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LFUCG Planning Commission
200 East Main Street
Lexington, KY 40507

May 10th, 2010

Dear Chairman Penn and Planning Commissioners,

My name is Knox van Nagell, and I am writing to you on behalf of The Fayette Alliance. The Fayette Alliance is Lexington's only land-use advocacy organization dedicated solely to preserving our renowned rural landscape in Fayette County, while strengthening the city of Lexington through innovative infill redevelopment and adequate infrastructure.

If responsibly pursued, this growth approach will dynamically improve our city and protect our productive and beautiful farmland—creating a quality of life crucial to Lexington-Fayette County’s economic and environmental success today and in the future.

In furtherance of this mission, the Alliance joins Planning Staff and the Moratorium Working Group in recommending approval of **ZOTA 2010:1: AMENDMENTS TO ARTICLES 1,7, AND 8 TO REDEFINE “FAMILY” AND OTHER DEFINITIONS; TO DEFINE AND REQUIRE CONDITIONAL USE PERMITS FOR A “FUNCTIONAL FAMILY;” AND TO ELIMINATE “THE KEEPING OF ROOMERS OR BOARDERS” IN SINGLE AND TWO-FAMILY RESIDENTIAL ZONES.**

As you know, the proposed text amendments seek to address the density problems experienced in residential zones throughout Fayette County, but primarily surrounding U.K. campus.

Key elements of the proposal are:

- Limiting the occupants of Single-Family and Two-Family Dwelling Units to traditional families, functional families, and 4-6 non-related persons. The LFUCG Board of Adjustment will determine who qualifies as a “functional family” on a case-by-case basis.
- Generally defining “functional family” as 5 or more persons who want to live together as a stable housekeeping unit. Such persons include residents of a boarding or lodging house; fraternity, sorority, or dormitory; a lodge, federation, or coterie; an association of seasonal individuals, or a group of people living together as a result of committing criminal offenses.
- Generally limiting additions to 25% of the gross square footage of homes that were historically occupied by 5 or more unrelated persons.
- The Board of Adjustment will administer, and Building inspection will enforce, these proposed requirements.

Several specific changes are proposed in this sweeping legislation, including:

1. Change the Definition of Family

The proposed definition makes “family” and “housekeeping unit” interchangeable, and identifies numerous ways in which a group of individuals living together might constitute a family.

The definition also allows for a “functional family” to qualify as a “family” or “housekeeping unit” for regulatory purposes.

2. Combine the Definitions of “Boarding House” and Lodging House”

This proposed definition will include any five or more persons living together that share some common areas; but not the basics that a “family,” “functional family,” or “housekeeping unit,” would, such as access to all areas of the building (i.e. bedrooms), meals and/or food costs, a mailbox and utility connections.

The last determining factor is whether individual leases are signed by the residents or if rent is based upon charges assessed to each individual.

This change will give consistency to the administration and enforcement of boarding/lodging houses where they are permitted in the zoning ordinance.

3. Change the Definitions of “Dwelling, Single-Family” and “Dwelling, Two-family”

This proposed change would limit single-family residences to occupancy by a “family” or “functional family” (if the BOA grants approval); or would permit residences occupied within the past five years by 5 or more unrelated persons to continue, but hereafter be limited to a maximum of 6 individuals.

This clause recognizes past rental situations and allows them to continue in a limited fashion. If enacted, landlords will need to document compliance with these regulations in terms of occupancy in order to avoid possible enforcement action in the future.

This change directly addresses the density concerns raised by the Moratorium Working Group.

4. Limiting the Size of additions to Single-Family and Two-Family Residences

To address large, out-of-scale residential additions to Single-Family Dwellings, and potentially Two-Family Dwellings, any enlargement of an existing building which has housed 5 or more unrelated persons during the previous five years would be limited to 25% of the total gross floor area. If such a building has already been expanded by 25% or more since January 1, 2005, then any expansion would be limited to 5%. Any expansion beyond these limitations would require a conditional use permit by the Board of Adjustment

Further, Two-Family Dwellings may add a second unit, where one does not now exist. It would not be required to obey the aforementioned size limitations, but would be required adhere to the new definition of “family”.

The proposed restrictions to Single-Family and Two-Family Dwelling Unit Additions only applies to structures housing five or more un-related individuals currently within the past five years; all units occupied by families or functional families would not be so restricted.

5. Add the Term “Fraternity or Sorority” House to the Zoning Ordinance

The proposed definition includes factors that the BOA can review in determining whether a fraternity or sorority house should be approved or not.

In 2009, the Student Housing Task Force recommended that the Urban County Council define this term in the zoning ordinance.

6. Add the Term “Functional Family” to the Zoning Ordinance

The term “Functional Family” is the result of altering the definition of family as proposed.

It will be necessary to determine when a group of five or more unrelated persons are the functional equivalent of a family, (and thus do not fall within the definition of “boarding and lodging house” or come other congregate living arrangement) and should therefore be allowed to reside within a Single-Family or Two-Family Dwelling Unit.

The proposed definition of “Functional Family” excludes residents of a boarding or lodging house; fraternity, sorority, or dormitory; any lodge or combine, federation, coterie or like organization; any group of individuals whose association is temporary or seasonal in nature; and/or any group of individuals who are in a group living arrangement as a result of criminal offenses.

The BOA will consider an unanticipated family unit by allowing a case-by-case administrative review of what constitutes a functional family—potentially resulting in their occupancy in a single or two-family residential unit.

7. Eliminate the “Keeping of Roomers and Boarders” as a Permitted Accessory Use in Single-Family and Two-Family Residential Zones.

If adopted, residential homeowners would not be allowed to rent a room in their house.

Should this change not be adopted, 2 unrelated individuals would be permitted to rent part of the space occupied by the resident family—potentially resulting in up to 6 unrelated persons in any dwelling unit.

If this were allowed, then potentially four or more unrelated persons could occupy a dwelling unit in the residential zone—creating a loophole in the new definition of “family” occupancy restrictions.

The Fayette Alliance understands that this provision is needed to ensure and enforce that the correct number of people are living in a Single Family or Two-Family Residential Unit—nonetheless, such a measure removes the current right of a homeowner to rent an individual room in their house.

Removal of this right may be objectionable, and therefore, The Fayette Alliance joins the Planning Commission's Zoning Committee in recommending that Council consider—when reviewing ZOTA 2010:1 for adoption—an alternative that would allow the keeping of up to two roomers or boarders by a resident family as a conditional use, thereby making such use subject to review by BOA in Single-Family and Two-Family Residential Zones.

**** Source, Revised Staff Report on Petition for ZOTA 2010:1**

If adopted, ZOTA 2010:1 will impact how residential zoning is interpreted and applied throughout the Fayette County. At first blush, this proposal promotes both individual property rights while protecting the safety and quality of life of our established neighborhoods.

On one hand, it limits the number of unrelated persons living in a Single-Family and Two-Family Dwelling Unit and the size of additions thereon, while also giving clarity to both landlords and local government as to what is permitted in residential zones.

While the proposed text amendment is not a perfect solution to all of the problems experienced in student housing areas—for example it does not address the issue of parking, and it infringes on a homeowner's right to lease out an individual room in their house—it lays a crucial foundation for achieving a delicate, but necessary balance for responsible infill redevelopment and density in our urban core.

The Fayette Alliance commends Mayor Jim Newberry, the Urban County Council, the Moratorium Working Group, and LFUCG Planning Staff in drafting this ZOTA in an effort to tackle Lexington's longstanding rental and student housing problems.

Therefore, we respectfully ask that you approve ZOTA 2010:1.

Thank you,

Knox van Nagell