

Note: Chairman Owens declared a brief recess at 2:47 p.m. The meeting reconvened at 2:53 p.m.

2. **ANDOVER TOWNHOUSE PARTNERS, PLLC, c/o DOUG CHARLES ZONING MAP AMENDMENT & WILLIAMS PROPERTY, LOT 1, ZONING DEVELOPMENT PLAN**

- a. **MAR 2014-14: ANDOVER TOWNHOUSE PARTNERS, PLLC, c/o DOUG CHARLES (10/5/14)*** – petition for a zone map amendment from a Single Family Residential (R-1D) zone to a High Density Apartment (R-4) zone, for 3.66 net (4.54 gross) acres, for property located at 3400 Todds Road.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's Goals and Objectives recommend growing successful neighborhoods through expanded housing choices that address the market needs for all residents (Theme A, Goal #1, Obj. b.); encouraging infill development throughout the Urban Services Area as a strategic component of growth (Theme A, Goal #2); providing well-designed neighborhoods that are connected for all modes of transportation (Theme A, Goal #3, Obj. b.); and working to achieve an effective and comprehensive transportation system for the community (Theme D, Goal #1). The above Goals and Objectives are applicable to the requested zone change and should guide the development of the subject property.

The petitioner proposes to develop 20 attached single family residences (a combination of townhouses and duplexes) on the property, which would yield a density of 5.46 dwelling units per acre.

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

The Staff Recommends: Approval, for the following reason:

1. The requested High Density Apartment (R-4) zone is found to be in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. The Goals and Objectives recommend growing successful neighborhoods through expanded housing choices that address the market needs for all residents (Theme A, Goal #1, Obj. b.). The petitioner proposes a townhouse style development of 20 dwelling units, which creates a variety of housing types in the immediate area that complement the existing neighborhood.
 - b. The Goals and Objectives encourage infill development throughout the Urban Services Area as a strategic component of growth for our community (Theme A, Goal #2). The petitioner proposes to increase the density of this portion of the Williams Property, from less than one unit per acre to 5.46 dwelling units per acre.
 - c. The Goals and Objectives recommend providing well-designed neighborhoods that are connected for all modes of transportation (Theme A, Goal #3, Obj. b.), and working to achieve an effective and comprehensive transportation system for the community (Theme D, Goal #1). With some slight modifications to the petitioner's development plan, these goals can also be met by the petitioner if the stub street, Andover Green, is utilized rather than providing access to Todds Road.
 - d. Chapter 3 of the Comprehensive Plan (Growing Successful Neighborhoods) emphasizes the importance of safe, secure, well-designed neighborhoods that create a sense of place and identity, which can occur with the incorporation of the subject property into the Andover neighborhood.
 2. This recommendation is made subject to approval and certification of ZDP 2014-66: Williams Property (Lot 1), 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. **ZDP 2014-66: WILLIAMS PROPERTY, LOT 1 (10/5/14)*** - located at 3400 Todds Road.
(EA Partners)

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

1. Provided the Urban County Council rezones the property R-4; 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. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote the number of bedrooms proposed in the site statistics.
8. Denote type of tree species in tree inventory.
9. Addition of parking space location and size.
10. Addition of existing and proposed easements.
11. Discuss access to Andover Green.
12. Discuss proposed driveway dimensions.
13. Discuss proposed access to Todds Road.
14. Discuss the need for storm water detention improvements.
15. Discuss compliance with Article 9 duplex setback, parking and open space requirements.

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

Zoning Presentation: Ms. Wade presented the staff report, and began by noting that the staff had received one letter of objection to this proposed zone change, and distributed it to the Commission members for their review. She briefly oriented the Commission to the location of the subject property on the south side of Todds Road, outside of Man O' War Boulevard. The property is approximately 3.7 acres in size, and is located between the Andover Baptist Church to the northwest, and the Andover Golf & Country Club to the southeast. The rest of the area is developed as single-family residences, with Andover Woods, which was originally also part of the Williams property, located directly to the southwest. Andover Green is a local street in that subdivision, which stubs into the rear of the subject property. The area is characterized predominantly by R-1D zoning, with R-1E and R-3 zoning located across Todds Road. There are also a few remaining tracts with A-U zoning in the area, associated with the adjacent church and the golf course.

Ms. Wade displayed an aerial photograph of the street system in the vicinity of the subject property, noting the location of Forest Hill Drive, which creates a loop, intersecting with Todds Road near the subject property, and then again further to the south. She displayed the following photographs of the subject property and surrounding area: 1) a view of the subject property from the existing Andover neighborhood, noting the Andover Green stub street; 2) a view toward Todds Road; 3) a view from Todds Road, noting the existing single-family residence on the subject property; and 4) the existing Todds Road corridor, from McFarland Lane, which is proposed to be closed at some point in the future. Ms. Wade noted that Todds Road is a two-lane, rural section near its intersection with McFarland Lane and along the subject property's frontage, but it is in the process of being widened and improved, with curbs, gutters, and sidewalks. The vertical and horizontal curves are also being reduced as part of the widening project.

Ms. Wade stated that the petitioner is proposing to rezone the subject property in order to develop a combination of 20 townhouses and duplexes, for a density of 5.46 dwelling units per acre. The corollary development plan filed with this request does not depict a connection to the existing Andover Green stub street. The petitioner is instead proposing a direct connection to Todds Road.

Ms. Wade said that the Williams property was rezoned from A-U to R-1D in 1997. At that time, the property was 12 acres in size; the corollary development plan proposed 33 lots, with the existing single-family residence (now the subject property) depicted as Lot 34. Future access to Todds Road was restricted on that development plan, with the following note:

"At the time of further subdivision of Lot 34, access to Todds Road shall cease, and access shall be provided by a local street stub provided to this property."

As the majority of the Williams' property developed, that stub street was constructed and named Andover Green.

Ms. Wade stated that the 2013 Comprehensive Plan has several Goals & Objectives that are applicable to the proposed zone change, specifically four that the staff mentioned in their report. Theme A recommends:

- "1) Growing successful neighborhoods through expanding housing choices that address market needs for all residents;
- 2) encourage infill development throughout the Urban Service Area boundary as a strategic component of growth;
- 3) providing well-designed neighborhoods that are connected for all modes of transportation; and
- 4) working to achieve an effective and comprehensive transportation system for the community."

The staff reviewed the proposed zone change with those Goals & Objectives in mind. It was clear that the petitioner met at least two of the goals, by providing a variety of housing types (townhouses) in an area that is currently developed as single-family, and providing a development at a higher density than the adjoining neighborhood. That provision helps to support infill and balance urban/rural demands in order to protect the Rural Service Area. Ms. Wade said that the petitioner contended in their justification that the proposed zone change is in agreement with the Goals & Objectives of the 2013 Comprehensive Plan, and that the existing R-1D zone is inappropriate and the proposed R-4 zone is appropriate. While the staff does agree that this proposal is in substantial compliance with the 2013 Comprehensive Plan, they did not believe that the justification regarding appropriateness was true in this case. The existing R-1D zoning could accommodate development of the subject property in a manner that is compatible with the adjoining neighborhood, as it was originally planned in 1997.

Ms. Wade stated that one aspect of the proposal that does not meet the Comprehensive Plan Goals & Objectives involves the lack of connectivity to the existing stub street. The proposal is contrary to the previous planning process, which established a local street network that was designed to connect to the adjoining subdivision. The staff believes that the Todds Road widening project will help mitigate some of the traffic issues in the vicinity of the subject property by removing some of the existing curves and providing sidewalks, curbs, and gutters; however, it is also likely to increase traffic speeds. That potential increase in overall traffic speed could make ingress and egress to the

subject property more difficult than it is currently. Ms. Wade said that the staff believes that the proposed development could fully meet the Goals & Objectives, if modifications are made to the development plan related to connectivity to the adjoining neighborhood through the existing street stub. The staff believes that utilizing the existing neighborhood street system would be safer; would promote more social interaction among neighbors; and would create a sense of place and security, as recommended by the Comprehensive Plan in Chapter 3, which is titled "Growing Successful Neighborhoods."

Ms. Wade stated that, since the petitioner's development plan did not include a stub street connection to Andover Green as recommended by the Comprehensive Plan, and as required by the Subdivision Regulations, the staff prepared for the Planning Commission an exhibit listing references in the Comprehensive Plan related to connectivity. Since the Comprehensive Plan no longer includes a land use element or specific density recommendation, the staff contends that the land use policies become much more important.

Ms. Wade said that the staff and the Zoning Committee recommended approval of this request, subject to the four findings as listed in the staff report and on the agenda. Contingent upon the upcoming discussion about the development plan, some of those findings could possibly need to be reworked or deleted in order to move this proposal forward to the Urban County Council.

Commission Questions: Ms. Plumlee asked Ms. Wade to note the location of McFarland Lane, and advise if that roadway was proposed to be closed. Ms. Wade noted the location of McFarland Lane, just across from the southeast corner of the subject property. She explained that McFarland Lane had, in the past, provided access for several small farm tracts and the Forker property, which is currently being developed. That development will connect to Autumn Ridge subdivision, so the McFarland Lane access to Todds Road is no longer needed.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, noting that the staff had prepared revised conditions for the approval of this plan, which were distributed to the Commission members. He stated that the subject property is a remnant tract, with frontage along Todds Road.

Mr. Martin stated that the petitioner is proposing to construct 20, two-bedroom dwelling units, to be subdivided and sold as fee-simple lots, on the subject property. Primary access to the development is proposed on Todds Road, with a gated access to the Andover Golf and Country Club parking lot. Mr. Martin said that the plan was recommended for approval by the staff and the Subdivision Committee, as listed on the agenda, and now is subject to the following revised conditions recommended by the staff:

1. Provided the Urban County Council rezones the property R-4; 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. Department of Environmental Quality's approval of environmentally sensitive areas.
7. ~~Denote the number of bedrooms proposed in the site statistics.~~
8. ~~Denote type of tree species in tree inventory.~~
9. ~~Addition of parking space location and size.~~
10. ~~Addition of existing and proposed easements.~~
- 7.11. Discuss access to Andover Green.
12. ~~Discuss proposed driveway dimensions.~~
- 8.13. Discuss proposed access to Todds Road.
- 9.14. Discuss the need for storm water detention improvements Addition of cul-de-sac at termination of Andover Green.
15. ~~Discuss compliance with Article 9 duplex setback, parking and open space requirements.~~

Mr. Martin said, as the revised conditions indicate, that the revised plan had resolved several of the original conditions, including the need to meet the setback, parking, and open space requirements for the R-2 zone. Several of the new units proposed along the property boundary bordering the A-U zone will also need to be shifted slightly in order to accommodate the more restrictive setback along the agricultural zone.

Mr. Martin stated that the revised conditions also include two discussion items. With regard to condition #8, the staff was originally concerned about the vertical sight distance along Todds Road, and its effect on the proposed access. The issue is significant enough that the proposed access would not be permitted to be constructed at this time, but the staff has been reassured that the planned Todds Road improvements will remedy that situation. The staff of the Division of Traffic Engineering have indicated that they would like to be able to amend their recommendation somewhat, based on the specifics of the redesigned right-of-way.

Mr. Martin said that the more important issue of concern, and subject of an associated waiver request, is the proposed termination of Andover Green. The staff believes that connectivity is very important to the function of the community, and the connection of Andover Green has been planned for many years. The petitioner has requested a waiver of the Subdivision Regulations in order to allow Andover Green to remain as a stub street into the subject property. The petitioner did not, however, offer any justification for granting the waiver under Article 1-5 of the Subdivision Regulations, which states that, in order to grant a waiver for a hardship, the situation requires an "exceptionally unique topographic or other natural or man-made physical condition encountered on the particular land." Mr. Martin stated that the petitioner's justification for the waiver request was neighborhood opposition to the zone change and the proposed connection of Andover Green, which does not constitute a unique situation. In addition to the lack of an appropriate justification, the petitioner has offered no proposal for an acceptable termination for Andover Green, even though all stubbed streets are intended to be connected, or terminated with a cul-de-sac. The Planning Commission has approved several similar requests to terminate a stub street with a modified access, such as pavement and a gate. That solution allows access to the property by emergency or service vehicles, and any residents who have permission to use the gate. Mr. Martin stated that, based on the lack of a termination and appropriate justification, the staff is recommending disapproval of the requested waiver of the Subdivision Regulations. In addition, the staff is recommending the inclusion of condition #9, which would require a cul-de-sac as a termination to Andover Green.

Mr. Martin said that the staff had also distributed to the Commission members findings for approval of an access easement. Since the petitioner intends to subdivide the subject property and sell the units, they are proposing to construct the interior circulation on the property as an access easement to provide primary access and lot frontages for the properties. The staff is recommending approval of the necessary finding by the Planning Commission to determine that the proposed access easement is appropriate to serve these new duplex and townhouse units in this circumstance.

Mr. Martin reiterated that the staff is also recommending approval of the development plan, subject to the revised conditions as listed, including condition #9, which would require the termination of Andover Green in a cul-de-sac.

Commission Questions: Mr. Brewer asked, with regard to condition #9, how terminating Andover Green in a cul-de-sac would increase connectivity. Mr. Martin answered that the petitioner would have to relocate two of the proposed dwelling units, and the cul-de-sac would then provide a connection to Andover Green. He added that the petitioner could also modify the cul-de-sac, which has been done in some locations in Lexington-Fayette County, particularly in multi-family developments.

Mr. Berkley asked, with regard to the waiver request, if there was a significant elevation change between Andover Green and the subject property. Mr. Martin answered that there was an elevation difference between the termination of Andover Green and the subject property, but the staff anticipates that the petitioner would perform significant grading on the property as part of the development's infrastructure construction. He added that a modified termination design could also help to address the issue related to topography. Mr. Berkley asked if the elevation difference could be considered as a justification for the waiver request. Mr. Martin answered that the petitioner could have used that elevation difference as a justification, but they did not.

Mr. Penn asked if the petitioner was proposing an emergency entrance to the property through the Andover Golf and Country Club property. Mr. Martin responded that he would not consider it to be an emergency access, but the petitioner was proposing a gated access into the country club parking area. He said that the access is proposed to be 20 feet wide, which could accommodate emergency vehicles; but the trucks would have to wind through the country club's parking area in order to reach the new dwelling units.

Mr. Cravens asked if the Todds Road frontage of the subject property would have to have curb, gutter, and sidewalk. Mr. Martin answered that the frontage would have to meet the Kentucky Transportation Cabinet's (KYTC) design for the right-of-way of Todds Road, but he was not sure if that would include curb, gutter, and sidewalks. Ms. Wade added that the proposed cross-sections do include curb, gutter, and sidewalks, as a continuation of the improvements that were made at the intersection of Man O' War Boulevard and Todds Road. Mr. Cravens asked if the petitioner would be responsible for constructing those improvements. Ms. Wade responded that KYTC would construct the improvements as part of their project. Mr. King added that Todds Road is a state route. He said that, during all of the development along Todds Road, improvements were required at the intersections, but not along full property frontages; but the necessary right-of-way was obtained. Mr. King explained that, when an active project is in process, provision of improvements is always deferred to the active public road project.

Mr. Owens asked if the staff's requested cul-de-sac termination of Andover Green would include a connection to the internal circulation on the subject property. Mr. Martin answered that it could, and the staff would hope that the petitioner would take advantage of the ability to provide connectivity to that access. Mr. Owens opined that it appeared to be a "long way back through the subdivision" along Andover Green, as opposed to using a direct connection to Todds Road. Mr. Martin noted that that is not an unusual circumstance in large subdivisions.

Petitioner Representation: Rory Kahly, EA Partners, was present representing the petitioner. He said that he had not prepared to discuss the waiver request at this hearing, since the staff indicated at the Subdivision Committee meeting three weeks ago that waivers were not typically discussed along with zone changes. He noted that, if he had known that was not the case, he would have submitted the information that the staff had not received to go along with their waiver request.

With regard to the conditions for approval, Mr. Kahly stated that most of the remaining conditions refer to access to Andover Green. He said that, in many cases, he represents petitioners whose projects face a great deal of neighborhood opposition. In this case, however, the petitioner met with the neighborhood early in the process, and found that the 33 residents of Andover Woods and Andover Green were opposed to the connection of Andover Green to the subject property. The petitioner is aware that that configuration might not meet the requirements of the Subdivision Regulations, but it is in keeping with the wishes of the area residents.

Mr. Kahly said that the petitioner has offered conditional zoning restrictions as another way to help put neighbors' minds at ease about the possible uses of the subject property. There were some concerns about the allowable density in the proposed R-4 zone, so the petitioner added conditional zoning restrictions to limit the development to single-family detached homes; duplexes; townhomes; or condominiums, and that apartments would not be permitted. The plan currently depicts townhomes and duplexes, but that configuration could change somewhat as the plan goes through the review process.

Mr. Kahly stated that the proposed access to Todds Road is based on the information provided by KYTC as part of their improvement project. The petitioner contends that the access will have adequate sight distance in both directions, and adequate spacing from the nearest access points. The improved Todds Road is proposed to be three lanes at this location, with a center turn lane; and the petitioner believes that the intersection will be safe for ingress and egress.

Mr. Kahly said that the Division of Fire and Emergency Services initially had some concerns about the access easement that is proposed to serve the interior of the property, but they are now satisfied with the revisions provided on the plan. The petitioner removed most of the medians that were proposed on the interior of the property in order to allow space for emergency vehicles to operate, and has agreed to provide an additional emergency access gate to the Andover Golf and Country Club property.

With regard to the concerns about the Andover Green connection, Mr. Kahly noted that there is an approximately five or six-foot difference in the elevation between the street and the subject property. He said that the note on the previous development plan for the property, indicating that Andover Green would be continued, was placed on the plan by a previous property owner and developer, who are no longer involved with the property. The petitioner has removed that note on the current plan, because they contend that that connection does not apply to the current proposal. Mr. Kahly said that the existing Andover Green residents have lived on a quiet circle for at least 10 years, and they do not want the street to be connected.

Mr. Kahly displayed an aerial photograph of the subject property and surrounding area, noting that it depicted several different neighborhoods that are typically known collectively as Andover. He said that having access to the clubhouse is important, because the proposed development will be marketed primarily to club members who desire to live nearby. The access to Todds Road is important for the visibility of the proposed development, and to provide an adequate means to move residents into and out of the property. The petitioner contends that the other neighborhoods in the area have ample connectivity, for residents and emergency vehicles. Mr. Kahly stated that the petitioner does not believe that a small, 2-unit development of townhomes is necessary for the area, and the existing Andover Green residents do not want the proposed connection.

Commission Questions: Mr. Drake asked how many units would be lost from the proposed development if the cul-de-sac was constructed. Mr. Kahly answered that he had not calculated how many units would be lost. He added that he was concerned that he could be required to rework the plan to include a cul-de-sac in just two weeks, since the plan must be certified within that timeframe in order for the rezoning request to proceed to the Urban County Council. Mr. Kahly opined that a typical cul-de-sac configuration would result in the loss of four dwelling units, out of the 20 proposed.

Ms. Mundy asked how solid waste and emergency vehicles currently access the area near the Andover Green stub. Mr. Kahly answered that Andover Green is a loop, so solid waste vehicles should only be required to back up the width of one lot in order to pick up trash.

Mr. Owens asked, with regard to the photo of the Andover Green stub, where the petitioner's property line is located. Mr. Kahly responded that the property line corresponds with the location of the four-plank fence in the photo, past the actual end of the stub.

Citizen Comments: Ryan Finnell, president of the Andover Hills Neighborhood Association, stated that he and his neighbors were not necessarily opposed to the proposal, but they were offended by the staff's assertion that existing residents' opinions were not significant regarding the waiver. He asked that the Commission respect the opinions of the residents, rather than just the "numbers."

Mr. Finnell stated that there are existing traffic problems in the neighborhood, for which the residents have sought assistance from the Divisions of Police and Traffic Engineering. They have not received any assistance, and now they are concerned that the additional traffic from the proposed development could exacerbate the situation.

Mr. Finnell said that the developer and the residents have requested an access to Todds Road, rather than a connection to Andover Green, while the staff is recommending the connection. He opined that the staff's recommendation was based on the fact that the staff members do not live in the area, so they are not fully aware of the traffic difficulties. The residents of his neighborhood believe that, since the proposed development will affect them, they should have some say in how it is constructed. Mr. Finnell added that, if Andover Green is connected, the proposed development "will be absorbed into the neighborhood, but will not actually be part of it" since it will not be regulated by the same HOA or held to the same deed restrictions.

Commission Questions: Mr. Owens asked if Mr. Finnell was opposed to the proposed development in general, or just to the connection of Andover Green. Mr. Finnell answered that he and his neighbors were opposed to the connection, not to the development in general. He added that the neighbors appreciated the petitioner's willingness to include them in early discussions about the proposed development, and he believed it would be a good addition to the area. Mr. Owens noted that the staff and the Commission believe that the neighborhood residents' opinions are significant.

Citizen Opposition: Ryan Gold, 945 Andover Woods Lane, stated that his property directly adjoins the subject property, so the proposed development would have a huge effect on his property values and where his children play. He said that Forest Hill Drive is heavily traveled, and he would not have bought a home there; he and his wife purposely chose to purchase their home because it was located at the stub end of Andover Green. Mr. Gold noted that the HOA had sought to construct speed bumps on Forest Hill Drive for years in an attempt to slow down the traffic.

Mr. Gold stated that he would like to submit a petition with more than 100 signatures, including those of more than one HOA president; some of those residents are opposed to the R-4 zoning, some to the proposed development, and some to the connection of Andover Green. Mr. Gold asked that, if the Planning Commission chooses to approve this request, they place restrictions on the property to prohibit high-density developments and Section 8 housing.

Richard Ward stated that he and his wife had lived in the Andover area for more than 17 years. He said that, when they first moved in, there were only two entrances to the subdivision; there are now four or five entrances. Mr. Ward said that much of the traffic in the area avoids Todds Road in favor of using the Andover neighborhood streets to access the Dabney and Mapleleaf Drive areas. He added that each new access brings with it more traffic.

Elmer Craig, 3516 Hunters Green Way, stated that there are several areas of luxury townhomes located throughout the Andover subdivision, and he was initially in favor of the proposed development. Once he heard about the proposed connection to Andover Green, however, he became concerned about the additional traffic and higher-density R-4 zoning. Mr. Craig opined that high-density zoning should not be necessary for the construction of luxury townhouses.

Mr. Craig stated that he was also concerned that additional traffic on Andover Green could endanger the school busses that travel through the area every day.

James Sutton, 3520 Hunters Green Way, stated that he was opposed to the proposed R-4 zoning, since he was aware of the possible ramifications of it. He said that he was also opposed to the connection of Andover Green, since it and the nearby streets are narrow and were never intended to carry additional traffic.

Mr. Sutton stated that, several years ago, the subject property was proposed for development as a daycare center. The petitioner in that case was denied an access to Todds Road, so he did not believe that the proposed access would be allowed in this case.

Clay Waller, 936 Andover Green, stated that he was the developer of many properties in Lexington-Fayette County. He believes that the townhouse market has been overbuilt, as there are many vacant units around the city already. Mr. Waller suggested that the petitioner consider retaining the existing R-1D zoning on the subject property, and developing it with single-family homes that would complement the existing neighborhood. He said that he and his neighbors are opposed to the R-4 zoning and the proposed connection of Andover Green.

Scott Martin, 928 Andover Green, stated that he was concerned that the subject property could be developed as apartments at some point under the proposed R-4 zoning. He said that the current zoning would accommodate townhomes, so he did not believe the zone change was necessary in order to develop the property.

Commission Question: Mr. Berkley asked if the petitioner had offered to add a note restricting the development of apartments. Mr. Kahly responded affirmatively.

Citizen Rebuttal: Mr. Gold stated that he appreciated the petitioner's offer to restrict the development of apartments on the property, but he was concerned that the property could be sold at some point in the future and asked if the next owner could construct apartments. Ms. Wade replied that, when a property is rezoned, it can include conditional zoning restrictions. Those restrictions can limit the land use, including density and the type of residential units. She stated that the petitioner's proposed conditional zoning restrictions would limit the use of the subject property to only single-family homes, either detached or attached, as townhomes or duplexes. The petitioner has also suggested the addition of condominiums; but that is a means of conveying property, rather than a land use, so it cannot be considered as a conditional zoning restriction. Ms. Wade stated that the petitioner is also proposing a conditional zoning restriction to prohibit apartments on the property. She explained that, when a conditional zoning restriction is attached to a property, it cannot be changed unless it goes through another zone change process, even if the property is conveyed. Conditional zoning restrictions are similar to deed restrictions, in that they run with the property, and can only be changed through a significant effort on the part of the property owner.

Ms. Wade stated, with regard to Mr. Kahly's assertion that terminating Andover Green in a cul-de-sac would cause the loss of some units from the proposed development, that the staff had prepared an exhibit. She displayed the graphic on the overhead, noting that, if the cul-de-sac is provided, the staff believes that the proposed density can be maintained, as well as the access easements for internal circulation and access to the Andover club. Ms. Wade stated that, in meeting with the petitioner, they indicated that they were not opposed to the type of configuration depicted, but they were attempting to appease the neighbors by not connecting Andover Green. The staff believes that, if a cul-de-sac is provided, the residents of the proposed development could use the gated access to the club to access Todds Road, which would provide some connectivity. Ms. Wade said that the staff simply cannot support the termination of a stub street with a fence, since it is contrary to the Subdivision Regulations and does not uphold the intent of the Comprehensive Plan. She added that the six-foot grade change between Andover Green and the subject property is nominal in terms of the grading that would need to be done on the property prior to construction.

Commission Questions: Mr. Penn asked what kinds of restrictions could be placed on the deeds for the townhouse units to ensure that they do not become rental units. Mr. Kahly answered that private deed restrictions could require that the units be owner-occupied. Mr. Penn asked if the petitioner would be agreeable to provide such a deed restriction. Mr. Kahly responded that the petitioner would be agreeable to that, but such a provision is not part of the Planning Commission's review process.

Petitioner Rebuttal: Mr. Kahly stated, with regard to some of the residents' concerns about the proposed R-4 zone, that the petitioner chose that zone because it provides more flexibility in terms of lot coverage and floor area ratio. Other zones allow the construction of townhomes, but the petitioner wanted to take advantage of the maximum allowable lot coverage and floor area ratio.

Mr. Kahly said, with regard to the staff's proposed layout for the subject property, that the petitioner would request that that issue be deferred until the Final Development Plan stage, since he would be required to redesign the layout of the development and get the plan certified within two weeks. He reiterated that this was a zoning development plan, not a detailed layout of the property, and its purpose was to secure the rezoning; the final configuration of the property could be determined at a later stage in the process. Mr. Kahly said that the petitioner's proposed development has the support of the area residents, as depicted without a connection to Andover Green, and he requested approval.

Staff Rebuttal: Mr. Martin stated that he wanted to be very clear that about the staff's belief that the petitioner could maintain the density on the subject property with an access to Andover Green. The staff also believes that the petitioner could have offered a modified entrance with controls into this location, which would maintain connectivity for public safety and service vehicles, as well as for residents. The staff is no longer opposed to the petitioner's proposed access to Todds Road, since roadway improvements will permit the access and they believe that many residents would choose to use that as the primary access. Mr. Martin stated that the staff would welcome the opportunity to evaluate a proposal for a modified, gated entrance to the property that would provide the desired connectivity.

Commission Questions: Mr. Owens said that he remembered an instance in which a terminated hammerhead-type cul-de-sac, that did not provide the connectivity, was constructed as part of another development. He asked if that would be a possibility in this situation. Mr. Martin that that type of modified design could be a possibility, although the subject property presents a very different circumstance from the case to which Mr. Owens was referring.

Mr. Cravens stated that, in his time on the Planning Commission, they had not allowed any streets to remain dead-ended without some type of termination. He said that the petitioner could terminate the street with a hammerhead, but without providing connectivity. Mr. Martin agreed that that would be a means to provide a termination to the street, while still restricting access. He added that the Subdivision Regulations require either the termination of the street, or the granting of a waiver of such.

Mr. Brewer asked if the Commission was considering the construction of some type of hammerhead on Andover Green. Mr. Martin reiterated that the Subdivision Regulations require either the termination of the street, or the granting of a waiver of such. Mr. Brewer said that the subject property is not located on Andover Green. Mr. Martin answered that the Andover Green right-of-way continues up to the subject property line, so it has to be terminated in conformance with the Subdivision Regulations. Mr. Brewer asked if the hammerhead could be constructed without connectivity, in order to address the staff's concerns, and then allay some of the concerns of the constituents. Mr. Martin responded affirmatively.

Mr. Drake asked on whose property the hammerhead would be constructed. Mr. Martin responded that it would be constructed on the subject property. Mr. Drake asked if that construction would have to be at the expense of the current applicant. Mr. Martin answered that the current applicant would have to build an approved termination on their property, as do all developers in this situation.

Mr. Brewer asked if the petitioner would be willing to construct such a hammerhead, without a connection to Andover Green. Mr. Kahly answered that any improvements that the Planning Commission was considering imposing would take up a portion of the petitioner's land from the proposed development. He added that it would be very onerous to have to rework the entire plan within the next two weeks.

Mr. Owens asked if the petitioner would be willing to resolve the termination of the cul-de-sac with a hammerhead at the Final Development Plan stage. Mr. Kahly answered that, according to the staff, the waiver was in the Commission's hands today, to make a decision about the termination. He said that delaying resolution of the termination until the Final Development Plan left the residents and the petitioner "up in the air."

Steve Snowden, petitioner, stated that he understood the staff's concerns about termination of the street, but none of the residents wanted the connectivity. He said that Andover Country Club had agreed to allow access to the subject property through their parking area, which would provide for emergency vehicles to access the property. With regard to the termination of Andover Green, Mr. Snowden stated that residents on the subject property would be unlikely to use Andover Green, rather than a direct access to Todds Road, because they would be required to travel through the entire neighborhood to get back to Todds Road.

Mr. Snowden stated that there was a strong demand from members of the country club for the proposed development, particularly because most of the dwelling units were proposed to be one level. He said that construction of a hammerhead termination of Andover Green would affect the proposed development, because the subject property is only 3.6 acres in size, and the proposed units are 50 feet by 60 feet. The petitioner's intent was not to crowd as many units as possible into the development, but to create a nice development, of which the future residents, himself included, could be proud. Mr. Snowden stated that he was aware that the connectivity situation was awkward, but he believed that this was a situation in which the Commission needed to decide on the right thing to do, which should be an obvious choice.

Mr. Penn asked if Mr. Snowden agreed that the Subdivision Regulations require a termination to a public street. Mr. Snowden answered in the affirmative. Mr. Penn asked how Mr. Snowden would propose to resolve the situation. Mr. Snowden answered that the street connection does not fit any of the three determinations outlined by Mr. Martin, so believed that the Commission should determine the right thing to do. He said that the neighbors did not want connectivity to Andover Green, and he did not believe that it would serve any purpose, particularly since it was not needed for emergency vehicle access. Mr. Penn stated that it would serve the purpose of following the Subdivision Regulations.

Mr. Owens asked if the conditional zoning restriction to which Mr. Kahly referred was included on the development plan. Ms. Wade answered that the conditional zoning restriction is not included on the face of the plan. She explained that Mr. Kahly's proposed restriction should not include condominiums; that restriction would not be appropriate, since it is a means of conveying property rather than a land use. Ms. Wade stated that the language did not need to specifically list apartments as a prohibited use, since it notes that the use of the property would be limited to single-family detached, single-family attached (townhouse), or duplex dwelling units. She added that, if the Planning Commission chooses to approve the development plan without a connection to Andover Green, they would need to strike findings "c" and "d," which specifically refer to connectivity for all modes of transportation.

Mr. Owens stated that the hearing was closed, and opened the floor to the Commission for discussion or a motion.

Ms. Mundy stated that she was pleased to see that the petitioner met with neighborhood representatives prior to this hearing, and she thanked the residents for their diligence in acquiring signatures for their petition and attending today's hearing. She said that there are certain restrictions that bind the Commission, which may not be in accordance with the residents' wishes, but noted that the Commission members appreciate their input.

Ms. Plumlee stated that she appreciated the residents' attendance and comments, and noted that it's rare to see "neighbors and an applicant waltzing in holding hands." She reiterated Ms. Mundy's comments that the Commission members listen to residents, and added that she was hopeful that, in this case, the Commission could come to some agreement that would be acceptable for both parties.

Mr. Drake asked how much property would be used to construct a hammerhead to terminate Andover Green. Mr. Kahly answered that the right-of-way depicted on the exhibit displayed on the overhead was 50 feet wide, and 100 feet long, with a utility strip and sidewalk outside of that area. Mr. Drake said that it appeared that it would require a minimum of 10,000 square feet of property, or a quarter of an acre.

Mr. Brewer stated that he was "struggling with the balance" between the requirements of the regulations, and a desire for a connection that "does not make sense." He said that, if he lived on the subject property, he would probably prefer to use a direct access to Todds Road, rather traveling back through the neighborhood. He noted, however, that he believed that losing a small percentage of the property, in order to address the neighbors' concerns and meet the requirements of the regulations, seemed like a relatively small concession to make.

Mr. Drake asked what would happen if the Commission ignored the regulation that requires the termination of streets. Ms. Jones answered that "ignoring regulations is never a good idea." She said that, whatever decision the Commission chooses to make, they will be required to have findings to support their reasons.

Zoning Motion: A motion was made by Mr. Cravens to approve MAR 2014-14, for the reasons provided by staff.

Discussion of Motion: Ms. Wade asked if it was Mr. Cravens' intent to include the proposed conditional zoning restriction, and to strike through the findings that refer to connectivity. She said that, if the intent was to provide a termination of Andover Green according to the Subdivision Regulations, it would be appropriate to allow those findings to remain. He responded affirmatively.

Motion Second: Mr. Cravens' motion was seconded by Ms. Mundy.

Discussion of Motion: Mr. Brewer asked if Mr. Cravens would need to provide another set of findings, if the intent was to require the petitioner to provide some termination to Andover Green. Ms. Jones answered that no additional findings would be necessary, because the Ordinance refers to connectivity or providing an appropriate termination. She noted that there would need to be slightly different conditions for the development plan approval if that was Mr. Cravens' intent. Mr. Brewer said that he thought Ms. Jones had indicated clearly that there would need to be findings, no matter which decision the Commission chose to make. Ms. Jones answered that there would need to be findings; but she believed that the current findings would be acceptable, because of the regulation that references either having connectivity or the proper termination of a street, as opposed to just a dead-end street. Mr. Sallee added that "c" and "d" would not be appropriate findings if the Commission chose to approve the development plan as proposed, with no termination of Andover Green. Mr. Brewer asked if "c" and "d" would be appropriate if the Commission chose to require the termination of the street in a hammerhead, to which Mr. Sallee responded in the affirmative.

Mr. Drake asked if the petitioner would have a process by which to alter any decision the Commission makes today, since he was not prepared to address the waiver request. Mr. Sallee answered that the petitioner could request additional waivers at the time of a Final Development Plan for the property.

Zoning Action: Mr. Cravens' motion carried, 9-1. (Brewer opposed, Wilson absent)

Development Plan Motion: A motion was made by Mr. Cravens and seconded by Ms. Mundy to approve ZDP 2014-66, subject to the first eight conditions as listed in the revised staff recommendation, and adding a new #9 for addition of a cul-de-sac or hammerhead on Andover Green.

Discussion of Motion: Mr. Penn asked if there was any way to include a condition that the units would be sold fee-simple, rather than rented. Mr. King answered that a government agency could not restrict that, because of fair housing laws. He added that the petitioner could enforce private deed restrictions to that effect.

Mr. Kahly stated that the petitioner would prefer that condition #9 not include the word "cul-de-sac," but would prefer to use "termination," as there were several different possibilities for terminating Andover Green. Mr. Cravens offered to change condition #9 to require resolution of the termination at the time of the Final Development Plan, to which Mr. Kahly agreed. Mr. Martin noted that the petitioner might file a preliminary subdivision plan, following this

preliminary development plan, in order to subdivide fee-simple lots, so the issue must be addressed on the proper plan. Mr. Penn stated that he would like to provide the neighborhood some reassurance that the issue will be resolved on the Final Development Plan. Mr. Sallee added that Mr. Cravens' motion would not necessarily require the cul-de-sac to connect, but rather that it be provided on the property to finish the street. Mr. Cravens stated that it was not his intent for the petitioner to connect through to their development, but rather an appropriate termination to the street. Mr. Brewer stated that he did not understand; he said that, if the intent is to comply with the regulations on the termination of Andover Green, without connectivity, it should be clearly stated that way. Mr. Cravens reiterated that his intent was to provide an appropriate termination to the street, and allow the petitioner to decide whether to use a cul-de-sac, hammerhead, or some other means to do so.

Mr. Kahly asked if Mr. Cravens' intent was to require the petitioner to construct a cul-de-sac, but have no access to it, to which Mr. Cravens responded that the petitioner indicated that they did not want access. Mr. Kahly stated that, if the intent was to restrict access, the Commission should grant the requested waiver, and allow the stub street to remain as it currently exists. Mr. Cravens responded that the Commission has not let one person, in the eight years he has served on the Planning Commission, get by without properly terminating a street.

Mr. Owens noted that there was a motion on the floor, and asked Mr. Cravens to restate condition #9. Mr. Cravens responded that condition #9 should read: "Resolve the termination of Andover Green."

Ms. Mundy indicated that she was in agreement with that condition.

Development Plan Action: Mr. Cravens' motion carried, 9-1. (Brewer opposed, Wilson absent.)

Waiver Action: A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 10-0 to disapprove the requested waiver of the Land Subdivision Regulations.

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