

1. **DUTCH BROS, LLC ZONING MAP AMENDMENT & GRIGALIS GROUP (VIRGINIA WAY LLC) DEVELOPMENT PLAN**

- a. **PLN-MAR-23-00002: DUTCH BROS, LLC**– a petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.57 net (0.90 gross) acres, for property located at 1008 South Broadway.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2018 Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community's resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. 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 applicant is seeking to construct a two-lane drive-through facility to support a proposed coffee shop use at this location. As proposed, the coffee shop use will provide access and egress to the site along Virginia Road. Speakers and order points for the drive-through facility will be provided near the middle of the site.

The coffee shop will be a single story, 950 square-foot building that will be oriented towards South Broadway, with a pick up window located to the rear. While the building will have a walk up window to serve pedestrians along the South Broadway frontage, dine-in service will not be provided.

The Zoning Committee Recommended: Disapproval.

The Staff Recommends: Disapproval, for the following reasons:

1. The requested rezoning to the Neighborhood Business (B-1) zone is not in agreement with the 2018 Comprehensive Plan for the following reasons:
 - a. The requested rezoning is not in agreement with the Goals, Objectives, and Policies of the 2018 Comprehensive Plan.
 1. The proposed development does not seek to construct at a density or intensity that might be reflective of a major corridor in Lexington, and is out of context with the surrounding area (Theme A, Goal #2.b). The applicant's proposal is 52.5 times less dense than the adjacent development, and is 8.75 times less dense than the minimum requirements of the nearby B-6P zone.
 2. The proposed development does not provide a pedestrian first design and development (Theme D, Goal #1.a) and reduces the effectiveness of the overall transportation system by introducing additional vehicular conflicts along Virginia Avenue (Theme D, Goal #1).
 3. The low density and single-user vehicle focus detract from the effectiveness of mass transit in this area (Theme D, Goal #1.c).
 4. The application encourages the use of single-occupancy vehicles and will increase greenhouse gas emissions at this location (Theme B, Goal #2.d).
 - b. The proposed development does not meet the intent of the Medium Density Non-Residential / Mixed Use Development Type as established on page 272 of the Comprehensive Plan.
 - c. The requested rezoning is not in agreement with the Development Criteria of the 2018 Comprehensive Plan. The following Development Criteria are not being met with the proposed rezoning.
 1. A-DS4-2: New construction should be at an appropriate scale to respect the context of neighboring structures; however, along major corridors, it should set the future context in accordance with other Imagine Lexington corridor policies and Placebuilder priorities.
 2. E-GR-9-4: Development should intensify underutilized properties and develop vacant and underutilized gaps within neighborhoods.
 3. A-DS7-3: Development should create context-sensitive transitions between intense corridor development and existing neighborhoods
 4. C-L17-1 Developments should create mixed-use neighborhoods with safe access to community facilities, greenspace, employment, businesses, shopping, and entertainment.
 5. C-LI6-1: Developments should incorporate multi-family housing and walkable commercial uses into development along arterials/corridors.
 6. A-EQ3-2 Development on corridors should be transit-oriented (dense & intense, internally walkable, connected to adjacent neighborhoods, providing transit infrastructure & facilities).
 7. D-CO2-1: Safe facilities for all users and modes of transportation should be provided.
 8. D-CO2-2: Development should create and/or expand a safe, connected multi-modal transportation network that satisfies all users' needs, including those with disabilities.

9. B-RE1-1: Developments should incorporate street trees to create a walkable streetscape.
2. There have been no major unanticipated changes of an economic, social or physical nature in the area of the subject property since the adoption of the 2018 Comprehensive Plan.
3. The applicant has not provided sufficient evidence as to why the current zoning is inappropriate, addressing the historical establishment of the zone, and why the proposed zoning is appropriate for this location. The Professional Office (P-1) zone is still appropriate due to the complex intersection of South Broadway and Virginia Avenue / Red Mile Road and the need to limit high turnover traffic entering and exiting the site.

b. PLN-MJDP-23-00011: GRIGALIS GROUP (VIRGINIA WAY LLC) (AMD) ((4/30/2023)* - located at 1008 S. BROADWAY, LEXINGTON, KY

Council District: 10

Project Contact: CMW, Inc.

Note: The purpose of this amendment is to depict site development for a drive-thru coffee shop, in support of the requested zone change from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone.

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

1. Provided the Urban County Council approves the zone change to B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree preservation plan.
5. Greenspace planner's approval of the treatment of greenways and greenspace.
6. United States Postal Service Office's approval of kiosk locations or easement.
7. Correct building setback maximum to 20'.
8. Dimension patio and canopy.
9. Dimension drive-thru canopy and denote height.
10. Dimension pedestrian connectivity to public sidewalk.
11. Dimension access to Virginia Avenue.
12. Revise tree protection plan to tree inventory map per Article 26 of the zoning Ordinance.
13. Denote height of retaining wall.
14. Denote order point for drive-thru.
15. Discuss access to Virginia Avenue.
16. Discuss dumpster location and access.
17. Discuss Placebuilder criteria.

Staff Presentation – Mr. Hal Baillie presented the staff report and recommendations for the zone change application. He displayed photographs of the subject property and the general area. He stated that the applicant was seeking a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.57 net (0.90 gross) acres, for property located at 1008 South Broadway. Mr. Baillie stated that the applicant is seeking to construct a two-lane drive-through coffee shop within a Corridor Place-Type and a Medium Density Non-Residential/ Mixed Use Development Type. Mr. Baillie indicated that Staff was in agreement with the Corridor Place-Type, but had concerns about the Development Type because this Development Type is supposed to enhance the transit area that they are in, and cater more to pedestrians.

Mr. Baillie highlighted the intersection of Virginia Avenue and Red Mile Road as being an important intersection for pedestrian connectivity in the area, in particular for the students who live in this area and walk to classes at the University of Kentucky. Additionally, Mr. Baillie noted that this development would be adjacent to two arterial roadways into and out of Lexington.

Mr. Baillie showcased the development plan and began conveying Staff's concern's about the proposed development's alignment with the Comprehensive Plan. Mr. Baillie indicated that the development is out of context with the surrounding area and that it does not seek to construct at a density or intensity that would be reflective of a major corridor as is recommended by the Comprehensive Plan. Mr. Baillie also indicated that the development does not provide a pedestrian first design and detracts from the effectiveness of mass transit in

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

the area. Additionally, Mr. Baillie indicated that Staff is also concerned with the safety of pedestrians, as well as vehicular movement in and out of the site.

Mr. Baillie continued his presentation by stating that the applicant was not using a recommended zone at this site, and noted the applicant's additional justification for this zone. Mr. Baillie indicated that the applicant had not applied enough justification. He stated that the staff had concluded that the applicant's zone was not in agreement with the Comprehensive Plan and disagrees with the applicant's assumptions in their justification. Mr. Baillie also briefly discussed the historic limitations on auto-centric uses in the B-1 zone and an example on a nearby property 373 Virginia Avenue that restricted drive-through facilities. In addition to this, Mr. Baillie cited concerns with traffic safety in the area and noted that there has been an accident a week at this location since 2018.

Mr. Baillie ended his presentation by stating that Staff is recommending disapproval and could answer any questions that the Planning Commission had and that he had two letters of opposition to enter into the record.

Commission Questions – Mr. Nicol stated that he thought this Planning Commission had done some very good work to increase density in the Lexington, but stated it was important to remember that the ratio of net to gross acreage on this corner lot is very low and that this property is very unique because of that.

Mr. Baillie stated that 80% of properties that are P-1 or B-1 in Lexington-Fayette County are of this size and stated that the suggestion that this property is too small to house other P-1 or B-1 uses is inappropriate.

Staff Development Plan Presentation – Mr. Tom Martin oriented the Planning Commission to the location and characteristics of the subject property. Mr. Martin reminded the Planning Commission that a development plan is submitted as if the zoning is already in place, and staff evaluates whether it meets the requirements and conditions. Mr. Martin stated that the two big concerns relate to the fact that the applicant is proposing a drive-through, which is generally a discretionary review on a final development plan, but the main concern stems from the access point. Mr. Martin indicated that the current access point depicted was not an acceptable access point and the only way that the proposed development plan would work would be with a right-in/ right-out with median controls.

Mr. Martin mentioned that this road is his everyday commute and that he was one of the accident statistics that Mr. Baillie mentioned. Additionally, Mr. Martin stated Staff concerns about dumpster access for employees and waste management staff and that there was not enough room on the site for large trucks to navigate.

Mr. Martin indicated that the Subdivision Committee recommended approval with 17 conditions and stated that he was available to answer any questions from the Planning Commission.

Commission Questions – Mr. Pohl stated that one of the letters of opposition suggests that in and out access would endanger bicyclists and questioned if Staff had discussions on that topic.

Mr. Martin stated that is always a concern and it was discussed, but was not a heavy focus for this site. Mr. Martin indicated it all comes back to that access point and the many concerns with it.

Mr. Pohl also asked if that influences the decision on the development plan and Mr. Martin indicated that it could on the final development plan and that Staff is unlikely to recommend approval on a drive-through on a final development plan.

Mr. Michler asked about the parking statistics on the development plan and if those are old metrics and Mr. Martin indicated that was old terminology as there are there is no "required" parking spaces any longer.

Applicant Presentation – Bruce Simpson, attorney for the applicant, stated that he appreciates Mr. Baillie's passion and argument but disagreed with his conclusion and stated it was his job to change the Planning Commission's thinking. Mr. Simpson displayed the development and noted the key locations on the property. Mr. Simpson stated that this half-acre property with no opportunity for shared parking and that whatever is going to be done on that half-acre is working in that limited space. Mr. Simpson asserted that Staff thinks that this a small density project, and therefore is not consistent with the Comprehensive Plan. Mr. Simpson stated that during the 2018 Comprehensive Plan draft process developers were concerned that the Development-Type and Place-Types would serve as a "checklist" and insinuated that Staff was doing that now. Mr. Simpson stated that the applicant is in agreement with the Staff with the exception of density of the site.

Mr. Simpson stated that Staff was sending mixed messages about density, that they want to increase density, but do not want you to use your car to get there. Mr. Simpson said that he understood that policy due to climate change, but people are not going to give up their cars in the very near future. Mr. Simpson emphasized that this property will remain vacant if this coffee shop is not approved and it has to be available with some amount of automobile use.

Mr. Simpson continued to highlight the various zones in the area to show, in his opinion, that a drive-through is in line with the character of the area and that the proposed coffee shop is not as large as the apartment development across the street with several parking spaces. Additionally, Mr. Simpson pointed to rising land costs and that these type of infill projects are important.

Mr. Simpson stated that the site would not have a left-hand turn out of the site and with the exception of access to Virginia Avenue, all future problems will be resolved on future development plans.

Mr. Simpson urged the Planning Commission to approve this zone change and stated he could answer any questions about the application from the Planning Commission.

Mr. Nicol asked Mr. Simpson what the process would be from their perspective to get a double lane drive-through. Mr. Simpson stated that the conditional approval would come back to the Planning Commission where it would come under scrutiny and be approved or disapproved.

Commission Questions – Mr. Nicol asked about the comment Mr. Simpson made about 2nd floor retail shops and where he heard that. Mr. Simpson said that he did not hear it somewhere but could not figure out a way to increase density without it, but pointed to a meeting about The Fountains at Palomar where that prospect came up. Mr. Nicol indicated that he had never heard that prospect before and wanted to state that for the record.

Ms. Worth asked the applicant for an estimate regarding how many turns in and out onto Virginia Avenue would there be for this proposed development. Mr. Brad Boaz, design professional for the applicant, stated that there was no Traffic Impact Study required, and he did not have a good estimate of that number.

Citizen Comment – Jamie Schrader, 805 Old Dobbin Road, stated that he thought Dutch Bros. would be well received in the area and the area of this proposed coffee shop has coffee shops and other similar uses in the area.

Amy Clark, 628 Kastle Road, objects to this development and thinks that it is not what the city needs at this already busy intersection. She expressed concern regarding pedestrians in the area.

Applicant Rebuttal – Mr. Simpson stated that we can get caught up in the small arguments, but the main point is that this is a coffee shop on a half-acre of land, on a commercial corridor surrounded by an apartment building and two major roadways. Mr. Simpson went on to say that this is a fair and worthy proposal and in line with the character of the area.

Mr. Simpson asserted that he has had the privilege over the past 35 to present in front of this Commission and he deeply values the Staff's recommendations, but in this instance he is asking the Planning Commission to assess it as people who live in this community and understand real world practicality. Mr. Simpson stated that if you look at this in terms of infill, and developer equity, this is worthy of approval.

Citizen Comment – Jamie Schrader, 805 Old Dobbin Road, stated that this site would have a lot of pedestrian traffic from people around the area and due to the configuration, not a whole lot else would make sense in this location.

Amy Clark, 628 Kastle Road, reaffirmed her opposition for the development, but urged the Planning Commission to support the Public MPO project to make the corridor walkable and bikeable.

Staff Rebuttal – Mr. Baillie began by stating that any left-hand turn out of the property would be a dangerous turn out of this property. Mr. Baillie continued by saying that the Comprehensive Plan is not a straightjacket and the recommendation is a comprehensive review of how the applicant is not addressing the Goals and Objectives of the Comprehensive Plan. Additionally, Mr. Baillie stated that Staff's recommendations were not denigrating the automobile and that Staff understands that people will continue to use them and that the problem with the applicant's proposal is the amount of traffic that this would add to this location.

Mr. Baillie stated that this application represents a decrease in intensity, increases problems on the roadway, and can be a problem for the community at that intersection.

Mr. Baillie concluded by once again stating that Staff is recommending disapproval, and that the Zoning Committee also recommended disapproval.

Action – A motion was made by Mr. Bell, seconded by Ms. Worth and carried 7-1 (Davis, de Movellan and Penn absent)(Nicol opposed) to disapprove PLN-MAR-23-00002: DUTCH BROS, LLC for reasons provided by Staff.

Action – A motion was made by Mr. Bell, seconded by Ms. Worth and carried 7-1 (Davis, de Movellan and Penn absent)(Nicol opposed) to indefinitely postpone PLN-MJDP-23-00011: GRIGALIS GROUP (VIRGINIA WAY LLC) (AMD)