

1. **M.I.A. BROOKHAVEN, LLC, ZONING MAP AMENDMENT & BROOKHAVEN SUBDIVISION ZONING DEVELOPMENT PLAN**

- a. **MAR 2015-1: M.I.A. BROOKHAVEN, LLC (4/5/15)\*** - petition for a zone map amendment from a Neighborhood Business (B-1) zone to a Highway Service Business (B-3) zone, for 5.6686 net (6.8980 gross) acres, for property located at 2434 & 2450 Nicholasville Road.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

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

1. The proposed Highway Service Business (B-3) zone is in agreement with the 2013 Comprehensive Plan and is supported by several Goals and Objectives of the Plan, including:
  - a. Theme A (*Growing Successful Neighborhoods*), Goal 2, Objective a., which states: "Identify areas of opportunity for infill, redevelopment and adaptive reuse that respect the area's context and design features whenever possible." The petitioner is redeveloping an "under-performing" shopping center with a new center, giving greater attention to the landscaping and pedestrian amenities than the previous development.
  - b. Theme C (*Creating Jobs and Prosperity*), Goal 1, Objective d., which encourages the creation of jobs near where people live. The subject property is located very near residential neighborhoods, which the applicant opines will give nearby residents opportunities to work within walking distance of their homes.
  - c. Theme D, Goal 2, which provides for accessible community facilities and services to meet the health, safety and quality of life needs of Lexington-Fayette County's residents and visitors.
2. The proposed hotel use supports the healthcare and tourist industries that are already thriving in Lexington, and which are acknowledged by the 2013 Plan.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses are recommended to be prohibited on all portions of the subject property:
  - a. Establishments for the display, rental, sale, service, and minor repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes, or supplies for such items.
  - b. Garden Centers
  - c. Kennels, animal hospitals or clinics, including offices of veterinarians.
  - d. Carnivals.
  - e. Taxidermy establishments.
  - f. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers.
  - g. Retail sale of automotive parts with storage and distribution of inventory to other local establishments under the same ownership.
  - h. Outdoor live entertainment when located within 100 feet of a residential zone.
  - i. All conditional uses listed under Article 8-20(d), except:
    1. Churches and Sunday schools.
    2. Temporary structures designed for use or occupancy for 61 to 180 days per 12-month period on a single property, calculating said period by cumulative consideration for the use of any and all such structures on a single property.

These use prohibitions are appropriate and necessary to ensure that future development will be compatible with the character of the adjoining area by prohibiting certain uses that would be too intensive or inappropriate at this location.

4. This recommendation is made subject to the approval and certification of ZDP 2015-10: Brookhaven Subdivision, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

- b. **ZDP 2015-10: BROOKHAVEN SUBDIVISION (4/5/15)\*** - located at 2434 & 2450 Nicholasville Road.  
(Council District 4) **(Wheat & Ladenburger)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-3; 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. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Clarify exterior dimensions for hotel building.
8. Dimension all new entrance aprons.
9. Clarify and dimension areas adjacent to hotel, restaurant and retail buildings.
10. Include patio seating in restaurant parking statistics.
11. Denote final record plat information in title block.

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



12. Resolve locations of interior landscape areas.
13. Resolve lack of dumpster for retail building and location of hotel dumpster.
14. Resolve sign and note #12.
15. Resolve stormwater detention location(s).
16. Resolve vehicular stacking area for proposed restaurant building "B".
17. Resolve required parking and provided parking (and lack of surplus).

**Zoning Presentation:** Mr. Emmons presented the zoning report, briefly orienting the Commission to the location of the subject property, which comprises most of the block formerly occupied by a shopping center, between Nicholasville Road, Malabu Drive, and Surfside Drive. Within the block, but not a part of the zone change are an existing Rite Aid drugstore, at the corner of Nicholasville Road and Malabu Drive, and a small strip commercial center, at the corner of Surfside Drive and Malabu Drive. The shopping center was formerly anchored by a Circuit City store and Rafferty's restaurant.

Referring to a rendered zoning map, Mr. Emmons said that the subject property is surrounded by a mix of zoning designations, including: B-1 and B-6P zoning along Nicholasville Road; Professional Office to the north along Malabu Drive; and R-4 zoning along Surfside Drive, where there are existing apartment buildings. He displayed the following photographs of the subject property: 1) the property as seen from Nicholasville Road, noting the apartment buildings and existing restaurant use across Surfside Drive; 2) the existing Rite Aid drugstore and former Rafferty's restaurant sign, which is still in place; 3) a view from the property toward Malabu Drive and Nicholasville Road, noting the existing Professional Office buildings across Malabu Drive; 4) the rear of the property, noting the small commercial center located above the retaining wall; 5) a view down Surfside Drive, noting the apartment complexes; and 6) the front of the small B-1 commercial center at the corner of Surfside Drive and Malabu Drive.

Mr. Emmons stated that the petitioner proposes to redevelop the subject property, with a hotel to serve as the "anchor" of the redevelopment. The existing B-1 zone will not allow a hotel, which is the reason for the petitioner's rezoning request to B-3. The petitioner's justification contends that the proposed zone change meets four of the Goals & Objectives of the 2013 Comprehensive Plan; and the staff agrees that two of those are particularly important in this case. Theme A, which promotes growing successful neighborhoods, includes Goals that emphasize opportunities for Infill & Redevelopment. The staff believes that the redevelopment of the subject property will provide better landscaping and pedestrian amenities than the previous shopping center. Mr. Emmons stated that the staff also believes that Theme C, Creating Jobs and Prosperity, applies to this proposed rezoning. The petitioner has indicated that approximately 200 jobs will be created with the redevelopment of the subject property. The staff believes that the increased walkability of the area, as well as its proximity to residential uses, will provide area residents with opportunities to live within walking distance of their jobs. The petitioner also contends that the Nicholasville Road area is a logical choice for a new hotel, since it provides access to public transit; nearby healthcare facilities; other shopping centers; and general tourist activities in the vicinity. The staff also recognizes that the hotel will help to support the thriving healthcare and tourism industries in Lexington-Fayette County.

Mr. Emmons explained that the petitioner proposed a list of uses to be prohibited via conditional zoning, which are listed in the staff report and on the agenda, in order to help maintain the character of the surrounding area. The staff proposed one additional use restriction--that of outdoor live entertainment, when located within 100 feet of a residential zone be prohibited. The staff does not believe the addition of that restriction would have a great deal of impact on the proposed development, as indoor live entertainment would still be permitted. Mr. Emmons stated that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

**Development Plan Presentation:** Mr. Martin presented the corollary preliminary development plan, referring to a rendered copy of the plan. He explained that a new access point is proposed on Surfside Drive, in addition to the existing access on that roadway, as well as two proposed new accesses to Malabu Drive. The hotel is proposed to be 75 feet in height, to be sited toward the rear of the property. The petitioner is also proposing to construct a retail building near Surfside Drive, as well as two additional restaurants toward the front of the property, one with a drive-through. Each of those restaurant buildings is proposed to be approximately 4,000 square feet in size.

Mr. Martin said that this plan had been slightly revised from the version that was presented at the Subdivision Committee meeting. He explained that the staff was originally concerned about the amount of parking on the subject property, since the petitioner was proposing only the required number of spaces, and no additional spaces. This version of the plan proposes a surplus of four parking spaces. The petitioner also did not originally include patio seating in the parking calculation, which would have impacted the parking numbers as well. The staff is now comfortable with the proposed number of parking spaces, since patio seating has been accounted for and a small surplus of parking will be provided. Mr. Martin stated that condition #13, which refers to the proposed dumpster area, that the Division of Solid Waste does not typically review preliminary plans; rather, that sign-off is usually required at the time of a Final Development Plan. The petitioner has suggested dumpster sites for the property, but the staff is aware that those sites do not meet the required clearance for Solid Waste vehicles. Those concerns will need to be addressed at the



time of a Final Development Plan for the property. Condition #14 refers to the former Rafferty's restaurant sign, which should be removed following the demolition of that restaurant. The staff recommended condition #16 to address their concerns about two-way traffic near the proposed restaurant drive-through, which needs to be resolved.

Mr. Martin stated that the staff is recommending approval of this plan, subject to the 17 conditions as listed on the agenda, deleting condition #10, since it was resolved by the petitioner.

Commission Question: Mr. Owens asked if condition #17 had been addressed as well. Mr. Martin answered that the petitioner had addressed the staff's concern about the number of parking spaces required. Mr. Owens asked if there was an existing median on Malabu Drive that could affect the placement of the access point there. Mr. Martin answered that there is no median on Malabu Drive in that location, so none of the proposed access points should be affected.

Petitioner Representation: Chris Westover, attorney, was present representing the petitioner. She stated that the petitioner is in agreement with the staff's recommendations, including the conditional zoning restrictions. Ms. Westover requested that all of the development plan conditions beginning with the word "resolve" and be revised to add "at time of Final Development Plan." She said that it would be typical to resolve those types of conditions at that time.

Citizen Comment: There were no citizens present to comment on this request.

Zoning Action: A motion was made by Ms. Mundy, seconded by Ms. Plumlee, and carried 9-0 (Brewer and Penn absent) to approve MAR 2015-1, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Mundy, seconded by Ms. Plumlee, and carried 9-0 (Brewer and Penn absent) to approve ZDP 2015-10, subject to the conditions as listed; deleting conditions #10 and #17; and changing conditions #12-#16 to read, "Resolve...at time of Final Development Plan."

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