

**STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT**

**MARV 2011-12: THE LEXINGTON HEARING & SPEECH CENTER, INC.**

**DESCRIPTION**

**Zone Change:** From a Single Family Residential (R-1D) zone  
To a Professional Office (P-1) zone

**Acreage:** 0.99 net (1.19 gross) acres

**Location:** 154 and 158-162 North Ashland Avenue

**EXISTING ZONING & LAND USE**

<b><u>Properties</u></b>	<b><u>Zoning</u></b>	<b><u>Existing Land Use</u></b>
Subject Property	R-1D	School and Day Care Center
To North	R-1D	Heritage Baptist Church, Residential
To East	R-1D & R-2	Vacant, Residential
To South	R-1D & R-2	Residential
To West	R-1D	Residential, Adath Israel Temple

**URBAN SERVICES REPORT**

**Roads** – North Ashland Avenue is a local street with on-street parking available on both sides of the roadway. It runs parallel to Walton Avenue south of the downtown area. North Ashland connects to East Main Street (US 25/US 421) west of the subject site and terminates at its intersection with National Avenue to the east. This wide local street serves a residential area, as well as two large places of worship and Ashland Elementary School.

**Curb/Gutter/Sidewalks** – North Ashland Avenue has typical urban improvements (sidewalk, curb and gutter) along both sides of the street.

**Storm Sewers** – The subject property is located within the Town Branch watershed. The storm sewer system in the area was constructed decades ago to serve the original development of this area. Multiple stormwater issues have been documented in the general area, although not affecting the subject property, during major storm events within the past decade. The area is not located within a FEMA Special Flood Hazard Area. If additional impervious areas are proposed, this property will have to comply with the Division of Engineering’s adopted Stormwater Manual with regard to stormwater management.

**Sanitary Sewers** – Sanitary sewers already serve this site and there are no known problems in the immediate area. The proposed reuse of the existing buildings in the site should not require any additional sanitary sewer service for the property. The Town Branch Wastewater Treatment Plant, located near the intersection of Leestown Road/Main Street and S. Forbes Road, serves this area.

**Refuse** – The Urban County Government serves residential and commercial properties within this portion of the Urban Service Area with collection on Tuesdays. Some commercial businesses also make arrangements for more frequent refuse collection through private contractors, as necessary.

**Police** – The nearest Police Station is the Police Headquarters, located on East Main Street, about one mile to the northwest of this property. The subject property is located within the Central Sector, which has its Roll Call Center, on Goodwin Drive near the Eastland Shopping Center.

**Fire/Ambulance** – The nearest fire station (#5) is located less than one mile to the northwest of this site at the intersection of Woodland Avenue and E. Maxwell Street.

**Utilities** – All utilities (gas, water, cable, phone, electric, and streetlights) are existing to serve the subject property and can be modified or improved to serve the proposed professional office use, if necessary.

**LAND USE PLAN AND PROPOSED USE**

The 2007 Comprehensive Plan (Sector 3) recommends Semi-Public (SP) future land use for the subject property. The petitioner proposes to rezone the property in order to renovate the existing buildings for limited professional office uses. The applicant has proposed conditional zoning restrictions and requested multiple dimensional variances in association with the requested zone change.

**CASE REVIEW**

The petitioner has requested a zone change from a Single Family Residential (R-1D) zone to a Professional Office (P-1) zone for 0.99 net acres of property located on the southeast side of North Ashland Avenue, immediately

across the street from the T-intersection of Franklin Avenue. The subject property is comprised of two parcels, located mid-block between East Main Street and Cramer Avenue. They have been most recently used by The Lexington Hearing and Speech Center, a private school and daycare center that serves children with speech, hearing, and language delays and disorders.

The North Ashland corridor is a mixture of residential and non-residential uses, including: single family dwellings, places of worship, neighborhood business, a public elementary school, townhouses, and numerous warehouses that are proposed for adaptive reuse. Such uses are in addition to the former private school and daycare center located on the subject property.

This property is part of the Rogers and Clark Addition to the City of Lexington, which was platted in June 1890. The comprehensive Zoning Atlas of 1969 depicts the area with R-3 zoning. In 1975, and again in 1998, the subject property was part of a neighborhood downzoning – first, to an R-2 zone, and more recently to the current R-1D zone – both times at the request of the neighborhood's residents. The private school had been at this location for 50 years, moving only recently to the former site of the Julia R. Ewan Elementary School in the Fairway neighborhood, located about one mile southeast of the subject property.

The owner/petitioner requests a re-zoning to the P-1 zone in order to re-use the subject property for professional offices. The corollary development plan proposes maintaining the former residences and the associated parking areas as they are today.

The 2007 Comprehensive Plan recommends Semi-Public Facilities (SP) land use for the subject property, recognizing the prior use of a school and daycare center on the subject site. The Semi-Public land use category is defined by the Comprehensive Plan to generally include facilities that benefit the public, but are not publicly-owned; service-oriented facilities; and facilities that contribute to the general welfare of the entire community. Places of worship, cemeteries, private educational institutions, and private recreation are specifically listed as uses that fall within this land use designation on the Land Use Map. The Comprehensive Plan also states that, if redevelopment of a semi-public use is proposed, the Planning Commission should consider the recommendations of the previous comprehensive plans and plan amendments, as well as other relevant current information when making a zoning recommendation for such sites. The 2001 Comprehensive Plan also recommended Semi-Public Facilities land use, while plans previous to that recommended Medium Density Residential future land use (defined as 0-10 dwelling units per acre).

While the P-1 zone allows many semi-public land uses, such as churches and schools, the R-1D zone does as well, as conditional uses (subject to approval by the Board of Adjustment). Thus, both zones could be considered to be in agreement with the Comprehensive Plan. When such a situation occurs, the staff reviews other current, relevant information as suggested by the Comprehensive Plan.

Past comprehensive plans support residential land use, and the neighborhood has twice downzoned to maintain the less intense and predominantly single-family residential character of the area. Of concern to the staff is the introduction of a non-residential zone within this established neighborhood.

While non-residential land use has existed in the area for decades, re-zoning could potentially alter the neighborhood and become a tipping point for more intense redevelopment. While the Comprehensive Plan makes policy statements encouraging infill and redevelopment, there is a delicate balance that must be acknowledged – redevelopment to the potential detriment of a neighborhood should be avoided. The question at hand then, is whether the proposed re-zoning is compatible with the area and/or appropriate. Unfortunately, the staff needs more time to assess the requested zone change, to further review the existing parking situation along North Ashland Avenue and to conduct more detailed site research related to the petitioner's contention that the structures are no longer suitable or viable for residential use.

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

1. The staff needs additional time to assess the requested zone change to further consider the existing on-street parking situation along North Ashland Avenue and to conduct site research as to the petitioner's contention that the structures are no longer viable for residential use.

## **STAFF REPORT ON VARIANCES REQUESTED FROM PLANNING COMMISSION**

### **MARV 2011-12: THE LEXINGTON HEARING & SPEECH CENTER, INC.**

#### **REQUESTED VARIANCES**

1. Reduce the minimum off-street parking requirements by 50%, from 49 spaces to 25 spaces.
2. Increase the maximum building height from 8 feet to 20 feet for 154 N. Ashland Ave. and from 0 feet to 24 feet for 158-162 N. Ashland Ave.
3. Reduce the minimum side yard for 158-162 N. Ashland Ave. from 12 feet to 9 feet and the side yard for 154 N. Ashland Ave from 12 feet to 2 feet.
4. Reduce zone-to-zone perimeter screening requirements from 15 feet to 0 feet and to eliminate the requirement for trees and shrubs.
5. Reduce the minimum required interior landscaping for the vehicular use area from 5% to 3% for 158-162 N. Ashland Ave.

#### **ZONING ORDINANCE**

Article 6-4(c) states that the Planning Commission may hear and act upon requested variances associated with a zone change. In such cases, they may assume all of the powers and responsibilities of the Board of Adjustment, as defined in Article 7-6(b) of the Zoning Ordinance.

Article 7-6(b)(1) states that before any variance is granted, it must be found that the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance.

Article 8-15(i) requires a minimum side yard setback of 12 feet in the P-1 zone.

Article 8-15(m) requires a maximum height to yard ratio of 3:1 in the P-1 zone.

Article 8-15(n) requires the minimum off-street parking in the P-1 zone to be 1 space for every 200 square feet of parking floor area for office uses. Other allowable uses, such as churches and private schools have differing minimum parking requirements; but generally require less parking than professional and other commercial office uses in the P-1 zone.

Article 15-7(d) states that there should be special considerations for Infill & Redevelopment areas. "The intent of the Infill and Redevelopment regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. Unique circumstances may require appropriate Board of Adjustment action to allow some relief of yard requirements where strict application of the regulations would cause unusual hardship or a development incompatible with the existing pattern of the neighborhood."

Article 18-2(c) states that, when there is a change of use proposed, "no use shall be changed to another use for which the Zoning Ordinance requires additional parking over and above that required for the previous use, unless vehicular use area perimeter landscaping as required by this Article is provided for such additional parking. The provisions of this section shall be effective regardless of whether or not new construction is necessary to meet the parking requirements for the new uses. Where new construction will not be necessary to meet the parking requirements, such additional required parking shall be deemed to be on the perimeter for as much as possible of the existing vehicular use area. Where the previous use had no required parking, perimeter landscaping shall be provided for the entire vehicular use area serving the new use. Interior landscaping shall not be required where only the use of the property is changed and no new construction or reconstruction is proposed."

Article 18-2(d) states that when there is a change of zone proposed, “no use of an existing building, structure, or vehicular use area shall be commenced subsequent to a change in zoning unless property perimeter landscaping as required herein has been provided.”

Article 18-3 (a) (1) & (2) state that when “any office or business zone (except P-2) adjoins any residential zone, then a 15' landscape buffer adjacent to all common boundaries (located behind the building line) except street frontage shall be provided with a 1 tree/40' of linear boundary OFT, from Group A or B only, plus 1) a double row of 6' high hedge, or 2) a 6' high fence, wall or earth mound. Also when any vehicular use area (VUA) on any property adjoins any property in any zone except industrial (I-1, I-2); downtown business zones (B-2, B-2A, B-2B), or agricultural (A-U, A-R, A-N or A-B), then a 5' landscape buffer to edge of paving where vehicles overhang, 4' minimum from edge of paving and 3' (that prohibits any vehicular overhang) for other areas, adjacent to portion of vehicular use area that faces adjacent property will be provided with 1 tree/40' of boundary of vehicular use area OFT, from Group A, B, or C, plus a 3' average height continuous planting, hedge, fence, wall or earth mound or a 3' decrease in elevation from the adjoining property to the vehicular use area.”

## **CASE REVIEW**

The applicant wishes to rezone the existing Lexington Hearing and Speech Center property from an R-1D zone to a P-1 zone in order to adaptively re-use the existing buildings on the site. There is no proposed physical change to the existing development, which consists of two separate buildings with a combined parking area of 25 spaces. The applicant has requested variances to the required setbacks, landscaping, and minimum required off-street parking.

This property for The Lexington Deaf Oral School, Inc. was originally purchased in 1969, at which time a private school was an allowable principal permitted use. In the 1983 rewrite of the Zoning Ordinance, private schools became conditional uses in the residential zones, and in 1984 the school applied to the Board of Adjustment for an expansion to the existing facility. In 1993, the accessory child care facility was approved by the Board to be added to the school.

### **Setbacks & Height:**

The proposed P-1 zone would require a side yard setback of 12 feet and a maximum height based on a 3:1 Height-to-Yard ratio. Neither of the two existing buildings meets the required 12-foot side yard setback, being 9 feet (158-162 N. Ashland) and 2 feet (154 N. Ashland) from the lot lines. It is reasonable to grant this side yard variance, subject to the adaptive reuse of these structures. Should the structures be purposefully demolished, it is recommended that any new buildings will be required to meet the P-1 setback regulations or seek a new variance.

Assuming that the side yard variances are granted then the maximum height of the buildings (3:1) would be 27 feet and 6 feet, respectively. The applicant has requested a variance from 0' to 24' (the existing height of the building) for 158-162 N. Ashland Ave. because a connection was built between two buildings over an old lot line. However, in essence, the act of building over the lot line consolidated the two lots into one. Considering that this building is at its closest 9 feet from the property line, the allowable height would be 27 feet; thus, a height variance is not necessary for either this structure or this lot.

The structure on 154 N. Ashland Avenue is, at its closest point, 2 feet from the property line. Therefore, it could not exceed 6 feet in height. The applicant has requested a variance to permit the existing height of 20 feet, which is a reasonable request for the adaptive reuse of this structure. Because the side yard variance is dependent upon the adaptive reuse of the structure, this height variance is likewise needed for this structure.

### **Landscaping:**

The applicant has requested that the existing landscaping and screening be considered adequate for this adaptive reuse. There is currently a 6-foot wooden privacy fence that runs along the southern and western

boundaries, separating the existing parking lot from the adjoining residential neighbors. Although the fence does exist, the required shrubbery and trees do not. There is very little room to install a viable vegetative buffer between the fence and the existing edge of pavement; however, there may be some room on the site to install additional landscaping, even if not in the location required by the Zoning Ordinance. The Landscape Review Committee has not yet met, but is scheduled to meet on August 16, 2011, prior to the Planning Commission hearing on this zone change. The staff will report on the Committee's recommendations at the public hearing.

**Parking:**

The applicant has requested a parking variance to reduce the required minimum off-street parking by 50% from 49 required spaces to 25 spaces. The ability to request a parking reduction is a relatively recent addition to the Zoning Ordinance. The staff generally evaluates the walkability of the area, the availability of on-street parking, and the potential parking generator of the requested use when considering parking reductions. The applicant is proposing a very limited number of uses that would be allowed on this property via conditional zoning, and has submitted a variance request that would cover the largest parking generator of general office use. Other semi-public uses that would be allowed such as a private school, daycare, or church will generally have less required parking. If the parking variance is not granted, the applicant would have to find other available off-site parking spaces to lease/share, or replace the open space areas that were used as playgrounds with additional asphalt to create a more efficient parking area.

There is no doubt that North Ashland Ave. is a walkable neighborhood, with a mix of schools, churches, residential, and commercial uses in the area. However, it is difficult to determine the availability of on-street parking on North Ashland Ave. at this time. Of particular concern to the staff is the Ashland Elementary School, and how it impacts traffic on this street. School resumes on August 11, 2011 and staff will evaluate the traffic and on-street parking situation similar to the Marquis Avenue parking request earlier this year, and report to the Commission at the public hearing.

The Staff Recommended: **Withdrawal** of the requested height variance for 158-162 N. Ashland Ave., for the following reason:

- a. The requested variance is not necessary because the existing 24' tall structure is located 9 feet from the nearest property line, and the P-1 zone height-to-yard ratio will allow up to 27' tall.

The Staff Recommended: **Approval** of the requested setback and height variance for 154 N. Ashland Ave., for the following reasons:

- b. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The existing structures were originally built as residences and have been used as the school and daycare over the past 50 years. The proposed adaptive reuse of these structures is a reasonable justification for the yard and height variances.
- c. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The purpose of the ordinance related to setbacks and height is to increase compatibility with surrounding uses. The adaptive reuse of these buildings accomplishes the same goal.
- d. The special circumstances that apply to the subject properties that serve to justify the variances are the adaptive reuse of the existing development.
- e. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would likely lead to destruction of the existing structures.
- f. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance.

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

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission, or as a Minor

Amendment permitted under Article 21-7 of the Zoning Ordinance.

3. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. Prior to any construction, the applicant shall obtain a building permit and all applicable Federal, State, and Local approvals associated with the identified floodplain.
5. The side yard and height variances are conditioned upon the adaptive reuse of the existing structures as depicted on the preliminary development plan. If the structures are to be purposefully demolished, any new structures built on the property shall comply with the required yard and height restrictions in the P-1 zone.

The Staff Recommended: **Postponement** of the requested landscaping and parking variances, for the following reasons:

- a. The Landscape Review Committee is scheduled to meet on August 16, 2011, and may make a substantive recommendation on the requested landscaping variances.
- b. More time is needed to review the impact that the parking variance may have on the on-street parking on N. Ashland Ave. Public Schools restart on August 11, 2011, and a site evaluation of the on-street parking while school is in session may have an impact on the parking variance recommendation.

JWE/TLW/BJR/WLS

8/4/2011

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