

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

**ZOTA 2017-5: AMENDMENTS TO ARTICLES 1, 3, 8, 9, 10, 12, 15, 16, 17, 22A & B, 23 and 24 -
CONDITIONAL USES, DEFINITIONS and CLARIFICATIONS**

REQUESTED BY: URBAN COUNTY PLANNING COMMISSION

PROPOSED TEXT: See attached

(Note: Underlined text indicates an addition to the current Zoning Ordinance; text ~~dashed through~~ indicates a deletion.)

STAFF REVIEW:

At the request of the Division of Planning staff, the Urban County Planning Commission has initiated a text amendment to several sections of the Zoning Ordinance, for the primary purpose of moving several uses from the conditional use category to either the principal permitted or the accessory use category. In the past, there have been several general categories of conditional uses routinely approved by the Board of Adjustment with no issues and/or no neighborhood opposition. For various reasons, other types of conditional uses have not even been requested in several years. It is anticipated that the proposed changes will have multiple benefits, including: a) providing better customer service by not requiring applicants to go through a long, potentially arduous, cumbersome and/or expensive process; b) adjusting Planning staff workload so that more time can be spent on reviewing the more complicated/problematic appeals, and preparing staff reports with sound findings and conditions; and c) reducing the number of cases that ultimately have to be considered by the Board of Adjustment, thereby allowing that body (as well as the Planning Commission in instances when a conditional use has been requested as part of a zone change) to focus on the more difficult appeals that have greater potential to adversely impact surrounding properties.

Several staff members met over a period of many months and reviewed every conditional use listed in the Zoning Ordinance by zone. A list of fourteen uses considered as "prime candidates" for changing from conditional uses that could potentially qualify and thereby be categorized as principal permitted or accessory was compiled. That list was reviewed on February 24, 2017 by the Board of Adjustment. The Fayette County Neighborhood Council, as well as the Fayette Alliance, which happened to be following BOA activities that day, also reviewed the proposed changes. Based on the input from those groups, and after careful consideration by the staff, the list was reduced to include ten uses that are very straightforward and would likely have no unintended consequences as a result of their classification change. This, in turn, was presented to the Planning Commission for discussion at the March 30th Work Session and to the full Commission on April 27, when the ZOTA was initiated.

There are four categories of uses in the Zoning Ordinance: principal permitted, accessory, conditional and prohibited. Principal permitted and accessory uses are those that are allowed by right in a particular zone, although an accessory use must remain incidental or secondary to the principal use of the property and may not occur on a property before a principal use is in place. A conditional use is one that could locate in a zone with no adverse effects to surrounding properties, but would have certain conditions attached to its approval to ensure that. All conditional uses must be approved by either the Board of Adjustment or by the Planning Commission in conjunction with a zone change. Examples might be a church, a child care facility or a "home occupation" in a residential zone. Finally, prohibited uses are those that are simply not allowed in a particular zone.

Some understanding of the conditional use application process is important to fully appreciate the significance of this proposed text amendment. Whether a conditional use is totally innocuous (e.g., sewing or handicrafts) or potentially disturbing (e.g., a use that requires noisy equipment or visits to the applicant's residence); and whether the applicant is an individual (member of the general public) or a larger business entity, the same amount of paperwork and the same \$200 fee applies. The application process includes preparation of a site plan; other paperwork; notification to surrounding property owners; and use of the

internet to complete an application in the Citizen Portal (aka the Accela system), which is often confusing and can be daunting for anyone not familiar with the system. Nearly every application requires up-front explanation to the applicant and, once the application has been submitted, careful review by the staff for accuracy and completeness. Research must often be done, and a staff report is written for every application, no matter how simple or complex. For the more simple and innocuous cases that are routinely approved by the Board, it would be a benefit for everyone involved if an application for a conditional use were not required.

When presenting the proposed text amendment to the Planning Commission at their Work Session, the question arose as to whether the term “church” includes all faiths. With the increasing diversity in Lexington, and the various religions that accompany that diversity (e.g., Buddhist; Muslim; Hindu; the Jewish and Christian religions and others), this has occasionally been questioned by applicants, some of whom do not consider their place of worship a “church” as such, but rather a place of religious assembly. Therefore, in an effort to be more reflective of the times and inclusive of the entire population, no matter what the faith base, the staff believes it is time to update the Ordinance and replace the term “church” with “place of religious assembly.”

Also as part of this text amendment, a definition of “Personal Care Facility” will be included in Article 1-11. This results from a recent Board of Adjustment case, which was for an expansion of an existing personal care home on Duke Road. The Board had questions about the nature of the facility; and at the end of the hearing, a request was made by a Board member that a definition for “personal care facility” be provided in the Zoning Ordinance, as they differ slightly from assisted living facilities. One difference is the requirement for a Certificate of Need, which does not apply to assisted living facilities. The staff originally thought that the definition of an assisted living facility could be revised to accommodate both uses; but after further review and after obtaining the definition from KRS 216.760 of “personal care home,” the decision was made to separate the two definitions. The level of care provided in a personal care home is beyond what is provided in an assisted living facility, but is not at the level of care provided in a nursing home. It was also determined that “personal care facility” should replace “rest home” throughout the Ordinance, as that is an outdated term and one that has never been defined in the Zoning Ordinance. While a text amendment in and of itself to create a definition of “personal care facility” was not deemed necessary, including it in this text amendment is logical and is a good time to define what has been an existing use in Lexington since at least the 1950s.

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

1. The proposed text amendment will have multiple benefits; e.g., it will adjust the Planning staff’s workload so that more time can be spent on reviewing the more complex or problematic appeals and providing sound, defensible findings and conditions; it will help to provide better government service by not requiring applicants to go through a long, potentially arduous, cumbersome and/or expensive process; and it will reduce the number of applications to the Board of Adjustment by eliminating many conditional uses that are routinely approved by the Board. This, in turn, will allow the Board (or, in some instances, the Planning Commission) to focus on more difficult appeals that have the potential for adversely impacting surrounding properties.
2. Replacing the term “church” with “place of religious assembly” is a timely update to the Zoning Ordinance. The term “church” is generally associated with the Christian faith, whereas “place of religious assembly” indicates a more inclusive concept of the various world religions, many of which are present in Lexington due to the diversity of its population.
3. Adding a definition of “personal care home” to the Zoning Ordinance will help to clarify the difference and levels of care between an assisted living facility, a personal care facility and a nursing home. At least one personal care facility is located in Lexington and has been in existence since the 1950s. Because it is listed in the Zoning Ordinance as a conditional use, it is logical to provide a definition.