

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **ZOTA 2012-11: AMENDMENT TO THE SPECIAL PROVISIONS OF THE CC ZONE (1/2/13)***– petition for a Zoning Ordinance text amendment to amend the requirements of the Community Center (CC) zone to allow a building to exceed 50,000 square feet in size.

REQUESTED BY: A & M Hamburg, LLC

PROPOSED TEXT: (Note: Text underlined is an addition to the current Zoning Ordinance.)

ARTICLE 23A – EXPANSION AREAS ZONING CATEGORIES AND RESTRICTIONS

23A-9 COMMUNITY CENTER (CC) ZONE

23A-9(k) SPECIAL PROVISIONS

1. At least 25% of the net developable acreage of any development within a CC zone shall be open space.
2. At least 40% of the aggregated floor area of buildings within a development in a CC zone shall be devoted to residential uses as permitted in EAR-3 and schools, churches and their accessory structures, and public buildings.
3. No building shall exceed 15,000 square feet in floor area unless:
 - a. the building contains a mix of residential and non-residential uses; or
 - b. the building is designed and intended to be used for a school, church or public building; or
 - c. the building is designed and intended to be used principally as a store selling food, produce and other grocery items (not primarily general merchandise) and not exceeding 50,000 square feet.
 - d. One additional building exceeding 50,000 square feet which is designed and intended to be used primarily as a store selling general merchandise, including food, produce and other grocery items, shall be permitted provided it is located within a CC zone containing at least 30 net contiguous acres, provided that the CC zone immediately adjoins and has frontage on an interstate interchange, and provided that such building is part of an integrated development governed by a single development plan.
4. Parking areas shall be designed so as to minimize the placement of parking between the buildings and the adjoining streets.
5. Each development within a CC zone shall have access to a pedestrian accessway.
6. Each development shall provide suitable facilities for the parking of bicycles.
7. The development shall be screened from adjoining zones as for a business zone under Article 18-3(a)(1).
8. Structures shall be sited to avoid the rear of the building facing a street (other than an alley) to the greatest extent practicable.

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

Staff Alternative Text:

ARTICLE 23A – EXPANSION AREAS ZONING CATEGORIES AND RESTRICTIONS

23A-9 COMMUNITY CENTER (CC) ZONE

23A-9(k) SPECIAL PROVISIONS

1. At least 25% of the net developable acreage of any development within a CC zone shall be open space.
2. At least 40% of the aggregated floor area of buildings within a development in a CC zone shall be devoted to residential uses as permitted in EAR-3; and schools, churches and their accessory structures; and public buildings.
3. No building shall exceed 15,000 square feet in floor area unless:
 - a. the building contains a mix of residential and non-residential uses; or
 - b. the building is designed and intended to be used for a school, church or public building; or
 - c. the building is designed and intended to be used principally as a store selling food, produce and other grocery items (not primarily general merchandise) and not exceeding 50,000 square feet; and
 - d. one additional building exceeding 50,000 square feet that is designed and intended to be used primarily as a store selling general merchandise, including food, produce and other grocery items, but only under the following conditions:
 1. the proposed building shall be located within a CC zone containing at least 30 net contiguous acres, and that has frontage on an interstate interchange;

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

2. the building shall be part of an integrated development governed for all contiguously zoned CC land (excluding right-of-way) by a single development plan; and
3. any building exceeding 80,000 square feet in size shall also adhere to the "Design Guidelines for 'Big-Box' Establishments," excluding guideline numbers 6 and 14, which are contrary to other provisions of the CC zone. Such design guidelines shall be met unless waived by the Planning Commission through its approval of a final development plan.
4. Parking areas shall be designed so as to minimize the placement of parking between the buildings and the adjoining streets.
5. Each development within a CC zone shall have access to a pedestrian accessway.
6. Each development shall provide suitable facilities for the parking of bicycles.
7. The development shall be screened from adjoining zones as for a business zone under Article 18-3(a)(1).
8. Structures shall be sited to avoid the rear of the building facing a street (other than an alley) to the greatest extent practicable.

The Staff Recommends: Approval of the Staff Alternative Text, for the following reasons:

1. The proposed text amendment to the special provisions of the Community Center (CC) zone will allow the option for a larger retail use in a CC area that meets the criteria, while still complying with the intent of the zone and the Community Center (CC) land use category.
2. As defined in the 2007 Comprehensive Plan, a mix of uses will still be required in CC areas to meet the needs of the surrounding neighborhoods.

Staff Presentation: Ms. Wade began the staff's presentation by noting that the staff had distributed a staff exhibit packet and a letter of opposition to this proposed text amendment. She stated that the petitioner is proposing a text amendment to Article 29 in order to amend the special provisions of the Community Center (CC) zone to allow buildings larger than 50,000 square feet under the three circumstances: the property has a minimum of 30 contiguous acres of CC-zoned land; the property is located adjacent to an interstate interchange; and the property is part of an integrated development governed by a single development plan.

Ms. Wade stated that the CC zone is only permitted in the Expansion Area. She explained that the Expansion Area Master Plan, which was adopted as part of the 1996 Comprehensive Plan, was the product of a long-term, collaborative effort that involved a great deal of citizen input. It established a new approach to development by proposing to divide large tracts of developable land into separate communities, each of which would have a mix of housing, community facilities and commercial development, as well as areas set aside for economic development. Within the EAMP, there are seven land use categories, one of which is the Community Center category. The EAMP designated four CC areas, on five properties: Hamburg; Sikura-Justice; Blackford; Gess; and Newmarket.

Ms. Wade said that the definition of the CC land use category established by the EAMP has carried forward to the 2007 Comprehensive Plan. It addresses the idea that Community Centers should have a horizontal or vertical mixture of uses, including retail, office, and residential, as well as institutional uses and public spaces. The CC zone was developed to implement the Community Center land use category, and its intent from (Article 23A-9) reads: "Implementing the land use category by providing a mixture of residential and non-residential uses which serve the needs of the surrounding neighborhoods." Ms. Wade explained that the commercial uses in CC zones are permitted "by right," but the buildings are limited by size restrictions. Any building in that zone can be up to 15,000 square feet in size. If a mixture of uses is provided in a single building, then there is no size limit. The Special Provisions of the CC zone allow for a grocery store to be up to 50,000 square feet in size. The original Zoning Ordinance language for the CC zone, drafted in 1996, intended to create mixed-use neighborhoods, with the possibility of a small grocery store located internally, surrounded by residential dwelling units.

Ms. Wade explained that, since the properties in the Expansion Area were rezoned, few of the areas with the CC zoning designation have developed as originally planned. The Providence Place CC area was unplanned, but was approved by the Urban County Council to provide for commercial uses in Expansion Area 3. That area remains mostly undeveloped, with the exception of a small parking lot, which serves an adjacent hotel. The second diversion from the planned CC areas is located on the Hamburg property, where the CC land was moved to an alternate location. That property also remains undeveloped. Ms. Wade noted that the staff believes that CC land has developed slowly, and not to its full potential.

Ms. Wade stated that the existing CC lands are in the following locations:

- 1) In Expansion Area 2a, on the Hamburg East Property at the intersection of Polo Club Boulevard, Man O' War Boulevard, and Interstate 75. The property has 37.5 total developable acres, which are currently vacant.
- 2) Split between the Sikura-Justice and Blackford Properties in Expansion Area 2a. The CC area on the Sikura-Justice Property is 8.21 acres in size, and is currently occupied by a bank, pharmacy, and gas station, with additional residential and retail uses planned. The portion on the Blackford Property is 29.8 acres in size, and is currently vacant.

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- 3) In Expansion Area 2b on the Newmarket property at the intersection of Todds Road and the planned extension of Polo Club Boulevard. The CC area in that location is 4.27 acres in size, with a townhouse residential development already constructed and construction of a medical office underway.
- 4) On the Gess Property, at the intersection of Hays Boulevard and Sperling Drive in Expansion Area 2c. That CC area is 9.36 acres in size, with a multi-family residential development currently underway.
- 5) In Expansion Area 3 on Providence Place Parkway, that property is 6.95 acres in size, and it is currently mostly vacant. There are existing development plan for retail, gas station, and residential uses.

Ms. Wade said that, in evaluating the petitioner's proposed text amendment, the staff considered that there had been a significant realignment of the Hamburg Property CC zone, and now that the property adjoins Interstate 75, it is bordered on three sides by significant roadways. Is no longer internally situated in relation to the surrounding residential area; and is no longer integrated in the existing greenway system, which is intended to connect the neighborhoods.

Ms. Wade said that, except for the size restrictions, the petitioner's proposal would not alter any of the existing Special Provisions of the CC zone, including the provision of common open space and the requirement that at least 40% of the total floor area for the development be dedicated to non-commercial land uses, such as residential, or churches, schools, or other public uses. In addition, the proposed text amendment would limit larger buildings in the CC zones to just one big-box establishment or anchor store, and those large commercial buildings would have to adhere to the guidelines for big-box establishments.

Ms. Wade stated that the staff believes that, after 16 years of minimal development in the CC zones, there should be a change made to the zoning regulations. The staff also believes it is important that the petitioner's proposal is self-limiting, and the petitioner is agreeable to providing big-box amenities for the proposed development. Ms. Wade said that the staff is therefore recommending approval of the applicant's request, along with a proposed staff alternative text, which is listed in the staff report and on the agenda. The staff alternative text recommends including big-box standards as required for other business zones for buildings that exceed 80,000 square feet. There were two big-box guidelines, #6 and #14, that the staff felt were contrary to the other Special Provisions of the CC zone, so those should not be required for big-box stores in the CC zone. Ms. Wade stated that the Zoning Committee also recommended approval of the staff alternative for this request.

Commission Questions: Mr. Penn asked if this proposed text amendment would apply to the entirety of the CC-zoned area on the Hamburg Property. Ms. Wade answered that it would apply to all of the CC zones. Mr. Penn asked Ms. Wade to confirm that no more than one big-box structure would be allowed on the 37.5-acre property. Ms. Wade responded affirmatively.

Mr. Owens asked how the staff arrived at the 80,000 square-foot recommendation for big-box stores in the CC zone. Ms. Wade answered that, in the B-6P zone, the guidelines are established to apply to buildings at least 80,000 square feet in size. So, in the other business zones, a big-box store is essentially defined as anything over 80,000 square feet. Ms. Wade added that, when the design guidelines were initially adopted, there were discussions between property owners, the staff, and the Planning Commission to establish the 80,000 square-foot requirement for big-box structures. The staff believed that it would be consistent, since the big-box design guidelines reference the 80,000 square-foot requirement, that the CC zone should be consistent with the remainder of the Ordinance. Mr. Owens asked if the staff would be willing to consider requiring the big-box standards, in CC zones only, to become applicable at 50,000 square feet, rather than 80,000. Ms. Wade answered that the staff would be agreeable to that change.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner. She stated that the petitioner is in agreement with the proposed staff alternative text.

Ms. Wiseman said that the proposed text amendment will not change the residential and open space components of the current regulations for the CC zone. It also would not allow for more retail square footage in that zone. It would, however, allow a developer the flexibility to reconfigure developable retail space that could otherwise be a grocery store and several other shops into one location. The petitioner contends that, due to the nature of the proposed retail tenant, many of the goods and services that would normally be available from a number of smaller shops in a Community Center could be provided in one larger structure. That would allow for a more efficient use of the land; and the retailer in question could, in turn, provide significant discounts on those goods and services for their members. Ms. Wiseman also noted that the proposed text amendment would not add new uses or permit additional square footage to buildings in the CC zone.

Ms. Wiseman stated that this text amendment was proposed as a means to provide the community with the opportunity to attract an outstanding company with the possibility of economic development, since the proposed retailer could bring at least 200 jobs. She added that the proposed retailer is not requesting any state or local government incentives for their location in Lexington-Fayette County.

Note: Ms. Roche-Phillips arrived at this time.

Jackie Frank, Vice-President of real estate development, Costco Wholesale, stated that the company is an international chain of warehouse clubs that provides merchandise at a discount via its membership-only stores. He said that the company tailors its products and services specifically toward small and medium-size businesses, for their own use as well as resale, to help them reduce their operating costs. Costco pays their employees a "living wage," which results in low turnover and greater job satisfaction, as well as enabling employees to give back to their communities through charitable donations and volunteerism.

Mr. Frank stated that Costco abides by a code of ethics that involves: obeying the law; taking care of their members; taking care of their employees; and respecting their suppliers, all of which results in rewards for their shareholders. He said that, based on global sales data, the company is the second-largest retailer in the United States and the seventh-largest in the world, ranking at #24 in the Fortune 500. Sales in 2011 were approximately \$87 billion, with fiscal year 2012 earnings projected at \$97 billion. Each warehouse store averages about \$146 million in sales each year. Mr. Frank said that Costco employ nearly 170,000 people worldwide in 607 stores, which are located in the United States, Canada, Mexico, the United Kingdom, Europe, Asia, and Australia. There are approximately 67 million club members worldwide, with two different "tiers" of membership and a 90% renewal rate. The average hourly wage for Costco employees in the United States is \$20.51 per hour, with approximately 90% of the positions being benefit-eligible. Mr. Frank stated that, after five years of employment, a cashier can earn nearly \$49,000 a year in salary and bonuses. The company believes that the generous salary contributes to high employee satisfaction, which is demonstrated by their less than 6% turnover rate for employees who have been with the company for more than a year.

Mr. Frank stated, with regard to the company's merchandise, that Costco is considered the largest seller of fine wines in the world, with \$1.3 billion in wine sales last year. The company is known for its high-quality foods, with \$4.6 billion in meat sales last year, as well as fine seafood and bakery items made from scratch. In addition, Costco operates a sustainable program for sourcing fresh produce from 41 countries, with nearly \$4 billion in produce sales in the last fiscal year. Their stores also include pharmacies and optical shops, with 3.2 million pairs of glasses sold in fiscal year 2011 and a ranking as one of the top opticians in the United States. As part of their efforts to provide high-quality goods at the lowest prices, Costco developed their own private label products that they believe are as good as, or better than, most national brands.

Mr. Frank said that, at the time that most Zoning Ordinances were developed, retail/wholesale warehouse stores such as Costco did not exist. He stated that there are already a large number of Costco members in the Lexington area who currently shop at their stores in Louisville and Cincinnati, so the company believes that this would be the perfect market for them to construct a new facility. In addition, the concentration of small businesses and a viable large market should contribute to the success of the proposed store. When considering possible sites for new stores, Costco looks for properties that are zoned appropriately, have site services and utilities, are easily developable, and have access to a regional roadway system. Mr. Frank stated that Costco is a "regional draw," with customers often traveling long distances to their stores, so easy access to the roadway system is critical to their success. He added that Costco is compatible with many other uses, including residential uses, so the proposed store should fit well with any of the other CC zone uses. Mr. Frank added that he had reviewed all of the Big-Box Design Guidelines, and that the Costco development plan can comply with and possibly exceed those requirements.

Commission Questions: Mr. Penn asked how many acres of the 37.5 site they are reviewing would be used for the proposed Costco store. Mr. Frank answered that between 15 and 16 acres would be needed to accommodate the warehouse store as well as the required parking, landscaping, and drainage system.

Mr. Owens asked, with regard to his earlier question to the staff, if the petitioner would be willing to set the threshold for the big-box guidelines to take effect in the CC zones at 50,000 square feet, rather than 80,000. Ms. Wiseman answered that the petitioner would be agreeable to that change. Mr. Owens stated that he believes that it would be a benefit to the CC zone overall to have that threshold set at 50,000 square feet.

Mr. Penn asked how the staff envisioned the remainder of the 37 acres being used. Ms. Wade answered that the staff would anticipate some multi-family residential development. She added that the 2007 Comprehensive Plan identified a location for a middle school on the Hamburg property; when the property was rezoned, however, Fayette County Public Schools did not reserve that space for a school. Patrick Madden, petitioner, said that he believes that the development could contain restaurants and the residential uses necessary to meet the requirements of the CC zone. He added that he would like for the proposed development to model the "village-type atmosphere" that he believes is the intent of the CC zone. Mr. Penn said that he hopes that the proposed development will be successful, since he believes that, if it is, it could serve as a model for future development for the other CC zones in Lexington-Fayette County.

Ms. Roche-Phillips asked if 40% of the CC area is required to be used for residences. Ms. Wade responded that 40% of the development is required to be non-commercial. Ms. Roche-Phillips asked how that number is measured. Ms. Wade answered that the 40% is calculated by floor area. Ms. Roche-Phillips asked, based on those calculations, how much of the 37 acres of the proposed development would be for non-commercial uses. Ms. Wade responded that it would be difficult to calculate, since there can be a vertical element, particularly in multi-family structures. She added that the staff had done

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some calculations, and determined that, if the proposed Costco store were to be 150,000 square feet in size, then the petitioner would be required to construct 100,000 square feet of non-commercial uses in order to meet the 60/40 requirement. Ms. Roche-Phillips asked if the petitioner would be required to address how that balance will be achieved at this stage in the process. Ms. Wade responded that the petitioner would address that issue on their preliminary or final development plan, and the staff would review the proposed mixture of uses at that time, and she added that the plan would have to include that information in order to demonstrate that it could meet the requirements of the Zoning Ordinance.

Ms. Beatty asked, with regard to the opposition email the staff distributed to the Commission members, if the staff had met with the Gleneagles Owners Association and attempted to address their concerns. Ms. Wade answered that the staff had received that email on the morning of this meeting. She explained that the email did not represent the Gleneagles Owners Association; it was submitted by an individual who resides in the neighborhood. Ms. Wade said that Mr. Sallee attended a neighborhood meeting a few days before this hearing, and he could elaborate on what type of discussion took place. Mr. Sallee stated that the meeting, which was attended mostly by the Board of the homeowners' association, lasted approximately 90 minutes. The petitioner and their representative were present as well. The staff provided information about the proposed text amendment, and distributed copies of their staff report. Mr. Sallee said that the Board members were concerned about the development meeting the required 60/40 mixture of uses, as well as how the proposed development might be configured on the final development plan. He noted that he did not stay until the end of the meeting, so he was not aware if the Board made any decisions or took a vote on the issue. The email to which Ms. Beatty referred was the only communication the staff received with regard to this request, although two of the homeowners' association board members have since asked to be notified at the time of the filing of a final development plan for the property. Mr. Sallee said that the staff placed copies of those requests in the file for the zoning development plan for the property, and agreed that they would provide notification of the filing of the development plan.

Mr. Owens asked if Costco would be the only commercial use on the subject property. Ms. Wade answered that the staff would anticipate additional complementary uses on the property as well.

Mr. Brewer stated that there had been a great deal of discussion about this request at the Commission's most recent work session, and he believed that it had been deliberate and necessary. He added that he appreciated the work that the staff and petitioner had put into resolving the Commission's concerns about this proposed text amendment; and, although there are some process issues that need to be addressed, he believes that this item should be recommended for approval, in order to allow the petitioner to move forward with the proposed development.

Motion: A motion was made by Mr. Brewer and seconded by Ms. Beatty to approve ZOTA 2012-11, for the reasons provided by staff.

Discussion of Motion: Mr. Owens asked if Mr. Brewer's motion referred to approval of the staff alternative text, with which Mr. Brewer agreed. Mr. Owens asked if Mr. Brewer would be willing to lower the big-box guideline threshold for the CC zone from 80,000 square feet to 50,000 square feet. Mr. Brewer answered that he was not very concerned about that issue, but he would be willing to consider it.

Mr. Penn stated that the proposed language to which Mr. Owens referred would require that structures over 50,000 square feet in size in a CC zone be required to adhere to the Big-Box Design Guidelines.

Ms. Roche-Phillips stated that she would not support this proposed text amendment, since she believes that it would be contrary to the Commission's purpose in comprehensive planning. She added that the CC zone was intended to include village-type neighborhood development, not regional destination shopping, and the Planning Commission has a responsibility to consider the future impacts of their decisions.

Mr. Owens asked if Mr. Brewer would be willing to amend his motion to include the big-box threshold at 50,000 square feet, rather than 80,000. Mr. Brewer responded that he would be willing, if the other Commission members were in support of that change. Ms. Beatty said that she would be agreeable.

Mr. Cravens said that he did not believe that a 50,000 square-foot building would be large enough to incorporate all of the elements of the Big-Box Design Guidelines. He said these would trigger bus stops, parking and designs on the outside of these boxes. He added that he likely would not support the proposed change to 50,000 square feet.

Mr. Brewer said that he did not have strong feelings either way, but he did not want the proposed text amendment to hamstring other developments, with all due respect to Ms. Roche-Phillips' concerns.

Mr. Owens stated that his concern stems from the fact that there are currently no big-box requirements for any structures in the CC zone.

Mr. Brewer asked if the staff had a recommendation with regard to the big-box concerns. Ms. Wade answered that the staff recommendation was 80,000 square feet.

Mr. Brewer stated that he would like to leave his motion intact, to approve ZOTA 2012-11, with the staff alternative text as written, for the reasons provided by staff. Ms. Beatty said that she would second that amendment to the motion.

Action: Mr. Brewer's motion carried, 5-4 (Mundy, Owens, Plumlee, and Roche-Phillips opposed; Berkley and Wilson absent).

Mr. Brewer stated that he would like to leave his motion intact, to approve ZOTA 2012-11, with the staff alternative text as written, for the reasons provided by staff. Ms. Beatty said that she would second that amendment to the motion.

Mr. Owens asked if ZOTA would be the only permitted use on the subject property. Mr. Wingo answered that the staff would evaluate additional conditional-use cases on the property as well.

Mr. Brewer stated that he had done a good deal of discussion about the request at the Commission's most recent work session. He explained that he had had a lot of discussion about the request and that he had been advised that the staff and the Commission would be looking at the request and that he should be prepared to provide some information for approval. In order to give the Commission more information about the request, he had prepared a staff alternative text amendment, and although he is not sure if it will be approved, he believes that the staff should be recommended for approval in order to give the Commission more information about the request.

Mr. Owens asked if the staff would be recommending the staff alternative text amendment for approval. Mr. Wingo answered that the staff would be recommending the staff alternative text amendment for approval.

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