

2. **MARV 2013-10: KROGER LIMITED PARTNERSHIP 1 ZONING MAP AMENDMENT & SUBURBAN PROPERTIES (KROGER) & SOUTH ASHLAND LAND CO. ZONING DEVELOPMENT PLAN**

- a. **MARV 2013-10: KROGER LIMITED PARTNERSHIP 1 (6/2/13)*** – petition for a zone map amendment from a Neighborhood Business (B-1), Professional Office (P-1), Single Family Residential (R-1E), and High Density Apartment (R-4) zone to a Planned Shopping Center (B-6P) zone, for 3.1462 net (3.6588 gross) acres, for properties located at 704 Euclid Avenue; and 408, 412, 416, and 420 Marquis Avenue. Dimensional variances are also requested.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Retail Trade and Personal Services (RT) future land use for the Kroger property. The Marquis Avenue properties have a Medium Density Residential (MD) future land use recommendation. The petitioner has requested a Planned Shopping Center (B-6P) zone for all of the properties in order to expand the existing Kroger store. Several dimensional variances have also been requested as part of this zone change.

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

The Staff Recommended: Approval, for the following reasons:

1. The requested Planned Shopping Center (B-6P) zone is in agreement with the 2007 Comprehensive Plan recommended land use of Retail Trade and Personal Services (RT) for the property located at 704 Euclid Avenue (existing Kroger site). The B-6P zone is one of several commercial zones that can implement this land use recommendation, and, in this case, will allow a grocery store to expand, and continue to serve an area of the community with limited access to food options.
2. The existing High Density Apartment (R-4), Professional Office (P-1), and Single Family Residential (R-1E) zones are collectively inappropriate; and the proposed B-6P zone is appropriate for the four parcels located at 408, 412, 416-418, and 420 Marquis Avenue, for the following reasons:
 - a. Each of the four lots is less than ¼ of an acre in size, and is currently vacant.
 - b. Including these properties as part of the Kroger site will allow for a more efficient use of the entire property, which will be controlled by a development plan as approved by the Planning Commission. Without these four parcels, the Kroger site would continue to have a stair-step configuration along the rear of the development. By incorporating these vacant parcels, the rear property line becomes uniform.
 - c. The existing zoning configuration of the four parcels is out of the ordinary in that each has a different zoning designation and, except for the property at 420 Marquis Avenue, would be difficult to develop collectively or independently due to the physical space necessary to fulfill parking requirements and zone-to-zone landscaping requirements of the Zoning Ordinance.
 - d. The business zone and proposed redevelopment of these lots with the rest of the Kroger site will result in a streetscape that is more consistent with the existing commercial area along Euclid Avenue. Currently, the Kroger store is developed in a suburban, automobile-oriented manner with parking between the street and the building along both frontages. The proposed development moves the structure to the street and parking internal to the site, similar to the character of the surrounding area.
3. The requested B-6P zone is supported by the Goals and Objectives of the 2012 Comprehensive Plan, which were adopted by the Urban County Council in May 2012. Specifically, the proposed zone change supports infill and redevelopment in a context-sensitive way and will provide improved design features that are consistent with the rest of the Chevy Chase commercial area (Goal A.2.a.). This development also serves the surrounding neighborhoods in a compact and contiguous manner within the Urban Service Area, which upholds the Urban Service Area concept (Goal E.1.a.).
4. This recommendation is made subject to approval and certification of **ZDP 2013-32: Suburban Properties (Kroger) and South Ashland Land Co.**, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. **REQUESTED VARIANCES**

1. Allow 3 wall lengths to exceed 100 feet without a change in setback
2. Reduce the required 50-foot B-6P setback along Marquis Avenue to 25 feet
3. Increase the Ground Area Building Coverage from 35% to 50% in the B-6P zone
4. Reduce the required 50-foot B-6P setback along Euclid Avenue to 40 feet for a portion of the building.
5. Reduce the required 50-foot B-6P setback along the rear property line to 40 feet for a portion of the building

The Zoning Committee made no recommendation on this request.

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

The Staff Recommended: Postponement of the requested setback variance along Marquis Ave, for the following reason:

- a. Further review is needed of the site layout and requested variance to ensure that the proposal will not negatively affect the pedestrian accommodations along Marquis Avenue. In particular, a wider sidewalk and potential increase in landscaping may be possible if the building were able to move further to the east.

The Staff Recommended: Approval of the remaining variances, for the following reasons:

- a. Granting the requested variances will not adversely affect the public health, safety or welfare; and will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The setback variances will be in keeping with the existing character of the neighborhood, the wall length variances will be satisfied with architectural features, and the coverage variance will make for more efficient use of the land.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance because the overall redevelopment of this grocery store will utilize innovative techniques to accomplish their expansion needs while promoting good infill and redevelopment practices.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is that the grocery store will utilize rooftop parking, and other architectural design features to meet the intent of the regulations.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship to the applicant because of the limited space available for an expansion of the current store.
- e. The circumstances surrounding the requested variances are not the result of the actions of this applicant taken subsequent to the adoption of the Zoning Ordinance, but rather a design response to difficulties of expanding this store without a major expansion of the land area that it occupies.

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

1. Provided the Urban County Council rezones the property B-6P; 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, or 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 2013-32: SUBURBAN PROPERTIES (KROGER) & SOUTH ASHLAND LAND CO. (6/2/13)* - located at 704 Euclid Avenue & 408, 412, 416 and 420 Marquis Avenue. **(Roberts Group)**

The Subdivision Committee Recommended: Postponement. There were concerns about the number of variances proposed and compliance with the adopted Big-Box Design Guidelines.

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

1. Provided the Urban County Council rezones the property B-6P; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote construction entrance location(s).
7. Denote that lighting will be directed away from residential zones.
8. Clarify that this plan is a Preliminary Development Plan (in title block).
9. Discuss additional screening and function of loading area per Article 12-7(f) and the Big-Box Design Guidelines.
10. Discuss extent of the building coverage variance request.
11. Discuss requested variances to setback to allow encroachments along Euclid and Marquis Avenues.
12. Discuss customer entrance requirements per Big-Box Design Guidelines.
13. Discuss land use screening/buffer requirements per Big-Box standards.
14. Denote that compliance with the Big-Box Design Guidelines shall be determined at the final development plan.
15. Provided the Planning Commission grants the requested dimensional variances.

Zoning Presentation: Ms. Wade presented the staff's zoning report, briefly orienting the Commission to the location of the subject properties at the intersection of Euclid Avenue and Marquis Avenue. She said that this request includes five properties: the existing Kroger site, and four small lots on Marquis Avenue. Marquis Avenue has a mixture of P-1 and B-1 zoning near the Euclid/Marquis Avenue intersection, and it transitions to a more residential character as it approaches the Hollywood/Columbia Heights neighborhoods, which were downzoned to R-1E some years ago.

Displaying an aerial photograph of the subject property, Ms. Wade noted the location of the five subject properties. She also displayed several ground-level photographs of the property, including: a view of the front of the Kroger store; a view

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of the rear of the store, from across Marquis Avenue; the existing access that is located directly across from Clay Avenue; the frontage and parking for the Kroger store; existing utility lines in front of the store, which prevent development right up to the Euclid Avenue right-of-way; the rear of the Kroger store, noting the existing privacy fence along the rear of the Ashland Terrace residential properties; a view from Marquis Avenue of the Kroger property adjacent to the first single-family residence that exists along Marquis; and a view of some construction work along Marquis Avenue, near the rear of the Kroger store.

Ms. Wade stated that the Euclid/Marquis Avenue area is characterized by a mixture of uses and pedestrian-friendly orientation. Most of the structures are directly adjacent to the right-of-way, with parking located either on the street, to the rear of the structure, or in a parking garage. With its greater setback, the existing Kroger store is an exception to the general character of the area. Ms. Wade stated that the petitioner is proposing to replace the existing Kroger facility with a larger grocery store, incorporating the four vacant lots on Marquis Avenue into their development plan. The petitioner has indicated that the proposed expansion would allow for a more modern grocery store at this location, with a wider product selection.

Ms. Wade stated that the 2007 Comprehensive Plan has a mixed recommendation for the subject property. The parcel that contains the existing Kroger store is recommended for Retail Trade & Personal Services use, while the four lots on Marquis Avenue are recommended for Medium Density Residential land use. The existing B-1 zone does permit a grocery or general merchandise store at this location, but it limits the maximum allowable size to 40,000 square feet. The existing structure on the site is 38,000 square feet in size; the other three zones on the subject properties do not permit any type of retail use, so the existing zoning cannot accommodate the petitioner's proposal for the site. Ms. Wade said that the proposed B-6P zone permits the same land uses as the B-1 zone, but it does not have the B-1 zone limitation on square footage. The B-6P zone was created in the 1960s, and it is somewhat suburban in character. Ms. Wade stated that the proposed B-1 zone for the four small lots along Marquis Avenue is not in agreement with the Comprehensive Plan, since they are recommended for residential land use.

Ms. Wade said that, as part of the staff's evaluation of this request, they evaluated Article 12 of the Zoning Ordinance, which addresses the locational standards for shopping centers within the community. The proposed new Kroger store would fall within the definition of a neighborhood shopping center because of the sale of convenience items, such as food and drugs. The size of the subject property, at just over three acres, also falls within the definition of a neighborhood shopping center. Ms. Wade explained that the criteria for shopping centers are: access along collector and/or arterial streets; a traffic pattern that is not congested; and facilities that are adequate for the neighborhood, but not excessive. In assessing the subject property against those standards, the staff found that Euclid Avenue is a minor arterial roadway, so this proposal meets the access standard. The Euclid Avenue/Marquis Avenue intersection currently functions at a Level of Service "C," with the closest signalized intersection (Euclid Avenue/Ashland Avenue) also having a Level of Service "C," which refers to average congestion. In addition, the petitioner is proposing to close two of the existing access points to the property, which should also help to improve traffic management on both Euclid and Marquis Avenues. Ms. Wade said, with regard to the adequacy of the proposed shopping center, the staff considered a food access data analysis that was completed as part of the 2012 Comprehensive Plan. The staff found that there is only one grocery store within one half-mile distance of the subject property, which is another Kroger location on Romany Road. To the northwest and northeast, the nearest full-service grocery store is more than two miles away on Broadway. There is an existing urban market downtown, but it is more than 1½ miles from the subject property. Ms. Wade stated that the existing Kroger store on the subject property is one of the smallest of the chain's stores in Lexington-Fayette County; and, as such, it has not been able to stock the wide range of products typically available at some of the larger stores. The petitioners have indicated that the desire to offer a broader selection of products was one of the primary reasons for the proposed expansion of this store. The petitioner also contends that the Kroger store complements the other commercial-uses located nearby in the Chevy Chase center, creating a more vibrant neighborhood shopping area. Ms. Wade noted that the petitioner is proposing to construct the new Kroger store on a basement, which should help to minimize the scale of the building for the square footage proposed; so the store will not appear too large for the property. The staff believes that the proposed new Kroger store does meet the locational criteria for the B-6P zone.

Ms. Wade stated that the petitioner contends that the proposed zone change to B-6P is in substantial compliance with the 2012 Comprehensive Plan's recommendation of Retail Trade use for the subject property, and that it is also supported by the Goals & Objectives. In addition, the petitioner contends that the four small lots on Marquis Avenue are inappropriately zoned, and that the proposed B-6P is more appropriate at this location. Ms. Wade said that the staff is generally in agreement with those statements, so the staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda. She added that the Zoning Committee also recommended approval of this request at their meeting three weeks ago.

Ms. Wade said that, at the Zoning Committee meeting, one of the members asked about the number of accidents in the vicinity of the subject property. The staff requested accident data from the Division of Police, and learned that, between Park Avenue and High Street, there were 95 accidents in the last five years; 60 of those were at intersections (including six at the Clay Avenue intersection), and 35 were between intersections. Ms. Wade noted that there were no accidents along Euclid Avenue during that time period between South Ashland Avenue and High Street.

Commission Question: Mr. Wilson asked if the accidents to which Ms. Wade referred involved vehicles, or pedestrians. Ms. Wade answered that they were all vehicle accidents.

Mr. Wilson asked for an explanation of the construction activities depicted in one of Ms. Wade's photographs. Bruce Simpson, attorney representing the petitioner, responded that that construction is being undertaken by one of the utility companies, working on its lines.

Mr. Owens asked how the number of accidents on Euclid Avenue compares with other areas of the city. Ms. Wade answered that she was not sure, since the staff only requested data for this one area. She added that the data provided also included accident numbers for Euclid Avenue between Woodland Avenue and Park Avenue, which were comparable to the number that took place near the subject property.

Development Plan Presentation: Mr. Martin presented the preliminary development plan associated with this rezoning request, noting that the Commission had received copies of the revised conditions for approval of the plan. Referring to a rendered copy of the plan, he noted the location of the proposed structure; the rooftop parking deck; the surface parking proposed adjacent to Euclid Avenue; the proposed accesses from Euclid Avenue, South Ashland Avenue, and Marquis Avenue; and the proposed storm water detention facility. The new Kroger store building is proposed to be 96,546 square feet in size, with 65,000+ square feet of building on the first floor; 31,000 square feet in the basement; and 54,700 square feet on the parking deck, with 48,000 square feet of surface parking. Escalators and elevators are proposed for the interior of the building, in order to provide access to the vertical elements of the structure. A pedestrian-oriented entrance to the building is proposed for the Euclid Avenue side of the structure, with a café accessible via either the interior of the store or external doors. Mr. Martin explained that the parking requirement in the B-6P zone is generated via an area calculation; and the proposed configuration of 216 spaces meets that requirement, due mostly to the rooftop parking deck. The building is proposed to be 21.5 feet tall, with a 42" railing around the parking deck. The loading docks at the rear of the store are proposed to slant downward, with most of the dock area below grade. The ramp to the rooftop parking is proposed to be 22' wide, with a drive-through facility for the pharmacy to the rear of the ramp. Mr. Martin said that the petitioner is also proposing to construct a fence at the rear of the subject property to buffer the nearby residences along Ashland Terrace. He added that the proposed building would comprise 335' of street frontage on Euclid Avenue, and 414' on Marquis Avenue.

The Staff Recommends: Approval, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-6P; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
- ~~6. Denote construction entrance location(s).~~
- ~~6. 7. Denote that lighting will be directed away from residential zones.~~
- ~~8. Clarify that this plan is a Preliminary Development Plan (in title block).~~
- ~~9. Discuss additional screening and function of loading area per Article 12-7(f) and the Big-Box Design Guidelines.~~
- ~~7. 10. Discuss extent of the building coverage variance request.~~
- ~~8. 11. Discuss requested variances to setback to allow encroachments along Euclid and Marquis Avenues.~~
- ~~12. Discuss customer entrance requirements per Big-Box Design Guidelines.~~
- ~~13. Discuss land use screening/buffer requirements per Big-Box standards.~~
- ~~9. 14. Denote that compliance with the Big-Box Design Guidelines shall be determined at the final development plan.~~
- ~~10. 15. Provided the Planning Commission grants the requested dimensional variances.~~

Mr. Martin stated that there was considerable discussion at the Subdivision Committee meeting about the pharmacy drive-through facility and traffic circulation throughout the site. He displayed a rendered version of the revised development, noting that the staff had highlighted the arrows on the face of the plan to indicate the circulation pattern now proposed. The staff believes that the revised plan provides for better traffic movement, as the traffic pattern on the original submission was somewhat convoluted. The petitioner moved the rooftop parking ramp back in order to remove conflicts with the main parking lot drive aisle, and directed traffic toward the access easement at the front of the property wherever possible.

Mr. Martin explained that the revised conditions for approval of this plan include the sign-offs typical of a preliminary development plan. Since the petitioner is requesting B-6P zoning for the subject property, they will be required to submit a report detailing compliance with the Big-Box Design Standards at the time of the filing of a Final Development Plan. Those requirements address building design, buffering, landscaping, and relationship of the structure to the street, as well as pedestrian facilities and amenities. The staff is recommending that that compliance be noted at the Final Development Plan stage.

Commission Questions: Ms. Blanton asked Mr. Martin to walk through the route that a motorist would take to enter the Kroger property, access the pharmacy drive-through window, and then exit the property. Using the rendered

development plan, Mr. Martin indicated that there are a couple of proposed options for accessing the pharmacy window, but both of them would require motorists to drive under the parking ramp.

Ms. Blanton asked at what point along the length of the ramp it would begin to elevate, as it appeared to her that the ramp might obstruct a motorist's view of oncoming traffic. Mr. Martin responded that the current version of the plan depicts the ramp as more sharply elevated, since it was shortened to allow more space for a drive aisle in the front of the grocery store.

Variance Presentation: Mr. Emmons presented the staff report on the five requested variances, beginning with the request to allow three wall lengths to exceed 100 feet in length without a change in setback. He said that that standard is a requirement of the both the B-6P zone and the Big-Box Standards. When the previous development plan was filed, there were three wall lengths that would require variances; with the submission of the revised plan, there are now only two such variances needed. On the south side of the property, along the wall where the drive-through window is to be located, the wall is proposed to be 120' in length. However, the staff believes that the ramp to the rooftop parking can serve to break up the expanse of the wall in the same manner as a setback. Mr. Emmons said that the other wall that is proposed to be more than 100' long is along Marquis Avenue, where the petitioner indicated that the store's emergency exits would be necessary.

Mr. Emmons stated that the petitioner has requested a variance to the 50' rear setback requirement of the B-6P zone. Along the rear property line, in the area of the parking ramp and pharmacy drive-through, a 55 square-foot area is proposed to cross over the 50' perimeter boundary to provide space for the store's compactor and trash receptacles. The majority of the rear property line will have an average setback of approximately 70 feet.

Mr. Emmons next explained that the petitioner has requested to reduce the setback along the front of the proposed store on Euclid Avenue from 50' to 40' for a portion of the wall. The majority of that wall is proposed to be set back 57' from the B-6P zone line, with only a small portion of the front of the building at a 40' setback to accommodate the outdoor seating area and café/restaurant. The average setback in that area would meet the 50' requirement.

Mr. Emmons stated that one of the more significant variances requested was to the maximum lot coverage allowed in the B-6P zone, which is 35%. He said that the coverage for the proposed Kroger store would be 50%. A typical grocery store development of this size would require the entire block, or approximately six acres of property; however, the petitioner's more innovative, compact development techniques could accommodate the proposed store on only three acres, which fits within the goals for Infill & Redevelopment. For that reason, the staff is recommending approval of the requested variance to the lot coverage. Mr. Emmons said that it was important to note that no residential units are proposed as part of this redevelopment, as the Planning Commission could not lawfully approve a coverage variance that would allow a greater density for the subject property.

Mr. Emmons said that the requested variance that had resulted in the most discussion was to the setback along Marquis Avenue. The staff originally recommended postponement of that variance, prior to the filing of the revised development plan. With the revised plan, the petitioner redesigned the surface parking lot and moved the building an average of 1.5' farther from Marquis Avenue. Although it was not a large change to the plan, that shift of the building was significant, in that it provided a slightly larger area for landscaping and street trees than originally planned. The staff also believes that a minimum five-foot sidewalk is important in this area, to promote the pedestrian-friendly character of the new Kroger store; and the shifting of the building can accommodate that recommendation as well.

Mr. Emmons stated that the staff prepared a supplemental report, which notes that the staff is now recommending approval of the requested variances:

The Staff Recommends: Approval of all the requested variances, for the following reasons:

- a. Granting the requested variances will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The setback variances will be in keeping with the existing character of the neighborhood, the wall length variances will be satisfied with architectural features, and the coverage variance will make for more efficient use of the land.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance because the overall redevelopment of this grocery store will utilize innovative techniques to accomplish its expansion needs, while promoting good infill and redevelopment practices.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is that the grocery store will utilize rooftop parking and other architectural design features to meet the intent of the regulations.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship because of the limited space available for an expansion of the existing store.
- e. The circumstances surrounding the requested variances are not the result of actions taken by this applicant subsequent to the adoption of the Zoning Ordinance, but rather a design response to the difficulties of expanding

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this store without a major expansion of the land area that it occupies.

Mr. Emmons said that the staff's recommendation of approval is made subject to the three conditions originally recommended, and two new conditions:

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

1. Provided the Urban County Council rezones the property B-6P; 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).
4. The sidewalk along Marquis Avenue shall be at least 5' in width, with the final design to be determined at the time of the final development plan.
5. A minimum greenspace shall be equivalent to the areas as proposed on the approved preliminary development plan.

Commission Question: Mr. Cravens asked if the staff was recommending a 25' setback be maintained along Marquis Avenue. Mr. Emmons responded that the B-6P zone has a 50' setback requirement from the zone line, which is the centerline of Marquis Avenue. A 25' reduction would, therefore, allow the building to be constructed at the property line. The staff is also recommending a condition for minimum greenspace on the back side of the sidewalk.

Note: Chairman Owens declared a brief recess at 3:08 p.m. The meeting reconvened at 3:14 p.m.

Petitioner Presentation: Bruce Simpson, attorney, was present representing the petitioner. He said that this rezoning request is the result of a two-year process that included at least three major iterations of the proposed design for the Kroger store. One of the major goals of the project was to follow the Planning Commission's admonition to focus on infill and redevelopment, so that the city can "grow up, not out." The petitioner contends that, based on the staff's recommendation of approval for the rezoning and variances, they have achieved that goal.

Mr. Simpson stated that the subject property has been used for a grocery store since 1962; the Kroger store took occupancy there in 1976. The existing building dates back to 1962, with an expansion in 1984 from 25,000 square feet to 35,000 square feet in size. Today, however, 35,000 square feet is smaller than a typical grocery store. The petitioner has spent the past several years expanding all of its stores in Lexington-Fayette County in order to stay competitive in the marketplace. They are proposing to make a \$19 million investment in the subject property, to ensure that this Kroger location can continue to be economically viable. In order to expand the store on what is a relatively small property, the petitioner has created an innovative design utilizing a basement and rooftop parking, with eight interior elevators and an escalator. The petitioner contends that the proposed renovation will create better buffering and screening around the store for the rest of the neighborhood; provide a more handsome façade; and create better access for pedestrians. The petitioner contends that the proposed new Kroger store meets all of the criteria for good infill.

Mr. Simpson stated that this request includes three parts: the zone change, variances, and a development plan. He noted that, at the Subdivision Committee meeting, there were a number of questions about the development plan with regard to the entrance on Euclid Avenue. Based on those concerns, the plan was redesigned, and the petitioner believes that the current plan is much improved with regard to the access point. Also in response to the concerns of the Subdivision and Zoning Committee members, the petitioner shifted the location of the proposed building slightly, to allow more space for a landscape buffer between the sidewalk and the building. Mr. Simpson said that the petitioner is aware that some development plan issues still need to be addressed, but those concerns should not be the basis of a recommendation for disapproval of the zone change and the variances. He displayed the following photographs of the subject property: 1) a view of the existing building from South Ashland Avenue; 2) existing air conditioning units to the rear of the store, which will be replaced by units located further from the nearest residences; 3) the rear of the parking lot, noting the existing fence along the rear of the adjoining properties on Ashland Terrace and the existing screening; 4) another view of the Ashland Terrace screening, noting some gaps in the coverage; 5) the rear loading dock for the building, which is currently located between 9' and 12' off of the property line; 6) the existing compactor at the rear of the store, which is located 4' from the property line; 7) the 0.4-acre parcel that was purchased by the petitioner some years ago, and which is split-zoned four ways; 8) the existing sidewalk along Marquis Avenue, noting the "suburban feel" of the existing setbacks; 9) the existing loading dock along Marquis Avenue which is used for delivery of perishable goods; 10) a drawing depicting the distance a pedestrian would have to travel along Marquis Avenue to the existing entrance (480') and the distance to the proposed pedestrian entrance along Euclid Avenue in the new store (478'); 11) a closer view of the rendering of the pedestrian connectivity; 12) a photo of a high-end residential development in Louisville, noting the existing 8-foot tall polyethylene, faux-stone, noise-resistant fencing, which the petitioner is proposing to install along their rear property line; 13) an example of the tall, narrow type of evergreen tree proposed for additional screening for the homes along the property boundary with Ashland Terrace; 14) a rendering of the proposed new building from the intersection of Euclid and Marquis Avenues, noting the café area and entrances on the parking lot side of the building.

and the area where trees will be planted along Marquis Avenue; 15) a rendering of the Marquis Avenue side of the building noting the proposed enhanced screening, windows into the store, and public art. Mr. Simpson noted at this time that architect Graham Pohl assisted the petitioner on an unpaid basis during the design phase of this proposed redevelopment, because the petitioner wanted input from a local, highly-regarded architect with a sense of place to help ensure that the proposed Kroger store would be compatible with the existing neighborhood. He continued by displaying additional photographs: 16) a rendering of the front of the proposed building from the parking lot, noting the large windows and rooftop parking area; and 17) the petitioner's proposed landscape plan, which is still conceptual at this time.

Mr. Simpson also displayed on the overhead projector a detailed, three-dimensional model rendering of the subject property, depicting first the existing Kroger store on the subject property; and then a rendering of the proposed new building, noting the proposed features along Marquis Avenue; the parapet wall along the rooftop parking to shield vehicle lights; the bumped-out sections of the building; the public art; the proposed plantings; the loading dock area; the compactor area; and the proposed entrance configuration and signage that will discourage pedestrians from entering at the rear of the store along Marquis Avenue.

Mr. Simpson stated that the petitioner contends that the existing B-1 zone would allow the construction of a "low-end strip shopping center." The petitioner believes, however, that the proposed rezoning would permit them to maximize the interior spaces of the Kroger store in order to maintain its economic viability, while offering an improved shopping experience to the area residents. Mr. Simpson noted that Kroger has been recognized as a first-class philanthropic company, with a history of being a good citizen. They have committed to finance this project completely on their own, with no Infill & Redevelopment incentives or Tax Increment Financing. The petitioner contends that the proposed redevelopment will not negatively impact traffic; will improve pedestrian and bicycle facilities; and will improve stormwater issues in the area, as there is currently no stormwater detention on the property. Mr. Simpson said that the staff has recommended approval of this request, recognizing that, although there are development plan issues that need to be addressed, they believe that the petitioner will honor their commitment and make whatever improvements are necessary to make the project work. He concluded by opining that, although some of the neighbors have concerns, the petitioner is trying to be a good neighbor, and this proposed rezoning is clearly worthy of the Planning Commission's support.

Citizen Support: Bill Fortune, 714 Bullock Place, stated that he is a longtime resident of the neighborhood who tries to do all of his shopping in the Chevy Chase area. He said that he is an "urban dweller," and he does not want to have to travel to the suburbs to shop. Mr. Fortune said that he believes that the petitioner's proposed redevelopment of the Kroger store could give inner-city residents the same types of shopping experiences that suburban residents routinely have. He noted that many shoppers access the Euclid Avenue Kroger store on foot, by bicycle, and by mass transit to purchase their groceries, and the petitioner intends to recognize their custom by providing amenities for them. Mr. Fortune concluded that he believes that it is "a fine thing for the community as a whole" for the petitioner to provide this type of shopping experience for those who might not otherwise be able to access or afford it.

Graham Pohl, 977 Fincastle Road, stated that the office of his architectural firm, in which he is a partner, is located very near the subject property. He said that he sits on the Board of Architectural Review as well.

Mr. Pohl stated that he would like to take a neutral stance on this request. He was approached by the petitioner to provide feedback for their design proposal. Mr. Pohl hosted four design meetings in his office, participated in two teleconferences, and had many email and phone conversations during the design process. He said that he found the petitioner's representatives to be "solicitous of any information they could gather, and making a serious, heartfelt response" to the needs of the neighborhood. They went out of their way to learn about the character of the neighborhood, and, in Mr. Pohl's opinion, have been genuinely interested in achieving a result that is good for the neighborhood.

Mr. Pohl said, with regard to the design issues on the subject property, that the proposed rooftop parking could be a major advantage to the neighborhood by removing cars from the view of the public. Reducing the setback of the building along Euclid Avenue will add to the "urban edge" of the area, which Mr. Pohl contends will be a major improvement over the "cheesy materials and poor design" of the existing Kroger store, which is set too far back on the property to be in character with the rest of the properties on Euclid Avenue. Mr. Pohl believes that the petitioner has succeeded in achieving an excellent result with their proposed design, particularly along Euclid and Marquis Avenues, and it has taken a huge amount of effort on their part. He said that he understands the concerns of the neighbors, particularly those who are worried about the loss of the small residential parcels that are part of the subject property, but he believes that the proposed development is a "superb proposal for the city," and that it could establish a positive precedent for development in the community.

Citizen Opposition: Mark Barker, 439 Park Avenue, stated that he is particularly concerned about the how the proposed Kroger store will affect the properties on Marquis Avenue. He displayed several photographs along Marquis Avenue, noting the house that adjoins the Kroger property. Mr. Barker said that proposed Marquis Avenue entrance to the Kroger

property will only be approximately 5' away from the residence, with an 8' fence located 3' from the house. He believes that a busy entrance, combined with the location of an industrial compactor on the other side of the fence, will "render that house unlivable."

Mr. Barker stated that, if the petitioner would withdraw variance request #5 and relocate the Marquis Avenue entrance slightly, it could have much less of a negative impact on the Marquis Avenue residence. He suggested that the petitioner add conditions to limit lighting on the subject property and limit the height of the building, which could also help to mitigate the effects of the large Kroger store on the surrounding neighborhood.

Mr. Barker added that he is also concerned about the safety of pedestrians on Marquis Avenue, particularly late at night. He asked that the petitioner consider leaving the pedestrian entrance nearest to Marquis open 24 hours a day, so that pedestrians will not be forced to walk around the building in the dark. Mr. Barker also asked that the petitioner consider closing some of the vehicular entrances with gates during the overnight hours to improve safety in the area.

Amy Clark, 628 Kastle Road, stated that she wants the Kroger project to succeed, but she believes that the question before the Planning Commission is "whether this is a big-box or a shopping center." She objected to Kroger's request to vary the lot coverage for the proposed Kroger store to 50% of the lot, which she believes will be too large for the area and will "feel like a fort," particularly since there are no other large stores in the area. Ms. Clark said that three acres is the smallest size allowed in the Zoning Ordinance for the proposed B-6P zone; the B-1 zone allows neighborhood shopping centers up to 10 acres in size, which is considerably larger than the subject property. She believed that the stacking of the building and use of rooftop parking are appropriate, but that the size of the proposed building's footprint is simply too large.

Ms. Clark stated that she is also concerned about the parking allotment for the subject property. She said that the petitioner is proposing to provide parking for only 57% of the floor area of the store, which would equal only 1.5 times the existing parking, for a building 2.5 times the size of the existing building. Ms. Clark said site circulation and access is also a concern, and she believed that most of the traffic on the site will be aimed toward South Ashland Avenue, which could have a negative impact on the homes there, including a retirement home, and that it will then affect residents on Kastle Road as well. She noted that one of the locational requirements of the B-6P zone is that the front of the store must face an arterial roadway, and she does not believe that that is the case according to the proposed development plan.

Ms. Clark said that she shared Mr. Barker's concern for the homes on Marquis Avenue, some of which are over 100 years old and are among the oldest structures in the Hollywood Terrace National Historic Register neighborhood. She indicated that she had spoken to some residents of the area who, should the proposed rezoning be approved, intend to either sell their homes and move, or rent out their properties. As a homeowner, Ms. Clark said that she finds that threat to the neighborhood tradition disturbing. She added that the residents of the Ashland Terrace retirement home, which has invested heavily in the neighborhood, are also concerned about the proposed redevelopment of the Kroger property.

Ms. Clark stated that she believes that "making a big-box into a shopping center" could work, with four guiding principles and two cautions: 1) Increase the setback from the rear lot line, to provide more protection for the Ashland Terrace residents from large truck traffic. In addition, Ms. Clark did not believe that the proposed Simtec fence will be an effective buffer from truck noise, and she feels that it will be out of context with the character of the area. She suggested that a masonry wall or berm might be more effective at that location; 2) Keep the footprint of the building at 35% of the lot coverage; 3) Stay within all of the required setbacks; and 4) Add a door entrance on Marquis Avenue.

In conclusion, Ms. Clark said that the petitioner has indicated that they do not intend to construct one of their large, marketplace-type stores on the subject property, but she has learned that the amount of money they propose to spend on the project is commensurate with the amount spent on the Beaumont Center Kroger, which is a marketplace store. She opined that the neighborhood residents do not want a marketplace store; rather, they would request that the petitioner restrict the allowable uses on the subject property to food sales and a pharmacy, which would eliminate the possibility of constructing a marketplace store. Ms. Clark opined that people in the vicinity only want to buy as many products as they can carry and afford—they do not need a large store, with large carts. She also questioned whether a big-box store on the subject property would "truly offer adequate, rather than excessive" services to a neighborhood that does not want them.

Penina Goldstein, 439 Marquis Avenue, stated that her residence was built in 1917. She said that she and her husband chose to purchase a home on Marquis Avenue specifically because they prefer walking and bicycling as their main modes of transportation. She noted that they "made a conscious decision not to live in a development such as Beaumont or Hamburg." Ms. Goldstein said that there is a high level of pedestrian traffic traveling to the Kroger store from the University of Kentucky campus, the Bates Creek Road area, and other nearby areas. She read the following into the record from the 2007 Comprehensive Plan:

"While sidewalks and bike facilities along transportation corridors are necessary for safe travel,

making bicycling and walking the preferred choice for short distance trips will require more emphasis on pedestrian-oriented design and land use patterns."

Ms. Goldstein opined that the design for the proposed Kroger store is "the opposite of a pedestrian-oriented design." She said that there is no natural entrance proposed along Marquis Avenue for pedestrians or cyclists, which would result in over 300 feet of unbroken wall along that roadway. In addition, Ms. Goldstein believed that traffic using the Marquis Avenue parking lot entrance, including drivers traveling to and from the pharmacy drive-through, would create a hazardous situation for pedestrians and cyclists.

Ms. Goldstein stated that she and her neighbors understand the petitioner's desire to grow their business, but they ask that the petitioner consider the needs of their customers who walk and cycle to the store. The residents also ask that the Planning Commission encourage pedestrians and cyclists by disallowing the Marquis Avenue pharmacy drive-through, and by requiring the petitioner to construct a pedestrian entrance along that street frontage. Ms. Goldstein said that she is proud to live in a city whose Comprehensive Plan states:

"Consider bicycling and walking as a primary means of travel during land use decision-making and development processes."

Kate Savage, 619 Columbia Avenue, began by presenting a petition that included over 50 signatures in opposition to this request. She displayed a Google map that identified all of the Kroger stores in the Lexington area. She noted that all of the large Kroger stores are located on the outer perimeter of the city, while the Romany Road and Euclid Avenue locations are left serving the entire large inner-urban area. Ms. Savage suggested that the petitioner consider adding an additional store within the central urban area, "rather than having such a massive one" in her neighborhood.

Ms. Savage displayed an aerial photograph of the subject property, noting the size of that property compared to the small residential lots surrounding it. She displayed a rendering of the subject property that depicted the coverage of the existing Kroger store on the property, and the coverage of the proposed larger store. Referring to the petitioner's rendering of the proposed store, Ms. Savage said that "Marquis Avenue looks like a boulevard;" however, in reality, that roadway is much narrower, and it typically has parking all along one side. She displayed a photograph of the Marquis Avenue residence nearest the subject property, noting how close the Kroger entrance will be to the house.

Ms. Savage stated that she is not opposed to the location of the Kroger store in the neighborhood, just to the size of the proposed new building.

Robin Michler, 439 Marquis Avenue, read the following statement into the record:

"As a recent applicant to this very commission on a zone change, I do not hold the view that all zone changes are inappropriate or that change is necessarily bad for a neighborhood. However, I do believe that zone changes should be made with careful consideration of the interaction between properties and the neighborhoods that house them. With this in mind, I argue that certain aspects of Kroger's plans are not in keeping with the Columbia Heights and Aylesford neighborhoods and that many of Kroger's key justifications do not match their proposal. In this letter, I highlight problems and discordance between Kroger's statement of justification and their actual plan, issues which led me to ask that this commission deny unjustified variances and prohibit drive through facilities as part of Kroger's zone change application.

1) Zone Change to B-6P

Kroger argues that "The vacant and contiguous lots on Marquis are quite small, oddly configured and contiguous to one another, but each lot is zoned differently, making it highly unlikely that they would be developed pursuant to its current zoning."

- a. The entirety of Marquis Avenue is composed of small parcels and the mosaic of small scale mixed-use buildings is a defining characteristic of the neighborhood. Consolidating multiple parcels into a single large superstore does not reflect the intricate small lot mosaic of the neighborhood.
- b. The only reason lots are vacant and unlikely to be developed under their current zoning is their ownership by Kroger. This neighborhood is highly desirable and even small lots are frequently developed or redeveloped.

I believe B-6P, as written, is an inappropriate transition zone for the small lots facing Marquis Avenue (a residential street). The intensive traffic and use proposed could be partially mitigated by adding a restriction against drive through facilities. If Kroger is unwilling to remove the drive through facility, their request to rezone these parcels to become part of a large superstore along a pedestrian oriented, urban, residential street should be denied.

2) Variance Request to Reduce Setback from 50' to 25' along Marquis

Kroger argues "The intent of the design was to create a downtown like atmosphere with the building at the property line"

- a. Marquis is an urban street, but it is not a downtown street and none of the adjacent houses are built close to the property line. Allowing Kroger to build so much closer to the street than the nearby houses would give the store an undesirably large profile on Marquis.
- b. Kroger has no plans to make an entry or exit for customers on Marquis. While this is typical of a suburban style shopping center, it is not typical of stores on a downtown or urban street.

As Kroger plans no entry or exit on the sidewalk along Marquis and no other building profiles are present along the street, it is clear that Kroger's justification is not accurate and, therefore, I ask that this variance be denied, allowing the zoning ordinance that is in place to do its intended job of protecting our street from this large impenetrable building profile.

3) Variance Request to Increase the Ground Building Area Coverage from 35% to 50%.

Kroger argues, "If the roof to parking was considered 'Ground' the coverage would be 32%. The ground coverage is to allow room to accommodate the required green areas and parking areas required in the B-6P zone."

Kroger is attempting to alter the formula for Ground Area. However, their argument is only justified if they also provide the additional green space required of their new, elevated, "Ground Area."

4) Variance Request to Allow Wall Lengths to Exceed 100 Feet without a Change in Setback

Kroger states, "Two sections of wall along Marquis are 111 feet and 127 feet. The walls are broken horizontally with material and textural changes."

Kroger is unable to comply with the wall length requirement, because of their desire not to move the building back from the property line. Should this setback variance be denied, as I have requested, then they will easily be able to comply with this requirement as well. Therefore, I ask that the variance request to allow wall lengths of 100 feet without a change in setback be denied.

Conclusion

Kroger is asking to rezone small lots facing Marquis Ave and proceed with a development that turns its back on our street with long impenetrable walls, provides no setback from the property line, and adds a drive through facility along a residential street. I ask that this commission ensure that Kroger does not turn its back on its neighbors and customers. Please add drive through facilities to the list of prohibited uses and deny or alter the variances that are not in keeping with the intent of the ordinance."

Ted Cowan, 612 Columbia Avenue, stated that he believed that the proposed Kroger store is a "square peg in a round hole." He said that the B-6P zone was designed for suburban shopping centers and, because some of the requirements for that zone do not work in this location, the petitioner is requesting too many variances. Mr. Cowan opined that it would be better to determine what type of zone would be more appropriate for such a use.

Mr. Cowan stated that one of his primary concerns is the lack of height restrictions inherent in the B-6P zone. He said that, if the petitioner should at some point move from the subject property, a building many stories tall could be built there. He said that the most recent rendering is very attractive, but he does not know if those proposed elevations are binding to the petitioner.

With regard to the proposed variances, Mr. Cowan read the following into the record from the staff report:

"Before any variance is granted, it must be found that the granting of the variance will not adversely affect...will not alter the essential character of the general vicinity."

Mr. Cowan stated that Marquis Avenue is a residential area, and he believes that a building with a 414-foot wall located eight feet from the curb would alter the character of the neighborhood.

Jenny Talbott, 634 Euclid Avenue, stated that she owns a small office building at that location, which is very near the subject property. She said that she believes that the long wall along Marquis Avenue will impact the character of her

office building. She stated that she is looking forward to the larger Kroger building, but she feels that the Marquis Avenue side of the building will have a negative impact on her business, and it could result in an unsafe situation, particularly at night.

Ginny Daley, 136 Burley Avenue, stated that she does not live in the adjacent neighborhood, but the subject property is the nearest grocery store to her home. She said that she believes that the proposed new Kroger store would be "overbuilt for the site, and excessive for the needs of the neighborhood."

Ms. Daley asked that the Commission consider that the petitioner has other options with regard to potential locations for the enlarged store. She said that there needs to be a "second UK Kroger," particularly in the Virginia Avenue area, where student housing has grown exponentially in the last decade. Ms. Daley displayed the staff's food access map, noting that that area is one of those classified as a "food desert." She noted that a former grocery store location is vacant and available on Virginia Avenue near Harrodsburg Road, but no reports have mentioned a need for additional access to food in the Euclid Avenue area. Ms. Daley is concerned that an expanded Kroger store on the subject property could impact the grocery store market and undermine any other company that might want to locate a grocery facility in the vacant Virginia Avenue location. She added that traffic could also be adversely impacted, since the student residents in the Virginia Avenue/Red Mile Road area would have to drive to the Euclid Avenue location.

Ms. Daley asked the Planning Commission members to consider the big picture that the proposed rezoning might have on the community as a whole. She said that, by limiting the requested variances, the Commission could provide an incentive for the petitioner, or another grocery store, to better align its growth with the research and documented planning goals for Lexington-Fayette County.

Bill Johnston, 645 West Short Street, stated that he does not reside near the subject property, but he is part of the Bluegrass Trust for Historic Preservation, and he is interested in the wellbeing of old neighborhoods. He asked that the Commission members be sensitive to the neighbors' concerns, particularly about the noise from trucks and the proposed trash compactor. In addition, Mr. Johnston is also concerned about the proposed setback along Marquis Avenue, and he believes that there should be a customer entrance there.

Chairman Comment: Mr. Owens stated that, at this time, the Chair would close the public comment portion.

Petitioner Rebuttal: Mr. Simpson stated that "perception is often reality when it comes to change," but there are several undisputed facts in this case: the existing Kroger store is unattractive; it is located closer to the homes on Ashland Terrace than the proposed new store will be; there is no existing soundproofing to mitigate the noise of delivery trucks currently accessing the rear of the store; there is no additional screening along the rear property boundary; and the proposed new store will be more attractive and more pedestrian-friendly. He said that there are constraints to consider as part of the process of redeveloping the subject property, but he believes that the homeowners nearest the portion of the property where the existing building setback is 4' would prefer the proposed 70' setback from the property line. The petitioner also contends that conditions will be improved for the nearest neighbors with the proposed relocation of the Kroger store's air conditioning units behind a parapet wall on the roof of the building, which should considerably reduce the noise. Mr. Simpson stated that the homeowner of the nearest residence on Marquis Avenue does have a legitimate reason to be concerned, and the petitioner considers it a challenge to reduce the impact on that resident as much as possible.

With regard to some of the concerns expressed about delivery truck noise on the subject property, Mr. Simpson noted that there are approximately seven deliveries a week to the loading dock at the rear of the store, each lasting about an hour, beginning at 8 a.m. He said, with regard to some of the residents' concerns about traffic from the proposed pharmacy drive-through, the projected usage of that facility is 8 – 10 cars during peak hours.

Mr. Simpson stated that the petitioner also contends that leaving the existing Kroger store as it is today would actually be worse for the neighborhood, and that their contributions to the area will outweigh any negative impacts. He opined that there could be no better project, for a significantly challenged area, than the proposed expanded Kroger store.

Opposition Rebuttal: Ms. Clark stated that she and her neighbors agree with Mr. Simpson's assertion that there is room for improvement for the existing Kroger store. She said that the Commission's charge at this time, however, is to consider the zone change and the variances, and whether or not the proposed B-6P zone fits the property and the context of the neighborhood. Ms. Clark opined that the proposed zone change is inappropriate as requested, and that its potential adverse impact is too great. She said that she and her neighbors would like for the requested variances to be removed, and limits placed on the zone change so that the store could never become a Kroger Marketplace. They also contend that the proposed zone change does not meet the required locational standards of the B-6P zone.

Ms. Clark stated that she and other residents are also concerned about "excessive market" and they believe that the Romany Road Kroger location might be closed if this existing Kroger is expanded. They also believe that the funds that the petitioner is proposing to invest at this location could be better spent in constructing a new store in the Virginia

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

Avenue/South Broadway area. In addition, the opposition letter Ms. Clark submitted to the Commission cited four market studies that indicate no need for "upzoning" in the area of the subject property for infill.

Staff Rebuttal: Mr. Emmons stated that the staff had no rebuttal comments, but would be available to answer Commission questions if necessary.

Commission Questions: Ms. Blanton stated that there had been comments about the appropriateness of the proposed B-6P zone and the need for so many variances, but it was her understanding that there was no "perfect fit" to allow the petitioner to expand the existing Kroger store in its current location. Mr. Emmons replied that that assessment was accurate. He explained that, in one of the early discussions between the petitioner and the staff, there was some question about whether it might be more appropriate to retain the existing B-1 zoning, and request a variance to allow the store to be larger than 40,000 square feet in size. It was decided that considering such a variance would be more of a deviation from typical practice than seeking a variance to the lot coverage, several of which have been granted in the past where residential uses were not proposed. Mr. Emmons added that many of the provisions of the B-6P zone, such as setbacks, appeared to match the needs of this proposal more closely than the B-1 zone.

Ms. Blanton said that one of the citizen objectors had indicated that square footage in the B-1 zone could go up to 50,000 square feet, and she asked if that was correct. Mr. Emmons responded that there is a special provision that would allow for that; Mr. Sallee displayed that portion of the text from the Zoning Ordinance on the overhead for the Commission members' review. Ms. Blanton asked for clarification that the Kroger store would only be able to expand their square footage by 2,000 square feet if it remained zoned B-1. Mr. Emmons answered that that was correct. He read the following excerpt from the Zoning Ordinance:

"No building to be used principally as a single store selling food, produce, grocery items, or general merchandise shall exceed 50,000 square feet in floor area unless it was approved by the Planning Commission prior to April 27, 2000. For at least 40,000 square feet in size, no such building shall exceed 60,000 square feet in any event."

Mr. Penn asked if providing a pedestrian entrance to the proposed Kroger store on the Marquis Avenue side could be reviewed at the time of the filing of a Final Development Plan for the subject property. Ms. Wade answered that it is an option, although the petitioner might object due to the changes that would be necessary to the internal layout of the store. The petitioner has indicated to the staff that providing an entrance on that side of the store would be difficult based on their typical store layout and the need to provide security at entrance points. Mr. Penn stated that he did not want to discuss that option at this time, since the Commission is currently considering only a preliminary development plan for the property; but he wanted to ask if that option was possible. Mr. Penn stated that the idea of rooftop parking is new to this community, and he has some questions about how it will function with regard to snow removal and other issues. He also asked if there would be any possibility of providing a pedestrian entrance on Marquis Avenue, since the wall on that side of the store would be very long. Ms. Wade explained that the Planning Commission has the ability to require such an entrance on Marquis; but the petitioner had indicated that that would not work for them, so the staff did not push that option.

Mr. Berkley said that, since questions had been raised about the locational standards, he would like for the staff to confirm that they do believe that this proposed rezoning meets the standards for the B-6P zone. Ms. Wade agreed that the staff does believe that those standards are being met.

Mr. Owens stated that he agreed that some of the issues that have been raised can be addressed at the Final Development Plan stage. He asked if the petitioner would be willing to agree to restricting the uses on the subject property to food sales only. Mr. Simpson answered that the petitioner does not intend to construct a Kroger Marketplace (which typically sells furniture and other household items in addition to groceries) at this location, but they do need to maintain a certain level of flexibility with regard to the sale of common grocery store items like school supplies and other non-food goods. He noted that the Commission is currently considering the zone change, variances, and development plan, but the development plan issues can be addressed further along in the process.

Mr. Wilson stated that he is conflicted about this request, because the neighborhood residents have indicated that, while they want to have a Kroger store in the neighborhood, they are concerned about the proposed size of the store. He asked if there is still any possibility for negotiations about the size of the store. Mr. Simpson responded that the petitioner needs to be competitive in the marketplace, and wants to retain their store on the subject property. He noted that the petitioner would be willing to discuss some issues, but added that they will be providing a more complete version of the plan later in the process, once the zone change is approved.

Mr. Berkley asked if the proposed expansion of the Kroger store on the subject property would result in any changes to the operation of other Kroger stores in the area. Mr. Simpson answered that all of the Kroger stores in the area have been under renovation for quite some time. He said that grocery stores must keep up with the demands of the marketplace, or they become obsolete and less competitive. He added that there are no plans to close any other stores at this time, noting that, since the Romany Road store occupies a certain niche, it is unlikely to be closed. Mr. Simpson

stated that the petitioner is attempting to ensure that every store in Lexington-Fayette County remains successful.

Ms. Roche-Phillips asked the staff to remind the Commission members of the KRS requirements for a rezoning. Ms. Wade responded that a zone change must either: 1) be in agreement with the recommendations of the Comprehensive Plan; or 2) if not in agreement with the Comprehensive Plan, the existing zoning is inappropriate and the proposed zoning is appropriate; or 3) there has been a social, physical, or economic change in the general vicinity that was not anticipated by the Comprehensive Plan. Ms. Roche-Phillips asked if the second criteria Ms. Wade mentioned meant that the zone change was consistent with the Comprehensive Plan, but the existing zoning is inappropriate. Ms. Wade responded that the second option assumes that the request is not in agreement with the Comprehensive Plan; the staff then evaluates the appropriateness/inappropriateness of the request, or whether there has been a change in the area. Ms. Roche-Phillips opined that this proposed rezoning might be in agreement with the Plan, but she did not believe that the existing B-1 zoning is inappropriate. She said that she also does not believe that a compelling argument has been made to show that the existing zoning is inappropriate, except for the fact that the petitioner cannot expand its store to the size it would like within the existing standard of the B-1 zone. Ms. Roche-Phillips encouraged the Commission to consider that the proposed zone change would result in the same zoning on the subject property as in the Hamburg Shopping Center, even though nothing in the neighborhood has changed. She said she is very concerned about excess traffic using the access easement to South Ashland Avenue, and that the effects of the changes on the subject property could "cascade over the neighborhood." Ms. Roche-Phillips said that she shops at this Kroger location, and she does not believe it needs to be expanded in order to offer a larger selection of items. She believed that B-6P zoning is inappropriate for this location "in a highly desirable neighborhood," which is included in the University of Kentucky live/work program, and she believes that rezoning the subject property to B-6P could ruin one of the community's "most treasured neighborhoods." Ms. Roche-Phillips stated that the Kroger store in the Beaumont shopping center was closed in order to construct a Marketplace store, which resulted in the old building being vacated, and still standing empty. She said that, if Kroger abandons the subject property, any other type of big-box store could locate there. She added that she would rather that a variance be granted to the size limitation for the store, than to rezone the property to B-6P.

Ms. Wade stated, for clarification, that the staff did not make a finding that the B-1 zone was inappropriate; their findings state that the R-4, R-1E, and P-1 zones along Marquis Avenue are inappropriate at that location, and B-6P is more appropriate. The staff has also found in the past that B-6P and B-1 can both implement the Retail Trade land use category. Ms. Roche-Phillips said that she would argue that the B-6P zone is not appropriate on a quarter-acre lot.

Ms. Blanton said that there is a lot of discussion about implementing Infill & Redevelopment, but "we just can't get to the execution phase." She said that, if the Planning Commission is not willing to execute infill, they should remove it as a policy consideration. Ms. Blanton opined that there has to be a balance between ensuring that the best thing is done for the community, and micromanaging how and on what scale the petitioner conducts their business. She said that she commented during the Zoning Committee's discussion of this request that she was concerned about traffic circulation on the site, and she is pleased that the situation appears to be improved somewhat with the revised development plan. Ms. Blanton added that she believes that the petitioner has provided some innovative solutions for some of the constraints on the site, and she would be disappointed if the Commission cannot find some way to move this project forward.

Ms. Mundy thanked the community members for their input, noting that it is vital for the Commission members to be aware of the needs and concerns of residents and the business community. She said, with regard to the concerns about a long, blank wall along the Marquis Avenue frontage of the Kroger store, that the submitted rendering indicates that the wall will have windows and will not be long and featureless. With regard to the neighbors' concerns about the increased size of the store, she said that it appears that the new facility will have improved access for pedestrians and cyclists, and will exist as a "neighborhood market" that provides more fresh food options and a better selection for its customers. Ms. Mundy noted that the petitioner owns the subject property, and it is not the Planning Commission's charge to require them to find another location in order to expand their facility. She said that the Commission's responsibility is to manage the site that exists, to the benefit of the residents and the community. Ms. Mundy concluded by noting that many of the concerns that have been raised will be addressed at the Final Development Plan stage.

Mr. Penn stated that he agrees with Ms. Blanton and Ms. Mundy, and he trusts that the petitioner will have the same zeal for providing innovative solutions on the subject property at the time of the Final Development Plan. He said that he does not believe that it would be appropriate to allow a variance to expand the size of the store at this location under the existing B-1 zone, because he is concerned about the future implications of that action. Mr. Penn noted that he does not particularly believe that the B-6P zone is entirely appropriate at this location; but he is aware that infill projects require some concessions, and he likes the concept of the proposed store. He added that he does not, however, want the petitioner to request the construction of a Kroger fuel station on the property in the future. Mr. Penn stated that he would be in support of the proposed rezoning to B-6P, because he supports the concept of infill to maintain the Urban Service Area boundary, and trusts that the petitioner will be willing to tweak the Final Development Plan in order to address some of the concerns that were raised at this public hearing.

Mr. Cravens stated that he agrees with Mr. Penn's comments, noting that the site is constrained and infill projects are often difficult. He noted that allowing the expansion of the Kroger store at this location could be considered as "saving"

three acres of developable land somewhere else in Lexington-Fayette County. Mr. Cravens added that the petitioner is proposing to invest a considerable amount of money in this project, and he would like to see it move forward.

Mr. Wilson stated that it seems that the residents and the petitioner can resolve their issues in some fashion that is mutually beneficial. He said that he has some concerns, but he believes that the petitioner has worked hard to resolve many issues on the site, and he encouraged all of the interested parties to continue to work together through the development process.

Mr. Berkley thanked the neighbors for their participation, noting that they are the petitioner's customers, and the petitioner wants to redevelop the Kroger store so that it will benefit the residents. He echoed many of the other Commissioners' comments, agreeing that offering an expanded B-1 zone would not be the best solution at this location. Mr. Berkley stated that this is a preliminary development plan, and he would like to see the requested zone change be approved, so that the project can go forward. He added that the Planning Commission and staff might want to consider some modifications to the development process in the Infill & Redevelopment area. He concluded by noting that he would vote in favor of this request.

Mr. Owens thanked the citizen participants as well, noting that the Commission members appreciate their comments. He said that he believed that a great deal of hard work has gone into this project, and that the revised development plan is much improved, particularly with regard to traffic circulation. With regard to the citizen question about whether the petitioner will be required to develop the property as depicted on the elevations, Mr. Owens stated that there would likely be some tweaks to that proposal; but the major elements of the development, such as landscaping, would remain. He encouraged the petitioner to seriously consider the addition of a pedestrian entrance on Marquis Avenue, noting that he is in support of this request.

Ms. Roche-Phillips stated that the petitioner has done a great deal of work, but she believed they could work harder in order to provide more protection for the neighborhood. She asked if the staff had considered conditional zoning restrictions to deal with issues such as lighting and the prohibition of specific land uses, in case the petitioner should abandon the subject property. She explained that she would like some reassurance that, if Kroger did leave the property, the space would still be used for a "high-quality food provider." Ms. Wade replied that the staff is not typically in favor of conditional restrictions to limit the use of a property to one particular use, since that type of planning can be short-sighted, but issues such as lighting could be considered as a conditional zoning restriction. She said that the staff does not have conditional zoning restrictions drafted; but they could do so if the rest of the Commission is interested, explaining that lighting and building height could be restricted via conditional zoning. Mr. Sallee placed a list of the allowable uses in the B-1 zone on the overhead for the Commission's review. Ms. Roche-Phillips stated that she was concerned about the possibility of hotels, but they were not an allowable use in the B-1 zone, so she would agree with not drafting a conditional zoning restriction to prohibit some uses. She said that she would, however, like for lighting on the property to be addressed. Ms. Wade noted that, if the Commission would like to impose a conditional zoning restriction, it would need to be done at this time. However, it could also be addressed on the development plan, now or in the future.

Mr. Owens stated that he believed it would be appropriate to address lighting on the Final Development Plan.

Zoning Action: A motion was made by Ms. Blanton, seconded by Mr. Penn, and carried 8-0 (Beatty, Brewer, and Plumlee absent) to approve MARV 2013-10, for the reasons provided by staff.

Variance Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 8-0 (Roche-Phillips abstained; Beatty, Brewer, and Plumlee absent) to approve the requested variances, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 7-1 (Roche-Phillips opposed; Beatty, Brewer, and Plumlee absent) to approve ZDP 2013-32, subject to the 10 conditions as listed in the revised staff recommendation.

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