

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, August 1, 2019 at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members: Patrick Brewer, Bruce Nicol, Graham Pohl, and Larry Forester. Staff members in attendance were: Traci Wade; Tom Martin; Hal Baillie; Samantha Castro; Lauren Hedge; and Debbie Woods, Brandi Peacher, Mayor's Office and Traci Jones, Department of Law. The Committee members reviewed applications and made recommendations as noted.

- A. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS** - Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) Proponents (10 minute maximum OR 3 minutes each)
 - (b) Objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) Petitioner's comments (5 minute maximum)
 - (b) Citizen objectors (5 minute maximum)
 - (c) Staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **6K AND UNDER AUTO SALES, LLC ZONING MAP AMENDMENT & ELKHORN PARK, BLOCK 8 (A PORTION OF) (W.P. LITTLE PROPERTY) (AMD) ZONING DEVELOPMENT PLAN**

- a. **PLN-MAR-19-00011: 6K AND UNDER AUTO SALES, LLC (9/1/19)***- a petition for a zone map amendment to modify the conditional zoning restrictions in the Highway Service Business (B-3) zone, for 0.85 net (1.14 gross) acres, for property located at 1709 North Broadway.

MODIFICATIONS OF CONDITIONAL ZONING RESTRICTIONS

In order to modify or remove conditional zoning restrictions, the applicant must prove that the request meets the requirements of Article 6-7(c) of the Zoning Ordinance. This section of the Ordinance states that the request may be granted only if it is found that there has been a major change in economic, physical, or social nature on the subject property or within the area containing the subject property. Additionally, the applicant must prove that the basic character of the area has been substantially altered since the time the conditional zoning restrictions were imposed that make the restrictions inappropriate. The burden is on the applicant to prove that such changes have occurred.

The petitioner has requested to remove a conditional zoning restriction on the subject property, which prohibits "establishments for the display, rental, sale, service and/or minor repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes or supplies for such items," in order to permit automobile sales as a principal use on the subject property. Conditional zoning restrictions were put in place in 1988 by the Urban County Planning Commission and later ratified by the Urban County Council.

The Zoning Committee Recommended: Postponement to the full Commission.

The Staff Recommends: Postponement, for the following reasons:

1. The applicant's justification and corollary development plan do not provide an adequate depiction of how the applicant seeks to utilize the subject property so that the proposed land use will not impact the neighboring properties that the conditional zoning restrictions seek to alleviate.
 2. The applicant has not shown how they seek to address the visual elements along North Broadway, which acts as a gateway into Lexington, and was one of the reasons the conditional zoning restrictions were adopted.
 3. The applicant has not described their outreach with the neighboring properties that would be most affected by the removal of the conditional zoning restrictions.
- b. **PLN-MJDP-19-00038: ELKHORN PARK, BLOCK 8 (A PORTION OF) (W.P. LITTLE PROPERTY) (AMD) (9/1/19)*** - located at 1709 N. BROADWAY, LEXINGTON, KY.
Project Contact: Vision Engineering

Note: The Planning Commission postponed this item at their July 25, 2019, meeting. The purpose of this amendment is to remove auto sales from the conditional zoning restrictions.

The Subdivision Committee Recommended: Postponement. There are questions regarding the application compliance with Article 21 of the Zoning Ordinance.

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

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

1. Provided the Urban County Council rezones the property B-3 with revised conditional zoning restrictions; 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. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Correct Planning Commission certification.
8. Correct labeling for Purpose of Amendment, and denote area of amendment.
9. Clarify interior landscaping calculations in site statistics and the note labeled interior landscaping.
10. Dimension access points and building on 1701 N. Broadway.
11. Addition of conditional zoning restrictions.
12. Addition of contour lines.
13. Depict parking for 1719 N. Broadway as shown on previous development plan (DP 2001-74).
14. Denote construction access on plan.
15. Addition of street cross-section for Cane Run Road and denote location of cross-section for street on plan face.
16. Denote vehicle display area.
17. Complete site statistics for all 3 lots.
18. Denote: The subject property is located in the Royal Springs Aquifer.
19. Discuss proposed land uses and label on plan.
20. Discuss access between 1701 and 1709 N. Broadway.
21. Discuss parking for employees and customers.
22. Discuss delineation/separation of shared access point between 1709 and 1719 N. Broadway.
23. Discuss need for enhanced landscaping along N. Broadway.

Zoning presentation – Mr. Baillie directed the Commission's attention to the PowerPoint presentation and said that the applicant has requested a zone map amendment to modify the conditional zoning restrictions in the Highway Service Business (B-3) zone, for 0.85 net (1.14 gross) acres, for property located at 1709 N. Broadway.

Mr. Baillie explained that the petitioner is requesting to remove the conditional zoning restrictions that were put in place by the Urban County Planning Commission in 1988, then later ratified by the Urban County Council. The current conditional zoning restriction that the applicant seeks to remove prohibits an establishment for the display and rental, sales, service and/or minor repairs of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes or supplies for such items.

Mr. Baillie indicated that the subject property is located on N. Broadway, which is a major arterial road way. He said that N. Broadway has four travel lanes, as well as a center turn lane. Access to the subject property is along N. Broadway. There is a shared access between 1709 and 1719 N. Broadway and a separate access approximately 120' west of the shared access point on the subject property.

Mr. Baillie said that the subject property is surrounded either by the Single Family Residential (R-1C) zone or the Highway Service Business (B-3) zone. The access to the rear neighborhood is off N. Broadway via Cane Run Road or Dover Road.

Mr. Baillie added that there is an access connection through 1701, 1709 and 1719 N. Broadway. The land use for 1701 is automobile sales, while 1719 N. Broadway is a strip mall with retail uses. He noted that 1701 N. Broadway is associated with 1709 N. Broadway, due to the shared access.

Mr. Baillie said that the subject property was rezoned from a Single Family Residential (R-1C) zone to Highway Service Business (B-3) zone in 1988. At that time, conditional zoning restrictions were applied to the subject property limiting the allowable uses. Those uses that were prohibited included advertisement signs, establishments for the display sale, rental service and/or minor repair of farm equipment, contractor equipment, automobile, motorcycles, trucks, boats, travel trailers, mobile homes, or supplies for such items, as well as kennels, animal hospitals or clinics, including offices of veterinarians. He said that these conditions were deemed appropriate due to the close proximity to the neighborhood and the designation of N. Broadway as being a major entrance or gateway into Lexington.

Mr. Baillie said that the 1988 conditional use restrictions were included with the zone change to ensure the development would be an asset to the image and visual quality of the community, specifically the N. Broadway corridor. The request to modify the conditional zoning restrictions is the second application seeking to allow display or rental vehicles at this location.

Mr. Baillie briefly described that the initial application was the result of a citizen complaint that was submitted to the Division of Planning, Zoning Enforcement section in March of 2018. He then said that the complaint expressed concerns about the employee and customer parking and storage and inventory for the newly established vehicle sales establishment. The complaint raised questions about whether or not that type of use was in compliance with the conditional zoning restrictions. He said that during the course of the investigation, the staff realized the applicant had applied for and was granted a Zoning Compliance Permit for vehicle sales. That permit was mistakenly issued because of the current conditional zoning

restrictions on the property, which prohibited vehicles sales. The permit was voided, at which time, the applicant was advised that one option was to file an application for a zone change to amend the current conditional zoning restrictions. He said that following the issuance of the Zoning Compliance Permit, a Certificate of Occupancy was not obtained prior to opening the business, nor were permits obtained from Building Inspection for paving, building or remodeling of the site. He then said that had a building or pavement permit applications been submitted, the applicant would have been informed that the proposed use was not permitted. Mr. Baillie said that the original application was withdrawn before the Planning Commission public hearing. Since that time, the applicant has been cited twice for violating the conditional zoning restrictions related to automobile sales.

Mr. Baillie indicated that the applicant opines that the proliferation of auto sales in the region has resulted in a major change of an economic and physical nature of the subject property and within the area containing the subject property. Furthermore, since the increase in sales of automobiles and recreational vehicles surrounding the subject property, including the neighboring 1701 N. Broadway, which has been done "by right," the preservation of the basic character of the area that was sought during the 1988 rezoning of the property has been substantially altered. He said that the changes in the land use in the area since the time that the conditional zoning restrictions were applied now make this specific use restriction inappropriate. With this evidence, the staff is in agreement with the applicant's position.

Mr. Baillie said that in the period following the Subdivision and the Zoning Committee meetings, the applicant met with the staff to revise their development plan in order to address the concerns described within the original Staff Report and the comments presented during the Committee meetings. The applicant modified their development plan to address the concerns regarding the impact on the neighborhood located to the rear of the subject property, and the visual impacts on a gateway into downtown Lexington. Furthermore, the connection between 1701 N. Broadway has been shown and areas of display and inventory storage have been delineated. With these modifications, the applicant addressed many of the concerns regarding the use of the subject property and the impacts on the surrounding area.

Mr. Baillie said that Article 6-7(c)(1)(a) of the Zoning Ordinance clearly states that "*The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.*" In this situation, the original zone change application did not meet the threshold to show the preponderance of the evidence of a significant change in the area or on the subject property. While the applicant has offered modification to the development plan, it is important to solidify those changes, not only on the corollary development plan, but also within the Zoning Ordinance utilizing conditional zoning restrictions. He said that the applicant has not addressed all of the elements of the conditional zoning restrictions that were imposed in 1988, which include advertising signs (billboards) and kennels, animal hospitals or clinics, including offices of veterinarians. These conditional restrictions shall remain prohibited. Additionally, adult arcades, adult book stores and adult entertainment establishments, as well as outdoor recreational and/or amusement facilities shall be prohibited due to the close proximity of the nearby neighborhood, which could cause potential negative impact to that area. In an effort to reduce the impact of the proposed land use on the neighborhood there shall be no outdoor speaker systems, and all lighting on the subject property shall be no taller than 10 feet in height and shall be shielded and directed downward. Furthermore, the control of the potential overflow of inventory on the subject property shall be limited to 30 or less vehicles, and shall be located in a designated area, as depicted on the corollary development plan. No inventory shall be located along the structure of 1719 N. Broadway and no inventory shall block or inhibit the customer parking along the western edge of 1719 N. Broadway. Finally, with N. Broadway being the gateway to Lexington there shall be a continuous 3-foot tall hedge, as well as a four-plank horse fence located along the frontage of N. Broadway. This will ensure the development is an asset to the visual quality of the Lexington community and the corridor.

Mr. Baillie said that the staff was in agreement with the applicant's justification, and recommends approval, for the following reasons:

1. The applicant has shown that there has been a major change of an economic and physical nature on the subject property or within the area containing the subject property, which has altered the basic character of the immediate area due to the proliferation and growth of automotive and recreational vehicle sales in the area since the conditional zoning restrictions were imposed in 1988.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use and buffering restrictions are recommended via conditional zoning:
 - a. Prohibited Uses:
 - i. Advertising signs (billboards)
 - ii. Kennels, animal hospitals or clinics, including offices of veterinarians
 - iii. Adult arcades, adult bookstores, or adult entertainment establishments
 - iv. Outdoor recreational facilities and amusement facilities
 - b. Outdoor speakers or amplification shall be prohibited on the subject property.
 - c. Lighting shall be a maximum of 10 feet in height and shall be shielded and directed away from the neighborhood located to the rear of the property.
 - d. Vehicular inventory on the subject property shall be limited to 30 or less vehicles, and shall be located in designated areas, as depicted on the corollary development plan. No inventory shall be located along the structure of 1719 North Broadway.
 - e. There shall be a continuous 3-foot hedge and four-plank horse fence located along the frontage of North Broadway.

3. This recommendation is made subject to approval and certification of PLN-MJDP-19-00038: ELKHORN PARK, BLOCK 8 (A PORTION OF) (W.P. LITTLE PROPERTY) (AMD), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

Development plan presentation - Ms. Gallit directed the Commission's attention to the final development plan, and briefly explained the proposed request. She indicated that the staff was recommending approval, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property B-3 with revised conditional zoning restrictions; 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. Department of Environmental Quality's approval of environmentally sensitive areas.
6. ~~Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.~~
7. ~~Correct Planning Commission certification.~~
8. ~~Correct labeling for Purpose of Amendment, and denote area of amendment.~~
9. ~~Clarify interior landscaping calculations in site statistics and the note labeled interior landscaping.~~
10. ~~Dimension access points and building on 1701 N. Broadway.~~
11. ~~Addition of conditional zoning restrictions.~~
6. 42. Addition of contour lines for all lots on plan.
13. ~~Depict parking for 1710 N. Broadway as shown on previous development plan (DP 2001-74).~~
7. 44. ~~Denote Move construction access on plan between 1701 and 1709 N. Broadway.~~
15. ~~Addition of street cross section for Cane Run Road and denote location of cross section for street on plan face.~~
8. 46. Denote vehicle display area for 1701 and 1709 N. Broadway.
17. ~~Complete site statistics for all 3 lots.~~
9. 48. Denote: The subject property is located in the Royal Springs Aquifer.
10. 49. Discuss proposed land uses and label on plan.
20. ~~Discuss access between 1701 and 1709 N. Broadway.~~
21. ~~Discuss parking for employees and customers.~~
22. ~~Discuss delineation/separation of shared access point between 1709 and 1710 N. Broadway.~~

Ms. Gallit directed the Commission's attention to condition #10 and explained that the applicant's proposal was to have automobile sales on the subject property, but the development plan indicates a detail shop. The staff wants clarification as to the land use, and that it be correctly denoted on the development plan.

Commission questions – Ms. Mundy asked if the applicant has met with the Royal Springs Aquifer Committee (condition #9). Ms. Gallit replied negatively. Mr. Martin responded that the applicant will need to meet condition #9 before the plan is certified.

Mr. Owens clarified that the subject property is the center lot shown on the rendering. Ms. Gallit replied affirmatively.

Mr. Owens then asked, even though the zone change is for the center lot, the rendering shows landscaping extending between 1709 and 1719 N. Broadway. Ms. Gallit indicated that the added landscape area will act as a buffer to help separate the two lots.

Mr. Owens asked if the required hedge and fencing along N. Broadway will be only on the subject property or both properties. Mr. Baillie said that 1701 and 1709 N. Broadway are working together so both properties are being amended, which allows the landscape buffer to be required.

Mr. Owens then asked if there will be a separation between each building. Ms. Gallit explained that there is an access driveway between 1701 and 1709 N. Broadway that will be utilized by both those properties, but as for 1709 and 1719 N. Broadway there will be no access between these lots. There will be an area of landscaping separating the two properties. The only use allowable along the property line for 1709 and 1719 N. Broadway would be employee parking. Mr. Baillie said that, as part of the conditional zoning restrictions, there shall be no storage of inventory on the side of 1709 N. Broadway along its side with 1719 N. Broadway. The inventory will only be allowed in designated areas and be restricted to a maximum of 30 vehicles. He then said that, as for the employee and customer parking, there is a private agreement between the applicant and 1719 N. Broadway. This agreement will allow employees and customers of the strip mall to utilize the parking spaces shown on 1709 N. Broadway along the side of 1719 N. Broadway.

Mr. Baillie presented a letter of opposition to the Commission for their review.

Representation presentation – Jacob Walbourn, attorney, along with Matt Carter, Vision Engineering, were present representing the Hammam Shalash.

In reference to Mr. Owens' previous question, Mr. Walbourn explained that the area between 1709 and 1719 N. Broadway is currently open to traffic, but they are proposing to extend the landscaping into the site and add a curb. He noted that there will be a physical barrier preventing traffic from entering 1719 N. Broadway to access 1709 N. Broadway.

Mr. Walbourn presented a PowerPoint presentation, and briefly explained that the nature of this request greatly resembles a Zone Map Amendment Request (MAR); but for this case, only the conditional zoning restrictions are proposed to be modified. This request does not fall under the Comprehensive Plan, or the Placebuilder. This request only relates to Article 6-7(c)(1)(a) of the Zoning Ordinance, which speaks to the requirements of removing a conditional zoning restriction that prohibits automobile sales at 1709 N. Broadway. He then said that the original conditional zoning restriction listed other items such as farm equipment, but his client will only sale automobiles at this location.

Mr. Walbourn said that the analysis for this type of request was similar to a zone change request, but the difference between the two is that findings are required to address what has changed since the restriction was imposed for this type of request. He indicated that their justification for removing the conditional zoning restrictions is as follows:

"Major change of economic, physical or social nature on the subject property or within the area in which the subject property is located, which was not anticipated at the time the binding restriction or condition was imposed, and which has substantially altered the basic character of such area making the restriction or condition inappropriate or improper."

Mr. Walbourn said that they believe there has been a major economic change in this area that makes the prohibition against automobile sales not an appropriate conditional zoning restriction. He then said that the property was rezoned on November 17, 1988, almost 31 years ago. That zone change modified the zoning for 1705, 1715 and 1719 N. Broadway from a Single Family Residential (R-1C) zone to Highway Service Business (B-3) zone, with conditional zoning restrictions attached, which were previously mentioned by the staff. He added that the reasons that were made at the time of the original zoning change were as follows:

"Close proximity of residential uses makes use restriction necessary to ensure residential area is not impaired" and "N. Broadway is a major entrance in to the community assets to the visual quality of the community.

Mr. Walbourn presented several photograph of the general area from 1993 to present, and gave a brief description of each. He indicated that there has been a major change in this area that includes the proliferation of "travel trailer" (RV) uses in the area on both sides of N. Broadway; transition of gas station use to car sales use on property immediately adjacent to the subject property; auto-centric uses (particularly sales) dominate the corridor; and the single-family residential neighborhood has persisted and expanded even during shift to auto-centric uses.

Mr. Walbourn continued to present several photographs of the nearby uses and their visual impacts to the corridor. He said that N. Broadway has seen major changes of a physical and economic nature in this area since the conditional zoning restrictions were imposed. The emergence of auto-centric uses on the corridor make restrictions inappropriate under the current circumstances. The agreement with the staff to provide fencing will actually enhance the viewshed along N. Broadway.

Mr. Walbourn asked if automobile sales has impaired, made worse, diminished, weakened or damaged the adjacent neighborhood. He indicated that the adjacent neighborhood has not been impacted by the automobile-related uses along N. Broadway, and to further prove that the neighborhood has not been impacted, Mr. Walbourn studied 1716 Hawthorne Lane. He indicated that the rate of inflation from 2013 to 2019 was 9.7%, however, the property value increased 26.3% per the PVA assessment. To further evaluate property values, they looked at not only 1716 Hawthorne Lane, but also 1712-1724 Hawthorne Lane (even). No transactions have taken place since 2011. He then said that there is no redevelopment in the neighborhood.

Mr. Walbourn concluded that the operation of auto-centric uses generally, and car lot specifically, has not impaired the value, caused property sales or led to the redevelopment to the neighborhood. He said that they are proposing steps that can be done to address any concern of impairment to the neighborhood, which include no speakers at the rear of the property; all lighting will be directed away and shield and they will preserve existing landscaping at the rear of the site.

Mr. Walbourn indicated that they have tried to meet with the neighborhood, but they were not willing to meet with his client. They do not know how to address the neighborhood concerns if those concerns are not being voiced to them. He said that the staff had pointed out several issues that needed to be addresses in order to reach an approval recommendation of the development plan to be presented to the Commission. He indicated that his client has agreed to everything the staff had requested without hesitation.

Mr. Walbourn ended his presentation by asking does restricting automobile sales on the property located at 1709 N. Broadway still remain appropriate. He said that over the last 31 years, it has become clear that restricting automobile sales is no longer appropriate. This area is proliferated with auto-centric and RV's along N. Broadway. He said that the automobile sales with the enhanced landscaping down N. Broadway will not serve as a detriment to the visual integrity of the corridor. Having automobile sales at this location will not cause an impact on the adjacent neighborhood property values. The major change in the area is the increased RV sales lot on N. Broadway.

Commission questions – Mr. Owens asked what the subject site is being used for. Mr. Walbourn replied office space. Mr. Owens asked if inventory is allowed on the subject property. Mr. Walbourn replied that he was unsure. Mr. Owens said that

he had gone by the subject property and there are at least 12 vehicles on site with for sale signs. He said that Mr. Shalash wants to turn over a new leaf, but it seems that he is still operating a vehicle sales lot, which is currently prohibited.

Supporters - Mr. Shalash, the applicant, indicated that Zoning Enforcement did issue notices of violation to them on two different occasions, but after that time, they informed Jim Marx, Zoning Compliance Manger, with the Division of Planning of their plans to seek a zone change. He then said that Mr. Marx had told them the vehicles can stay on site until after the ruling of the Planning Commission and the Urban County Council. Mr. Shalash said that in his opinion they are not going against the regulations. He added that he had met with Mr. Marx and Mr. Duncan and they are aware of the vehicles on site.

Opposition – Richard Murphy, attorney, was present representing Peter Sun and Susan Lui, property owners of 1719 N. Broadway. He said that that 1709 and 1719 N. Broadway share an entrance leading into each of the lots and had both lots follow the conditional zoning restrictions, there would not be issues with the entrance. He presented a PowerPoint presentation, and gave a brief description of each slide. Mr. Murphy said that there were several permits that the applicant should had obtained ranging from grading permit to do the additional paving; a building permit to transfer the car wash into an office space; and before a structure is occupied a Certificate of Occupancy must be obtained. He then said that anyone of these permits would have to verify the zoning of the property before a Zoning Compliance permit is issued.

Mr. Murphy said that his clients are concerned about the lack of customer parking for the shopping center and the inability for the Larger trucks to enter the rear of the property because of the overflow of automobiles from 1709 N. Broadway. He distributed an exhibit packet to the Commission, and gave a brief summary of each. He noted that the legal standards of granting a change to a conditional zoning restriction can be located in Article 6-7(c)(1)(a) of the Zoning Ordinance. Article 6-7(c)(1)(a) clearly states in order to change the restrictions a *“Major change of economic, physical or social nature on the subject property or within the area in which the subject property is located, which was not anticipated at the time the binding restriction or condition was imposed, and which has substantially altered the basic character of such area making the restriction or condition inappropriate or improper. The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.”* He said that in 1988 staff report show the staff recommending conditions to be imposed for the following reasons:

1. The close proximity of residential uses (single-family homes adjoin the property along its northern boundary) makes use restriction necessary to ensure the residential area is not impaired.
2. North Broadway is a major entrance into the community. Use restrictions as proposed will ensure that the development is an asset to the image and visual quality of the community.

Mr. Murphy said that, other than more houses being developed, there has been no change to this area and N. Broadway is still a major gateway to the community. The zoning pattern in the surrounding area has not changed since the restrictions were added. He then said that the staff report from 2018, had stated that *“Even though numerous other parcels in the area now contain vehicle sales establishments that were not in existence at the time of the subject property’s rezoning, the applicant has not justified the request to remove the conditional zoning restriction.”* These statements only confirm that other establishments developed as allowed on unrestricted sites. The reason the restrictions were put in place was to protect the residential area adjoining the subject property. If the residential properties had been rezoned to a non-residential zone, then the applicant would have a *“clear preponderance of the evidence”* supporting the removal of the zoning restriction. Because the adjacent Elkhorn Park neighborhood remains residential, there is no evidence to support the removal of the conditional zoning restriction.

Mr. Murphy said that the only difference between the 2018 request and the 2019 request was the landscape buffer between 1709 and 1719 N. Broadway. He asked what happens if that landscape buffer is not built. Not receiving a Certificate of Occupancy is not a deterrent because they have already been operating the sales lot for two years. They find it hard to believe that the applicant will put in the work because they have never received a permit to operate the vehicle sales lot.

Mr. Murphy said that this property has been out of compliance for two years and the cars have remained on the lot, even through this zone change hearing. He then said that it is not right to bring a use into compliance by conceding to what they are already doing improperly. He added that the Planning Commission should not reward the applicant for what has been going on the subject property for the last two years.

Mr. Murphy concluded by saying that he has drafted proposed findings for disapproval, and requesting the Planning Commission to disapprove this request.

Note: A recess was declared by the Chair at 3:30 p.m. and the meeting re-convened at 3:40 p.m.

Citizen opposition - Missy Rogers, 538 Dover Road, spoke in opposition to this request, and requested the Planning Commission to deny the applicant’s request. She presented photographs showing the number of automobile parked on the subject property and along N. Broadway, which impact the corridor.

David Danforth, 525 Dover Road, spoke in opposition to this request, and requested the Planning Commission to deny the applicant’s request. He does not believe the applicant will install the improvements because the number of cars on the lots allows no room to move the cars around or even plant the required landscaping.

Brenda Cochran, 1720 Woodlark Ave, spoke in opposition to this request, and requested the Planning Commission to deny the applicant's request. She presented photographs showing an automobile trying to exit the intersection of Cane Road and N. Broadway. She explained that the person in the car could not see the oncoming semi-tracker trailer truck due to business parking their vehicles so close to the intersection. This is a safety hazard because of the potential traffic accidents.

Vincent Bonomini, manager of the Penn Station located at 1719 N. Broadway, spoke in opposition to this request, and requested the Planning Commission to deny the applicant's request. He explained that the businesses in the strip mall are seeing a decrease in sales. This decrease is due to several factors such as a tow truck or vehicle delivery truck blocking part of the access forcing traffic down to using one lane for entering and exiting the subject property. The vehicle sales employees making illegal traffic movements, which caused one of his employee to be involved in a traffic accident.

Dawn Forry, 151 Muir Station Rd, spoke in opposition to this request, and requested the Planning Commission to deny the applicant's request. She explained that she was the previous owner of 1719 N. Broadway, and indicated that no matter what the applicant says they will do they will not follow the regulations. She added that the property values may not be decreasing, but the businesses in the strip mall are suffering. The actions of the adjacent lot is stopping the strip mall's customers by closing off the access, or they are imposing themselves on the businesses and they threaten people. This type of behavior is unacceptable. She indicated that she was assured by the Division of Planning that the subject property would fall into compliance. She thought she sold the property to Mr. Sun in good conscience and she was relying on the City to follow through for her. She believes that the businesses located at 1719 N. Broadway or the nearby neighborhood will be negatively impacted.

Carter Crump, 1720 Woodlark Ave, spoke in opposition to this request, and requested the Planning Commission to deny the applicant's request. He said that the employees of these two lots create a safety hazard on N. Broadway by driving in the turn lane in the wrong direction. The employees will park the vehicles near the intersection of Cane Run Road and N. Broadway creating a safety issue for cars trying to exit Cane Run Road. He said that people cannot get into 1719 N. Broadway because of the number of parked cars blocking the access into the lot. Mr. Crump said that once the landscaping and fence are installed, plus the parked cars, the intersection at Cane Run Road and N. Broadway will be further impacted.

Dan Forry, 151 Muir Station Rd, spoke in opposition to this request, and requested the Planning Commission to deny the applicant's request. He indicated that the development is not the problem, but rather whether or not the applicant will do what is required.

Peter Sun, 1030 Monarch Street, spoke in opposition to this request, and requested the Planning Commission to deny the applicant's request. Mr. Sun is the new property owner of 1719 N. Broadway and he was assured that the issues with the adjacent property were resolved, but as of today there are still cars on the lot. He indicated that some of the tenants in the strip mall will not be renewing their lease because of the vehicle sales lot impacting the mall parking lot and the side parking area.

Charles Hife, spoke in opposition to this request, and requested the Planning Commission to deny the applicant's request. He indicated that good planning practice and common sense would say the Commission should turn down this application. The applicant's contention that the changes along N. Broadway have been unanticipated is ridiculous. There have been five Comprehensive Plan reviews since 1988 and the staff would anticipate these changes along N. Broadway. The Planning Commission should not reward this type of bad behavior.

Applicants rebuttal – Mr. Walbourn said that the Planning Commission's charge in this case is to evaluate whether the findings under Article 6-7(c)(1)(a) of the Zoning Ordinance have been met. The applicant has presented evidence that they have met the findings of Article 6-7(c)(1)(a) and the staff concurs with their findings. The previous testimony is not germane to this request.

Mr. Walbourn said that the parking spaces along the side of 1719 N. Broadway are not part of his lot. Those parking spaces are part of an easement that belongs to 1709 N. Broadway. They have offered those parking spaces to Mr. Sun, but since he could not obtain those spaces immediately then he decided to oppose this request. However, the applicant is still willing to discuss those parking spaces with Mr. Sun.

Mr. Walbourn said that the development plan resolves the issue of the access between 1709 and 1719 N. Broadway. If the Planning Commission denies this request then the landscape buffer will not be installed and the circulation between the lots will continue as is for this property owner or the next property owner.

Mr. Walbourn then said that as for the permits, those have been obtained. As for the enforcement, the staff can speak to their procedures and the Planning Commission is not part of enforcing fines or passing judgment. The Infrastructure Hearing Board is the one who can reduce or eliminate the amount of the fines.

Mr. Walbourn asked has there been a major change in this area, then replied that in his opinion the answer is yes. He then asked has the neighborhood been impaired, no. Will the proposed landscaping improvements have a negatively impact on the viewshed along N. Broadway; no. He said that he is not trying to diminish the concerns from the audience, but it is not germane to what is being requested of the Planning Commission.

Mr. Walbourn asked the Planning Commission to trust the professional staff to enforce any future violations of a development plan. He then asked the Planning Commission to focus their attentions to what is relevant to this case. The staff is in agreement with the proposed change to the conditional zoning restrictions, and asked for the Planning Commission to approve the change.

Mr. Shalash said that when they purchased the property they were not aware of the conditional zoning restrictions. They first applied for the zone change, but when they realized there was an issue and they withdrew it. They were not denied. He then said that before they resubmitted their request to the Planning Commission, they upgraded several things on the property and received those permits from the different divisions. They were cited twice, but those citations were dropped because the vehicles in question were actually parking their cars on the subject site, then walked over to the shopping center.

Citizen rebuttal - Mr. Murphy explained that there is less landscaping along N. Broadway verses the landscaping from five years ago. He said that the subject property is having a negative impact on the shopping center. When these properties were rezoned in 1988 it was designed to serve the neighborhood and a vehicle sales lot would not be appropriate for this area. The people who are impacted by the business have voiced their concerns, as well as listed the impairment that the vehicle sales lot is having on the shopping center. Nothing else has changed since 1988 and N. Broadway is still a major gateway to Lexington. He asked the Planning Commission to deny this request.

Staff rebuttal - Mr. Martin said that the development plan is conditionally approved by the Planning Commission and occasionally during the signoff process issues may arise on the exact scope of the signoff, relative to the approval of the Planning Commission. He then said that during the testimony of this case, the staff noticed the access along Cane Run Road near N. Broadway, and recommends that it is removed from the development plan. He then said that Traffic Engineering is in agreement with removing the access point closet to N. Broadway along the Cane Run Road frontage.

Mr. Baillie clarified that there was testimony where it was mentioned that the staff and/or Mr. Marx had stated that the prohibited use on the property was allowed to continue. He said that the staff had informed the applicant that no fines would be levied during the zone change process, but the applicant should operate under the current Certificate of Occupancy, which was approved for an office use, not for a vehicle lot.

With regards to the previous testimony, should the zone change be approved, Mr. Murphy stated that the only recourse would be to hold the Certificate of Occupancy. Mr. Baillie replied yes that would be the case for the development plan. Additionally, if the conditional zoning restrictions recommended by the staff were approved, they would go into effect immediately upon Council adoption. Should the applicant not abide by those conditional zoning restrictions, they would be fined and cited specifically for the number of vehicles allowed on the lot, as well as the location of those vehicles. He said that there is a recourse against the applicant violating the conditional zoning restrictions that are being recommended by the staff.

Applicants comment – Mr. Walbourn indicated that they have no objection to the new condition on the development plan, as suggested by the staff.

Commission questions – Mr. Wilson asked if this is a zone change issue. Ms. Jones indicated that this is not a typical zone change where a piece of property is being changed from a one to another zone. In order for the conditional zoning restrictions attached to a piece of property be removed, the request must go through the same process as a typical zone change. The Planning Commission is not acting on changing the zone of a piece of property, but rather the Planning Commission is reviewing whether or not the conditional zoning restrictions can be removed. She emphasized the finding established under Article 6-7(c)(1)(a) of the Zoning Ordinance, which says: *“Major change of economic, physical or social nature on the subject property or within the area in which the subject property is located, which was not anticipated at the time the binding restriction or condition was imposed, and which has substantially altered the basic character of such area making the restriction or condition inappropriate or improper. The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.”* She said that the Planning Commission must decide whether or not they want to remove the conditional zoning restriction prohibiting the sale of automobiles for this piece of property and if the evidence supports such a decision.

Mr. Wilson said that it was mentioned that the Planning Commission cannot review the compliance issues on the subject property. He said that there were compliance issues that were not followed. He then said that the applicant continued to operate even though those compliance issues were not resolved. He asked if the Planning Commission can consider those facts when taking action on this application. Ms. Jones said that the Planning Commission is not considering the compliance portion of the Zoning Compliance Permit process. It is handled by the Division of Planning through a Notice of Violation. However, if the conditions of the property have a major change of economic, physical or social nature to a degree those will weight into the decision. The Planning Commission will not make a ruling on whether or not something is in compliance or not in compliance.

Mr. Wilson said that several times it was mentioned that nothing has changed in terms of the economics in this area. Now the staff is saying the area has changed, yet the only thing he has observed was the change in the hedges along N. Broadway. Mr. Baillie said that according to Article 6-7(c)(1)(a) of the Zoning Ordinance a clear preponderance of the

evidence must be provided by the applicant. He then said that during the previous zone change hearing, the applicant did not provide that evidence to persuade or prove that there has been a significant change to the economic, physical or social nature of the area.

Mr. Wilson asked if the applicant had proved the change in the beginning would the staff recommendation be the same as today. Mr. Baillie replied affirmatively.

Mr. Nicol asked if the economic, physical or social nature all have been met or is it one of the three. He then asked what convinced the staff to change their recommendation. Mr. Baillie referred to the staff report, and said that the staff was recommending approval, subject to the following findings:

1. The applicant has shown that there has been a major change of an economic and physical nature on the subject property or within the area containing the subject property, which has altered the basic character of the immediate area due to the proliferation and growth of automotive and recreational vehicle sales in the area since the conditional zoning restrictions were imposed in 1988 notes the economic and physical change in the area.

Mr. Nicol then asked if the Highway Service Business (B-3) zone without the conditional zoning restrictions allows for car dealerships, general office and retail. Mr. Baillie replied that none of the other lots surrounding the subject property were seeking a zone change during the past 31 years. This property was one of the earlier properties that had the conditional zoning restrictions attached to the property, but no other area had a zone change so the development in this area has been "by right" development.

Mr. Nicol asked what is an appropriate zone for car dealerships. Ms. Wade said that car dealerships are allowed in Highway Service Business (B-3) zone, Wholesale & Warehouse Business (B-4) zone, Light Industrial (I-1) zone and Heavy Industrial (I-2) zone. The most common is a Highway Service Business (B-3) zone.

Mr. Owens asked if this request would need the Urban County Council's approval. Ms. Jones replied affirmatively. Ms. Wade said that the adopted Ordinance specifically states that if the conditional zoning restriction were to be amended it would need Council approval.

Mr. Owens asked where would the employee parking be located. Mr. Baillie replied that car dealerships area able to double up in certain areas and the development plan shows 25 delineate parking spaces for their inventory and the additional parking spaces located in the front and side of the building are delineated for customer and employee parking.

Mr. Owens said if that is the case then why wasn't the staff recommending 25 or less cars since you have to allow room for employee and customers. Mr. Baillie said that car dealerships tend to double up the parking in some areas that because in those spots those cars do not maneuver in and out at a regular pace. This is allowed so the dealership can increase their inventory and still have the circulation that is needed.

Mr. Owens said that as tight as this space is, it seemed to him that it will be problematic.

Mr. Nicol asked what are the enforcement options if the applicant does not comply with the maximum number of vehicles in inventory. Mr. Baillie explained that the Zoning Enforcement staff would need the inventory count and locational requirement to ensure compliance. If there are any cars over the allowable number, then notices of violation and fines would be issued.

Mr. Nicol asked if 1701 N. Broadway has had any conditional zoning restrictions issues for too many cars on that lot. Mr. Baillie said that 1701 N. Broadway does not have conditional zoning restrictions attached to that lot. The lot is a by-right development that is operating under a Highway Service Business zone without any restrictions. He said that the lot has been warned about moving vehicles into the N. Broadway right-of-way or on the grass, which is why the landscape recommendation is being requested. The landscape buffer will help beautify the area while keeping the applicant off the right-of-way or the grass.

Mr. Wilson asked if the applicant keeps repeating the offense, do the fines increase in the amount of money. Ms. Wade said that the goal is to have every zoning violation cleared up, but for every violation that the Zoning Enforcement staff investigate, a notice letter is sent to the owner, then they are given a timeline to rectify that violation. She then explained that for the 1st offense the fine is 75 dollars, then for each one after that, the fine increases by 75 dollars.

Mr. Wilson then asked how much time does the applicant have to address the violation. Mr. Duncan explained that the applicant has 30-days to appeal their case to the Infrastructure Hearing Board. During this time, there would be no action taken until the appeals process is completed.

Mr. Wilson said that there is the letter of the laws versus the spirit of the law. He then said that a person can play this game for a little bit by paying the fine and still have the cars on-site. He has heard testimony on what the Planning Commission can and cannot do, but there is something about this request that he does not like.

Mr. de Movellan asked if there are any physical requirements for the fence. Mr. Baillie replied that the physical requirements would be a 4 plank horse fence that will be 4 feet in height.

Commission Comments – Mr. Nicol said that the Planning Commission must take a motion on the zone change request to allow the removal of a conditional zoning restriction and then the development plan. Mr. Owens indicated yes.

Mr. Owens said that the Planning Commission is charged with looking forward and deciding what will be best for Lexington. Personally, he said that he has not seen enough evidence to support the applicant's request. He believes that there have been some changes to N. Broadway, but there has been no unanticipated changes that would suggest the conditional zoning restrictions should be amended from what was approved in 1988.

Ms. Plumlee said that a neighborhood is not measured by dollars, but it is measured by social, livability and movability of the area.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Wilson, carried 5-2 (Forester and Nicol opposed; Bell; Brewer; Pohl and Penn absent) to disapprove **PLN-MAR-19-00011: 6K AND UNDER AUTO SALES, LLC**, for the following reasons:

1. In accordance with Article 6-7(c)(1)(a) of the Zoning Ordinance, there has been no unanticipated changes of any economic, physical or social nature in the immediate area since the time the conditional zoning restrictions were imposed in 1988 that has substantially changed the character of the area or the subject property. In particular, the Elkhorn Park neighborhood adjoining the back of the site remains residential and the N. Broadway corridor remains a prominent entry to the community that needs protection from further impacts to its visual quality.
2. The petitioner has not provided evidence to support the requested removal of the conditional zoning restrictions, and further, the nature of the immediate area still presents many of the same issues that required the original inclusion of the conditional zoning restrictions.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Wilson, carried 7-0 (Bell; Brewer; Pohl and Penn absent) to indefinitely postpone **PLN-MJDP-19-00038: ELKHORN PARK, BLOCK 8 (A PORTION OF) (W.P. LITTLE PROPERTY) (AMD)**.