

2. **DAVID M. HARL AND JOSOPHIA D. HARL ZONING MAP AMENDMENT & UHLAN COURT SUBDIVISION ZONING DEVELOPMENT PLAN**

- a. PLN-MAR-17-00005: DAVID M. HARL AND JOSOPHIA D. HARL (5/7/17)\* - petition for a zone map amendment from a Wholesale and Warehouse Business (B-4) zone to a Planned Neighborhood Residential (R-3) zone, for 0.34 net (0.43 gross) acres, for property located at 1251 Red Mile Road. A conditional use permit and dimensional variances are also requested.

**COMPREHENSIVE PLAN AND PROPOSED USE**

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

The petitioner proposes to rezone to a Planned Neighborhood Residential (R-3) zone in order to maintain the existing structure on the site, and convert it to a fraternity house with associated off-street parking. A conditional use permit for a fraternity house and several dimensional variances has also been submitted with the requested zone change.

**The Zoning Committee Recommended: Approval.**

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

1. The request Planned Neighborhood Residential (R-3) zone is in agreement with the 2013 Comprehensive Plan's Goals and Objectives, for the following reasons:
  - a. The Goals and Objectives of the Plan recommend expanded housing choices (Theme A, Goal #1); housing options that address the market needs of all citizens (Theme A, Goal #1b.); infill and redevelopment, as well as adaptive reuse of existing structures (Theme A, Goal #2); and calls compact, contiguous and/or mixed-use sustainable development within the Urban Service Area to accommodate future growth needs (Theme E, Goal #1b.).
  - b. The proposed rezoning will allow adaptive re-use of an existing structure that already has a distinctively residential character. This will allow an additional housing option to address demand for residential Greek housing near the UK campus.
  - c. Multi-family residential dwelling units are common along both the Red Mile Road and South Broadway corridors. These residential developments are located in close proximity to the University of Kentucky and provide much needed housing for students and faculty near the university campus.
  - d. The proposed redevelopment is located within the Urban Service Area, is proposed in a compact and contiguous manner, and addresses future residential growth needs.
  - e. Residential zoning for a fraternity house in close proximity, especially within walking distance, of the University of the Kentucky serves to reduce vehicles miles traveled, as most students that live nearby walk or utilize public transit to campus.
  - f. Redevelopment opportunities exist near the intersection of South Broadway and Red Mile Road. Residential land use and redevelopment has historically been a harmonious land use in the immediate area.
2. This recommendation is made subject to approval and certification of PLN-MJDP-17-00010: Uhlán Court Subdivision, 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 CONDITIONAL USE** – Fraternity House.

c. **REQUESTED VARIANCES**

1. Reduce the minimum front yard from 20' to 4'
2. Eliminate the required 15' perimeter landscape buffer (zone-to-zone screening)

**The Zoning Committee Recommended: Postponement and Approval (as recommended by the staff).**

**The Staff Recommends: Postponement of the requested Conditional Use Permit, for the following reason:**

- a. All necessary public facilities and services are not currently available and adequate for the proposed use. Off-street parking proposed does not offer a sufficient option on the subject site for vehicular movements, without having vehicles maneuver in a planned open space (basketball court) area.

**The Staff Recommends: Disapproval (or Withdrawal) of the requested Front Yard Variance, for the following reason:**

- a. Article 3-2 of the Zoning Ordinance does not require the existing building to meet the 20' minimum setback from Red Mile Road and Uhlán Court. No structural changes are proposed to the exterior of the principal building on this lot, so the building may be converted regardless of its setback from the adjoining streets.

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

The Staff Recommends: **Approval of the requested Landscape Variance**, for the following reasons:

- a. There will be no adverse health, safety or welfare impact to the adjoining neighborhood or neighboring properties from this variance. The existing building and off-street parking lot will remain as it has been for the past 32 years, and only one single family residence is located within 250' of the subject site.
- b. The unusual circumstance surrounding this proposed R-3 property or to other land in this vicinity is that the height of the existing fence and landscape material will almost completely comply with the Article 18 requirements, and materially comply with the need to buffer adjacent properties from this use. The site is bordered by another fraternity-owned land use to the north, and by a large parking lot immediately to the southwest, which necessitate little additional screening beyond that already in existence.
- c. Strict application of these Zoning Ordinance requirements would constitute an unnecessary hardship to the applicant, because it would necessitate a significant construction of privacy fencing along the northern property line amongst a significant tree stand along that property line.
- d. Approval of these variances would not result in an unreasonable circumvention of the Zoning Ordinance, as the applicant has committed to retain all of the existing landscaping on the site, which adequately screens the property from most of its neighbors.
- e. The variance has been requested by the applicant prior to the re-use of their property, and thus, there is no willful violation of any existing zoning regulation by the applicant.

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

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval of this variance is null and void.
  2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, 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 variance that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
  4. The property shall be additionally screened by the installation of an 18"-3' high hedge along the northwest property line, between the end of the existing retaining wall and the rear property line.
- d. PLN-MJDP-17-00010: UHLAN COURT SUBDIVISION (5/7/17)\* - located at 251 Red Mile Road.  
**(Vision Engineering)**

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

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Division of Waste Management's approval of refuse collection locations.
6. Delete note #1.
7. Delete note #9 (duplicate).
8. Revise note #10 for the use of a gate to the approval of Fire and Emergency Medical Service.
9. Provided the Planning Commission grants the requested variances.
10. Discuss off-street parking layout, and loss of parking.

Staff Zoning Presentation – Ms. Wade presented and summarized the staff report and recommendations for this zone change. She said that the subject property currently has a residential looking building located on it and the applicant is proposing to re-use that building as a fraternity house with 25 beds, which is a conditional use in the proposed R-3 zone.. She said that the applicant contends in their justification that this zone change is in agreement with the 2013 Comprehensive Plan. The staff agrees and recommends approval of the zone change.

Development Plan Presentation – Ms. Gallt presented a rendering of this development plan, which was displayed, and also handed out an updated staff report to the Commission with revised conditions, as follows:

The Subdivision Committee Recommended: **Approval**, subject to the conditions listed on today's agenda.

On March 21<sup>st</sup> the applicant provided a revised submission to the staff addressing several conditions identified by the Subdivision Committee at their March 2<sup>nd</sup> meeting. The staff can now offer the Planning Commission a revised recommendation for this zoning development plan.

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

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.

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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. Division of Waste Management's approval of refuse collection location(s).
6. Delete note #1 reference to "Variance 20' to 4'."
7. ~~Delete note #9 (duplicate).~~
8. ~~Revise note #10 for the use of a gate to the approval of Fire and Emergency Medical Service.~~
7. 9. Provided the Planning Commission grants the requested variances.
10. ~~Discuss off street parking layout, and loss of parking.~~

She said that this is a Final Development Plan for this location because this is an existing building, and no infrastructure improvements are necessary. She said that there were some concerns regarding the parking and drive aisle. Since the Committee meeting, a revised plan has been submitted changing the layout of the parking and the drive aisle to allow two-way traffic.

Commission Question – Mr. Penn asked about the business on the corner of Uhlan Court and what will be done to discourage vehicles from entering this property for that business. Ms. Gallt replied that there is a significant grade change that will prevent vehicles from doing so. Ms. Wade added that there is a solid fence at the termination of Uhlan Court.

Requested Variance – Mr. Sallee presented the staff report and the staff's recommendations for the requested variances and the conditional use requested for this zone change. He said that the conditional use is for a fraternity house at this location. Mr. Sallee mentioned that a legal size sheet staff exhibit had been prepared, containing the findings previously distributed to the Planning Commission.

Mr. Sallee said that there are two dimensional variances being requested for the subject property to allow the existing building to remain four feet from the right-of-way of Red Mile Road and four feet from the stub of Uhlan Court. He said that the applicant is also asking for the elimination of the perimeter landscaping requirements. He said that with the revised parking and the open space area for the residents, all of the required facilities are adequate for the proposed conditional use. He also said the staff doesn't believe that the variance for the building setback is required because there will not be any structural changes to the existing building. The only exterior changes that will be proposed are the addition of a handicap ramp and a fire escape.

Mr. Sallee said that there are two areas of the existing landscaping material that are not in compliance with the Article 18 requirements. He said, in the rear of the subject building on the property, there are a few trees missing along the fence line and on the northern property line, there isn't a double row of hedge material. There will also be an addition of one handicap parking space. He said that the landscape portion of this request was reviewed by the Landscape Review Committee, but they didn't have a quorum for that meeting. The discussion at that meeting was that the retaining wall should be augmented with a vehicular use planting from the end of the wall to the rear of the parking area, which was included in the staff's recommendation.

Mr. Sallee summarized the findings for the conditional use that appear on the staff's handout and said that the staff has made the following recommendations:

This recommendation of approval for this Conditional Use Permit is made subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval of this conditional use permit 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 conditional use that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
4. The fraternity shall operate at this location in accordance with University of Kentucky regulations and requirements for Greek organizations, including its alcohol policy, and in accordance with the LFUCG Noise Ordinance.
5. The off-street parking spaces shall be separated from the basketball court area with curbing or wheel stops.

Mr. Sallee stated that the applicant is not in agreement with the curbing and wheel stops on condition #5. He said that staff has no objections to remove that for that condition to require the separation without those particular improvements to the site.

The Staff Recommends: **Disapproval (or Withdrawal) of the requested Front Yard Variance**, for the following reason:

- a. Article 3-2 of the Zoning Ordinance does not require the existing building to meet the 20' minimum setback from Red Mile Road and Uhlan Court. No structural changes are proposed to the exterior of the principal building on this lot, so the building may be converted regardless of its setback from the adjoining streets.

The Staff Recommends: **Approval of the requested Landscape Variance**, for the following reasons:

- a. There will be no adverse health, safety or welfare impact to the adjoining neighborhood or neighboring properties from this

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- variance. The existing building and off-street parking lot will remain as it has been for the past 32 years, and only one single family residence is located within 250' of the subject site.
- b. The unusual circumstance surrounding this proposed R-3 property or to other land in this vicinity is that the height of the existing fence and landscape material will almost completely comply with the Article 18 requirements, and materially comply with the need to buffer adjacent properties from this use. The site is bordered by another fraternity-owned land use to the north, and by a large parking lot immediately to the southwest, which necessitate little additional screening beyond that already in existence.
  - c. Strict application of these Zoning Ordinance requirements would constitute an unnecessary hardship to the applicant, because it would necessitate a significant construction of privacy fencing along the northern property line amongst a significant tree stand along that property line.
  - d. Approval of these variances would not result in an unreasonable circumvention of the Zoning Ordinance, as the applicant has committed to retain all of the existing landscaping on the site, which adequately screens the property from most of its neighbors.
  - e. The variance has been requested by the applicant prior to the re-use of their property, and thus, there is no willful violation of any existing zoning regulation by the applicant.

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

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, 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 variance that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
4. The property shall be additionally screened by the installation of an 18"-3' high hedge along the northwest property line, between the end of the existing retaining wall and the rear property line.

Commission Question – Mr. Owens asked that since there are no windows on the side of the building which faces the closest residential uses on Uhlán Court, what is the process should the applicant choose to later add windows. Mr. Sallee replied that the applicant will not need to appear before the Planning Commission but will need to have that request reviewed by the Division of Building Inspection staff.

Petitioner Presentation – Dick Murphy, attorney, was present representing the petitioner. He said the applicant is in agreement with the staff's recommendations and is withdrawing the request for the front yard variance. He said that the parking and open space areas have been reconfigured, since the Subcommittee meetings. He said that he has met with Casey Kaucher, Division of Traffic Engineering, regarding the gate on the front of the subject property. He said that Traffic Engineering wanted to move that gate should Red Mile Road be widened in the future. He said that the following note will be added to the development plan:

PROPOSED ADDITIONAL NOTE FOR PLN-MJDP-17-000010: UHLAN COURT SUBDIVISION 1251 RED MILE ROAD

In the event that Red Mile Road is widened in the future, the gate shown on this plan may be relocated or eliminated, as determined by the Division of Traffic Engineering.

Mr. Murphy also said that with respect to condition #5; the applicant would like to suggest planters, which are higher in the field of vision. He suggested the following:

5. The off-street parking spaces shall be separated from the basketball court area with curbing or wheel stops or concrete planters or similar materials.

Commission Questions – Mr. Penn asked who will own this fraternity house. Mr. Murphy replied that Mr. and Mrs. Harl will retain ownership with a long term lease to the Housing Corporation.

Citizen Comment – There were no citizens present to speak to this application.

Zoning Action – A motion was made by Ms. Richardson, seconded by Mr. Brewer, and carried 11-0 to approve PLN-MAR-17-00005: DAVID M. HARL AND JOSOPHIA D. HARL, for the reasons provided by the staff.

Development Plan Action – A motion was made by Ms. Richardson, seconded by Mr. Brewer, carried 11-0 to approve PLN-MJDP-17-00010: UHLAN COURT SUBDIVISION, for the reasons provided by the staff.

The Motion was revised to include the revision of the staff recommendations. A motion was made by Ms. Richardson, seconded by Mr. Brewer, carried 11-0 to approve PLN-MJDP-17-00010: UHLAN COURT SUBDIVISION, for the reasons provided by the staff and to add the note submitted by Mr. Murphy:

In the event that Red Mile Road is widened in the future, the gate shown on this plan may be relocated or eliminated, as determined by the Division of Traffic Engineering.

Conditional Uses - A motion was made by Ms. Richardson, seconded by Mr. Brewer, carried 11-0 to approve the conditional uses recommended by the staff and with the addition to condition #5:

This recommendation of approval for this Conditional Use Permit is made subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval of this conditional use permit 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 conditional use that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
4. The fraternity shall operate at this location in accordance with University of Kentucky regulations and requirements for Greek organizations, including its alcohol policy, and in accordance with the LFUCG Noise Ordinance.
5. The off-street parking spaces shall be separated from the basketball court area with curbing or wheel stops or concrete planters or similar materials.

Requested Variance Action – A motion was made by Ms. Richardson, seconded by Mr. Brewer, carried 11-0 to approve the requested variances, for the revised reasons, and as recommended by the staff and the withdrawal of the front yard variance.

Note: Commission member Patrick Brewer and David Drake left the meeting at 4:30 p.m.

