property is located. The EAMP, which was completed in 1996, recommended EAR-3 zoning for the subject property, with the CC zoning and TA overlay on the opposite side of Polo Club Boulevard. In 2009, a zone change was requested that "swapped" those land uses, which resulted in the current zoning of the existing CC area. That zone change, along with a text amendment that allowed larger retail establishments, resulted in the Costco development as it exists today.

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Ms. Wade stated that, although the subject property is located in the Expansion Area, it is still appropriate to focus on the general land use policies emphasized by the 2013 Comprehensive Plan, including: land use compatibility; well-designed neighborhoods; improving a desirable community; and making the best use of land inside the Urban Service Area boundary in order to protect the surrounding rural areas. In the 2009 zone change, although a "swap" of uses took place, the size of each zone proposed was kept consistent with the recommendations of the EAMP. The EAMP recommends that transition areas (TA) be located next to CC zoning, but also adjacent to residential uses, in order to serve as a transition between more intense and less intense uses. In this case, there is no EAR-3 land directly adjacent, so the subject property is located between two higher-intensity zones.

Ms. Wade said that the petitioner contends that the proposed rezoning is appropriate, in part because the land use relationships originally planned for the area no longer exist. Although the intent of the TA zone can no longer be met at this location, the petitioner opined that the proposed CC zone would allow for a mix of uses, similar to the provisions of the EAR-3 and TA zones, including community and civic uses; churches; nursing homes; schools; and child care establishments, as well as residential uses. Ms. Wade noted that the petitioner emphasized that residential uses will remain part of the proposed development, in the mixed-use building. She said that the staff found that increasing the CC zone on the subject property would not be detrimental to the "community of place" that is being established in the area. Reducing the residential density and providing spaces for cultural and civic institutions on the west side of Polo Club Boulevard could make way for a better shopping center development. The staff would like for the petitioner to consider increasing the residential density proposed on the east side of Polo Club Boulevard to the highest degree possible, in order to offset the density lost in the CC area on the west side.

Ms. Wade stated that the staff found that the proposed zone change was in agreement with the recommendations of the 2013 Comprehensive Plan, specifically with regard to providing employment opportunities to the community. The staff believes that the proposed land use is compatible with the existing land uses; that it will not impair the floodplain and environmental conditions of the site; and that the proposed development will provide a more appropriate mix of land uses on the subject property than previously planned. The staff and the Zoning Committee recommended approval of this rezoning request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, referring to a rendered copy of the plan. He explained that the petitioner is proposing to construct a 73,000 square-foot building with associated parking; and three outlots, with one 15,000 square-foot building and two 8,200 square-foot structures, respectively. The petitioner is proposing to accommodate a civic use in one of the structures, in order to accommodate the requirements of the CC zone. Accesses are proposed to the subject property from Fitzgerald Court, Polo Club Boulevard, and a service area is proposed at the rear of the property. Residential units are proposed to be located in a new mixed-use building, with associated parking on the lower level, in order to satisfy the required residential component of the CC zone. In addition, the petitioner is proposing a large amount of greenspace adjacent to and in the existing floodplain area on the edge of the subject property.

Mr. Martin stated that the Subdivision Committee recommended approval of this development plan, subject to several standard sign-off conditions. Condition #6 addresses the need for the Planning Commission to grant a variance to the height of the proposed large structure, since it exceeds the height limit of the CC zone. Condition #7 requires the inclusion of the lot requirements on the Final Development Plan for the property, since the Expansion Area was designed for flexibility, with no set lot requirements.

Mr. Martin said that the petitioner will also need to resolve the parking that is oriented toward Polo Club Boulevard in the outlot areas. That parking configuration was also of concern to staff at the time of the development of the adjacent Costco store, and it was resolved to their satisfaction at that time by orienting the front façade of the building to Polo Club Boulevard. The staff does not believe there is a need to orient parking or vehicular use areas to Polo Club Boulevard, preferring instead that the roadway be bordered by landscaped areas or a building façade. Mr. Martin noted that it should be simple for the petitioner to amend that area and adjust the parking, since they have a large surplus of proposed parking spaces for the property. He said that the petitioner will also need to document that they have resolved compliance with the 25% open space requirement of the zone. The staff's preferred configuration would have the open space oriented toward the proposed residential area.

With regard to condition #9, Mr. Martin noted the access points along Polo Club Boulevard were established on their own Final Development Plan for the boulevard. That plan indicated that Fitzgerald Court was to be located 800' from the Man O' War Boulevard/Polo Club Boulevard intersection, with subsequent access points set at distances of 500'. This development plan was revised in order to meet that standard; it originally depicted access points located 450' apart. While the plan now meets the standard, the staff of the Division of Traffic Engineering has concerns about the proposed intersection configuration and how it might relate to the long-term residential development across Polo Club Boulevard from the subject property. Mr. Martin stated that

funds have been deposited to make the Polo Club Boulevard/Fitzgerald Court intersection signalized at some point in the future, but the staff and the Division of Traffic Engineering do not believe that that configuration would provide for optimal spacing of traffic signals. The staff is also concerned about pedestrian access to the proposed development, again in consideration of future residential development across Polo Club Boulevard.

Commission Questions: Mr. Owens asked if the proposed residential building will meet the residential requirements for the portion of the property occupied by the Costco store as well. Mr. Martin answered affirmatively.

Mr. Penn asked if the proposed retail area in the mixed-use building will be limited to the first floor, with residential units in the remaining four floors. Mr. Martin answered affirmatively, explaining that the lowest level of the building is proposed to be used for parking, with commercial uses on the first floor, and all residential units above.

Variance Presentation: Mr. Emmons presented the staff report on the requested height variance, explaining that the CC zone has a maximum height limit of 48'. The petitioner has requested a height variance to allow the construction of a 56', five-story, mixed-use building. The building is proposed to be constructed adjacent to the greenway to the north of the subject property.

Mr. Emmons stated that the primary consideration in any variance request is the existence of some unique circumstances that would justify the granting of a variance. He noted that there is approximately a 15' grade change from the proposed location of the new mixed-use building to the existing creek in the greenway area. In their consideration of this request, the staff determined that there were two unique circumstances that supported the granting of the height variance: 1) the change in topography; and 2) the ED-zoned area located just across the greenway, which has a maximum height limit of 90'. The staff does not believe that granting the requested 8' height variance would be opposed to the intent of the Zoning Ordinance regulations. Mr. Emmons stated that the staff is recommending approval of the height variance, for the reasons as listed in the staff report and on the agenda, and subject to the three conditions as listed.

Commission Questions: Mr. Penn stated that the conditions for approval did not appear to be contingent upon the approval of the requested Zoning Ordinance text amendment. Mr. Sallee answered that condition #10, plus a note on the plan indicating that the issue will be resolved at the Final Development Plan stage, should address that concern.

Petitioner Representation: Bill Lear, attorney, was present representing the petitioner. He said that this rezoning request, along with the proposed text amendment, represent "a coordinated set of development approvals" that will allow the petitioner to bring a Cabela's retail store to Lexington-Fayette County.

Mr. Lear stated that the petitioner contends that the proposed development will not be detrimental to any of the surrounding areas. He said that the Cabela's store design is not typical of big-box retailers; rather, the store will be constructed to resemble a hunting or fishing lodge. The proposed layout of the property will allow for the retail portion of the property to back up to the existing wooded area, near the interstate, while the residential component is located further from the highway.

With regard to the staff's concerns about the proposed parking lot entrance at Polo Club Boulevard, Mr. Lear said that that entrance is critical for the success of the proposed development. The petitioner was advised by the Cabela's company that the location of such an entrance on the property is absolutely necessary for the location of their store. Polo Club Boulevard was constructed by the petitioner, all the way to Winchester Road, at significant cost. That construction process included a great deal of negotiation about the spacing of proposed intersections, which is referenced on more than one Final Development Plan for the area. The petitioner contends that that access configuration was agreed upon some time ago; it was reaffirmed during the development of the Costco store; and it meets the requirements of the Zoning Ordinance.

Mr. Lear displayed a rendering of a "residential over retail" development that is located near the University of Cincinnati, which the petitioner considers to be a good model for the type of development anticipated for the subject property. The proposed five-story building height would not be atypical for the style of development, and the petitioner contends that it would be a good example of the "building up instead of out" philosophy that Lexington-Fayette County has embraced in recent years. Mr. Lear reiterated that the adjacent ED property could have structures that are significantly taller than the proposed five story mixed-use building.

Mr. Lear opined that the CC zone at this location already has, in effect, stores that sell groceries, electronics, hardware, liquor, and pet supplies, all under one roof in Costco. The addition of the proposed Cabela's store would add fishing; hunting; hiking; camping; and outdoor recreation wear; as well as a small café, while still providing outlot areas for restaurants; pubs; small shops; and space for a church or other civic use. The

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petitioner will be able to accommodate many of the uses that are anticipated for the TA zone, without being forced to "shoehorn" a TA zone into an area not anticipated by the EAMP.

Mr. Lear stated that the petitioner is in agreement with most of the staff's recommendations, with the slight disagreement about the front access to the property on Polo Club Boulevard. He added that the petitioner contends that they should be able to construct a full, signalized intersection at that location, with no negative impact to the existing development or any future residential uses on the east side of Polo Club Boulevard. Mr. Lear concluded by requesting approval of the zone change, variance, and development plan as submitted.

Citizen Comment: There were no citizens present to comment on this request.

Commission Questions: Mr. Penn asked what the proposed timing would be for construction of the residential portion of the proposed development. Patrick Madden, petitioner, responded that it would take some time to put together the plans for the development, because it was a new style of development for him and he was seeking a partner who had experience with similar developments. Mr. Penn stated that there are no existing CC zones with residential uses. Mr. Madden said that he was aware of that, and that he was trying to determine the best way to provide the residential development.

Ms. Plumlee asked for an example of a possible civic use. Mr. Lear answered that civic uses could include libraries and fire stations, or any one of a number of non-profit entities. He added that, as the surrounding area develops further, there will be more of a demand for civic uses.

Ms. Mundy asked if the full access at the entrance to the Cabela's store on Polo Club Boulevard is proposed to be signalized. Mr. Lear answered that it was not currently proposed for a traffic signal, and noted that the decision to do so would likely be based on the evolving situation on the site as the proposed development is constructed. He said it would depend largely on how the property on the east side of Polo Club Boulevard is developed, and what the traffic counts for that proposed development would be. Ms. Mundy stated that it would likely be wiser to construct the intersection as right-in/right-out, as suggested by the Division of Traffic Engineering staff. Mr. Lear responded that it could be more appropriate, but, if so, the rest of the development would not take place, since the Cabela's company has indicated that it would not construct a store with a right-in/right-out intersection in front.

Ms. Mundy asked how many jobs would be provided by the Cabela's store, to which Mr. Lear responded that the number would be over 400.

Mr. Owens asked the staff of the Division of Traffic Engineering to weigh in on the proposed development plan. Ms. Kaucher stated that there had been a great deal of discussion about the access points on the subject property. She said that, given the proximity of the proposed new access to Fitzgerald Court, the Division of Traffic Engineering would prefer a right-in/right-out intersection, although there had been some more recent discussions about restricting only the left-hand turns out of the subject property, as well as straight movements through the new intersection. Mr. Owens asked if the issue could be resolved at the Final Development Plan stage. Ms. Kaucher responded that she would defer that answer to the petitioner, because she believed that it was their desire for the Planning Commission to approve the intersection as depicted. Nick Nicholson, attorney, stated that the petitioner would like to resolve the issue at this time, since Cabela's made it very clear that they would not proceed without a full intersection at that location. The petitioner contends that the intersection has been depicted in this configuration since before the construction of Polo Club Boulevard, on the first development plan for the property. There have since been three additional development plans, each of which depicts a full intersection at that location. Mr. Nicholson said that the petitioner spent a great deal of money to construct Polo Club Boulevard in its current configuration, and every conversation he had with a potential tenant on the property included the knowledge that the Planning Commission had approved three different development plans that included a full intersection at that location. He stated that the petitioner needs to resolve the issue today, since any alternate configuration for that intersection would likely negate the need for a Final Development Plan. Mr. Owens opined that he "hated being held hostage over a situation like this."

Mr. Lear noted that the Zoning Ordinance contains spacing standards; the spacing proposed on Polo Club Boulevard was not at the request of any particular retailer. The applicable standard in this instance is either 400 feet or 500 feet, or a specific formula used for calculating spacing on nonresidential streets. According to either methodology, the proposed access meets the requirements. Mr. Lear stated that the petitioner has been candid about Cabela's intent for the property, because he did not want Commission members to have questions at some point in the future if they approved a different access and Cabela's withdrew from the project.

Mr. Penn stated that future development of the petitioner's property across Polo Club Boulevard would be "held hostage" if the subject property were developed with a full intersection, since any street proposed on that property would need to line up with the intersection. Mr. Lear responded that, in a typical development, the

roads would need to line up, but there would be considerable leeway in developing that access. Mr. Penn stated that he wanted the proposed development to work, and did not want to hamper future development on the residential property across Polo Club Boulevard. Mr. Lear reiterated that a full intersection has been proposed at this location since the initial development plan for Polo Club Boulevard. Ms. Kaucher stated that Polo Club Boulevard functions more as a minor arterial than a collector street, which is its actual classification. She said that the required spacing, therefore, might not be adequate for the function of the roadway. The Division of Traffic Engineering staff is not suggesting the removal of that access point, but merely restricting its functionality.

Ms. Richardson asked what the timetable would be for the signalization of Fitzgerald Court. Mr. Nicholson answered that there was a note included on the plan for that property requiring that the signal be installed within three years; or the funds that were deposited by the developer must be returned.

Mr. Cravens asked if there was any guarantee that future residential development across Polo Club Boulevard would need to use the same access point as Cabela's; it could use the signalized intersection at Fitzgerald Court. Mr. Lear answered that the petitioner would be willing to commit to restricting the intersection at the time of the development of the residential property across Polo Club Boulevard. Ms. Kaucher stated that the Division of Traffic Engineering would feel more comfortable if that restriction was placed on the adjacent residential property at this time. She added that their concern is that future development of the residential property will generate sufficient traffic to merit a second signalized intersection at a spacing that does not meet local regulations.

Ms. Mundy asked if it was possible to restrict a property that was not being proposed for development at this time. Mr. Lear answered that the petitioner was willing to agree that, should a full access be provided for Cabela's, no connection would be necessary for the residential development across Polo Club Boulevard.

Mr. Penn stated that his reason for bringing up the issue of the access to the residential development was to ensure that it became part of the record of the discussion. Mr. Lear responded that the residential property across Polo Club Boulevard could not be developed without a development plan, which would be required to depict any proposed access points, and which would be approved by the Planning Commission.

Mr. Brewer stated that the situation was not perfect, but he believed that the proposed development would be a "solid addition to the local economy."

Zoning Motion: A motion was made by Mr. Brewer and seconded by Ms. Richardson to approve MAR 2014-13, for the reasons provided by staff.

Discussion of Motion: Mr. Owens stated that he did not want to stop a successful business from locating in Lexington-Fayette County, but he did not believe that the area around the subject property was envisioned to be developed with two such large retail stores. He said that he had concerns about the future traffic in the area, particularly once the residential development is built out.

Mr. Brewer agreed that the current development on the subject property was not originally envisioned there, but opined that it was a better option for two retail stores to back up to the interstate, rather than a large residential development. He said that he understood the traffic concerns, but the Commission had no control over the development of that property at this point, and he believed that this was a good plan.

Mr. Brewer's motion carried, 9-1 (Owens opposed; Wilson absent.)

Variance Action: A motion was made by Mr. Brewer, seconded by Ms. Richardson, and carried 10-0 (Wilson absent) to approve the requested height variance, as recommended by staff.

Development Plan Motion: A motion was made by Mr. Brewer and seconded by Ms. Richardson to approve ZDP 2014-68, subject to the conditions as listed on the agenda.

Petitioner Comment: Mr. Lear asked that the Commission remove the words "and vehicular" from condition #9 in order to allow for a full access to Polo Club Boulevard at the front of the proposed development.

Development Plan Action: Mr. Brewer amended his motion to reflect the deletion of the words "and vehicular" from condition #9, which was agreed to by Ms. Richardson. The motion carried 10-0 (Wilson absent).