

**2. FLYING DUTCHMAN PROPERTIES, LLC, (AMD.) ZONING MAP AMENDMENT & GIBSON PARK SUBDIVISION, BLK B, ZONING DEVELOPMENT PLAN**

- a. MARV 2015-15: FLYING DUTCHMAN PROPERTIES, LLC (AMD.) (10/22/15)\* - amended petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Planned Neighborhood Residential (R-3) zone, for 0.654 net (0.754 gross) acre, for property located at 509, 513 and 517 Pyke Road. 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. In addition to the Comprehensive Plan mission statement, the Goals and Objectives of the Plan also encourage growing successful neighborhoods (Theme A), and maintaining a balance between planning for urban uses and safeguarding rural land (Theme E).

The petitioner proposes to retain the existing residence on the subject property, and develop a new duplex or townhouses on either side, with associated off-street parking.

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

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2013 Comprehensive Plan, as follows:
  - a. The Goals and Objectives recommend growing successful neighborhoods through expanded housing choices that address the market needs for all residents (Theme A, Goal #1b.). The petitioner proposes a townhouse style development of 8 dwelling units, which creates a variety of housing types in the immediate area that complement the existing neighborhood.
  - b. The Goals and Objectives encourage infill development throughout the Urban Service Area as a strategic component of growth for our community (Theme A, Goal #2). The petitioner proposes to increase the density of the subject properties, as compared to the surrounding area, to 12.23 dwelling units per net acre.
  - c. The Goals and Objectives recommend identifying areas of opportunity for infill development that respects the area's context and design features (Theme A, Goal #2a). The applicant plans to maintain a similar front yard setback, and provide off-street parking in the rear of the development, which will better match the existing character of the neighborhood.
  - d. The Goals and Objectives also encourage the use of underutilized land (Theme E, Goal #1a.) and building in a compact, contiguous, and/or sustainable manner (Theme E, Goal #1b.) The proposed development is well aligned with the vision articulated in the Comprehensive Plan for "single/small lot infill" projects, and is using two vacant lots that are considered underutilized in this urban context.
2. This recommendation is made subject to approval and certification of ZDP 2015-63: Gibson Park Subdivision, Block B, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be prohibited for the subject property:
  - a. Multi-family dwellings.
  - b. Dormitories.
  - c. Boarding or lodging houses.
  - d. Assisted living facilities.
  - e. Community residences.

These limitations are appropriate and necessary to better protect the existing neighborhood and to prevent the most intensive uses that might be out of character with the existing residents of the area.

**b. REQUESTED VARIANCES**

1. Reduce the required lot frontage for a duplex use in the Planned Neighborhood Residential (R-3) zone from sixty (60) feet to fifty (50) feet.
2. Increase the maximum allowable number of parking spaces for a single family residence in the defined Infill & Redevelopment Area from 2 to 6.

The Zoning Committee made no recommendation on the requested variances.

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

- a. Granting the requested frontage and parking variances will not adversely affect the public health, safety or welfare;

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

and will not alter the character of the general vicinity, as 50' wide lots are commonplace in this neighborhood. The parking will be located to the rear of the structures and will not be readily visible from the street or other residential properties.

- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance because the existing lot is 50' wide and can be built upon as a legal non-conforming lot, should the property be rezoned to R-3. With regard to the parking variance, the overall project does not exceed the maximum allowable parking for the uses on the three lots.
- c. The special circumstance that applies to this site that does not generally apply to land in the general vicinity is the location of the existing single family house, which the applicant desires to retain as a part of this infill and redevelopment project.
- d. Strict application of the requirements of the Zoning Ordinance would not deprive the applicant of a reasonable use of the property, but would create an unnecessary hardship in the future should they wish to modify the lot in any way, or design each unit to independently meet their required parking on each lot.
- e. The circumstances surrounding the requested variance are not the result of the actions of this applicant, but rather are a response to the unique characteristics of this redevelopment project.

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

1. Provided the Urban County Council rezones the property R-3; 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).

- c. ZDP 2015-63: GIBSON PARK SUBDIVISION, BLOCK B (9/4/15)\*- located at 509, 513 & 517 Pyke Road.  
(Vision Engineering)

The Subdivision Committee Recommended: Postponement. There were some questions regarding compliance with the requirements of Articles 8-10 and 15-7 of the Zoning Ordinance.

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

1. Provided the Urban County Council rezones the property R-1T; 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. Correct plan title.
6. Denote: Compliance with Art. 15-7(d) of the Zoning Ordinance shall be determined at the time of the Final Development Plan.
7. Dimension sidewalks.
8. Discuss timing of the resolution of the conflict with the 30' platted building line.
9. Discuss proposed lotting and parking lot maintenance and access.
10. Discuss note #9.
11. Discuss compliance with Article 15-7(d) of the Zoning Ordinance.
12. Discuss compliance with Article 8-10(o)(g) of the Zoning Ordinance.
13. Discuss Article 18 landscape requirements' conflict with existing utility easement at rear of property.
14. Discuss easement conflict with proposed building.

Zoning Presentation: Ms. Wade presented the staff report on this amended rezoning request for three parcels on the east side of Pyke Road, including ½ of the abandoned right-of-way of Devonshire Avenue. She briefly oriented the Commission to the location of the subject properties, noting that zoning and uses in the general area include primarily single-family residences in the Golf View Estates subdivision; a multi-family residential development further along Devonshire Avenue; professional office uses along Red Mile Road; and commercial business along South Broadway. The subject property currently contains one existing single-family residential structure situated on the center lot, which the petitioner is proposing to retain. The development plan originally filed with this request depicted eight townhouses on the subject parcels. However, the petitioner amended the request, and is now proposing to construct one duplex on either side of the existing single-family residence, for a total of five dwelling units, and a density of approximately 7.65 dwelling units per acre.

Ms. Wade said that the petitioner contends that the proposed rezoning is in agreement with the 2013 Comprehensive Plan, particularly Themes A and E, and Goals related to expanding housing choices; supporting infill & redevelopment that is context-sensitive; providing well-designed neighborhoods with mixed uses and housing types; and using underutilized property within the Urban Service Area boundary. The petitioner contends that the revised proposal is more context-sensitive than the townhouses originally proposed for the subject property; it allows the front

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building setbacks to match, and provides parking to the rear of the homes. Ms. Wade stated that the staff does agree with that contention, and agrees that the proposed rezoning is in agreement with the Comprehensive Plan. The petitioner has proposed conditional zoning restrictions in order to prohibit R-3 uses that would be detrimental for the existing single-family residential neighborhood, including multi-family dwelling units; dormitories; boarding and lodging houses; assisted living facilities; and community residences. The staff agrees that the proposed conditional zoning restrictions will help to maintain the character of the existing neighborhood.

Ms. Wade stated that the staff report was updated, based on the amended application, but the staff's findings needed to be updated as well. The staff is now recommending approval, for the following reasons:

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2013 Comprehensive Plan, as follows:
  - a. The Goals and Objectives recommend growing successful neighborhoods through expanded housing choices that address the market needs for all residents (Theme A, Goal #1b.). The petitioner proposes to develop two duplexes (on either side of the existing single-family residence) a townhouse-style development of 8 dwelling units, which creates a variety of housing types in the immediate area that complement the existing neighborhood.
  - b. The Goals and Objectives encourage infill development throughout the Urban Service Area as a strategic component of growth for our community (Theme A, Goal #2). The petitioner proposes to moderately increase the density of the subject properties, as compared to the surrounding area, to 7.65-12.23 dwelling units per net acre.
  - c. The Goals and Objectives recommend identifying areas of opportunity for infill development that respects the area's context and design features (Theme A, Goal #2a). The applicant plans to maintain a similar front yard setback, and provide off-street parking in the rear of the development, which will better match the existing character of the neighborhood.
  - d. The Goals and Objectives also encourage the use of underutilized land (Theme E, Goal #1a.) and building in a compact, contiguous, and/or sustainable manner (Theme E, Goal #1b.) The proposed development is well aligned with the vision articulated in the Comprehensive Plan for "single/small lot infill" projects, and is using two vacant lots that are considered underutilized in this urban context.
2. This recommendation is made subject to approval and certification of ZDP 2015-63: Gibson Park Subdivision, Block B, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be prohibited for the subject property:
  - a. Multi-family dwellings.
  - b. Dormitories.
  - c. Boarding or lodging houses.
  - d. Assisted living facilities.
  - e. Community residences.

These limitations are appropriate and necessary to better protect the existing neighborhood and to prevent the most intensive uses that might be out of character with the existing residents of the area.

Development Plan Presentation: Mr. Sallee stated that the subject property is located at the northern end of Pyke Road, near the intersection with Devonshire Avenue. The subject property includes a 25' wide piece of land that, for over 80 years, was part of the right-of-way of Devonshire Avenue. No pavement was ever constructed there, but the right-of-way has recently been abandoned, formally, and ½ of it was added to the 517 Pyke Road parcel of the subject property.

Mr. Sallee explained that the existing house on the subject property is in the center of the site, and on either side, the petitioner is proposing to construct one new duplex. Shared access is proposed along the side and rear of the subject property, to include 13 parking spaces behind the residential units.

Mr. Sallee said that the Subdivision Committee recommended postponement of this plan when it was initially reviewed at their meeting several months ago. That plan was for a townhouse development in the R-1T zone, for the entirety of the property; the existing structure was proposed to be removed. This version of the development plan was submitted to the staff on October 14<sup>th</sup>; an earlier version was submitted along with the amendment to the zone change. Mr. Sallee stated that the staff is now recommending approval of this plan, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property R-1T R-3 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. Correct plan title.
6. Denote: Compliance with Article 15-7(d) of the Zoning Ordinance shall be determined at the time of Final Development Plan.
7. ~~Dimension sidewalks.~~
8. ~~Discuss timing of the resolution of the conflict with the 30' platted building line.~~
9. ~~Discuss Denote proposed letting and parking lot maintenance and access note on plan.~~
10. ~~Discuss note #9.~~
11. ~~Discuss compliance with 15-7(d) of the Zoning Ordinances.~~
12. ~~Discuss compliance with 8-10(e)(g) of the Zoning Ordinances.~~
13. ~~Discuss Article 18 Addition of street tree landscape requirements conflict with existing utility easement at rear front of property.~~
14. ~~Discuss easement conflict with proposed building.~~
9. Denote future use of "Ex. Carport" space, since driveway to it has been removed.
10. Provided the Planning Commission grants a dimensional variance to Article 8-11(g) and 16-4(b)(7) requirements of the Zoning Ordinance.

With regard to the conditions for approval, Mr. Sallee said that #2 through #5 are standard agency "sign-offs" and corrections, and the revised plan has addressed several of the additional conditions. The staff is recommending condition #7 in order to document the parking maintenance requirements, even though this is a preliminary development plan. Condition #8 needs to be added in order to account for tree plantings, if only in a general sense, as a final development plan will be required for this property. Condition #9 refers to the carport that is depicted on the development plan at one corner of the existing building. There is no driveway proposed to that carport, so the staff is requesting that the label for that area be changed to reflect the updated use of that portion of the property. Condition #10 refers to the two requested variances.

Commission Question: Mr. Penn asked why the Subdivision Committee did not review the revised plan. Mr. Sallee answered that he was not sure, as he was not in the office the week that the revised plan was originally submitted. Ordinarily, the staff would update the Commission's sub-committee when a development plan was revised.

Variance Presentation: Mr. Emmons stated that the petitioner had requested two dimensional variances, due to the requirements of the requested R-3 zone. He explained that the R-3 zone allows a variety of uses; depending on the type of use, the Zoning Ordinance specifies different dimensional requirements.

Mr. Emmons said that the first requested variance is to the lot frontage requirement for the southernmost property, which is currently 50' wide. When a duplex is proposed in the R-3 zone, 60' of frontage is required. The petitioner is requesting a variance from 60' to 50' in order to construct the duplex on that lot. The staff does not believe that the variance is required to build the proposed duplex; however, the petitioner has expressed intent to move the property line via a consolidation plat in order to ensure that the properties can meet the side yard requirements. Once the lot line is moved, the lot would be non-conforming, and any changes would have to be done in such a way as not to increase the non-conformity. Mr. Emmons said that the staff does not believe that granting the requested variance from 60' to 50' will have an adverse effect on the public health, safety, or welfare, and it will not change the character of the immediate vicinity.

Mr. Emmons noted that the staff's review of the first requested variance led to the discovery that the petitioner would need an additional variance, to the parking area proposed adjacent to the existing single-family home on the property. In the Infill & Redevelopment area, single-family homes are allowed only two parking spaces; duplexes are allowed six spaces. Because the parking on the subject property is proposed to be shared between two duplexes and a single-family residence, the overall project will be in compliance with the parking requirements. However, if the single-family home in the center was reviewed independently, it would have six parking spaces, so the staff recommended that the petitioner request a variance to increase the maximum number of parking spaces for the single-family lot from two to six.

Mr. Emmons stated that the staff is recommending approval of both of the requested variances, for the reasons as listed in the supplemental staff report and on the agenda, and subject to the conditions as listed.

Petitioner Presentation: Jacob Walbourn, attorney, was present representing the petitioner. He opined that the proposed project is the "perfect example of context-sensitive infill development." The petitioner originally proposed to construct eight townhomes on the subject property in the R-1T zone; they presented that proposal to the Commission's subcommittees several months ago. While the petitioner was considering the feedback from the committees, it was determined that there was no need to demolish the single-family home, since it is occupied and in good shape. The petitioner then determined that the current proposal would provide the most flexibility for the development.

Mr. Walbourn said that there were some comments made during the Zoning Committee meeting about the scale of the proposed development, and the petitioner took those comments to heart. The rear parking, which is the most unique feature of the development, was designed to eliminate on-street parking, in order to not have to ask the existing area residents to bear the burden of the increased density in the neighborhood. The petitioner also brought forward conditional zoning restrictions in order to ensure that the property develops as proposed. Mr. Walbourn stated that there are existing single-family homes adjacent to duplexes with rear parking in the neighborhood today, in the 400 block of Pyke Road, and the petitioner believes that the proposed development will be an asset to the community.

Commission Question: Mr. Owens asked how many parking spaces are proposed. Mr. Walbourn replied that the petitioner is proposing 13 spaces on the subject property.

Citizen Support: There were no citizens present in support of this request.

Citizen Opposition: Robert Wells, 512 Pyke Road, stated that he has lived in the area since 1991. He said that he has seen single-family neighborhoods in the Elizabeth Street and Waller Avenue areas develop with multi-family structures, and he and his neighbors do not want that type of development in their neighborhood. The petitioner did not present the proposed plan to the neighbors, who would have liked the opportunity to learn more about it prior to this hearing. Mr. Wells noted that, prior to the development of the apartment complex on Devonshire Avenue, that residents were told by the developer in that case that the units would be marketed to families. However, the development was targeted specifically toward UK students, and the neighborhood residents did not believe that was fair to them.

Mr. Wells stated that he is also concerned about the use of the former Devonshire Avenue right-of-way parcel, since he does not believe that it was abandoned, and it could belong to someone. He opined that that area should remain as greenspace, since it has mature trees that will likely need to be removed in order to accommodate the parking area for the proposed development. In addition, he is concerned about additional on-street parking from the proposed development, since a large number of cars are typically parked along Pyke Road.

Mr. Wells said that the Golf View subdivision is the only remaining single-family neighborhood in the area, since so much property has been developed for student housing, and he believes that it should be allowed to remain free of additional multi-family uses. He said that he is happy with his neighborhood, and he would prefer that the petitioner develop the subject property with single-family dwelling units, rather than duplexes.

Mr. Wells added that he believes that there is a discrepancy in the addressing as depicted on the petitioner's ZOMAR plat, which was submitted with the rezoning request.

Staff Rebuttal: Ms. Wade stated, with regard to Mr. Wells' comments about an addressing discrepancy, that the existing single-family residence is on the middle lot, which is 513 Pyke Road according to the PVA records. The two vacant lots are 509 and 517 Pyke Road. She said that the mailing addresses might not have been updated to match the PVA record, but the staff is required by state law to use the PVA data for any zone change.

Petitioner Rebuttal: Mr. Walbourn said that the petitioner understands the concerns of the neighbors, but they attempted to make the proposed development as context-sensitive as possible. He said that the Comprehensive Plan notes that, in order to maintain the Urban Service Area boundary, modest increases in density in infill areas are an important component.

Mr. Walbourn noted that, although the former Devonshire Avenue parcel had been referred to as "found" property, it was paid for by the petitioner at a great deal of expense, and was closed by action of the Urban County Council.

Commission Question/Comments: Mr. Penn asked if the proposed development was intended to serve as student housing. Mr. Walbourn answered that it will not be marketed as student housing, noting that the proposed duplexes will be constructed of solid brick. Mr. Penn asked if the duplexes would be sold or rented, to which Mr. Walbourn responded that they would be rented. He added that the existing single-family home is currently rented by a professional, who has indicated his intent to remain. With regard to the carport, Mr. Walbourn noted that it was proposed to be removed.

Citizen Rebuttal: Mr. Wells stated that the resident of the existing single-family home moved out several weeks ago.

Commission Discussion: Mr. Owens stated that the hearing was now closed, and he opened the floor for Commission comments or discussion.

Mr. Cravens stated that he could not support this rezoning request, since the petitioner had not demonstrated any compelling need for the proposed development. He opined that the best use of the subject property would be to construct two additional single-family residences there, and he believed that the rear parking area is not context-sensitive to the area.

Mr. Wilson stated that he believed that the petitioners had done a good job with the proposed development, although he understood Mr. Wells' concerns, particularly about the possibility of more student housing.

**Zoning Action:** A motion was made by Mr. Wilson, seconded by Ms. Plumlee, and carried 8-2 (Cravens and Mundy opposed; Drake absent), for the reasons provided by staff, with the revised findings as outlined by staff.

**Variance Action:** A motion was made by Mr. Wilson, seconded by Ms. Plumlee, and carried 8-2 (Cravens and Mundy opposed; Drake absent) to approve the requested variances, for the reasons provided by staff, subject to the conditions as recommended by staff.

**Development Plan Action:** A motion was made by Mr. Wilson, seconded by Ms. Plumlee, and carried 8-2 (Cravens and Mundy opposed; Drake absent) to approve ZDP 2015-63, subject to the revised conditions as presented.