

2. **RML CONSTRUCTION, LLP, ZONING MAP AMENDMENT & CADENTOWN SUBDIVISION, LOT 10 (BRIGHTON 3050) ZONING DEVELOPMENT PLAN**

- a. **MARV 2014-10: RML CONSTRUCTION, LLP (6/29/14)*** – petition for a zone map amendment from a Single Family Residential (R-1D) zone to a High Density Apartment (R-4) zone, for 0.92 net (0.92 gross) acre; and a Neighborhood Business (B-1) zone, for 1.01 net (1.22 gross) acres, for property located 2985 Liberty Road. Landscape variances are also requested with this zone change.

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 petitioner proposes a High Density Apartment (R-4) zone for about half of the subject property to allow for construction of a 24-unit apartment building, which is planned to be incorporated into the "Brighton 3050" (formerly "The Summit") apartment complex. The petitioner proposes a Neighborhood Business (B-1) zone for the remainder of the property for a mixed-use building with 12,500 square feet of retail space on the first floor, and 16 residential units on the second and third stories of the building, with associated off-street parking. Overall, the site is planned to have 40 dwelling units.

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

The Staff Recommends: Approval, for the following reasons:

1. The requested High Density Apartment (R-4) zone and Neighborhood Business (B-1) zone are appropriate and the existing Single Family Residential (R-1D) zone is inappropriate, for the following reasons:
 - a. Single family residential development is possible at this location, although the surrounding uses suggest that a more intense use of the property is more appropriate. The closest single family residence is over 400 feet away and is located along Cadentown Road.
 - b. The proposed rezoning of the subject property will allow uses in keeping with the existing character of the area. This portion of the Urban Service Area has developed with a combination of neighborhood business and office uses fronting along Man o' War Boulevard, with residential uses located to the rear of the business uses or along Liberty Road.
 - c. The petitioner's proposed rezoning is generally in keeping with the established development pattern of the immediate area, because the planned neighborhood business zoning will extend to generally the same boundary as that for the CVS Pharmacy located directly across Liberty Road.
2. This recommendation is made subject to the approval and certification of **ZDP 2014-40: Cadentown Subdivision, Lot 10 (Brighton 3050)**, 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. **REQUESTED VARIANCE**

1. Eliminate the B-1 to R-4 zone-to-zone screening and vehicular use area screening requirements internal to the site on property located at 2985 Liberty Road.

The Staff Recommends: Approval of the requested landscape variances, for the following reasons:

- a. Granting the requested landscape variances will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The variances are requested because providing the required landscaping between the B-1 and R-4 zones would be contrary to the applicant's intent to integrate the mixture of commercial and residential uses.
- b. Granting the requested landscape variances will not result in an unreasonable circumvention of the Zoning Ordinance because zone-to-zone screening is designed to "require buffering between incompatible land uses," and the proposed mixture of land uses will be compatible (rather than incompatible) with each other. Landscaping will be provided by the developer throughout the property that will accomplish the purpose of the general provisions of Article 18 without impairing the mixed-use development concept associated with this proposal.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is the intent to develop a small mixed-use development that will be integrated into both the existing apartment complex and the existing Brighton Place shopping center.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship because the internal screening of the uses would be contrary to the concept of an integrated mixed-use development.
- e. Although the circumstances surrounding the requested variances are associated with the proposed zone change, the variances are requested in an effort to accomplish an efficient design and place the landscaping in more appropriate locations on the property.

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

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval of this variance is null and void.
 2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission; or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
 3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
 4. Prior to obtaining an Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.
- c. ZDP 2014-40: CADENTOWN SUBDIVISION, LOT 10 (BRIGHTON 3050) (6/29/14)* - located at 2985 Liberty Road.
(EA Partners)

The Subdivision Committee Recommended: Postponement. There are some questions regarding the compliance with the R-4 lot, yard and height requirements, and the B-1 residential open space requirements.

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

1. Provided the Urban County Council rezones the property R-4/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. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Addition of street cross-sections.
7. Denote all proposed and existing easements.
8. Denote final record plat information on plan.
9. Denote written scale on plan.
10. Discuss zone-to-zone screening (residential & business zones).
11. Discuss drive-through lane proposed in the existing right-of-way.
12. Discuss conceptual stormwater detention and/or other planned drainage controls.
13. Discuss R-4 open space requirements.
14. Discuss R-4 lot, yard and height requirements for new building.
15. Discuss B-1 residential open space requirements for new dwelling units.
16. Discuss off-site parking improvements and dumpster location, as well as the timing for amending the existing final development plan for property to the south.
17. Discuss access to adjoining property.

Zoning Presentation: Ms. Wade presented the staff report on this requested zone change, noting that the subject property is nearly two acres in size, and is proposed to be split-zoned. The petitioner is proposing to rezone the northern 0.92 of an acre to the R-4 zone, and the southernmost 1.01 acres to the B-1 zone. The B-1 portion of the property would have frontage on Liberty Road, as well as an area that was formerly part of the right-of-way of Bryant Road. The R-4 portion, however, is not proposed to have frontage on either of those roadways, but will be accessed via another adjacent parcel.

Ms. Wade said that the immediate vicinity of the subject property was formerly a rural crossroads area, where Bryant Road, Todds Road, and Liberty Road met in two (offset) intersections. The 2008 widening of Liberty Road, and its realignment, created the frontage for the subject property. That widening project also created Cadentown Road, to the east, and required the re-naming of a portion of Todds Road to Old Todds Road. In the vicinity of the subject property are R-3 zoning to the north and east; and single-family residential (R-1D) zoning to the west, including a small remnant parcel along Liberty Road. The Brighton Place Shoppes and Todds Center to the south and south-east, which are both mostly zoned B-1, with a small portion of B-3 zoning for a car wash. The Cadentown Historic District (H-1 zone) is located further to the west of the subject property, across Liberty Road and Cadentown Road.

Note: Mr. Wilson arrived at this time.

Ms. Wade stated that the petitioner is proposing this combination of R-4 and B-1 zoning in order to develop an apartment building, which will be complementary to the adjacent existing Brighton 3050 multi-family development. The petitioner is proposing to construct 24 dwelling units on the R-4 portion of the property, for a residential density of 26.09 units per acre. The B-1 portion of the property is proposed for the development of a mixed-use building with approximately 12,000 square feet of typical B-1 uses on the first floor, and 16 dwelling units on the second and third floors.

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Referring to an aerial photograph of the subject property and surrounding area, Ms. Wade noted the existing multi-family development; a townhouse development to the north; a CVS pharmacy, across Liberty Road; and a gas station and the Brighton Place Shoppes development adjacent to the subject property. She displayed several street-level photographs, noting: the existing treeline along the eastern boundary of the property; the access points to the gas station and Brighton Place Shoppes; the existing residence on the subject property, which has been vacant for some time; the Todds Road Shopping Center; and the location where the subject property's frontage ends along Liberty Road.

Ms. Wade said that the petitioner contends that the existing R-1D zone is inappropriate at this location, and the R-4 and B-1 zones are appropriate. The petitioner also contends that this proposed rezoning is supported by the Goals & Objectives of the 2013 Comprehensive Plan, particularly with regard to infill and development of underutilized urban land in order to safeguard the community's rural land. The petitioner also believes that the proposed development would be compatible with and sensitive to the character of the existing neighborhood.

Ms. Wade stated that, although single-family residential development is possible on the subject property, the staff believes that a more intense use would be appropriate here, given the adjacent multi-family and commercial developments. The proposed rezoning will allow for development that is similar to the existing character of the area, with commercial uses fronting on the portion of Liberty Road nearest to Man O' War Boulevard, and a transition to residential character further along Liberty Road. The proposed business zoning on the subject property extends back from Liberty Road approximately the same distance as that of the CVS pharmacy, which is an existing B-1 use directly across from the subject property. Ms. Wade said 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.

Commission Questions: Mr. Penn asked how the small, triangle-shaped remnant parcel is zoned. Ms. Wade answered that it is also zoned R-1D. She added that the construction of Liberty Road caused it to be split from the rest of that property across Liberty Road. That parcel has access to Cadentown Road. Mr. Penn asked how large the remnant triangle-shaped parcel is. Ms. Wade responded that it is approximately 0.3 acre in size.

Development Plan Presentation: Mr. Martin presented the staff report on the corollary preliminary development plan, noting that the following revised conditions for approval had been distributed to the Commission members prior to the start of the hearing:

1. Provided the Urban County Council rezones the property R-4 & 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. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Addition of street cross-sections.
7. ~~Denote all proposed and existing easements.~~
- 7.8. ~~Denote final record plat information on plan.~~
9. ~~Denote written scale on plan.~~
8. ~~10. Discuss Provided the Planning Commission grants the requested variance to the zone-to-zone screening (residential & business zones).~~
11. ~~Discuss drive through lane proposed in the existing right of way.~~
12. ~~Discuss conceptual stormwater detention and/or other planned drainage controls.~~
13. ~~Discuss R-4 open space requirements.~~
9. 14. ~~Discuss R-4 lot, yard and Denote the height requirements for new of the buildings in feet and correct lot coverage statistics.~~
10. 15. ~~Discuss B-1 residential Denote that useable open space locations requirements for new dwelling units shall be resolved at the time of Final Development Plan.~~
11. 16. ~~Discuss Denote the timing of the off-site parking improvements and dumpster location, as well as the timing for amending the existing final development plan for property to the south.~~
12. 17. ~~Discuss access to Denote the timing of the amendment to the existing Final Development Plan for the adjoining property.~~

Referring to the rendered development plan, he noted the location of the proposed B-1 and R-4 parcels. The petitioner is proposing to construct a 12,000 square-foot building on the B-1 parcel, with 16 two-bedroom residential units to be located on the second and third floors. The residential building proposed for the R-4 parcel would be three stories in height, with 24 two-bedroom dwelling units. Total lot coverage for the site is proposed to be 10,995 square feet in the R-4 zone, which is slightly less than 2,000 square feet under the allowable floor area ratio for that zone. The petitioner is proposing to provide access to the parking area via Old Todds Road, as well as via an access road to the existing Brighton 3050 complex. Parking is proposed to be shared between the B-1 and the residential buildings.

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Mr. Martin said that condition #9 refers to some discrepancies in the building height and lot coverage statistics that were included on the plan. He added that it is important to document the building height correctly in order to ensure that the residential building meets the height-to-yard requirement. Condition #10 refers to a discussion about the petitioner's ability to meet the open space requirement on the B-1 property, which is necessary due to the proposed residential units there. Mr. Martin stated that the plan meets "the number" required for the open space, but the staff is concerned that the open space provided may not be usable, and has a concern about what constitutes usable open space in the proposed development. He said that this issue can be resolved at the Final Development Plan stage; but the staff believes that it is important, because there could be some conflicts inherent in the development of residential units in a building that also contains commercial uses. The plan depicts 90 parking spaces, even though only 54 are required; and the staff believes that some open space could possibly be gained through a reduction in the number of spaces, which can be determined on the Final Development Plan. The R-4 area requires 43 parking spaces, and the current plan proposes 47.

Mr. Martin noted that the original plan for the property included a proposed drive-through lane for the commercial uses, which caused considerable concern for the staff and the Division of Traffic Engineering, due to the lack of access controls in that area. The petitioner has since removed the drive-through facility from the plan.

With regard to condition #11, Mr. Martin said that the petitioner needs to document the offsite parking improvements and dumpster location on the adjacent property, and the timing of the amendment to the existing Final Development Plan for that property. He said that the Subdivision Committee recommended postponement of this plan; the staff is recommending approval, subject to the conditions as listed previously.

Commission Question: Ms. Plumlee asked if an additional access would be provided to the property, so that drivers will have an alternative to using the busy intersection at Liberty Road. Mr. Martin answered that the proposed development will connect to an existing access point within the adjoining development, which connects to a signalized of Man O' War Boulevard and Helmsdale Place.

Mr. Owens asked why the petitioner is proposing so much excess parking. Mr. Martin answered that the petitioner would need to provide an answer to that question. Mr. Owens said that the Commission typically avoided recommending parking spaces in locations that would require drivers to back out into traffic.

Variance Presentation: Mr. Emmons presented the staff's variance report, explaining that the petitioner requested variances to the zone-to-zone screening required between the B-1 and R-4 zones, and to the interior landscaping requirement for the parking lot.

Mr. Emmons stated that the petitioner is requesting a variance to the zone-to-zone screening requirement because they contend that the purpose of such screening is to separate incompatible uses, but they intend to fully integrate the commercial uses in the B-1 building into their residential complex. The staff is recommending approval of the requested landscape variances, as did the Zoning Committee. Mr. Emmons said that, at the time of the Zoning Committee meeting, the staff had not had the opportunity to present this request to the Landscape Review Committee. That committee met two days prior to this meeting, and the staff prepared a supplemental staff report to address the discussion that took place at that meeting.

Mr. Emmons said that the Landscape Review Committee members agreed with the staff and the Zoning Committee in their approval recommendation for the requested variances. However, there was one clarification that was made during the committee meeting, based on the petitioner's presentation of the exhibit also displayed for the Commission's review. The Committee members were concerned that, in the staff report, it appeared that the staff had combined the two requested variances into one recommendation, and they were unsure if that recommendation addressed the perimeter landscape screening variance requested. Mr. Emmons stated that it was the staff's intent to recommend approval of that request as well, which was reflected in the supplemental staff report. The staff is now recommending approval, with that clarification, which requires no changes to the reasons or conditions recommended by staff for approval.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner. She stated that the petitioner owns the Brighton 3050 (formerly the Summit) apartment development. The petitioner purchased the subject property specifically so that the proposed residential and commercial buildings could be incorporated into the Brighton 3050 development, with comparable architecture and access to amenities for all the residents.

Ms. Wiseman stated that the development plan depicts some extra items because it also refers to the adjoining property, and she added that the petitioner is aware that the approved plan for that property will need to be amended, as well. With regard to the comments about the number of additional parking spaces on the property, she said that it was the petitioner's experience in operating apartment developments that the residents tend to need more parking spaces than the number required. In addition, the petitioner does not want to create parking conflicts between the residents of the residential development and the users of the commercial area. Ms. Wise-

man stated that the petitioner did not request a mixed-use zone because the subject property did not meet the locational requirements. She said that the petitioner is in agreement with the staff's recommendations, including the conditions for approval of the development plan and variances, and she requested approval.

Citizen Comments: Although a citizen was present for this hearing, he chose not to speak.

Zoning Action: A motion was made by Mr. Drake, seconded by Mr. Cravens, and carried 8-0 (Berkley, Brewer, and Mundy absent) to approve MARV 2014-10, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Drake, seconded by Mr. Cravens, and carried 8-0 (Berkley, Brewer, and Mundy absent) to approve the requested variances, for the reasons provided by staff, and subject to the conditions as recommended by staff.

Development Plan Action: A motion was made by Mr. Drake, seconded by Mr. Cravens, and carried 8-0 (Berkley, Brewer, and Mundy absent) to approve ZDP 2014-40, subject to the 12 conditions as listed in the revised staff recommendation.