

4. BURLINGTON HEIGHTS CONDOMINIUMS, LLC, AND WYNNDALE DEVELOPMENT, LLC, ZONING MAP AMENDMENT & KALUSKI PROPERTY (LEX AVE APARTMENTS) ZONING DEVELOPMENT PLAN

- a. MARV 2016-9: BURLINGTON HEIGHTS CONDOMINIUMS, LLC, AND WYNNDALE DEVELOPMENT, LLC (6/5/16)* – petition for a zone map amendment from a High Density Apartment (R-4) zone to a High Rise Apartment (R-5) zone, for 0.59 net (0.69 gross) acre, for property located at 256 & 260 Lexington Avenue. Dimensional variances are also requested.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The 2013 Plan's Goals and Objectives emphasize the importance of growing successful neighborhoods (Theme A), protecting the environment (Theme B), creating jobs and prosperity (Theme C), improving a desirable community (Theme D) and maintaining a balance between planning for urban uses and safeguarding rural land (Theme E). The subject properties are also located within the areas of the Downtown Master Plan (2005) and the College Town Study (2002), both of which are plans prepared by the Lexington Downtown Development Authority.

The petitioner proposes a High Rise Apartment (R-5) zone for the two parcels in order to construct a new, more modern apartment building with a total of 24 dwelling units (36 bedrooms) and associated off-street parking. The petitioner is also requesting several dimensional variances for the subject properties.

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

The Staff Recommends: **Approval**, for the following reasons:

1. The proposed High Rise Apartment (R-5) zone is in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. The Comprehensive Plan Goals and Objectives recommend expanding housing choices to meet the needs for all of Fayette County's residents (Theme A, Goal #1b.); supporting infill and redevelopment that respects the area's context and design features (Theme A, Goal #2a.); providing well-designed neighborhoods and communities (Theme A, Goal #3); and utilizing vacant properties within the Urban Service Area to encourage compact, contiguous and/or mixed-use sustainable development to accommodate future growth needs (Theme E, Goal #1b).
 - b. These Goals and Objectives are furthered by the applicant's proposal to create affordable, safe and secure high density residential dwelling units within the College Town area, which will allow students and others to live near the University of Kentucky and downtown.
 - c. These Goals and Objectives are also furthered by the applicant's proposal to increase density to accommodate future growth needs of the community, thereby reducing pressure to expand the USA boundary.
 - d. The applicant's proposal is context sensitive and compatible with the surrounding area because proposed high density redevelopment is surrounded by high density zoning and land uses, and the three-story redevelopment will be consistent in scale with the surrounding neighborhood.
2. The applicant's proposal to rezone the subject properties for 24 dwelling units, a residential density of 40.68 dwelling units per acre, is also supported by the Downtown Master Plan, which recommends increasing residential density within the downtown area. The Plan also acknowledges the mix of opportunities and challenges within the College Town area, noting that increased density and retail development should respond to the surrounding architectural character of the area. The corollary development plan is in keeping with the character of the area – it proposes a three-story building with a setback similar to the existing front setbacks along Lexington Avenue, and off-street parking out of view of the street, at the rear of the properties.
3. This recommendation is made subject to approval and certification of ZDP 2016-43: Kaluski Property (Lex Ave Apartments), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED VARIANCES

1. Reduce the number of required parking spaces from 36 to 34.
2. Eliminate the required interior Vehicular Use Area (VUA) landscape area(s).
3. Reduce the required open space from 20% to 15%.
4. Reduce the required front yard from 20 feet to 8 feet.

The Staff Recommends: **Approval of the requested variances**, for the following reasons:

- a. Granting the requested variances will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. In fact, granting the variances will help to maintain the existing character of the street, which is residential in nature, with setbacks closer to the street than even the current R-4 zone requires; and will provide a more modern residential building

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- that will, ideally, blend in with the overall character of the street. At the same time, it will allow the parking area at the rear of the property to be maximized, creating a safe and efficient layout for parking and circulation.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance. Lexington Avenue is a residential street that provides a connection from the University of Kentucky to Downtown; and the building and parking, as proposed, are designed to maximize the site, replacing two older residential structures with a safer, more modern living space for students or others who might wish to take advantage of live-where-you-work opportunities, which is endorsed by the Comprehensive Plan. All of the variances work together to provide as efficient and safe of a parking layout as possible. Landscaping (including a 6-foot privacy fence) will be provided by the developer along the rear property line to take the place of what would otherwise be required by Article 18 for interior landscaping.
 - c. One special circumstance that applies to this site that does not generally apply to land in the general vicinity is its size, which will allow the redevelopment as proposed. There is only one other residential property in the immediate vicinity that is of a comparable size, which is the property adjoining 256 Lexington Avenue to the north, already developed with an apartment building. Any other property of that size in the area is commercial in nature (e.g., Maxwell Presbyterian Church and the US Post Office building). Another circumstance is that this is an urban infill project located between the University of Kentucky campus and Downtown that will continue to provide rental housing, which is always in demand. The new building proposed will replace two older structures with a new, safe structure that will contain only a few more dwelling units than the two existing buildings do currently.
 - d. Strict application of the requirements of the Zoning Ordinance would prevent the most efficient layout of the parking area that is currently proposed, or would require an off-setting decrease in the number of dwelling units for this redevelopment project.
 - e. Although the circumstances surrounding the requested variance are associated with the proposed zone change, the variances are requested in an effort to accomplish an efficient design of the off-street parking area. Landscaping will be placed in a more appropriate location on the property, and the apartment building will be at a setback more in line with what is existing on the remainder of the east side of Lexington Avenue.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property R-5; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
4. Prior to obtaining an Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.
5. The final Landscaping Plan, submitted to the Division of Building Inspection for review, shall also be submitted to the Division of Planning, for placement in the appropriate file(s).

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

- c. ZDP 2016-43: KALUSKI PROPERTY (LEX AVE APARTMENTS) (6/5/16)* - located at 256 and 260 Lexington Avenue.
(EA Partners)

The Subdivision Committee Recommended: Postponement. There are questions about compliance with the required open space and parking.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property R-5; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
6. Correct plan title (to include Kaluski Property).
7. Denote: Recordation of a consolidation plat will be required prior to certification of a final development plan.
8. Addition of record plat designation on plan or in title block.
9. Dimension breezeway and sidewalks.
10. Revise cross-section to depict no parking on one side of street.
11. Discuss reciprocal access and maintenance with adjacent property to the southeast.
12. Discuss compliance with the required parking and open space requirements.
13. Discuss compliance with Article 15-7 of the Zoning Ordinance.

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Zoning Presentation – Ms. Wade presented the staff report and oriented the Commission to the location of the subject properties. She said that this request is for a change from an R-4 (High Density Apartment) zone to an R-5 (High Rise Apartment) zone for two properties, located at 256 and 260 Lexington Avenue. The site is between E. High and E. Maxwell Streets, near the High Street branch post office, which is just to the north at the intersection of E. High Street and Lexington Avenue. She said that all properties that border the site are zoned R-4, although there is B-2A zoning along E. High Street and S. Martin Luther King Boulevard. The properties are located between the University of Kentucky campus and Downtown Lexington, in the area that is considered College Town, and were included in the College Town and Downtown Master Plan studies in 2002. The Downtown Master Plan indicated that redevelopment opportunities exist in this area, but any redevelopment should be context sensitive to what is in the area. Although not within a local historic district, the two properties are within a residential district listed in the National Register of Historic Places and are between the Aylesford and the South Hill local historic districts.

She said that the petitioner is proposing to increase the density on the property by building 24 apartment units, which will result in a density of 40.68 dwelling units per acre. Ms. Wade presented several aerial photos of the property and surrounding area, noting that there are two structures on the site today, one of which is an historic single family residence that was converted to a duplex, and the other a building that had been converted to a 16-unit apartment building. She said that the petitioner contends that the proposed zoning is in agreement with the following Goals & Objectives of the 2013 Comprehensive Plan: Theme A, Goal 1, Objective b, which relates to expanding housing choices for Fayette County residents; Theme A, Goal 2, Objective a, which supports infill and redevelopment that respects an area's context and design features; Theme A, Goal 3, which is to provide for well-designed neighborhoods and communities; and Theme E, Goal 1, Objective b, which has to do with utilizing vacant or underutilized properties within the Urban Service Area in a compact, contiguous and sustainable manner in order to address future growth needs within Fayette County.

Ms. Wade said that the staff does not believe that changing from one high density zone to another will have much impact in an already densely populated area, adding that the petitioner is proposing to modernize the housing and make it safer for residents (presumably students and faculty or staff of the University of Kentucky) in a manner compatible with existing residences in the area (i.e., a 3-story building, which is typical of other structures on this street and at a similar setback). She said that the staff believes this zone change to be in agreement with the Comprehensive Plan and is supported by the Downtown Master Plan. She concluded by saying that the staff was recommending approval for the reasons as stated in the staff report and on the agenda, and that the Zoning Committee had recommended approval as well.

Commission Question - Ms. Mundy asked if there was any requirement that would make the petitioner use the same footprint, to which Ms. Wade responded that it was in a National Historic District, but not a local district; therefore, there is no such requirement, although it is standard procedure that the Division of Historic Preservation would review the proposal as it relates to demolition of the buildings.

Development Plan Presentation – Ms. Gallt presented the corollary development plan, noting that the petitioner is proposing a 3-story apartment building with parking to the rear and driveway access to Lexington Avenue, both from the subject property and the adjoining property by connecting the parking areas. After explaining the required conditions for approval, one of which was to delineate who would be the party responsible for maintaining the reciprocal access easement, she said that the staff's recommendation of the revised development plan was for approval.

Variance Presentation – Mr. Emmons said that the petitioner was requesting a total of four variances, all of which were fairly minor in scope and all of which would work together to help facilitate a cohesive development: 1) a reduction in the number of required parking spaces from 36 to 34; 2) elimination of the required vehicular use area interior landscaping; 3) reduction of the open space requirement from 20% to 15%; and 4) a reduction of the front yard requirement from 20 feet to 8 feet. Mr. Emmons explained that a reduction of the front setback would put the new building more in line with properties on the street in the direction of the University of Kentucky, as opposed to the larger setbacks on the street nearer downtown. He said that the staff was recommending approval of that variance.

The second variance, elimination of the required vehicular use area screening (landscape islands within the parking lot) was requested to allow a connected parking area across the rear of the two properties area; if the interior landscaping were required, it would reduce the amount of parking the petitioner could provide, which would result in the need for a greater parking variance. He said that the Landscape Review Committee had reviewed this portion of the request and had recommended approval. Their recommendation included providing additional trees along the rear property boundary for better perimeter screening between the parking area and the residential properties on Hagerman Court, to the rear.

With regard to the open space reduction from 20% to 15%, Mr. Emmons said that, although the proposed development is infill, the requirements for new development would apply since a new lot is being created by consolidating the two existing lots. He explained that there is generally a 20% open space requirement in the R-5 zone and that the proposed reduction of open space was minimal. He said the staff found it to be a justifiable and reasonable request because balconies will be provided for the individual apartments.

The last variance discussed was the parking variance. Mr. Emmons said that 36 spaces are required, based on the number of bedrooms being proposed for the development. The petitioner was requesting a variance to 34 spaces, which is equal to a 6% reduction in parking. He explained that properties within 300' of a bus stop can have a 5% reduction in parking by right; and if within 300 feet of a sheltered bus stop, there is a 10% reduction allowed by right. The staff believes this

variance to be minor and justifiable as well, particularly due to the walkability of the area and the proximity of the Transit Center (only 600 feet from the site).

He said that the staff was recommending approval of all the requested variances, for the reasons as listed in the staff report and on the agenda, and subject to the five conditions listed. Mr. Emmons said that because there is a landscape variance involved, the staff was requesting a copy of the final landscape plan to be submitted to Planning to be included as part of the record of this case.

Petitioner Presentation - Jacob Walbourn, attorney, was present on behalf of the petitioner. He said they were in agreement with the staff's recommendations and that he would reserve his comments for rebuttal in order to respond to the opposition's concerns.

Opposition - Amy Clark, 628 Kastle Road, said that the primary speaker in opposition to this case (Ms. McAlister) had to leave the meeting and asked that she (Ms. Clark) be allowed to use her allotted time in addition to what would be needed for her own PowerPoint presentation. She said that she had Ms. McAlister's prepared remarks, which would be provided to the Commission. Ms. Clark also said that there was a resident of the Aylesford neighborhood who was present and who had signed up to speak, but had yielded his time to her. She asked to be allowed extra time for both Ms. McAlister and the Aylesford resident's remarks. In response, the Chair said that it was unfortunate that Ms. McAlister had to leave the meeting, but extra time would not be given to Ms. Clark for someone who was not present at the hearing. He added that it was up to the Chair's discretion as to how much additional time a speaker was allowed. He noted that the staff had provided an excellent, detailed presentation with regard to all aspects of the request and that the petitioner's representative had been very brief in his remarks. He said that the Commission was interested in hearing Ms. Clark's presentation, asked her to keep her comments brief and to the point, and said that only Ms. McAlister's written comments would be made part of the record.

Ms. Clark said that their contention was that the proposed zone change was not in agreement with the Comprehensive Plan, was not appropriate zoning for the property or the area, and that there has not been a major change in the area that would justify the requested change to R-5. One concern was that a much larger building for not many more units than were already existing on the two properties was proposed, and that the building does not fit the context of the area in either size or design. She said that the Downtown Master Plan described the need for higher density; but that was for the wider streets, rather than streets the size of Lexington Avenue, which should be developed in a more conservative manner in order to preserve neighborhood character. She said that the applicant's contention was that the reduced front yard was appropriate; however, the platted setback is 20 feet, which is observed by the large apartment building on the adjoining property. The buildings that are closer to the street are, in fact, much older buildings.

Ms. Clark said that, if the intent is to preserve the character of the neighborhood, it would not be accomplished by tearing down the two buildings and replacing them with a larger one that would loom over the others on the street. Referencing the buildings on the opposite side of Lexington Avenue, she said that they are all set back further than what is being requested with this zone change. Ms. Clark said that, according to PVA records, the properties that abut the subject properties to the rear (on Hagerman Court) are all single family residential structures. They have almost no rear yards, so the proposed building and its associated parking will have a great impact on those properties. For these reasons, and because the apartment building is designed in a similar manner to those in suburban settings, she believed that the proposed zone change does not comply with either the Comprehensive Plan or the Downtown Master Plan. She compared the proposed building and its site statistics to the adjoining apartment building, noting that it will be much larger in size and scope than the existing building, which was built in the 1990s without the need for variances.

Ms. Clark said that the need for variances for this project is a sign that the development "doesn't fit the zone," noting that R-5 is very rare around UK's campus. It was her belief that a "student housing monoculture" is developing around UK due to the number of new dorms and student apartments and provided several statistics to support her statements. She said the affordable housing study from a couple of years ago indicated that an increase in student housing results in a loss of affordable rental apartment units. She said that the petitioner indicated at the Zoning Committee meeting that the proposed development would not displace any low income tenants (in response to a question on the development plan application form). It was her contention that many students are low income, including a former student who resides on the subject property with whom she had spoken.

Ms. Clark said that the area around UK's campus is a "volatile environment," noting that several units near the Maxwell Street/Stone Avenue intersection sold in the fall of 2015, and there was another large purchase in 2014 in the Euclid/Aylesford area. In her opinion, this was an indication that the area around the University is not only volatile, but is vulnerable. She said that she was concerned that the proposed zone change would set a precedent that could drive up the price of land near UK beyond sustainable prices. She noted that the role of the Planning Commission, using the Comprehensive Plan as a guide, is to carefully judge "what to grant incentive to in land use and development;" this zone change provides an incentive to R-5 style development which is out of character with the neighborhood. The R-5 zone allows extended-stay hotels, offices on the first two floors, and incidental retail and restaurant uses, none of which belong in a residential neighborhood. It was her belief that the proposed variances are designed to "put parking on every available inch," noting that area homeowners are concerned about the lack of parking in the neighborhood. She said that the parking re-

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quirement is not sufficient for the number of units or the number of bedrooms proposed. Additionally, the development does not seem to provide a sufficient level of housing choices in the area.

Kathy Chatfield, 2309 Old Keene Place, was present. She said she own a building at the corner of E. Maxwell and Lexington Avenue. Her building has parking only for residents. She was concerned that parking would not be sufficient for the proposed development; and if that is the case, parking on the street will become an even greater problem than it already is. She asked that the Planning Commission carefully consider this possibility in their deliberation of the proposed zone change.

Petitioner Rebuttal – Mr. Walbourn made several points in rebuttal. He said that the development will likely be occupied by students, with one student per apartment, and only one car will be permitted per dwelling unit. The petitioner is providing parking for every unit, with a couple of visitor spaces, as well as handicap accessible parking. He said that this is a student housing neighborhood with a variety of housing types and setbacks; and many of the single family houses in the area have large additions to accommodate more student density. The small units that remain in the area are typically duplexes and multi-family residential structures, many of which are located on Hagerman Court and are no longer used as single family residences. He said that the 200 block of Lexington Avenue has 18 parcels, only two of which receive tax bills at their Lexington Avenue address. Both are used as office, one of which is for the apartment building. This site is 700' from Memorial Coliseum and 1,200 feet from the Avenue of Champions and is an area typically inhabited by students.

With regard to parking, Mr. Walbourn said that there are two different parking generators listed in the Zoning Ordinance that apply to multi-family development – 0.9 per bedroom or 1.5 spaces per dwelling unit, whichever is greater. This development requires the higher of the two generators, which is more than one space per bedroom, and which they are providing. He said that one way to avoid the proposed variance to the number of parking spaces might be to eliminate the handicap accessible space, which they did not consider an option; however, that would only give the development one extra space and would effectively make little to no difference.

Mr. Walbourn said that the variance to the vehicular use area landscaping was requested in order to provide more on-site parking, and the parking was placed in the rear to avoid a front yard parking situation. With regard to the open space variance, he said that student populations typically congregate in parks or other areas, many of which are available in the area, rather than the open space that might be provided in apartment complexes. They therefore considered it justifiable. Lastly, the front yard variance will allow a setback similar to other structures on this side of the street.

Describing the existing buildings, Mr. Walbourn said that one has a large addition; the structures are old and unsafe; the foundations have been eroded; they have termite infestations; and the sprinkler system in one building no longer functions. He said that one structure is no longer able to have gas service; so the residents use electric heaters, which regularly overloads the electrical circuits. There is a need for safe, affordable off-campus student housing. He said that while they are sympathetic to the neighbors' concerns, the petitioner contends that this development is in scale and compatible with the existing streetscape. He noted that the staff was recommending approval of all aspects of the request and asked that the Commission act accordingly.

Citizen Rebuttal - Ms. Clark suggested that the Planning Commission consider a variance that would preserve the historic character of the neighborhood. She said that the petitioner seemed to suggest that the buildings are not up to code, which is troubling; but they are currently rented. She admitted that the larger of the two buildings has an inappropriate addition on the rear of the structure; however, the building's front façade was preserved. She also suggested that the Planning Commission consider the cross-access to the other parking area referenced in the development plan presentation, noting that it could be a problem if there are no parking spaces to share. She said she did not believe it would be appropriate to pinch what little green space there is in favor of providing more parking spaces, when considering "how far out of whack" the existing parking situation in the neighborhood is already. The only remedy apparent to her was for the Planning Commission to deny the zone change and postpone the development plan in order to consider some of the issues she had raised. It would also be appropriate to prohibit, via conditional zoning restrictions, the uses not suitable for a neighborhood street, and would be helpful to have increased buffering along the rear of the property. She asked that the Planning Commission not grant the variances due to adverse impacts on the neighborhood.

Staff Rebuttal – Ms. Wade said that the staff could suggest conditional zoning to restrict some allowable uses, such as extended-stay hotels; restaurants; and incidental retail uses, which are all permitted as conditional uses in the R-5 zone but would be problematic mid-block on a residential street. She also said that the Downtown Master Plan was never completely adopted by the Planning Commission; and that, rather than a preservation plan, it showed opportunities for infill.

Mr. Walbourn said that his client was in agreement with the conditional zoning restrictions, although there is no intent for any use other than residential on the property. If they ever did consider those uses, they would have to obtain Board of Adjustment approval as a conditional use if those zoning restrictions were not in place. He said that, should the Planning Commission wish to impose the conditional zoning restrictions, it would not impact the development in any way.

Chair Comments – The Chair asked if the Commission had any discussion on the zone change request, variance or development plan. There were no comments or questions on the part of the Commission.

Zoning Action – A motion was made by Mr. Brewer, seconded by Mr. Wilson and carried 9-0 (Drake and Smith absent) to approve MARV 2016-9: BURLINGTON HEIGHTS CONDOMINIUMS, LLC, AND WYNNDALE DEVELOPMENT, LLC, to include the conditional zoning restrictions proposed by the staff.

Variance Action – A motion was made by Mr. Brewer, seconded by Ms. Richardson and carried 9-0 (Drake and Smith absent) to approve the requested variances as recommended by the staff, subject to the conditions listed in their report.

Development Plan Action – A motion was made by Mr. Brewer, seconded by Ms. Richardson and carried 9-0 (Drake and Smith absent) to approve ZDP 2016-43: KALUSKI PROPERTY (LEX AVE APARTMENTS), subject to the conditions as noted in the revised report.