

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

ZOTA 2012-7: AMEND THE NOTIFICATION REQUIREMENTS FOR CONDITIONAL USE PERMITS

INITIATED BY: Urban County Council

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

7-5 NOTICE - The Board shall fix a reasonable time for hearing an action or appeal and shall give public notice in accordance with KRS Chapter 424, as well as written notice as set forth more fully herein. Any person may appear at the hearing personally or by attorney. All applications shall be decided by the Board within sixty (60) days from the date of the application, unless postponement is granted pursuant to the Board's bylaws.

When an application is made for a variance, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to the owner of every parcel of property within two hundred (200) feet of the property to which the application applies. In the event that the subject property adjoins land which is zoned Agricultural Urban (A U), Agricultural Rural (A R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a 200-foot radius of the subject property, but to the next two properties beyond those included in the 200-foot radius; but in no event shall notice be required for property more than twenty-four hundred (2,400) feet from the subject property.

When an application is made for a conditional use permit, administrative review, non-conforming use or structure appeal, or any other appeal, written notice shall be given at least twenty-one (21) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to owners of parcels of property within eight hundred (800) feet ~~four hundred (400)~~ feet of the property to which the application applies. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A B), notification shall be given by first-class mail to not only those properties within a 800-foot ~~400-foot~~ radius of the subject property, but to the next two properties beyond those included in the 800-foot ~~400-foot~~ radius; but in no event shall notice be required for property more than one (1) mile from the subject property. In addition, notification shall also be given by first class mail to the neighborhood or homeowner's association which is nearest to the subject property, regardless of distance. Such association must be duly registered with the government through its Division of GIS.

All written notice shall be by first-class mail, with certification by the Board's Secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the Board the name and address of an owner of each parcel of property as described in this section and of the nearest neighborhood or homeowner's association. Records maintained by the Property Valuation Administrator may be relied upon to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group that administers property commonly owned by the condominium or cooperative owners.

STAFF REVIEW:

The Urban County Council has recently initiated a text amendment to Article 7-5 of the Zoning Ordinance. The purpose of the amendment is to modify the notification requirements for Conditional Use Permit applications to the Board of Adjustment by increasing the notification area to a distance of 800 feet from the subject property (property on which the proposed conditional use will operate), and requiring notice to the nearest neighborhood association or homeowner's association, regardless of distance. The Council initiated this text amendment proposal in April,

triggering review and a public hearing by the Planning Commission. The Planning Commission must review the proposed changes to the Zoning Ordinance and make a recommendation to the Urban County Council within 60 days of receiving the proposal, which in this case is by June 18th.

The Division of Planning has established and updates a list of “registered” neighborhood and homeowner’s associations in order to keep neighborhoods informed about development-related public hearings for zone changes, conditional use requests and variances. This same neighborhood association database is used by others within the government to contact neighborhoods about community events and services offered by the government, such as the Neighborhood Summits offered a few years ago at the Government Center. The database is available on the LFUCG website and can be accessed by the general citizenry of Lexington-Fayette County to make contact with their neighborhood association or to identify the neighborhood or homeowner’s association’s boundaries. Today, the Division of Planning requests mailing information, email, website and a map of the neighborhood association when new associations decide to register, but that was not always the case. Approximately 10% of the 250± registered neighborhood associations do not have a mapped boundary, either because they are a county-wide organization (such as the Fayette County Neighborhood Council), or because they choose not to provide the government with a map. Another 10 to 20 neighborhood associations are considered inactive at any given time.

The Kentucky Revised Statutes that apply to all planning and zoning activities (KRS 100) establish minimum notice requirements for zone change, conditional use, and variance applications. KRS 100 requires notification to any adjoining property owner and special notice if one of the adjoining properties happens to be located within the jurisdiction of another Planning Commission. There are no notification areas based on distance, or notices required to a neighborhood association. Lexington-Fayette County has been providing notice to property owners within 400 feet since the 1970s; these requirements were codified in the 1980s; and they have remained mostly unchanged since that time. Neighborhoods have been notified of zone changes in their area for nearly a quarter century.

While the staff is supportive of providing expanded notice on applications, the staff has several concerns with the specifics of the proposed change to the Zoning Ordinance. First, the increased cost of mailed notification to additional property owners up to 800 feet from the subject property could be significant for certain applicants, in some cases more than doubling the number of notification letters that must be mailed via first class mail. This could pose a hardship to “citizen” applicants. Second, the Zoning Ordinance currently treats the notification for a zone change (Planning Commission) and a conditional use (Board of Adjustment) application equally, as in both cases notification is required to property owners within 400 feet of the subject property. Additional notice is required if agricultural zoning is adjacent to the site. However, the proposed text amendment would give deference or greater importance to conditional use applications. There is concern that if the two types of requests are treated differently, a message is conveyed to the neighborhoods and applicants that one is more important than the other. Third, by establishing a legal requirement to notify the nearest neighborhood or homeowner’s association (only one), a situation may be created where errors would occur based on a subjective assessment of which of several associations is “closest.” Fourth, the proposed text amendment mentions associations being “duly registered with the government through the Division of GIS,” but makes no mention of the Division of Planning, who actually maintains the contact information for such associations. It can be clarified that being “duly registered” means providing up-to-date contact information to the Division of Planning and a geographical boundary map to the Division of GIS. Lastly, there are areas of the community that are “claimed” by more than one neighborhood association. Until now, the Division of Planning has not established any rules about how a neighborhood establishes its boundaries, as all such neighborhood were provided a courtesy notice. This will, however, become a broader issue if neighborhood notice becomes a legal requirement rather than a courtesy of the local government.

The staff would ask for additional time to formulate a staff alternative text for expanded notice that would address the issues outlined above for consideration by the Commission and the Council. The staff would like to further discuss the proposed text amendment and to conduct research into what other communities require for notification of similar applications.

The Staff Recommends: Postponement, for the following reason:

1. The proposed text amendment needs further review, discussion, and research prior to the staff making a substantive recommendation to the Planning Commission.