

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, October 1, 2015, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members Mike Cravens, David Drake, Carolyn Richardson, and Bill Wilson. The Committee members reviewed applications and made recommendations as noted.

A. **PUBLIC HEARINGS ON ZONING MAP AMENDMENTS**

1. **DR. MICHAEL GENTRY & RML CONSTRUCTION, LLP, (AMD.) ZONING MAP AMENDMENT & CADENTOWN SUBDIVISION ZONING DEVELOPMENT PLAN**

- a. **MARV 2015-8: DR. MICHAEL GENTRY & RML CONSTRUCTION (10/22/15)*** – amended petition for a zone map amendment from a Single Family Residential (R-1D) zone to a High Density Apartment (R-4) zone, for 1.74 net (1.80 gross) acres, and to a Wholesale & Warehouse Business (B-4) zone, for 2.43 net (2.74 gross) acres, for property located at 2833 Liberty Road. A dimensional variance is also requested.

COMPREHENSIVE PLAN AND PROPOSED USE

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

The petitioners propose to construct a veterinary clinic with an associated animal kennel, and a 28-unit apartment building with associated off-street parking. The proposed vet clinic and kennel facility will be enclosed (\pm 20,000 square feet of space), with a small outdoor play area planned, and will also have considerable off-street parking.

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

The Staff Recommends: Approval, for the following reason:

1. The requested rezoning to a High Density Apartment (R-4) zone, and for a lesser acreage to a Wholesale and Warehouse Business (B-4) zone, is in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. The Goals and Objectives and policy statements of the Plan encourage the consideration of how proposals relate to existing development in the immediate vicinity, and focus on protecting neighborhoods and residential areas from incompatible land uses. A neighborhood node already exists a short distance away at Man o' War Boulevard and Liberty Road, which will be expanded with this rezoning to R-4.
 - b. The Comprehensive Plan also encourages the placement of residential land and development nearest to our parks and greenways to ensure that they are utilized to the highest extent possible. This amended zone change application to an R-4 zone will accomplish this recommendation, since the Brighton Trail is planned for the former railroad line immediately north of this location.
 - c. Some 35-40 persons are to be employed at this location (which equates to about 15 jobs/acre), some of which will be veterinary professionals. Quality pet care and modern animal boarding facilities are an important service that adds to the quality of life in our community.
2. This recommendation is made subject to the approval and certification of **ZDP 2015-49: CADENTOWN SUBDIVISION – ANIMAL HOSPITAL/CLINIC**, prior to forwarding this 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 in any B-4 zoning approved for a portion of the subject property:**
 - a. Shops of special trade and general contractors, such as plumbing; heating; carpentry; masonry; painting; publishing; lithographing; engraving; electrical; major automobile and truck repairing; sign painting; upholstering; tile, mosaic and terrazzo work; electroplating; interior decorating.
 - b. Cocktail lounges and nightclubs, or the serving of alcoholic beverages.
 - c. Laundry, clothes cleaning or dyeing shop.
 - d. Ice plant.
 - e. Tire re-treading and recapping.
 - f. Machine shop.
 - g. Offices of purchasers, processors and handlers of agricultural products.
 - h. Establishments and lots for the display, rental, sale and repair of farm equipment, contractor equipment, automobiles, trucks, mobile homes, recreational vehicles such as mini-bikes, motorcycles, bicycles, boats or supplies for such items.
 - i. Truck terminals and freight yards.
 - j. Automobile service stations.
 - k. Major or minor automobile and truck repair.
 - l. Establishments for the display and sale of precut, prefabricated or shell homes.
 - m. Circuses and carnivals.

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- n. Retail sale of building materials and lumber.
- o. Pawnshops.

These use restrictions are appropriate and necessary for the subject property since they were volunteered by the original zone change applicant; since they will ensure continued agreement with the 2013 Comprehensive Plan; and, most importantly, since they will provide greater protection for the adjacent residences and Local Historic District surrounding this location.

b. REQUESTED VARIANCE

- 1. Decrease the minimum distance required for a kennel or animal clinic from a residential zone from 100 feet to 50 feet along the northwest and northeast property lines.

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance to 50 feet will not adversely affect the public health, safety or welfare. It will not negatively impact the essential character of the general vicinity because this modern kennel/animal clinic is primarily designed to keep the pets indoors; and in this case, the kennel/hospital will be more than 130 feet from the nearest residence. Additionally, the property to the northwest is currently vacant and is buffered by a heavy line of vegetation that is proposed to remain.
- b. There is a special circumstance regarding this property (a 9-sided lot) that makes standard development more difficult. It applies to this property but does not generally apply to most commercial properties, which are generally much more rectangular in shape. Additionally, the proposed variance along the northwestern property line was chosen because the adjoining property is vacant, whereas there are occupied residential properties to the southeast on Campbell Lane.
- c. Although a facility could be constructed on this site without a variance, it would not likely result in a better design or outcome. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship for the applicant, because the design of the facility would need to be less efficient and could impact the operational needs of the proposed kennel/animal clinic.
- d. The requested variance is not an unreasonable circumvention of the Zoning Ordinance, because the setback requirements for this use are to buffer nearby residential uses from the potential nuisances of this use. This facility, like most modern kennels, will be built in such a way that the majority of the animal keeping is indoors, and more than 130 feet from any existing or proposed dwellings.
- e. The circumstances surrounding the requested variance are a result of the odd shape and other special considerations and are not the result of prior actions taken by this applicant, as no construction has yet occurred on the subject site.

- c. ZDP 2015-49: CADENTOWN SUBDIVISION – ANIMAL HOSPITAL/KENNEL (10/22/15)*- located at 2833 Liberty Road.
(Vision Engineering)

The Subdivision Committee Recommended: Approval, subject to the following requirements:

- 1. Provided the Urban County Council rezones the property B-4 and R-4; 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. Greenspace Planner's approval of the treatment of greenways and greenspace.
- 6. Provided the Planning Commission grants the requested variance to the building setback requirements.
- 7. Denote access locations across Liberty Road on plan.
- 8. Denote proposed stormwater detention area on plan for both proposed developments.
- 9. Denote lot coverage and floor area ratio site statistics for the proposed R-4 development.
- 10. Discuss access entrance proposed to Campbell Lane.
- 11. Discuss access to proposed trail for the proposed R-4 development.
- 12. Discuss pedestrian access from the proposed R-4 development to the existing apartment complex, and to Liberty Road.

Zoning Presentation: Ms. Wade presented the staff report for this amended rezoning request, briefly orienting the Commission to the location of the subject property on the east side of Liberty Road, to the north of the intersection of Liberty and Man O' War Boulevard. She stated that the subject property is approximately four acres in size. Zoning in the immediate vicinity includes R-1D surrounding the subject property, along with several R-3 and R-4 parcels along Campbell Lane that are part of the Brighton 3050 multi-family residential development. One parcel, which serves as an access for a Kentucky Utilities parcel along Man O' War Boulevard, is zoned A-U; it is the former right-of-way for the abandoned rail lane, and the future location of a Rails-to-Trails shared use path that will connect the existing Liberty and Brighton paths. Also in the vicinity are the Link-Belt manufacturing facility, which has access to Palumbo Drive; several churches, single-family residential developments, and an elementary school to the northeast; and two small shopping centers to the south.

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Ms. Wade explained that the original petitioner modified his rezoning application in order to request a kennel and animal hospital on the front of the property, and a multi-family residential building with 28 dwelling units on the rear of the property. The petitioners contend that the proposed rezoning is in agreement with several of the Goals & Objectives and policy statements of the 2013 Comprehensive Plan, including providing accessible community facilities; enabling infill & redevelopment that creates jobs; attracting and retaining high-paying jobs; supporting infill & redevelopment within the Urban Service Area boundary; and encouraging and expanding housing choices throughout the community. The staff recognized that the proposed zone change would expand the existing neighborhood node at Man O' War Boulevard and Liberty Road, by providing more business opportunities and an expanded residential use. Ms. Wade stated that the staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Ms. Wade noted that the petitioner provided a list of proposed conditional zoning restrictions that would prohibit several uses in the B-4 zone. The staff report included a typographical error; item "b" identified cocktail lounges and nightclubs as a prohibited use; however, that use is not currently allowed in the B-4 zone, so item "b" could be deleted from the staff's findings for approval.

Ms. Wade indicated that the staff had received two letters of opposition to this request, which she distributed to the Commission members for their review.

Development Plan Presentation: Mr. Martin presented the revised preliminary development plan, explaining that it includes the new animal hospital/kennel, which is proposed to be approximately 20,000 square feet in size. Access to the animal hospital is proposed from Liberty Road, with an associated off-street parking area. A connection is provided to the R-4 portion of the property, where a three-story apartment building is proposed, with 21 one-bedroom units and four three-bedroom units. Parking is provided separately for the apartment building, and it will have access to Campbell Lane. There is an existing emergency access gate on Campbell Lane, such that the new that access point will not access that roadway, but instead will tie the proposed apartment building on the subject property to the existing Brighton 3050 development. That will provide a route through the apartment development, which will allow drivers to use Liberty Road for access, rather than Campbell Lane, which is very substandard.

With regard to the discussion items, Mr. Martin explained that they relate to the proposed multi-family building, and how it will relate to the existing R-4 development. The staff is also concerned about providing access from the subject property to the proposed Brighton East Rail Trail. The staff is comfortable, however, with deferring the discussion items to the final development plan stage. Mr. Martin said that the staff and the Subdivision Committee recommended approval of this plan, subject to the 12 conditions as listed on the agenda.

Variance Presentation: Mr. Emmons stated that the petitioner was requesting a variance in conjunction with this rezoning, to reduce the 100' distance requirement for a kennel/animal clinic from a residential zone to 50', along the northwest and northeast property boundaries. Referring to the rendered development plan, he noted the area that would be buildable for the kennel/animal hospital, should the requested variance be granted.

Mr. Emmons said that the staff is recommending approval of the requested variances. As the proposed kennel will be a new, modern facility, most of their activities will take places indoors, so the staff does not believe that the proposed use will have a negative impact on the nearby residences. In addition, the northwest property line is heavily vegetated, so it should help to provide a buffer for the residence.

Commission Questions: Mr. Wilson asked where the Link-Belt facility is located relative to the subject property. Mr. Emmons indicated the location on the rendered zoning map, noting that it is across Liberty Road, catty-corner from the subject property. Mr. Wilson asked what the distance is between the two properties. Ms. Wade responded that the distance is approximately 200', across the Liberty Road right-of-way. She noted that Link-Belt typically uses the rear portion of their property, nearest to Liberty Road, for storage only. Their property frontage along Liberty Road is also very narrow, with most of their activity located on their property much closer to Palumbo Drive.

Mr. Owens asked how access would be provided to the residential portion of the subject property. Mr. Emmons answered that access would be through the existing apartment complex.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioners. He stated that the petitioners were in agreement with the staff's recommendations for the zone change, variances, and development plan.

Mr. Murphy said that, at the Planning Commission sub-committee meetings, there were concerns about the possible use of the rear portion of the subject property, and the lack of residential use in the area. Dr. Gentry, who was the petitioner for the original application, discovered that Ball Homes was interested in developing the rear portion of the

property. They formed a partnership wherein RML Construction would purchase that rear portion and develop it as part of the adjoining Brighton 3050 complex.

With regard to the emergency access between the subject property and the existing residential development, Mr. Murphy explained that apartment residents will not use Campbell Lane at all; rather, all traffic will be directed through the complex to the other access.

Mr. Murphy said that the animal hospital is also an important component of the proposed development, not just the kennel. The petitioners do propose a small outdoor exercise area for the kennel use, but the main exercise area will be enclosed in a courtyard.

With regard to the two opposition letters received, Mr. Murphy said that representatives of the Link-Belt company were concerned about the proposed residential development. The petitioner is proposing to construct the animal hospital and kennel between the residential use and the Link-Belt property, which should help to provide a buffer for the residences. The other letter was from the owner of the adjoining property, with whom the petitioner attempted to negotiate a purchase price for that parcel. Those negotiations were unsuccessful, and the property owner is now objecting to the proposed development.

Mr. Murphy said that RML Construction has extensive experience in constructing multi-family residential development, and the petitioners believe that they can provide sufficient screening to adequately buffer the proposed residential building from the animal hospital/kennel. The petitioners also contend that the proposed development will benefit the area by supplying quality jobs, and that it is fully in agreement with the recommendations of the 2013 Comprehensive Plan.

Zoning Action: A motion was made by Ms. Richardson, seconded by Ms. Mundy, and carried 10-0 (Drake absent) to approve MARV 2015-8, for the reasons provided by staff, deleting item "b" from the list of conditional zoning restrictions.

Variance Action: A motion was made by Ms. Richardson, seconded by Mr. Penn, and carried 10-0 (Drake absent) to approve the requested variances, for the reasons provided by staff, subject to the conditions as listed on the agenda.

Development Plan Action: A motion was made by Ms. Richardson, seconded by Ms. Mundy, and carried 10-0 (Drake absent) to approve ZDP 2015-49, subject to the 12 conditions as listed, changing #10-#12 to read "Resolve at the time of final development plan."