

## 1. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT

- a. MAR 2013-16: URBAN COUNTY PLANNING COMMISSION - petition for a zone map amendment from an Agricultural Urban (A-U), Neighborhood Business (B-1), and Planned Shopping Center (B-6P) zone, with conditional zoning restrictions, to an Agricultural Urban (A-U), Neighborhood Business (B-1), and Planned Shopping Center (B-6P) zone with modified conditional zoning restrictions, for 29.96 net (30.77 gross) acres, for property located at 760 & 789 Newtown Springs Drive and 1443 & 1445 Newtown Center Way.

### LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 7) recommends Retail, Trade, and Personal Services (RT) and Greenspace (GS) future land use. The Urban County Planning Commission has initiated a zone change to revise a conditional zoning restriction in order for the restriction to match an existing legal agreement between the property owner and the government as it relates to screening and landscaping along the Legacy Trail, which was constructed parallel to the Newtown Pike right-of-way.

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

The Staff Recommends: Approval, for the following reason:

1. An easement agreement/contract between the property owner and the government, signed in December 2009, and the subsequent construction of the Legacy Trail, constitute major changes of a physical and economic nature that were not anticipated at the time the conditional zoning restriction was imposed on the subject property in 2001. These changes justify a modification to the conditional zoning on the subject property.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall maintain conditional zoning restrictions #2 and #3; however, restriction #1 shall be modified to read:
  1. The developer shall construct a three-plank horse farm fence, generally parallel to the Legacy Trail (shared use path) along Newtown Pike.

Staff Presentation: Ms. Wade presented the staff report, noting that the Planning Commission had initiated this rezoning request approximately six weeks ago. She briefly oriented the Commission to the location of the four subject parcels on Newtown Springs Drive and Newtown Center Way, at the southeast corner of the intersection of Newtown Pike and Citation Boulevard. Ms. Wade displayed an aerial photograph of the subject property, noting the location of the Legacy Trail, which lies along the Newtown Pike frontage of these four lots.

Ms. Wade stated that the subject property is zoned A-U along the frontage of all four parcels. The remainder of the largest parcel (760 Newtown Springs Drive) is zoned B-6P, and the other parcels are primarily zoned B-1. Other zoning in the vicinity includes P-1 across Newtown Pike, and P-2 in the Coldstream Research Campus. The Newtown Springs development, to the rear of the subject property, includes professional office zoning, residential units, and a new nursing home facility. To the north of the subject property is the Griffin Gate golf course and subdivision, with a portion of the Lexmark property, which remains agriculturally zoned, to the south.

Ms. Wade said that this request for initiation was made by the property owner, who sought an amendment to the conditional zoning restrictions in order to allow those restrictions to match an agreement that they signed with the Lexington-Fayette Urban County Government in 2009. The current restrictions reads: "The developer shall construct a four-plank horse farm fence, and shall install plantings within the 75-foot buffer area along Newtown Road, all as more particularly shown on a rendered landscape plan." Ms. Wade explained that, when the conditional zoning restriction was put in place at the time of the rezoning of the subject property in 2001, there were no plans for the Legacy Trail, although the 75' greenspace area was depicted along the front of the properties in the 2001 Comprehensive Plan. Since that time, the Legacy Trail has been constructed in that area. Ms. Wade displayed several photographs of the Legacy Trail, noting that landscaping and trees have been installed parallel to the trail. The 2001 rezoning was approved with two additional conditional zoning restrictions, prohibiting some land uses and requiring the provision of landscaping along the other side of Citation Boulevard, to the benefit of the Griffin Gate neighborhood.

Ms. Wade stated that, in reviewing the agreement between LFUCG and the property owners, along with the existing conditional zoning restrictions, there were two differences. The conditional zoning restriction required a four-plank fence, while the subsequent agreement required three; there was also a disagreement with regard to the amount of landscaping required. The property owner is requesting that the agreement that provided the easement for the Legacy Trail be honored, reducing the number of fence planks to three and changing the required landscaping so that it would not be in addition to the amount already required by the Zoning Ordinance. Referring to a photograph of the property, Ms. Wade noted that the property owner would need to provide additional shrubs for vehicular use area screening, in addition to the existing trees, which are spaced approximately 50 feet apart.

Ms. Wade said that, in considering a request to modify conditional zoning restrictions, the Planning Commission must find that there has been an unanticipated change of an economic, physical, or social nature in the immediate area since the time the restriction was put in place. The staff believes that, in this case, the easement agreed upon by the property

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

owner, and the subsequent construction of the Legacy Trail, were not anticipated at the time that the conditional zoning restriction was put in place, which constitutes a major change in the area. The property owner has acknowledged that they will need to install the fence, as well as some additional plantings, in order to meet the Zoning Ordinance requirements, which they intend to do at the time of any development on the subject property. Ms. Wade stated that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Owens asked why the Planning Commission was listed as the applicant in this request. Ms. Wade answered that the property owner asked the Planning Commission to be the applicant in this case. Mr. Sallee added that the Commission agreed to initiate the zone change this past summer.

Mr. Owens asked on which side of the Legacy Trail the fence would be located. Ms. Wade responded that the staff's understanding was that the fence would be located between the trail and the developable area of the property. Mr. Owens asked how close the fence would be to the trail, to which Ms. Wade replied that that issue would be open for discussion at the time of the filing of a development plan for the property. She added that Scott Thompson, the Bicycle and Pedestrian Planner, indicated a desire for the fence to be constructed at a distance of at least 10 feet from the trail.

Mr. Penn asked if the required landscaping would be planted inside or outside the fence. Ms. Wade answered that the fence would be constructed around the existing trees, while the shrubs would be located very near the parking lot, since they would serve as the required vehicular use area screening.

Mr. Penn asked, with regard to the fence, why the property owner preferred a three-plank fence to the more typical four-plank fence, and whether the fence was intended to improve the appearance of the property, or screen it from view. Ms. Wade responded that the original intent was to provide screening for the development from Newtown Pike, the result of which was a four-plank fence and landscaping that was in excess of the Zoning Ordinance requirements. Since that time, the property owner entered into an agreement with LFUCG, which requires a three-plank fence. The property owner wants the conditional zoning restrictions to reflect the requirements of that agreement, and they chose to pursue that solution through a modification of the restrictions rather than a Council change to the trail agreement. Mr. Penn asked if the property owner's intent was to save money on the fencing, opining that a four-plank fence would have been more attractive. Ms. Wade said that it was the staff's understanding that the property owner wanted the two sets of requirements to match. Mr. Sallee added that the staff was not party to the agreements that resulted in the construction of the Legacy Trail, but once the inconsistency was identified, the staff knew that one of the requirements would need to be changed prior to the beginning of any development on the property. He added that the property owner did not have a representative present at this hearing to elaborate further on their reason for pursuing the three-plank fence.

Mr. Owens agreed with Mr. Penn's opinion that four-plank fencing would be more attractive, and that it would fit better with the rest of the fencing along Newtown Pike, which is four-plank. He said that in this case, however, he believed that the three-plank fence might be more appropriate, since it would provide for a more open view along the Legacy Trail.

Citizen Comment: Chris Jones, 2372 Prescott Lane, stated that the property on which the Red Cross buildings are located, directly across Citation Boulevard, has a four-plank fence.

Zoning Action: A motion was made by Mr. Wilson, seconded by Mr. Drake, and carried 9-1 (Plumlee opposed; Beatty absent) to approve MAR 2013-16, for the reasons provided by staff.