

AN ORDINANCE CHANGING THE ZONE FROM A TOWNHOUSE RESIDENTIAL (R-1T) ZONE TO A PROFESSIONAL OFFICE (P-1) ZONE, FOR 5.08 NET (6.16 GROSS) ACRES; AND FROM A PLANNED NEIGHBORHOOD RESIDENTIAL (R-3) ZONE TO A PROFESSIONAL OFFICE (P-1) ZONE, FOR 0.40 NET AND GROSS ACRE, FOR PROPERTY LOCATED AT 3500 ARBOR DRIVE (A PORTION OF). (DR. JAMES WILHITE; COUNCIL DISTRICT 8).

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WHEREAS, at a Public Hearing held on April 28, 2016, a petition for a zoning ordinance map amendment for property located at 3500 Arbor Drive (a portion of) from a Townhouse Residential (R-1T) zone to a Professional Office (P-1) zone, for 5.08 net (6.16 gross) acres; and from a Planned Neighborhood Residential (R-3) zone to a Professional Office (P-1) zone, for 0.40 net and gross acre, was presented to the Urban County Planning Commission; said Commission recommending approval of the zone change by a vote of 8-0; 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 herein by reference.


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


Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a change in zone for property located at 3500 Arbor Drive (a portion of) from a Townhouse Residential (R-1T) zone to a Professional Office (P-1) zone, for 5.08 net (6.16 gross) acres; and from a Planned Neighborhood Residential (R-3) zone to a Professional Office (P-1) zone, for 0.40 net and gross acre; being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - That the Lexington-Fayette Urban County Planning Commission is directed to show the amendment on the official zone map atlas and to make reference to the number of this Ordinance.

Section 3 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: June 23., 2016

  
MAYOR

ATTEST:  
  
CLERK OF URBAN COUNTY COUNCIL  
Published: June 30, 2016-1t  
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The following description is intended for zoning purposes only. The description represents information depicted on documents of record found in the Fayette County Clerk's office. This description does not represent a boundary survey and should not be used for real estate conveyance or transfer.

**Zone Change from R-1T to P-1  
For  
3500 Arbor Drive  
Wilhite Park Subdivision  
Lexington, Ky. 40503**

Beginning at the southwest corner of the Cornerstone Subdivision recorded in Plat Cabinet I, Slide 86 of the Fayette County Court Clerk's records, and being in the existing Zone R-1C Delineation Line; thence with said Delineation Line for one (1) call:

1. South 27° 36' 59" West 376.98 feet to a corner of the existing R-3 Zone Delineation Line; thence with said Delineation Line for nine (9) call:
2. South 00° 56' 10" West 360.39 feet;
3. North 28° 48' 24" East 279.11 feet;
4. South 61° 11' 36" East 75.00 feet;
5. South 28° 48' 24" West 20.00 feet;
6. South 61° 11' 36" East 75.00 feet;
7. South 28° 48' 24" West 167.08 feet;
8. Along a curve to the right having a Radius of 50.00 feet, a Delta Angle of 55° 37' 33" and a Long Chord of South 26° 44' 19" East 46.66 feet;
9. South 89° 03' 50 East 16.83 feet to a point in the western Right-of-Way of Man-O'-War Boulevard and the existing R-3 Zone Delineation Line; thence severing said Man-O'-War Right-of-Way and said R-3 Zone for three (3) calls:
10. South 61° 59' 47" East 59.65 feet to a point on the centerline of said Man-O'-War;
11. North 28° 00' 13" East 191.43 feet with said centerline;
12. Along a curve to the right having a Radius of 2864.79 feet, a Delta Angle of 12° 01' 31" and a Long Chord of North 35° 01' 28" East 600.16 feet to a point in the existing R-2 Zone Delineation Line; thence with said Zone Delineation Line for two (2) calls:
13. North 79° 35' 47" West 69.48 feet;
14. North 79° 35' 47" West 102.71 feet to the southeast corner of said Cornerstone Subdivision; thence with said Cornerstone Subdivision for one (1) call:
15. North 79° 35' 47" West 356.46 feet to the Point of Beginning containing 6.16 Acres Gross and 5.08 Acres Net.

The following description is intended for zoning purposes only. The description represents information depicted on documents of record found in the Fayette County Clerk's office. This description does not represent a boundary survey and should not be used for real estate conveyance or transfer.

**Zone Change from R-3 to P-1  
For  
3500 Arbor Drive  
Wilhite Park Subdivision  
Lexington, Ky. 40503**

Beginning at a point in the existing R-1D Zone Delineation Line and the eastern line of the River Park Subdivision Unit 3-A as recorded in Plat Cabinet A, Slide 703 of the Fayette County Court Clerk's records, said point being South 27° 36' 59" West 376.98 feet from the southwest corner of the Cornerstone Subdivision recorded in Plat Cabinet I, Slide 86, and being in the existing Zone R-1C Delineation Line; thence with said Delineation Line for one (1) call:

1. South 27° 33' 13" West 235.56 feet; thence severing the R-3 Zone for three (3) calls:
2. South 62° 26' 47" East 66.12 feet;
3. South 00° 56' 10" West 75.75 feet;
4. South 63° 02' 47" East 51.66 feet to a point in the existing R-1T Zone Delineation Line; thence with said Delineation Line for one (1) call:
5. North 00° 56' 10" East 338.63 feet to the Point of Beginning containing 0.40 Acre Gross and Net.

Rec'd by \_\_\_\_\_

Date: \_\_\_\_\_

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

**IN RE: MAR 2016-12: DR. JAMES WILHITE** – petition for a zone map amendment from a Townhouse Residential (R-1T) zone to a Professional Office (P-1) zone, for 5.08 net (6.16 gross) acres; and from a Planned Neighborhood Residential (R-3) zone to a Professional Office (P-1) zone, for 0.40 net and gross acre, for property located at 3500 Arbor Drive (a portion of). (Council District 8)

Having considered the above matter on **April 28, 2016**, at a Public Hearing, and having voted **8-0** 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 existing R-1T and R-3 zoning is no longer appropriate for the property and P-1 zoning is appropriate for the following reasons:
  - a. The property and building have been designed and operated as a childcare facility, after school programs, and as a cheerleading and gymnastics club for the last 30 years. However, changes in the provision of such services have moved many such programs to publicly-funded programs at public schools, rendering the existing use no longer viable at this property.
  - b. The existing building, an approximately 30,000 square-foot concrete and steel building, which is fully sprinkled, is not well-suited for residential uses, but would be suitable for many uses allowed in the Professional Office zone such as offices, private or church-related schools for academic instructions, churches, libraries, museums, business college, private clubs, elder day care center and other such uses.
  - c. Professional office use would remain a quiet use and would be combatable with surrounding land uses. The church and residential uses to the north and west have no vehicular access into the property and are separated by topography. The building and property are already constructed with appropriate utilities, drainage, and sewer service for a professional office building.
2. This recommendation is made subject to approval and certification of **ZDP 2016-46: WILHITE PARK SUBDIVISION, UNIT 1-B, SECTION 1** prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

ATTEST: This 3<sup>rd</sup> day of June, 2016.

  
Secretary, Jim Duncan

**MIKE OWENS**  
CHAIR

Note: The corollary development plan, ZDP 2016-46: WILHITE PARK SUBDIVISION, UNIT 1-B, SECTION 1 was approved by the Planning Commission on April 28, 2016 and certified on May 11, 2016.

K.R.S. 100.211(7) requires that the Council take action on this request by July 27, 2016.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Dick Murphy, attorney.**

**OBJECTORS**

- None

**OBJECTIONS**

- None

VOTES WERE AS FOLLOWS:

AYES: (8) Berkley, Brewer, Cravens, Mundy, Owens, Plumlee, Richardson, Wilson

NAYS: (0)

ABSENT: (3) Drake, Penn Smith

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **APPROVAL** of **MAR 2016-12** carried.

Enclosures: Application  
Plat  
Staff Report  
Applicable excerpts of minutes of above meeting



MAR 2016-12

Date Received 3/7/16

Pre-Application Date 12/22/15

Filing Fee \$ 500.00

### GENERAL INFORMATION: MAP AMENDMENT REQUEST (MAR) APPLICATION

**1. ADDRESS INFORMATION (Name, Address, City/State/Zip & PHONE NO.)**

APPLICANT:	DR James Wilhite, 3500 Arbor Dr, Lexington KY 40517
OWNER:	National Academy INC, 3500 Arbor Dr, Lexington KY 40517
ATTORNEY:	Richard V. Murphy, 250 W Main St, Ste 2510, Lexington KY 40507

**2. ADDRESS OF APPLICANT'S PROPERTY (Please attach Legal Description)**

3500 Arbor Dr
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**3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY (Use attachment, if needed--same format.)**

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
R-1T	Day Care Facility	P-1	Office Space	5.08	6.16
R-3	Vacant / Un-developed	P-1	Detention Area	0.40	0.40
Total				5.48	6.56

**4. SURROUNDING PROPERTY, ZONING & USE**

Property	Use	Zoning
North	Residential	R-1T
East	Residential	R-3
South	Residential	R-3
West	Residential	R-1D

**5. EXISTING CONDITIONS**

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
c. Are these units currently occupied by households earning under 40 % of the median income? If yes, how many units? If yes, please provide a written statement outlining any efforts to be undertaken to assist those residents in obtaining alternative housing.	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO ____ Units

**6. URBAN SERVICES STATUS (Indicate whether existing, or how to be provided.)**

Roads	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Storm Sewers	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Sanitary Sewers	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Curb/Gutter/Sidewalks	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Refuse Collection	<input checked="" type="checkbox"/> LFUCG	<input type="checkbox"/> Other		
Utilities	<input checked="" type="checkbox"/> Electric	<input checked="" type="checkbox"/> Gas	<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Phone <input checked="" type="checkbox"/> Cable

**7. DESCRIBE YOUR JUSTIFICATION FOR REQUESTED CHANGE (Please provide attachment.)**

This is in... <input type="checkbox"/> in agreement with the Comp. Plan <input checked="" type="checkbox"/> more appropriate than the existing zoning <input checked="" type="checkbox"/> due to unanticipated changes.
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**8. APPLICANT/OWNER SIGNS THIS CERTIFICATION**

I do hereby certify that to the best of my knowledge and belief, all application materials are herewith submitted, and the information they contain is true and accurate. I further certify that I am  OWNER or  HOLDER of an agreement to purchase this property since 1988.

APPLICANT Richard V. Murphy DATE 3/6/16

OWNER atly for applicant and owner DATE \_\_\_\_\_

LFUCG EMPLOYEE/OFFICER, if applicable \_\_\_\_\_ DATE \_\_\_\_\_



## **7. Justification for requested change.**

The applicant, Dr. James Wilhite, is requesting a zone change from the townhouse residential (R-1T) zone and the Planned Neighborhood Residential (R-3) zone to the professional office (P-1) zone for about 5.5 net acres of property located at 3500 Arbor Drive.

The subject property is the current location of the National Academy, which is a facility which offers gymnastics, cheerleading and childcare facilities. It was approved in 1986, and in 2000, an amendment was approved to allow the total number of the children using the facility to be increased to 476.

The National Academy is operated within a modern concrete and steel building containing over 30,000 square feet. It is fully sprinkled. Dr. Wilhite is a pediatrician and he started National Academy because of the need he saw for quality athletic and motor skill training for children and the need for childcare and after school programs. In the last 30 years, however, the method of providing services to children has changed. Now, public schools provide publicly funded athletic, after-school and childcare programs. As a result, the enrollment at National Academy has continually decreased over the last few years to about 125 students, a level which cannot be sustained in a 30,000 square foot building. The building is located in the R-1T zone, which allows limited uses for the existing building.

We are requesting a professional office zone for this property because it would be the most appropriate zone for adaptive reuse of the building. The P-1 zone would allow uses such as professional offices, private or church-related schools for academic instruction, churches, libraries, museums, business colleges, athletic clubs, elder day centers and similar uses.

P-1 zoning would be a good neighbor to the existing residential and institutional uses in the area. The uses to the north and west, a church and residential, are separated from the property by steep topography and have no vehicular access to the subject property. To the east is Man-O-War Boulevard, with multi-family residential on the other side. To the south are existing townhouses. This property is served by Arbor Drive, and the traffic generated by a professional office use would be less than that generated by a 476 child day care, gymnastics and cheerleading facility. There are also churches, a funeral home and a nursing home in the vicinity of the property. Professional office use would be a quiet, lower intensity use of the property and would be a good adaptive reuse of the property which is a well-built, steel and concrete structure which is fully sprinkled.

Thus, the existing R-1T and R-3 zoning is no longer appropriate for the property and P-1 zoning is appropriate for the following reasons:

1. The property and building have been designed and operated as a childcare facility, after school programs, and as a cheerleading and gymnastics club for the last 30 years. However, changes in the provision of such services have moved many such programs to




publicly-funded programs at public schools, rendering the existing use no longer viable at this property.

2. The existing building, an approximately 30,000 square foot concrete and steel building, which is fully sprinkled, is not well-suited for residential uses, but would be suitable for many uses allowed in the Professional office zone such as offices, private or church-related schools for academic instruction, churches, libraries, museums, business colleges, private clubs, athletic clubs, elder day centers and other such uses.

3. Professional office use would generate less traffic than an existing 476-child daycare, afterschool and gymnastics and cheerleading club. It would remain a quiet use and would be compatible with surrounding uses. The church and residential uses on the north and west have no vehicular access into the property and are separated by topography. The building and property are already constructed with appropriate utilities, drainage and sewer service for this professional office building.

Thank you for your consideration of this zone change request.

  
Richard V. Murphy, Attorney for Applicant

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**STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT**

**MAR 2016-12: DR. JAMES WILHITE**

**DESCRIPTION**

<b>Zone Change:</b>	<b><u>REQUEST</u></b>		<b><u>ACREAGE</u></b>	
	<b><u>FROM</u></b>	<b><u>TO</u></b>	<b><u>NET</u></b>	<b><u>GROSS</u></b>
	R-1T	P-1	5.08	6.16
	R-3	P-1	<u>0.40</u>	<u>0.40</u>
	TOTAL		5.48	6.56

**Location:** 3500 Arbor Drive (a portion of)

**EXISTING ZONING & LAND USE**

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Property	R-1T & R-3	Child Care/Gymnastics Facility & Vacant
To North	R-1T	Residential
To East	R-3	Residential
To South	R-3	Residential
To West	R-1D	Residential

**URBAN SERVICES REPORT**

Roads – Arbor Drive is a local cul-de-sac street that provides access to the subject property, and to a number of single family dwellings. Its intersection with Trent Boulevard is approximately 1,000 feet to the west of the subject property. Trent Boulevard, which is a collector street, extends from Kenesaw Drive in the Hartland area, continues to the west across Man o’ War Boulevard and terminates at Appian Way, just east of Tates Creek Road. Access to the property is not proposed to be modified and no road improvements are either needed or proposed to adaptively re-use the property.

Curb/Gutter/Sidewalks – All urban road improvements exist on Arbor Drive, which is primarily a residential street. The street terminates at the subject property and provides access to the parking area, with curbing, gutters and sidewalks continuing from the public street into the parking lot on the property. There are also sidewalks interior to the property.

Storm Sewers – The subject property is located within the West Hickman watershed. The nearest stream is Mill Creek, just a short distance to the west of the property. A stormwater detention basin exists to serve the property, as well as a storm sewer easement that crosses a portion of the property and should need no improvements. However, further evaluation may be necessary by the Urban County Engineer. All storm sewer and/or detention facilities must be in compliance with the Engineering Storm Water Manual.

Sanitary Sewers – The subject property is in the West Hickman sewershed, which is served by the West Hickman Wastewater Treatment Plant. A pump station is located just to the south of the property, with a force main, as well as a gravity main, in the immediate vicinity. A sanitary sewer easement is located on the northwestern portion of the property, in the same general area as the storm sewer easement. There is no development proposed for that area.

Refuse – The Urban County Government serves this portion of the Urban Service Area with collection on Fridays. Commercial developments sometimes contract with private waste haulers for more frequent service.

Police – The nearest police station is located a little less than one mile to the northwest, at the East Sector Roll Call Center (Police Sector 3) on Centre Parkway.

Fire/Ambulance – The nearest fire station to the subject property is Station #16, located approximately ¼ mile to the northeast on Man o’ War Boulevard, directly across from Bold Bidder Drive.

Utilities – Natural gas, telephone service, electric, water, and cable television are all available to the subject property.

**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 2015 Armstrong Mill Road West Small Area Plan (AMWSAP) is a plan for the revitalization of the 1900<sup>±</sup> acre area that recommends six goals. Eight designated neighborhood associations are included in the area encompassed by the Small Area Plan. The goals focus on improving safety; improving connectivity; promoting livable neighborhoods with housing choices (while maintaining the neighborhood form) and promoting green infrastructure; improving the quality of life and health including access to affordable and healthy food; and enhancing the sense of place by creating community spaces that foster social interaction and a sense of identity.

The petitioner proposes a Professional Office (P-1) zone for the subject property in order to adaptively re-use the existing 30,000+ square-foot building on this site for offices. The R-3 zoned portion of the property will be used as a storm water detention area.

## **CASE REVIEW**

The applicant wishes to rezone the subject property from a combination of a Townhouse Residential (R-1T) zone and a Planned Neighborhood Residential (R-3) zone to a Professional Office (P-1) zone. At this time, no specific user has been identified for this property, but the applicant suggests that offices, churches, private or church related schools for academic instruction, libraries, museums, business colleges, private clubs, athletic clubs, elder day centers and other such uses would be appropriate at this site.

The subject property is located on the west side of Man o' War Boulevard, just south of Armstrong Mill Road intersection. Access to the property is via Arbor Drive, which connects to Trent Boulevard about ¼ mile southwest of the subject property. The site is located in the River Park neighborhood, and was included in the 2015 Armstrong Mill West Small Area Plan, an adopted amendment to the 2013 Comprehensive Plan that makes additional recommendations for this vicinity of the Urban Service Area.

The 5.5-acre subject property is the current location of the National Academy, which is a private club and child care facility that offers gymnastics, cheerleading, and childcare services for up to 200 children, although the current enrollment is only about 125 students. The 30,000+ square-foot facility has about 75 available parking spaces. If the zoning is approved, the applicant intends to install a new parking area to the rear of the lot (generally where an existing playground area exists), which would bring the total off-street parking up to 158 spaces.

The history of the existing conditional uses on this property spans a time frame of about 30 years. A private club (the gymnastics and cheerleading portion of the use) and child care facility were originally approved by the Board of Adjustment in 1986 (C-86-70: Dr. James G. Wilhite) in the existing R-1T zone. An expansion was approved in 2000, which authorized the construction of an additional building, an increase in enrollment (up to 476 children) and an additional parking lot on the south side of the new building (C-2000-28: National Academy). The additional building has been constructed as permitted. In 2008, additional parking lots and bus areas were approved (C-2008-3: National Academy). Most recently, in 2013, the Planning Commission approved a 19-lot subdivision for townhouses on a portion of the property, which is not proposed to be rezoned by the applicant (DP 2013-67: Wilhite Park Unit 1-B). Subsequently, and as a result of the approval of the townhouses, the applicant submitted the latest BOA case to remove the parking approved in 2008 and reduce the total number of children to 200 for the combined uses in order to ensure adequate on-site parking (C-2013-54: Jim Wilhite).

The applicant has not provided any justification that the proposed zone is in agreement with either the 2013 Comprehensive Plan or the 2015 Armstrong Mill West Small Area Plan. However, the applicant does contend that the existing zoning is no longer appropriate and the proposed zoning is appropriate. This site has been utilized as the National Academy for three decades; and, according to the applicant, public schools now regularly provide athletic, after-school, and childcare programs. This has led to a decrease in the enrollment to the point that it is no longer sustainable for the National Academy to continue to operate.

It is true that in the R-1T zone, there are only three realistic conditional uses that would likely be interested in the existing building as developed: another private club, a religious assembly use, or a private school for academic instruction. The Staff would note that in the R-1T zone, a child care facility was only allowed because it was considered accessory to the private club use; otherwise, a free-standing child care center is not a permitted use in this zone. While the staff can agree with the applicant that there are only a limited number of conditional uses possible in this zone, it should be stated that the R-1T zone for the subject property could still be a viable zone for any of the allowable conditional uses or the re-development of this property - especially considering the upcoming

development of the 19 new townhouses that are proposed to be built on a portion of this property, which is not subject to this zone change request.

The requested P-1 zone, however, is inappropriate for this site. Although this site has frontage on, and is visible from Man o' War Boulevard, it is only accessed by a local residential cul-de-sac, Arbor Drive. Approving a non-residential zone on this property would force commercial traffic through a residential neighborhood, commonly accepted as a poor planning practice. The applicant briefly addressed traffic concerns in their justification, stating that an office redevelopment would have less of an impact on the traffic than a 476-student child care, but there are two important points that were not addressed: 1) although this site was approved for up to 476 children in 2000, the maximum number of children allowed under the current conditional use permit from 2013 limits this use to a total of 200 children; and 2) if the property were rezoned to P-1, child care facilities, along with many other higher traffic uses such as banks and medical offices, would become permitted uses and would not have the protection of the review process that the current conditional uses on this site have. Other than traffic, the Board of Adjustment can also consider typical nuisance factors of non-residential uses such as noise and light pollution that would not be reviewed if the uses were allowed as principal permitted uses in the P-1 zone. Additionally, this site would be the only commercially zoned property within nearly a mile of the subject property and could easily be considered "spot zoning." This could potentially lead to other requests for zone changes in the area if it were deemed an unanticipated change in the basic character of the neighborhood.

Should the applicant continue to seek a zone change for this property, the staff would suggest that a Planned Neighborhood Residential (R-3) zone, or possibly a High Density Apartment (R-4) zone, is a more appropriate zone for this property, and that could be considered in agreement with both the 2013 Comprehensive Plan and the recently adopted 2015 Armstrong Mill West Small Area Plan. This would particularly apply to those recommendations that encourage a safe and livable community with a diversity of housing choices, and maintaining the character of the neighborhood form. A more intense residential zone would allow a higher density residential development, should this building be adaptively reused for residences or if the site were to completely redevelop, which would provide additional housing choices and the potential for more affordable housing in this area. These higher density residential zones would also grant the owner a larger array of potential conditional uses that might be interested in re-using the existing building and its site improvements. In addition to the potential conditional uses allowed in the R-1T zone, R-3 & R-4 residential zones would allow nursing homes, assisted living facilities, community centers (like a YMCA), child care centers, and athletic club facilities (when accessory to another permitted or accessory use). The applicant suggests in this application that many of these uses would be well suited for the existing structure on this site.

Lastly, there has not been an unanticipated significant change of physical, social or economic nature within the immediate area since the 2013 Comprehensive Plan was adopted. Furthermore, as proposed, this zoned change would likely be detrimental to the protection of the adjacent neighborhood due to the likelihood of increased traffic on a local residential street, and would be contrary to the Goals and Objectives of the 2013 Comprehensive Plan and the 2015 Armstrong Mill West Small Area Plan that promote well designed neighborhoods and communities.

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

1. The applicant has not provided any justification that the Professional Office (P-1) zone is in agreement with either the 2013 Comprehensive Plan or the 2015 Armstrong Mill West Small Area Plan, an adopted element of the Plan.
2. As proposed, re-zoning this location to a P-1 zone may significantly impact the nearby neighborhood with the potential for increased traffic, noise and light pollution - especially for those properties on Arbor Drive and those immediately adjoining the subject property. It is therefore inappropriate.
3. The existing Townhouse Residential (R-1T) zone and Planned Neighborhood Residential (R-3) zone remain appropriate for the subject property because they can more fully support the 2013 Comprehensive Plan goals and policies, including the 2015 Armstrong Mill West Small Area Plan.
4. There have been no unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in 2013, or since the Armstrong Mill West Small Area Plan was adopted in 2015, that would support the requested P-1 zoning for the subject property.



7. DR. JAMES WILHITE ZONE MAP AMENDMENT & WILHITE PARK SUBDIVISION, UNIT 1-B, SECTION 1, ZONING DEVELOPMENT PLAN

- a. MAR 2016-12: DR. JAMES WILHITE (6/5/16)\* – petition for a zone map amendment from a Townhouse Residential (R-1T) zone to a Professional Office (P-1) zone, for 5.08 net (6.16 gross) acres; and from a Planned Neighborhood Residential (R-3) zone to a Professional Office (P-1) zone, for 0.40 net and gross acre, for property located at 3500 Arbor Drive (a portion of).

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 2015 Armstrong Mill Road West Small Area Plan (AMWSAP) is a plan for the revitalization of the 1900± acre area that recommends six goals. Eight designated neighborhood associations are included in the area encompassed by the Small Area Plan. The goals focus on improving safety; improving connectivity; promoting livable neighborhoods with housing choices (while maintaining the neighborhood form) and promoting green infrastructure; improving the quality of life and health including access to affordable and healthy food; and enhancing the sense of place by creating community spaces that foster social interaction and a sense of identity.

The petitioner proposes a Professional Office (P-1) zone for the subject property in order to adaptively re-use the existing 30,000+ square-foot building on this site for offices. The R-3 zoned portion of the property will be used as a storm water detention area.

The Zoning Committee Recommended: **Approval.**

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

1. The applicant has not provided any justification that the Professional Office (P-1) zone is in agreement with either the 2013 Comprehensive Plan or the 2015 Armstrong Mill West Small Area Plan, an adopted element of the Plan.
  2. As proposed, re-zoning this location to a P-1 zone may significantly impact the nearby neighborhood with the potential for increased traffic, noise and light pollution - especially for those properties on Arbor Drive and those immediately adjoining the subject property. It is therefore inappropriate.
  3. The existing Townhouse Residential (R-1T) zone and Planned Neighborhood Residential (R-3) zone remain appropriate for the subject property because they can more fully support the 2013 Comprehensive Plan goals and policies, including the 2015 Armstrong Mill West Small Area Plan.
  4. There have been no unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in 2013, or since the Armstrong Mill West Small Area Plan was adopted in 2015, that would support the requested P-1 zoning for the subject property.
- b. ZDP 2016-46: WILHITE PARK SUBDIVISION, UNIT 1-B, SECTION 1 (6/5/16)\* - located at 3500 Arbor Drive.  
**(Vision Engineering)**

The Subdivision Committee Recommended: **Approval,** subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; 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. Addition of building coverage and floor area ratio in site statistics, per Article 21 requirements, instead of parking floor area (85%).
6. Denote street/cul-de-sac detail on plan.
7. Resolve need for a turn-around for emergency vehicles in parking lot.

Staff Zoning Presentation - Mr. Emmons presented the staff report for this zone change request and said that this application is for a rezoning from two zones, primarily R-1T and a small portion of R-3. The applicant is requesting a P-1 zone for 5½ acres, located on Man O' War Boulevard, between Armstrong Mill Road and Trent Boulevard. It is accessed solely from Arbor Drive. The subject property is surrounded by residential zoning, which includes single family residential to the north and west; to the north there is a combination of R-1T and R-2 zones. Across Man O' War Boulevard it is zoned R-4. The property along Arbor Drive is zoned R-3 and R-1T, with a mix of single family residences and townhomes. The subject property has been home to the National Academy since 1986; and since that time, it has had a number of conditional uses approved, which are outlined in the staff report. The subject property is currently used primarily as a private club in the R-1T zone. This club has been used as an athletic facility (gymnastics, etc.) for after-school programs for kids. The Board of Adjustment allowed a childcare center as an accessory use to the private club, which as a standalone facility, is not a permitted conditional use in

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



the R-1T zone. The petitioner believes that the time for this use is ending and would like to re-purpose this property and is proposing to re-utilize this facility for office space.

Mr. Emmons stated that the staff must first consider whether the proposed zone is in agreement with the Comprehensive Plan. Mr. Emmons stated that the petitioner has said that their application is in agreement with the Comprehensive Plan but has not provided any justification that it is. The staff considered the Comprehensive Plan and found that it and the 2015 Armstrong Mill West Small Area Plan (an adopted element of the Comprehensive Plan) both encourage safe and livable communities, diversity of housing, and keeping the neighborhood character. The staff does not believe that the proposed zone change to P-1 is in agreement with the Comprehensive Plan. The petitioner believes the proposed zone change is appropriate and that the existing zoning is inappropriate at this location.

Mr. Emmons displayed an aerial photo of the property proposed for rezoning, showing an existing building on the site, which is surrounded by parking. Mr. Emmons stated that the staff disagrees with the petitioner's proposal that the requested zone change to P-1 is appropriate. The staff feels this zone change is inappropriate for the subject property. This property is visible from Man O' War Boulevard but is only accessible from Arbor Drive, which is a small local residential street. It is generally accepted as a poor planning principle to place professional offices at the end of residential streets, with the residential street as sole access. It creates unnecessary traffic traveling through neighborhoods. The petitioner stated that the gym did produce traffic; however, that was a conditional use approved by the Board of Adjustments. Mr. Emmons stated that at one point the gym was approved for up to 476 children, currently they are only approved for 200. As a conditional use, the Board of Adjustment can consider an individual case as to whether that particular use would or would not create a nuisance via traffic, noise, light, hours of operation, etc. The staff believes that the petitioner neglects regarding the traffic, such that if the proposed zone change does get approved, the athletic center and child care facility would be principal permitted uses in this zone. They would therefore not have the protection that they have as a conditional use, such as hours of operation and the total number of children. Mr. Emmons stated that the proposed zone change to a P-1 zone could potentially increase traffic and also other nuisance factors such as traffic, noise, light and disruption due to the hours of operation.

Mr. Emmons stated that the existing R-1T zone is appropriate since there are conditional uses that are permitted in that zone. The staff agrees with the petitioner regarding the list of conditional uses that are permitted in the R-1T zone that there are not many uses that could go into the existing 30,000 square-foot building on the subject property. The staff believes that other uses such as a private club, a church or religious assembly or a private school for academic instruction could also repurpose this property. The staff also believes that the land would be more appropriately used as residential since the Planning Commission has approved a portion of the property near the Arbor Drive site for approximately 20 townhouses, which are not inappropriate at this location. An R-3 zone would be more appropriate than the proposed P-1 because, in addition to the conditions that have already been mentioned with the R-1T zone, things like nursing homes, assisted living facilities, community centers, and stand-alone child care facilities would be permitted as conditional uses. An R-3 zone also would be more in compliance with the recommendations of the Comprehensive Plan. Mr. Emmons stated that the Zoning Committee had recommended approval.

Development Plan Presentation - Ms. Gallt reviewed the development plan listing the conditions for approval, noting that the staff reviewed it as if the zoning is already in place. The plan displays the 30,000 square-foot building and the parking lot in the front, as well as some additional parking to be able to meet the parking requirements for the use. The staff and the Subdivision Committee recommended approval for the reasons listed on today's agenda.

Petitioner Presentation - Dick Murphy, attorney representing the petitioner, Dr. James Wilhite, was present. Mr. Murphy stated that the subject property is currently the site of the National Academy, which is a private club for children with cheerleading, dance, child care, etc. Dr. Wilhite has been operating this facility for 30 years. The Board of Adjustment amended the approved conditional use in 2000 to allow 476 students. The petitioner opened this facility in order to assist with motor skill development for children. The public schools have discovered funding programs for after-school programs, which has impacted the attendance of this facility, and the current enrollment is down to 125 children. Mr. Murphy displayed some photos of the facility, noting that the photos had to be taken without students present due to privacy laws: 1) street frontage from Arbor Drive; 2) side view of building, which is two levels with the height of a three-story building because of the two-story gym included in the facility; 3) side view; 4) side view with a play area; 5) kitchen; 6) classroom; 7) interior gym; 8) large classroom; 9) closed KinderCare facility which is currently not being used; 10) Northpointe Healthcare at Trent Blvd. and Man O' War Blvd.; 11) New Apostolic Church; 12) Community Action Head Start in a former church building; 13) Church of God; 14) Milward Funeral Home; 15) Word of Hope Lutheran Church next door to the subject property, which is across a ravine. Mr. Murphy stated that the Wilhite building is in proximity to other educational institutions noting that they are appropriate building-wise, architecture-wise, and massing-wise with their location.

Mr. Murphy said that the existing R-1T zone provides limited options for the property. In the R-1T zone, the only viable uses are other churches or daycare facilities that would be limited to 12 years and younger. The petitioner feels that selling the proposed townhouse lots to fund the operation of the current facility is not feasible, and that they would be forced to wait for a church or school to approach him to buy the facility. Mr. Murphy stated that the P-1 zone would allow further uses, which would be fully appropriate with the institutional type uses in the area already and would also make the property more viable. Mr. Murphy stated that the property could have professional offices or charitable offices, libraries or museums, medical offices



or a wellness center, dance studios, fine-art studios, private clubs, business colleges, or adult day centers. Mr. Murphy stated that they're not a requesting B-1 zone change or anything similarly intense; they are asking for limited additional uses.

Mr. Murphy said that the staff contends that the existing building could be adapted for use as R-1T, adding that this building cannot be redeveloped for residential use. If it went to R-3, it would be difficult even for a nursing home because the building has no elevator and has several two-story staircases.

Mr. Murphy stated that with regard to the Armstrong Mill West Small Area Plan it found that this area is a third-tier or a "middle ring suburb." Those suburbs in the middle often lack public intervention and are often overlooked by private investors. Many residents in this area do not own automobiles and have difficulties getting to stores and medical services. This area has a lower household income and very few resources, such as medical offices. There is a great need for healthcare in this area. Mr. Murphy stated that Dr. Wilhite has always been interested in providing medical facilities for the health and safety of the children. This building has been on the property for 30 years, and there are no objectors present who objected to them on using it for a new use, which indicates that the facility is an accepted part of the community. The petitioner contends that the P-1 zone would help to meet the recommendations of the Armstrong Mill West Small Area Plan.

Matt Carter, Vision Engineering, commented on the traffic. He compared three different facilities similar to the subject property. The first facility was a 300-child daycare center; from the ITE trip generation manual, the peak hour traffic for the AM was 240 trips and for the PM was 246 trips. The second facility was a 200-child daycare center that had peak hour traffic of 160 trips in the AM and 164 in the PM. The third facility was a 30,000 square-foot professional office building that had peak hour traffic of 47 trips in the AM and 45 in the PM. He said if the childcare facility is compared to the 30,000 square-foot office building, it has a 57% reduction of trips in the AM and 51% reduction of trips in the PM. The proposed office building would be a significant reduction from the current child care facility.

Mr. Murphy said that there have been complaints about noise and lights. The current facility operates from 5:30 AM to 8:00 PM. The petitioner contends that the proposed P-1 zone would actually be a less intense use, and that it would be worse for the neighborhood if the existing building ends up vacant.

Commission Questions - Mr. Brewer asked Mr. Murphy if a zone change to R-3 had been discussed with his clients. Mr. Murphy stated that it had, and that a change to R-3 would allow other uses such as a nursing home, however the petitioner contends that the extra uses in the P-1 zone would be low-impact to the existing traffic.

Staff Rebuttal - Mr. Emmons said that the number of cars is not their main concern; it's the types of trips that will increase in the existing residential zone. If medical offices were to exist on the subject property, traffic would increase all day long, not just in the AM and PM peak hours. He said that if the Planning Commission agrees with the petitioner's justification, the staff would request that they delete a portion of item C (the first sentence) from the petitioner's findings for approval. The professional office use would remain a quiet use and would be compatible with surrounding uses without addressing the traffic generation that was addressed in the findings for approval. Mr. Emmons also stated that when the staff recommends items for disapproval they look at other zoning to prohibit uses such as medical offices.

Mr. Cravens commented that the building already appears as a P-1 building because it is very large and properly constructed. Mr. Cravens said that he could move for approval. Ms. Mundy commented that her daughter had attended classes when she was younger. Ms. Mundy has been in this building and understands and appreciates the construction of the structure.

Zoning Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson and carried 9-0 (Drake and Smith absent) to approve MAR 2016-12: DR. JAMES WILHITE with the petitioner's findings, revised as follows.

- a. The property and building have been designed and operated as a childcare facility, after school programs, and as a cheer-leading and gymnastics club for the last 30 years. However, changes in the provision of such services have moved many such programs to publicly-funded programs at public school, rendering the existing use no longer viable at this property.
- b. The existing building, an approximately 30,000 square-foot concrete and steel building, which is fully sprinkled, is not well-suited for residential uses, but would be suitable for many uses allowed in the Professional office zone such as offices, private or church-related schools for academic instructions, churches, libraries, museums, business college, private clubs, elder day care center and other such uses
- c. Professional office use would remain a quiet use and would be compatible with surrounding uses. The church and residential uses on the north and west have no vehicular access into the property and are separated by topography. The building and property are already constructed with appropriate utilities, drainage, and sewer service for this professional office building.

Development Plan Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson and carried 8-0 (Drake, Penn, and Smith absent) to approve, subject to the conditions as recommended by the Subdivision Committee.



