

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

**ZOTA 2012-14: AMEND THE NOTIFICATION REQUIREMENTS FOR
MAP AMENDMENT REQUEST (ZONE CHANGE) APPLICATIONS**

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: **Underlined bold text** below indicates an addition, ~~dashed through~~ text indicates a deletion to the current Zoning Ordinance.

ARTICLE 6: AMENDMENTS

6-4(b) NOTICE OF PUBLIC HEARING BEFORE THE PLANNING COMMISSION – Before voting upon any proposed text amendment, zone map amendment, or binding condition or restriction amendment, notice of the time, place and reason for holding a public hearing shall be given by one publication in the newspaper of highest circulation in Fayette County, Kentucky, not earlier than twenty-one (21) days or later than seven (7) days before the public hearing. In addition, for any map amendment, or binding condition or restriction amendment, notice of the public hearing shall be posted on the subject property for fourteen (14) consecutive days prior to the hearing, and notice shall be given by first-class letter at least twenty-one (21) days in advance to owners of all property within a ~~500~~**500**400-foot radius of the subject property. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a ~~500~~**500**400-foot radius of the subject property, but to the next two properties beyond those included in the ~~500~~**500**400-foot radius; but in no event shall notice be required for property more than twenty-four hundred (2,400) feet from the subject property for a zone change request or more than one (1) mile from the subject property for a conditional use or variance request in conjunction with a zone change as allowed in Article 6-4(c). For any Council- or Commission-initiated map amendment, notice by first-class letter shall be given to all owners of property, the classification of which is proposed to be changed, at least thirty (30) days prior to the public hearing.

STAFF REVIEW:

The staff requested that the Planning Commission initiate a text amendment to Article 6-4 of the Zoning Ordinance in order to modify the notification requirements for map amendment request (zone change) applications. The current notification requirements are three-fold: (1) first-class mailed notice to all property owners within 400 feet of the subject property (land to be re-zoned), with additional notification when the subject property is adjacent to an agricultural zone; (2) a sign posted on the subject property for 14 consecutive days prior to the public hearing; and (3) a legal advertisement in the newspaper between 7 and 21 days prior to the public hearing.

This text amendment would alter the notification area from 400 feet to 500 feet in order to be consistent with a recent change approved to Article 7 of the Zoning Ordinance for conditional use permit applications. When the staff recently evaluated a text amendment proposal from the Urban County Council, (*ZOTA 2012-7: Amend the Notification Requirements for Conditional Use Permits*), we found that increasing notice to nearby property owners, requiring notice to neighborhood or homeowner's associations within the required notice area, and requiring a sign to be posted on the subject property associated with a conditional use application would support Goal #1 of the 2007 Comprehensive Plan. This Goal endorses providing planning processes which enable widespread citizen participation and benefit the community. The staff's alternative text was recommended for approval to the Council, and the Council adopted the changes in July 2012. This proposed text amendment would likewise support Goal #1 of the 2007 Comprehensive Plan, and also Theme F.1. of the 2012 Comprehensive Plan's Goals and Objectives, which encourages engaging the residents of Lexington-Fayette County in the planning process, especially through constructive communication.

During the evaluation of that text amendment, the staff identified an issue of concern. Until July of this year, the Zoning Ordinance treated the notification for a zone change (Planning Commission) and a conditional use (Board

of Adjustment) application equally; that is, notification was provided to property owners within 400 feet of the subject property. However, the approved change to Article 7 now gives deference or greater importance to conditional use applications. The staff does not want to convey a message to the neighborhoods and applicants that conditional use permits are more important than zone change applications, as each can have an equal impact to surrounding property owners. The proposed text amendment would equalize these notification requirements once again, which will be especially helpful in the instances when an applicant for a zone change also wishes to request approval of a conditional use permit from the Planning Commission.

Notification to neighborhood or homeowner's associations is not required, except in the case of a conditional use permit application. The staff does routinely mail notification letters to any registered neighborhood or homeowner's association within the vicinity of the subject property as a courtesy. The staff does not believe that such notification should be regulated by the Zoning Ordinance in a manner similar to the new requirements for conditional use permit applications, as it removes any flexibility in making suitable decisions on a case-by-case basis. The Department of Law also suggests leaving such specific notification requirements out of the Zoning Ordinance, as they can hamper notification in some cases. In addition, the Department of Planning, Preservation and Development has created a weekly email newsletter to registered neighborhood and homeowner's associations, which will include recently filed applications of all types. This is a proactive approach to notification that is not necessarily geographically based. It should be noted that only those registered associations that have provided a valid email address receive the new newsletter.

Other communities in Kentucky typically follow the KRS 100 minimum requirements for notification of a zone change request – i.e., only to all adjacent property owners. Communities reviewed outside of Kentucky range from 200 feet to 1,000 feet when using a notification area distance from the subject property, and were typically equal to or greater than notification requirements for conditional use permits.

Lastly, in reviewing the existing text of Article 6-4, the staff noted an inconsistency between the requirements for conditional uses and variances when filed in conjunction with a zone change application and when an agricultural zone is adjoining the subject property (considered by the Planning Commission), as compared to the requirements for those applications when filed with the Board of Adjustment. The staff alternative text moves variance requests so that they have a maximum notification area of 2,400 feet when the subject property is located adjacent to an agricultural zone, rather than one mile, as is the case for conditional use requests.

Staff Alternative Text:

6-4(b) NOTICE OF PUBLIC HEARING BEFORE THE PLANNING COMMISSION – Before voting upon any proposed text amendment, zone map amendment, or binding condition or restriction amendment, notice of the time, place and reason for holding a public hearing shall be given by one publication in the newspaper of highest circulation in Fayette County, Kentucky, not earlier than twenty-one (21) days or later than seven (7) days before the public hearing. In addition, for any map amendment, or binding condition or restriction amendment, notice of the public hearing shall be posted on the subject property for fourteen (14) consecutive days prior to the hearing, and notice shall be given by first-class letter at least twenty-one (21) days in advance to owners of all property within a ~~500~~400-foot radius of the subject property. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a ~~500~~400-foot radius of the subject property, but to the next two properties beyond those included in the ~~500~~400-foot radius; but in no event shall notice be required for property more than twenty-four hundred (2,400) feet from the subject property for a zone change or variance request, or more than one (1) mile from the subject property for a conditional use ~~or variance~~ request in conjunction with a zone change as allowed in Article 6-4(c). For any Council- or Commission-initiated map amendment, notice by first-class letter shall be given to all owners of property, the classification of which is proposed to be changed, at least thirty (30) days prior to the public hearing.

The Staff Recommends: Approval of the Staff Alternative Text, for the following reason:

1. The staff alternative text amendment is supported by Goal #1 of the 2007 Comprehensive Plan, which endorses providing planning processes which enable widespread citizen participation and benefit the community; as well as Theme F.1. of the 2012 Comprehensive Plan's Goals and Objectives, which encourages engaging the residents of Lexington-Fayette County in the planning process, especially through constructive communication. The amendment expands mailed notice by twenty-five (25%) and will provide a

detailed notification letter to a greater number of property owners near the location of a proposed zone change.

2. Until earlier this year, the Zoning Ordinance treated the notification for a zone change (Planning Commission) and a conditional use (Board of Adjustment) application equally; that is, notification to property owners within 400 feet of the subject property. However, the recently approved change to Article 7 now gives deference or greater importance to conditional use applications. The proposed text amendment would equalize these notification requirements again, as each can have an equal impact to surrounding property owners.

TLW/BJR/WLS

9/5/12

Planning Services/Staff Reports/ZOTA/ 2012/ZOTA 2012-14.doc