

AN ORDINANCE AMENDING ARTICLES 7, 23 AND 26 OF THE ZONING ORDINANCE TO STRENGTHEN OVERSIGHT BY THE URBAN COUNTY BOARD OF ADJUSTMENT FOR THE PROTECTION OF ENVIRONMENTALLY SENSITIVE AREAS (ESAs) WITHIN THE COMMUNITY. (PLANNING COMMISSION).

WHEREAS, the Lexington-Fayette Urban County Planning Commission has considered a text amendment to Articles 7, 23 and 26 of the Zoning Ordinance to strengthen oversight by the Urban County Board of Adjustment for the protection of environmentally sensitive areas (ESAs) within the community. Planning Commission did recommend APPROVAL of the text by a vote of 8-3; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Article 7-6(a)(4) of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended as follows:

- (4) When reviewing a conditional use application, the Board shall thoroughly address potential impacts to any identified environmentally sensitive area (ESA), geologic hazard area (GHA), as further regulated under the Subdivision Regulations, and/or Rural Service Area (RSA) prime soils as well as any other resources of special concern located on the property. The Board may require a more detailed site plan and more comprehensive associated information in order to assess and consider the future protection of such areas and resources. Such a site plan shall be prepared by a qualified professional well-suited to addressing a particular issue or concern of interest, including landscape architects, hydrologists, geologists, environmental engineers, naturalists, arborists, etc. The site plan shall show or describe protection measures, mitigation and enhancement of the ESA(s) and/or GHA(s) and their associated buffer areas, when they are, or could be, impacted by any alteration, use or activity within the ESA(s) and/or GHA(s) and their buffer areas pre-construction, during construction and post-construction. For any conditional use permit granted for a site containing any ESA(s) and/or GHA(s), the Board may impose intermediate certification and verification reviews during the pre-construction, active construction and/or post-construction phases of development in order to ensure protection of environmentally sensitive areas and environmental hazard areas during all phases of a project. Such certification or verification reviews may be conducted by either a public enforcement agency or a qualified private contractor, as deemed appropriate by the Board. In addition, when the proposed conditional use is located within the Rural Service Area (RSA), the Board may consider a requirement that alterations to the ESA(s) and/or GHA(s), such as non-habitable structures, non-habitable facilities, natural feature modification and paving installation associated with the conditional use permit be removed, and/or restored if the conditional use were to cease operation.

Section 2 – That Article 23A-2(c) and (d) of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended as follows:

23A-2(c) ENVIRONMENTALLY SENSITIVE LAND - Except as provided under 23A-2(d), 23A-2(g), and 23A-2(u) below, any environmentally sensitive areas or geologic hazard areas shall be regulated in accordance with the provisions of Article 6-11 of the Subdivision Regulations, as applicable.

23A-2(d) STEEP SLOPE AREAS - No building or structure shall be located on any land with a slope which is greater than 30%. For areas with slopes between 15% and 30%, the provisions of Article 6-11 of the Land Subdivision Regulations shall be applicable.

Section 3 – That Article 26-2 and 26-3 of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended as follows:

TREE PRESERVATION PLAN (TPP) - A plan, which may be in either written and/or graphic format, describing and identifying existing trees, tree stands, and TPAs. The TPP will outline, with description and/or maps, the natural condition of the proposed development, proposed alteration of the wooded area with justification for said removal, protection measures for remaining trees, environmentally sensitive areas, geologic hazard areas and any riparian areas, before, during, and after construction. The TPP will also contain replanting plans with locations.

26-3APPLICABILITY OF STANDARDS - The standards in this Article shall be applied to all major subdivision and development plans. All developments shall be required to demonstrate compliance with these standards through either preservation of healthy trees present on the site or, if sufficient existing trees to be preserved do not meet these standards, through planting of new trees in accordance with this Article. No development plan or subdivision plan shall be approved unless it is in compliance with the standards herein (see **Article 26-5[c], Agricultural Standard Exemptions**). Any areas that qualify as Environmentally Sensitive Areas and/or Geologic Hazard Areas herein (and under Article 6-11 of the Subdivision Regulations) will be subject to the more restrictive regulations under the Subdivision Regulations.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: July 7, 2016


MAYOR

ATTEST:

Clerk of Urban County Council

Published: July 14, 2016-1t

0795-:16:TWJ:X:\Cases\PLANNING\16-LE0001\LEG\00540139.DOCX

Recd by Bm
Date: 6-24-16

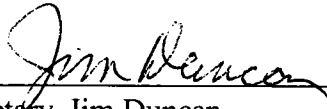
RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: ZOTA 2016-1: AMENDMENTS TO ARTICLES 7, 23, AND 26 FOR ENVIRONMENTALLY SENSITIVE AREAS – petition for a Zoning Ordinance text amendment to Articles 7, 23, and 26 to strengthen oversight by the Urban County Board of Adjustment for the protection of environmentally sensitive areas (ESAs) within the community.

Having considered the above matter on **June 9, 2016**, at a Public Hearing and having voted **8-3** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL** of this matter for the following reasons:

1. The proposed text amendment will help to guide the Board of Adjustment in their review of conditional use permit applications, specifically for properties that may be environmentally sensitive and could be impacted by a future land use, and will strengthen the Board's oversight of our environmentally sensitive land in Fayette County.
2. The 2013 Comprehensive Plan's Goals and Objectives related to protection of environmentally sensitive land are advanced by implementing the proposed text amendments. If approved, the Board of Adjustment will be able to assist in promoting the protection of natural features and landscapes prior to development (Theme A, Goal #3c. and Theme B, Goal #3a.); reducing the community's carbon footprint (Theme B, Goal #1); encouraging environmentally sustainable uses of natural resources (Theme B, Goal #1b.); and protecting and enhancing the natural, cultural, historic, and environmental resources of the Rural Service Area and rural farmland (Theme E, Goal #2b.).
3. The proposed text amendment will correct outdated references to the Land Subdivision Regulations as it relates to environmentally sensitive areas and geologic hazard areas.

ATTEST: This 24th day of June, 2016.



Secretary, Jim Duncan

MIKE OWENS
CHAIR

At the Public Hearing before the Urban County Planning Commission, this petition was represented by **Traci Wade, AICP, Division of Planning.**

OBJECTIONS

OBJECTORS

VOTES WERE AS FOLLOWS:

AYES: (8) Berkley, Brewer, Mundy, Owens, Penn, Plumlee, Smith, Wilson

NAYS: (0)

ABSENT: (3) Cravens, Richardson, Drake

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **Approval** of **ZOTA 2016-1** carried.

- Enclosures: Application
- Recommended Text
- Staff Report
- Applicable excerpts of minutes of above meeting

Environmentally Sensitive Areas
Zoning Ordinance Text Amendment (ZOTA)

Article 7 – Board of Adjustment

Article 23 – Expansion Area

Article 26 – Tree Protection Standards



ENVIRONMENTALLY SENSITIVE AREAS ZOTA

February 2016

ARTICLE 7

BOARD OF ADJUSTMENT

7-1 ESTABLISHMENT - The Board of Adjustment, as constituted at the time of the re-adoption of this Zoning Ordinance, shall continue in power. There shall be seven (7) members appointed by the Mayor with the approval of the Urban County Council, for 4-year terms, ending on July 1 of the designated year. The terms shall be staggered so that the terms of no more than two members expire in any year. Vacancies on the Board of Adjustment shall be filled within sixty (60) days. If the vacancy is not filled within that time, the Planning Com-mission shall fill the vacancy.

7-2 STAFF - The staff to the Board of Adjustment shall be the Division of Planning of the Lexington-Fayette Urban County Government.

7-3 GENERAL POWERS - The Board of Adjustment may employ or contract with planners or other persons, as it deems necessary, to accomplish its assigned duties. The Board shall have the right to receive, hold, and spend funds which it may legally receive from any and every source in and out of the Commonwealth of Kentucky, including the United States Government, for the purpose of carrying out the provisions of this Zoning Ordinance. The Board shall have the power to issue subpoenas to compel witnesses to attend its meetings and give the evidence bearing upon the questions before it. The Chairman of the Board of Adjustment shall have the power to administer oaths to witnesses prior to their testifying before the Board on any issue.

7-4 PROCEEDINGS - The Board of Adjustment shall conduct meetings at the call of the Chairman, who shall give written or oral notice to all members of the Board at least seven (7) days prior to the meeting, which notice shall contain the date, time, and place of the meeting, and the subject or subjects which will be discussed. A simple majority of the total membership of the Board of Adjustment shall constitute a quorum.

The Board of Adjustment shall adopt bylaws for the transaction of business and shall keep minutes and records of all pro-ceedings, including regulations; transactions; findings; deter-minations; the number of votes for and against each question; whether any member is absent or abstains from voting; all of which shall, immediately after adoption, be filed in the office of the Board. A transcript of the minutes of a Board of Adjustment meeting shall be provided if requested by a party, at the expense of the requesting party, and the transcript shall constitute the record.

7-5 NOTICE - The Board shall fix a reasonable time for hearing an action or appeal and shall give public notice in accordance with KRS Chapter 424, as well as written notice as set forth more fully herein. Any person may appear at the hearing personally or by attorney. All applications shall be decided by the Board within sixty (60) days from the date of the application, unless postponement is granted pursuant to the Board's bylaws.

When an application is made for a variance, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to the owner of every parcel of property within two hundred (200) feet of the property to which the application applies. 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 200-foot radius of the subject property, but to the next two properties beyond those included in the 200-foot radius; but in no event shall notice be required for property more than 2,400 feet from the subject property.

When an application is made for a conditional use permit, administrative review, non-conforming use or structure appeal, or any other appeal, written notice shall be given at least twenty-one (21) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to owners of parcels of property within five hundred (500) feet of the property to which the application applies. 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-foot radius of the subject property, but to the next two properties beyond those included in the 500-foot radius; but in no event shall notice be required for property more than one (1) mile from the subject property. Notification shall also be given by first-class mail to any neighborhood or homeowner's association within the 500-foot radius of the subject property. Such association must be duly registered with the government through the Division of Planning and the Office of Geographic Information Systems (GIS). In addition, for any conditional use permit, notice of the public hearing shall be posted on the subject property for fourteen (14) consecutive days prior to the hearing.

Note: Additions to the Zoning Ordinance are shown with underlined text and deletions are shown with ~~stricken through~~ text. Box around text indicates the area of change.

ENVIRONMENTALLY SENSITIVE AREAS ZOTA

February 2016

All written notice shall be by first-class mail, with certification by the Board's Secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the Board the name and address of an owner of each parcel of property as described in this section and of any neighborhood or homeowner's association located within the required notice area. Records maintained by the Property Valuation Administrator may be relied upon to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group that administers property commonly owned by the condominium or cooperative owners.

7-6 SPECIFIC POWERS - The Board of Adjustment shall have the following powers:

7-6(a) CONDITIONAL USE PERMITS - The Board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the planning area of uses which are specifically named in this Zoning Ordinance, which may be suitable only in specific locations in the zone only if certain conditions are met, and which would not have an adverse influence on existing or future development of the subject property or its surrounding neighborhood.

- (1) The Board may approve, modify, or deny any application for a conditional use permit. If it approves such permit, it may attach necessary conditions such as time limitations, requirements that one or more things be done before the request can be initiated, or conditions of a continuing nature and which would not have an adverse influence on existing or future development of the subject property or other property in the neighborhood. Any such conditions shall be recorded in the Board's minutes and on the conditional use permit, along with a reference to the specific section in the Zoning Ordinance, listing the conditional use under consideration. Where the Zoning Ordinance establishes conditions for a conditional use, such conditions are the minimum requirements for the use and may not be waived or varied unless otherwise specifically allowed. The Board shall have power to revoke conditional use permits for non-compliance with the condition thereof. Furthermore, the Board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.

- (2) In approving a conditional use permit, the Board shall find that the public facilities and services that will be needed are, or will soon be, adequate to serve the proposed use. The Board shall give consideration to the road system sewage disposal facilities, utilities, fire and police protection and other services and facilities as are relevant to the proposed use. The Board may establish conditions to ensure that the proposed conditional use will not have an adverse influence on the subject property or the surrounding neighborhood.
- (3) In approving a conditional use permit, the Board shall provide for the continuation of existing or proposed collector streets, and whenever possible, provide for the continuation of local streets.

- (4) When reviewing a conditional use application, the Board shall thoroughly address potential impacts to any identified environmentally sensitive area (ESA), geologic hazard area (GHA), as further regulated under the Subdivision Regulations, and/or Rural Service Area (RSA) prime soils as well as any other resources of special concern located on the property. The Board may require a more detailed site plan and more comprehensive associated information in order to assess and consider the future protection of such areas and resources. Such a site plan shall be prepared by a qualified professional well-suited to addressing a particular issue or concern of interest, including landscape architects, hydrologists, geologists, environmental engineers, naturalists, arborists, etc. The site plan shall show or describe protection measures, mitigation and enhancement of the ESA(s) and/or GHA(s) and their associated buffer areas, when they are, or could be, impacted by any alteration, use or activity within the ESA(s) and/or GHA(s) and their buffer areas pre-construction, during construction and post-construction. For any conditional use permit granted for a site containing any ESA(s) and/or GHA(s), the Board may impose intermediate certification and verification reviews during the pre-construction, active construction and/or post-construction phases of development in order to ensure protection of environmentally sensitive

Note: Additions to the Zoning Ordinance are shown with underlined text and deletions are shown with ~~stricken through~~ text. Box around text indicates the area of change.

ENVIRONMENTALLY SENSITIVE AREAS ZOTA
February 2016

areas and environmental hazard areas during all phases of a project. Such certification or verification reviews may be conducted by either a public enforcement agency or a qualified private contractor, as deemed appropriate by the Board. In addition, when the proposed conditional use is located within the Rural Service Area (RSA), the Board may consider a requirement that alterations to the ESA(s) and/or GHA(s), such as non-habitable structures, non-habitable facilities, natural feature modification and paving installation associated with the conditional use permit be removed, and/or restored if the conditional use were to cease operation.

- (5) The granting of a conditional use permit does not exempt the applicant from complying with all other requirements of law.
- (6) ~~(5)~~ In any case where a conditional use permit has not been exercised within the time limit set by the Board; or within one (1) year, if no specific time limit has been set, the granting of such conditional use permit shall not revert to its original designation unless there has been a public hearing, with notice as required herein below. Exercised, as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvement have been let; or in absence of contracts, that the main building or other improvement is under construction to a substantial degree or that prerequisite conditions involving substantial investment shall be under contract, in development or completed. When construction is not a part of the use, exercised shall mean that the use is in operation in compliance with the conditions as set forth in the permit.
- (7) ~~(6)~~ The Division of Planning shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the landowner is complying with all of the conditions listed on the conditional use permit. If the landowner is not complying with all of the conditions listed on the conditional use permit, the Division of Planning shall report the fact in writing to the Chairman of the Board of

Adjustment. The Board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearings shall be furnished to the landowner at least one (1) week prior to the hearing. If the Board of Adjustment finds that the facts alleged in the report of the Division of Planning are true and that the landowner has taken no steps to comply with them between the date of the report and the date of the hearing, the Board of Adjustment may authorize the Division of Planning to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

- (8) ~~(7)~~ Once the Board of Adjustment has granted a conditional use permit, and all of the conditions required are of such type that they can be completely and permanently satisfied, the Division of Planning, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit, which is on file with the County Clerk. Thereafter, said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.
- (9) ~~(8)~~ The granting of a conditional use permit for a "functional family" shall be based on application of the following considerations by the Board:
- Members of the functional family will share a strong bond or commitment to a single purpose (e.g., religious orders);
 - Members of the functional family are not legally dependent on others not part of the functional family;
 - Members can establish a legal domicile as defined by Kentucky law;
 - Members share a single household budget;
 - Members prepare food and eat together regularly;
 - Members share in the work to maintain the premises;
 - Members legally share in the ownership or possession of the premises;
 - Members demonstrate stability in the arrangement, as opposed to transient living arrangements.

Note: Additions to the Zoning Ordinance are shown with underlined text and deletions are shown with ~~stricken through~~ text. Box around text indicates the area of change.

ENVIRONMENTALLY SENSITIVE AREAS ZOTA

February 2016

7-6(b) VARIANCES - The Board shall have the power to hear and decide on applications for variances that are defined as departures from dimensional terms of the Zoning Ordinance pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departures meet with the requirements of this section. The Board may grant a variance to vary the lot coverage or floor area ratio in the Single Family Residential (R-1A, R-1B, R-1C, R-1D and R-1E) zones or in the Two-Family Residential (R-2) zone, as these factors do not increase the permitted number of dwelling units. The Board may grant a variance for dimensional requirements only and may not vary the number of permitted signs, minimum number of required parking spaces outside of the Infill & Redevelopment Area, or other numeric requirements or limits of the zone. However, the Board may grant a variance to the maximum number of parking spaces allowed in a zone, or reduce the minimum number of parking spaces by fifty percent (50%) of the otherwise required number in accordance with Article 16-10 for projects within the defined Infill & Redevelopment Area. Any reduction granted by the Board shall account for and include all other allowable parking reductions. The Board may impose any reasonable conditions or restrictions on any variance it decides to grant, and may revoke a variance for non-compliance with the conditions thereof. The Board shall not have the authority to vary lot coverage, floor area ratio (except in the R-1A, R-1B, R-1C, R-1D, R-1E and R-2 zones, as permitted above), nor lot size; nor to vary the maximum height of a building containing residential units in the Neighborhood Business (B-1) zone, as these are methods of controlling population density used in this Zoning Ordinance.

7-6(b)(1) FINDINGS REQUIRED FOR VARIANCE - Before any variance is granted, the Board must find the following, which shall be recorded along with any imposed conditions or restrictions in minutes and records and issued in written form to the applicant to constitute proof of the variance:

- (a) The granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (1) The requested variance arises from special circumstances that do not generally apply to land in the general vicinity, or in the same zone;
- (2) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (3) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

- (b) The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

7-6(b)(2) - The Board shall not possess the power to grant a variance to permit a use of any land, building, or structure which is not permitted by this Zoning Ordinance in the zone in question.

7-6(b)(3) - A variance applies to the property for which it is granted, and not the individual who applied for it. A variance also runs with the land and is transferable to any further owner of the land, but it cannot be transferred by the applicant to a different site.

7-6(c) NON-CONFORMING USE AND STRUCTURE APPEALS - The Board of Adjustment shall have the authority to hear and decide appeals, as authorized in Article 4, concerning non-conforming uses and structures. If it approves the appeal, the Board must find, in addition to all requirements of Article 4, that the non-conformity of the use or the non-conformity of the structure would not be increased in scope or area of its operation, and that it would not have an adverse effect on existing or future development of the subject property or the surrounding area. In approving an appeal, the Board may require appropriate conditions be met to ensure the health, safety, and welfare of the community and to protect the essential character of the surrounding area.

7-6(d) ADMINISTRATIVE REVIEW - The Board of Adjustment shall have the power to hear and decide cases where it is alleged by an applicant that there is an error in any order, requirement, decision, grant, or

Note: Additions to the Zoning Ordinance are shown with underlined text and deletions are shown with ~~stricken through~~ text. Box around text indicates the area of change.

ENVIRONMENTALLY SENSITIVE AREAS ZOTA
February 2016

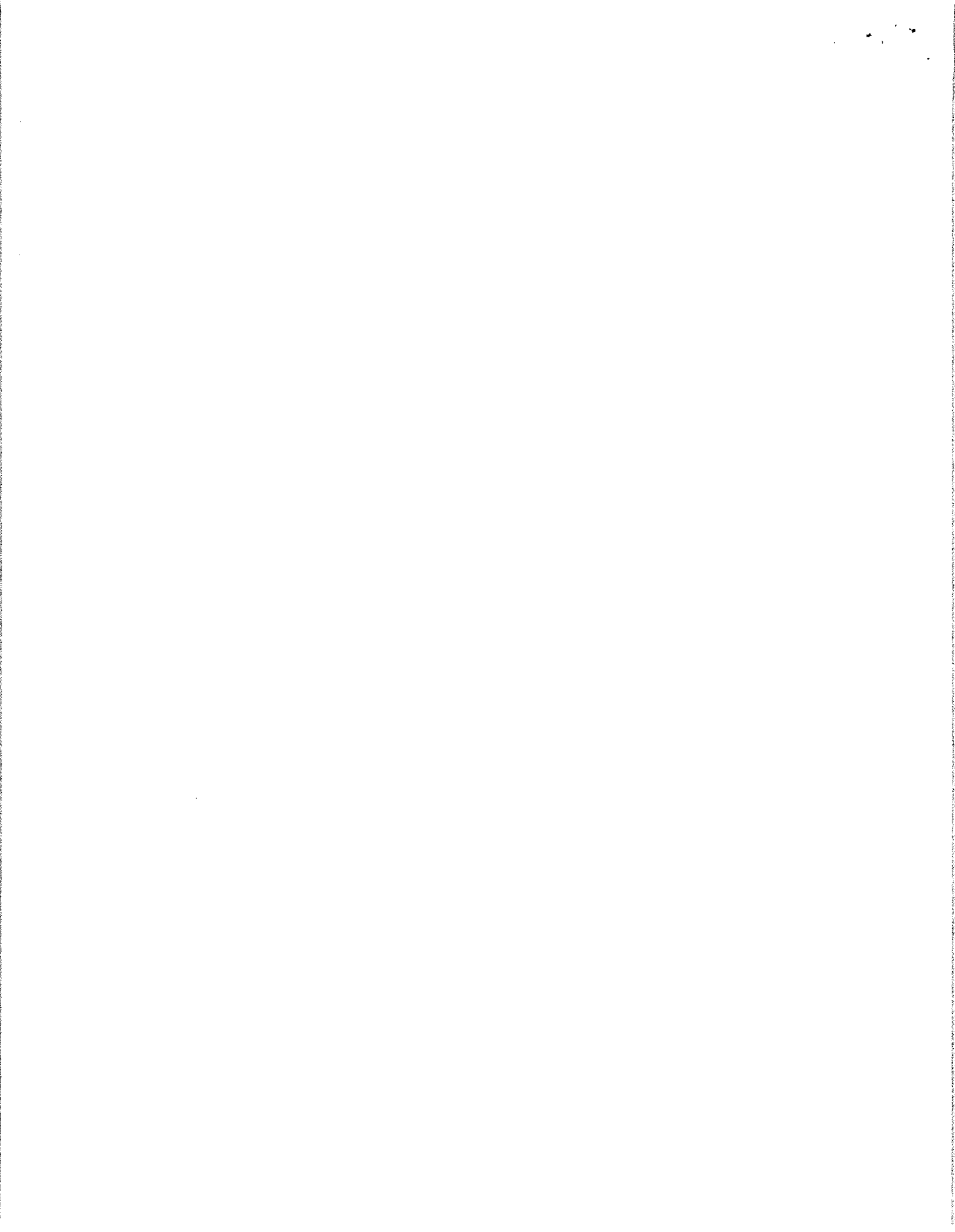
refusal made by the Division of Planning or the Division of Building Inspection in the enforcement of this Zoning Ordinance. Appeals under this section must be taken within thirty (30) days of the date of official action by the Division of Planning.

7-6(e) ALL OTHER APPEALS - Appeals to the Board may be taken by any person or entity claiming to be injuriously affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal or decision of the Division of Planning or the Division of Building Inspection in the enforcement of this Zoning Ordinance. Such appeal shall be taken within thirty (30) days after the appellant or his agent receives notice of the action appealed from, by filing with the Board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. The Division of Planning shall forthwith transmit to the Board papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings. At any hearing by the Board, any interested person may appear and enter his appearance, and all shall be given an opportunity to be heard.

7-7 AUTHORIZATION - Based upon the official record of the Board's public hearing, a written report of the Board's action shall be prepared by the Division of Planning and shall be forwarded to any responsible Division. Such report shall constitute the authorization to the Division to issue a permit, provided the permit application meets all other requirements of law, or take other action as appropriate.

7-8 RECORDING - All variances and conditional use permits approved by the Board shall be recorded at the expense of the applicant at the office of the County Clerk.

Note: Additions to the Zoning Ordinance are shown with underlined text and deletions are shown with ~~stricken through~~ text. Box around text indicates the area of change.



ARTICLE 23

APPENDIX 23A - ZONING CATEGORIES AND RESTRICTIONS

23A-1 PURPOSE - The purpose of this appendix is to set forth the zoning categories and restrictions for use in the Expansion Areas, and to establish their regulatory content.

23A-2 GENERAL PROVISIONS APPLICABLE IN ALL ZONES - The following provisions shall be applicable in all zones within the Expansion Areas:

23A-2(a) SPECIAL RURAL ROAD ACCESS REQUIREMENTS - In order to protect the unique character of rural roads within the Expansion Areas, no new street or new driveway access shall be permitted to the following roads: DeLong Road in Expansion Area 1 and 2C; northwest side of Walnut Grove Lane in Expansion Area 2A and Deer Haven Lane in Expansion Area 2B; and the southeast side of Chilesburg Road in Expansion Area 2C.

23A-2(b) FENCES - No more than fifty (50) feet of fence which is not a transparent fence or a stone fence shall be located in a single horizontal plane.

23A-2(c) ENVIRONMENTALLY SENSITIVE LAND - Except as provided under 23A-2(d), 23A-2(g), and 23A-2(u) below, any environmentally sensitive lands areas or geologic hazard areas shall be regulated in accordance with the provisions of ~~Articles 6-7(l) and 6-10~~ 6-11 of the Subdivision Regulations, as applicable.

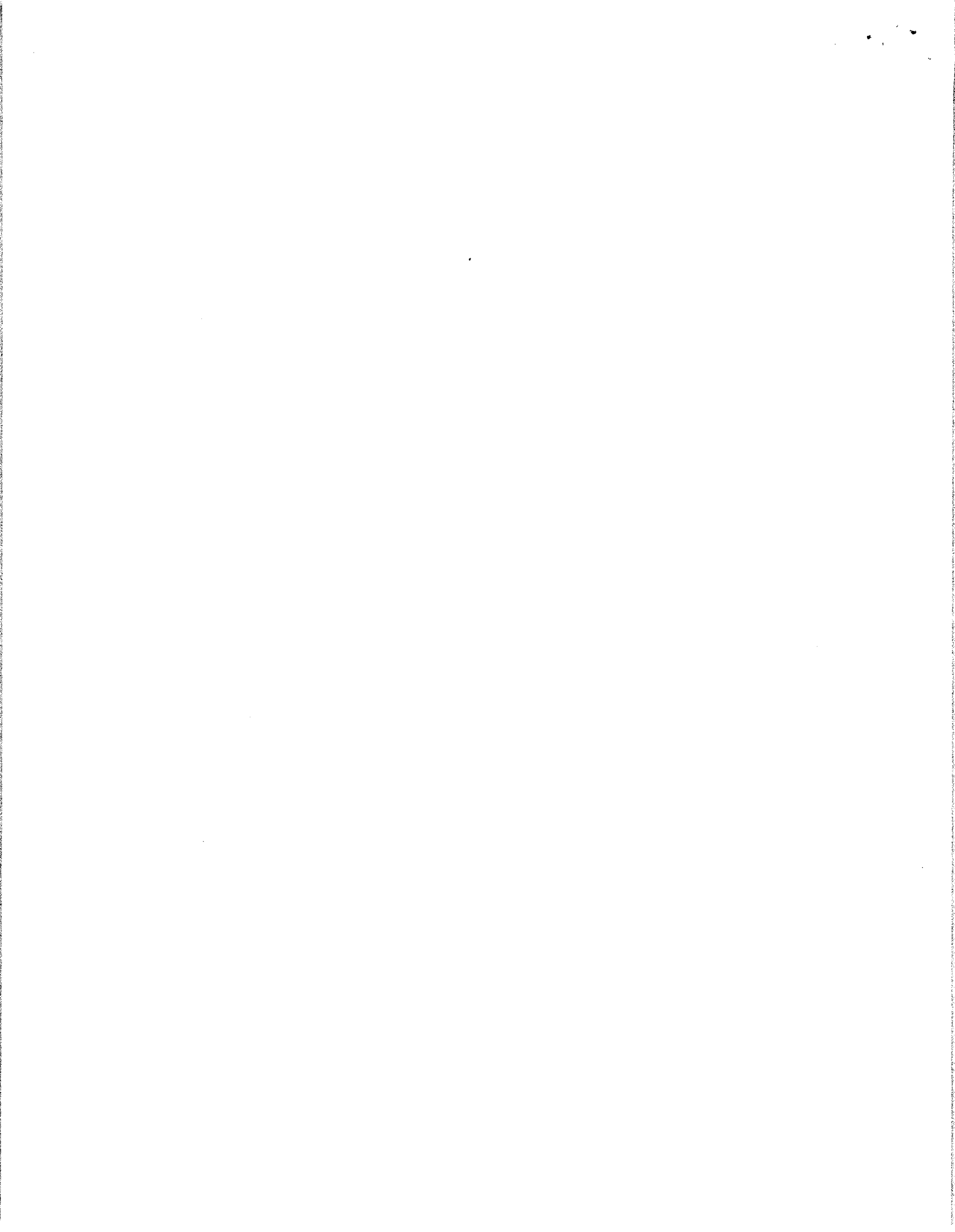
23A-2(d) STEEP SLOPE AREAS - No building or structure shall be located on any land with a slope which is greater than 30%. For areas with slopes between 15% and 30%, the provisions of ~~Article 6-10~~ 6-11 of the Land Subdivision Regulations shall be applicable.

23A-2(e) RURAL SERVICE AREA SETBACK - No building or structure other than transparent fences and

stone fences shall be located within 100 feet of the Rural Service Area Boundary.

23A-2(f) RURAL SERVICE AREA AGRICULTURAL USE BUFFER YARD - All development shall provide a buffer yard along any boundary of a parcel proposed for development adjacent to land which adjoins the Urban/Rural Service Area Boundary, which is used for agricultural uses and which is not located across an arterial street, which shall be:

1. Fifty (50) feet in width with two parallel fences of not less than six (6) feet in height located along the outermost and innermost boundaries of the buffer yard with barbed wire not less than six (6) feet above ground level or landscaping material along each fence which will prevent persons from climbing onto or over the fence; or
2. One hundred (100) feet in width with a fence of not less than six (6) feet in height located at the innermost boundary of the buffer yard with barbed wire not less than six (6) feet above ground level or landscaping material which will prevent persons from climbing onto or over the fence; or
3. Three hundred (300) feet in width with a fence of not less than four (4) feet in height located along the innermost boundary of the buffer yard with landscaping material which will prevent persons from climbing onto or over the fence; or
4. A buffer yard width as agreed to in the form of a legally recorded covenant by the owner of the land used for agricultural purposes which provides comparable protection to the agricultural use.



ARTICLE 26

TREE PROTECTION STANDARDS

26-1 PURPOSE - The Urban County Government recognizes the importance of trees as a vital component in counterbalancing the effects of an urban setting by providing cooling shade; by reducing noise and glare; by significant contribution to urban aesthetics; by improving air quality through carbon dioxide reduction and replenishing oxygen to the atmosphere; by improving surface drainage and reducing the effects of storm drainage flooding; by filtering non-point source pollution from area streams; by stabilizing soil, thereby minimizing erosion; and providing habitat for wildlife. The purpose of this Article is to establish standards and procedures for county-wide tree protection and planting in new developments and redevelopments subject to review by the Planning Commission.

26-2 INTERPRETATION AND DEFINITIONS - The provisions of this Article shall be construed so as to liberally carry out its purpose in the creation and enhancement of an urban forest in Lexington-Fayette County. Words used in this Article shall be construed as having their common meaning or, when specified, as defined in other Articles in this Zoning Ordinance; except as they may be defined herein below:

TREE PRESERVATION PLAN (TPP) - A plan, which may be in either written and/or graphic format, describing and identifying existing trees, tree stands, and TPAs. The TPP will outline, with description and/or maps, the natural condition of the proposed development, proposed alteration of the wooded area with justification for said removal, protection measures for remaining trees, environmentally sensitive areas, geologic hazard areas and any riparian areas, before, during, and after construction. The TPP will also contain replanting plans with locations.

26-3 APPLICABILITY OF STANDARDS - The standards in this Article shall be applied to all major subdivision and development plans. All developments shall be required to demonstrate compliance with these standards through either preservation of healthy trees present on the site or, if sufficient existing trees to be preserved do not meet these standards, through planting of new trees in accordance with this Article. No development plan or subdivision plan shall be approved unless it is in compliance with the standards herein (see Article 26-5[c], Agricultural Standard Exemptions). Any areas that qualify as

Environmentally Sensitive Areas and/or Geologic Hazard Areas herein (and under Article 6-10 6-11 of the Subdivision Regulations) will be subject to the more restrictive regulations under the Subdivision Regulations. ~~that section.~~

26-4 PROCEDURES - The following procedures are required as an adjunct to review of proposals for development.

26-4(a) ON-SITE MEETING - Prior to the submission of an initial planning application (i.e., development plan or subdivision plan), the owner/developer shall contact the Urban Forester, who will determine if an on-site meeting with the developer's design professional and/or pertinent LFUCG staff is necessary.

26-4(b) PRELIMINARY DEVELOPMENT PLAN RE-QUIREMENTS - A **Tree Inventory Map (TIM)**, in a number of copies specified by the Division of Planning, shall be required to be filed as a part of any initial application for approval of a preliminary development plan. If a TIM is not provided at the time of filing in a full and complete form, the plan application shall not be considered as properly filed and may be rejected for submittal by the Division of Planning. This map shall be provided at the same scale as the preliminary development plan and shall contain the following information, at a minimum:

1. The locations of any tree clusters or stands, including perimeter fence line trees, fences, and any significant trees (showing the full canopy[ies] on both sides of a property line in accordance with Article 26-6[d], Perimeter Trees).
2. The species of trees noted above. This information can be generalized as a single note calling out any significant trees (4" + DBH, trees' genus, sizes, etc.).
3. Existing canopy coverage (location and extent expressed as a percentage of the property) to be included in the site statistics on the subdivision or development plan.
4. Location of blue-line or first-order streams and other water bodies.
5. Soil type and location.
6. Existing topographic contours in at least 5-foot intervals.

Note: Additions to the Zoning Ordinance are shown with underlined text and deletions are shown with ~~stricken through~~ text. Box around text indicates the area of change.

ENVIRONMENTALLY SENSITIVE AREAS ZOTA
February 2016

7. Location of any Environmentally Sensitive Area, Geologic Hazard Area, and features, such as sinkholes; slopes greater than 15%; floodplains; springs; wetlands; or other areas ~~Environmentally Sensitive Areas (ESAs)~~, as defined under the Land Subdivision Regulations.
8. Existing easements for utilities and other purposes.

Note: Additions to the Zoning Ordinance are shown with underlined text and deletions are shown with ~~stricken through~~ text. Box around text indicates the area of change.

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

ZOTA 2016-1: AMENDMENTS TO ARTICLES 7, 23, AND 26 FOR ENVIRONMENTALLY SENSITIVE AREAS

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: See Attached

STAFF REVIEW:

The Urban County Planning Commission recently initiated a text amendment to Article 26 and related sections, to strengthen oversight by the Urban County Board of Adjustment (BOA) for the protection of environmentally sensitive areas (ESAs) within the community. The proposed amendment will modify portions of three articles of the Zoning Ordinance. First, Article 7-6(a) which outlines the Board of Adjustment's responsibility and authority in terms of reviewing conditional use permit applications. Second, Article 23A-2(c) which references environmentally sensitive lands and includes outdated Land Subdivision Regulations references (Expansion Area Zoning Categories and Restrictions). Third, Article 26 which mentions environmentally sensitive areas multiple times, as well as the same Land Subdivision Regulations references (Under Tree Protection Standards).

During the course of the Planning Commission's consideration of another text amendment, a local planning advocacy organization proposed that the Commission consider an "environmental surety" (bond) ordinance to improve the protection of environmentally sensitive areas. The organization believed that a surety or bond would "certify that businesses use best management practices while operating on environmentally sensitive lands. Additionally, such bonds would bridge the gap between the competing goals of conservation and public recreation in fragile natural areas." As a result, The Planning Commission Chairman created an Ad Hoc Committee to further study the recommendation and consider alternative possibilities in late 2014.

The Ad Hoc Committee was chaired by Planning Commission Parliamentarian Bill Wilson and met between December 2014 and February 2015. After a great deal of research, review and discussion, the group determined that requiring a surety bond as a condition (specifically associated with Board of Adjustment actions) was not a viable option for myriad of reasons. However, the Committee agreed that alternative measures should be considered to improve the ability of LFUCG to address environmental violations and degradation, especially as it related to conditional use permits deliberated by the Board of Adjustment. Their research indicated that there were very few issues related to development considered by the Planning Commission due to the extensive technical review associated with their usual applications. Ultimately, the Ad Hoc Committee wanted all review bodies/agencies to have the necessary tools to protect our environmentally sensitive land in Fayette County.

To that end, the Ad Hoc Committee developed three recommendations:

1. **Revise the Zoning Ordinance to require applications that impact an environmentally sensitive area (ESA) include a site plan for Board of Adjustment (BOA) consideration of a conditional use permit. When deemed necessary to ensure the proper addressing of environmentally sensitive areas, the site plan shall be prepared by a registered engineer, or other professional qualified to assess and make recommendations for protection of the specific ESA in question. The proposed regulations should be drafted to ensure that small scale applications with minimal potential for environmental disruption are not automatically required to provide excessive levels of site plan detail or professional expertise.**
2. **Revise the Zoning Ordinance to include language indicating that in conjunction with a conditional use permit involving an ESA, the BOA may impose a condition establishing "gateway" or "checkpoint" certifications for proceeding with exercising the conditional use permit during pre-construction, active construction and/or post construction phases of the development. This requirement should be drafted to permit verification by either a public enforcement agency or qualified private contractor as deemed appropriate by the BOA on a case-by-case basis.**
3. **Revise the Zoning Ordinance to indicate that within ESAs in the Rural Area, the BOA may consider a requirement that non-habitable structures and facilities, natural feature modifications and paving installed in conjunction with a conditional use permit may be required to be removed and/or restored if**

the conditional use ceases operation. In such cases, the BOA should provide specific conditions as to what event(s) would constitute the cessation of the conditional use permit; specific listing of the structures or facilities subject to the condition; and the responsible party for such removal action(s).

The Ad Hoc Committee chairman presented the recommendations to the full Planning Commission in May 2015, and the Commission requested that the staff draft a text amendment to address the report of the Committee. The three, very specific recommendations listed herein were incorporated into Article 7-6(a)(4) of the Zoning Ordinance. This new sub-section of the Ordinance strengthens the BOA's existing authority and will give the BOA the necessary information to make knowledgeable decisions. Changes to Article 23 and 26 were suggested by the staff to eliminate any ambiguity and correct outdated references to the Land Subdivision Regulations, where the core of the regulations related to environmentally sensitive areas and geologic hazard areas exists for LFUCG.

The staff agrees with the recommendations of the Ad Hoc Committee and suggests adoption of the proposed text amendment in whole, without modification. The proposed text amendment is consistent with the direction set by the 2013 Comprehensive Plan, which recognizes the importance of our environmentally sensitive land by establishing a number of Goals and Objectives which directly relate, including:

- (1) promoting the protection of natural features and landscapes prior to development (Theme A, Goal #3c. and Them B, Goal #3a.);
- (2) reducing the community's carbon footprint (Theme B, Goal #1);
- (3) encouraging environmentally sustainable uses of natural resources (Theme B, Goal #1b.); and
- (4) protecting and enhancing the natural, cultural, historic, and environmental resources of the Rural Service Area and rural farmland (Theme E, Goal #2b.).

Although text amendments are not legally required to make a finding that they be consistent with the Comprehensive Plan, it is wise to consider text amendments in light of the Plan because zoning is the primary mechanism by which the Plan is implemented.

The Staff Recommends: Approval, for the following reasons:

1. The proposed text amendment will help to guide the Board of Adjustment in their review of conditional use permit applications, specifically for properties that may be environmentally sensitive and could be impacted by a future land use, and strengthen the Board's oversight of our environmentally sensitive land in Fayette County.
2. The 2013 Comprehensive Plan's Goals and Objectives related to protection of environmentally sensitive land are advanced by implementing the proposed text amendments. If approved, the Board of Adjustment will be able to assist in promoting the protection of natural features and landscapes prior to development (Theme A, Goal #3c. and Them B, Goal #3a.); reducing the community's carbon footprint (Theme B, Goal #1); encouraging environmentally sustainable uses of natural resources (Theme B, Goal #1b.); and protecting and enhancing the natural, cultural, historic, and environmental resources of the Rural Service Area and rural farmland (Theme E, Goal #2b.).
3. The proposed text amendment will correct outdated references to the Land Subdivision Regulations as it relates to environmentally sensitive areas and geologic hazard areas.

TLW/BJRWLS

5/3/16

Planning Services/Staff Reports/ZOTA/2016/ZOTA 2016-1 Environmentally Sensitive Areas.docx

VI. COMMISSION ITEMS

B. INITIATION OF ZONING ORDINANCE TEXT AMENDMENT – Ms. Wade stated that the staff was requesting Commission initiation of a Zoning Ordinance Text Amendment for Environmentally Sensitive Areas. She said that the Commission has discussed this issue several times at work sessions, and has discussed the results of an ad hoc work group that formulated the recommendations for changes to those areas. The proposed text amendment would affect Articles 7, 23 and 26 of the Zoning Ordinance. Ms. Wade explained that, if the Commission chooses to initiate the text amendment, the staff would begin the process of public notification, drafting staff reports, and preparing for the public hearing.

Mr. Owens noted that the ad hoc committee had been headed by Mr. Wilson, and he thanked everyone who participated in the process.

Action: A motion was made by Ms. Plumlee, seconded by Mr. Wilson, and carried 7-1 (Cravens opposed; Berkley, Brewer, and Mundy absent) to initiate a text amendment to Articles 7, 23, and 26 of the Zoning Ordinance relating to Environmentally Sensitive Areas.

VII. STAFF ITEMS – No such items were presented.

VIII. AUDIENCE ITEMS – No such items were presented.

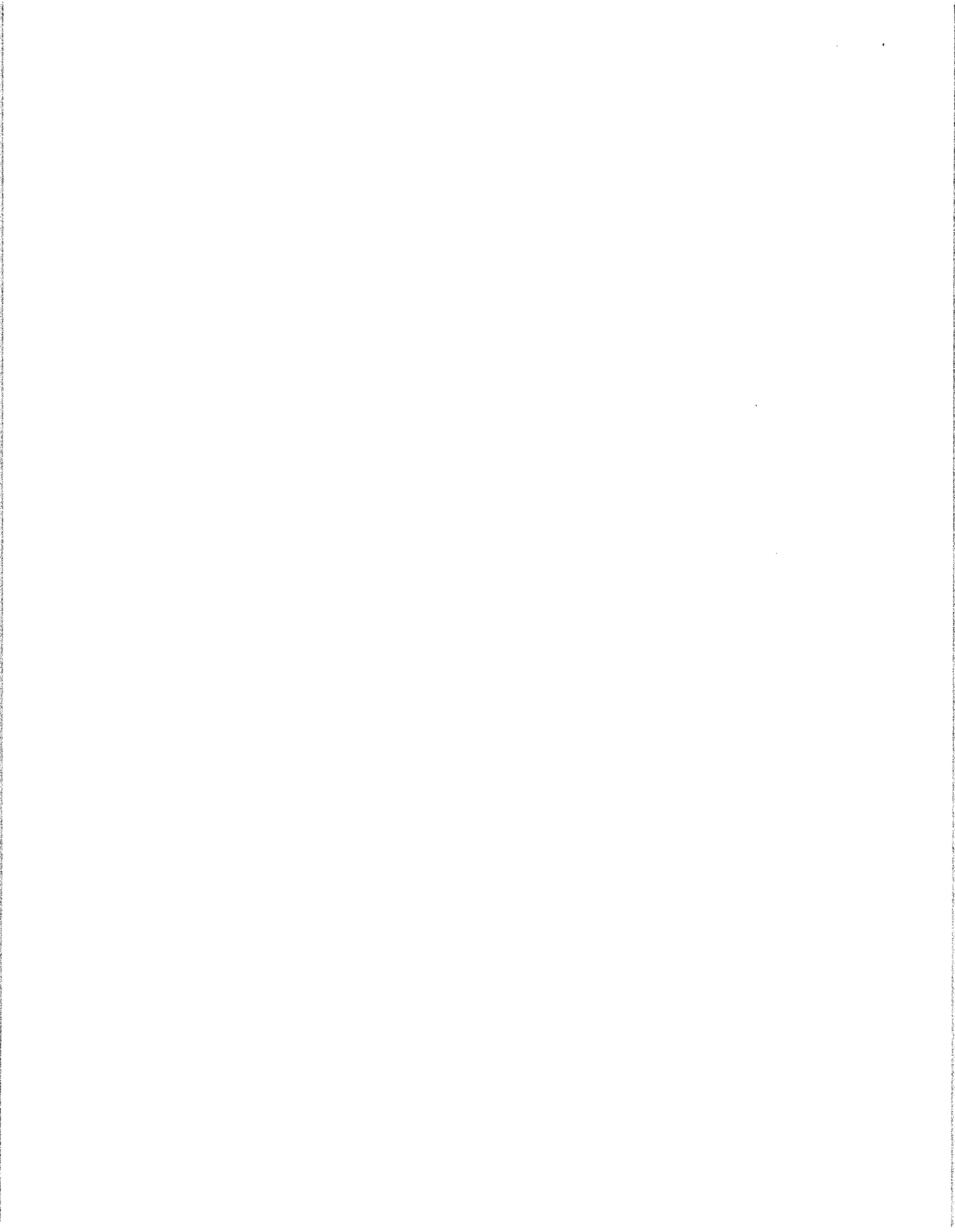
IX. MEETING DATES FOR April, 2016

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	April 7, 2016
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	April 7, 2016
Subdivision and ND-1 Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 14, 2016
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	April 27, 2016
Zoning Items Public Hearing, Thursday, 1:30 p.m., 2nd Floor Council Chambers.....	April 28, 2016

X. ADJOURNMENT

TLW/TM/CT/BJR/BS/src

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.



FULL PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMEMENDMENT

1. **ZOTA 2016-1: AMENDMENTS TO ARTICLES 7, 23, AND 26 FOR ENVIRONMENTALLY SENSITIVE AREAS** – petition for a Zoning Ordinance text amendment to Articles 7, 23, and 26 to strengthen oversight by the Urban County Board of Adjustment for the protection of environmentally sensitive areas (ESAs) within the community.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: *COPIES OF TEXT ARE AVAILABLE UPON REQUEST*

The Zoning Committee Recommended: Referral to the full Commission.

The Subdivision Committee Recommended: Approval, for the following reasons:

1. The proposed text amendment will help to guide the Board of Adjustment in their review of conditional use permit applications, specifically for properties that may be environmentally sensitive and could be impacted by a future land use, and will strengthen the Board's oversight of our environmentally sensitive land in Fayette County.
2. The 2013 Comprehensive Plan's Goals and Objectives related to protection of environmentally sensitive land are advanced by implementing the proposed text amendments. If approved, the Board of Adjustment will be able to assist in promoting the protection of natural features and landscapes prior to development (Theme A, Goal #3c. and Theme B, Goal #3a.); reducing the community's carbon footprint (Theme B, Goal #1); encouraging environmentally sustainable uses of natural resources (Theme B, Goal #1b.); and protecting and enhancing the natural, cultural, historic, and environmental resources of the Rural Service Area and rural farmland (Theme E, Goal #2b.).
3. The proposed text amendment will correct outdated references to the Land Subdivision Regulations as it relates to environmentally sensitive areas and geologic hazard areas.

Staff Presentation – Ms. Wade directed the Commission's attention to a PowerPoint presentation for the proposed text amendment for environmentally sensitive areas. She said that the proposed amendment involves Articles 7, 23 and 26 of the Zoning Ordinance. She then said that the Planning Commission recently initiated a text amendment to these three sections of the Zoning Ordinance to strengthen oversight by the Urban County Board of Adjustment, specifically to protect environmentally sensitive areas in the community. She added that the proposed text amendment would relate to Article 7-6(a), which outlines the Board of Adjustment's responsibility and authority in dealing with conditional use permit applications; Article 23A-2(c), which references the Expansion Area Zoning Categories; and Article 26, which deals with the tree protection standards.

Ms. Wade said that, during the course of the Planning Commission's consideration of another text amendment for recreation and tourism, an idea was brought forward to consider that an environmental surety or bond be placed on property that could have an impact on the environmentally sensitive areas. In consideration of that proposal, an Ad Hoc Committee was established with members from the Planning Commission and the Board of Adjustment, as well as stakeholders. She said that during the course of their meetings from December 2014 to February 2015, the Ad Hoc Committee studied the idea of the environmental surety or bond and determined that that placing a surety or bond as a condition was not a viable solution. She then said that the Ad Hoc Committee had proposed the following three recommendations:

1. **Revise the Zoning Ordinance to require applications that impact an environmentally sensitive area (ESA) include a site plan for Board of Adjustment (BOA) consideration of a conditional use permit.** When deemed necessary to ensure the proper addressing of environmentally sensitive areas, the site plan shall be prepared by a registered engineer, or other professional qualified to assess and make recommendations for protection of the specific ESA in question. The proposed regulations should be drafted to ensure that small scale applications with minimal potential for environmental disruption are not automatically required to provide excessive levels of site plan detail or professional expertise.
2. **Revise the Zoning Ordinance to include language indicating that in conjunction with a conditional use permit involving an ESA, the BOA may impose a condition establishing "gateway" or "checkpoint" certifications for proceeding with exercising the conditional use permit during pre-construction, active construction and/or post construction phases of the development.** This requirement should be drafted to permit verification by either a public enforcement agency or qualified private contractor as deemed appropriate by the BOA on a case-by-case basis.
3. **Revise the Zoning Ordinance to indicate that within ESAs in the Rural Area, the BOA may consider a requirement that non-habitable structures and facilities, natural feature modifications and paving installed in conjunction with a conditional use permit may be required to be removed and/or restored if the conditional use ceases operation.** In such cases, the BOA should provide specific conditions as to what event(s) would constitute the cessation of the conditional use permit; specific listing of the structures or facilities subject to the condition; and the responsible party for such removal action(s).

Ms. Wade said that all three changes included the Board of Adjustment reviewing conditional use permits. In reviewing the proposed recommendations, the staff was charged with creating the text amendment to the Zoning Ordinance. She then said that those three recommendations from the Ad Hoc Committee were presented to the full Commission in May 2015.

Ms. Wade said that the three proposed revisions would amend Article 7-6(a)(4) and would make a reference change to Articles 23 and 26 of the Zoning Ordinance. She then said that, as a group, the Planning Commission and staff had decided to focus on the Ad Hoc Committee recommendations; therefore, the Land Subdivision Regulations would not be amended at this

time. However, should there be a need to change the Land Subdivision Regulations, other divisions of the LFUCG would be included in the review.

Ms. Wade then said that Article 6-11 of the Land Subdivision Regulations does reference environmentally sensitive areas, as well as geologic hazard areas. She noted that generally when there is a geologic hazard area, then there is also an environmentally sensitive area. She explained that an environmentally sensitive area is an area that is limited in its development due to floodplains, sinkholes and so forth; whereas, a geologic hazard area would be an area that is severely limited in its development, due to for example, an identified cave system or a cluster of sinkholes. She said that some of the environmentally sensitive areas have been mapped for Lexington, but not every type is part of the LFUCG GIS system. She then said that a map was generated and it showed at least one third of Fayette County was located in an environmentally sensitive area. This is partially due to the aquifer recharge area for the Georgetown water supply, as well as the number of areas that are impacted by floodplains and steep slopes. Ms. Wade said that these land subdivision regulations definitions are not being proposed to change and the Zoning Ordinance does refer to these terms. The following text is being proposed to address the Committee recommendations (inserted in Article 4-6(a)(4)):

When reviewing a conditional use application, the Board shall thoroughly address potential impacts to any identified environmentally sensitive area (ESA), geologic hazard area (GHA), as further regulated under the Subdivision Regulations, and/or Rural Service Area (RSA) prime soils as well as any other resources of special concern located on the property. The Board may require a more detailed site plan and more comprehensive associated information in order to assess and consider the future protection of such area and resources. Such a site plan shall be prepared by a qualified professional well suited to addressing a particular issue or concern of interest, including landscape architects, hydrologists, geologists, environmental engineers, naturalists, arborists, etc. The site plan shall show or describe protection measures, mitigation and enhancement of the ESAs and/or GHAs and their associated buffer areas when they are, or could be, impacted by an alteration, use or activity within the ESAs and/or GHAs and their buffer areas pre-construction, during construction and post-construction.

For any conditional use permit granted for a site containing any ESAs and/or GHAs the Board may impose intermediate certification and verification reviews during the pre-construction, active construction and/or post-construction phases of development in order to ensure protection of environmentally sensitive areas and environmental hazard areas during all phases of a project. Such certification or verification reviews may be conducted by either a public enforcement agency or a qualified private contractor, as deemed appropriate by the Board.

In addition, when the proposed conditional use is located within the Rural Service Area (RSA), the Board may consider a requirement that alterations to the ESA(s) and/or GHA(s), such as non-habitable structures, non-habitable facilities, natural feature modification and paving installation associated with the conditional use permit be removed, and/or restored if the conditional use were to cease operations.

Ms. Wade said that during the staff's review, it was discovered that Articles 23A-2(c) and 23A-d of the Zoning Ordinance still referenced Articles 6-7 and 6-10 of the Land Subdivision Regulations. She explained that in the early 2000s, changes were made to the Land Subdivision Regulations that reordered and moved the environmentally sensitive information under Article 6-11 of the Land Subdivision Regulations. This proposed text amendment would update references to that section.

Ms. Wade then said that Article 26 of the Zoning Ordinance regulates tree protection standards. She noted that there are a few generic references to environmentally sensitive lands, and the staff felt it would be necessary to place the terms "environmentally sensitive areas" and "geologic hazard area" from the Land Subdivision Regulations into Article 26. The staff recommends adding the following in Article 26 of the Zoning Ordinance:

- Article 26-2: Update "Tree Protection Plan (TPP)" definition to include geologic hazard area;
- Article 26-3: Update the reference to Article 6-11 of the Land Subdivision Regulations; and
- Article 26-4(b): Update Preliminary Development Plan requirements to include geologic hazard area;

Ms. Wade said that, however, text amendments are not legally required to make a finding that they be consistent with the Comprehensive Plan; the Zoning Ordinance is the primary mechanism by which the Planning Commission and the Council implement the Plan through the Goals and Objectives. Due to the importance of protecting the environmentally sensitive lands, the staff made their recommendation with findings using a number of Goals and Objectives which directly relate, including the following:

- (1) promoting the protection of natural features and landscapes prior to development (Theme A, Goal #3c. and Theme B, Goal #3a.);
- (2) reducing the community's carbon footprint (Theme B, Goal #1);
- (3) encouraging environmentally sustainable uses of natural resources (Theme B, Goal #1b.); and
- (4) protecting and enhancing the natural, cultural, historic, and environmental resources of the Rural Service Area and rural farmland (Theme E, Goal #2b.).

Ms. Wade said that in reviewing the proposed text amendment, the staff is recommending approval, for the following reasons:

1. The proposed text amendment will help to guide the Board of Adjustment in their review of conditional use permit applications, specifically for properties that may be environmentally sensitive and could be impacted by a future land use, and strengthen the Board's oversight of our environmentally sensitive land in Fayette County.

2. The 2013 Comprehensive Plan's Goals and Objectives related to protection of environmentally sensitive land are advanced by implementing the proposed text amendments. If approved, the Board of Adjustment will be able to assist in promoting the protection of natural features and landscapes prior to development (Theme A, Goal #3c. and Theme B, Goal #3a.); reducing the community's carbon footprint (Theme B, Goal #1); encouraging environmentally sustainable uses of natural resources (Theme B, Goal #1b.); and protecting and enhancing the natural, cultural, historic, and environmental resources of the Rural Service Area and rural farmland (Theme E, Goal #2b.).
3. The proposed text amendment will correct outdated references to the Land Subdivision Regulations as it relates to environmentally sensitive areas and geologic hazard areas.

Ms. Wade said that before the Planning Commission makes a decision on a plan, that plan has been fully vetted by their Technical Committee, which consists of up to 25 people who have expertise in their field. The Board of Adjustment does not have this advantage. The proposed text amendment would help the Board in their review of conditional use applications, and should an application need additional review, the staff would present that application to the Technical Committee. She indicated that there is no requirement for a BOA application to be presented to the Technical Committee; it is only when the staff deems it necessary.

Ms. Wade said that the 2013 Comprehensive Plan will be furthered by the implementation of this text amendment, and the proposed text amendment would correct the outdated references in the Zoning Ordinance. She then said that she would try to answer any questions regarding the proposed text amendment listed on today's agenda.

Commission Questions – Mr. Penn said that he appreciated that the Technical Committee reviews the applications before Planning Commission, and asked if the proposed text amendment would require a better development plan to be submitted that identifies the environmentally sensitive areas. Ms. Wade replied affirmatively, and said that the staff may need to help an applicant identify whether or not the land has environmentally sensitive areas before they apply for the conditional use permit. She explained that once an application is submitted, the Board of Adjustment's deadline is much shorter than the Planning Commission's deadline. She said that the applicant does have the option to postpone the request, but it would be the staff's responsibility to help them identify those areas before they apply for the permit. This would also help the applicant find the appropriate professional to assist. Mr. Penn said that he hopes that is the reason because some of the things that this community has gotten are the direct result of the development plan not showing or identifying correct information.

Mr. Drake said that there is no doubt that the intent of this text amendment is very noble; but he indicated that he was not sure of its "mechanics." He asked if a floodplain was an environmentally sensitive area. Ms. Wade replied affirmatively. Mr. Drake then asked if that floodplain was altered and fill used, if this text amendment would allow the Board of Adjustment to require that fill to be removed if that business were to fail. Ms. Wade said that that could be an option for the Board; but since fill in a floodplain is required to be engineered and approved by FEMA, the Division of Water and the local regulations, that fill would not necessarily be removed. Mr. Drake noted that that troubled him.

Ms. Mundy indicated that her property has steep slopes where the water flows over the palisades to the river. She said that under Article 6-11 of the Land Subdivision Regulations, it lists aquifer recharge areas, and asked about the area where the water flows to the river. Ms. Wade said that the steep slope area, as well as the floodplain language would cover palisades. Ms. Mundy said that the palisades are above the floodplain. Ms. Wade said that palisades would be part of the floodplain. She then said that generally every piece of land in Fayette County flows toward a river, but not all of that land is located in an environmentally sensitive area. Ms. Mundy said that most of the area behind her house has over 15 percent slope. Ms. Wade said that if a slope is over 15 percent, it would fall under environmentally sensitive area; but if that percentage is under 15 percent, it would not. Ms. Mundy said that in her mind this is a river recharge, not an aquifer recharge. Ms. Wade said that, in terms of the Engineering Manuals, there are other ways to control the runoff on a site that regulate water quality and water quantity runoff. Ms. Mundy said that the Engineering Manuals would protect those areas with a runoff over 15 percent.

Mr. Berkley indicted his support of the Committee's recommendations of not having a surety or bond. He said that the staff had stated that the Board of Adjustment could require the fill to be removed, and asked how they would require that to be done. Ms. Wade indicated that there are still logistical issues in having fill removed from a site; but during their meetings, the staff had spoken with Commissioner Paulsen, who is involved with Code Enforcement, about the possible enforcement issue that is associated with the Board of Adjustment. Should they make a ruling saying that a conditional use ceases to exist and now you, as the property owner, must return the land back to its pre-development condition. She then said that there would be some cost to that action. When an applicant applies to the Board for a conditional use permit and a condition is put in place, they are agreeing to those terms. She added that there is a contract between the applicant, the Board of Adjustment and the Lexington-Fayette Urban County Government to ensure that conditions are met, if it were to occur. The City would not require the applicant to set money aside in the beginning; but afterwards, the City would have the authority to follow up on that conditional use; and if needed, ask the applicant to begin the process of returning the land back to its pre-development conditions. Otherwise, the City could fine the applicant for not complying with conditions imposed by the Board of Adjustment's action.

Mr. Berkley asked if Code Enforcement would be handling these types of cases. Ms. Wade said that Zoning Enforcement would handle any follow-ups, as well as any required annual reviews for the Board of Adjustment.

Mr. Drake asked how the conditional use requests within an environmentally sensitive areas were handled prior to this proposed text amendment; and if there has been a great deal of abuse. Mr. Sallee said that, with the exception of two more recent cases, there have not been a great number of these cases in the past. He explained that one of the cases was off Georgetown Road, and that the operation that was approved to remove the top soil was in part of the aquifer recharge area. He said that during the excavation of the site, the workers had removed much more than the top soil. This in turn, became an issue with State regulations, in addition to the conditional use permit. He then said that, since this was in an aquifer recharge area, it was located within environmentally sensitive area. He then said that a number of property owners, as well as local organizations that became interested in this location. Mr. Sallee added that the more recent case was the property down by the Kentucky River at the opposite end of Fayette County, and said that parts of that property have steep slopes and a floodplain area.

Mr. Sallee said that there have been a few conditional uses that have been located in the floodplain; and, in those circumstances, the section of the Zoning Ordinance that references floodplains (in existence since the 1980s) has also been applicable in the Board of Adjustment's review. He said that those cases, in his mind, do not stand out as anything out of the ordinary. They only involved an additional section of the Zoning Ordinance that is not typically reviewed with the average conditional use permit, such as a home occupation permit, or a school or church in a residential zone, which are more typical types of development.

Mr. Sallee said that the actual review of the text amendment and the issue studied by the Sub-Committee is probably more of a result of two of the Board's more recent cases. He then said that, from his experience being on the staff, these types of contentious cases often lead to the need or the desire for text amendments either by the Planning Commission or, in some cases, as recommended by the Board of Adjustment.

Mr. Cravens said that he was alright with the Committee's recommendations; but in reviewing the details of the text amendment, he is not in support of it. He said that the text amendment states that such a site plan shall be prepared and asked if a site plan would need to be submitted with each application. Ms. Wade said that in every conditional use case a site plan is prepared; it's not required by law, but administratively it is required. Mr. Cravens said that it was the staff's testimony that the site plan shall be prepared by a qualified professional, such as a landscape architect, hydrologist, geologist, environmental engineer, naturalist, arborist, etc. The Chair said that it is not mandated; but if the Board of Adjustment deems it necessary to have a site plan submitted, they have the ability to request the applicant to have one prepared by one of the qualified professions listed in the staff report. Mr. Cravens replied that the language indicated "shall" be prepared. The Chair said that the site plan shall be prepared by that individual. Ms. Wade said that, in looking at the entire paragraph, the section that is bolded reads: "The Board may require a more detailed site plan." Mr. Cravens asked if this can be done with the proposed Ordinance change. Ms. Wade responded that it would not be without delay, and explained that when the applicant files their application, the Board would not see the application until their first meeting, which is a month later. She said that, at that time, the Board could request a more detailed plan to be submitted, delaying the applicant 30 days. Mr. Cravens said that the Commission delays/postpones applications until the plan is fixed. Ms. Wade said that the Board has 60 days to review applications, whereas, the Commission has 90 days.

Mr. Cravens asked if a house being built in an environmentally sensitive area is covered under this text amendment. Ms. Wade said that if you are asking to build a house in the floodplain, then it might. Mr. Cravens then asked what if someone wanted to build a California style house on a steep slope looking out over the river. Ms. Wade said that the Board could ask for a site plan and the applicant would need to hire the appropriate professional. Mr. Cravens asked if a house would need to be reviewed by the Board of Adjustment. Ms. Wade responded only if a variance is needed, but a house is not a conditional use, it is a principal uses in most zones.

Mr. Cravens said that when a house is built the different divisions come on site to review the construction, and asked who would be reviewing the different phases of construction. Ms. Wade said that there are no site visits with a Board of Adjustment case, and this is a difference between regular activity for a subdivision development and conditional use applications in the environmentally sensitive areas, typically in a rural area. Mr. Cravens said that if a site plan is filed with the staff, then that would trigger the Division of Engineering to perform a site visit even without the text amendment. Mr. Sallee said that the Division of Engineering's review would be associated with a land disturbance permit, and some conditional uses obviously on a larger scale would require a land disturbance permit. He then said that the staff is not sure if a review would happen if it wasn't required; for example, a conditional use for a church in a rural area or even an urban area. He added that if it was not within an environmentally sensitive area, the staff is not sure if that would trigger anything more than the building permit type of review by the Division of Engineering.

Mr. Cravens said that it seems that the text amendment is "doubling down" on the same restrictions. Ms. Wade said that the text amendment would ensure that the Board of Adjustment cases receive the same review as the Planning Commission cases. Mr. Cravens commented that he is not satisfied nor is he hearing answers that he likes. Ms. Wade responded that the staff is doing their best.

Mr. Cravens asked if an applicant poured a nice driveway, and the use goes away, if this text amendment would force the driveway to be removed. Ms. Wade said that the Board of Adjustment would make that determination.

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

Discussion - The Chair said that in each one of the staff's recommendations it states that the Board "may" require something; it does not say they have to mandate it. He then said that the intent of the zone says we shall protect environmentally sensitive areas. These recommendations are making things proactive rather than reactive. He said that 10 years ago Adventure Tourism was not even heard of in this area. This type of tourism includes such items as rock climbing. He said that new things are happening more and more; and even though there has only been one Agricultural Natural Areas (A-N) zone change request, he believes that the Commission will see these more in the future. He then said that there should be ways to allow this type of tourism; this is a proactive approach to allow more uses to occur in the environmentally sensitive areas, while at the same time protecting these areas.

Mr. Wilson said that he appreciated this discussion. He said that every time there is a discussion he learns a little bit more, and the Chair had described the intent of the text amendment. He said that the text amendment would strengthen, but not overburden the Board of Adjustment's review; and among the Ad Hoc Committee members was the Chairman of the Board of Adjustment and several attorneys, who appreciated being on that Committee. Mr. Wilson indicated that he felt good about the proposed text amendment.

Ms. Richardson said that, with regard to agri-tourism, she believes this is an expensive overkill. It is her belief that this is incredibly restrictive and expensive, and she is concerned that this text amendment would keep the developers or people who want these activities from coming to Lexington. She added that most of these activities have an educational arm, but this proposal would prohibit them from coming and would force them to move to another county or another state. Ms. Richardson said that this text amendment is overly restrictive and she cannot support it.

Mr. Penn said that the problem needs to be identified before facilities are built and not try to prohibit them afterwards. He then said that historically the Board of Adjustment has not seen a good enough development plan to really know what environmental problems are, then suddenly the project is found to be not up to standard. He said that changing something on a piece of paper is a lot cheaper than getting into an afterthought situation, because the Board does not have a Technical Committee Review like the Commission does for development plans.

Mr. Penn asked if the reason for not using the surety or bonds was due to the expense. Mr. Wilson said that the Committee looked at whether or not a surety or bond could be legally imposed, as well as the cost of that surety or bond. Ms. Wade said that the Committee had an individual from a bond company in the group, and he indicated that the only way a bond company would support something like this was if it was one-for-one up front. She then said that their concern was how the Committee would enumerate that and how much it would cost to put something back to its natural state.

Ms. Plumlee thanked the staff and the Ad Hoc Committee for putting the text amendment together. She said that she would like to see more strength by using the word "shall" in the text amendment, particularly for the Rural Service Area. She then said that a surety or bond should be used in the rural areas because if the surety is too expensive to post, then perhaps the land shouldn't be developed in the first place - especially if it cannot be returned to its original use.

Mr. Cravens asked if the surety or bonds would be required if the project was not completed. Mr. Sallee said that the Board, theoretically, has that power; but it is not practical to require a bond for reclamation for conditional uses. Mr. Cravens asked what happens to the bonds that the Commission attaches to a development plan if the project goes unfinished. Mr. Sallee said that the bonds that the Commission considers are not reclamation. Ms. Wade said that the bonds that the Commission considers are infrastructure bonds and those are used for the right-of-way construction, which is City property. She then said that there is a known dollar amount that can be used for projects that have not been completed. Mr. Cravens asked if that is on City property, to which Ms. Wade replied affirmatively.

Mr. Brewer said that the recommendations made by the Ad Hoc Committee strike a good medium point between too much regulation or too much expense and with the right amount of investment in protecting the environmentally sensitive areas. He then said that this is a good compromise for both sides, and this text amendment should move forward.

Ms. Richardson indicated that in serving on many Committees; there has been a lot of discussion concerning the Bylaws and the Zoning Ordinance. She said that any time a body is given authority to do something, that body does it. She added that they begin to feel like it's their responsibility, and this is one of the reasons she believes this text amendment is overkill and too restrictive in the language that is being proposed. She said that she has been involved in too many things where people love the word "may" and they feel that they are empowered to do that and proceed forward. She then said that she doesn't want the word "shall" either; and in this situation, she doesn't believe it will make much difference. She believes that they will consider it a part of their authority and will most likely do it.

Mr. Penn said that he understood Ms. Richardson's concern, and he is not a big government person either. However, when the vegetation, the grass and the weeds are removed from a steep slope, replacing it is very hard due to soil erosion. A body can review the development plan very carefully, but not the business plan. He said that there is no way for the Board of Adjustment or the Commission to predict whether or not a business can make it. They are not in the business to determine which business is viable. Mr. Penn said that what they can do is say if nature's protection against erosion is removed, that business does not grow then it needs to put the land back to its original state. He then said that you can't just walk away from the situation and let the soil wash into the body of water. There needs to be a balance between those two points and that is what he is trying to consider today. He said that he does not want to make it where

everyone just gets a permit for everything, but neither does he want the vegetation removed that has been there for hundreds of years for something that may or may not work. If the business doesn't work, that area becomes a rut and a mess. It's a two-way street.

The Chair said that the Committee, which included attorneys and Board and Commission members, put a lot of work into this text amendment. He then said that the Commission discussed this issue at many of their work sessions, and the consensus was to allow the staff to draft the text amendment. He then said that the Commission has seen this draft before, and there is still discussion on this topic. At this point, he said that he would call for a vote and asked for a motion.

Mr. Wilson said that he appreciated the discussion on this topic. He also appreciated the staff's input during this process, because the Committee was driving everyone crazy with questions about definitions, rules and regulations, and was requesting maps. He then said that he would also like to publicly thank all the people who served on that Committee, as well as the people who participated.

Action - A motion was made by Mr. Wilson, seconded by Ms. Plumlee and carried 8-3 (Cravens, Richardson and Drake opposed) to approve ZOTA 2016-1: AMENDMENTS TO ARTICLES 7, 23, AND 26 FOR ENVIRONMENTALLY SENSITIVE AREAS, as presented for the reasons presented by staff.