

- V. **ZONING ITEMS** - The Zoning Committee met on Wednesday, September 5, 2013, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Patrick Brewer, Mike Cravens, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ZONING ORDINANCE TEXT AMENDMENT**

1. **ZOTA 2012-9: AMENDMENTS TO ARTICLES 1, 8 & 12 FOR MODIFICATIONS TO THE B-1 ZONE** – petition for a Zoning Ordinance text amendment to Articles 1, 8 and 12 to make various modifications to the B-1 zone, including the addition of several new definitions.

Referral back to the Planning Commission to reconsider regulations of rehabilitation homes and tattoo parlors.

TATTOO PARLORS

ARTICLE 8: SCHEDULE OF ZONES

8-19 LEXINGTON CENTER BUSINESS (B-2B) ZONE

8-19(d) Conditional Uses

11. Tattoo parlors.

8-19(e) Prohibited Uses

13. Tattoo parlors.

REHABILITATION HOMES

ARTICLE 8: SCHEDULE OF ZONES

8-15 PROFESSIONAL OFFICE (P-1) ZONE

8-15(b) Principal Uses

20. Assisted living facilities and rehabilitation homes, but only when more than five hundred (500) feet from a residential zone.

8-15(d) Conditional Uses

5. Assisted living facilities and rehabilitation homes, when located closer than five hundred (500) feet from a residential zone.

8-16 NEIGHBORHOOD BUSINESS (B-1) ZONE

8-16(b) Principal Uses

16. Rehabilitation homes, but only when more than five hundred (500) feet from a residential zone.

Re-number remaining section

8-16(d) Conditional Uses

10. 11. Assisted living facilities and rehabilitation homes, but only when more than five hundred (500) feet from a residential zone.

ARTICLE 12: PLANNED SHOPPING CENTER (B-6P) ZONE

12-512-4—CONDITIONAL USES

f. Assisted living facilities and rehabilitation homes, when located closer than five hundred (500) feet from a residential zone.

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

The Staff Recommended: Postponement, for the following reason:

1. The staff would like the opportunity to meet with the Department of Law in order to discuss the possible implications of making rehabilitation homes a conditional use in every instance.

Staff Presentation - Ms. Wade explained that, at the request of the Lexington-Fayette Urban County Council, the Planning Commission is being asked to reconsider a portion of ZOTA 2012-9. This is a petition for a Zoning Ordinance text amendment to Articles 1, 8 and 12 to make various modifications to the B-1 zone, including the addition of several new definitions. She further explained that the Council had received the final report for this request in February 2013, after the Commission's action on January 31, 2013.

Ms. Wade directed the Commission's attention to the staff report for the requested changes to the proposed text amendment, and briefly explained the four items included in the staff exhibit packet. She said that after the Council had received the proposed text amendment in February, they had referred it to the Planning and Public Works Committee, who then discussed the proposed changes several times. In June, the Committee voted to make changes to how tattoo parlors in the B-2B (Lexington Center Business) zone and to rehabilitation homes are regulated. Ms. Wade said that rehabilitation homes were not discussed when the Planning Commission first considered this text amendment; and for that reason, the Law Department advised the Council to refer those changes back to the Planning Commission for further consideration.

Ms. Wade said that the Planning Commission had recommended that tattoo parlors be a prohibited use in the Downtown Business Center (B-2B) zones, noting that this change would apply to the general area surrounding the Rupp Arena. However, upon the Council's review; they recommended that tattoo parlors be a conditional use in the B-2B zone. The staff does not see any real significant issue with that change.

Ms. Wade then said that, as for rehabilitation homes, when the Planning Commission and the staff had reviewed the original request, no changes were made as to how rehabilitation homes were being regulated. Following the Planning and Public Works Committee's review, the Council now proposes to regulate rehabilitation homes as a conditional use in the P-1, B-1 and B-6P zones, which then have similar implications in the B-2 and B-2A zones. She then said that the current Zoning Ordinance allows rehabilitation homes to be a principal permitted use if it is located more than 500' from a residential zone. She then said that, by implementing the Council's recommendation, it would result in there being no zone where a rehabilitation home would be a principal use, with the exception of the Community Center zone in the Expansion Area, and there are only five locations where this zone could occur throughout the county.

At the request of the Council, Ms. Wade said that the staff had reviewed the proposed change for rehabilitation homes, and believes there would be an issue raised with the Federal Fair Housing Act. She then said that, also at the Council's request, the regulations for rehabilitation homes were significantly reviewed in 2004, at which time a small change to the definition was made that basically excluded any persons that falls within the definition of a person with a disability. This is regulated by KRS 100.982. At that time, the staff had also suggested the current spacing requirements that are in the Zoning Ordinance, as opposed to making rehabilitation homes a conditional use within these same zones. Ms. Wade said that, in reviewing the previous case files, rehabilitation homes are of various sizes and are able to serve a large range of people. This was one reason that rehabilitation homes were suggested as a conditional use in areas that were closer to a residential area, but still a principal permitted use in other areas. She added that in general, in our community, land uses are by-right somewhere, even with restrictions, especially for the people who are at a disadvantage.

Ms. Wade said that one of the primary issues discussed a decade ago was compliance with the 1988 Federal Fair Housing Amendments Act (FHAA) and the Americans with Disabilities Act (ADA). She then said that, in reviewing the Act and researching its implications, the staff had found that those individuals who are recovering from an addiction are considered disabled, and therefore are considered a "protected class" by the FHAA and the ADA. While governments have the authority to protect the health, safety and welfare of their citizens through land use regulations, that authority has at times around the country been used to restrict the ability of individuals who have a disability to live in some communities. Ms. Wade said that there is case law that protects individuals; and it is important to state that the Fair Housing Act is intended to prohibit the application of special requirements through the land use regulations, such as conditional use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice. She said that, given current case law centered around the fair housing practices, it is imperative that any ordinance changes balance a legitimate government purpose, such as protecting the general welfare or safety of children, while not excluding housing choices for our protected class of citizens. In terms of the local regulations, the definition of rehabilitation homes covers both a protected group, such as recovering addicts; and a group, such as parolee, that do not have any coverage by these federal laws. She said that, at the Council's Planning and Public Works Committee meeting in June, several Council members voiced concern about the possibility of rehabilitation homes, specifically housing parolee being located near schools for academic instruction or child care centers. She said that, at least one member opined that rehabilitation homes that house individuals who were convicted of violent crimes or sex offenses should not be allowed to live near a school or day care center because of the potential threat to young children. The staff does believe this is a legitimate government purpose for a revision to our zoning regulations.

Ms. Wade said that, since this was initially postponed by the Commission, the staff had met with the Law Department to review the suggested changes made by the Council. The staff has very serious reservations about overly restricting a class of citizens that is protected by the Fair Housing Amendment Act and the Americans with Disabilities Act. With that being said, the staff continues to recommend that there be at least some opportunity to allow a rehabilitation home as a principal permitted use in our community. Adding a 500' setback from schools for academic instruction and child care centers would be rational and logical. Ms. Wade said that there is not a specific staff recommendation for the Commission to consider because the staff believes there are several options. She then said that the Commission could consider leaving the text amendment as it is today or use the alternative text, which would still meet what is required by the Federal Fair Housing Act. She added that the staff is not comfortable with making this use a conditional use in all cases.

Planning Commission Questions – Mr. Penn asked why the staff is not comfortable in making the rehabilitation homes a conditional use. Ms. Wade said that some individuals that reside in rehabilitation homes are a protected class of citizens, and the Federal Fair Housing Act notes that if the government is going to restrict uses, then it needs to be in a less imposing manner. Mr. Penn said that the reason he prefers the rehabilitation home to be a conditional use is to inform the public in advance within a 500' notice area. He then said that he does not want someone to wake up one morning with this type of use in their area without a notification being sent out, plus this would also grant a hearing on that request. He added that he does not know how this would balance out with the Fair Housing Act, and he is not concerned with this being in any zones as long as there is a hearing involved. Mr. Penn said that the staff also said rehabilitation homes need to be a permitted use in some areas. Ms. Wade agreed that the staff is of that opinion. Mr. Penn asked what areas the staff is recommending. Ms. Wade said that the staff is recommending that it remain in its current zone, which is the Professional Office and Business zones. She then said that rehabilitation homes are already restricted in the agricultural and residential zones as a conditional use in all cases. She added that the more permissive zones are the business zones. If a rehabilitation home cannot be a principal use anywhere else, then this would be where they could be located. Mr. Penn said that a rehabilitation home is a broad term, and it covers many situations that are not all equal. Ms. Wade agreed.

Ms. Blanton said that sex offenders are already prohibited from living near schools, and asked if this type of use would be considered as an "address." Ms. Wade replied that it is and that was mentioned at the Planning and Public Works Committee meeting. She then said that Council Member Lawless had researched that issue and State law does require separation between these types of homes and schools and playgrounds, but it only applies to those persons who committed the crime after the law was enacted. The most recent law was enacted in 2008; however, if a person committed a sex offense prior to 2008, they would not fall under those restrictions, in terms of living arrangements. Ms. Blanton said that, in reviewing the alternative text, a rehabilitation home would not be a principal use in the downtown business zones. Ms. Wade said that that use is permitted in P-1 and B-1 and that regulation carried over to the B-2 zone, in terms of principal uses; and in terms of conditional uses it does not use the same language. Ms. Blanton said that the alternative text does a good job in balancing the public safety concerns along with making sure that the Commission is not eliminating rehabilitation homes from the community. She then said that we want people to be rehabilitated and to be able to reenter society. She added that she understands what Mr. Penn is saying about the public having the right to know; but by the same token, it puts a lot of pressure on the Board of Adjustment. She said that people have the right to voice their opinions on a use, but we have to make sure that these uses are allowed within the community.

Ms. Plumlee said that she is concerned with a rehabilitation home being a principal use within a neighborhood zone and not in a downtown business zone. She then said that it seems like the word "neighborhood" has a connotation for uses that are less intense than are rehabilitation homes. Ms. Wade said that, with the distance restriction, it does currently limit the use to the larger B-1 zoned parcels or in a larger concentration of business or professional office zones. She then said that not every B-1 zone would be eligible because it would be within 500' of a residential area, it already significantly restricts that use. She added that since a lot of the B-1 properties are near or are surrounded by residential areas, such as the Romany Road and Chevy Chase areas, it would not be a principal permitted use. She said that recently the Buckhorn Drive area had requested a rehabilitation home to be permitted in the shopping center zone, and the staff was unaware of any issues with that facility. She clarified that if a rehabilitation home was a principal use in the B-1 zone, it would continue forward into the B-2 and B-2A zones. She said that however the principal use is treated in the B-1 zone carries forward to the B-2 and B-2A zones.

The Chair asked if the downtown business zone is a mixture of residential and business uses. Ms. Wade said that the uses are mixed, but the zoning is far less mixed downtown. She then said that the core of downtown is in a business zone, and this particular use is restricted from its proximity to a residential zone - not a residential use. She added that there is already one rehabilitation home located in the downtown area. This rehabilitation home is located near a residential zone, but the staff is unsure if it is within 500 feet of one.

Audience Comment – The Chair asked if anyone in the audience wished to discuss these requests. There was no response.

Motion: A motion was made by Ms. Blanton, and seconded by Mr. Cravens, and carried 10-0 (Brewer absent) to approve ZOTA 2012-9, with the alternative text for "rehabilitation home" and the amended language for "tattoo parlor."