

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

**1. RML CONSTRUCTION ZONING MAP AMENDMENT & THE GLEN AT LOCHDALE, UNIT 4 (AMD.) ZONING DEVELOPMENT PLAN**

- a. MAR 2012-1: RML CONSTRUCTION (2/19/12)\* - petition for a zone map amendment from a Neighborhood Business (B-1) zone to a High Density Apartment (R-4) zone, for 14.78 net (17.47 gross) acres, for property located at 3600 & 3652 Winthrop Drive.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 11) recommends High Density Residential land use for the entire subject property. The petitioner proposes an apartment complex for 252 dwelling units (444 bedrooms), with an accessory clubhouse and associated off-street parking.

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

The Staff Recommended: **Approval**, for the following reason:

1. The requested High Density Apartment (R-4) zoning is in agreement with the 2007 Comprehensive Plan for the following reasons:
  - a. The 2007 Comprehensive Plan recommends High Density Residential future land use for the subject property, which is defined by the Plan as 10-25 dwelling units per net acre.
  - b. The applicant proposes to construct multiple apartment buildings for 252 residential units (with 444 bedrooms) at a residential density of 17.05 dwelling units per net acre. The applicant's proposed residential development falls within the density range recommended by the Plan for the subject site.
2. This recommendation is made subject to approval and certification of ZDP 2012-2: The Glen at Lochdale, Unit 4 (Amd.), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following buffering restriction is required for the subject property via conditional zoning:
  - a. There shall be planted and maintained along the southern boundary of the retention basin located on the subject property eight-foot (8') evergreen trees, staggered ten feet (10') on center.

This restriction is appropriate and necessary to provide a natural screen of the retention basin for the adjoining less intense residential development, and the applicant has agreed to provide this landscape buffer.

- b. ZDP 2012-2: THE GLEN AT LOCHDALE, UNIT 4 (AMD) (2/19/12)\* - located at 3600 and 3652 Winthrop Drive.  
**(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.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree protection plan.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Denote the height of building in feet.
10. Denote final record plan information for subject property.
11. Denote: No building permits will be issued unless and until a consolidation plat is recorded to combine Tracts 1 & 2.
12. Complete internal pedestrian system (to sidewalk).
13. Resolve note #13 and compliance with floor area ratio and lot coverage.
14. Resolve tree line along eastern boundary and possible need for tree protection area.

Zoning Presentation: Ms. Wade presented the staff's zoning report, briefly orienting the Commission to the location of the subject property at the southeast corner of Man O' War Boulevard and Winthrop Drive. She said that other uses in the vicinity include Anchor Baptist Church, which is located just to the west of the subject property; single-family residential uses to the southwest and to the north across Man O' War Boulevard; and four-plex and townhouse developments to the east and south along Goldon Trophy Trail. She noted that the subject property is approximately 15 acres in size, and is completely surrounded by residential zoning, consisting of mostly R-3 parcels, with some R-1D and R-4 zoning to the north. Other uses in the vicinity include more residential; the Millpond Shop-

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

ping Center, to the west; and Fayette Mall, to the east and north. Winthrop Drive is a collector street; it extends to Jessamine County to the south and across Man O' War Boulevard to the north.

Note: Mr. Brewer arrived at this time.

Ms. Wade displayed an aerial photograph of the subject property, explaining that it is currently vacant, with the exception of the existing retention pond on the southern portion of the two properties. The property was rezoned to R-4 in 1996 as part of a larger zone change from A-U to R-4. In 2007, the former owner proposed to rezone the property from the R-4 zone to the B-1 zone in order to construct a mixed-use development. In the four years since that zone change, the subject property has not developed, and it is now owned by a bank.

Ms. Wade said that the petitioner proposes to construct a multi-family housing development on the subject property, with 252 dwelling units comprising a total of 444 bedrooms on the site. The petitioner also proposes to construct a pool and clubhouse to serve the apartment development. The 2007 Comprehensive Plan recommends High Density Residential land use, which is defined as 10 to 25 dwelling units per net acre. The proposed apartment development would result in a residential density of 17.05 dwelling units per net acre, which is within the range recommended by the Comprehensive Plan.

Ms. Wade explained that, currently, the zoning of the subject property includes a conditional zoning restriction to require buffering and screening along a portion of the southern property line, where the retention basin adjoins existing residential development. The staff believes that that conditional zoning would still be appropriate at this location to provide screening from the higher-density apartment development for the existing four-plex units along Goldon Trophy Trail. Ms. Wade said that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda. She noted that the wording of the proposed conditional zoning restriction would be as follows: "There shall be planted and maintained along the southern boundary of the retention basin located on the subject property eight-foot evergreen trees, staggered 10 feet on center."

Commission Questions: Mr. Penn asked if the subject property was rezoned contrary to the recommendation of the Comprehensive Plan in 2007. Ms. Wade answered that the Planning Commission and the staff recommended disapproval of that request, because they found that it was not in agreement with the Comprehensive Plan. The Urban County Council, however, found that the request was in agreement with the Comprehensive Plan. Their decision was based on the Goals and Objectives and Implementation sections of the Comprehensive Plan, rather than just the Land Use map. Mr. Penn asked if the Planning Commission had recommended maintaining the residential zoning at that time. Ms. Wade answered in the affirmative.

Development Plan Presentation: Mr. Martin presented the corollary final development plan, noting that the staff had distributed a list of revised conditions to each of the Commission members prior to the start of this hearing. He explained that the petitioner is proposing to construct nine buildings on the subject property, each three stories in height, with 450 parking spaces to be located in the interior portion of the property. The petitioner also intends to construct a clubhouse and pool to serve the apartment development. The buildings are proposed to be just over 450,000 square feet in size, with 160,000 square feet for the footprints of the buildings. Mr. Martin stated that the staff is recommending approval of this plan, subject to the following revised 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.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree protection plan.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Denote the maximum height of the clubhouse building in feet.
10. ~~Denote final record plan information for subject property.~~
11. ~~Denote: No building permits will be issued unless and until a consolidation plat is recorded to combine Tract 1 & 2.~~
12. ~~Complete internal pedestrian system (to sidewalk).~~
- 10.13. ~~Discuss note #3 and compliance with floor area ratio and Addition of proposed mail kiosk/canopy into proposed lot coverage site statistics.~~
- 11.14. Resolve extent of tree line along southeastern property boundary and possible need for (next to existing basin) to be designated as a tree protection area, prior to plan certification.

Mr. Martin stated, with regard to the conditions for approval, that the staff is recommending #9 to correct what they believe is an oversight in the site statistics. Condition #10 refers to the addition of the proposed mail area to the site statistics. The petitioner needs to denote whether or not that area is proposed to be a building, because, if it is, its

square footage must count toward the lot coverage. Condition #11 would require the resolution of an existing treed area on the property. The staff believes that there might be some significant trees located there; and, if so, the petitioner will need to denote that area for tree protection on the plan. Mr. Martin said that the petitioner has been working with the Urban Forester to determine the level of protection necessary for those existing trees.

Commission Questions: Ms. Copeland asked if the existing sidewalk extends past the detention basin. Mr. Martin answered in the affirmative. He explained that Winthrop Drive transitions to a collector street width of 60' near the subject property, and it has full improvements in that area. He added that the petitioner has addressed the Subdivision Committee's concerns about pedestrian connections by depicting that sidewalk on this revised development plan.

Mr. Penn asked if the retention basin is intended to serve only the subject property. Mr. Martin stated that the basin has been constructed for some time and is in use, but he is unsure whether it currently serves other properties. Mr. Penn asked if the retention basin was constructed for the formerly proposed commercial use; and, if so, if the petitioner intends to make the necessary modifications to it. Mr. Martin replied that it is the staff's understanding that some modifications to the basin. Mr. Penn asked, with regard to the utility easement on the property, if it is currently in use. Mr. Martin answered that it is an existing utility easement that has been in use for some time. Mr. Penn asked how the petitioner can rectify that situation, since the easement is located in the area designated for possible tree protection. Mr. Martin responded that the petitioner will need to protect the trees to the best of their ability, but any necessary utility work there will take precedence over the maintenance of the trees.

Mr. Owens asked if the proposed lot coverage on the property is within the allowable limits. Mr. Martin answered that it is within the limits, although it is near the top of the allowable range. Mr. Sallee added that the lot coverage is the key statistic that is closest to the maximum allowable, which is the basis for condition #10 concerning the mail kiosk.

Petitioner Presentation: Rena Wiseman, attorney, was present representing the petitioner. She said that the subject property was rezoned to B-1 in 2007 contrary to the recommendation of the Planning Commission, who found that rezoning to be contrary to the recommendation of the Comprehensive Plan. At that time, the Planning Commission found the R-4 zoning to be appropriate for the subject property. When the property was rezoned to R-4 in 1996, the residential density proposed was close to what is currently proposed by the petitioner.

Ms. Wiseman stated that the subject property is currently owned by a bank, and the petitioner has a contract to purchase it, which includes some time constraints that relate to the filing of the development plan. She said that, normally, the petitioner would not file a final development plan with a rezoning request due to the two-week certification requirement. However, the petitioner's contractual requirements dictated that they finalize the development plan as quickly as possible in order to close on the property. Ms. Wiseman said the petitioner has been working with the staff, and has already satisfied many of the sign-off conditions on the development plan. With regard to the new condition #11, the petitioner would like to request a modification to the language to require that they preserve the existing healthy trees, but not designate a tree preservation area. Ms. Wiseman explained that the petitioner will need to do some clearing of dead trees and brush in order to make the needed modifications to the retention basin, and they will not be able to do so if they are required to designate the entire area for tree preservation. The Urban Forester has reviewed the property, and he does not believe that the area needs to be set aside as a formal tree protection area. The petitioner would like for that condition to denote that the petitioner will maintain large, healthy trees in that location.

Ms. Wiseman said that the petitioner is in agreement with the staff's findings, with the exception of #3, which would maintain the existing conditional zoning restriction to require landscape buffering along the southern boundary of the subject property. The petitioner met with representatives of the Magnolia Run neighborhood, who requested that there be no trees or screening along that boundary in order to maintain their view of the retention basin. To that end, the petitioner would like to request that that conditional zoning restriction be changed to a development plan note requiring the planting of evergreen trees along that boundary. Should the petitioner obtain a formal statement from the neighborhood requesting that no trees be planted there, the plan note could then be amended to reflect that request. If the conditional zoning restriction is maintained, the petitioner would be required to go through the zone change process in order to remove it. Ms. Wiseman said that the Magnolia Run representatives are interested in the petitioner cleaning up the retention basin and maintaining it as an amenity for their neighborhood, as well as the proposed development.

Commission Questions: Mr. Penn asked, with regard to the utility easement on the southern property boundary, what the petitioner proposes to do with the existing trees in the easement. Rory Kahly, EA Partners, answered that the existing boundary between the subject property and the four-plexes on Goldon Trophy Trail has a recorded utility easement, which has precedence. The petitioner's plan is depicting a tree protection area along the longest side of the proposed building nearest that property line. Mr. Kahly explained that the petitioner agrees not to disturb the trees during grading and construction activities on the property, but they cannot prevent the utility company from using the recorded easement.

Mr. Penn asked if the retention pond will need to be expanded or deepened. Mr. Kahly answered that he met with Hillard Newman, Division of Engineering, and learned that the basin was originally designed for detention, rather than retention. The Division of Engineering is of the opinion that the petitioner can either: rectify the condition that is causing the basin to retain water all the time, and then use as for detention only; or, submit a new development plan requesting that the basin be maintained for retention, and used as a pond feature for the proposed development. Mr. Kahly added that he does not know at this time the extent of the grading that will be necessary. Mr. Penn asked how much bigger the retention pond would be. Mr. Kahly answered that the petitioner will not know the exact dimensions until the development plan is approved and certified, and construction begins on the property. Ms. Wiseman added that the retention basin was originally designed to accommodate a residential use in the 1990s, rather than the business use that was proposed when the subject property was rezoned in 2007.

Ms. Copeland opined, with regard to the request of the Magnolia Run subdivision residents to not hamper their view of the retention pond, that it would be preferable for them to view the pond through trees. She asked if the petitioner and the Urban Forester would be agreeable to spacing the trees about every 20 feet on center, rather than every 10 feet as required by the existing conditional zoning restriction. Mr. Kahly answered that the conditional zoning restriction currently requires trees planted every 10 feet on center, and the petitioner cannot change that. If the Commission chooses to make that requirement a development plan note, however, the petitioner can plant the trees as Ms. Copeland suggested. Ms. Wade replied that there is currently a long list of conditional zoning restrictions associated with the subject property which relate to B-1 uses. The staff believed that the conditional zoning restriction requiring buffering might be appropriate, but it is not required between two residential zones. The staff would be agreeable, therefore, to removing that restriction, should the Commission members so choose.

Ms. Copeland stated that she would like for some trees to be planted on that boundary to soften the lines of the building. Ms. Wade explained that that could be achieved with a development plan note, which would provide more flexibility than a conditional zoning restriction.

Mr. Owens asked if a conditional zoning restriction or a development plan note would be more appropriate to address the issue of buffering along the southern property boundary. Ms. Wade answered that, if the Planning Commission approved a development plan condition, it would become condition #12. It could read "resolve" the landscaping, which would be very general, or it could require specifics. She noted that a conditional zoning restriction has more enforcement power, and is generally "stronger" than a development plan note, since conditional zoning restrictions require refileing a zone change, notifying surrounding property owners, and forwarding the zone change to the Urban County Council for their action. Mr. Martin stated, with regard to the petitioner's request to modify condition #11, that the staff would be agreeable to changing the language to read: "Resolve the extent of tree protection necessary." That language would allow the petitioner to work with the Urban Forester to determine which trees are worthy of protection.

Ms. Beatty asked if the retention pond could create a safety hazard for the surrounding neighborhoods, and if the residents of those neighborhoods should be notified that there will be a pond on the subject property. Mr. Martin answered that the retention pond currently exists, and has been there for some time, so the nearby residents should be aware of it. He added that the Division of Engineering has estimated the depth of the pond at two to three feet.

Ms. Roche-Phillips asked if the retention pond will hold water temporarily, or have standing water continually. Mr. Kahly answered that detention basins hold water during events, then let it go; retention basins have a permanent pool. If the petitioner decides to use the pond as a retention basin, there will be a permanent pool level, and a flood control level. The water level would still fluctuate somewhat, but there would be a basic depth that would be maintained continually.

Ms. Copeland asked what Tim Queary, Urban Forester, would recommend with regard to whether a conditional zoning restriction or development plan note would be more appropriate. Mr. Queary answered that a development plan note should be sufficient to address the treatment of the wooded area on the subject property. With regard to Ms. Copeland's suggestion to provide more space between the trees in the landscape buffer, Mr. Queary said that it would not be appropriate to require that as part of a conditional zoning restriction, but a development plan note should suffice in that case as well. Ms. Copeland asked if Mr. Queary would recommend wording the development plan condition to include an "evergreen buffer." Mr. Queary responded that zone-to-zone screening in the form of a landscape buffer is not required along that property boundary; rather, the former owner of the property agreed to that conditional zoning restriction at the time of the zone change in 2007. Mr. Queary did not believe that that buffer is required, but the Commission can require evergreens planted 20 feet on center as a development plan condition, if they so choose. Mr. Kahly stated that the petitioner would be agreeable to maintaining the conditional zoning restriction, but they wanted to accommodate the request of the Magnolia Run residents who indicated a preference for an unobstructed view of the retention basin. He added that the petitioner would be agreeable to providing evergreen trees planted 20 feet on center, or in groups of three. Ms. Copeland stated that she does not like to see a natural setting with trees planted in rows. Mr. Kahly suggested that the development condition could read as follows "...evergreen plantings along the southern boundary in groups of three or more, leaving gaps of 20 feet between

clusters." The Commission could also word the condition to require evergreen plantings; and, knowing their wishes, Mr. Kahly could ensure that the trees are planted according to Ms. Copeland's suggestion.

Ms. Wiseman asked for clarification on condition #10, since the petitioner is concerned about the designation of a tree preservation area. Mr. Sallee answered that the proposed language for a condition that could read: "Resolve extent of tree protection, as necessary."

Mr. Penn asked who would be liable if someone drowned in the retention basin. Ms. Wiseman responded that whoever has responsibility for maintaining the retention pond would be subject to liability in that unfortunate event. She added that the petitioner will be required to adhere to the regulations of not only the Lexington-Fayette Urban County Government, but the Army Corps of Engineers as well, and will have to take reasonable measures to protect the public. Mr. Penn asked why a property owner would want a retention basin, since the possibility of such a liability exists. He said that, because there are many residences located near the retention basin, he is concerned about the safety of the residents and the possibility of liability. Ms. Wiseman answered that it is an individual decision for each landowner to weigh the risk of liability against the potential of creating an attractive amenity.

Mr. Owens asked if the staff would be comfortable with requiring a development plan condition, rather than a conditional zoning restriction, to address the issue of a landscape buffer for the southern property boundary. Ms. Wade answered that the staff is comfortable with a development plan note that would provide some flexibility for the petitioner. Mr. Owens asked the staff to provide some language for that note. Mr. Sallee explained that the minutes of this meeting would clearly indicate that the language should be similar to what was mentioned earlier in this hearing. Ms. Wade said that Mr. Kahly had suggested evergreen plantings in groups of three or more spaced at least 20 feet apart along the southern boundary.

Ms. Copeland clarified that the trees should be planted with a group of three, then a 20-foot space, then another group of three.

Citizen Opposition: Lisa Rogers, 3206 Pimlico Parkway, stated that she is a trustee at Anchor Baptist Church. She said that many church members are concerned about the safety of the retention basin, and asked if the petitioner could place signs noting the location of the pond.

Ms. Rogers said that church members are also concerned about traffic in the vicinity of the subject property. There is a great deal of traffic entering and leaving their property for services on Sundays and Wednesdays, in addition to traffic generated by Trinity Christian Academy Middle School, which is housed on their property. The church members are concerned that the proposed development could exacerbate a difficult situation.

Discussion: Ms. Roche-Phillips asked Ms. Rogers to note the location of the church on the rendered development plan. Ms. Rogers did so, noting that the entrance to the church is located in the curve of Winthrop Drive.

Ms. Copeland asked Mr. Sallee to display an aerial photograph of the subject property and the surrounding neighborhood. She said that the existing residential area appeared to be very isolated from Millpond Shopping Center, and that she believed that the Commission should avoid duplicating this type of development pattern in the future.

Mr. Owens stated that he appreciated the concerns of the members of Anchor Baptist Church

Zoning Action: A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 10-0 (Wilson absent) to approve MAR 2012-1, for the reasons provided by staff, deleting finding #3.

Development Plan Action: A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 10-0 (Wilson absent) to approve ZDP 2012-2, subject to the first 10 conditions as listed; changing #11 to read: "Resolve extent of tree protection as necessary prior to certification;" and adding condition #12 to require plantings of three or more evergreen trees spaced at least 20' apart along the southern property boundary.