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Lexington-Fayette Urban County Planning Commission
200 East Main Street
Lexington, Kentucky 40507

Re: Request to Remove Conditional Zoning – 1709 N Broadway

Dear Commissioners:

Please be advised that I represent 6k and Under Auto Sales, LLC. My client desires to remove conditional zoning restrictions imposed on property located at 1709 North Broadway in Lexington that prohibit use of this property as a location for auto sales. Though this is not a true rezoning (in that the underlying zoning, B-3, will be retained even if the restriction is removed), the procedure for removal of conditional rezoning restrictions mirrors a rezoning proposal. The standard, however, is to review whether “there has been a major change of an economic, physical, or social nature on the property or within the area, which was not anticipated at the time the binding restriction or condition was imposed, and which has substantially altered the basic character of such area making the restriction or condition inappropriate or improper.” The analysis would greatly resemble the analysis the Commission would conduct when evaluating a zone change under the standards articulated in KRS 100.213(1)(a), noting that the Commission can rezone a property if the current zone is inappropriate and the proposed zone is appropriate.

My client is a used automobile sales operation that has enjoyed great success on the property adjacent to the one that is subject to this application. They attempted to expand their operations to 1709 North Broadway, the adjacent property, initially unaware that the property was encumbered by the conditional zoning restriction. My client was surprised to learn of the conditional restriction, in light of the property’s previous auto-centric use as a car wash, and given its close proximity to Northside Family RV and Bluegrass RV, two major dealers of recreational vehicles.

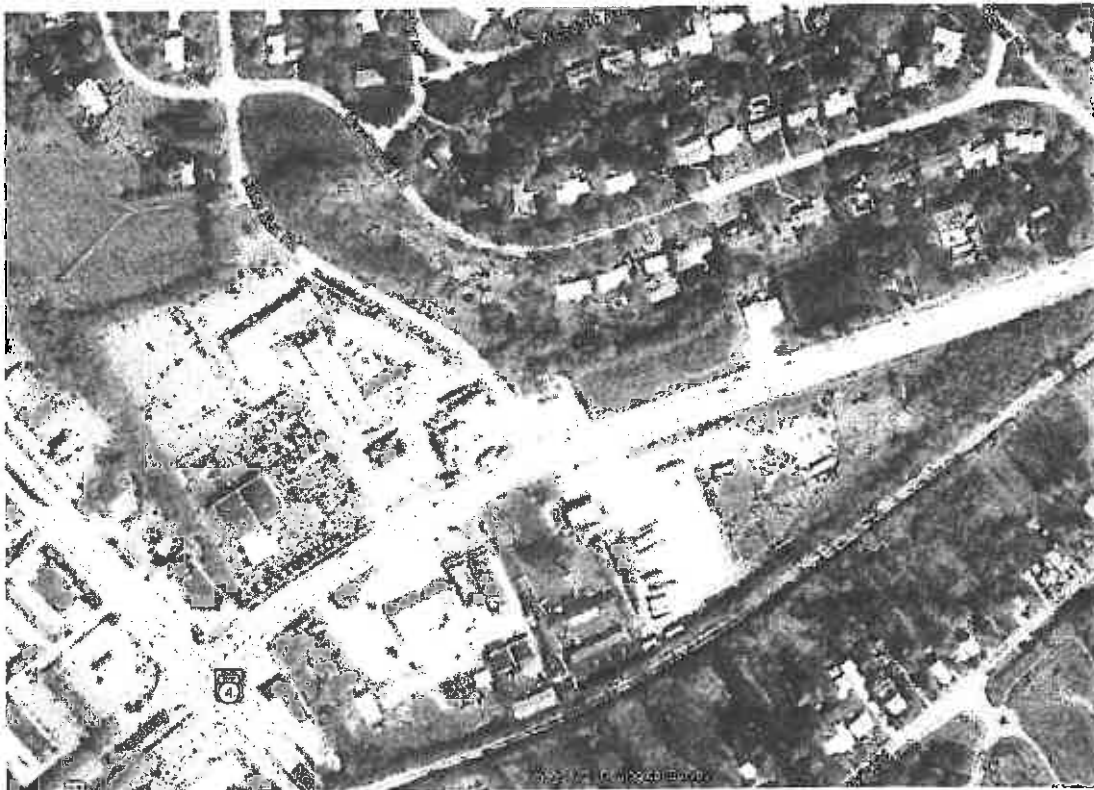
My client seeks to remove the conditional zoning restriction concerning auto sales, at is clearly no longer appropriate at this location. We request the Planning Commission’s approval of the same.

History

The property at 1709 North Broadway was officially rezoned by Ordinance 270-88 on November 17, 1988, some 31 years ago. This property was included in a rezoning proposal with 1705, 1715, and 1719 North Broadway, which successfully requested rezoning from R-1C (Single Family Residential) zoning to B-3 (Highway Service Business) zoning. The Ordinance imposes conditional zoning restrictions prohibiting the display, rental, sale, service, and/or minor repair of farm equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes, or supplies for such items. It also banned kennels and

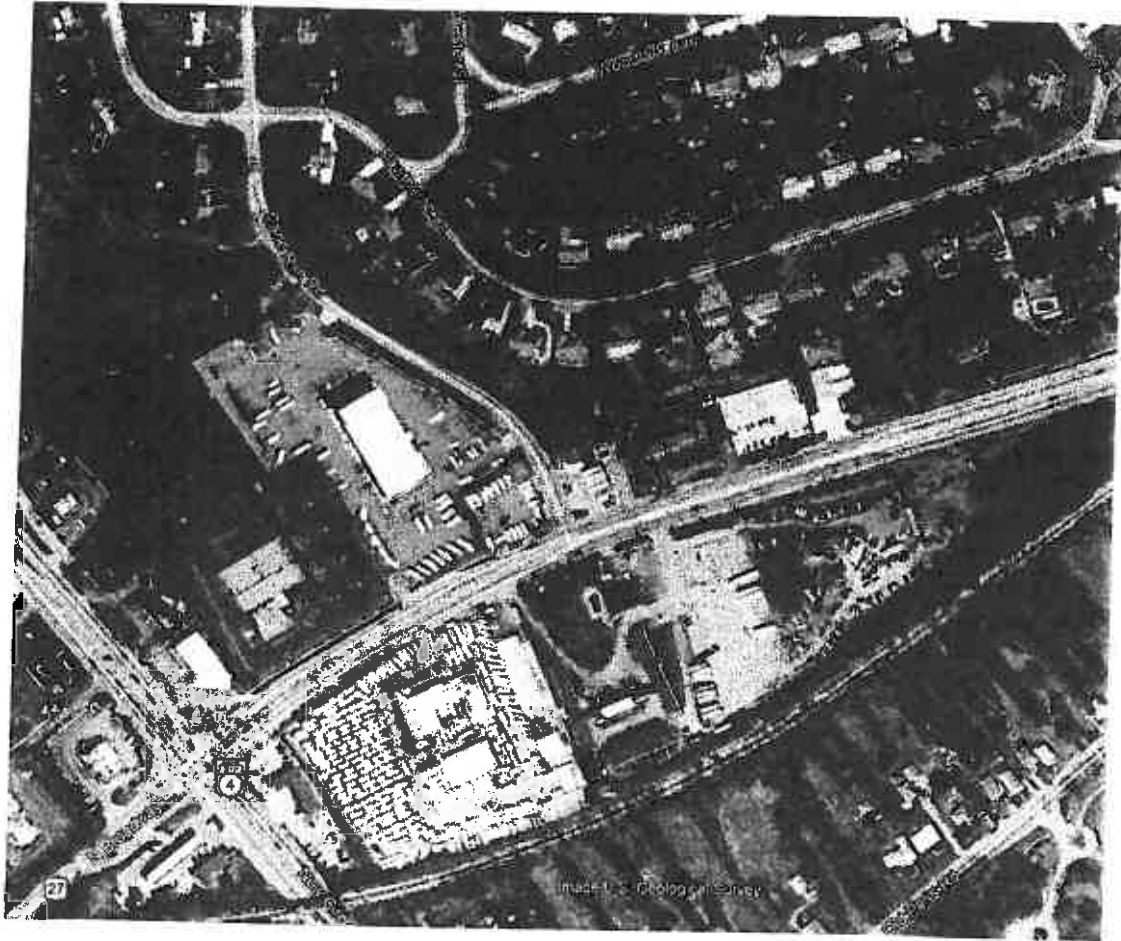
veterinarian uses. The Ordinance itself provides no reasons for such restrictions aside from adopting the recommendations and reasoning of the Planning Commission, so it is prudent to look the minutes of the Planning Commission hearing where the restrictions were imposed, which occurred September 22, 1988. The Commission, in adopting conditional zoning restrictions for the property, noted two reasons for imposition of the conditions: 1) that the “close proximity of residential uses makes use restriction necessary to ensure the residential area is not impaired” and “North Broadway is a major entrance in to the community... [u]se restrictions will ensure the development is an asset to the visual quality of the community.” This is the only indication in the record as to why the conditional zoning restrictions were imposed.

Google Maps inventories overhead imagery of Lexington dating as early as 1993. Though this was some five (5) years after the zone change, it gives the best imagery of the area as it would have been in 1988, when the restrictions were imposed. In 1993, the North Broadway corridor at this location looked like this:



As you can see, in 1993 the massive recreational vehicle operations had not yet begun. In fact, as best as can be deduced, there were no automobile or RV sales operations in the area at the time. The strip center to the east of the subject property had not yet been constructed, nor had the car wash that was located on the subject property.

By 2002, we begin to see the emergence of the recreational vehicle operations on both sides of North Broadway. Though not yet as intense as they will ultimately be, this begins to show the changes emerging in this area:



At present, we see full-fledged, auto-centric uses throughout the area:



The Northside RV operation is now massive and directly fronting the roadway further east down Broadway. The Bluegrass RV operation has likewise expanded and occupies a significant portion of the property to the subject property's west. Likewise, to the west, we see a large-scale car sales operation in the form of the Broadway Auto Mall.

Argument

Conditional zoning restrictions are permitted by KRS 100.203(8) and Zoning Ordinance § 6-7. The Urban County Council, in Ordinance 270-88, adopted identical reasoning to the Planning Commission in imposing conditional zoning on the property. Accordingly, it is appropriate to review whether "there has been a major change of an economic, physical, or social nature on the property or within the area, which was not anticipated at the time the binding restriction or condition was imposed, and which has substantially altered the basic character of such area making the restriction or condition inappropriate or improper." For the reasons that follow, we submit that there have been physical changes to the area that were not considered 31 years ago, and that the condition is no longer appropriate.

I. The Viewshed of North Broadway Has Markedly Changed in 31 Years

One of the reasons cited for the conditional zoning restrictions is that the viewshed of North Broadway needed to be protected, as it constitutes a major gateway to Lexington.

While North Broadway no doubt remains a primary access point to Lexington, the physical changes in the area have been dramatic, and there is no evidence to suggest they were anticipated at the time of the conditional zoning restrictions.

As they say, a picture is worth a thousand words – and one only need look at the pictures above to show the dramatic physical changes in the area since the restrictions were imposed. The 1993 picture shows that the auto-centric, intense uses of the RV sales were not present at the time the restriction was established. The viewshed was not impaired by the presence of numerous recreational vehicles of other car lots, and it appears that was the intent of the conditional zoning restriction. By 2002, we see the evolution beginning, in that Northside RV begins to have a significant presence in the area, and Bluegrass appears to be emerging as well. However, those uses are still constrained to areas away from the subject property. Further, my client's existing property still appears to be functioning as a gas station in 2002. At present, however, we must note the large-scale RV presence in the immediate area, which extends well past (i.e., closer to Interstate 75) the subject property.

To put it both bluntly and succinctly, this proposal would not negatively impact the viewshed as it exists today. There is certainly an argument that a car sales operation might have impacted the viewshed in 1988 (or 1993), but certainly the massive physical change of the RV sales operations have mooted such concerns now. Accordingly, the restriction is no longer appropriate.

II. *Existing Auto Sales Operations Have Not and Will Not Harm Residential Neighborhood*

The other reason cited in 1988 was that the use restrictions were necessary as to not “impair” the residential area. Notwithstanding the evolution of the area to include auto-centric uses, the neighborhood has not been and will not be impaired. Notwithstanding the major physical changes in the general area in that many auto-centric businesses have been located, the neighborhood has not been impaired.

“Impaired” is not a term defined in the Zoning Ordinance. The Dictionary defines “impair” as “to make or cause to become worse; diminish in ability, value, excellence, etc.; weaken or damage.” So the question becomes simply – since auto-centric uses have emerged in this corridor, has the residential area (specifically, Hawthorne Lane) been impaired? If so, it would be difficult to argue that the restriction was not appropriate. However, it is clear the residential area has not only not been impaired, but has in fact improved.

There is a relatively simple case study that will illustrate the non-impairment of the area due to auto-centric uses. My client's current property, 1701 North Broadway, was not always a car sales venue. In fact, my client only obtained the property in December of 2013. The most immediately adjacent residential property to 1701 North Broadway is 1716 Hawthorne Lane. When my client obtained its property in 2013, 1716 Hawthorne Lane was value by the Fayette County PVA at \$190,000. One would assume that if this residential use was being impaired, the property's value would drop, or would certainly not increase in value. However, the value of this property is now \$240,000, or an increase of 26.3% in

value. During the same time period, the rate of inflation was 9.7%. So, this property's value has increased substantially more than the rate of inflation since it bordered an auto sales use.

Of course, impairment is not limited to mere financial value. However, none of the other reasonable metrics for "impairment" the residential area are present, either. Of the properties along Hawthorne Lane that are close to the RV use or my client's existing facility, there have been no rash of sales (in fact all near the area have remained in steady ownership since at least 2001), and are largely (in fact, it appears wholly) owner occupied. There has been no massive, or even minor, redevelopment in the residential area. The sheer fact of the matter is that notwithstanding the substantial change to auto-centric uses, that was clearly not anticipated at the time of the zone change, the neighborhood has not been impaired. This demonstrates the inappropriateness of this condition, and justifies its removal.

III. Steps Taken to Protect Adjacent Residential

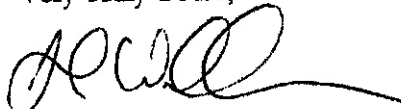
Finally, though this application is not governed by the commands of the Placebuilder or 2018 Comprehensive Plan, the applicant has taken steps to reach out to adjacent neighbors to address potential concerns about the removal of the conditions. To that end, the applicant has committed to: 1) not locating speakers at the rear of the property so as to disturb residential neighbors, 2) ensuring all lighting is directed away from residential properties and shielded, if necessary, 3) preserving the existing thick landscape buffer between the subject property and the residential properties, and 4) ensuring complete compliance with LFUCG standards concerning landscaping at auto dealerships.

Furthermore, there are as-built features in this area that serve as obvious breaks for B-3 style development. To the east of the subject property, there exists R-1C zoning. The first property in that zoning is an LFUCG Fire Station, which presumably will remain for the foreseeable future. This public improvement serves as a natural boundary between where B-3 uses should be seen as appropriate, and where they may be less appropriate. Likewise, on the opposite side of Broadway, railroad right of way immediately borders Broadway, as to serve as a natural boundary as well. Any concerns of "creep" should be satisfied by the recognition of these boundaries.

Conclusion

In sum, we submit that the conditional zoning restrictions imposed should be removed, as there have been significant physical changes in the area that have made them inappropriate. We look forward to our continued discussions with staff and the Commission, and request your approval of our request. Of course, if I can be of further assistance, please do not hesitate to contact me.

Very Truly Yours,



Jacob C. Walbourn