

12/09/2008

Ordinance

282-2008

AN ORDINANCE AMENDING ARTICLE 6-7(c)(2) OF THE ZONING ORDINANCE TO CREATE ALTERNATIVE FINDINGS FOR CHANGES PROPOSED TO EXISTING NEIGHBORHOOD DESIGN CHARACTER OVERLAY (ND-1) ZONE RESTRICTIONS, AND TO AMEND THE PROCEDURE BY WHICH SUCH APPLICATIONS WILL BE REVIEWED BY THE URBAN COUNTY PLANNING COMMISSION.

WHEREAS, the Lexington—Fayette Urban County Planning Commission has considered a text amendment proposed to it so as to create alternative findings for changes proposed to existing design character overlay (ND-1) zone restrictions, and to amend the procedure by which such applications will be reviewed by the Urban County Planning Commission; and

WHEREAS, the Planning Commission did hold a public hearing on this proposed text amendment on November 20, 2008; and

WHEREAS, the Planning Commission did recommend APPROVAL of this proposed text amendment by a vote of 8-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 — That Article 6-7(c)(2) of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended to read as follows:

6-7(c)(2) ALL OTHER RESTRICTIONS OR CONDITIONS – The Planning Commission shall have final authority to consider and act upon requests for modification, removal or other amendment of all other restrictions or conditions in accordance with the procedure and requirements set forth in Section 6-7(c)(1) above, except that no Council action shall be required. In the case of a request to modify, remove or amend a Neighborhood Design Character overlay (ND-1) zone restriction(s), the application shall follow the procedure as set forth above, but shall be reviewed by the Planning Commission for adherence to the requirements set forth in Section 6-7(c)(2)(a) below. In addition, notice shall be given to the members of the Urban County Council, to the Mayor and to the Council Clerk at least fourteen (14) days in advance of the public hearing. Members of the Urban County Council may appear and speak at the public hearing. The Planning Commission's decision to modify, remove or amend a duly imposed binding restriction or condition shall be final action, and any person or entity claiming to be injured or aggrieved by

that action may appeal to Fayette Circuit Court within thirty days after such final action, pursuant to KRS 100.347.

6-7(c)(2)(a) FINDINGS REQUIRED FOR ND-1 OVERLAY ZONE

– The request may be granted by the Planning Commission only if the request for modification, removal or amendment is found to meet the following:

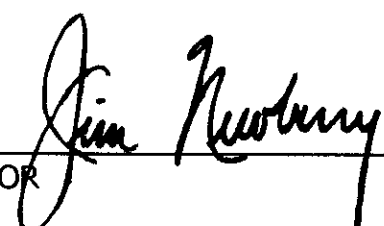
- (1) The granting of the modification, removal or amendment to an ND-1 overlay restriction will not adversely affect the public health, safety or welfare, will not alter the essential character of the overlay district, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the ND-1 overlay restrictions. In making these findings, the Planning Commission shall consider whether:
 - (a) The requested modification, removal or amendment arises from special circumstances that do not generally apply to land in the same ND-1 overlay district;
 - (b) The strict application of the provisions of the restriction would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant;
 - (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the ND-1 overlay restrictions from which relief is sought; and
 - (d) The general intent and preservation goals of the ND-1 overlay district are being met.
- (2) The Planning Commission shall deny any request for modification, removal or amendment to an ND-1 overlay restriction arising from circumstances that are the result of willful violations of the restriction by the applicant subsequent to the adoption of the ND-1 overlay zone from which the amendment is sought.

The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.

The decision of the Planning Commission shall be recorded in minutes and records and issued in written form to the applicant and the Division of Building Inspection to constitute proof of the change.

Section 2 – That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: December 9, 2008


MAYOR

ATTEST:



Clerk of Urban County Council

PUBLISHED: December 20, 2008-1t

REB/X:\Cases\PLANNING\08-LE0044\LEG\00191157.DOC

0-282-2008
Recd by KP
Date: 12/4/08

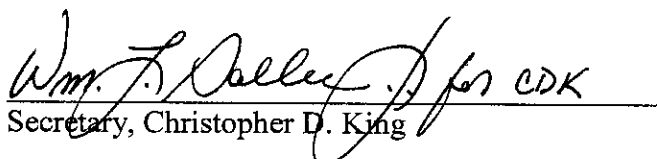
RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: ZOTA 2008-9: AMENDMENT TO ARTICLE 6 TO ALTER THE PROCESS AND FINDINGS TO MODIFY OR REMOVE CONDITIONAL ZONING RESTRICTIONS IN AN ND-1 ZONE – a Zoning Ordinance text amendment to Article 6-7(c) to create alternative findings for changes proposed to existing Neighborhood Design Character Overlay (ND-1) zone restrictions, and to amend the procedure by which such applications will be reviewed by the Urban County Planning Commission in the future.

Having considered the above matter on **November 20, 2008**, at a Public Hearing and having voted **8-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL** of this matter, for the following reasons:

1. Altering the procedures and findings to amend, modify or remove conditional zoning restrictions only associated with an Neighborhood Design Character Overlay (ND-1) zone will result in a more efficient and expedited application process for this type of amendment, and one that can still be considered fair.
2. The 2007 Comprehensive Plan recommends that neighborhood protection overlay zoning provisions be implemented for establishing stability and protection in existing and, especially, older neighborhoods (Goal 15, Objective I), and more generally suggests “preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents,” which is one of eight overriding themes of the Plan. This can be better accomplished if the application and procedures for the ND-1 Overlay zone are practical for the average resident of Lexington-Fayette County. Otherwise, neighborhoods may avoid seeking ND-1 Overlay zoning to protect, preserve and maintain their neighborhoods in the future.

ATTEST: This 4th day of December, 2008.


Secretary, Christopher D. King

RANDALL VAUGHN
CHAIR

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Traci Wade, senior planner.**

OBJECTORS

- None

OBJECTIONS

- None

VOTES WERE AS FOLLOWS:

AYES: (8) Brewer, Copeland, Cravens, Owens, Richardson, Roche-Phillips, Vaughn, and Whitman

NAYS: (0)

ABSENT: (3) Day, Holmes, Penn

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **Approval** of **ZOTA 2008-9** carried.

Enclosures: Minutes of PC meeting initiating request
Staff Report
Planning Commission Recommended Text
Applicable excerpts of minutes of above public hearing

- D. ZONING ORDINANCE TEXT AMENDMENT INITIATION** – The staff will request Commission initiation of a text amendment to Article 6-7(c) of the Zoning Ordinance, as has been discussed at various meetings over the past few weeks. The purpose of this text amendment would be to create alternative findings for changes proposed to existing Neighborhood Design Character Overlay (ND-1) zone restrictions, and to amend the procedure by which such applications will be reviewed in the future by the Commission. If initiated, the required public hearing could be held as early as next month.

Staff Presentation – Mr. Sallee stated that the staff is requesting the Planning Commission consider the initiation of a text amendment to Article 6-7(c) of the Zoning Ordinance. He said that this is in accord with the previous discussions from the Commission's last two meetings regarding the modification of the process to which conditional zoning restrictions for the Neighborhood Design Character Overlay (ND-1) zone can be modified. He noted that the staff had previously distributed this information to the Commission members during the Zoning Committee meeting last week, and the text is in the same format as it was originally presented. The staff appreciated the feedback from the Commission members, and the Zoning Committee; and if this text amendment is initiated today, the required public hearing could be held as early as next month. He noted that the staff will provide the required notification prior to that hearing.

Planning Commission Comments and Questions – Mr. Penn asked if the guidelines and the appeal process are the same as they were discussed in the Zoning Committee meeting. He said that in the ND-1 zone, a variance request by the Board of Adjustment was not possible. He asked if this is alter what was heard at their previous hearing. Mr. Sallee responded that it is, and said that with this text amendment, the idea would be to have a different application, and different findings that would be necessary to modify the Neighborhood Design Character Overlay (ND-1) zone restrictions, versus other conditional zoning restrictions. He then said that the staff could report to the Commission at their upcoming Work Session as to how the current review period could be shortened. He noted that an application must be submitted, the required notification must be sent out and the Zoning Committee members will be able to review each request. He then noted that these applications are still required to have public hearings.

Mr. Vaughn asked about the timing of the text amendment if initiated, as requested. Mr. Sallee responded that if this text amendment is initiated at today's meeting, it could be placed on next month's (November's) meeting agenda.

Mr. Cravens asked if there is currently a provision for an appeal. Mr. Sallee said that after the outcome from the August and September meetings, the staff considered different processes for amending ND-1 zoning restrictions. He said that this text amendment would not allow those cases to be heard by the Board of Adjustment (BOA), but rather, those cases would be retained for the Planning Commission to review. The text amendment would make the appeal time shorter than for a typical zone change; and if the fee schedule were to be amended, the cost would be similar to that for a variance request from the BOA. He said that instead of the case going before the BOA, though, the application would be heard by the Zoning Committee and then by the full Planning Commission. Mr. Cravens clarified that this amendment would shorten the review time of an ND-1 appeal only. Mr. Sallee replied yes, and said that the staff could present that information to the Commission at their upcoming Work Session. Mr. Cravens asked if these cases would be heard prior to a zone change case. Mr. Sallee replied that those cases would not be heard at the Zoning public hearing, but rather they will be presented at the Subdivision meetings. Mr. Cravens said that he is not in favor of shortening the application time, and that these cases should be presented just as a typical zone change is presented. Mr. Sallee said that this text amendment does not address the time that those ND-1 cases will be scheduled. He said that the time and day of the meeting will be listed on the 2009 Meeting and Filing Schedules, which will be distributed to the Commission at next week's Work Session. Mr. Cravens commented that they have received several handouts associated with today's meeting, and he believes this information should have been distributed prior to today's meeting. He said that he had not been able to review this material, and now the Commission is asked to act upon this decision. Mr. Sallee said that if the text amendment is initiated today, then this text amendment will be presented to both the Subdivision and the Zoning Committee, and there will be a public hearing scheduled in the future. He said that the staff can certainly forward any comments from the Committees and make any possible changes that the Committees desire. He noted that there will be a full review opportunity, as is done with all text amendments.

Mr. Vaughn said that at the Zoning Committee meeting last week, the staff had distributed these documents and presented flow charts that address Mr. Cravens' concerns. He said that that information could be given to Mr. Cravens; but today's request is only for an initiation of the text amendment. Mr. Sallee commented that the Commission could postpone this initiation, as well. Mr. Vaughn concurred.

Mr. Cravens said that he cannot act on information that he has not previously reviewed, and the time to "stop" a text amendment would be now. Mr. Sallee apologized to Mr. Cravens, and said that the staff did not realize that he was not present at the past two meetings. Mr. Cravens said that even if the information was handed out at the beginning of this meeting, it would have been sufficient. He said that he is suspicious of information being handed out prior to the issue being acted upon. Mr. Sallee understood, and said that the information should have been distributed during the previous break.

Mr. Brewer commented that he is familiar with this proposal, and said that he believes that the staff has done an excellent job.

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

Action - A motion was made by Mr. Brewer, seconded by Mr. Owens, and carried 9-1 (Cravens opposed; Whitman absent) to initiate the requested text amendment to Article 6-7(c) of the Zoning Ordinance.

- VI. **STAFF ITEMS** – None was considered at this time.
- VII. **AUDIENCE ITEMS** – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will NOT be heard are those requiring the Commission’s formal action, such as zoning items for early rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.
- VIII. **NEXT MEETING DATES** -
- | | |
|---|--------------------------|
| Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers..... | October 16, 2008 |
| Zoning Items Public Hearing, 2nd Floor Council Chambers | October 23, 2008 |
| Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)..... | October 29, 2008 |
| Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers..... | October 30, 2008 |
| Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)..... | November 6, 2008 |
| Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building) | November 6, 2008 |
| Subdivision Items Public Meeting, Thursday, 1:30 p.m., 2nd Floor Council Chambers | November 13, 2008 |
- X. **ADJOURNMENT** - There being no further business, the meeting was adjourned at 5:32 p.m.

Randall Vaughn, Chair

Frank Penn, Secretary

CT/CG/TM/JE/BR/BS/DB

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

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

**ZOTA 2008-9: AMEND ARTICLE 6 TO ALTER THE PROCESS AND FINDINGS
REQUIRED TO AMEND, MODIFY OR REMOVE A CONDITIONAL ZONING
RESTRICTIONS IN AN ND-1 OVERLAY ZONE**

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: (Note: Text underlined indicates an addition to the current Zoning Ordinance.)

ARTICLE 6: AMENDMENTS

6-7(c)(2) ALL OTHER RESTRICTIONS OR CONDITIONS - The Planning Commission shall have final authority to consider and act upon requests for modification, removal or other amendment of all other restrictions or conditions in accordance with the procedure and requirements set forth in Section 6-7(c)(1) above, except that no Council action shall be required. In the case of a request to modify, remove or amend a Neighborhood Design Character Overlay (ND-1) zone restriction(s), the application shall follow the procedure as set forth above, but shall be reviewed by the Planning Commission for adherence to the requirements set forth in Section 6-7(c)(2)(a) below. In addition, notice shall be given to the members of the Urban County Council, to the Mayor and to the Council Clerk at least fourteen (14) days in advance of the public hearing. Members of the Urban County Council may appear and speak at the public hearing. The Planning Commission's decision to modify, remove or amend a duly imposed binding restriction or condition shall be final action, and any person or entity claiming to be injured or aggrieved by that action may appeal to Fayette Circuit Court within thirty days after such final action, pursuant to KRS 100.347.

6-7(c)(2)(a) FINDINGS REQUIRED FOR ND-1 OVERLAY ZONE - The request may be granted by the Planning Commission only if the request for modification, removal or amendment is found to meet the following:

- (1) The granting of the modification, removal or amendment to an ND-1 overlay restriction will not adversely affect the public health, safety or welfare, will not alter the essential character of the overlay district, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the ND-1 overlay restrictions. In making these findings, the Planning Commission shall consider whether:
 - (a) The requested modification, removal or amendment arises from special circumstances that do not generally apply to land in the same ND-1 overlay district;
 - (b) The strict application of the provisions of the restriction would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant;
 - (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the ND-1 overlay restrictions from which relief is sought; and
 - (d) The general intent and preservation goals of the ND-1 overlay district are being met.
- (2) The Planning Commission shall deny any request for modification, removal or amendment to an ND-1 overlay restriction arising from circumstances that are the result of willful violations of the restriction by the applicant subsequent to the adoption of the ND-1 overlay zone from which the amendment is sought.

The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.

The decision of the Planning Commission shall be recorded in minutes and records and issued in written form to the applicant and the Division of Building Inspection to constitute proof of the change.

STAFF REVIEW:

The Urban County Planning Commission initiated an amendment to the text of Article 6-7 of the Zoning Ordinance to alter the process and findings required to amend, modify or remove conditional zoning restrictions associated with an Neighborhood Design Character Overlay (ND-1) zone. The Planning Commission was evaluating a rezoning request for the ND-1 Overlay zone a few month ago, when it became clear that the process to change a restriction (if a homeowner could not or chose not to abide by the conditional zoning restrictions established through the ND-1 Overlay rezoning) was considered onerous by the residents of a large neighborhood, as well as by some design professionals who may be serving this neighborhood and others that are contemplating the ND-1 Overlay zone. The Planning Commission agreed with that assessment and recommended approval of the rezoning only after the staff drafted alternative language to modify the Zoning Ordinance.

Currently, the Zoning Ordinance requires that a map amendment request (aka zone change) application be filed with the Planning Commission in any circumstance where a conditional zoning restriction is to be amended, modified or removed. In assessing the situation and possible resolutions, the staff reviewed the Zoning Ordinance and Kentucky Revised Statutes Chapter 100 (KRS 100), and found the following: (1) conditional zoning restrictions are only allowed to be applied by urban county governments; (2) conditional zoning restrictions must be applied, varied, or amended by the Planning Commission, not by the Board of Adjustment (BOA), and (3) the process by which such restrictions are amended or removed shall be established by an urban county government. Otherwise, KRS 100 is silent regarding such procedures. Also, there was a general sentiment expressed at the Planning Commission hearing that the procedures and findings for a variance were acceptable to the interested parties. This information provided the framework for the staff to develop an alternative set of procedures and findings that would be tailored to those property owners wishing to modify or remove conditional zoning restrictions established as part of an ND-1 Overlay zone, while maintaining the current procedure for all other zoning categories.

The proposed text amendment would allow for the Planning Commission to grant the modification, removal or amendment to an ND-1 overlay restriction as long as the change would not adversely affect the public health, safety or welfare, would not alter the essential character of the overlay district, would not cause a hazard or a nuisance to the public, and would not allow an unreasonable circumvention of the requirements of the ND-1 overlay restrictions. Also, the text directs that the Planning Commission shall deny any request arising from circumstances that are the result of willful violations of the restrictions; that is proceeding with a project or improvement that the applicant knows does not meet the restrictions.

Additionally, the staff has agreed to seek changes to the Planning Commission's fee schedule and official meeting and filing schedule, as well as develop a new application for this specialized type of map amendment request. The staff's focus throughout has been to develop procedures and findings that are more in keeping with the Board of Adjustment fee schedule and submittal requirements; thus, the proposed timeframe for the ND-1 Overlay zone amendment process can be shortened to between 27 and 41 days from the filing date, resulting in significant time savings. No development plan would be required with a request to modify or remove ND-1 restrictions, but a building elevation and/or site plan would be required (as is also required for a submission to the BOA) to allow the staff and Planning Commission the ability to accurately evaluate the request. A request to modify or remove ND-1 restrictions would also be required to follow the same notification requirements as any other zone change request, which means a mailed notice will be prepared for property owners within 400 feet of the property proposed for modification.

Lastly, it will be the standard procedure for the Planning Commission during a rezoning request to establish the ND-1 Overlay zone to ask the Urban County Council to make a statement or resolution part of the ordinance that says that any restrictions placed can be amended, modified or removed without the Council's approval.

The proposed text amendment will result in a more efficient and expedited application process for this type of an amendment, and one that is considered fair. This text amendment may also serve to relieve some concerns that have been expressed by some about the suitability of a neighborhood conservation overlay that may be too strict in its application. The 2007 Comprehensive Plan, Goal 1, Objective A addresses this issue – it states that the community should “provide an ethically sound decision-making environment for planning and zoning; ensure that the planning process is open and accessible, efficient and effective.” Also, the Comprehensive Plan recommends that neighborhood protection overlay zoning provisions be implemented for establishing stability and protection in existing and, especially, older neighborhoods (Goal 15, Objective I), and more generally suggests “preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents,” which is one of eight overriding themes of the Plan. This can only be better accomplished if the amendment application and procedures for the ND-1 Overlay zone are practical for the average resident of Lexington-Fayette County. Otherwise, neighborhoods may avoid seeking ND-1 Overlay zoning to protect, preserve and maintain their neighborhoods in the future.

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

1. Altering the procedures and findings to amend, modify or remove conditional zoning restrictions only associated with an Neighborhood Design Character Overlay (ND-1) zone will result in a more efficient and expedited application process for this type of amendment, and one that can still be considered fair.
2. The 2007 Comprehensive Plan recommends that neighborhood protection overlay zoning provisions be implemented for establishing stability and protection in existing and, especially, older neighborhoods (Goal 15, Objective I), and more generally suggests "preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents," which is one of eight overriding themes of the Plan. This can be better accomplished if the application and procedures for the ND-1 Overlay zone are practical for the average resident of Lexington-Fayette County. Otherwise, neighborhoods may avoid seeking ND-1 Overlay zoning to protect, preserve and maintain their neighborhoods in the future.

TLW/RP/BJR/WLS

11/5/08

Planning Services/Staff Reports/ZOTA/2008/ZOTA2008-9.doc

**ZONING ORDINANCE TEXT AMENDMENT AS APPROVED BY THE
URBAN COUNTY PLANNING COMMISSION ON 11/20/08**

ARTICLE 6: AMENDMENTS

6-7(c)(2) ALL OTHER RESTRICTIONS OR CONDITIONS - The Planning Commission shall have final authority to consider and act upon requests for modification, removal or other amendment of all other restrictions or conditions in accordance with the procedure and requirements set forth in Section 6-7(c)(1) above, except that no Council action shall be required. In the case of a request to modify, remove or amend a Neighborhood Design Character Overlay (ND-1) zone restriction(s), the application shall follow the procedure as set forth above, but shall be reviewed by the Planning Commission for adherence to the requirements set forth in Section 6-7(c)(2)(a) below. In addition, notice shall be given to the members of the Urban County Council, to the Mayor and to the Council Clerk at least fourteen (14) days in advance of the public hearing. Members of the Urban County Council may appear and speak at the public hearing. The Planning Commission's decision to modify, remove or amend a duly imposed binding restriction or condition shall be final action, and any person or entity claiming to be injured or aggrieved by that action may appeal to Fayette Circuit Court within thirty days after such final action, pursuant to KRS 100.347.

6-7(c)(2)(a) FINDINGS REQUIRED FOR ND-1 OVERLAY ZONE - The request may be granted by the Planning Commission only if the request for modification, removal or amendment is found to meet the following:

- (1) The granting of the modification, removal or amendment to an ND-1 overlay restriction will not adversely affect the public health, safety or welfare, will not alter the essential character of the overlay district, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the ND-1 overlay restrictions. In making these findings, the Planning Commission shall consider whether:
 - (a) The requested modification, removal or amendment arises from special circumstances that do not generally apply to land in the same ND-1 overlay district;
 - (b) The strict application of the provisions of the restriction would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant;
 - (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the ND-1 overlay restrictions from which relief is sought; and
 - (d) The general intent and preservation goals of the ND-1 overlay district are being met.
- (2) The Planning Commission shall deny any request for modification, removal or amendment to an ND-1 overlay restriction arising from circumstances that are the result of willful violations of the restriction by the applicant subsequent to the adoption of the ND-1 overlay zone from which the amendment is sought.

The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.

The decision of the Planning Commission shall be recorded in minutes and records and issued in written form to the applicant and the Division of Building Inspection to constitute proof of the change.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. **ZOTA 2008-9: AMEND ARTICLE 6 TO ALTER THE PROCESS AND FINDINGS REQUIRED TO AMEND, MODIFY OR REMOVE A CONDITIONAL ZONING RESTRICTION IN AN ND-1 OVERLAY ZONE** – petition for a Zoning Ordinance text amendment to Article 6-7(c) to create alternative findings for changes proposed to existing Neighborhood Design Character Overlay (ND-1) zone restrictions, and to amend the procedure by which such applications will be reviewed by the Urban County Planning Commission in the future.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: (Note: Text underlined indicates an addition to the current Zoning Ordinance.)

ARTICLE 6: AMENDMENTS

6-7(c)(2) ALL OTHER RESTRICTIONS OR CONDITIONS - The Planning Commission shall have final authority to consider and act upon requests for modification, removal or other amendment of all other restrictions or conditions in accordance with the procedure and requirements set forth in Section 6-7(c)(1) above, except that no Council action shall be required. In the case of a request to modify, remove or amend a Neighborhood Design Character Overlay (ND-1) zone restriction(s), the application shall follow the procedure as set forth above, but shall be reviewed by the Planning Commission for adherence to the requirements set forth in Section 6-7(c)(2)(a) below. In addition, notice shall be given to the members of the Urban County Council, to the Mayor and to the Council Clerk at least fourteen (14) days in advance of the public hearing. Members of the Urban County Council may appear and speak at the public hearing. The Planning Commission's decision to modify, remove or amend a duly imposed binding restriction or condition shall be final action, and any person or entity claiming to be injured or aggrieved by that action may appeal to Fayette Circuit Court within thirty days after such final action, pursuant to KRS 100.347.

6-7(c)(2)(a) FINDINGS REQUIRED FOR ND-1 OVERLAY ZONE - The request may be granted by the Planning Commission only if the request for modification, removal or amendment is found to meet the following:

- (1) The granting of the modification, removal or amendment to an ND-1 overlay restriction will not adversely affect the public health, safety or welfare, will not alter the essential character of the overlay district, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the ND-1 overlay restrictions. In making these findings, the Planning Commission shall consider whether:
 - (a) The requested modification, removal or amendment arises from special circumstances that do not generally apply to land in the same ND-1 overlay district;
 - (b) The strict application of the provisions of the restriction would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant;
 - (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the ND-1 overlay restrictions from which relief is sought; and
 - (d) The general intent and preservation goals of the ND-1 overlay district are being met.
- (2) The Planning Commission shall deny any request for modification, removal or amendment to an ND-1 overlay restriction arising from circumstances that are the result of willful violations of the restriction by the applicant subsequent to the adoption of the ND-1 overlay zone from which the amendment is sought.

The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.

The decision of the Planning Commission shall be recorded in minutes and records and issued in written form to the applicant and the Division of Building Inspection to constitute proof of the change.

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

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

1. Altering the procedures and findings to amend, modify or remove conditional zoning restrictions only associated with a Neighborhood Design Character Overlay (ND-1) zone will result in a more efficient and expedited application process for this type of amendment, and one that can still be considered fair.
2. The 2007 Comprehensive Plan recommends that neighborhood protection overlay zoning provisions be implemented for establishing stability and protection in existing and, especially, older neighborhoods (Goal 15, Objective I), and more generally suggests "preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents," which is one of eight overriding themes of the Plan. This can be better accomplished if the application and procedures for the ND-1 Overlay zone are practical for the average resident of Lexington-Fayette County. Otherwise, neighborhoods may avoid seeking ND-1 Overlay zoning to protect, preserve and maintain their neighborhoods in the future.

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

Staff Presentation: Ms. Wade presented the staff report, noting that the proposed text amendment to Article 6-7(c) of the Zoning Ordinance would create alternative findings for changes proposed to existing Neighborhood Design Character Overlay (ND-1) zone restrictions. This proposal also would amend the procedure by which such applications will be reviewed by the Planning Commission in the future. She noted that each of the Planning Commission members had received a flow chart as a staff exhibit that supplements the staff's report and presentation.

Ms. Wade stated that the Planning Commission initiated this text amendment following a rezoning to the ND-1 overlay zone that was requested by the Chevy Chase Neighborhood Association. During that process, it came to light that removing or changing a conditional zoning restriction through the typical ND-1 procedure was considered to be onerous by that neighborhood. The staff then worked with the neighborhood association and other interested parties, such as the Homebuilders Association, to develop a different process for changing this type of conditional zoning restriction in an ND-1 overlay zone.

Ms. Wade said that, when the staff began considering revisions to this process, they reviewed KRS 100 and found that the Planning Commission must be the body that reviews ND-1 overlay changes, because the ND-1 zone is applied via conditional zoning restrictions. Through a series of discussions with the neighborhood association and other interested parties, the staff discovered that the Chevy Chase residents would be willing to accept the traditional variance process, in terms of timetable, cost, and requirements. The staff then worked to adapt the existing variance process to an ND-1 conditional zoning change request. The result was this proposed change to Article 6-7 of the Zoning Ordinance, which would allow a property owner to apply to the Planning Commission to remove or change part of their (ND-1) conditional zoning. The process would be similar to a typical zone change request, but shortened. Rather than the usual 4 – 6 months required for a zone change, this shortened process could possibly be completed in 4 – 6 weeks. Presenting these requests at the Planning Commission's subdivision items meeting will also shorten the process somewhat, as will eliminating the requirement for Urban County Council approval. The staff has worked to incorporate the new filing date and hearing dates into the Planning Commission's official Meeting & Filing Schedule, and the next step will be a petition to the Council to adjust the fee associated with this new type of filing. Ms. Wade noted that no development plan will be required under the new process, but a building elevation or site plan would likely be required or necessary.

The staff and Zoning Committee are recommending approval of this proposed text amendment, for the two reasons as listed on the agenda and in the staff report.

Citizen Comments: Chairman Vaughn asked if anyone in the audience wished to discuss this proposal. There was no reply from anyone in attendance.

Commission Questions: Mr. Cravens asked why a reduction in filing fees was suggested along with this text amendment. Ms. Wade answered that the existing variance process has a lower filing fee. The staff agreed to a reduced filing fee as a concession to the Chevy Chase residents, who had thought for some time that they would be able to alter the conditional zoning restrictions proposed via the typical variance process.

Mr. Cravens stated, with regard to the proposed "fast track" timeline, that he is concerned that other projects will be pushed aside in order to allow the staff more time to work on these requests. Ms. Wade responded that zone changes are required by state law to go to the Urban County Council, which usually takes about three months. The staff believed that hearing these ND-1 requests on the second Thursday of the month, rather than the fourth Thursday, is just a function of dividing the Commission's work into manageable portions.

Ms. Copeland asked if homeowners will be required to hire an engineer and an attorney in order to prepare the necessary documents for this amended filing. Ms. Wade answered that, if an architect has designed an addition to a home, it may be necessary for that individual to prepare a site plan or provide a building elevation. There will be no requirement for any plan to be stamped by an architect or engineer. This process, just as any other zone change, will not require that the applicant have legal representation.

Mr. Vaughn said that he would like to note that, although he had to recuse himself from the deliberations for the Chevy Chase ND-1 overlay, he appreciates the hard work that Ms. Wade, Ms. Phillips, the rest of the staff, and the Chevy Chase Neighborhood Association have put into this process.

Action: A motion was made by Mr. Brewer, seconded by Ms. Whitman, and carried 8-0 (Day, Holmes, and Penn absent) to approve ZOTA 2008-9, for the reasons provided by staff.

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