

02/23/2012

Ordinance

20-2012

AN ORDINANCE AMENDING ARTICLE 29-6 OF THE ZONING ORDINANCE TO UPDATE REFERENCES TO CODES FOR PROPERTIES WITHIN THE NEIGHBORHOOD DESIGN CHARACTER OVERLAY (ND-1) ZONE.

WHEREAS, the Lexington-Fayette Urban County Planning Commission has considered a text amendment to Article 29-6 of the Zoning Ordinance to update references to codes for properties within the Neighborhood Design Character Overlay (ND-1) zone; and

WHEREAS, the Planning Commission did hold a public hearing on this proposed amendment on January 26, 2012; and

WHEREAS, the Planning Commission did recommend APPROVAL of the proposed amendment to Article 29-6 by a vote of 10-0; 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.

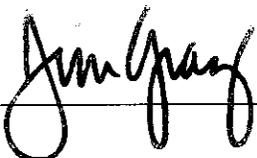
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Article 29-6 of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended to read as follows:

In order to prevent purposeful neglect of structures within zones protected by neighborhood design character overlays, all properties shall comply with the Property Maintenance Code, as well as all other applicable codes, statutes, and regulations. To accomplish this, the Division of Code Enforcement shall, on an annual basis, compile and forward to the Planning Commission a list of those properties in zones with neighborhood design character overlays that have been found to be in violation of the International Property Maintenance Code, 1998 Edition.

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

PASSED URBAN COUNTY COUNCIL: February 23, 2012

MAYOR 

ATTEST:

  
Clerk of Urban County Council  
PUBLISHED: March 1, 2012-1t

Recd by JM  
Date: 2/8/12

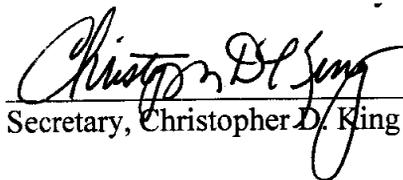
**RECOMMENDATION OF THE**  
**URBAN COUNTY PLANNING COMMISSION**  
**OF LEXINGTON-FAYETTE COUNTY, KENTUCKY**

**IN RE: ZOTA 2012-2: AMENDMENT TO ARTICLE 29 TO UPDATE REFERENCES TO CODES FOR PROPERTIES WITHIN THE ND-1 OVERLAY ZONE** – a Zoning Ordinance text amendment to Article 29-6 to update references to codes for properties within the Neighborhood Design Character Overlay (ND-1) zone.

Having considered the above matter on **January 26, 2012**, at a Public Hearing and having voted **10-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL**, for the following reasons:

1. This is a timely and appropriate amendment to Article 29-6 of the Zoning Ordinance in order to update incorrect references, and to alter the frequency of required meetings with code enforcement officials from a quarterly to an annual basis.
2. These changes were suggested by the Divisions of Code Enforcement and Fire and Emergency Services.

**ATTEST:** This 8<sup>th</sup> day of February, 2012.

  
Secretary, Christopher D. King

**DEREK PAULSEN**  
CHAIR

At the Public Hearing before the Urban County Planning Commission, this text amendment was presented by **Traci Wade, Senior Planner**.

**OBJECTORS** \_\_\_\_\_

- None

**OBJECTIONS** \_\_\_\_\_

- None

**VOTES WERE AS FOLLOWS:**

AYES: (10) Beatty, Berkley, Blanton, Brewer, Copeland, Cravens, Owens, Paulsen,  
Penn, Roche-Phillips  
NAYS: (0)  
ABSENT: (1) Wilson  
ABSTAINED: (0)  
DISQUALIFIED: (0)

Motion for **Approval** of **ZOTA 2012-2** carried.

Enclosures: Application  
Staff Report  
Applicable excerpts of minutes of above public hearing

tw/wls/src

Ms. Rackers stated that, in July 2011, Fayette County Public Schools sold approximately an acre of land in the northeast corner of the school property to LFUCG for the purpose of constructing a detention basin and temporary construction easement. She said that the 2007 Comprehensive Plan recommends Public Education use for the subject property, as it does for most of the public schools and associated facilities in Fayette County, as recognition of both the historic use of the property and its continued function as a public school. As part of their review of this proposal, the staff evaluated the Comprehensive Plan Goals and Objectives and found that there were none in opposition, and several that supported the overall intent, which were listed in the staff report. The staff also identified text in the Comprehensive Plan that was particularly relevant to this proposal, particularly with regard to existing problems with storm water runoff in the community.

Ms. Rackers noted that the areas surrounding the school have historically suffered from storm water problems and flooding issues; it was included in the 1983 Kenroy Report, which identified it as a problem area in need of remediation. In September, 2006, during a 100-year flood event in Lexington, the residential area just to the east of the school property suffered severe flooding and sanitary sewer overflows. During the rezoning of the Laclede Avenue area in 2005, many residents attended, spoke before the Planning Commission about the long history of flooding problems in the vicinity of the school, and requested that no development be allowed on the property unless some sort of flooding mitigation took place. At that time, the applicant in the rezoning request agreed to construct a detention basin that was 20% larger than what the Engineering Manuals would require. That basin was constructed, but did not significantly relieve the flooding during the 2006 event.

Ms. Rackers explained that the detention basin currently proposed would be part of a three-phase undertaking known as the Wickland-Anniston Project. The project will involve connecting the proposed detention basin to the existing basin in the Laclede subdivision, as well the removal of two houses that have experienced repeated flooding on Wickland Avenue. At the time of the adoption of the 2007 Comprehensive Plan, 64 such priority projects had been completed; since that time, 10 additional projects have either been completed or are currently in process.

Ms. Rackers said that environmental responsibility and sustainability were two of the main themes of the Comprehensive Plan, and upgrading community facilities through infrastructure improvements such as the proposed detention basin are inherent in that concept. The staff believes, therefore, that providing these improvements is important to the quality of life in Fayette County. Therefore, the staff is recommending approval of this request.

Action: A motion was made by Ms. Roche-Phillips, seconded by Ms. Beatty, and carried 9-0 (Paulsen and Penn absent) to approve PFR 2011-6, for the reason provided by staff.

**D. INITIATION OF ZONING ORDINANCE TEXT AMENDMENT** – The staff will request that the Planning Commission initiate a text amendment to modify the reference to the applicable codes in Article 29 for the Neighborhood Design Character Overlay (ND-1) Zone. Following notification to registered neighborhood associations, and review by the Commission’s Zoning Committee, the required public hearing could be scheduled this fall.

Ms. Wade stated that the staff was requesting that the Planning Commission initiate a text change to Article 29 for the Neighborhood Design Character Overlay (ND-1) zone. In the last few months, the Commission initiated and acted upon a text amendment to change Article 27, which refers to the Courthouse Area Design Overlay Zone, in order to correct code references in the Zoning Ordinance. Ms. Wade noted that the proposed text amendment would be very similar, in that Article 29 also requires that the Division of Code Enforcement respond to the Planning Commission with a list of properties that have code issues on a quarterly basis. At this time, Article 29 still contains references to BOCA codes, which are no longer used by the Division of Code Enforcement. Ms. Wade said that the staff is requesting initiation of a text amendment in order to make those corrections.

Action: A motion was made by Mr. Owens, seconded by Ms. Blanton, and carried 9-0 (Paulsen and Penn absent) to initiate a text amendment to Article 29 as recommended by staff.

**VII. STAFF ITEMS** – No such items were presented.

**VIII. AUDIENCE ITEMS** – No such items were presented.

**IX. MEETING DATES FOR OCTOBER, 2011**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	October 6, 2011
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	October 6, 2011
<b>Subdivision Items Public Meeting, Thursday, 1:30 p.m., 2<sup>nd</sup> Floor Council Chambers.....</b>	<b>October 13, 2011</b>
Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	October 20, 2011
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	October 26, 2011
<b>Zoning Items Public Hearing, Thursday, 1:30 p.m., 2<sup>nd</sup> Floor Council Chambers.....</b>	<b>October 27, 2011</b>

**X. ADJOURNMENT** – There being no further business, Chairman Cravens declared the meeting adjourned at 5:22 p.m.

TLW/TM/BJR/BS/src

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

**STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT**

**ZOTA 2012-2: AMENDMENT TO UPDATE REFERENCES TO CODES FOR PROPERTIES WITHIN  
THE NEIGHBORHOOD DESIGN CHARACTER OVERLAY (ND-1) ZONE**

INITIATED BY: Urban County Planning Commission

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

**ARTICLE 29: NEIGHBORHOOD DESIGN CHARACTER OVERLAY (ND-1) ZONE**

**29-6 COMPLIANCE WITH OTHER CODES, STATUTES AND REGULATIONS** - In order to prevent purposeful neglect of structures within zones protected by neighborhood design character overlays, all properties shall comply with the ~~BOCA, adopted Basic~~ Basic Property Maintenance Code, as well as all other applicable codes, statutes, and regulations. To accomplish this, the Division of Code Enforcement shall, on an annual ~~quarterly~~ basis, compile and forward to the Planning Commission a list of those properties in zones with neighborhood design character overlays that have been found to be in violation of the ~~BOCA Basic International~~ Property Maintenance Code, 1998 Edition.

**STAFF REVIEW:**

The Planning Commission has initiated a text amendment to update references to property maintenance codes for properties located within the Neighborhood Character Design Overlay (ND-1) zone and to amend the frequency of required meetings with code enforcement officials from a quarterly to an annual basis. This text amendment is very similar to one processed in 2011 for the Courthouse Area Design Review Board (Board), and is recommended by the Divisions of Code Enforcement and Fire & Emergency Services.

The Division of Code Enforcement uses the *International Maintenance Code, 1998 Edition* in all of their duties; thus, updating the reference in this section of the Zoning Ordinance is a timely and appropriate change. Although more recent editions of this particular code do exist, Code Enforcement continues to use the 1998 Edition because it addresses nuisance issues and dwelling unit occupancy, which are concerns within our community. The 1998 edition provides minimum occupancy requirements based upon habitable building square footage, while the newer code does not.

The rationale for the amendment allowing annual code enforcement reports to the Planning Commission, rather than quarterly, is quite simple – there simply have not been enough code violations in the past to justify quarterly reports. The staff is supportive of these timely and appropriate changes to Article 29 of the Zoning Ordinance.

The Staff Recommends: Approval, for the following reasons:

1. This is a timely and appropriate amendment to Article 29-6 of the Zoning Ordinance in order to update incorrect references, and to alter the frequency of required meetings with code enforcement officials from a quarterly to an annual basis.
2. These changes were suggested by the Divisions of Code Enforcement and Fire and Emergency Services.

2. ZOTA 2012-2: AMENDMENT TO ARTICLE 29 TO UPDATE REFERENCES TO CODES FOR PROPERTIES WITHIN THE ND-1 OVERLAY ZONE – a Zoning Ordinance text amendment to Article 29-6 to update references to codes for properties within the Neighborhood Design Character Overlay (ND-1) zone.

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

The Staff Recommends: Approval, for the following reasons:

1. This is a timely and appropriate amendment to Article 29-6 of the Zoning Ordinance in order to update incorrect references, and to alter the frequency of required meetings with code enforcement officials from a quarterly to an annual basis.
2. These changes were suggested by the Divisions of Code Enforcement and Fire and Emergency Services.

Staff Presentation: Ms. Wade presented the staff report, noting that this request is very similar to a text amendment that was presented to the Planning Commission late in 2011. She said that the proposed text amendment would amend references to property maintenance codes in the ND-1 zone. The Zoning Ordinance currently references the BOCA, adopted Basic Property Maintenance Code, although the Division of Code Enforcement is currently using the International Property Maintenance Code, 1998 Edition. Ms. Wade stated that the staff is recommending approval of this change, as well as allowing the Division of Code Enforcement to provide an annual report to the Planning Commission, rather than a quarterly report. She noted that the Planning Commission has not received such a report to date, but the staff is currently working with the Division of Computer Services to establish an automated process to create that report, so that it can be provided to the Planning Commission. She said that the Zoning Committee also recommended approval of this request.

Commission Questions: Mr. Owens asked what type of data the Planning Commission could expect to see on an annual report, and what type of action would be required of them. Ms. Wade answered that the Commission could possibly receive a summary of which properties currently have code violations, and how many violations they've had within a calendar year. The next steps would likely be to research whether the code violations have been corrected; and, if they have not been corrected, what would be necessary to do so. Ms. Wade added that the staff would likely not provide detailed information for each case, but would be able to provide that information if the Commission requested it. Mr. Owens asked if there would be any point in providing a report, if the issues had been in place for most of a year. Ms. Wade responded that the report is intended to be informational in nature only, to let the Planning Commission know what types of issues might be occurring in the ND-1, H-1, and Courthouse Area overlay zones.

Mr. Penn asked if the code violations would be complaint-driven. Ms. Wade answered that some of them would be nuisance complaints, such as weeds or broken windows. She added that one complaint could have a single violation, or several.

Ms. Roche-Phillips asked if any of this type of reporting had been done during Ms. Wade's time with the Division of Planning. Ms. Wade responded that it had not.

Ms. Beatty asked if the Planning Commission would have a role in any follow-up action to the reports. Ms. Wade answered that they would not; the reports would be informational only.

Mr. Berkley asked if the reporting requirement would be different for the H-1 and Courthouse Area overlay zones. Ms. Wade responded that the Planning Commission has already updated the text for the Courthouse Area overlay zone. The H-1 text has not yet been amended, because the Historic Preservation Commission intends to propose some other amendments, and the staff will likely group them together for a single text amendment application. Ms. Wade explained that, when those three text amendments are complete, the reporting requirement will be the same for the three overlay zones.

Mr. Penn asked if this proposed text amendment is the result of the re-aligning of some of the duties of the Division of Planning. Ms. Wade answered that it is not.

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

Citizen Comments: No other citizens were present for this public hearing.

Action: A motion was made by Ms. Blanton, seconded by Mr. Brewer, and carried 10-0 (Wilson absent) to approve ZOTA 2012-2, for the reasons provided by staff.

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