



FAYETTE ALLIANCE

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June 26, 2019

Dear Chair Wilson and Planning Commission Members,

Please accept this letter on behalf of the Fayette Alliance with respect to ZOTA 2019-2: Alternative Regulation for Zoning Map Amendment (KRS 100.21111).

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Executive Director

Brittany M. Roethemeier, J.D.

Founded in 2006, Fayette Alliance is a coalition of citizens dedicated to achieving sustainable growth in Lexington-Fayette County through land use advocacy, education, and research. We believe that preserving our unique and productive Bluegrass farmland, advancing smart growth and innovative development are essential to Lexington's continued success.

In furtherance of this mission, we respectfully submit the following with regard to our support for ZOTA 2019-2 as well as recommendations for equitable implementation of the same.

If adopted, ZOTA 2019-2 will effectively change the current map amendment ("zone change") process in the following ways:

- Planning Commission's action relating to a proposed zone change shall become final and the zone change shall be automatically implemented unless, within twenty-one (21) days after the final action by the Planning Commission ("Commission"):
 - Any aggrieved person files a written request with the Commission that the final decision shall be made by the Lexington-Fayette Urban County Council ("Council"); or
 - The Council files a notice with the Commission that the Council shall decide the zone change.

This alternative process, codified in KRS 100 in 1988 but never adopted into our local ordinance, will expedite the approval process of an uncontested zone change by making the Commission's decision final and preventing any further delay caused by procedural requirements for Council adoption. It will also shorten the time frame concerned citizens have to mobilize and express their desire for the



Council to decide the change and potentially hold a second public hearing. It is critical when we promote and encourage efficiency in our regulations that the correct balance is struck between that efficiency and equity for those affected by the result of such a change. Progress is made at the speed of trust, and we must ensure these processes are transparent so we can work for the benefit of the various stakeholders involved and affected by development in our community.

Zoning, as a practical matter, regulates the public use of real estate to further responsible development of the community, as well as for the health and welfare of our citizens. Infill and redevelopment strengthens communities by directing development towards existing communities, creates more diverse housing opportunities, promotes walkable neighborhoods, fosters attachment between people and their community¹ and preserves our vital Bluegrass farmland. All of these benefits work together to enhance our quality of life and promote economic prosperity in our city. While the benefits of infill development are clear, it can be costly, time consuming and difficult for developers to navigate the zoning process and we must acknowledge these issues in order to come together to promote policies that encourage the development our community wants.

The question at this point in Lexington's history is not if we grow, but how we grow. Over 17,000 acres of underutilized, undeveloped and vacant land have been identified within our boundary for development and redevelopment opportunities.² We must encourage improvements in our regulations to make progress in utilizing this land for the betterment of our city. The 2018 Comprehensive Plan ("Plan") identifies infill development and land use efficiency as primary objectives of our policies going forward.³ Our community expressed its vision and we have successfully adopted the Plan; now, we must implement it. It takes difficult work and a balancing of many interests to change and refine our zoning ordinances and Fayette Alliance commends the Planning Staff ("Staff") for spearheading this effort through ZOTA 2019-2.

ZOTA 2019-2 promotes efficiency for the zone change applicant and Staff by potentially removing the prolonged time frame and cost (legal and project related) involved for two readings by the Council following a decision by the Commission. The applicant is then free to begin the next phases of their project without additional delay after the 21 day period expires. Staff estimates that 85% of the zone changes coming before the Commission are uncontested and could benefit from this change.⁴ This ZOTA works to encourage infill and redevelopment projects by removing some of the most basic obstacles to the

¹ Environmental Protection Agency, "Smart Growth and Economic Success: Investing in Infill Development", February 2014, pg. 1.

² Underutilized Properties Study, Fayette Alliance and Lord Aeck Sargent, March 2017.

³ Imagine Lexington, 2018 Comprehensive Plan, Theme A.

⁴ Staff Report on Petition for Zoning Ordinance Text Amendment 2019-2.

same, allowing all parties to focus their time, money and community capital on those projects which will, deservedly, face additional community scrutiny.

It is crucial, however, that while we encourage efficiency we also ensure our citizens interests are protected and opportunities and awareness of their ability to speak publicly about their concerns are not hindered. While potentially expediting the zone change process for the applicant, ZOTA 2019-2 also provides any objectors to the Commission's decision a reasonable way to move forward so that the zone change may still proceed to the Council for a second hearing upon their request, consistent with the process currently in place. Any "aggrieved person", which, pursuant to Kentucky case law should be interpreted broadly⁵, although is undefined in the zoning ordinance, will have to submit a written request to the Commission within the 21 day period from the Commission's approval that the Council decide the zone change, which is a decrease in the time period citizens have under the current ordinance to request Council action. For this reason, the communication, education and transparency about these new processes will be critical.

It should be noted that use of The Placebuilder, a framework within the Plan now used to evaluate zone changes and development plans, encourages significant and meaningful communication between a zone change applicant and the neighborhood citizens **prior to** the submission of the zone change to the Commission for decision⁶. There is greater emphasis on the pre-application process, which works towards addressing and resolving issues between citizens and applicants before the zone change process is actually underway. The earlier the neighborhoods and citizens are notified of an upcoming project the more transparent this process will be, and ultimately, the more efficient. The Placebuilder, in addition to effective and comprehensive communication by the Staff to the necessary parties as recommended below, can work together to mitigate the risks associated with shortening the time frame required for citizen objectors to the zone change.

In order for the use of this alternative process to be both successful and equitable, the administrative processes to ensure communication between the Planning Staff, Council and potential citizen objectors must be put into place and refined as needed during the implementation of ZOTA 2019-2. The Staff has demonstrated their commitment to citizen engagement and continued dedication to public outreach will be crucial to ensure our citizens are educated about the change and informed as to how they need to act in order to protect any objections they have to future zone changes. Fayette Alliance recommends that clear processes be established for the following:

- a. Notifying Council of decisions made by the Commission on the next business day and including, but not limited to, the following:

⁵ See *Id.* Spencer County Preservation, Inc. v. Beacon Hill, LLC, 214 S.W.3d 327 (Ky. Ct. App. 2007)

⁶ Imagine Lexington, 2018 Comprehensive Plan, The Placebuilder.

- I. case description;
 - II. Commission's recommendation and vote;
 - III. names of objectors present at the public hearing;
 - IV. Councilmember and district for subject zone change;
 - V. timeline during which an aggrieved person or Council would need to request that Council take final action and instructions to do so; and
 - VI. final development plan as soon as certified;
- b. Providing at the time of the hearing to all citizens attending (and to any that later request this information, as well as on the Planning Commission web page), detailed instructions regarding the timeline during which an aggrieved person or Council would need to request that the Council take final action and clear instructions on how to move forward with that request;
 - c. Educating citizens and neighborhoods about the ordinance changes through public outreach, materials and meetings;
 - d. Ensuring final zone change records be housed consistently with all records prior to this change or further educating involved parties on how to ensure a request for these records can be processed to limit any burden on the requesting party to obtain the necessary records.

Implementation of ZOTA 2019-2 with consideration of the aforementioned can work to encourage infill and redevelopment to enhance our city, provide the necessary protections to our citizens, and affirm our community's commitment smart, responsible and sustainable growth.

Based on the above, Fayette Alliance supports ZOTA 2019-2 and respectfully requests that our recommendations are put into place as implementation moves forward. We look forward to continuing to support policies that sustainably grow our city and promote our farms. On behalf of the Fayette Alliance, I sincerely thank you for your consideration.

Respectfully,



Brittany M. Roethemeier, J.D.
Executive Director

Cc: Jim Duncan, LFUCG Director of Planning
Walt Gaffield, Fayette County Neighborhood Council