

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky February 11, 2020

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on February 11, 2020 at 5:07 p.m. Present were Vice Mayor Kay in the chair presiding, in the absence of Mayor Gorton, and the following members of the Council: Reynolds, Bledsoe, J. Brown, Ellinger, Evans, Farmer, Gibbs, Lamb, McCurn and Mossotti. Absent were Council Members Worley, Bledsoe, F. Brown, and Moloney.

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At 5:07 p.m., Vice Mayor Kay opened the hearing.

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An Ordinance changing the zone from a High Density Apartment (R-4) zone to a Downtown Frame Business (B-2A) zone, for 1.810 net (2.274 gross) acres, for property located at 201, 207, 209, 211, 215, 221, 225, 227 and 231 East Maxwell St., and 245, 247 and 251 Stone Ave. (Aptitude Development; Council District 3) received second reading.

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Vice Mayor Kay swore in the witnesses, and reviewed the procedures and order of proceeding for the meeting.

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Ms. Traci Wade, Div. of Planning, gave a presentation on the recommendation of the Planning Commission and filed the following exhibits: (1) Legal Notice of Public Hearing; (2) Affidavit of Notices Mailed; (3) Copy of Planning Commission Final Report and Recommendation; (4) Letters of Opposition and information submitted at the November 21, 2019 Planning Commission Public Hearing (5) Copy of the 2018 Comprehensive Plan *Imagine Lexington*; (6) Copy of the Zoning Ordinance; (7) Copy of the Land Subdivision Regulations; (8) Copy of Staff Presentation and (9) Letters of Opposition received since the Planning Commission Public Hearing.

Ms. Wade described the subject property and surrounding property, and the various uses that have been applied to it in the past. She displayed photographs and

maps of the subject property and described its physical characteristics. Ms. Wade also discussed the proposed development and the reasons for the Planning Staff's and the Planning Commission's recommendations.

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Mr. Jon Woodall appeared as counsel for the Petitioner and filed the following exhibits: (1) Witness List; (2) Copy of PowerPoint presentation; (3) Affidavit of Posting Signs; and (4) List of Current Property Taxes Paid – Existing Properties.

Mr. Woodall introduced various representatives for the Petitioners; he talked about the requested zone change, displayed photographs of the subject property, and discussed the location and proposed uses, as well as historical uses that have applied.

Mr. Hutter, the Petitioner, provided background on his company, Aptitude Development, and spoke about the substantial economic impact the development would have on Lexington. He also addressed the height restriction imposed on the project by the Planning Commission.

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Ms. Jessica Winters appeared as counsel for the Opposition (the Aylesford Place Neighborhood Association and others) and filed the following exhibits: (1) Witness List; (2) Letter to Council; (3) Copy of PowerPoint presentation; and, (4) Letters from residents, neighborhood associations and other organizations in opposition.

Ms. Winters talked about the requested zone change, displayed photographs of the subject property and discussed the location and proposed uses. She spoke of the historical significance these properties have, as some are listed on the National Register of Historic Places.

Ms. Winters interviewed the Opposition's first expert witness, Jim Dickinson, attorney. She asked him to describe his experience with neighborhood development and Lexington's Comprehensive Plan, and asked him if he felt the proposed development was appropriate for the neighborhood. Mr. Dickinson responded. Ms. Winters asked him to state and explain his opinion on whether the proposed development was in conformity with the goals and performances in the comprehensive plan. Mr. Dickinson responded, quoting an excerpt from the comprehensive plan. Ms. Winters asked Mr. Dickinson his opinion on the comprehensive plans' directives regarding infill and adaptive uses of

historic properties. Mr. Dickson responded. She asked Mr. Dickinson to explain the Planning Commission's role in the request and interpretation of the comprehensive plan. Mr. Dickson responded.

Ms. Winters interviewed the Opposition's second expert witness, Lynne Dunn, property manager, landlord and investor. She asked Ms. Dunn to describe her experience in the Lexington rental industry. Ms. Dunn responded. Ms. Winters asked her to elaborate on her experience managing rental properties located in the proposed development. Ms. Dunn responded, noting she managed properties until they were sold in 2015. Ms. Winters asked Ms. Dunn about the occupancy of the properties during her time managing the properties and if they fulfilled the need for affordable housing for students. Ms. Dunn responded. Ms. Winters asked her to describe the structure and maintenance of the buildings while she was property manager. Ms. Dunn responded. Ms. Winters asked Ms. Dunn if she noticed a decline in maintenance of the properties once they were sold. Ms. Dunn responded. Ms. Winters asked Ms. Dunn to explain in her professional opinion, the need for luxury student housing in Lexington, and current investors in the local student housing market. Ms. Dunn responded.

Ms. Winters interviewed the Opposition's third expert witness, Dr. Christopher Sass, Associate Professor and Director of Undergraduate Studies in the Department of Landscape Architecture at the University of Kentucky. Ms. Winters asked him to describe his work studying the effect of trees on the health of the city. Dr. Sass responded. Ms. Winters asked him to explain his understanding of Lexington's goal to increase the urban tree canopy. Dr. Sass responded. She asked him to describe the heat stress in the proposed development area, and how it compares to other areas in the city. Dr. Sass explained. Ms. Winters asked Dr. Sass if he was familiar with the Lexington Tree Canopy Report Card and to explain the grade the proposed development site received. Dr. Sass responded, noting the area received a score of D+. She asked him about replacing the mature trees currently in the proposed development area with ornamental trees and shrubs and the resulting heat stress. Dr. Sass responded.

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At 6:56 p.m., the meeting stood at recess.

At 7:08 p.m., the meeting reconvened with the same persons present.

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The following persons spoke in opposition: (1) Mary Plank, Preston Ct.; (2) Matthew Brooks, W 6<sup>th</sup> St.; (3) Kevin Benzie, Hagerman Ct.; (4) Martha Birchfield, Linden Walk; (5) Alice Christ, Transylvania Park; (6) Robin Michler, Marquis Ave., Kentucky Native Café and Michler Florist; (7) John Michler, Kentucky Native Café and Michler Florist; (8) Penina Goldstein, Marquis Ave.; (9) Beverly Fortune, Bullock Pl.; (10) Kaitlyn Frick, Burley Ave.; (11) Aditya Sriram, Red Mile Rd.; (12) Bill Johnston, Old Georgetown St. (13) Britney Sams, Blue Grass Trust for Historic Preservation; (14) Jackson Osborne, Lexington Ave.; (15) Charles D. Smith, S. Broadway; (16) Tom Self, Kentucky Ave.; (17) Mark Streety, Lexington Urban Neighborhood Alliance (LUNA) Representative; (18) Kathleen Winter, Kentucky Ave.; (19) Doug Appler, Elsmere Park; (20) Walt Gaffield, Fayette County Neighborhood Council; (21) Alan Cornett, Historic Preservation Commission (who filed Opposition Exhibit 5 – Speaking Notes); (22) Joe Turley, Russell Ave.; (23) Ginny Daley, Burley Ave.; (24) Maureen Peters, Russell Ave. (who filed Opposition Exhibit 6 – Speaking Notes); (25) Greg Guenther, Ransom Ave.; (26) Carlotta Abbott, Preston Ct.; (27) Nathan Hohman, Woodland Ave.; (28) Tempa Hohman, Woodland Ave.; (29) Ken Pidgeon, Oldham Ave.; (30) Vida Vitagliano, Stone Ave.; (31) Gerard Gerhard, Kalmia Ave.; (32) Wanda Jacquith, S. Hanover Ave.; (33) Shirley Evans, S. Hanover Ave.; (34) James Evan, S. Hanover Ave.; (35) Michael Kovash, Board of Historic South Hill Neighborhood Association; (36) Esther Murphy, Clay Ave.; (37) William Murphy, Clay Ave.; (38) Kristen Bohnert, Laketower Dr.; (39) Peggy McAllister, Stone Ave.; (40) Wendy McAllister, Stone Ave. (who filed Opposition Exhibits 7 and 8 – Maps); (41) Stephen Trask, Transylvania Park; (42) Lynn Dunn; (43) Chris Huestis, Lynn Rd.; (44) Sue Mize, Transylvania Park Neighborhood Association; (45) Neal Mize, Transylvania Park; (46) Judith Sparks, Park Ave.; (47) Fran Taylor, W. High St. (who filed Opposition Exhibit 9 - Speaking Notes); (48) Donna Winfield, Ransom Ave.; (49) Elena Ferrero, E. High St.; (50) Hatti Nunley, Saxon Dr.; (51) Chris Winfield, Ransom Ave.; and (52) Amy Clark, Kastle Rd. (who filed Opposition Exhibit 10 – Powerpoint presentation, Opposition Exhibit 11 – University of Kentucky Committee Report Excerpt, and Opposition Exhibit 12 – Screen Shot of Lexington History Museum Webpage).

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The following persons spoke in support: (1) Blake Hall, Richmond Ave., and (2) Mr. John Cirigliano, E. High St.

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At 8:41 p.m., the meeting stood at recess.

At 8:52 p.m., the meeting reconvened with the same persons present.

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Ms. Wade offered rebuttal comments, and clarified the statement made by Ms. Winters that several of the properties in the proposed development area were listed on the National Register of Historic Places was incorrect, as those properties are included on the list as contributing structures to a district, not individually.

Mr. Woodall made rebuttal comments and offered summation on behalf of the Petitioner.

Ms. Winters made rebuttal comments and offered summation on behalf of the Opposition.

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Vice Mayor Kay opened the floor for questions from the Council Members.

Mr. Gibbs asked about tree inventory for the proposed development area. Ms. Wade responded.

Ms. Lamb asked if the proposed development will have any affordable housing units. Mr. Woodall responded. Mr. Hutter responded. She also asked about height requirements and the development process in regards to the current R-4 zone classification. Ms. Wade responded.

Ms. Evans asked about the access for emergency responders if the Hagerman Ct. Access were re-routed to Stone Ave. as proposed; in addition, asked about current parking along Hagerman Ct. Ms. Wade responded.

Mr. McCurn asked about the history of occupancy in the properties in question; in addition, he asked if any of the properties had been condemned. He also asked about the Petitioner's buffer between the development and neighboring homes. Mr. Hutter responded. Erin Hathaway, Landscape Architect for Gresham Smith also responded on behalf of the Petitioner. Mr. McCurn asked about the citizen turnout at the first meeting held by the Petitioner, and feedback received as a result. Mr. Hutter responded. Mr.

McCurn asked if the aesthetics of the building would change if the eight-story recommendation was approved; in addition, he asked about the presence of property management in the proposed development. Mr. Hutter responded.

Ms. Mossotti asked if there was a compromise that could be made in order to satisfy both parties; in addition, she asked for clarification on the units offered and comparable market rates. Mr. Hutter responded.

Ms. Wade provided information on the tree inventory in the area in response to Mr. Gibbs' previous question. Mr. Gibbs asked for clarification on the tree requirements for the proposed zone and the tree canopy proposed by the Petitioner.

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At 9:42 p.m., Vice Mayor Kay closed the hearing.

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Mr. J. Brown thanked the public for their participation and the Petitioner for showing interest in Lexington. He spoke of the need for student housing in Lexington and the need to be more inclusive of students when considering planning and development issues. Mr. J. Brown also spoke of the challenges the Planning Commission and Staff encounter in their decision-making. He discussed concerns over the demolition of historic buildings, and remarked that while the Maxwell area will need to increase density in the future, he felt changing the zone to a B2-A was not appropriate for the location at this time.

Ms. Plomin thanked everyone for attending and speaking at the hearing. She commented that she did not believe that the proposed development was appropriate for the neighborhood.

Ms. Evans discussed the need for housing across the city, as well as student housing. She talked about infill development in her district and spoke in support of the eight-story development.

Mr. Gibbs commented on student housing on the University of Kentucky's campus, and discussed the downtown borders as defined by the Downtown Lexington Management District. He talked about the historical structures surrounding the development site and spoke against the proposed development.

Mr. Farmer inquired if Mr. Gibbs was going to make a motion. Vice Mayor Kay responded. Mr. Farmer stated he would reserve any further comments until after a motion was made.

Vice Mayor Kay yielded the chair to Mr. Ellinger. He commented generally on the Council's responsibility of balancing need for infill development while retaining defining characteristics of neighborhoods when considering planning petitions and other developments, as well as the impacts, both real and perceived, of the Council's decision. He remarked that the proposed development would be out of place in the neighborhood.

Vice Mayor Kay moved to adopt the Findings of Fact as recommended by the Planning Commission. Mr. Farmer seconded. Vice Mayor Kay resumed the chair.

Mr. Farmer thanked the Vice Mayor for his motion, and thanked all of the neighbors for coming out and the Petitioner for their interest. He recalled a similar zone change in 1996 and other infill development hearings recently held and considered. Mr. Farmer spoke of the importance of the neighbors collectively voicing their thoughts and spoke against the proposed development.

Ms. Evans responded to Mr. Farmer's comments. She spoke again about the infill development in her neighborhood, and discussed the state of the structures in question.

Vice Mayor called for any final Council member comments. He reiterated the motion on the floor and clarified the vote to be taken on the Findings of Fact.

Mr. McCurn talked about the city's need for growth and the opportunity the proposed development brings to Lexington.

Mr. Ellinger asked a procedural question about the number of votes needed to overturn the Planning Commissions' recommendation. Ms. Jones responded.

Ms. Lamb requested clarification on the effect of the vote, if the Council fails to override the Planning Commission's recommendation. Ms. Jones responded.

Vice Mayor Kay addressed the audience and explained that in order to disapprove the proposal, the Council would need to vote positively on the Findings of Fact which recommend disapproval, and negatively on the ordinance.

Ms. Mossotti asked Ms. Jones if it was an appropriate time to bring forward any proposed changes the Petitioner may have. Ms. Jones responded.

Ms. Evans requested Vice Mayor Kay withdraw his motion. Vice Mayor Kay responded. Ms. Evans commented that the motion should be withdrawn in order for the Council to consider any other discussion or amendments to the Findings of Fact. Ms. Jones responded. Vice Mayor Kay responded.

Mr. Gibbs motioned, seconded by Mr. Farmer, to call for the question. The motion was approved by the following vote:

Aye: Reynolds, J. Brown, Ellinger, Farmer, Gibbs, -----8  
Kay, Lamb, Plomin

Nay: Evans, McCurn, Mossotti -----3

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Upon motion by Vice Mayor Kay, seconded by Mr. Farmer, the Council approved the Findings of Fact, as follows, by the following vote:

Aye: Reynolds, J. Brown, Ellinger, Farmer, Gibbs, -----9  
Kay, Lamb, Mossotti, Plomin

Nay: Evans, McCurn -----2

1. The requested Downtown Frame Business (B-2A) zone is not in agreement with the 2018 Comprehensive Plan's Goals and Objectives, Policies and Development Criteria for the following reasons:
  - a. The proposed rezoning and redevelopment of a ten-story structure along E. Maxwell Street is compatible with the existing character of the corridor which includes residential structures that front onto the public street with front porches and direct access to the street. Theme A, Goal #2b. states that the development should "respect the context and design features of areas surrounding development projects & develop design standards & guidelines to ensure compatibility with existing urban form." The proposed project disregards the existing urban form.
  - b. Theme A, Goal #3a. encourages existing and new neighborhoods to flourish through improved regulation, expanded opportunities for neighborhood character preservation, and public commitment to expand options for mixed-use and mixed-type housing throughout Lexington-Fayette County. Although the proposed development would provide new residential dwelling units, it does not provided for mixed-use or mixed-type development, nor does the proposed development preserve the character of the neighborhood in which it would be located.
  - c. Although a business zone is proposed, the proposed rezoning would not contribute to the creation or growth of jobs in the downtown area or creation of jobs where people live, as is recommended by Theme C, Goal #2.
  - d. The proposed demolition and redevelopment does not promote and protect historic preservation of the community's resources, which are part of the cultural landscape that gives Lexington its unique identity and image. Theme D, Goal #3 encourages that protection of historic resources, including the renovation and restoration of structures. The existing residential structures was on the subject site were constructed between 1885 and 1915, and



are part of a district which was listed on the National Register of Historic Places in 1984.

2. The existing High Density Apartment (R-4) zone is appropriate in that it allows high density residential land use and has for over a century at this location. The current zoning permits renovation and restoration of the existing structures, which can continue to provide necessary housing for the community.
3. The requested Downtown Frame business (B-2A) zone is not appropriate for the subject site in that the site is not adjacent of the existing core downtown business zone or land use. Although the Zoning Ordinance indicates that the B-2A zone is meant to allow expansion on the downtown, the subject site has not historically been considered part of downtown.
4. There has been no significant unanticipated changes of a physical, social, or economic nature since the Comprehensive Plan was adopted in February 2019 which would warrant the requested rezoning.

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Ms. Mossotti motioned, seconded by Mr. McCurn, to reconsider the vote on the previous vote on the Findings of Fact. Ms. Evans and Mr. McCurn appealed to the Council to approve the motion to reconsider.

The motion failed by the following vote:

Aye: Reynolds, Evans, McCurn, Mossotti	-----4
Nay: J. Brown, Ellinger, Farmer, Gibbs, Kay, Lamb, Plomin	-----7

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Upon motion by Mr. Farmer, and seconded by Mr. Ellinger, the motion to approve the ordinance failed by the following vote:

Aye: Evans, McCurn, Mossotti	-----3
Nay: Reynolds, J. Brown, Ellinger, Farmer, Gibbs, Kay, Lamb, Plomin	-----8

Vice Mayor Kay thanked the participants for their involvement.

Upon motion by Mr. Farmer, seconded by Mr. Ellinger, and approved by unanimous vote, the meeting adjourned at 10:24 p.m.

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Deputy Clerk of the Urban County Council

