

Mr. Berkley said that KRS 100.285 mentioned a revocation of a subdivision plat, and this request is to revoke a consolidation plat. Ms. Boland said that the 2003 request was to subdivide 10 acres from the main agricultural property and there was no distinction in that regard in the ability to revoke a plat. Mr. Sallee added that a consolidation plat is classified as a minor subdivision plat.

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

Planning Commission Questions – Mr. Owens asked if it is the intent for the PDR Program to acquire the 10 acres as a donated easement. Mr. Van Pelt said that an easement would not be recorded until the plat is revoked because there would need to be a new legal description with the new boundaries of the farm property. He then said that the Commission could possibly add a new condition to that effect.

Ms. Roche-Phillips asked if the motion of the Rural Land Management Board was to correct things with the federal Department of Agricultural with regard to the PACE Program. Mr. Van Pelt said that the Rural Land Management Board's motion was to amend the deed of conservation easement on the 102.16-acre parcel to reflect 10 additional acres with the revocation of this plat. This would result in the new deed of conservation easement to reflect 112.16 acres. He said that the PDR Program, the federal funding partners, and the property owner would sign the new conservation easement.

Ms. Roche-Phillips clarified that there would be no cost to the local or federal government. Mr. Van Pelt said that there is no cost to the federal government, but the local government would pay for the new title search and the easements recording fee.

Action – A motion was made by Ms. Roche-Phillips, seconded by Ms. Beatty, and carried 5-4 (Cravens, Owens, Penn and Plumlee opposed; Blanton and Wilson absent) to approve the Revocation Plat for PLAN 2003-232C: RICHMOND ESTATES (BETSY TOY HALL PROPERTY), as presented by the staff.

- C. **PERFORMANCE BONDS AND LETTERS OF CREDIT** – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Mr. Cravens, seconded by Mr. Brewer, and carried 9-0 (Blanton and Wilson absent) to approve the release and call of bonds as detailed in the memorandum dated July 12, 2012, from Ron St. Clair, Division of Engineering.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, July 5, 2012, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Mike Cravens, Carla Blanton, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **PUBLIC HEARING ON ZONING ORDINANCE TEXT AMENDMENT REQUEST**

- a. **ZOTA 2012-10: DEFINE & REGULATE ADULT DAY CARE CENTERS (7/25/12)*** – a Zoning Ordinance text amendment to define adult day care centers and to regulate such facilities as a conditional use in the P-1, B-1, B-2, B-2A and P-2 zones.

INITIATED BY: Urban County Council

PROPOSED TEXT: (Text underlined indicates an addition; text ~~dashed through~~ indicates a deletion.)

ARTICLE 1-11: DEFINITIONS

ADULT DAY CARE CENTER – A facility providing care, protection, and/or guidance for adults in a protective setting during only part of a 24-hour day, with no overnight accommodations. This term does not include public and private educational facilities or any facility offering care to individuals for a full 24-hour period.

COMMUNITY CENTER - Buildings and facilities for a social, educational, or recreational purpose, operated by a non-profit organization, which are generally open to the public and which do not render a service customarily carried on as a business.

ARTICLE 8

PROFESSIONAL OFFICE (P-1) ZONE

8-15(d) Conditional Uses (Permitted only with Board of Adjustment approval.)

7. Adult Day Care Centers.

8-15(n) Off-Street Parking (See Article 16 for additional parking regulations.)

Adult Day Care Center – One (1) space for every four (4) persons being provided care, plus one (1) space per caregiver on the maximum shift.

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

NEIGHBORHOOD BUSINESS (B-1) ZONE**8-16(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)13. Adult Day Care Centers.**DOWNTOWN BUSINESS (B-2) ZONE****8-17(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)9. Adult Day Care Centers.**OFFICE, INDUSTRY & RESEARCH PARK (P-2) ZONE****8-24(d) Conditional Uses** (Permitted only with Board of Adjustment approval.)5. Adult Day Care Centers.**8-24(n) Off-Street Parking** (See Article 16 for additional parking regulations.)Adult Day Care Center – One (1) space for every four (4) persons being provided care, plus one (1) space per caregiver on the maximum shift.**Staff Alternative Text (including the change to Article 1-11 adding the Adult Day Care Center definition):****8-15(b) Principal Uses – PROFESSIONAL OFFICE (P-1) ZONE**21. Adult day care centers, but only when located at least five hundred (500) feet from a residential zone.**8-15(d) Conditional Uses – PROFESSIONAL OFFICE (P-1) ZONE**7. Adult day care centers, when located closer than five hundred (500) feet from a residential zone.**8-15(n) Off-Street Parking** (See Article 16 for additional parking regulations.)Adult Day Care Center – One (1) space for every four (4) persons being provided care, plus one (1) space per caregiver on the maximum shift.**8-16(b) Principal Uses – NEIGHBORHOOD BUSINESS (B-1) ZONE**

1. The principal permitted uses in the P-1 zone, not including a Professional Office Project.

8-16(c) Conditional Uses – NEIGHBORHOOD BUSINESS (B-1) ZONE13. Adult day care centers, when located closer than five hundred (500) feet from a residential zone.**8-17(b) Principal Uses - DOWNTOWN BUSINESS (B-2) ZONE (carries forward to the B-2A zone)**

1. The principal permitted uses in the B-1 (and P-1) zone.

8-17(d) Conditional Uses – DOWNTOWN BUSINESS (B-2) ZONE (carries forward to the B-2A zone)9. Adult day care centers, when located closer than five hundred (500) feet from a residential zone.**8-24(b) Principal Uses – OFFICE, INDUSTRY AND RESEARCH PARK (P-2) ZONE**28. Adult day care centers, but only when located at least five hundred (500) feet from a residential zone.**8-24(d) Conditional Uses – OFFICE, INDUSTRY AND RESEARCH PARK (P-2) ZONE**5. Adult day care centers, when located closer than five hundred (500) feet from a residential zone.**8-24(n) Off-Street Parking** (See Article 16 for additional parking regulations.)Adult Day Care Center – One (1) space for every four (4) persons being provided care, plus one (1) space per caregiver on the maximum shift.The Zoning Committee Recommended: **Approval of the Staff Alternative Text.**The Staff Recommends: **Approval of the Staff Proposed Text**, for the following reasons:

1. The proposed text amendment will make adult day care centers a conditional use in the P-1, B-1, B-2, B-2A, and P-2 zones when proposed to be closer than 500 feet to a residential zone, which will allow for notification to neighbors and a public hearing before the Board of Adjustment prior to siting an adult day care center in these locations.
2. The proposed adult day care center definition is crafted after four zoning definitions recommended by the American Planning Association, and will allow for a new use in our zoning regulations.
3. The staff alternative text achieves the Council's goal of requiring notification and a public hearing process for siting adult day care centers proposing to locate near existing residential areas, and addresses the Commission's initial concerns with the draft text amendment forwarded to them for their review.

Staff Presentation – Mr. Sallee identified the proposed text amendment on the Agenda, and noted that the staff previously distributed the Council Resolution #243-2102 that was passed on May 10th, the Staff Report that was presented to the Zoning Committee on July 5th and the Supplemental Staff Report on this text amendment.

Mr. Sallee said that this text amendment request was recently initiated by the Lexington-Fayette Urban County Council. He then said that the text amendment is proposing to amend the Zoning Ordinance to create a new definition for a land use that is not currently in the Ordinance. The proposed text amendment would amend Articles 1 and 8 of the Zoning Ordinance, inserting the new land use into the list of allowable uses. Mr. Sallee said that the Council has proposed a new definition for "adult day care center" to be inserted into Article 1-11 of the Zoning Ordinance, and make adult day care centers a conditional use in the P-1, P-2, B-1, B-2 and B-2A zones. He then said that the new definition would allow care and guidance to be given to adults within a protective setting that does not involve overnight accommodation. These accommodations would only be offered during part of the day. He noted that the staff report lists the definition of Community Centers and said that this language is probably the most similar to what is being proposed with this text amendment.

Mr. Sallee said that what led the Council to initiate this text amendment was the recent opening of an adult day care center that was in close proximity to an existing downtown neighborhood. He then said that the residents of that neighborhood were displeased with the lack of notification they received, as well as the inability to verbally object to the proposed request prior to its opening. He added that the proposed text amendment suggests listing adult day care centers as a conditional use in the P-1, P-2, B-1, B-2 and B-2A zones. This would then require an application to be filed and approved by the Board of Adjustment. He explained that the requirements for a Board of Adjustment application consist of notification to be sent out to all property owners within a 500-foot radius, notification to the closest neighborhood association, and the applicant would need to present their proposal at a public hearing.

Mr. Sallee said that this amendment is proposing to define "adult day care center" similar to other zoning definitions that are used in Blacksburg, VA; Boulder, CO; Durham, NC and Wheaton, IL. He then said that there are two different types of day care centers that would be covered under the new definition; one type is a medical facility that requires a Certificate of Need and approval from different state and federal agencies. The other type of adult day care is more of a social model, and does not require medical services. He added that there are three social adult day care facilities in Lexington located on Nicholasville Road, and the most recent, North Martin Luther King Boulevard.

Mr. Sallee said that the proposed text amendment was first introduced to the Commission at their June 21st work session. He then said that, during the work session, the Commission had voiced their concern with how restrictive the regulations were; and if this use was listed as a conditional use in every instance, there may not be any real locations available under the Ordinance. The staff took what the Commission had said, and drafted the proposed alternative text and presented that text to the Zoning Committee on July 2nd. Mr. Sallee explained that the alternative text would create a two-tiered system for regulating the use. The system would still keep the Council's proposal intact; but it would also allow the new use to be a principal permitted use in the Mixed Use and Planned Shopping Center zones, but only when that location is more than 500 feet from a residential zone.

Mr. Sallee said that during the drafting of the Supplemental Staff report the staff had found an anomaly or "unintended consequence" that was not anticipated. He directed the Commission's attention to the zoning map, and explained that the map identifies the different zoning locations throughout Lexington. He said that these zones could allow an adult day care center as a conditional use or a principal permitted use. He said that the edges of most of these areas are in close proximity to residential zones, and as a conditional use the proposed new use could be allowed. He then directed the Commission's attention to the downtown area, noting that much of this area is zoned B-2A. As such, the proposed use would be considered a principal permitted use; however, the adult day care center could still be within 500 feet of a residential zone. Mr. Sallee then directed the Commission's attention to a closer view of the Constitution Historic District, and said that it is located northwest of Martin Luther King Boulevard, southeast of North Limestone and between Pleasant Stone Street and East Third Street. He indicated that this is the largest downtown area that is located in a Downtown Business (B-2A) zone, adding that it is more than 500 feet from a residential zone. Since the Zoning Committee meeting, the staff was prompted to reconsider the alternative text as it would relate to the B-2A zone. He said that the basic intent of this regulation was to allow residences and neighbors to receive notification of an adult day care center when it is being proposed in close proximity to their properties. He then said that there are so many residences within this particular area, the staff's revised alternative text would have made the adult day care center a conditional use in the B-2A zone.

Mr. Sallee redirected the Commission's attention to the Supplemental Staff Report, and said that the revision to the staff's alternative text relates to the B-2A zone and where principal permitted uses of the B-2 zone carry into that zone. He then said that the staff is suggesting changing Article 8-18(b)(1) Principal Uses to read: "The principal permitted uses in the B-2 zone, except for adult day care centers" and create a new Article 8-18(d)(2) Conditional Uses to read: Adult day care centers. He said that the B-2A zone would have an exception for this use and the adult day care centers would be considered a conditional use in all instances. He added that the staff is estimating this would impact eight city blocks and should not have a huge impact on the general direction of the staff's alternative text.

Mr. Sallee said that the staff did not alter their findings, as presented to the Zoning Committee last week, and the staff is still recommending approval of the revised staff proposed text, for the following reasons:

1. The proposed text amendment will make adult day care centers a conditional use in the P-1, B-1, B-2, ~~B-2A~~, and P-2 zones when proposed to be closer than 500 feet to a residential zone, which will allow for notification to neighbors and a public hearing before the Board of Adjustment prior to siting an adult day care center in these locations.

2. The proposed adult day care center definition is crafted after four zoning definitions recommended by the American Planning Association, and will allow for a new use in our zoning regulations.
3. The staff alternative text achieves the Council's goal of requiring notification and a public hearing process for siting adult day care centers proposing to locate near existing residential areas, and addresses the Commission's initial concerns with the draft text amendment forwarded to them for their review.

Planning Commission Questions – Ms. Plumlee asked if the zoning regulations were to be based on the size of the facility. Mr. Sallee said that it is not related to the size of the facility. He then said that, generally how the regulations would work would be if a facility wanted to locate in an area, a determination would be made as to where the nearest residential zone was located, which would determine whether or not the proposal would be presented to the Board of Adjustment or if it could bypass the BOA and obtain zoning and building permits. It would not matter if the building was 2,000 square feet or a 20,000 square-foot building. Ms. Plumlee asked if the nonmedical facilities are state regulated. Mr. Sallee replied that he was unsure if the nonmedical facilities are state regulated.

Mr. Owens said that the Council had initiated this request and asked if they were requesting this to be a conditional use. Mr. Sallee replied affirmatively, noting that P1, B-1, B-2, B-2A and P-2 zones would be impacted.

Ms. Beatty asked if the current adult day care centers would be grandfathered in or if those facilities would need to come into compliance as either a conditional or a principal use. Mr. Sallee said that the current adult day care centers would be grandfathered in; but should a facility want to expand, and if that facility is closer than 500 feet to a residential zone, they would have the opportunity to request a conditional use permit. He then said that such a facility would not become a non conforming use to the point where they could not expand under any circumstances.

Ms. Roche-Phillips asked if the map previously presented to the Commission was only identifying the B-2A zones or the areas 500 feet from the nearest residential zones. Mr. Sallee explained that the previous map was showing the Constitution Historic District boundaries, and said that this largest of the B-2A zones. He then said that the edges of this B-2A zone are within 500 feet of a residential zone, and added that the map indicated the areas that are farther than 500 feet from a residential zone. He said that under the original staff alternative text, an adult day care center outside the boundaries could be considered as a "principal permitted use," and inside the boundaries it could be permitted as a "conditional use." He said that this area is primarily comprised of residential uses, which is what made it so significant. He then said that the staff's alternative text had resulted in an "unintended consequence" of negating the Council's original intention for this proposal in that one area.

Ms. Roche-Phillips said that at the Zoning Committee, there was a discussion concerning residential uses versus residential zones. She then said that that the map was showing an area where an adult day care center could potentially be located in the B-2A zone, and said that other zones could also be impacted. Mr. Sallee said that there are certainly residential uses located in the P-1 and B-1 zones, but the staff could not think of another area that is as concentrated as Constitution Historic District in a business zone.

Audience Comments – Linda Carroll, 343 North Limestone, was present. She said that the proposed text amendment was nearly perfect, particularly if the Commission were to adopt the new B-2A portion of the language. She then said that with regards to the situation on North Martin Luther King Boulevard, three separate schools were in close proximity to the facility that did not receive notification of the proposal. Ms. Carroll said that, in speaking with the staff, the one gap with this proposal was the schools. She then said that the schools in the downtown core are often not within 500 feet of residential zones, which would result in the schools being missed when the nearby areas are notified of a pending request. She requested that the Commission consider conditional use within 500 feet of a school or a child day care center because of the large number that are located downtown. She asked that the Commission add a condition that would require schools and child day care centers to be notified.

Rick Chrisman, CEO of Plummet Solutions, was present. He said that he was very familiar with the programs that are part of adult day care centers. He then said that understands the reasoning this text amendment was being proposed and he is aware that homeless people congregate downtown. He noted that there are many other adult day centers in Lexington that serve people with developmental disabilities and mental illness; and often times it would be generally known or obvious that they were in a facility. He encouraged the Commission to consider that under certain conditions these centers could be considered as a principal use.

Dawn Klus was present representing Sayre School, located at 194 North Limestone Street. She said that she supports Ms. Carroll's previous statement and she is also requesting that schools be included in the language of the proposed text amendment. She then said that this would allow the schools that are in close proximity to an adult day care center the opportunity to participate in the discussions beforehand.

Jeanne Miller was present representing St. Peter & Paul Regional Catholic School, located at 423 West Short Street and 133 Barr Street. She said that she supported Ms. Carroll's statement and requested that schools be included in the notification for this type of request.

Planning Commission Questions – Mr. Owens thanked the staff for working diligently on this request in such a short amount of time. He said that he was concerned as to how the adult day care center on North Martin Luther King

Boulevard started this issue. He then said that the adult day care center was a permitted use at that location and notification was not required. He added that, with regard to what the staff was recommending, if an adult day care center is located in a residential zone the request would become a conditional use. Mr. Owens said that with the North Martin Luther King Boulevard location there were concerns from both the residential neighborhoods and nearby businesses. He then said that it seemed that the nearby businesses were not being given the opportunity to voice their concerns, which is needed. He added that he does not want to hinder what is being accomplished, but he did not believe a conditional use would pose a hindrance in the process. Mr. Owens said that these types of request would be presented to the Board of Adjustment, and the Board members were open minded enough to realize when a use is merited or when the concerns are a "Not In My Back Yard" (N.I.M.B.Y) type situation. He then said that it is his opinion that adult day care centers could be classified as a conditional use throughout the zones, at this point in time.

Ms. Beatty applauded the staff and the work that was put into this issue. She then said that Ms. Blanton, who was absent, had strongly expressed her thoughts about creating a balance. She then said that the Commission should not lose sight of Ms. Blanton's initial comments and need to be respectful of our adult population, noting her understanding that there are challenged adults that need centers; but there are also our "traditional" aging adults that want to come together in a center. Ms. Beatty said that whatever the Commission's decision, there should be a nice balance.

Ms. Roche-Phillips said that the Zoning Committee had discussed this issue at their last meeting, and it was her understanding that Ms. Blanton did not want to make this so prohibitive to where we would not see adult day care centers in the community. She then said that she could not speak for Ms. Blanton, but she believed that the B-2A alternative would provide enough opportunity throughout the other zoning districts.

Mr. Cravens asked, if a conditional use permit was filed, if the schools would be notified if they were within a 500-foot proximity. Mr. Sallee replied affirmatively, and said that the name and address listed on the property tax information would receive the notification.

Mr. Cravens asked if the staff could include the schools' concerns. Mr. Sallee said that most of their concerns deal with the B-2 zone, and the following language could address what had been mentioned at today's meeting:

Article 8-17(d)(1) Conditional uses – Downtown Business (B-2) Zone

9. Adult day care centers, when located closer than five hundred (500) feet from a residential zone, school or child care center.

Mr. Sallee said that the downtown area is more compact, with a mixture of uses, by adding this language; it would not be difficult to ensure the requested notification. However, for the areas that are zoned B-1 and P-1, it would be difficult to ensure that each of the schools and day care facilities were properly notified since those facilities are wide spread throughout Lexington.

Mr. Brewer asked if the additional language would capture the downtown area that was indicated on the previous map. Mr. Sallee replied affirmatively, and said that the original text would have been appropriate for the school notification; but by adding the additional language, it would take the regulations one step closer in notifying the schools and day care centers. Mr. Brewer indicated that he was in agreement with the added language offered by the staff.

Ms. Beatty said that she believed that the schools should be notified, and asked why the downtown schools and day care facilities would be treated differently from any other schools and day care facilities in Lexington. Mr. Sallee said that this was offered only as an attempt to accommodate the downtown schools' request.

Mr. Owens asked if the staff believed this would be too problematic to make the proposed language applicable to the other zones. Mr. Sallee said that the B-2 zone was concentrated in one particular area, whereas the B-1 and P-1 zones are spread throughout Lexington, in multiple locations. He then said that it would be hard to know exactly where every school and day care facility is located if they fall within the 500-foot radius. Mr. Owens then asked, if this type of use was made a conditional use throughout, if those facilities would be notified. Mr. Sallee said that any property owners or schools within 500 feet would be notified of a pending request. Mr. King added that the downtown area is a finite area that can be easily managed. He then said that there is not a list of schools or day care facilities for the City of Lexington; and should a request be submitted, it would require a custom research project for that particular location to ensure that proper notification was sent. Mr. Owens said that he understood that reasoning; but, in his opinion, this type of use should be considered a conditional use.

Ms. Roche-Phillips asked what the Commission's timeline is for considering this request. Mr. Owens said that the Commission has 60 days from date of initiation to make a recommendation, which would expire before their next meeting. Mr. Sallee added that the Commission has 13 more days to make a recommendation. Ms. Roche-Phillips then asked, if the Commission does not consider this request, if the initiated text amendment from Council would become law. Mr. King said that the Commission must take action on what the Council had submitted within 60 days by making a recommendation of approval, disapproval or an alternative recommendation. The Council can then consider their recommendation.

Mr. Brewer asked when the Commission sends a recommendation to the Council for approval, with a staff revision, if the Council; in turn would review the text and make their own decision. Mr. King said that the Council could approve what the

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

Commission had recommended; they could approve the original text, or, within reason, they could modify the text even further. Mr. Brewer then asked, if the Council were to modify the text, if the Commission would review those changes. Mr. King replied that, if the changes are way outside the bounds of what the Commission had discussed and what was noticed to the public for this hearing, they might recommend to remand it back, but that decision currently is unknown.

Ms. Roche-Phillips asked if a hearing would be required. Mr. King replied negatively, and said that he does not believe a separate hearing would be required. Ms. Boland said that if the Council does something substantially different, the process would be repeated and they would have to initiate something different. She then said that to pass something that is different from what the Commission had proposed, the Council would be overriding the Commission's decision; and eight Council votes, not the majority vote of who is present, would be required. She added that the Council could also form a Committee, at which time it could stay in limbo since the Council is not on a time limit. Mr. Sallee said that the only required hearing on a text amendment is before the Planning Commission.

Mr. Brewer asked, for all concerned parties, including people in the audience, if they could contact their Council member and voice their support or opposition about this proposal. Ms. Boland said that, just as for any other Council meeting, the agenda is published; notice is given to the public; and, in general, the Council meeting allows public comments. Mr. Sallee added that the staff had notified over 250 neighborhood associations about today's Commission hearing.

Mr. Cravens said that he agreed that this type of request should be a conditional use in all zones, and not as a principal use. Mr. Owens asked if the original text was proposed as a conditional use only for all zones. Mr. Sallee said that the text sent to the Commission by the Council would make this type of use a conditional use for all B-1, P-1, B-2 and B-2A, as well as P-2 zones. Mr. Owens asked if the original text submitted by Council reads as a conditional use, to which Mr. Sallee replied affirmatively.

Mr. Brewer said that there are two recommended text from the staff, and asked if the Commission was now considering the original text submitted by the Council, which would include the concerns that were raised by the audience members. Mr. Sallee said that the question posed by Mr. Owens regarded the text initially submitted by the Council. He then said that since the Committee meeting, the staff drafted an alternate text, and added that on the overhead projector, the staff had further revised the text at this meeting to reflect the concerns voiced by the audience members.

Mr. Brewer said that based upon the comments from Mr. Owens and Mr. Cravens, the suggestion was for the Commission to go back to the original text offered by the Council. He asked, if the Commission considers the original text sent by the Council, if the concerns raised by the audience members would be addressed. Mr. Sallee replied affirmatively. Mr. Brewer then said that this would also raise the logistics issue of notifying everyone and asked if the staff was concerned about that. Mr. Sallee said that the staff's concerns were based upon the Commission's initial review and response to the text amendment. He added that, as a conditional use, the only way a facility could be sited is if all property owners are given notice within the particular area. He said that, in the staff's estimation, this would address the audience's concerns. He then said that the Commission could recommend the original text or the alternate text.

Ms. Beatty asked if the original text was more inclusive or less inclusive. Mr. Sallee said that the Council text had no provisions for an adult day care facility being a principal permitted use in the community, except as allowed as a community center under the existing regulations.

Mr. Brewer asked, if the Commission agreed with the original text submitted by the Council, if there would be notification to the schools and child care facilities. Mr. Sallee replied that that was not necessarily the case, and said that only the property owners, schools and child care centers within 500 feet from the proposed site would receive notification. He added that if the property owners, schools and child care centers fall outside the 500-foot notification area, those facilities would not receive a mailed notification.

Mr. Brewer then asked if the map showing the downtown area was within the 500-foot area, and if the text amendment would cover that area. Mr. Sallee said that the map previously shown was the area zoned B-2A; and under the Council's proposal and the revised staff proposal, the adult day care center would be a conditional use and all property owners would receive notification of the proposed use. Mr. Brewer confirmed that notification would be required for all property owners within the B-2A zone. Mr. Sallee replied affirmatively.

Mr. King clarified by saying that not everyone within the B-2A zone would be notified. He then said that if the Commission were to consider the Council's proposed text, there would be nowhere in Fayette County where an adult day care center would be a "by right" use. He then said that at any time this type of facility was being requested they would be referred to the Board of Adjustment (BOA), and the normal rules of the BOA would be applicable. This would include the property owners within the 500-foot radius being notified, legal notice placed in the newspaper and the posting of a sign on the subject property.

Ms. Roche-Phillips said that making this a conditional use in all of the zones was overly restrictive; and in many of the instances, medical or non medical, these facilities would not be significantly different from facilities that accommodate children. She then said that this type of use needed to be allowed by right in certain districts, and the Commission should not require this to be a conditional use in all zones or in all cases. She added that she was in favor of the alternative text that was presented by the staff today.

Action - A motion was made by Mr. Brewer, seconded by Ms. Roche-Phillips, to approve the revised staff-proposed text for ZOTA 2012-10: DEFINE & REGULATE ADULT DAY CARE CENTERS, for the following reasons:

1. The proposed text amendment will make adult day care centers a conditional use in the P-1, B-1, B-2, ~~B-2A~~, and P-2 zones when proposed to be closer than 500 feet to a residential zone, which will allow for notification to neighbors and a public hearing before the Board of Adjustment prior to siting an adult day care center in these locations.
2. The proposed adult day care center definition is crafted after four zoning definitions recommended by the American Planning Association, and will allow for a new use in our zoning regulations.
3. The staff alternative text achieves the Council's goal of requiring notification and a public hearing process for siting adult day care centers proposing to locate near existing residential areas, and addresses the Commission's initial concerns with the draft text amendment forwarded to them for their review.

Changing Article 8-17(d)(1) Conditional uses – Downtown Business (B-2) Zone to read:

9. Adult day care centers, when located closer than five hundred (500) feet from a residential zone, school or child care center.

Discussion of Motion – Mr. Cravens asked if Mr. Brewer would amend his motion by making this type of a request a conditional use and not a principal permitted use, which would then require Board of Adjustment approval. He said that these types of facilities could have an impact on the community, adding that these facilities can be threatening to passersby. Mr. Owens agreed, and said that the Board of Adjustment is open minded enough to determine whether or not a use at a particular location is merited or not, of if it's just a NIMBY situation.

Mr. Cravens asked Mr. Brewer if he would amend the motion on the floor. Mr. Brewer declined to so. Mr. Cravens said that he would therefore make a motion to amend the motion on the floor.

Legal Comment - Ms. Boland said that this is not an amendment and the Commission had the option of the Council's original proposed text, which is what the amendment was. She then said that Mr. Brewer had made a motion to accept the revised staff alternative text. She added that Mr. Cravens had made a motion to reject the motion on floor. Mr. Cravens said that he was not rejecting the motion on the floor, but wanted to make this type of use a conditional use only, not principal permitted use. Ms. Boland said that the Council recommendation was to have this type of use as a conditional use throughout the city. She then said that if the motion on the floor fails, then what was being suggested would be appropriate for the next motion.

The motion failed 2-7 (Cravens, Owens, Penn, Beatty, Berkley, Mundy and Plumlee opposed; Blanton and Wilson absent). Mr. Owens then asked for another motion.

Discussion - Mr. Cravens asked for clarification on the Council's language. Ms. Boland said that the Council's proposed text would make this new use a conditional use only, not a principal permitted use. Mr. Cravens then asked if the proposed text would require notification to notify property owners within a 500-foot area. He said that it is important for the schools to be notified of these uses.

Mr. Brewer said that his reasoning for suggesting the staff's revision was to ensure that all schools, day care centers and others were included in the notification process. He then said that the staff had indicated that there may be certain situations that a property owner would not be notified; and before the Commission moves forward, he wanted legal clarification that the audience members' concerns were addressed.

Mr. Berkley asked if this proposal would extend to the B-2A zone. Mr. Owens replied affirmatively. Mr. Sallee said that the conditional uses in the B-2 zone are the same conditional uses in the B-2A zone.

Ms. Roche-Phillips said that the Council's proposed text did not include all zoning categories (i.e., mixed use zones & B-6P); and by adopting the original language, the Commission would make it to where these uses are not allowed, regardless of the other districts.

Mr. Cravens said that his motion would make adult day care centers a conditional use for all zones. Ms. Boland asked if Mr. Cravens was asking that for every zone that was listed in the staff's alternative text it would be a conditional use. Mr. Cravens replied affirmatively, and added that schools and day care centers are to be notified as well. Ms. Boland said that the way the text has been discussed; every school and child care center in Fayette County would be notified. She said that if the school or day care centers are within 500 feet of the proposed location, those facilities would receive notification. Mr. Cravens agreed, and asked if Ms. Carroll was in agreement. Ms. Carroll said that there are some schools within Fayette County that are outside the 500-foot boundary. She said that if this type of use were being proposed near a school, she would hope that that school would be notified. Mr. Sallee said that if the use is a conditional use, all properties within 500 feet would receive mailed notification, which would also include any schools within that boundary. Mr. Owens clarified that there would be a posting of a sign on the proposed location, as well as legal notification in the newspaper, under this proposal. Mr. Sallee replied affirmatively. Mr. Cravens indicated that that would be appropriate.

Action – A motion was made by Mr. Cravens, to approve the staff revised alternative definition for ZOTA 2012-10: DEFINE & REGULATE ADULT DAY CARE CENTERS, changing the "principal uses" to "conditional uses" for P-1, B-1, B-2, B-2A and P-2 zones.

Discussion of Motion – Mr. Brewer said that if the language encompasses the audience’s concerns, he does not see why the Commission spent the last hour on this request. He asked if the Council’s version would include the schools and child care centers being notified. Mr. Sallee said that any time there is a request for a conditional use, there is mailed notification to all property owners within the notice radius, a legal advertisement in the newspaper and now a required posting of a sign on the subject site.

Mr. Brewer asked, if the concerns are being met, why the text is being changed. In response to the question from Mr. Brewer, Mr. Cravens said that a principal use allows the applicant to obtain a permit without any type of notification to the property owners, and suggested making this new use a conditional use, which would require notification, as well as a hearing by the Board of Adjustment.

Mr. Penn asked why the text could not be written to indicate that all schools are to be notified because the word “area” becomes a judgment call. Ms. Boland said that if the wording indicates that all schools would be notified, then all of Fayette County Schools would need to be notified. Mr. Penn then asked if the wording could indicate all schools in the affected area. Ms. Boland asked what would be the affected area. Mr. Penn conceded that was a good point and he would leave that up to the staff to determine. Ms. Boland said that the Commission can not make that request, and must define the area. She added that there are all types of schools in Fayette County to include trade, vocational and so forth, both large and small.

Mr. Penn said that the argument should be how to define an adult day care center. He said that it is not a question as to whether or not adult day care centers should be a conditional use, but rather what defines an adult day care center. Ms. Boland said that the issue of notification was raised, and this could create a situation that would pose a problem with someone not being notified. This could bring the Commission back to the beginning of the process and potentially make it impossible for anyone to have an adult day care center.

Mr. Owens said that there is a motion on the floor to amend the Zoning Ordinance text amendment language to define adult day care centers and to regulate such facilities as a conditional use in the P-1, B-1, B-2, B-2A and P-2 zones, with the definitions listed on the staff report.

The motion was seconded by Ms. Plumlee.

Discussion of Motion – Ms. Beatty said that the staff has done a phenomenal job in presenting the proposed text amendment. She then said that she understands that this text amendment must be considered today, but asked if the staff could create another report for the Commission to review and consider at the next meeting. Mr. Brewer said that there was not sufficient time to consider another proposal, because of the 60-day deadline. He then said that what has been presented is an attempt to address the concerns raised at the Commission’s hearing. The deadline for the Commission to consider this proposal would have passed before the next Commission meeting. Mr. Owens said that that is correct, and if the Commission could not come to a decision, the staff would inform the Council.

The motion carried 8-1 (Roche-Phillips opposed; Blanton and Wilson absent).

V. COMMISSION ITEM – The Chair will announce that any item a Commission member would like to present will be heard at this time.

1. **ELECTION OF OFFICERS** – The Commission’s By-laws state that at the first regular meeting in July, the Commission shall elect a Chairperson, Vice-Chairperson, Secretary, and Parliamentarian. The nominating committee will present its slate for consideration by the Planning Commission. Nominations may also be made from the floor.

The current officers are as follows:

Chairperson	-	Mike Owens
Vice Chairperson	-	Mike Cravens
Secretary	-	Lynn Roche-Phillips
Parliamentarian	-	William Wilson

Nominating Committee Report – Mr. Penn stated that the nominating committee recommended the following slate of Planning Commission Officers for 2012:

Chairperson	-	Mike Owens
Vice Chairperson	-	Mike Cravens
Secretary	-	Lynn Roche-Phillips
Parliamentarian	-	William Wilson

Other Nominations – Mr. Owens asked if there were any other nominations from the Commission. There were no other nominations from the floor.

Action - A motion was made by Mr. Penn, seconded by Mr. Brewer, and carried 9-0 (Blanton and Wilson absent) to approve the Planning Commission’s Slate of Officers, as presented by the Nominating Committee.

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