

AN ORDINANCE ADDING A NEIGHBORHOOD DESIGN CHARACTER OVERLAY (ND-1) ZONE FOR 134.50± NET (171.77± GROSS) ACRES, TO PRESERVE EXISTING NEIGHBORHOOD CHARACTER FOR PROPERTIES LOCATED AT 310-395 ANDOVER DRIVE; 201-299 CASSIDY AVENUE (ODD ADDRESSES ONLY); 300-356 CASSIDY AVENUE; 125-250 CHENAULT ROAD; 309-539 CHINOE ROAD; 180-346 COCHRAN ROAD; 401-435 COCHRAN ROAD (ODD ADDRESSES ONLY); 1394-1506 COCHRAN ROAD; 300-377 COLONY BOULEVARD; 951-1245 COOPER DRIVE (ODD ADDRESSES ONLY); 323-325 CROSS LANE; 305-436 DUDLEY ROAD; 300-335 DUKE ROAD; 340-360 DUKE ROAD (EVEN ADDRESSES ONLY); 131-191 EASTOVER DRIVE; 300-372 GARDEN ROAD; 201-505 HART ROAD; 101-194 LOUISIANA AVENUE; 100-165 OLD CASSIDY AVENUE; 998-1144 PROVIDENCE LANE (EVEN ADDRESSES ONLY); 1200-1237 PROVIDENCE LANE; 303-440 RIDGEWAY ROAD; 300-315 AND 340 ROMANY ROAD; 901-1015 TATES CREEK ROAD (ODD ADDRESSES ONLY); AND 1405-1491 TATES CREEK ROAD (ODD ADDRESSES ONLY)(URBAN COUNTY PLANNING COMMISSION).

WHEREAS, at a Public Hearing held on August 28, 2008, and September 25, 2008, a petition for a zoning ordinance map amendment to add a Neighborhood Design Character Overlay (ND-1) zone for 134.50± net (171.77± gross) acres for property located at 310-395 Andover Drive; 201-299 Cassidy Avenue (odd addresses only); 300-356 Cassidy Avenue; 125-250 Chenault Road; 309-539 Chinoe Road; 180-346 Cochran Road; 401-435 Cochran Road (odd addresses only); 1394-1506 Cochran Road; 300-377 Colony Boulevard; 951-1245 Cooper Drive (odd addresses only); 323-325 Cross Lane; 305-436 Dudley Road; 300-335 Duke Road; 340-360 Duke Road (even addresses only); 131-191 Eastover Drive; 300-372 Garden Road; 201-505 Hart Road; 101-194 Louisiana Avenue; 100-165 Old Cassidy Avenue; 998-1144 Providence Lane (even addresses only); 1200-1237 Providence Lane; 303-440 Ridgeway Road; 300-315 and 340 Romany Road; 901-1015 Tates Creek Road (odd addresses only); and 1405-1491 Tates Creek Road (odd addresses only), was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change; 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 herein by reference.

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

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County

Government be amended to show a change in zone, to add a Neighborhood Design Character Overlay (ND-1) zone for 134.50± net (171.77± gross) acres for property located at 310-395 Andover Drive; 201-299 Cassidy Avenue (odd addresses only); 300-356 Cassidy Avenue; 125-250 Chenault Road; 309-539 Chinoe Road; 180-346 Cochran Road; 401-435 Cochran Road (odd addresses only); 1394-1506 Cochran Road; 300-377 Colony Boulevard; 951-1245 Cooper Drive (odd addresses only); 323-325 Cross Lane; 305-436 Dudley Road; 300-335 Duke Road; 340-360 Duke Road (even addresses only); 131-191 Eastover Drive; 300-372 Garden Road; 201-505 Hart Road; 101-194 Louisiana Avenue; 100-165 Old Cassidy Avenue; 998-1144 Providence Lane (even addresses only); 1200-1237 Providence Lane; 303-440 Ridgeway Road; 300-315 and 340 Romany Road; 901-1015 Tates Creek Road (odd addresses only); and 1405-1491 Tates Creek Road (odd addresses only); being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - That the granting of this zone change is made subject to the following use restrictions as conditions of granting the zone change:

Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be subject to the following use restrictions:

Unless otherwise noted, the proposed standards shall only apply to single-family detached residential dwellings.

1. Rear Yard Setbacks:
 - A. Measured 70' from the Front Building Plane (excludes porches) or 10' from the Rear Property Line, whichever is greater. Applies to all properties except those on Andover Drive, Garden Road, and Tates Creek Road.
 - B. Measured 80' from the Front Building Plane (excludes porches) or 10' from the Rear Property Line, whichever is greater. This applies to all properties on Andover Drive, Garden Road, and Tates Creek Road.
2. Building Heights: Maximum of 30' to highest ridge and maximum eave height (aka gutter line) at 2nd floor ceiling line including dormers. (Excludes new additions which may exceed 30' in order to match existing ridge lines, eave height measured at top of fascia board)
3. Roof Pitch: Minimum 7:12 slope for Gabled Primary Roofs (Excludes dormers, single story flat roofs, roofs built to match existing roof pitches, and for allowable projections per Article 15-5 of the Zoning Ordinance)
4. Wall Openings: Minimum of 10% of the wall plane on each

elevation of new construction is to be windows, doors and/or vented openings; however, no openings shall be required if Building Code requires Fire Ratings. (Excludes any new construction with a wall plane area of less than 150 square feet, chimneys, and side walls of dormers)

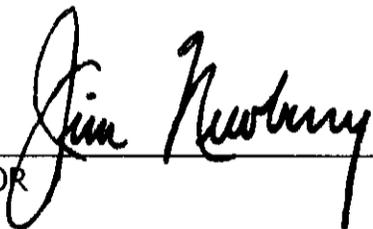
5. Parking for Single-Family Attached and Multi-Family Dwellings: No parking in front of the front building plane of the principal structure on the lot. Garage doors shall not face the front building line. (Excludes detached garages)
6. Accessory Structures: Maximum footprint of 800 square feet for all accessory structures per lot. Maximum 22' height to roof ridge, maximum 12' height to eave (aka gutter line). No exterior stairs shall be permitted. Maximum 50 percent of roof square footage allowed to be shed dormer. (Eave height measured at top of fascia board and does not apply to dormers, and no minimum roof pitch required on accessory structures)

These restrictions are appropriate, given the extensive study undertaken to identify the existing neighborhood character by the Chevy Chase Neighborhood, and are important to maintain that existing character in the future. In accordance with Section 6-7(c)(2) of the Zoning Ordinance, these restrictions can be modified, removed, or amended by the Planning Commission with no Council action required.

Section 3 - That the Lexington-Fayette Urban County Planning Commission is directed to show the amendment on the official zone map atlas and to make reference to the number of this Ordinance.

Section 4 - That this Ordinance shall become effective on January 1, 2009.

PASSED URBAN COUNTY COUNCIL: November 6, 2008

MAYOR 

ATTEST:


CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: November 13, 2008-1t

Rec'd by djh

Date: 10-17-08

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

IN RE: MAR 2008-27: URBAN COUNTY PLANNING COMMISSION (AMD.) – amended petition for a zone map amendment to add a Neighborhood Design Character Overlay (ND-1) zone for 134.50± net (171.77± gross) acres, to preserve existing neighborhood character for properties located at 310-395 Andover Drive; 201-299 Cassidy Avenue (odd addresses only); 300-356 Cassidy Avenue; 125-250 Chenault Road; 309-539 Chinoe Road; 180-346 Cochran Road; 401-435 Cochran Road (odd addresses only); 1394-1506 Cochran Road; 300-377 Colony Boulevard; 951-1245 Cooper Drive (odd addresses only); 323-325 Cross Lane; 305-436 Dudley Road; 300-335 Duke Road; 340-360 Duke Road (even addresses only); 131-191 Eastover Drive; 300-372 Garden Road; 201-505 Hart Road; 101-194 Louisiana Avenue; 100-165 Old Cassidy Avenue; 998-1144 Providence Lane (even addresses only); 1200-1237 Providence Lane; 303-440 Ridgeway Road; 300-315 and 340 Romany Road; 901-1015 Tates Creek Road (odd addresses only); and 1405-1491 Tates Creek Road (odd addresses only) (Council District 5)

Having considered the above matter on August 28, 2008, and on September 25, 2008, at Public Hearings, and having voted 6-0-4 that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend

CONDITIONAL APPROVAL of this matter for the following reasons:

1. The requested Neighborhood Design Character (ND-1) overlay zone is in agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The Goals & Objectives of the Plan identify eight themes, one of which is “preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents.” Further, Goal 15, Objective I states that neighborhood protection overlay zoning provisions should be implemented for establishing stability and protection in existing and, especially, older neighborhoods.
 - b. The implementation of a Neighborhood Design Character (ND-1) overlay zone is in agreement with the Comprehensive Plan’s Goals & Objectives by providing specific standards that will maintain the existing character of the neighborhood, regardless of the underlying zoning.
 - c. The Chevy Chase neighborhood has completed a design character study, defined the existing character of the neighborhood, developed preservation goals, and proposed appropriate neighborhood design standards (in need of only slight modification), thus meeting the requirements of the ND-1 zone.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

Unless otherwise noted, the proposed standards shall only apply to single-family detached residential dwellings.

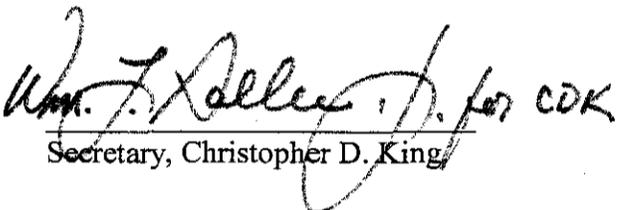
1. Rear Yard Setbacks:
 - A. Measured 70’ from the Front Building Plane (excludes porches) or 10’ from the Rear Property Line, whichever is greater. Applies to all properties except those on Andover Drive, Garden Road, and Tates Creek Road.

- B. Measured 80' from the Front Building Plane (excludes porches) or 10' from the Rear Property Line, whichever is greater. This applies to all properties on Andover Drive, Garden Road, and Tates Creek Road.
2. Building Heights: Maximum of 30' to highest ridge and maximum eave height (aka gutter line) at 2nd floor ceiling line including dormers. (Excludes new additions which may exceed 30' in order to match existing ridge lines, eave height measured at top of fascia board)
 3. Roof Pitch: Minimum 7:12 slope for Gabled Primary Roofs (Excludes dormers, single story flat roofs, roofs built to match existing roof pitches, and for allowable projections per Article 15-5 of the Zoning Ordinance)
 4. Wall Openings: Minimum of 10% of the wall plane on each elevation of new construction is to be windows, doors and/or vented openings; however, no openings shall be required if Building Code requires Fire Ratings.
(Excludes any new construction with a wall plane area of less than 150 square feet, chimneys, and side walls of dormers)
 5. Parking for Single-Family Attached and Multi-Family Dwellings: No parking in front of the front building plane of the principal structure on the lot. Garage doors shall not face the front building line. (Excludes detached garages)
 6. Accessory Structures: Maximum footprint of 800 square feet for all accessory structures per lot. Maximum 22' height to roof ridge, maximum 12' height to eave (aka gutter line). No exterior stairs shall be permitted. Maximum 50 percent of roof square footage allowed to be shed dormer. (Eave height measured at top of fascia board and does not apply to dormers, and no minimum roof pitch required on accessory structures)

These restrictions are appropriate, given the extensive study undertaken to identify the existing neighborhood character by the Chevy Chase Neighborhood, and are important to maintain that existing character in the future.

Note: The Planning Commission also recommended that this rezoning ordinance have an effective date of January 1, 2009.

ATTEST: This 17th day of October, 2008.


Secretary, Christopher D. King

RANDALL VAUGHN
CHAIR

K.R.S. 100.211(7) requires that the Council take action on this request by December 24, 2008.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by Traci Wade, Senior Planner.

OBJECTORS

- Chip Crawford, Chair of the Lexington Remodelers Council
- Richard Murphy, attorney, representing the owners of 310 Romany Road; 258 Duke Road; 300, 310, 320, 340, and 360 Romany Road
- Tom Bunch, 402 Dudley Road, head of ad-hoc opposition committee
- John Bryce, attorney, representing the owner of 311 Duke Road
- Susan Slade, 1405 Tates Creek Road
- Bryan Sawyer, 380 Andover Drive
- Joe Lenney, 341 Colony Boulevard
- Tom Burke, 342 Dudley Road
- Blanche Horseman, 317 Colony Boulevard
- Russ Milburn, Dudley Road
- P.J. Blackburn, 200 Chenault Road

OBJECTIONS

- He is concerned about the lack of an appeals process and the possibility of an increased burden on the Division of Building Inspection with regard to review of the ND-1 guidelines.
- His clients believe that it is unfair to prohibit side yard parking for properties with multi-family dwelling units.
- His committee is not entirely opposed to ND-1 zoning, but has concerns about specific design guidelines and the lack of an appeals process.
- His client objects to the inclusion of the R-3 properties on Duke and Romany Roads in the ND-1 request.
- She had an architect design a proposed addition to her home, which would not be allowed under the proposed design guidelines.
- He believes that there needs to be more flexibility in the design guidelines for homeowners whose properties do not match the "typical" Chevy Chase lot.
- He shares the opposition committee's concerns about the proposed design guidelines.
- He believes that the proposed design guidelines need "tweaking" to allow more flexibility for homeowners.
- She is concerned that her property value will be negatively impacted by ND-1 zoning.
- He believes that the proposed design guidelines are too restrictive.
- She believes that the proposed ND-1 zoning would take away her rights as a homeowner.

VOTES WERE AS FOLLOWS:

- AYES: (6) Brewer, Copeland, Day, Owens, Richardson, Roche-Phillips
- NAYS: (0)
- ABSENT: (1) Cravens
- ABSTAINED: (0)
- DISQUALIFIED: (4) Holmes, Penn, Whitman, Vaughn

Motion for CONDITIONAL APPROVAL of MAR 2008-27 carried.

Enclosures: Application
 Plat
 Staff Report
 Revised Staff Findings
 Applicable excerpts of minutes of above meeting

GENERAL INFORMATION

1. ADDRESS INFORMATION (Name, Address, City/State/Zip, & PHONE NO.)

APPLICANT:	Lexington-Fayette Urban County Planning Commission 200 East Main Street, Lexington, Kentucky 40507
OWNER:	See Attachment
ATTORNEY:	LFUCG Department of Law 200 East Main Street, Lexington, Kentucky 40507

2. ADDRESS OF APPLICANT'S PROPERTY (ATTACH LEGAL DESCRIPTION)

310-395 Andover Drive; 201-299 Cassidy Avenue (odd addresses only); 300-356 Cassidy Avenue; 125-250 Chenault Road; 309-539 Chinoe Road; 180-346 Cochran Road; 401-435 Cochran Road (odd addresses only); 1394-1506 Cochran Road; 300-377 Colony Boulevard; 951-1245 Cooper Drive (odd addresses only); 323-325 Cross Lane; 305-436 Dudley Road; 300-335 Duke Road; 340-360 Duke Road (even addresses only); 131-191 Eastover Drive; 300-372 Garden Road; 201-505 Hart Road; 101-194 Louisiana Avenue; 100-165 Old Cassidy Avenue; 998-1144 Providence Lane (even addresses only); 1200-1237 Providence Lane; 303-440 Ridgeway Road; 300-313 and 340 Romany Road; 901-1015 Tates Creek Road (odd addresses only); and 1405-1491 Tates Creek Road (odd addresses only).

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY (Use attachment, if needed--same format.)

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
R-1C, R-1D, R-1T, R-2, R-3 & B-1	Single Family Residential, Townhouse Residential, Duplexes, Multi-Family Residential	ND-1 Overlay	Same	134.5 ±	171.7 ±

4. SURROUNDING PROPERTY, ZONING & USE

Property	Use	Zoning
North	Single Family Residences, Multi-Family Residential, Commercial	R-1C, R-2, R-3 & B-1
East	Single Family Residences	R-1C
South	Single Family Residences	R-1C
West	Schools, Churches, Single Family Residences	R-1C, R-1D

5. URBAN SERVICES STATUS (Indicate whether existing, or how to be provided.)

Roads	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Storm Sewers	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Sanitary Sewers	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Curb/Gutter/Sidewalks	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Refuse Collection	<input checked="" type="checkbox"/> LFUCG	<input checked="" type="checkbox"/> Other		
Utilities	<input checked="" type="checkbox"/> Electric	<input checked="" type="checkbox"/> Gas	<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Phone <input checked="" type="checkbox"/> Cable

6. DESCRIBE YOUR JUSTIFICATION FOR REQUESTED CHANGE (Use attachment, if needed.)

See Division of Planning staff report.

7. APPLICANT/OWNER SIGNS THIS CERTIFICATION.

I do hereby certify that to the best of my knowledge and belief, all application materials are herewith submitted, and the information they contain is true and accurate.

PLANNING COMMISSION SECRETARY *Christina D. King* DATE 10/15/2008

- A. **CHEVY CHASE NEIGHBORHOOD ZONE CHANGE INITIATION REQUEST** – petition request by residents of the Chevy Chase neighborhood for Planning Commission initiation of a ND-1 overlay zone for residential properties bounded by Chinoe Road, Cooper Drive, Tates Creek Road and the rear property line of parcels along the south side of Fontaine Road.

The Zoning Committee Recommended: **Approval** of the initiation of an ND-1 overlay zone.

Staff Presentation: Ms. Wade entered into the record a copy of the Chevy Chase neighborhood's ND-1 rezoning request and petitions. She briefly oriented the Commission to the location of the Chevy Chase neighborhood, which includes 675 residential properties and encompasses four neighborhood associations.

Ms. Wade stated that the Chevy Chase neighborhood representatives had worked closely with the Strategic Planning staff in order to prepare this request, in addition to collecting the petition signatures necessary to initiate ND-1 zoning. The primary goal of the neighborhood with this request is to maintain the character of the area; conserve the size and scale of development; and reinforce the architecture and historic integrity of the neighborhood.

Ms. Wade referred to the neighborhood representatives' exhibit packet, which had been distributed to the Commission, noting that the response rate to the petition request was 73%, with 61% of the total respondents in favor of the ND-1 overlay zone. 11.4% were in opposition to the request, and 27.5% of the original total did not respond to the petition request. Of the residents who did respond, 84.5% approved of the ND-1 overlay zone and requested that the Planning Commission go forward with the initiation of that request. The Executive Summary for this application includes the following seven restrictions, to be governed by the proposed ND-1 overlay zone:

1. Minimum rear yard setback requirement shall be 1/3 of the lot depth or 25', whichever is greater.
2. Maximum residential building height of 28'.
3. Minimum residential roof pitch of at least 7:12.
4. A minimum of 10% window and door openings per new wall.
5. Scaled drawings shall be required to secure a residential building permit.
6. Modified R-1T and R-3 parking limits to require rear yard parking.
7. Maximum garage sizes: 700 square-foot footprint and 19' tall.

Ms. Wade stated that the Zoning Committee recommended approval of the initiation of the ND-1 zone, after reviewing this information at their meeting three weeks ago.

Neighborhood Representation: Brad Hawkins, 405 Dudley Road, stated that he was present representing a committee of neighbors who evaluated the appropriateness of ND-1 zoning for the Chevy Chase neighborhood. He said that that committee included several planners and architects, as well as Henry Jackson, former manager of Strategic Planning. The committee's process began in 2006, when area residents became aware that the ND-1 zone could be used as a tool to preserve the character of the neighborhood. Mr. Hawkins noted that Lexington's older neighborhoods are a "non-renewable resource," and it is important that they be preserved.

Mr. Hawkins stated that the Chevy Chase neighborhood residents embraced the ND-1 zoning process as a way to enhance and improve their properties while providing some degree of certainty as to what is going to happen to the neighborhood in the future. The neighborhood committee held 16 monthly meetings where ND-1 zoning was a topic on the agenda, and every resident in the area received copies of their meeting agendas. After the committee developed the proposed set of guidelines, they spent the winter of 2008 presenting those guidelines to residents, and modifying them based on neighborhood members' input. Of all the property owners surveyed, 61% of the property owners were in agreement with the proposed ND-1 zoning. The neighborhood committee also reached out to the approximately 125 absentee property owners in the Chevy Chase area, sending out two letters in an attempt to contact them; of the 22 responses the committee received to those letters, 18 were in favor of ND-1 zoning.

Mr. Hawkins said that the neighborhood committee held focus groups to determine residents' concerns for the neighborhood, and learned that the primary concern was new development or re-development of properties, mostly with the size and scale of those new homes in comparison to existing residences. The neighborhood committee considered the 15 guidelines allowable under Article 29 from which the neighborhood could choose, and narrowed the list down to the seven guidelines proposed to address size and scale. An architectural survey of every structure in Chevy Chase was also performed, including photos and database information for each structure. Once the list of proposed guidelines was developed, an article was printed in the *Chevy Chaser* magazine in order to allow all area residents the opportunity to review and comment on those guidelines.

Mr. Hawkins stated that he believes that the Chevy Chase area residents have gone far beyond what most neighborhoods have done with regard to the ND-1 process. They believe that the proposed guidelines are reasonable, and would provide protection for the character of the neighborhood.

Commission Questions: Mr. Penn asked, with regard to the demarcation line shown on the map included with the exhibit packet, why the demarcation line was proposed as it was in the area of Cochran and Chenault Roads. Mr. Hawkins answered that both sides of those streets are lined with multi-family homes, so those lots were chosen as the boundary for the request area.

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

Mr. Penn asked why the ND-1 request area included 901-1015 Tates Creek Road, but excluded properties on Fontaine Road. Mr. Hawkins responded that the neighborhood committee surveyed the area that is traditionally believed to be the Chevy Chase neighborhood. The residents of the properties that front onto Fontaine Road consider themselves part of the Ashland Park neighborhood, and the Chevy Chase residents did not wish to interfere with those established neighborhood boundaries.

Mr. Vaughn asked all those in the audience in favor of this request to stand, and several people stood. There were no citizens present in opposition to this request.

Action: A motion was made by Ms. Godfrey, seconded by Mr. Mahan, and carried 9-0 (Holmes and Whitman absent) to initiate an application for ND-1 overlay zoning as requested by the Chevy Chase neighborhood.

Commission Comments: Ms. Godfrey complimented the Chevy Chase neighborhood committee on their hard work, including the comprehensive exhibit packet presented to the Commission.

Mr. Mahan stated that it was refreshing to see a neighborhood work together so well, and commended the committee on their excellent preparation.

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

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

MAR 2008-27: URBAN COUNTY PLANNING COMMISSION

DESCRIPTION

Zone Change: To a Neighborhood Character Design Overlay (ND-1) zone

Acreage: 134.7 ± net (172.0 ± gross) acres

Location:	310-395 Andover Drive	340-360 Duke Road (even addresses only)
	201-299 Cassidy Avenue (odd addresses only)	131-191 Eastover Drive
	300-356 Cassidy Avenue	300-372 Garden Road
	125-250 Chenault Road	201-505 Hart Road
	309-539 Chinoe Road	101-194 Louisiana Avenue
	180-376 Cochran Road	100-165 Old Cassidy Avenue
	401-435 Cochran Road (odd addresses only)	998-1144 Providence Lane (even addresses only)
	1394-1506 Cochran Road	1200-1237 Providence Lane
	300-377 Colony Boulevard	303-440 Ridgeway Road
	951-1245 Cooper Drive (odd addresses only)	300-315 and 340 Romany Road
	323-325 Cross Lane	901-1015 Tates Creek Road (odd addresses only)
	305-436 Dudley Road	1405-1491 Tates Creek Road (odd addresses only)
	300-335 Duke Road	

Proposed Design Standards:

1. **Rear Yard Setbacks:** Minimum of 25' or one third of the lot depth, whichever is greater.
2. **Building Heights:** Maximum of 28' to highest ridge and maximum eave height at 2nd floor ceiling line.
(includes dormers)
3. **Roof Pitch:** Minimum of 7:12 slope.
(except dormers, porches, flat roofs, and to match existing roof)
4. **Wall Openings:** Minimum of 10% of wall area on each elevation of new construction to be windows or doors.
(excludes porch openings; no openings required if Building Code requires Fire Ratings)
5. **Drawings:** Building floor plans and exterior elevations of all sides typical of proposed construction at a minimum 1/8" scale and scaled site plan required to secure building permit.
(includes accessory structures)
6. **R-1T and R-3 Parking:** Garage doors shall not face the front building line. No parking in front yard. All parking in rear lot only.
(excludes detached garages)
7. **Maximum Garage Size:** Maximum footprint of 700 square feet per lot. Maximum of 19' height to roof ridge, maximum 12' height to eave. No exterior stairs permitted.

EXISTING ZONING & LAND USE

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Properties	R-1C, R-1D, R-1T, R-2, R-3 & B-1	Residential
To North	R-1C, R-2, R-3 & B-1	Residential & Commercial
To East	R-1C	Single Family Residential
To South	R-1C	Single Family Residential
To West	R-1C & R-1D	Residential, Churches, Schools

URBAN SERVICES REPORT

Roads – The Chevy Chase neighborhood area has access to several minor arterial roadways, including Tates Creek Road (KY 1974), Fontaine Road, Cooper Drive and Chinoe Road. Romany Road, Hart Road, portions of Ridgeway Road, and portions of Cochran Road also serve as collector streets through the neighborhood. Generally, the neighborhood collector and local streets are laid out in a grid system/pattern. No changes are expected as a result of the imposition of the Neighborhood Design Character overlay zone.

Curb/Gutter/Sidewalks – The street system in this neighborhood is suburban in character, with curbs, gutters and sidewalks throughout the area.

Storm Sewers – The neighborhood area is split between the Town Branch and the West Hickman watersheds. Storm sewers are constructed throughout the neighborhood. Historically, the Duke Road area has seen severe drainage problems, but many improvements have been constructed in that area to alleviate those problems.

Sanitary Sewers – Sanitary sewers exist in the Chevy Chase neighborhood area. This area is served by gravity sanitary sewer lines to both of Lexington-Fayette County's wastewater treatment facilities. A majority of the neighborhood area is served by the Town Branch Wastewater Treatment facility; however, the southern and eastern edges of the subject area are served by the West Hickman Wastewater Treatment facility in northern Jessamine County. Some sanitary sewer problems have been reported in this area, specifically during the huge September 2006 storm event.

Refuse – The Urban County Government serves this residential area with collection on Fridays.

Police – The nearest police station is the Central Sector roll call center, located about 3 miles to the northeast of Chevy Chase, off of Winchester Road, near the Eastland Shopping Center

Fire/Ambulance – The fire stations #5 and #9 both serve the Chevy Chase neighborhood area. Fire station #5 is located about 1¼ miles to the northwest of Chevy Chase, at the corner of Woodland Avenue and East Maxwell Street. Fire Station #9 is located about 2 miles to the southeast of Chevy Chase along Richmond Road, just south of the Fontaine Road and Richmond Road signalized intersection.

Utilities – Electric, gas, cable television, water, and phone service, as well as street lights all exist in the neighborhood at this time.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 3) recommends a combination of residential land uses for the subject area, including high, medium and low density residential land use. The Planning Commission has initiated a zone change request to add a Neighborhood Design Character Overlay (ND-1) zone in order to regulate rear yard setbacks, building height, roof pitch, off-street parking, garage door restrictions, and accessory structures, regardless of the underlying zoning.

CASE REVIEW

The Planning Commission initiated a zone change to a Neighborhood Design Character Overlay (ND-1) zone for the Chevy Chase neighborhood in June 2008 at the request of the Chevy Chase Neighborhood Association and its Neighborhood Design Committee. The area proposed for the ND-1 overlay zone constitutes over 130 acres of property and more than 600 individual properties. The subject area is bounded by Tates Creek Road to the west, the rear of properties on the south side of Fontaine Road to the north, Chinoe Road to the east, and Cooper Drive to the south. Additionally, the commercial properties along Duke and Romany Roads (including the U.S. Post Office), church-owned properties along Colony Boulevard, and Morton Middle School and Cassidy Elementary School were excluded from the ND-1 overlay area due to their non-residential land use status. The area proposed for the overlay zone includes the residential portions of the area generally considered the Chevy Chase neighborhood.

Chevy Chase was originally developed in the 1920s and 1930s as a mixed-use neighborhood with single and multi-family homes, commercial and institutional structures. Some residential development continued into the 1940s. The majority of the neighborhood is zoned R-1C, although R-1D, R-1T, R-2, and R-3 zoning also exists mostly near the Romany Road/Duke Road commercial area. Outside of the subject area, churches, schools, businesses and institutional uses help to create a neighborhood with a unique and distinctive character within Lexington-Fayette County. The neighborhood's application describes the area:

“The streets in Chevy Chase tend to have a visual continuity with the manner in which the neighborhood was developed; almost a park-like appearance. There is a rhythm and a beauty to the manner in which the homes relate to one another and their design cues in setbacks, building heights, eaves and scale that link adjoining properties into unified block faces and in creating a distinct character. This visual continuity is a critical factor that helps to create the unique identity of Chevy Chase.”

The Chevy Chase neighborhood has experienced some new residential development in the form of “tear-downs and pop-ups”, and new additions that are, in many instances, a stark contrast to the existing neighborhood character. In order to protect the neighborhood from inappropriate or incompatible development, they have requested the ND-1 overlay zone to maintain the existing rear yard setbacks, further limit building height, establish a minimum roof pitch, limit off-street parking in front yards and garage door orientation, and limit the size of accessory structures.

The purpose of the ND-1 overlay zone is to establish a design framework to conserve key features or visual and natural characteristics of an interested neighborhood. Although the ND-1 overlay has been applied to one other neighborhood (Greenbrier), this is the first neighborhood effort to regulate specific structural and design features such as building sizes, roof shapes, and parking area design. The ND-1 zone is designed to be administered in a way similar to properties that have conditional zoning restrictions.

Article 29-3 gives seven criteria, at least one of which must be met by a neighborhood in order to qualify for the ND-1 overlay zone. As noted in the Chevy Chase petition to the Planning Commission, the neighborhood would like to maintain the overall character of the neighborhood, and they have established a need to protect the visual characteristics that give their neighborhood its distinct identity based upon recent changes to the neighborhood.

The neighborhood has requested the ND-1 overlay zone with seven regulations or standards. One of the seven standards would require that 1/8"-scale drawings be provided to the Division of Building Inspection at the time of building permit application. While this would certainly assist the plan review and verification of other ND-1 standards, but this is not an allowable standard as outlined in the Zoning Ordinance. For this reason, the staff has recommended that it be deleted and that a formal request be placed with the Division of Building Inspection that they ask for these types of drawings for new construction in the ND-1 area as necessary to issue permits in conformance with the standards.

The neighborhood identified two conservation and design goals through the study process. They are: (1) promote new construction in harmony with the scale and physical character of original buildings; and (2) encourage the use of existing buildings through adaptive rehabilitation in a manner appropriate to the scale and physical character of original buildings. The remaining six standards were developed based upon these goals.

The first requested standard, a minimum rear yard setback of 25 feet or one-third of the lot depth, will help to maintain green space and building scale in the neighborhood. The rear yard setback would only apply to the principal structure on the lot. Second, building heights are requested to be a maximum of 28 feet to the tallest ridge and a maximum eave height (generally thought of as the gutter line) of the 2nd story ceiling height. This regulation is aimed at keeping homes in scale with the neighborhood and will, in combination with the third proposed standard, prevent three-story homes or even two-story homes with dormers. The third proposed standard would require a minimum 7:12 slope for the primary roof structure; that is, one located on the principal structure on the lot. The neighborhood has defined some exceptions to this regulation to allow some variation and additions that are typical of the neighborhood already. The fourth standard proposes that a minimum of 10% of any wall plane of new construction be openings, specifically windows or doors. This is similar to an existing Infill & Redevelopment Area regulation and will help to ensure visual continuity of the neighborhood. For regulatory purposes, this standard should only apply once the wall plane area is at least 150 square feet in size. The fifth standard applies only to single-family attached (townhouses), and multi-family residential development. The standard would require that all parking be located behind the building(s), so that it is not as intrusive to the existing streetscape. Additionally, the standard would require that overhead garage doors not face the front building line, except for detached garages. The sixth proposed standard limits the size of detached garages and other accessory structures to 700 square feet (total footprint or lot coverage) per lot, a maximum height of 19 feet, with a maximum eave height (aka gutter line) of 12 feet. The neighborhood noted that the earlier roof pitch regulation is not intended to be applied to accessory structures. The neighborhood has requested these restrictions in order to maintain the "sense of place" and the "architectural integrity" currently found in Chevy Chase.

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. Therefore, it follows that the implementation of a Neighborhood Design Character (ND-1) overlay zone in the Chevy Chase neighborhood is in agreement with the Comprehensive Plan's Goals & Objectives by providing specific standards that will maintain the existing character of the neighborhood, regardless of the underlying zoning.

In conclusion, the proposed ND-1 regulations will help maintain the existing character of the Chevy Chase neighborhood, ensuring that any new development or additions to existing homes will be compatible with the surrounding development. The neighborhood studied the early and present character of the neighborhood, and found that incompatible development is occurring and threatening the identity and unique fabric of the neighborhood. Should this neighborhood not be protected through the use of either conditional zoning restrictions or the proposed Neighborhood Design Character Overlay (ND-1) zone, it might be altered to the extent that the quality of life of residents would be impacted.

Lastly, the property located at 315 Romany Road is zoned Neighborhood Business (B-1) and has been used as an office for the past 14 years by the current property owner. Given the fact that the property is not zoned residentially, nor is it a non-conforming residential land use, the ND-1 zone is not appropriate and the property should be removed from the subject area boundary.

Staff Alternative Design Standards:

Note: Additions are identified by an underline, and deletions are identified by a ~~strikethrough~~.

Unless otherwise noted, the proposed standards shall only apply to single-family residential dwellings.

- Rear Yard Setbacks:** Minimum of 25' or one third of the lot depth, whichever is greater.
(applicable to the principal structure only, excludes covered porches)

2. **Building Heights:** Maximum of 28' to highest ridge and maximum eave height (aka gutter line) at 2nd floor ceiling line.
(includes dormers, but excludes new additions, which may exceed 28' in order to match existing ridge lines)
3. **Primary Roof Pitch:** Minimum of 7:12 slope.
(except dormers, porches, flat roofs on single-story additions, and to match existing roofs, and for allowable projections per Article 15-5 of the Zoning Ordinance)
4. **Wall Openings:** Minimum of 10% of the wall plane area on each elevation of new construction is to be windows or doors.
(excludes any new construction with a wall plane area of less than 150 square feet and side walls of dormers porch openings; however, no openings shall be required if Building Code requires Fire Ratings)
5. **Drawings:** Building floor plans and exterior elevations of all sides typical of proposed construction at a minimum 1/8" scale and scaled site plan required to secure building permit.
(includes accessory structures)
5. 6. **R-1T and R-3 Parking for Single-Family Attached and Multi-Family Dwellings:**
No parking shall be permitted in the front or side yard. All parking in rear lot only. Garage doors shall not face the front building line. *(excludes detached garages)*
6. 7. **Maximum Garage Size Accessory Structures:** Maximum footprint of 700 square feet for all accessory structures per lot. Maximum of 19' height to roof ridge, maximum 12' height to eave (aka gutter line). No exterior stairs shall be permitted.
(no minimum roof pitch required on accessory structures)

The Staff Recommends: **Withdrawal of 315 Romany Road**, for the following reason:

1. The property located at 315 Romany Road is zoned Neighborhood Business (B-1) and has been used as an office for the past 14 years by the current property owner. Given the fact that the property is not zoned residentially, nor is it a non-conforming residential land use, the ND-1 zone is not appropriate and the property should be removed from the area proposed for this overlay.

The Staff Recommends: **Approval of the Staff Alternative Design Standards for the remaining properties**, for the following reason:

1. The requested Neighborhood Design Character (ND-1) overlay zone is in agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The Goals & Objectives of the Plan identify eight themes, one of which is "preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents." Further, Goal 15, Objective I states that neighborhood protection overlay zoning provisions should be implemented for establishing stability and protection in existing and, especially, older neighborhoods.
 - b. The implementation of a Neighborhood Design Character (ND-1) overlay zone is in agreement with the Comprehensive Plan's Goals & Objectives by providing specific standards that will maintain the existing character of the neighborhood, regardless of the underlying zoning.
 - c. The Chevy Chase neighborhood has completed a design character study, defined the existing character of the neighborhood, developed preservation goals, and proposed appropriate neighborhood design standards (in need of only slight modification), thus meeting the requirements of the ND-1 zone.

TLW//RMP/BJR/WLS

8/7/08

Planning Services/Staff Reports/MAR/2008/MAR2008-27.doc

REVISED STAFF FINDINGS FOR CONDITIONAL ZONING RECOMMENDATION

MAR 2008-27: URBAN COUNTY PLANNING COMMISSION

The Staff Recommends: **Withdrawal of 315 Romany Road**, for the following reason:

1. The property located at 315 Romany Road is zoned Neighborhood Business (B-1) and has been used as an office for the past 14 years by the current property owner. Given the fact that the property is not zoned residentially, nor is it a non-conforming residential land use, the ND-1 zone is not appropriate and the property should be removed from the area proposed for this overlay.

The Staff Recommends: **Approval of the Staff Alternative Design Standards for the remaining properties**, for the following reasons:

1. The requested Neighborhood Design Character (ND-1) overlay zone is in agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The Goals & Objectives of the Plan identify eight themes, one of which is "preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents." Further, Goal 15, Objective I states that neighborhood protection overlay zoning provisions should be implemented for establishing stability and protection in existing and, especially, older neighborhoods.
 - b. The implementation of a Neighborhood Design Character (ND-1) overlay zone is in agreement with the Comprehensive Plan's Goals & Objectives by providing specific standards that will maintain the existing character of the neighborhood, regardless of the underlying zoning.
 - c. The Chevy Chase neighborhood has completed a design character study, defined the existing character of the neighborhood, developed preservation goals, and proposed appropriate neighborhood design standards (in need of only slight modification), thus meeting the requirements of the ND-1 zone.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

Unless otherwise noted, the proposed standards shall only apply to single-family detached residential dwellings.

1. Rear Yard Setbacks:

- A. Measured 70' from the Front Building Plane (excludes porches) or 10' from the Rear Property Line, whichever is greater. Applies to all properties except those on Andover Drive, Garden Road, and Tates Creek Road.
- B. Measured 80' from the Front Building Plane (excludes porches) or 10' from the Rear Property Line, whichever is greater. **This applies to all** ~~For~~ properties on Andover Drive, Garden Road, and Tates Creek Road.

2. Building Heights: Maximum of 30' to highest ridge and maximum eave height (aka gutter line) at 2nd floor ceiling line including dormers. (Excludes new additions which may exceed 30' in order to match existing ridge lines. **eave height measured at top of fascia board**)

3. Roof Pitch: Minimum 7:12 slope for Gabled Primary Roofs (Excludes dormers, single story flat roofs, roofs built to match existing roof pitches, and for allowable projections per Article 15-5 of the Zoning Ordinance)

4. Wall Openings: Minimum of 10% of the wall plane on each elevation of new construction is to be windows, doors and/or vented openings; however, no openings shall be required if Building Code requires Fire Ratings. (Excludes any new construction with a wall plane area of less than 150 square feet, chimneys, and side walls of dormers)

5. Parking for Single-Family Attached and Multi-Family Dwellings: No parking in front of the front building plane of the principal structure on the lot. Garage doors shall not face the front building line. (Excludes detached garages)

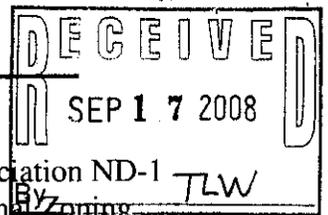
6. Accessory Structures: Maximum footprint of 800 square feet for all accessory structures per lot. Maximum of 22' height to roof ridge, maximum 12' **height** to eave (aka gutter line). No exterior stairs shall be permitted. Maximum 50 percent of roof square footage allowed to be shed dormer. (**Eave height measured at top of fascia board and does not apply to dormers, and** no minimum roof pitch required on accessory structures)

These restrictions are appropriate, given the extensive study undertaken to identify the existing neighborhood character by the Chevy Chase Neighborhood, and are important to maintain that existing character in the future.

Proposed Neighborhood Design (ND-1) Standards for Chevy Chase

September 17, 2008

(3 p.m. Revised copy)



The following are recommended changes (by the Chevy Chase Neighborhood Association ND-1 Design Committee) to the most current language by the Staff Findings for Conditional Zoning Recommendation as presented at the Mar 2008-27: Urban County Planning Commission Meeting.

Bold Text shows change to wording.

Unless otherwise noted, the proposed standards shall only apply to single-family residential dwellings.

○ #1 – Rear yard setbacks:

Measured 70 Feet from the Front Building Plane (excludes porches) or 10 Feet from the Rear Property Line, whichever is greater. Applies to all properties except those on Andover Drive, Garden Road, and Tates Creek Road.

Measured 80 Feet from the Front Building Plane (excludes porches) or 10 Feet from the Rear Property Line, whichever is greater. For properties on Andover Drive, Garden Road, and Tates Creek Road.

○ #2 – Building Heights:

Maximum of **30'** to highest ridge and maximum eave height (aka gutter line) at 2nd floor ceiling line including dormers (excludes new additions which may exceed **30'** in order to match existing ridge lines)

○ #3 – Roof Pitch:

Minimum 7:12 slope for **Gabled Primary Roofs (excludes dormers, single story flat roofs, roofs built to match existing roof pitches,** and for allowable projections per Article 15-5 of the Zoning Ordinance)

○ #4 – Wall Openings:

Minimum of 10% of the wall plane on each elevation of new construction is to be windows, doors **and vented openings** (excludes any new construction with a wall plane area of less than 150 square feet, **chimneys**, and side walls of dormers); however, no openings shall be required if Building Code requires Fire Ratings.

○ #5 – Parking for Single-Family Attached and Multi-Family Dwellings:

No parking in front of the front building plane of the principal structure on the lot. Garage doors shall not face the front building line.
(*excludes detached garages*)

○ #6 – Accessory Structures:

Maximum footprint of **800** square feet for all accessory structures per lot. Maximum of **22'** height to roof ridge, maximum 12' to eave (aka gutter line). No exterior stairs shall be permitted. (No minimum roof pitch required on accessory structures) **Maximum 50% of Roof S.F. allowed to be Shed Dormer.**

Note: Mr. Vaughn recused himself from the following item, and left the meeting. Mr. Day assumed the role of Chair at this time.

10. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT

- a. **MAR 2008-27: URBAN COUNTY PLANNING COMMISSION (10/9/08)*** - petition for a zone map amendment to add a Neighborhood Design Character Overlay (ND-1) zone for 134.70± net (172.0± gross) acres, to preserve existing neighborhood character for properties located at 310-395 Andover Drive; 201-299 Cassidy Avenue (odd addresses only); 300-356 Cassidy Avenue; 125-250 Chenault Road; 309-539 Chinoe Road; 180-346 Cochran Road; 401-435 Cochran Road (odd addresses only); 1394-1506 Cochran Road; 300-377 Colony Boulevard; 951-1245 Cooper Drive (odd addresses only); 323-325 Cross Lane; 305-436 Dudley Road; 300-335 Duke Road; 340-360 Duke Road (even addresses only); 131-191 Eastover Drive; 300-372 Garden Road; 201-505 Hart Road; 101-194 Louisiana Avenue; 100-165 Old Cassidy Avenue; 998-1144 Providence Lane (even addresses only); 1200-1237 Providence Lane; 303-440 Ridgeway Road; 300-315 and 340 Romany Road; 901-1015 Tates Creek Road (odd addresses only); and 1405-1491 Tates Creek Road (odd addresses only).

Proposed Design Standards:

- 1. **Rear Yard Setbacks:** Minimum of 25' or one third of the lot depth, whichever is greater.
- 2. **Building Heights:** Maximum of 28' to highest ridge and maximum eave height at 2nd floor ceiling line. *(includes dormers)*
- 3. **Roof Pitch:** Minimum of 7:12 slope. *(except dormers, porches, flat roofs, and to match existing roof)*
- 4. **Wall Openings:** Minimum of 10% of wall area on each elevation of new construction to be windows or doors. *(excludes porch openings; no openings required if Building Code requires Fire Ratings)*
- 5. **Drawings:** Building floor plans and exterior elevations of all sides typical of proposed construction at a minimum 1/8" scale and scaled site plan required to secure building permit. *(includes accessory structures)*
- 6. **R-1T and R-3 Parking:** Garage doors shall not face the front building line. No parking in front yard. All parking in rear lot only. *(excludes detached garages)*
- 7. **Maximum Garage Size:** Maximum footprint of 700 square feet per lot. Maximum of 19' height to roof ridge, maximum 12' height to eave. No exterior stairs permitted.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 3) recommends a combination of residential land uses for the subject area, including high, medium and low density residential land use. The Planning Commission has initiated a zone change request to add a Neighborhood Design Character Overlay (ND-1) zone in order to regulate rear yard setbacks, building height, roof pitch, off-street parking, garage door restrictions, and accessory structures, regardless of the underlying zoning.

The Zoning Committee Recommended: Withdrawal of 315 Romany Road, and Approval of the remainder, for the reasons provided by staff.

The Staff Recommends: Withdrawal of 315 Romany Road, for the following reason:

- 1. The property located at 315 Romany Road is zoned Neighborhood Business (B-1) and has been used as an office for the past 14 years by the current property owner. Given the fact that the property is not zoned residentially, nor is it a non-conforming residential land use, the ND-1 zone is not appropriate and the property should be removed from the area proposed for this overlay.

The Staff Recommends: Approval of the Staff Alternative Design Standards for the remaining properties, for the following reason:

- 1. The requested Neighborhood Design Character (ND-1) overlay zone is in agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The Goals & Objectives of the Plan identify eight themes, one of which is "preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents." Further, Goal 15, Objective I states that neighborhood protection overlay zoning provisions should be implemented for establishing stability and protection in existing and, especially, older neighborhoods.
 - b. The implementation of a Neighborhood Design Character (ND-1) overlay zone is in agreement with the Comprehensive Plan's Goals & Objectives by providing specific standards that will maintain the existing character of the neighborhood, regardless of the underlying zoning.
 - c. The Chevy Chase neighborhood has completed a design character study, defined the existing character of the neighborhood, developed preservation goals, and proposed appropriate neighborhood design standards (in need of only slight modification), thus meeting the requirements of the ND-1 zone.

Staff Comment: Mr. Sallee stated that the staff had received one request for additional presentation time. That request was submitted by an attorney who is representing a total of five property owners in the area. He has re-

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

requested a total of 15 minutes speaking time. Mr. Sallee noted that the alternative to granting that request for additional time would be that each of those five clients would be allowed to speak for three minutes. The staff provided a memo to the Chair recommending approval of that request for additional time.

Richard Murphy, attorney, stated that he was present representing three clients, and requested extra time for his presentation. Mr. Day answered that Mr. Murphy would normally be allowed nine minutes for that presentation, and asked how much additional time he believed he would need. Mr. Murphy replied that 12 minutes should be sufficient.

Staff Presentation: Ms. Wade began the staff's presentation by stating that this request was initiated by the Planning Commission, at the request of the Chevy Chase neighborhood, to add a Neighborhood Design Character Overlay Zone (ND-1) for the Chevy Chase area.

Ms. Wade entered into the record of the meeting and distributed to the Commission 18 letters in support of this request, and 29 letters in opposition.

The subject property is an area bounded by Bates Creek Road to the west, Cooper Drive to the south, Chinoe Road to the east, and the rear property lines along Fontaine Road and Chenault Road to the north. There are a few areas that were excluded from the request, including Morton Middle School and Cassidy Elementary School; church properties located in the center of the area; and the commercial areas along Duke Road and Romany Road. Those commercial areas include a post office, as well as some professional office uses. Ms. Wade stated that the area is predominantly zoned R-1C. There is one R-1D lot included, on Cooper Drive; a few properties zoned R-1T; two properties zoned R-2; and a multitude of properties that are zoned R-3. Streets in the neighborhood include Hart Road, Cochran Road, Colony Road, Duke Road, Romany Road, Andover Road, Dudley and Ridgeway, Andover and Garden Roads, Old Cassidy Avenue, Eastover Drive, Louisiana Avenue, Cross Lane, and Chenault Road. The area is comprised of over 600 individual residential properties, and over 130 net acres of property. The commercial properties, and those owned by churches or Fayette County Public Schools, were not included in the ND-1 request because that zone can only be applied to residential land use and zoning.

Ms. Wade stated that the Chevy Chase neighborhood was originally developed in the 1920s and 1930s, with additional homes built into the 40s and 50s. It was originally constructed as a mixed-use neighborhood, with both single-family and multi-family housing. The neighborhood's application to the Planning Commission for initiation of this re-zoning detailed many of the aspects of the neighborhood that are considered to be important and contribute to the unique character of the neighborhood. Ms. Wade read the following quote from the neighborhood's application:

"The streets in Chevy Chase tend to have a visual continuity with the manner in which the neighborhood was developed; almost a park-like appearance. There is a rhythm and a beauty to the manner in which the homes relate to one another, and their design cues in setback, building heights, eaves and scale that link adjoining properties into unified block faces and in creating a distinct character. This visual continuity is a critical factor that helps create the unique identity of Chevy Chase."

Ms. Wade said that the neighborhood has recently experienced some new development, including tear-downs of existing homes, and "pop-ups," which they consider to be out of character with the neighborhood. In order to protect the character of the neighborhood from incompatible development, the Design Review Committee of the Chevy Chase Neighborhood Association developed standards and requested an ND-1 overlay zone from the Planning Commission.

The purpose of the ND-1 overlay is to establish a design framework, to conserve key features, and to protect the visual and natural characteristics of a neighborhood. Although an ND-1 overlay has been previously applied to the Greenbrier neighborhood, this is the first ND-1 request in which specific design characteristics for structures have been proposed to be regulated. Ms. Wade stated that the ND-1 zone is designed to be administered in a way similar to properties that have conditional zoning restrictions. Article 29-3 of the Zoning Ordinance requires that at least one of seven provided criteria must be met by a neighborhood in order to qualify for an ND-1 overlay. The Chevy Chase petition states that the neighborhood would like to "maintain the overall character of the neighborhood, and that they have established a need to protect the visual characteristics that give their neighborhood its distinct quality."

Ms. Wade said that, as part of their request for an ND-1 overlay zone, the Chevy Chase neighborhood provided a set of seven proposed design standards, as listed in the staff report and on the agenda. One of the seven standards requested was that the Division of Building Inspection require 1/8 scale drawings for any improvements proposed within the ND-1 overlay. The staff reviewed the Zoning Ordinance, and found that that particular standard would not be allowable. The staff has therefore recommended that that standard be deleted. The neighborhood identified two conservation and design goals through their study process: first, to promote new construction that is

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

in harmony with the scale and physical character of the original buildings; and second, to encourage the use of existing buildings through adaptive rehabilitation in a manner that is appropriate for the scale and physical character of the original buildings. The remaining six standards proposed were developed based on those goals.

Ms. Wade stated that the first proposed standard would require a rear yard setback of 25 feet, or one-third of the lot depth, whichever is greater. This restriction would help to maintain green space and building scale in the neighborhood. The rear yard setback requirement would apply only to principal structures, not to accessory structures. The second proposed standard would require a maximum building height of 28 feet at the tallest ridge, and a maximum eave height, which is generally considered to be the gutter line, of the second story ceiling height. This regulation is aimed at keeping homes in scale with the neighborhood, and will, in combination with the third proposed restriction, prevent three-story homes or two-story homes with dormers. The third proposed standard would require a minimum of a 7:12 slope for the primary roof structure. The neighborhood has defined some exceptions to this restriction to allow for some variation; those would include dormers, flat roofs on single-story additions, a pitch to match an existing roof, or a different roof pitch for projections such as bay windows and covered porches. Ms. Wade said that the fourth proposed design standard would require that a minimum of 10 percent of any wall plane in new construction have openings such as windows and doors. This restriction is similar to an existing Infill and Redevelopment standard. It would help to ensure visual continuity, and it should only apply when a wall plane is at least 150 square feet in size. The fifth standard would apply only to single-family attached dwellings (townhomes) and multi-family residential development, and would require that all parking be provided behind all buildings on the property. That restriction is proposed to prevent intrusion into the existing streetscape. This restriction would also require that garage doors not face the front building line, but excludes detached garages. The final standard proposed is to limit the size of accessory structures to a maximum of 700 square feet in size; a maximum height of 19 feet at its tallest ridge; and a maximum eave height of 12 feet. The proposed 7:12 roof pitch restriction would not be applied to accessory structures. The neighborhood requested these restrictions in order to maintain the sense of place and the architectural integrity currently found in Chevy Chase.

With regard to the 2007 Comprehensive Plan, Ms. Wade stated that it was more appropriate, in considering a request such as this, to focus on the Goals and Objectives, rather than the Land Use element. In the 2007 Plan, the neighborhood protection overlay zoning provisions are recommended to be implemented for "establishing stability and protection in existing and especially older neighborhoods." (Goal 15, Objective I) Ms. Wade read the following, which is one of the eight overriding themes from the 2007 Comprehensive Plan:

"Preserving, protecting and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents..."

The ND-1 overlay zone in the Chevy Chase neighborhood is therefore in agreement with the Comprehensive Plan, and specifically, its Goals and Objectives.

Ms. Wade said, in conclusion, that the proposed ND-1 regulations will help to maintain the existing character of the Chevy Chase neighborhood, ensuring that new development or additions to existing homes will be compatible with the surrounding existing development. The neighborhood studied the early and current character of the neighborhood, and found that incompatible development is occurring and threatening the unique identity of the neighborhood. If the neighborhood is not protected, it may be impacted to the extent that quality of life may be threatened for the residents.

Ms. Wade stated that, in reviewing the proposed design standards, the staff found that #5 would not be allowed by the Zoning Ordinance. Following several discussions with the Division of Building Inspection, the staff found that there were several small "tweaks" that were necessary in order to clarify some issues or protect the intent of the neighborhood's design committee. The staff has recommended the following standards:

Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

Unless otherwise noted, the proposed standards shall only apply to single-family detached residential dwellings.

1. **Rear Yard Setbacks:** Minimum of 25' or one third of the lot depth, whichever is greater. (applicable to the principal structure only, excludes covered porches)
2. **Building Heights:** Maximum of 28' to highest ridge and maximum eave height (aka gutter line) at 2nd floor ceiling line. (includes dormers, but excludes new additions, which may exceed 28' in order to match existing ridge lines)
3. **Primary Roof Pitch:** Minimum of 7:12 slope. (except dormers, flat roofs on single-story additions, to match existing roofs, and for allowable projections per Article 15-5 of the Zoning Ordinance)
4. **Wall Openings:** Minimum of 10% of the wall plane on each elevation of new construction is to be windows or doors. (excludes any new construction with a wall plane area of less than 150 square feet and side walls of dormers; however, no openings shall be required if Building Code requires Fire Ratings)

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

5. **Parking for Single-Family Attached and Multi-Family Dwellings:** No parking shall be permitted in the front or side yard. All parking in rear lot only. Garage doors shall not face the front building line. (excludes detached garages)
6. **Accessory Structures:** Maximum footprint of 700 square feet for all accessory structures per lot. Maximum 19' height to roof ridge, maximum 12' height to eave (aka gutter line). No exterior stairs shall be permitted. (no minimum roof pitch required on accessory structures)

Ms. Wade stated that the staff is recommending approval of these restrictions, with the exception of 315 Romany Road, which the staff is recommending be withdrawn from the request. That property is zoned B-1; it was thought at the time of filing of the application that the use of the property was residential, but the property owner came forward and indicated that the property has been in use as an office for several years. Therefore, it is a conforming use, and business zones are not appropriate for an ND-1 overlay. The staff's recommendation is made for the reasons provided by staff, as listed in the staff report and on the agenda.

Ms. Wade noted that there were questions at the Zoning Committee meeting three weeks ago about how a homeowner might appeal an ND-1 standard. Because these standards would function basically the same as conditional zoning restrictions, a zone change would be necessary to remove or change an ND-1 overlay design standard. There is no variance procedure allowed by the Zoning Ordinance that would permit a homeowner to vary any of those standards.

Ms. Wade said that, in instances where a current requirement of the Zoning Ordinance is more restrictive than the proposed design standards, the more restrictive requirement would apply. For example, there is a provision in the Zoning Ordinance that can restrict garage size to a maximum of 625 square feet; therefore, if the principal structure on the lot is small enough, the resident may only be able to obtain a building permit for a 625 square-foot garage.

Ms. Wade added that the Division of Building Inspection had asked that she state, for the record, that an ND-1 overlay zone may lengthen the time of review for a building permit application.

Commission Questions: Ms. Copeland asked if Chenault Road and Louisiana Avenue are currently in an H-1 zone. Ms. Wade answered that they are not. The Zoning Ordinance would not allow any property that was currently within an H-1 overlay to also qualify for an ND-1 overlay. Ms. Copeland asked if those two streets have any type of special zoning classification. Ms. Wade responded that they do not, and added that the nearest H-1 zoning is in the Aylesford neighborhood

Ms. Roche-Phillips asked if there is any process in place to make an adjustment to the ND-1 standards if a homeowner could not comply with those standards. Ms. Wade answered that the homeowner would have to make an application to the Planning Commission for a zone change, and have the request go to the Council for final approval. Ms. Roche-Phillips asked if there was any provision in place for a variance at the Board of Adjustment level. Ms. Wade answered that there is not. Mr. King added that the staff explored that possibility with the Department of Law when they were creating the ND-1 zone. At that time, the opinion of the Department of Law was that, since the only way to implement an ND-1 overlay is through conditional zoning restrictions, the statutory rules regarding conditional zoning would have to apply. Those rules do not provide for conditional zoning restrictions to be revised or amended by the Board of Adjustment. Ms. Wade added that that requirement speaks to the importance of the neighborhood's study effort, and the consideration given to the design standards.

Mr. Cravens asked if the Division of Building Inspection would have to enforce the design standards proposed as part of this ND-1 zoning request. Ms. Wade responded that, presumably, any resident who was building a garage or an addition would have obtained a building permit. Mr. Cravens asked which body ensures that the garage or addition is built according to the design standards. Ms. Wade answered that the Division of Building Inspection enforces any building permit. Mr. Cravens asked if scale drawings are required to get a building permit, to which Mr. Carpenter responded that scale drawings are required. Mr. Cravens said, with regard to the staff's recommendation to eliminate the proposed design standard requiring scale drawings, that those drawings would be necessary in order for the Division of Building Inspection to enforce the design standards. Ms. Wade stated that the Zoning Ordinance does not allow that type of restriction. Part of the staff's rationale for their recommendation to eliminate that proposed restriction was that they did not feel it appropriate to require a homeowner to submit scale drawings in order to obtain a permit to build a simple structure such as a deck.

Ms. Wade stated that Rachel Phillips, Strategic Planning, had worked closely with the Chevy Chase neighborhood through the application process and the creation of their design standards. Ms. Phillips said that the ND-1 process is neighborhood-driven, but Strategic Planning is assigned to provide facilitation for any neighborhood that is interested in ND-1 zoning. The Chevy Chase ND-1 process began in June of 2006, and they worked out their ND-1 request through focus group exercises, gauging neighborhood interest, the development of design standards, and data analysis.

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Citizens in Support: Brad Hawkins was present representing the Chevy Chase Neighborhood Association. He began his presentation by thanking Ms. Wade and Ms. Phillips for their assistance and support during the ND-1 process. Mr. Hawkins displayed a PowerPoint presentation as he spoke, referring to photographs of the neighborhood provided as examples of size and scale.

Mr. Hawkins stated that the Chevy Chase ND-1 process began in 2006, following a wave of neighborhood concern about recent "pop-ups" and "tear-downs" that the residents felt were out of character and scale with the existing homes. The neighborhood association became aware of Article 29 of the Zoning Ordinance, which provides requirements for ND-1 zoning, and they came to believe that it may be a way to proactively and democratically manage new development and redevelopment in the neighborhood.

Following the neighborhood association's discovery of the potential of the ND-1 process, a group of volunteers was formed to study its feasibility for the Chevy Chase neighborhood. Mr. Hawkins said that the study process began in July of 2006 with street-level focus groups, which identified the residents' concerns and their vision for the future of the neighborhood. The major issue of concern that arose from those focus groups was infill or redevelopment of properties that was out of size and scale with the existing homes.

After narrowing down the list of the concerns through the focus group process, a series of meetings was held to discuss the ND-1 process. Each homeowner received hand-delivered notice of those meetings, as well as emails and phone calls, so that all residents were aware of the opportunity to participate in the process. Mr. Hawkins said that, during the same time period as the monthly meetings, an architectural analysis of the entire neighborhood was performed, as required by Article 29 of the Zoning Ordinance. Volunteers reviewed and photographed all of the 761 residential structures in the neighborhood, noting architectural details, through walking evaluations of the properties. All of the data collected during that analysis was organized and used to develop the proposed design standards.

Mr. Hawkins stated that, from January through April of 2008, the Design Review Committee met nightly to prepare and revise the list of proposed design standards, while attending monthly meetings to keep neighborhood residents apprised of their progress. In April and May, trained volunteers canvassed the neighborhood with petitions, seeking to gauge the residents' level of support of the ND-1 process. At least two information letters were also sent to each non-resident property owner. The neighborhood association sought to keep the process "transparent, open, and inclusive," so that they would be able to ascertain the level of support prior to requesting initiation of the zone change from the Planning Commission. In total, 675 total petitions were circulated; of those, 413 people, or 61% percent, were in support of ND-1 zoning and the proposed design standards. Seventy-seven residents, or 11.4% of those petitioned, were not in favor of ND-1 zoning. No response was given by 186 residents, or 27.5% of those petitioned. If the "no response" numbers are removed, 84.5% of the total number of residents petitioned was in support of ND-1 zoning. The neighborhood association believed that those numbers provided evidence of neighborhood-wide, overwhelming support for the ND-1 request.

Mr. Hawkins read the following into the record from Article 29-1(c) of the Zoning Ordinance, which refers to the goals of ND-1 zoning:

"Protect against destruction, degradation or encroachment upon neighborhoods, areas, or places having a special, unique or distinctive character of aesthetic, architectural or cultural significance which serves as the identity of a neighborhood.

Encourage the use of existing buildings through the use of adaptive rehabilitation.

Encourage construction that will lead to continuation, conservation and improvements in a manner appropriate to the scale and physical character of the original buildings. Assure that new construction is in harmony with the scale and physical character of the original buildings of the neighborhood through the use of design standards."

Mr. Hawkins stated that the Chevy Chase neighborhood is not unique in terms of its age, but it has played a significant part in Lexington's history. The neighborhood began as part of the Henry Clay estate in the 1920s. Over a period of 30 or 40 years, Chevy Chase was developed with modest-sized lots and homes, with fine architectural details. Mr. Hawkins displayed several photographs of homes in the area to depict those architectural details.

Article 29 specifically requires that a detailed architectural survey be performed in any neighborhood seeking ND-1 zoning. The Chevy Chase architectural survey identified 701 single-family homes, with many different architectural styles. Mr. Hawkins noted that the survey volunteers identified a particularly unusual type of Cape Cod home that they named the "Chevy Chase Cape Cod," due to its unique features and prevalence in the neighborhood. The survey focused primarily on particulars of size and scale, and did not take into account such characteristics as building materials or window materials. The design committee also tried to avoid those guidelines that they felt would make

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new development or redevelopment more costly. The survey determined that 450 homes in the neighborhood are 1½ story, with only 11 homes 2½ stories or taller; over 90% of the lots are 50 feet by 150 feet in size; in 2006, the average size home was less than 2,000 square feet in size; 81% of the homes are currently smaller than 2,600 square feet in size.

Mr. Hawkins said that the architectural survey process also identified some of the recent new developments and redevelopments that have interrupted the visual continuity because of their size and scale. Recent trends in construction in the neighborhood have produced both homes and accessory structures that are larger in scale than the existing residences. There were eight recent additions to homes in the neighborhood that averaged 1,600 square feet in size. The neighborhood association predicts that, with current building codes allowing larger, taller homes and garages, further inappropriate construction will occur in the neighborhood unless it can be protected via ND-1 zoning.

Mr. Hawkins read into the record the goals of the Chevy Chase ND-1 process:

1. Promote new construction in harmony with the scale and physical character of original buildings; and
2. Encourage the use of existing buildings through adaptive rehabilitation in a manner appropriate to the scale and physical character of original buildings."

With regard to the neighborhood's design standards, Mr. Hawkins said that the proposed rear yard setback of 25 feet or 1/3 of the lot depth is intended to prevent building up to the rear property line, in order to protect the sight lines of neighboring properties. He displayed a photograph of a home with an addition built to approximately 10 feet off the rear property line. Given the typical lot depth in Chevy Chase of 150 feet, the rear yard setback for most of the lots would be 50 feet. Under the current Building Codes, a property owner could construct a 2,380 square-foot, one-story building on the typical Chevy Chase lot, and still maintain the 50-foot setback. The design review committee believes that this guideline is generous enough to allow for sizable homes and additions, while still protecting the visual character of the neighborhood. As part of their study process, the design review committee determined that building height is also an important element in maintaining the character of Chevy Chase. The design standards propose a 28-foot maximum building height, which would prevent homeowners from constructing additions taller than two stories off the backs of their homes. The committee believes that this standard will help to address the size and scale issue, while still allowing homeowners a great deal of design flexibility with regard to roof type, etc. With regard to the proposed roof pitch standard, Mr. Hawkins stated that the standard roof pitch in the Chevy Chase neighborhood is 7:12. The committee is requesting that that standard be applied to any new or redeveloped homes in the neighborhood. The committee discovered during the neighborhood survey that many of the new additions in the neighborhood had been constructed without wall openings; many residents felt that those sheer walls lacked "human elements." The proposed standard would require that 10% of the wall plane on each elevation be windows or doors, excluding wall areas less than 150 square feet. Mr. Hawkins displayed a photograph of a home with a "sheer wall" addition, which the design review committee believes appears out of visual context with the surrounding residences. With regard to the staff's recommendation to remove the proposed design standard #5, which would require 1/8 scale drawings in order to obtain a building permit, Mr. Hawkins stated that the neighborhood was agreeable to that recommendation. However, they would hope that the Division of Building Inspection will require those plans, in order to prevent costly omissions in terms of enforcement. With regard to proposed design standard #6, to require that all parking for single-family attached and multi-family dwellings be provided in the rear yard or side yard, the Chevy Chase Neighborhood Association believes that removing parking from the fronts of those buildings will help to maintain architectural integrity and visual continuity in the neighborhood. It would also help to promote a more pedestrian-friendly environment. Proposed design standard #7, which would restrict the size of accessory structures, has been a major point of contention in the Chevy Chase neighborhood. Mr. Hawkins said that the design review committee attempted to develop a standard that would allow homeowners to construct an accessory structure larger than a traditional two-car garage, while maintaining architectural integrity and visual continuity, and protecting green spaces. Many of the Chevy Chase residents surveyed were angry about the construction of large accessory structures, particularly some garages as large as 1,600 square feet in size. The proposed 700 square-foot footprint should help to promote more creative accessory structure designs, while forcing homeowners to make decisions about how they want to use their property.

Mr. Hawkins stated that the ND-1 process has been a truly democratic one for the Chevy Chase neighborhood. The Chevy Chase Neighborhood Association (CCNA) believes that ND-1 zoning will encourage and promote new development and redevelopment in scale with the existing neighborhood, which will help to maintain the sense of place that is unique to the neighborhood.

The CCNA does, however, have several concerns with the proposed ND-1 zoning for which they are seeking clarification. The neighborhood association, as well as the Home Builders Association of Lexington (HBAL), supports the requirement of scaled drawings, and would suggest a text amendment to Article 5 of the Zoning Ordinance to that effect.

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With regard to the review / appeal process for ND-1 zoning restrictions, the CCNA and Chevy Chase residents believed, until a few days before this meeting, that the review process involved filing an appeal to the Board of Adjustment for a dimensional variance, rather than requesting a zone change from the Planning Commission. Mr. Hawkins suggested that a text amendment to Article 29 could possibly address the problem and provide for a variance-type of process. He said that no one in the Chevy Chase Neighborhood Association intended, through the ND-1 process, to "handcuff homeowners into some inflexible rules that would not allow them to work with their existing properties." Requiring a zone change to change an ND-1 standard would seem to be one of those "inflexible rules." Mr. Hawkins said that he had read Article 7 of the Zoning Ordinance, and it did not appear to him that the language prohibited appeals through a variance process. He said that the CCNA believes that this issue should not stop the ND-1 process; it can be resolved separately.

Mr. Hawkins stated that several Chevy Chase residents had indicated that they were concerned about the replacement of non-conforming buildings, such as after a fire. Article 4 of the Zoning Ordinance allows property owners whose structures are non-conforming under the proposed design standards to rebuild them as they were.

Mr. Hawkins said that there has been opposition to this request; the results of the petition drive indicated an 11% response in opposition. Some of those who oppose the request are owners of multi-family properties, who are concerned about the parking restrictions; others are residents who had hoped to enlarge their homes and are concerned that the proposed design standards will not allow them to do so. The CCNA would like for the Planning Commission to require those individuals who would like to build additions to their homes to provide an architectural analysis to support their ideas. The neighborhood association did not become aware of much of this opposition until July 31st, which was after the rezoning request was filed and placed on the Planning Commission's agenda. The CCNA believes that the proposed guidelines are reasonable and fair, and provide ample opportunities to expand their homes or add accessory structures to their properties.

Mr. Hawkins concluded his presentation by displaying several photographs of "Chevy Chase without ND-1," or properties which have been altered in a manner which the CCNA believes is inappropriate, and "Chevy Chase with ND-1," or properties that have additions and accessory structures that were constructed similar to the proposed design guidelines. Mr. Hawkins entered into the record of the meeting letters from the Blue Grass Trust and the Home Builders Association of Lexington, which are in support of this request, and a letter from the Fayette Alliance, which supports the concept of ND-1 zoning in general. He said that the proposed ND-1 zoning would be good for Chevy Chase and for all of Lexington, and he requested approval.

Commission Question: Mr. Brewer stated that he was very impressed with the effort on the part of the Chevy Chase neighborhood that went into this request. He asked if it would be possible to approve this rezoning today, and address the neighborhood's concerns in a parallel process, or if those concerns needed to be addressed prior to the resolution of this request. Mr. Hawkins answered that the neighborhood's proposed design guidelines, with the staff's recommendation of approval, would achieve the goals of the Chevy Chase Neighborhood Association. He believes that the clarifications can be addressed while the rezoning process is ongoing, and should not prevent the Planning Commission from approving this request today.

Susan Booker, 125 Old Cassidy Avenue, stated that her parents purchased the home, in which she now resides, in 1951. She said that the Chevy Chase neighborhood was a wonderful place to grow up in the 1950s. The houses were of good quality, and each design was individualized and full of character. The neighborhood was safe, quiet, and close to good schools, shopping, churches, and entertainment venues. Ms. Booker believes that Chevy Chase is still a great place to live, but the quality of the neighborhood is being threatened by "ostentatiously enlarged, out-of-scale, remuddles" which overwhelm the existing homes with their scale.

Ms. Booker said that the new construction and redevelopment in the neighborhood has inflated property taxes, while at the same time adversely affecting the sanitary and storm sewer system. Renovations and redevelopment that are done correctly and sensitively, however, can enhance the neighborhood; and the proposed ND-1 zoning would allow that type of restoration. Ms. Booker noted that her basement has flooded on four occasions in the last 10 years, but only one time during her childhood in the home. The proposed ND-1 zoning would help to alleviate those problems, while preserving the historic scale, charm, and traditional character of Chevy Chase for future generations.

Graham Pohl, 239 South Hanover Avenue, stated that he is an architect and he has been working in the Chevy Chase neighborhood for 15 years. He has designed "dozens" of additions and remodels in the neighborhood, and is currently working with three clients there.

Mr. Pohl stated that he supports the Chevy Chase neighborhood's ND-1 zoning request. He followed the process, attending several of the neighborhood meetings, and was very impressed with the democratic nature of the process. His main concern, and the main focus of his work, is design excellence; and he believes that the requested ND-1 zoning will help to maintain a tradition of excellent design in the Chevy Chase neighborhood.

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Mr. Pohl stated that he does have one concern with the proposed design guidelines, but he would support the ND-1 overlay even if no changes are made to the design guidelines in response to that concern. He believes that the proposed 7:12 roof pitch requirement would not allow for shed roof designs as the main form for an addition, which could prevent a contemporary response on a two-story addition, and force a traditional response. Mr. Pohl stated that the Historic Preservation guidelines, with which he has worked often, specifically state that a new addition to a home should be "of its own era," rather than duplicating the design of the existing home. The shed roof form is contemporary and popular at this time, but it could be used sympathetically with the existing residences in the Chevy Chase neighborhood. Mr. Pohl said that, if possible, he would like for a provision to be added to the design guidelines to allow for the use of shed roof design.

Phyllis Jeness, 360 Garden Road, stated that she has owned her home for 34 years, and she walks through the Chevy Chase neighborhood daily. When she began to notice the construction of new homes in the area, Ms. Jeness identified three qualities that make them, and other redevelopments in the neighborhood, out of character with the existing homes: first, the new structures are much larger and take up more space on the lots than the existing Chevy Chase homes; second, these new homes are too tall to be aesthetically pleasing, and the taller height blocks sunlight from existing, smaller residences; third, many of the mature trees in the neighborhood have been removed to allow space for construction of the larger residences.

Ms. Jeness said that she is very devoted to Lexington, and has tried to make a contribution to it. She is disappointed to see people putting their own self-interest before the good of the community, and does not want to see the city suffer for it. Ms. Jeness urged the Planning Commission to approve this request.

Chip Crawford, chair of the Lexington Remodelers' Council, stated that his organization understands and agrees with the overall intent of the proposed ND-1 zoning, but has some concerns about the design guidelines. He said that the lack of an appeals process in Article 29 is one of the major concerns, as it would require a homeowner to go through the zone change process in order to vary the design guidelines. Mr. Crawford and his organization are also concerned that the application of an ND-1 overlay in Chevy Chase will place more of a burden on the Division of Building Inspection. That division will be required to review every project proposed in the neighborhood, and enforce the design guidelines, which could increase their workload, particularly since several other neighborhoods are currently considering an ND-1 overlay as well.

Mr. Crawford stated that the enforcement of strict design guidelines, without an appeals process in place, could be extremely limiting for the residents and property owners in the Chevy Chase neighborhood. Other conditional zones, such as the H-1 and Courthouse Area zones, have either an appeal or review process written into the Zoning Ordinance. Mr. Crawford suggested that the Planning Commission postpone their decision on this request until such time as Article 29 could be rewritten to include a more appropriate appeal process.

David Medley, 333 Dudley Road, stated that he has lived in his home for 21 years. He believes that Chevy Chase is a great neighborhood, but it has undergone a series of changes in the last five or six years. Many of the remodeling projects that have taken place in the neighborhood have not been appropriate in size or character with the existing homes. For example, a two-bedroom bungalow near Mr. Medley's home was sold after the original owners died. The new owners elected to add on to the small bungalow by removing the roof and back of the home, and expanding it "up and back." Mr. Medley stated that, as a homeowner, he has a great deal of anxiety that inappropriate remodels of homes near his own home will decrease his property value. He asked that the Planning Commission provide homeowners in the Chevy Chase neighborhood with the security that their homes will not be negatively affected by inappropriate remodeling and redevelopment projects, by approving this request.

Kate Cannon, 373 Colony Boulevard, stated that she loves the park-like atmosphere of the Chevy Chase neighborhood. Her next-door neighbors, who had built their house in 1945, died two years ago. She was "scared to death at what would happen" on that property after their deaths, and how it would affect her home. Ms. Cannon asked that the Planning Commission help the Chevy Chase residents ensure that their properties will not be negatively impacted by inappropriate remodeling and redevelopment in their neighborhood.

Carla VanHoose, 110 Louisiana Avenue, referred to the letter in support of this request that was submitted by the Fayette Alliance, which stated that the proposed ND-1 zoning would support many of the Comprehensive Plan Goals and Objectives. She referred also to the letter submitted by the Lansdowne Neighborhood Association, reading the following excerpt into the record of the meeting:

"For that reason the Board of Directors of the Lansdowne Neighborhood Association supports the application of the Chevy Chase Neighborhood Association for the Neighborhood Design Overlay."

Ms. VanHoose displayed two photographs of her property and her neighbor's new garage. She said she is lucky that her neighbors have good taste, and their garage is attractive, tasteful, and well-designed. However, the new garage is significantly taller than her existing garage, and the increased height has interrupted the visual character

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of her yard and "changed the way that the homes relate to each other." Prior to the construction of the new garage, Ms. VanHoose could see all the way down the street; she is no longer able to do so. She said that one such structure does not significantly change the character of the street, but several in a row could eliminate airspace, sunlight, and the feeling of connection between neighbors. Ms. VanHoose asked that the Planning Commission approve this rezoning request, and she thanked the Commission members, as well as Ms. Wade and Ms. Phillips, for their time and support.

Paul Winther, 328 Ridgeway Road, stated that most of the homes in the Chevy Chase neighborhood are similar in size, with nice back yards. He said that, without the protection of the proposed ND-1 zoning, a developer could buy an existing small home in Chevy Chase, and redevelop the property with a "big vinyl box." A home directly across the street from Mr. Winther's was removed and replaced with such a structure, and there were no regulations in place to prevent it. Mr. Winther added that he is concerned that, with the expansion of the University of Kentucky, more developers will see the potential to redevelop for student housing in the neighborhood, and it will result in the character of the neighborhood being negatively impacted. He asked that the Planning Commission consider that the Chevy Chase neighborhood needs regulations to protect it from development, and approve this request.

Harvey Coggin, 166 Louisiana Avenue, stated that he has lived in his home for 26 years. He is in support of the ND-1 overlay request, and believes that it will help to protect the charm and character of the neighborhood. Mr. Coggin thanked the neighborhood representatives who have worked for the past two years to get the ND-1 request to the Planning Commission.

Citizen Opposition: Richard Murphy, attorney, was present representing the following three groups of property owners who own ten multi-family housing buildings between them: Harry Jones, 310 Romany Road; Al and Charles Schubert, 258 Duke Road; and Penny and Ben Campbell, 300, 310, 320, 340 and 360 Romany Road. Mr. Murphy began his presentation by displaying for the Commission a map depicting all of his clients' properties.

Mr. Murphy requested that the Planning Commission remove the R-3 properties from the proposed ND-1 overlay zone. He said that it did not make sense to include the multi-family dwellings in the ND-1 zone, and it is also an issue of fairness to those property owners. When this rezoning request was initiated at the Planning Commission's June 26th meeting, it was recommended by staff that the multi-family properties on Cochran Road not be included in the request. Mr. Penn asked, at that meeting, why those properties on Cochran Road were not included in the ND-1 request. The answer that he was given was that those properties are multi-family, and therefore should not be included in the ND-1 request. Mr. Murphy stated that it is unfair and arbitrary to include his clients' properties, and eliminate the Cochran Road residences, particularly since Cochran Road is the "gateway to Chevy Chase." In addition to the 13 multi-family lots on Cochran Road that were not included in this request, 66 multi-family lots on Fontaine Road were exempted as well.

Mr. Murphy said that no front yard parking is allowed for multi-family dwellings; all parking must be in either the side or rear yard. The commercial properties adjacent to his clients' properties, however, are allowed to have front yard parking. Mr. Murphy stated that his clients believe that it is unfair to allow front yard parking for an adjacent property, but require his clients to provide all of their parking in the rear yards of their properties.

Mr. Murphy said that the multi-family residences owned by his clients provide a "transition area" between the commercial area and the surrounding residential properties. Transition areas generally possess some of the qualities of each of the uses for which they provide a buffer. The commercial property located immediately adjacent to Mr. Jones' property has front yard parking; therefore, it would not be inappropriate to allow side yard parking on that property, which is zoned R-3, particularly since the side yard parking would be set further back from the street.

Mr. Murphy stated that, although he was informed by the staff that there are no residential properties in the area with side yard parking, he discovered at least five instances of multi-family residential structures that provide some side yard parking. Since those properties currently provide parking in the side yard, continuing to allow that parking would not create any further intrusions or detriment to the neighborhood.

Prohibiting side yard parking can negatively affect the architecture of multi-family structures, by necessitating that the "long side" of the building would face the street. Currently, most of the multi-family structures have their "short dimension" facing the road. However, if side yard parking is prohibited, it may encourage remodels that expand further into the side yards of the properties, since that area would be useless for parking. Those remodels would then be out of character with the rhythm and style of the existing structures.

Mr. Murphy stated that the proposed design guidelines would be treated as conditional zoning restrictions under Article 29-4 (c) of the Zoning Ordinance. He read the following into the record from that Article:

"The following are categories of design standards that shall be eligible for overlay regulations, and may modify existing zoning or subdivision regulations as conditional zoning restrictions."

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Mr. Murphy said that, without an appeal process in place to request a variance for side yard parking from the Board of Adjustment, his clients would be required to seek a zone change, which is a very lengthy process. Mr. Murphy's clients do not believe that it is appropriate to require a six-month process to permit a condition which currently exists, and does not negatively affect the neighborhood.

Mr. Murphy stated that the Chevy Chase multi-family transition area functions better than any other such area in Lexington. Chevy Chase has, in fact, been used as a model for many other neighborhoods in the city, because of that excellent relationship between the commercial, multi-family, and single-family areas. The apartments in the area are popular and maintain a very low vacancy rate for that reason. Mr. Murphy asked that the Planning Commission either exempt the R-3 properties from this ND-1 request, or allow side yard parking in the R-3 areas, in order to allow those properties to continue to function successfully without additional restrictions.

Tom Bunch, 402 Dudley Road, stated that he was present representing several Chevy Chase residents who are not entirely opposed to ND-1 zoning, but have some serious concerns about the proposed design guidelines.

Mr. Bunch said that he remembered, from a Planning and Zoning Law class in college, that there is no appeal process for conditional zoning restrictions, and he was concerned about the applicability of that regulation to the Chevy Chase ND-1 process. He received a letter from the Chevy Chase Neighborhood Association on August 26th, indicating that, should this ND-1 request be approved, there would be no variance or appeal process for homeowners. He believes that this request should not go forward without some type of appeal process other than a zone change request.

Mr. Bunch displayed a photograph of the remodel of a home at 331 Ridgeway Road that "started this whole process." Many of his neighbors agreed that the changes to the home were not in keeping with the character of the neighborhood, and they wanted to prevent further such projects. One of the owners of a property adjoining that residence sold his house and moved from the neighborhood, citing that home's "quadrupling in size" as his reason for selling. Many Chevy Chase residents are particularly concerned that such large residences will be used as rentals to UK students, rather than owner-occupied homes.

Mr. Bunch stated that he originally became involved in this issue after talking with Tom Burke, who is an architect and a member of the Chevy Chase neighborhood Design Review Committee. Mr. Bunch intends to build a garage on his property at some point, with a small art studio for his wife. After reviewing the proposed design guidelines, he realized that he would not be able to construct the garage he envisioned, if the ND-1 overlay request was approved.

Mr. Bunch displayed a graphic of the homes on Dudley Road, colored to depict the number of homes in favor and opposed to this request, prior to the receipt of the July 25th letter notifying residents of this rezoning request; 31 homeowners were in favor, five were opposed, and nine were unavailable. He then displayed a rendered graphic of the properties on the street depicting the numbers in support and in opposition after the receipt of that letter; 18 homeowners were in favor, 24 were opposed, and three were unavailable. Mr. Bunch circulated a petition in opposition to this request in order to obtain that data. Following the receipt of the notification letter, which contained the proposed design guidelines, there was a "major shift in thinking" for many of the homeowners. After talking with many of his neighbors and circulating his opposition petition, Mr. Bunch formed an ad hoc group, comprised of himself, Joe Lenney, Jeff England, Steve Stade, and Brian Sawyer, to study the proposed design guidelines and develop a set of alternative recommendations.

Mr. Bunch stated that his opposition group would like to propose some changes to the design guidelines that would protect the neighborhood from inappropriate development, without "stepping on other people's rights and needs." With regard to design guideline #1, Mr. Bunch stated that requiring a setback of 1/3 of the lot depth would be too restrictive. He displayed a photograph of the Jaeger home at 436 Dudley Road, noting that the lot is only 100 feet deep, rather than 150 feet, which is the depth of the other lots on that street. The result of that shallower lot depth is that the rear of the Jaegers' home is only 27.5 feet from the property line. If design guideline #1 is applied as recommended, the Jaegers could never build an addition to their home, no matter how modest. Without the proposed rear setback, however, they could construct a modest 17.5-foot addition at the rear of the home to allow space for a den or small bedroom. For that reason, Mr. Bunch would propose the addition of the words "not to exceed 40 feet" to design guideline #1. That provision would be fairly restrictive for most of the other lots in the neighborhood, but would still allow the Jaegers to build an addition if they so chose. Mr. Bunch displayed a graphic depicting the lots on Andover Drive and Garden Road, indicating the 40-foot front setback on those streets and the proposed 1/3 lot depth rear yard setback. There are several property owners on those streets that, if the proposed design guidelines are adopted, could never enlarge their homes, as the rear setback line would fall on the existing structure. Unlike some of the larger houses on Dudley Road, Chenault Road, etc., most of the homes on Garden Road and Andover Drive are smaller, one-story ranches that would be severely limited by that restriction.

With regard to design guideline #2 and #3, Mr. Bunch displayed a photograph of Tom Burke's home on the corner of Dudley Road and Hart Road, which is 30 feet high from grade to the top ridge of the roof. There are several other

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two-story homes on Dudley Road and Ridgeway Road that are 30 to 32 feet tall. Mr. Bunch stated that, although the Design Review Committee focused heavily on the 1.5-story homes in the Chevy Chase neighborhood, there are also a number of two-story homes as well. Since those two-story homes are taller than the proposed 28-foot height restriction, Mr. Bunch would recommend changing that height restriction to 31 feet to match the existing structures. He is concerned that a 28-foot height restriction, combined with a 7:12 pitch roof restriction, would "crunch down" the size of any addition to the existing taller homes. When the homes in the Chevy Chase neighborhood were built during the 1920s, 30s, and 40s, it was typical for siblings to share bedrooms, and for each home to have only one bathroom. Today's families need larger homes, and it is important to allow homeowners the opportunity to increase the size of their residences to fit their needs.

Mr. Bunch said that his group is in agreement with proposed design guideline #4, concerning minimum wall openings, and #6, concerning parking for multi-family dwellings. With regard to proposed guideline #7, Mr. Bunch stated that he was told by his architect that a garage constructed at 19 feet in height would not accommodate the second-floor art studio he had planned for his wife; it would need to be constructed to at least 20.5 feet in order to allow for the studio space. He would also need to be able to construct the garage at 830 square feet in size (rather than the 700 square feet as proposed) in order to accommodate two cars, a storage area, and a workshop space. Mr. Bunch proposed to increase the garage square footage to 800 or 850 square feet, and the height to 21 or 22 feet. He displayed several photographs of remodeled garages that have been constructed at 21 or 22 feet in height, and stated that those garages, if they are well-designed, do not appear out of character with the neighborhood.

Mr. Bunch stated that he loves living in the Chevy Chase neighborhood, and he does not want to see it damaged by inappropriate construction. He said that the small alterations to the proposed design guidelines would afford the neighborhood the protection it needs, while still providing homeowners the opportunity to alter their properties according to their needs.

John Bryce stated that he was present on behalf of the owner of 311 Duke Road. He said that his client objects to the arbitrary inclusion of the R-3 properties on Duke and Romany Roads in this ND-1 request, particularly since all of the R-3 properties on Cochran Road, Chenault Road, and Fontaine Road were excluded. Mr. Bryce contends that there is no difference between the multi-family dwellings on those three roads, and the ones on Duke and Romany Roads.

Mr. Bryce stated that his client contracted to purchase the property at 311 Duke Road in November of 2007. During the due diligence period for that purchase, Mr. Bryce attended the January 29, 2008, meeting of the Chevy Chase Neighborhood Association. At that meeting, he specifically asked if 311 Duke Road would be included in the proposed ND-1 overlay, and was told that it would not be included; there would be no restrictions proposed to the R-3 properties. Based on the information Mr. Bryce obtained at that meeting, his client closed on the property. He did not find out until one week prior to this meeting that the property was proposed to be governed by the ND-1 overlay design guidelines. Mr. Bryce said that he does not believe that he was deceived at any point, but that the process changed and his client's property was included in the overlay area without his knowledge.

Mr. Bryce said that the information submitted by the Chevy Chase Neighborhood Association for initiation of this request focused solely on the single-family residences in the area, not the multi-family dwellings. The neighborhood association is seeking to preserve the single-family residential character of the neighborhood, but that is not applicable to his client's property, which is a 13-unit apartment building surrounded by other multi-family dwellings and commercial uses.

Mr. Bryce requested that the property at 311 Duke Road be removed from this ND-1 overlay request, since his client did not petition for its inclusion or receive any notice that it would be included. He also asked that all of the R-3 properties that lie within the proposed overlay area be removed as well, in order to be fair to all of the other multi-family dwelling unit property owners. Mr. Bryce said that applying the proposed ND-1 guidelines to those multi-family properties will not foster the goals of an ND-1 area.

Susan Slade, 1405 Tates Creek Road, said that she has lived in her home, which her grandfather built in 1939, for 15 years. Ms. Slade and her husband have spent the last few years meticulously restoring the home, including replacement of the custom windows and restoration of the original slate roof. They hired an architect who had a background in historic preservation several years ago to develop a long-range plan for the home, since they would like to add a one-story, first-floor addition at some point. Unfortunately, the architect's preliminary design for the addition would not be allowed under the proposed guidelines, due to issues with the rear yard setback. Ms. Slade's property is trapezoidal in shape, and has a 60-foot front yard setback. If the proposed 1/3 lot depth setback requirement is approved, Ms. Slade would be severely limited with regard to possibilities for construction of an addition to her home.

Ms. Slade stated that she and her husband first learned of the specifics of the proposed design guidelines in April of 2008, and they have been following the process since then. Her husband asked, at a neighborhood meeting, if there would be an appeal process to allow them to vary their rear yard setback in order to construct an addition to

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their home. At that time, he was informed that a variance process was in place, and "it should not be a problem to get a variance." Mr. and Mrs. Slade did not feel comfortable enough with that information to sign the petition in favor of ND-1 zoning. The day before this meeting, they received the letter informing them that there was, in fact, no variance process, and they would have to hire an attorney and request a zone change for their property in order to build the proposed addition.

Ms. Slade said that she believes that the proposed addition her architect designed would be very attractive, and her neighbors would not object to it. She asked if it would be possible to slow down this ND-1 process, and reconsider the design guidelines prior to the Planning Commission's consideration of this request. Ms. Slade stated that she missed out on the earlier planning phases of the ND-1 process, and would have liked to discuss modifications to the proposed design guidelines before the request came to the Planning Commission.

Bryan Sawyer, 380 Andover Drive, stated that he has lived in Chevy Chase his whole life. He said that he is not entirely opposed to ND-1 zoning, but he believes that the proposed design guidelines need to be revisited in order to allow more flexibility for homeowners. Andover Drive was initially platted in 1959, and the homes were mostly constructed in 1960. Very few of the homes on that street have 7:12 pitch roofs; most of the roofs have 4:12 or 5:12 pitch roofs. The homes on Andover Drive are mostly split-level or ranch style homes, with lots that are 90 feet wide, rather than the 50-foot wide lots typical to Chevy Chase. Mr. Sawyer said that, since the homes on Andover Drive are so different from the rest of Chevy Chase, "one size fits all" design guidelines may not be appropriate there.

Mr. Sawyer displayed photographs of several of the homes on Andover Drive to demonstrate their typical style and roof pitch. He said that there have been some renovations on the street, but most have been in keeping with the scale and character of the other homes. Mr. Sawyer would like to construct an addition to his home to allow for more space on the first floor, but the proposed design guidelines would allow only a very small addition on the first floor. He would also like to construct a detached garage, as he uses his existing attached garage for a woodshop and motorcycle collection. Mr. Sawyer displayed a graphic depicting the garage he would like to build, which, at 20'6" in height, would be taller than allowed under the proposed design guidelines. He then displayed a graphic depicting the garage he could build under the proposed guidelines, which he believes is much less attractive and would not add to the value of his home.

Mr. Sawyer said that he generally supports the ND-1 process, but believes that the design guidelines should be amended to address these concerns.

Joe Lenney, 341 Colony Boulevard, stated that he has lived in his home for 21 years. He believes that the ND-1 committee has done a great job throughout the ND-1 process, but supports Mr. Bunch's changes to the proposed design guidelines.

Tom Burke, 342 Dudley Road, stated that he is a member of the Design Review Committee that helped draft the proposed design guidelines, but he now believes that some of those guidelines need "tweaking." Mr. Burke believes that the proposed guideline with regard to height and roof pitch of accessory structures would result in garages with a "squashed, mashed" appearance. He displayed several photographs and graphics depicting the different types of roof treatments that would be possible under the proposed guidelines and with additional flexibility for height and roof pitch. It would be possible, under the proposed guidelines, to construct a garage with shed dormers on the front and rear of the structure, which would produce a very unattractive garage that could be out of character with the surrounding neighborhood. Mr. Burke believes that the guidelines could be altered somewhat to allow for better proportions in garages, while still affording the protection to the character of the neighborhood.

Mr. Burke said that changing the proposed height restriction to 22 feet would provide a look that is more in keeping with the character of the neighborhood, as well as more usable square footage, better insulation, recessed lighting, and mechanical duct runs. He asked that the Planning Commission consider altering the design guidelines to permit a maximum height of 22 feet with shed dormers.

Blanche Horseman, 317 Colony Boulevard, stated that she has lived in Chevy Chase for 35 years. Ms. Horseman believes that the proposed ND-1 guidelines are too restrictive. She said that there have actually been only three or four inappropriate remodels in the neighborhood, out of the 643 properties proposed for ND-1 zoning.

Ms. Horseman was recently told that prospective buyers do not want to purchase properties in an ND-1 overlay zone because of the restrictiveness of the design guidelines. She is concerned, therefore, that her property value may be negatively impacted by the proposed ND-1 zoning. She said that she has been opposed to the ND-1 process all along, and she believes that the existing restrictions of the Zoning Ordinance are adequate to protect the Chevy Chase neighborhood.

Russ Milburn, Dudley Road, stated that he heard that some of the pending sale contracts in the Chevy Chase neighborhood are "in trouble" because of the proposed ND-1 overlay zone. He believes that the proposed design

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guidelines are too restrictive, particularly since Chevy Chase "is not a one-size-fits-all community." Mr. Milburn believes that the Chevy Chase neighborhood does need some type of protection, but it is important to ensure that an appropriate appeals process is in place before applying such broad restrictions.

P.J. Blackburn, 200 Chenault Road, stated that she would like to increase the size of her home by adding a second story, while maintaining the same footprint, but the proposed ND-1 zoning would take away that right. She believes that the proposed ND-1 zoning is arbitrary, and she is "tired of her rights being taken away."

Citizens in Support Rebuttal: Mr. Hawkins stated that the ND-1 process has been difficult, and the Design Review Committee had to make some hard decisions. If this request is approved, property owners will have to make hard decisions about how to enlarge their homes.

Mr. Hawkins said that the proposed design guidelines are very generous. The proposed rear yard setback is the same as is currently required in the Infill and Redevelopment area around downtown, and would allow the construction of very spacious additions to most of the homes in the neighborhood. Many of the ideas presented at this meeting have been very good, but, unfortunately, they were not presented to the Design Review Committee prior to the Planning Commission's initiation of this request.

Mr. Hawkins stated that the negative trends in the neighborhood began some years ago, and they have affected "more than just one or two houses." He said that it is time for the Chevy Chase neighborhood to use the tools provided by Article 29 in order to protect the neighborhood.

With regard to the restrictions proposed for multi-family properties, Mr. Hawkins said that the original language submitted with the ND-1 application restricted only front yard parking; the side yard parking restriction was added as a recommendation of the Planning staff. The neighborhood association would be satisfied with the original language, which may help satisfy the concerns of those multi-family property owners.

Henry Jackson, 310 Cochran Road, stated that he had participated as a member of the Design Review Committee. He said that design guideline #2 discourages third-floor construction, but does not prevent it, which may provide another option for property owners who wish to enlarge their homes.

With regard to the staff's statement that Building Inspection review time could be lengthened if the ND-1 overlay is approved, Mr. Jackson stated that he had worked with the city for several years, and was heavily involved in the implementation of the Infill and Redevelopment area. There are rules in the Zoning Ordinance that govern the Infill and Redevelopment area, which are arguably more restrictive than the proposed design guidelines, and yet Mr. Jackson never received a complaint from anyone about the length of time it took the Division of Building Inspection to review a project.

Mr. Jackson stated, with regard to roof pitch, that the proposed design guideline did not mention roof shape, so it would not prevent shed roofs.

Mr. Jackson agreed that the lots along Andover Drive are somewhat different from the rest of the neighborhood, since the houses are placed in the middle of the lots. Those residents should be eligible for a variance to the design guidelines, as should Ms. Slade, who owns property at the corner of Tates Creek Road, since it would constitute a "hardship that was not self-imposed."

Mr. Jackson stated, with regard to accessory structure roof heights, that the Design Review Committee believed that 19 feet would allow a reasonably-sized garage that would not overwhelm the neighboring structures with its mass and scale. Mr. Jackson's home is 23 feet high at the peak of the roof; a 22-foot-tall garage would be comparable in height to the principal structure, which is the type of situation that the committee was attempting to avoid.

Mr. Jackson said, with regard to the concerns about the lack of an appeal process to the ND-1 zoning, that it was assumed, when the ND-1 Ordinance was originally written, that there would be a variance process through the Board of Adjustment. It came as new information to the Design Review Committee, just a few days ago, that that was not the case. Mr. Jackson said that the committee members reviewed both the Zoning Ordinance and the Kentucky Revised Statutes, and were not able to locate the regulation that would prohibit appeals to the BOA for conditional zoning. He said that it would be preferable to the Neighborhood Association to implement an appeals process, if any means to do so could be found.

Director Comments: Mr. King stated, with regard to the issue of variances, that he would respectfully disagree with Mr. Jackson. The staff was aware that conditional zoning restrictions cannot be amended through a variance procedure with the Board of Adjustment. That is a basic, threshold requirement that came about as a result of the state statutes regulating planning and zoning. When the staff was developing the ND-1 ordinance, the Commission's former legal counsel was very clear about that issue.

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Mr. King said that there is no objection on the staff's part if there is a way that, under the statutes, the process could be legally changed to give the Board of Adjustment authority over some aspects of conditional zoning restrictions. The staff would be willing to explore that possibility. There is a great concern, however, about the threshold question of the Board of Adjustment being able to vary or change conditional zoning restrictions put in place by the Urban County Council. There have been many zone changes, over a period of more than 10 years, where conditional zoning restrictions were put in place, and it was well understood and clear in the Ordinance that the only way those restrictions can be changed is through the rezoning process, including an application to the Planning Commission and approval by the Council. Mr. King noted that it will be an involved and lengthy process to complete the statutory analysis and, if it was found to be allowable, to initiate the text amendment that would allow that change to be made to the Zoning Ordinance.

Staff Rebuttal: Ms. Wade stated, with regard to the changes to the design guidelines proposed by Mr. Bunch, that the staff and the Division of Building Inspection were able to determine that there is no definition in the Zoning Ordinance for "wall area." That terminology could be problematic, so the Division of Building Inspection staff requested the use of "wall plane," since that term is defined in the Ordinance. The staff would argue that the term "wall plane" should remain in the design guidelines.

Ms. Wade stated that, in reviewing the multi-family and single-family attached proposed guideline, the original language proposed by the neighborhood association would have required "no parking in the front yard; all parking in rear lot only." In the staff's discussions with the Division of Building Inspection, some concerns arose about side yard parking. The staff determined that the proposed guideline was intended to restrict side yard parking as well, even though it was not explicitly stated. If that was not the intent of the neighborhood association, and the Planning Commission should choose to allow side yard parking for multi-family structures, the staff would suggest that the first sentence read: "No parking in front of the front wall plane of the principal structure on the lot." That language would prevent parking in front of the structure itself, but to the side of or behind it.

Ms. Wade noted, with regard to Mr. Hawkins' statement about rear yard setbacks in the Infill and Redevelopment area, that the existing small lot provisions call for 20% of the lot requirement for a rear yard. The proposed design guidelines would require either 25 feet or 33.3% of the lot depth, whichever is greater.

Commission Comments: Mr. Cravens stated that he is concerned that, without an appropriate appeal process, the Division of Building Inspection would be placed in the role of enforcing what amounts to deed restrictions. He believes that 25 feet is sufficient for a rear yard setback; most new neighborhoods only require a 10-foot rear yard setback. Mr. Cravens said that, as a real estate broker, he "hates to give away property rights." He said that he is concerned about all the different opinions expressed by the Chevy Chase residents, and would be in favor of postponement of this request in order to give the neighborhood time to resolve some of those issues.

Ms. Richardson stated that her major concern is the lack of a variance process to appeal the design guidelines. She said that she understands why there is no such process, but she believes that, given the large size of the Chevy Chase neighborhood and the many houses there, it is important to pursue some type of appeal process for the residents. Ms. Richardson said she was not sure whether postponement would be helpful, and she would like to hear the staff's opinion with regard to Mr. Bunch's proposals to alter the design guidelines.

Ms. Copeland said that it seemed that, if an appeal process could be created, most of the other issues would resolve themselves. She said that such a process would provide the concerned residents with more freedom, so that they would not feel "boxed in" by the design guidelines.

Legal Comment: Ms. Boland stated that she was not involved in drafting the portion of the Zoning Ordinance that regulates conditional zoning restrictions, but she agreed with Mr. King that the Board of Adjustment has never had jurisdiction to review a zone change decision made by the Planning Commission. She said that, if the Board is put in the position of being able to alter conditional zoning restrictions that have been imposed by the Planning Commission, it would absolutely not be authorized by the state statute. Ms. Boland noted that she would be willing to look into a possible delegation of authority or restructuring to provide for an appeal process, but this issue was researched thoroughly by legal counsel at the time of the drafting of the Ordinance. She said that she could look into the issue, but could not guarantee that any means will be found to allow for such a process.

Mr. Brewer stated that he believes that the Chevy Chase neighborhood deserves preservation, and it appears that the preponderance of people in the neighborhood agree. He said that he would be reluctant, however, to vote on an issue that is still unresolved between all of the parties in the neighborhood. Mr. Brewer stated that he does not want to "derail" the ND-1 process, because it has involved an incredible amount of effort; but he believes that there are too many questions of substance that need to be addressed.

Mr. Owens stated that it seems like many of the residents who spoke in opposition are not totally opposed to ND-1 zoning, they just had some problems with the proposed guidelines. He asked if it would be possible to continue this

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August 28, 2008

item to a future date, in order to allow the neighborhood association, the concerned residents, and the staff more time to create a different set of design guidelines. Ms. Boland answered that, procedurally, the Planning Commission could choose to continue this hearing so that evidence would be restricted to new evidence or testimony only. There may be an issue raised, depending on what kinds of changes are made to the proposed design guidelines, as to whether the notification process needs to be redone. If there are significant changes proposed to the design guidelines, it would be appropriate to re-notify the residents, in case they may have problems with the new proposals.

Mr. Day stated that it seemed that all of the Commission members were concerned about the lack of an ND-1 appeal process. He said that everything appeared to be in order at the time of the initiation of this request, but many people were unaware about the lack of an appeal process at that time. He noted as well that many people do not get involved in issues such as this one "until it gets down to the last minute." Mr. Day asked if it would be possible to carry this request on without having another full public hearing.

Ms. Roche-Phillips stated that she did not believe she was mentally competent, after an 8½-hour meeting, to make technical decisions. She said that it seemed that the opposition's proposed changes to the design guidelines were small enough that new notification would not be required, that all parties could easily agree on those changes, and that the staff, meanwhile, could attempt to find some sort of relief or appeal process to satisfy the rest of the residents' concerns. Ms. Roche-Phillips said that she would be in favor of a continuance of this item, and asked if 60 days or 30 days would be more appropriate. Mr. King answered that a continuance of 30 days would probably be preferable due to the potential for notice issues. The statutory notice and sign posting constitute a huge effort on the staff's part, so it would be helpful to avoid re-notification if possible. Mr. King stated that the staff could be comfortable with a 30-day continuance. He identified the following three issues that he believes need to be resolved in those 30 days: first, the appeal process, which is entirely a staff issue. The staff would do the most exhaustive research possible within that 30 days, and would let the Commission know if there are other options. In terms of the restrictions, Mr. King noted that those issues are largely neighborhood-driven. He said that the design expertise in the Chevy Chase Neighborhood Association exceeds that of the staff; there are no architects on the planning staff. The staff's role has been to help the neighborhood determine how to come up with the design guidelines, and facilitate their conversations that they have had within the neighborhood. Mr. King said that he was sure that the neighborhood would appreciate any guidance that the Planning Commission could offer as they further refine their design guidelines. He noted that the third major issue area seems to be the question of parking in the R-3 zone, which dealt mostly with side yard parking. Mr. King understood the neighborhood representative to say that they were not concerned about side yard parking, and the staff proposed a tweak that may address the concerns of the R-3 property owners, which could resolve that issue entirely.

Mr. Brewer asked if there was a motion that could encompass all those concerns, while still indicating that the Planning Commission supports the ND-1 zoning overall and avoiding another full hearing.

Mr. Day stated that for the Commission to "try to tweak things" among themselves was not fair to the neighborhood residents. He said that the Commission must choose between continuation, postponement, approval, or disapproval of this request, because it was not appropriate for them to work on the issues themselves.

Action: A motion was made by Ms. Roche-Phillips, seconded by Ms. Richardson, and carried 7-0 (Holmes, Penn, and Whitman absent, Vaughn recused) to continue MAR 2008-27 to the September 25, 2008, Planning Commission meeting. She asked that the neighborhood association try to provide the Commission members with any new information at least one week prior to the meeting, so that they would have time to review it.

Citizen Request: Mr. Lenney asked if it would be possible to hear this case early in the agenda on September 25th. Mr. Day stated that the Commission would make every effort to do so.

Note: Chairman Vaughn declared a brief recess at 2:53 p.m. The meeting reconvened at 3:12 p.m. Ms. Richardson arrived at this time. Upon the reconvening of the meeting, Mr. Holmes, Mr. Penn, Mr. Vaughn, and Ms. Whitman recused themselves from the following item. Mr. Day assumed the Chair for the remainder of the meeting.

A. CONTINUATION OF HEARING ON ZONING MAP AMENDMENT

1. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT

- a. **MAR 2008-27; URBAN COUNTY PLANNING COMMISSION (10/9/08)*** - continuation of a public hearing on a petition for a zone map amendment to add a Neighborhood Design Character Overlay (ND-1) zone for 134.70± net (172.0± gross) acres, to preserve existing neighborhood character for properties located at 310-395 Andover Drive; 201-299 Cassidy Avenue (odd addresses only); 300-356 Cassidy Avenue; 125-250 Chenault Road; 309-539 Chinoe Road; 180-346 Cochran Road; 401-435 Cochran Road (odd addresses only); 1394-1506 Cochran Road; 300-377 Colony Boulevard; 951-1245 Cooper Drive (odd addresses only); 323-325 Cross Lane; 305-436 Dudley Road; 300-335 Duke Road; 340-360 Duke Road (even addresses only); 131-191 Eastover Drive; 300-372 Garden Road; 201-505 Hart Road; 101-194 Louisiana Avenue; 100-165 Old Cassidy Avenue; 998-1144 Providence Lane (even addresses only); 1200-1237 Providence Lane; 303-440 Ridgeway Road; 300-315 and 340 Romany Road; 901-1015 Tates Creek Road (odd addresses only); and 1405-1491 Tates Creek Road (odd addresses only).

Proposed Design Standards:

1. **Rear Yard Setbacks:** Minimum of 25' or one third of the lot depth, whichever is greater.
2. **Building Heights:** Maximum of 28' to highest ridge and maximum eave height at 2nd floor ceiling line.
(includes dormers)
3. **Roof Pitch:** Minimum of 7:12 slope.
(except dormers, porches, flat roofs, and to match existing roof)
4. **Wall Openings:** Minimum of 10% of wall area on each elevation of new construction to be windows or doors.
(excludes porch openings; no openings required if Building Code requires Fire Ratings)
5. **Drawings:** Building floor plans and exterior elevations of all sides typical of proposed construction at a minimum 1/8" scale and scaled site plan required to secure building permit.
(includes accessory structures)
6. **R-1T and R-3 Parking:** Garage doors shall not face the front building line. No parking in front yard. All parking in rear lot only.
(excludes detached garages)
7. **Maximum Garage Size:** Maximum footprint of 700 square feet per lot. Maximum of 19' height to roof ridge, maximum 12' height to eave. No exterior stairs permitted.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 3) recommends a combination of residential land uses for the subject area, including high, medium and low density residential land use. The Planning Commission has initiated a zone change request to add a Neighborhood Design Character Overlay (ND-1) zone in order to regulate rear yard setbacks, building height, roof pitch, off-street parking, garage door restrictions, and accessory structures, regardless of the underlying zoning.

The Zoning Committee Recommended: Withdrawal of 315 Romany Road, and Approval of the remainder, for the reasons provided by staff.

The Staff Recommends: Withdrawal of 315 Romany Road, for the following reason:

1. The property located at 315 Romany Road is zoned Neighborhood Business (B-1) and has been used as an office for the past 14 years by the current property owner. Given the fact that the property is not zoned residentially, nor is it a non-conforming residential land use, the ND-1 zone is not appropriate and the property should be removed from the area proposed for this overlay.

The Staff Recommends: Approval of the Staff Alternative Design Standards for the remaining properties, for the following reason:

1. The requested Neighborhood Design Character (ND-1) overlay zone is in agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The Goals & Objectives of the Plan identify eight themes, one of which is "preserving, protecting, and maintaining existing residential neighborhoods in a manner that ensures stability and the highest quality of life for all residents." Further, Goal 15, Objective I states that neighborhood protection overlay zoning provisions should be implemented for establishing stability and protection in existing and, especially, older neighborhoods.
 - b. The implementation of a Neighborhood Design Character (ND-1) overlay zone is in agreement with the Comprehensive Plan's Goals & Objectives by providing specific standards that will maintain the existing character of the neighborhood, regardless of the underlying zoning.

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- c. The Chevy Chase neighborhood has completed a design character study, defined the existing character of the neighborhood, developed preservation goals, and proposed appropriate neighborhood design standards (in need of only slight modification), thus meeting the requirements of the ND-1 zone.

Staff Presentation: Ms. Wade began the staff's presentation by noting that this item was a continuation of a zone change hearing that began on August 28th. Since that time, the staff has received several more letters from residents with regard to this request; Ms. Wade entered those letters into the record, and circulated copies to the Commission members for their review.

Ms. Wade stated that, at the end of the Commission's public hearing on August 28th, there were three main issues left to be resolved: the language of the multi-family and single-family attached restriction; the possible changes to the remaining restrictions; and refinement of an appeal process.

With regard to the language of the multi-family and single-family attached parking restrictions, Ms. Wade said that the staff had prepared a revised recommendation. She distributed that recommendation, noting that #5 on the staff's exhibit was the language that the staff submitted during rebuttal at the August 28th hearing. The representatives of the multi-family property owners, who were in objection to the staff's original language, approached the staff and indicated that they were agreeable to the revised language, which is as follows:

- 5. Parking for Single-Family Attached and Multi-Family Dwellings:** No parking in front of the front building plane of the principal structure on the lot. Garage doors shall not face the front building line. (Excludes detached garages)

Ms. Wade said that the staff, the neighborhood, and the multi-family property owners agree that that issue has been resolved, with the proposed change to the ND-1 restriction.

With regard to the remaining ND-1 restrictions proposed for single-family uses, the Planning Commission at their August 28th hearing encouraged the neighborhood and those in opposition to get together and try to come to an agreement on the necessary "tweaks" to the restrictions. The two groups met, drafted proposed changes and forwarded them to the staff, which were included in the exhibit packet distributed to the Commission members prior to the start of this hearing. The staff reviewed that proposed language, and made some additional tweaks in order to make the language more consistent and to respond to concerns from the Division of Building Inspection. The following is the language proposed by the staff, based on the neighborhood's revised submission:

Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

Unless otherwise noted, the proposed standards shall only apply to single-family detached residential dwellings.

- 1. Rear Yard Setbacks:**
 - A.** Measured 70' from the Front Building Plane (excludes porches) or 10' from the Rear Property Line, whichever is greater. Applies to all properties except those on Andover Drive, Garden Road, and Tates Creek Road.
 - B.** Measured 80' from the Front Building Plane (excludes porches) or 10' from the Rear Property Line, whichever is greater. This applies to all properties on Andover Drive, Garden Road, and Tates Creek Road.
- 2. Building Heights:** Maximum of 30' to highest ridge and maximum eave height (aka gutter line) at 2nd floor ceiling line, including dormers. (Excludes new additions which may exceed 30' in order to match existing ridge lines; eave height measured at top of fascia board)
- 3. Roof Pitch:** Minimum 7:12 slope for Gabled Primary Roofs (Excludes dormers, single story flat roofs, roofs built to match existing roof pitches, and for allowable projections per Article 15-5 of the Zoning Ordinance)
- 4. Wall Openings:** Minimum of 10% of the wall plane on each elevation of new construction is to be windows, doors and/or vented openings; however, no openings shall be required if Building Code requires Fire Ratings. (Excludes any new construction with a wall plane area of less than 150 square feet, chimneys, and side walls of dormers)
- 5. Parking for Single-Family Attached and Multi-Family Dwellings:** No parking in front of the front building plane of the principal structure on the lot. Garage doors shall not face the front building line. (Excludes detached garages)
- 6. Accessory Structures:** Maximum footprint of 800 square feet for all accessory structures per lot. Maximum 22' height to roof ridge, maximum 12' height to eave (aka gutter line). No exterior stairs shall be permitted. Maximum 50 percent of roof square footage allowed to be shed dormer. (Eave height measured at top of fascia board and does not apply to dormers, and no minimum roof pitch required on accessory structures)

Ms. Wade said, with regard to rear yard setbacks, that the neighborhood had come up with a measurement that, in some cases, amounts to the same number as the previously proposed percentage standard. The majority of the

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properties in the neighborhood are 150 feet deep, which would require a rear yard of 50 feet with the original restriction. The neighborhood maintained that idea, but approached it from the front of the property rather than the rear, when they developed the new proposed restriction. Some of the properties in the neighborhood are not 150 feet deep, and the new proposal would allow those property owners more flexibility to expand their homes to the rear. Andover Drive, Garden Road, and Tates Creek Road, which have shallower lots, are proposed to have 80 feet to work with, rather than 70'.

With regard to the remaining restrictions, Ms. Wade stated that the staff's changes to the proposed restriction on building heights were intended to address the Division of Building Inspection's concerns about eave measurements. She displayed a graphic rendering to help explain those changes. The changes to roof heights exempted roof types other than gabled roofs from the requirements. The suggested change to the restriction on wall openings was to add an accommodation for vented openings, and an exception for chimneys. Ms. Wade said, with regard to the restriction on accessory structures, that the neighborhood had reached a compromise of 800 square feet in size and 22 feet tall, after discussions with the opposition. They also had proposed a provision allowing a maximum of 50 percent of the roof square footage to be a shed dormer. Ms. Wade displayed a rendering of an accessory structure to help clarify the proposed changes for the Commission, and noted that the staff understands that the neighborhood is generally in agreement with these proposed changes to the ND-1 restrictions.

Ms. Wade said that the third issue that remains for the Commission's consideration is an appeal process. The staff has reviewed the Zoning Ordinance and K.R.S. 100, and found that conditional zoning restrictions are only allowed to be applied by urban county governments; and they have to be applied, varied, or amended by the Planning Commission, not by the Board of Adjustment. The BOA is not given the power to make changes to conditional zoning restrictions, so that responsibility will still need to rest with the Planning Commission. The staff found, however, that it was possible to amend the process by which an applicant could come before the Commission to request an amendment to ND-1 restrictions. The usual procedure for changing conditional zoning restrictions involves filing an application for a zoning map amendment, which typically takes four to six months, including a decision by the Urban County Council. The staff considered what could be done to help ND-1 applicants amend conditional zoning restrictions in a manner that would not be as onerous as a more typical map amendment changing zoning categories.

Ms. Wade stated that Ms. Phillips would review the proposed process for the Commission. The staff has also prepared a new application, and has begun work on drafting a text amendment that they will ask the Planning Commission to consider at their October work session.

Ms. Phillips displayed an exhibit for the Commission, entitled "Planning Application Review Time." She said that the staff's goal was to provide a process that would meet the requirements of both K.R.S. 100 and Article 6 of the Zoning Ordinance. The result was a "hybrid" process between a standard zone change application and that necessary for a dimensional variance, which is usually reviewed by the Board of Adjustment. Ms. Phillips referred to the exhibit, which explained the timeline, fee schedule, and submittal requirements for both zone map amendments, dimensional variances, and the proposed ND-1 amendment process. The staff's focus in creating this process was to keep it more in line with the Board of Adjustment fee schedule and submittal requirements.

Ms. Phillips stated that the timeframe proposed for the modified ND-1 amendment process is from 27 to 41 days from the filing date. She noted that, although a map amendment process would still have to be followed, it would be more expedited than a more typical map amendment filing. Property owners would be required to follow the same filing schedule as other zone change applications, but the request could probably be heard at the Commission's subdivision items meeting on the second Thursday of the month, rather than the zoning public hearing held on the fourth Thursday of each month. No development plan would be required with a modified ND-1 amendment, but a building elevation and/or site plan would be required. A modified ND-1 amendment would also be required to follow the same notification requirements as a more typical zone change request, which requires mailed notice to property owners within 400 feet of the property.

Ms. Phillips displayed a flowchart of the proposed ND-1 map amendment process. She said that an applicant would be required to complete a pre-application conference, just as for a zone map amendment; the applicant would then file their application, including a building elevation or site plan and notification to surrounding property owners; the staff would prepare a legal advertisement for the request; the Zoning Committee would consider the staff's report on the request; and, if the Planning Commission so chose, they could hear the request at their monthly subdivision meeting. In most circumstances, modified ND-1 amendments would not be forwarded to the Urban County Council following Planning Commission action, unlike most zoning map amendments. The staff believes that following this procedure would reduce the length of the process from four to six months to four to six weeks.

With regard to the procedural elements of the proposed modified ND-1 amendment, Ms. Phillips said that an amendment to Article 6 of the Zoning Ordinance would be necessary to change the types of findings required for the modified process. Also, the staff would need to create a new application and amend the fee schedule, which would require Urban County Council approval. Ms. Boland would also need to work with the Council on the ordi-

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nance for each neighborhood requesting ND-1 zoning, so that Council approval would not be required. Ms. Phillips stated that the staff is currently working on the draft text amendment, and will be prepared to present it at the October 16th work session, for possible initiation at the October 24th Planning Commission meeting.

Ms. Wade said that there had been some questions since the August 28th hearing about whether the Planning Commission or the Council could make this zone change effective on a certain date, after the modified ND-1 amendment process is in place. The Department of Law advised that an effective date can be added to the ordinance, but it would have to be a specific date; it could not be contingent on another action. The staff feels that an effective date for sometime in the spring of 2009 would be an appropriate time frame to allow the Planning Commission to vet the text amendment, initiate it, have a hearing, and send it to the Council.

Chair Comments: Mr. Day stated that the public comment portion of the hearing would be continued at this time. He noted that this portion of the meeting is for response to new material entered into the record or presented today only, not for information that was presented at the August 28th hearing. It would be most appropriate to begin with comments about the appeal process, since that issue generated the most concern from the residents at the August 28th hearing. Mr. Day noted that the same time limit procedure used at the August 28th hearing would be in place for this portion of the continued public hearing.

Audience Comments: Brad Hawkins, Dudley Road, stated that he was once again present representing the Chevy Chase Neighborhood Association. He said that the two issues with the proposed design guidelines themselves had been resolved, and he commended his neighbors on their time and effort to achieve that resolution. Some residents in the neighborhood are simply philosophically opposed to any type of overlay; but, of the residents who were receptive to ND-1 zoning but opposed to specifics of the guidelines, there is overwhelming support for the proposed changes.

With regard to the proposed appeal process, Mr. Hawkins said that he would like to commend Ms. Wade and Ms. Phillips, and all the other Planning and Law staff involved, for their hard work in such a brief time span. He believes that the proposed appeal process will allow homeowners who have unique situations to seek relief.

Mr. Hawkins asked that the Planning Commission approve the staff's recommendation for the design guidelines, and use their collective wisdom to decide if an effective date should be applied for the appeal process. He believes that it would be difficult to take this request to the Urban County Council without some resolution of the appeal process, so he asked that the Planning Commission consider, if possible, moving that issue forward along with the rezoning request.

Tom Bunch, Dudley Road, said that he was gratified that the ad hoc opposition group was able to work with the CCNA to produce guidelines that he believes are superior to those originally presented with the rezoning application. With regard to the appeal process, he believes everything is in order, but he is concerned about the following language: "The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence." Mr. Bunch said that, in legal terminology, there can either be "preponderance of the evidence" or "clear and convincing evidence," but it should not read "a clear preponderance."

Mr. Bunch urged the Planning Commission to use their wisdom with regard to setting an effective date for the appeals process, as long as it can somehow go forward.

P.J. Blackburn, 200 Chenault Road, stated that, in her opinion, there is no general consensus of the neighborhood in support of ND-1 zoning. She said that, following the August 28th hearing, she asked to be included in the meetings to discuss the changes to the design guidelines, but she was not included. She sought to communicate with several different individuals about the issue, but no one answered her phone calls or emails. Therefore, Ms. Blackburn read the following statement into the record:

"Years ago, the city of Lexington did use great wisdom in laying down the building parameters for Chevy Chase. Those parameters were strong enough to protect us, but not so strong that we lost our liberties. While ND-1 restrictions are well-intended, they do nothing to guarantee the look and feel of Chevy Chase. However, they do take away the liberties provided by the wisdom that came before us all. Houses can still be painted any bright, garish color; be built in a contemporary design; be hexagon- or A-frame shaped; anyone could submit yard art in their front yards, etc. When I asked petitioners why these aforementioned restrictions were not listed in ND-1, I was told, "You can't legislate good taste." But, this is exactly what the proponents of ND-1 are trying to do: legislate or force the taste of a small group of people on the rest of us, while taking away our liberties, yet failing to preserve the look and feel of Chevy Chase. Further, if a full zone change is required for any remodeling outside the ND-1 proposed restrictions, I submit to this Commission, empowered for your experience and your wisdom, that getting a zone change is far too great a burden to place on a single homeowner to achieve, not to mention probably cost-prohibitive. Therefore, I respectfully ask you to vote against the ND-1 overlay for Chevy Chase. This initiative is unprece-

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dented in the state of Kentucky, and a slippery slope to venture down without knowing all of the unintended and intended consequences it will result, which you will have to deal with in the future. Relative to that, has the Commission, since August 28th, researched all the additional burden in time and cost placed on the City's building inspectors, to facilitate exact compliance, relative to all the new idiosyncrasies of ND-1? Surely, the petition, signed by less than half of the 800 affected homeowners, was considered null and void at the close of the August 28th hearing, since it was clear to the Commission members that homeowners had signed it based on misstatements to them. Please know that throughout all ND-1 meetings, homeowners were told that all we had to do to build outside ND-1 restrictions was get a simple variance from the Board of Adjustment. This probably is the reason they gathered as many signatures as they did. Even at the final ND-1 meeting, after presenting signatures on the petition, the same question was asked and answered the same way. Residents I have spoken to did not understand the huge, negative implications of what they were signing and how it would adversely affect the future sale of their property. This was because some of us do not want to remodel again, but were not aware of the exorbitant costs of a zone change required by future buyers. Then, at the eleventh hour, two days before the August 28th hearing, the proponents of ND-1 circulated the brief letter in our mailboxes, letting us know that, 'in a recent meeting with Planning staff, we learned that the process for appealing ND-1 standards requires a complete zone change.' The brief letter proceeded to gloss over a few very general steps and listed some very minimal costs involved with the zone change process, as if getting a zone change was no big deal. Why did it happen, if proponents for ND-1 had been working on this for two years prior to circulating that petition? Simple due diligence would have revealed that a complete zone change was always, and the only option Chevy Chase residents ever had from the onset. Further, I believe any petition on an issue of this magnitude should be signed by two-thirds of all affected homeowners prior to placing it before this esteemed Commission, with frequently asked questions and answers circulated to all who cannot attend the meetings. Anything less wastes homeowners' and the Commission's time and money. Many of us do not belong to the Chevy Chase Neighborhood Association. I could not attend the meetings prior to the 28th hearing, so I used the email address they gave us to get questions and objections addressed about the ND-1 overlay. I emailed a simple question, asking the names of those who were leading this initiative, so I could voice those objections. I never received any response, nor, as I repeated before, was I allowed to attend any meetings to iron out differences in today's vote. So much for open neighborhood communication to address objections. You, our Commission, are empowered in your experience and wisdom to prevent this mistake from harshly affecting 800 homeowners. I again call on you to vote 'no' on ND-1 and fulfill your obligation to your fellow homeowners, for it is too burdensome and a single appeal procedure must be in place before any ND-1 initiative in the city of Lexington is ever passed."

Bryan Sawyer, Andover Drive, stated that he is agreeable to the revisions to the design guidelines. He said, with regard to the appeals process, that it would be preferable to require only a 200-foot notification, as for a BOA action, rather than a 400-foot notification. Mr. Sawyer noted that he would like for the appeals process to be in place before the enactment of the ND-1 rezoning.

Steve Slade, Tates Creek Road, stated that he participated in the process of "tweaking" the design guidelines. He said that the changes made to the guidelines were done so that the potential for appeals should now be minimal. The group took a great number of situations into consideration, and he does not believe that there will be many appeals. The committee was open with the CCNA, and Mr. Slade appreciated that.

Commission Comments: Mr. Day asked if it would be appropriate to approve the ND-1 overlay, and then focus on the appeal process; and whether it would be appropriate to "tie the two issues together." Ms. Boland answered that it is not legally possible to pass an ordinance contingent upon another action. The Commission could recommend that this zone change not go into effect until a specific date, because each ordinance passed by Council ends with an effective date.

Mr. Brewer said that he believes that an extraordinary amount of work has gone into this process, and this request needs to move forward, even though the zone change cannot be approved contingent upon the revisions to the appeals process. He said that it seemed like, since the staff, the CCNA, and the opposition had reached a consensus, there should not be a large number of appeals. Mr. Brewer stated that this request should be moved forward with a date certain as recommended by the Law Department staff.

Ms. Roche-Phillips stated that she agrees with Mr. Brewer, and she believes that an effective date of January 1 or February 1, 2009, would be appropriate.

Ms. Phillips stated that the staff had done enough work to date that the proposed text amendment could be presented at the Commission's October 16th work session. Ms. Phillips asked if it would be possible to hear that presen-

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September 25, 2008

tation at the Zoning Committee meeting on October 2nd, rather than at the October 16th work session, particularly since some of the Commission and staff members will be at the KAPA conference on that day. She said she does not believe that a January effective date would be an unreasonable goal.

Ms. Wade stated that Council generally takes a holiday break from approximately December 10th through the New Year's holiday.

Action: A motion was made by Ms. Roche-Phillips, seconded by Ms. Richardson, and carried 6-0 (Cravens, Holmes, Penn, Whitman, and Vaughn absent) to approve MAR 2008-27, as proposed by staff, and recommending an effective date of January 1, 2009.

Staff Comment: Mr. Sallee noted that the staff could put this new process on the Zoning Committee agenda for next week; and then, depending on the Committee's review, present it at the work session or proceed to place it on the Commission's agenda.