

7. **D & D REALTY, LLC ZONING MAP AMENDMENT & WHISTLE STOP**

- a. PLN-MAR-16-00023: D & D REALTY, LLC (1/29/17)\* – petition for a zone map amendment from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone, for 1.84 net (2.74 gross) acres, for property located at 362 Newtown Pike.

**COMPREHENSIVE PLAN AND PROPOSED USE**

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The subject property is located within the boundary of the *Central Sector Small Area Plan*, the *Downtown Lexington Masterplan* and the *Fourth Street Zoning Study*. Each document suggests future mixed-use development for the subject site.

The petitioner proposes to rezone the properties to the B-1 zone in order to construct a convenience store/gas station/restaurant and a small commercial building oriented to the intersection of Newtown Pike and West Fourth Street.

The Zoning Committee made no recommendation on the proposal.

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

1. The proposed Neighborhood Business (B-1) zone does not propose a mixed-use development or project, while these uses have been recommended by both the *Downtown Lexington Masterplan* and the *Fourth Street Zoning Study*.
2. It is not certain that the rezoning and redevelopment request is in agreement with the themes, goals and objectives of the 2013 Comprehensive Plan, as currently proposed.

- b. PLN-MJDP-16-00051: WHISTLE STOP (1/29/17)\* - located at 362 Newtown Pike.

**(Barrett Partners)**

The Subdivision Committee Recommended: **Postponement**. There were some questions regarding the proposed access complying with Article 18 and the Newtown Pike Landscape Ordinance.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Denote location of the Legacy Trail on plan.
7. Denote lot coverage and floor area ratio in site statistics per Article 21 requirements.
8. Denote height of building in feet.
9. Denote canopy height in feet.
10. Denote that compliance with Newtown Pike Landscaping Ordinance shall be determined at the time of the Final Development Plan.
11. Replace Tree Protection Plan with required Tree Inventory Map and information.
12. Discuss proposed dumpster location or remove from the plan.
13. Discuss proposed access to Newtown Pike and to Fourth Street.
14. Discuss compliance with Fourth Street Study recommendations.
15. Discuss compliance with Newtown Pike Landscaping Ordinance.
16. Discuss compliance with Article 18 requirements adjacent to 338-340 Newtown Pike.

Staff Zoning Presentation – Mr. Sallee presented and summarized the staff report on this zone change. He displayed aerial photographs of the subject property. He summarized the supplemental staff report that was distributed to the Planning Commission, which states that the staff is now recommending approval for the following reasons:

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

1. The existing Light Industrial (I-1) zone is not appropriate, and a Neighborhood Business (B-1) zone is appropriate for the subject property, for the following reasons:
  - a. The site is located within the boundary of the *Downtown Lexington Masterplan* and the more recent *Fourth Street Zoning Study*. The *Masterplan* and the *Zoning Study* both recommend mixed-use development for the site. In addition, the *Masterplan* states that the Downtown Edge West precinct "has the potential to be a true

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- mixed-use neighborhood with retail, offices, and residential as a signature entryway to the downtown." A B-1 zone would permit this type of development.
- b. The proposed B-1 zone allows much more flexibility in its setback and other zoning requirements, which will permit a redevelopment of the subject site to better match the area's character and form. The petitioner's corollary development plan now proposes a more urban environment.
  - c. The I-1 zone permits the site to be under-performing and underutilized, while B-1 uses would be a better compliment to the surrounding institutional and residential neighborhoods in this area.
  - d. A B-1 zone would be more consistent with the themes, goals and objectives of the 2013 Comprehensive Plan, and the other plans and studies previously conducted in this immediate area.
  - e. B-1 zoning would match that approved for the Thistle Station site immediately to the south of this location, and that for land uses located to the west across Newtown Pike.
2. This recommendation is made subject to approval and certification of PLN-MJDP-16-00051: Whistle Stop, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
  3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses are recommended to be prohibited on the subject property:
    - a. Animal hospitals or clinics.
    - b. Drive-through facilities.
    - c. Automobile repair, service stations and gasoline pumps, closer than 125' from West Fourth Street.
    - d. Automobile and vehicle refueling stations, closer than 125' from West Fourth Street.

Commission Comments – There was a question regarding the sanitary sewers and the need to upgrade the lines for the developments. There was another question regarding the service station, which will not closer than 125' to West Fourth Street.

Development Plan Presentation – Mr. Martin presented the updated staff report on this development plan, which was handed out to the Commission with 6 total conditions, as follows:

The Staff Recommends: Approval, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Addition of tree sizes to the required Tree Inventory Map and information (generalized).

Traffic Impact Study – Mr. Emmons presented the staff report on the submitted Traffic Study for this zone change. He said that the applicant's consultant found that the proposed development will have a very minimum impact on the roadways.

Petitioner Presentation – Tony Barrett, landscape architect, was present representing the petitioner. He said that the applicant is in agreement with the staff's recommendations.

The following citizens were present in opposition to this application:

John Cirigliano, Managing member of Thistle Station, LLC, is concerned about the traffic with the drive-thru facilities. He said the neighborhood associations have voiced that they don't want bars, liquor stores, or gas stations. He also stated that any implications that they cooperated in this application is untrue.

Mark Klar, 321 Blackburn Ave., has concerns with a gas station being built at this location.

Barbara Grossman, 321 Blackburn Ave., believes that a gas station is not suitable for this area, and she would prefer to see a grocery store built on the subject property.

Petitioner Rebuttal – Mr. Barrett said that the staff recommendation prohibits drive-thru facilities. He said that the need for a gas and convenience store is warranted by the traffic counts along Newtown Pike. Also, the Georgetown Road neighborhood has stated that they are seeking convenience type services in the area.

Citizen Rebuttal – Mr. Cirigliano said that there seems to be an overabundance of convenience stores and he doesn't believe that neither the Georgetown Road neighborhood nor the Northside Neighborhood Association wants this use.

Staff Rebuttal – Mr. Sallee said that, as to the previous question regarding the sewer capacity, that both the subject property development and Thistle Station should be able to occur at the level of 22,000 available gallons per day.

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Commission Comments – There was a question regarding the prohibited use of services stations and gasoline pumps. Mr. Sallee said that they cannot be closer than 125 feet from West Fourth Street, under the staff's recommendation.

Zoning Action – A motion was made by Mr. Owens, seconded by Mr. Smith, and carried 8-0 (Brewer, Drake, and Richardson absent) to approve PLN-MAR-16-00023: D & D REALTY, LLC, with the revised staff recommendations, and with the conditions provided by the staff.

Development Plan Action – A motion was made by Mr. Owens, seconded by Mr. Smith, and carried 8-0 (Brewer, Drake, and Richardson absent) to approve PLN-MJDP-16-00051: WHISTLE STOP, with the revised staff recommendations and conditions provided by the staff.

