

**1. WILLSTONE, LLC ZONING MAP AMENDMENT & BELLA VISTA SUBDIVISION, LOT 6 ZONING DEVELOPMENT PLAN**

- a. PLN-MAR-17-00038: WILLSTONE, LLC (12/31/17)\*- petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Neighborhood Business (B-1) zone, for 0.256 net (0.299 gross) acres, for property located at 101 Dennis Drive. A dimensional variance is also requested.

**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 Plan's 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 rezoning to a Neighborhood Business (B-1) zone in order to construct a retail establishment, approximately 2,050 square feet in size, and associated off-street parking.

**The Zoning Committee Recommended: Approval.**

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

1. The proposed Neighborhood Business (B-1) zone is appropriate and the existing Single Family Residential (R-1C) zone is inappropriate, for the following reasons:
  - a. The proposed B-1 zone is compatible and consistent with the B-1 and P-1 zoning that exists within the immediate area.
  - b. Existing residentially zoned land in this area is generally suited to a future commercial land use and is awaiting redevelopment. The subject property is the only residentially zoned lot remaining on Dennis Drive, but it has not been used for residential land use for more than 20 years.
  - c. Historic land use decisions and previously adopted Comprehensive Plans have collectively encouraged a higher intensity of land use and a commercial character for the area to the point where the existing single-family residential zoning is no longer compatible or desirable in this location.
  - d. The depth of commercial land use and zoning along the west side of Nicholasville Road is approximately 225 to 275 feet within the immediate area. The proposed rezoning would be consistent with the existing land use pattern in the area.
2. This recommendation is made subject to the approval and certification of PLN-MJDP-17-00104: Bella Vista Subdivision, Lot 6, 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. To reduce side yard (west) from 12 feet to 5 feet. Staff will report at the meeting.

- c. PLN-MJDP-17-00104: BELLA VISTA SUBDIVISION, LOT 6 (12/31/17)\* - located at 101 Dennis Drive.  
(Vision Engineering)

**The Subdivision Committee Recommended: Approval** subject to the following 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. Resolve timing of resolution of plated building line conflict with B-1 zone requirements.
6. Relocate proposed building to meet the required side yard setback per Art. 15-3 and delete note #10.
7. Resolve access to adjacent lot (2413 Nicholasville Road) at final development plan.

**Staff Zoning Presentation** – Ms. Wade presented the staff report and recommendations for the zone change. She displayed photographs of the subject property and aerial photographs of the general area. She said the subject property is currently a vacant gravel parking lot and has been used in that manner for the past 20 years.

Ms. Wade said that the applicant is proposing to develop a use that is compatible with the adjoining offices and commercial uses along Dennis Drive. She said that the corollary development plan depicts a small retail establishment of about 2,000 square-foot and off-street parking spaces. She said the applicant states that this rezoning is speculative in nature and there is no user at this time.

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

Ms. Wade said the staff reviewed the Goals & Objectives of the 2013 Comprehensive Plan; but ultimately found that the proposed zone is appropriate and current zone is no longer appropriate. She said the proposed zone is compatible with the adjacent zones and the existing uses in the vicinity. She said that the staff and the Zoning Committee both recommended approval.

Development Plan Presentation – Ms. Galt presented a rendering of the preliminary development plan associated with the zone change. She said that the development plan depicts access from Dennis Drive and in the rear of the subject property there is a connection through a lot to Nicholasville Road. She said that the plan shows a proposed building on the property and the building setback that is required between the B-1 and the P-1 zones. She said that there are a few sign-off conditions, and that the applicant will need to submit a final development plan. She stated that a final record plat has been recorded with the County Clerk with a 40' building line setback. The minimum and maximum setback will change with the zone change. She said the proposed building is over the recorded setback line and the applicant will need to submit an amended plat to revise that setback in conformance with the B-1 zone. She said that the required side yard between the two zones could be resolved by relocating the building. She also said the staff would like to delete condition #10 and resolve the access to the adjacent property on Nicholasville Road at the time of the final development plan.

Variance Presentation – Ms. Wade presented the updated staff report for the requested variance for a portion of the subject property. She said the applicant is requesting to reduce the side yard setback, from the required 12' to 5' along the western side of the subject property. She said that the B-1 zone doesn't have a side yard setback, but according to Article 15-3 of the Zoning Ordinance, which states that when a more restrictive zone is adjacent to the property line, the side or rear yard must match that of the more restrictive zone, which is the P-1 zone.

Ms. Wade said that there is a 10' utility easement along the eastern side of the subject property, which is being used as a landscape area, as well as the drive aisle, and has caused the applicant to use other side of the property as the buildable area. She said that there is also a utility easement along the rear of the property but that doesn't affect the buildable area depicted on the development plan. She said that staff cannot identify any special circumstances, that there isn't any unique situation for this property that would allow for this dimensional variance. She said that the user is unknown, at this time, and the staff believes that it is premature to ask for a variance for the size of the building on the subject property and that the Board of Adjustment should consider a variance at a later time. She stated that the staff is recommending postponement at this time.

Commission Question – Mr. Owens asked if the current access to the subject is where the driveway is. Ms. Wade replied that access is located at the center of the property. He also asked if the setback on right is similar. Ms. Wade replied that the B-1 zone doesn't have a required side yard or a rear yard setback, so that the building could be located along the property line on that side of the property.

Mr. Wilson asked for clarification that this should go to the Board of Adjustment before the Planning Commission. Ms. Wade said that the applicant has the ability to ask the Planning Commission to consider variances and conditional uses along with their zones changes. She stated the staff prefers not to approve variances when the user is unknown.

Applicant Presentation – Mr. Murphy, attorney representing the petitioner, replied to Mr. Owens question, that access to the property is located in the middle and the frontage is entirely open. He said that this property is surrounded by commercially zoned properties and that this is the last remaining lot on Dennis Dr. that is residentially zoned. He displayed photos of the surrounding businesses. He said that as Ms. Wade stated, this zone change will permit the depth of retail as other commercial uses that currently exist along Nicholasville Rd. and that it is highly unlikely that this property will ever be developed as a single family, detached residential use. He said that they believe the request is in agreement with the 2013 Comprehensive Plan, regarding infill objectives, as well as the goals and objectives that were just passed last week, for developing parcels to a higher density along corridors. He also stated that the present zone is inappropriate and the proposed zone is appropriate.

Mr. Murphy said that the variance is needed on this property. He said that the owner is planning ahead for a future user, so that potential users will know what they have before they purchase the lot. He said that there are a few concerns with this property, but the main concern is the 10' utility easement on the side of the property and also the required driveway. He displayed photos of the utility poles on and off the subject property. Another concern is the potential driveway access next to a day care and the applicant wants to avoid traffic near that day care, which is why they want to locate the building on the west side of the property. He said that the Zoning Ordinance requires them to build the building close to the street there must be a two-way 24' driveway. He said that the driveway is near the utility easement and OSHA requires all scaffolding must be 15' away from a 3-phase electrical line. He referred to the development plan associated with this zone change depicting the location of the building. He said that the 10-foot easement comes with 29-feet of unbuildable land because of OSHA rules, which is why they are requesting the variance. He said that there is a fixed access point into the shopping center for other access instead of Nicholasville Rd, which will remain.

Commission Question – Mr. Cravens asked if moving the driveway would alter the parking lot configuration. Mr. Carter, engineer, said that it will make it more difficult to design the parking lot.

Mr. Penn asked what would be the size of the building. Mr. Murphy said the development plan depicts a 1,950 sq. ft. building. Mr. Penn said that the applicant is requesting a variance before the use is known and is it possible that the building could be larger on the final development plan. Mr. Murphy said that it could be, but that it would need to be approved by the Planning Commission. Mr. Penn said that he is concerned the development plan is more than a sketch because of the variance. Mr. Murphy said the development plan is very precise, but lacks the end user.

Mr. Berkley said that staff is recommending averaging provision if Article 15 is employed and would that mean that less of the variance would be needed. Mr. Murphy said that averaging would allow them to move the building back from one area but will need to be made up in other areas. He said that it isn't an averaging of the two side yards.

Citizen Comment – Tim Chinn, 103 Dennis Dr., owner of the adjacent daycare property, stated his concerns about security and liability issues, and the need to install lighting between the two buildings. He believes that this property should be rezoned to the P-1 zone, which is what most of Dennis Dr. is zoned. He is also concerned about the variance, the amount of the setback allowed will allow the proposed building to be closer to his existing building. He said that the required 12' setback is agreeable with him. He said that his building will no longer be seen from Nicholasville Rd. which may affect his business. He would prefer the building line be 20' from the property line so that his building could be seen.

Commission Question – Ms. Mundy asked if the variance was along the drive aisle between the two buildings, which will provide Mr. Chinn some extra space. Mr. Chinn said that he had his property recently surveyed, and that property line is within 6" from the driveway.

Mr. Berkley said that if the building is relocated, the driveway would then be on Mr. Chinn's side of the property, which would increase the traffic near the daycare. Mr. Chinn stated that he could not comment at this time about that, since there is not a known user at this time. He said that he is concerned about children's safety and the separation of the two driveways would make him more comfortable. Mr. Berkley said that the driveway may be best on the right side of the subject property.

Petitioner Rebuttal - Mr. Murphy distributed potential findings for approval, which are as follows:

Proposed Findings and Conclusions approving variance to reduce the side yard (west) setback from 12 feet to 5 feet at 101 Dennis Drive.

Based upon the evidence presented to us, the Planning Commission does hereby approve a variance from 12 feet to 5 feet for the west side yard at 101 Dennis Drive for the following reasons:

1. Granting this variance will not adversely affect the public health, safety or welfare and will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public because it will allow separation of the daycare driveway from the business driveway and allow better spacing along Dennis Drive. It will allow a reasonably sized building to be constructed on the property.
2. Granting this variance will not allow an unreasonable circumvention of the requirements on the Zoning Ordinance because the need for the variance arises from the existence of a 10-foot utility easement along the east side of this property and the need for spacing of the driveways. Due to OSHA regulations, approximately 24 or 25 feet cannot be built upon along the east property line where the electric line is located. The combination of the space needed for the electric line, plus the fact that the property narrows as it goes to the back, leave very limited space for construction of a reasonable commercial building.
3. The special circumstances which apply to this property and which do not generally apply to the land in the general vicinity or in the same zone are the existence of the utility easement on the east property line which would prevent the building from being far enough to the east to allow a two-way driveway to be constructed on the west. Also, it will allow separation of the business driveway from the daycare driveway. In addition, the property narrows as it goes back.
4. Strict application of the regulations of the Zoning Ordinance would deprive the applicant of a reasonable use of its land or create an unnecessary hardship because a one-way driveway to the rear would not adequately serve the property, and it would create a situation which the driveway is next door to the daycare driveway. It would not allow a reasonably sized commercial building to be constructed on the lot.
5. The circumstances surrounding the requested variance are not the result of actions taken by this applicant subsequent to the regulation from which relief is sought. This property is now a vacant lot and the applicant is making this request before commencing any construction or activity on the property. The applicant purchased this property in 2015. The lot was created in 1958, as a residential lot.

Mr. Murphy said that the variance for the side yard setback of 12' only applies to the building, not to driveways. He said that, with or without the variance, their driveway could be as close as 3' to the day care driveway. He said the applicant is trying to avoid that by constructing the building there to create a barrier between the two driveways.

Mr. Murphy commented on Mr. Berkley's question on the size of the building; he said that they could only add another 200 square feet because of parking constraints. Mr. Penn asked if the use of the building would affect the parking. Mr. Murphy said that if a restaurant came in, it would require more parking, which would mean the building size would need to decrease.

Mr. Murphy replied to Mr. Chinn's setback comment that the applicant is following the requirements of the B-1 zone ordinance, which requires them to build close to the street and to have the parking behind the building. He believes it's best for the use of this property to use the area underneath the power lines as the two-lane driveway and the building near the daycare, which will prevent any driveway or parking near the daycare.

Citizen Rebuttal – There were no citizens rebuttal at this time.

Staff Rebuttal - Ms. Wade said the development plan conditions reflect the staff's recommendation to not approve the variance, but if it is approved by the Commission, condition #6, referring to Note #10 on the development plan, will need to be amended. The note states that "a variance to reduce the 12' to 5' is required for the building location to remain as shown." She said that the staff would rather the applicant meet the current ordinance and ask for the variance when there is a particular user for this site. She said if the Planning Commission approves the variance, this note will need to state that the Planning Commission approved the variance and today's date.

Commission Questions – Mr. Owens asked what kind of buffering will be required within the side yard. Ms. Wade replied that there is not a zone-to-zone screening requirement between the P-1 zone and the B-1 zone. Mr. Owens also asked what would be the possibility of this building being 2 stories. Ms. Wade said that the Zoning Ordinance would allow a 2-story building, but parking will most likely restrict it.

Mr. Berkley referred to the proposed 2018 Comprehensive Plan and the flexibility of the B-6P zone and asked why that wouldn't apply in the B-1 zone. Ms. Wade said the zones are different categories of uses and that it doesn't immediately transfer to the Zoning Ordinance and there is also a state law that requires the variance. She said that relaxing setbacks is something that can be applied for, however a variance is to address special circumstances or unique conditions.

Ms. Mundy also said the proposed 2018 Comprehensive Plan is reviewing the reduction of parking lot requirements. Ms. Wade said that small lots have more difficulty with parking because the parking isn't shared as it is in a shopping center.

Mr. Cravens asked if the adjacent P-1 property were to ask for a zone change, they wouldn't have a side yard setback, because it is equal to the zone beside it, which they could be right on the property line. He opined that Article 15-3 should be amended because as it is, it's whichever property owner gets there first. Ms. Wade said that section Zoning Ordinance could be reviewed to eliminate that from happening.

Ms. Plumlee verified that drive thrus are allowed in the B-1 zone. Ms. Wade said that they are allowed with the Planning Commission's approval of the development plan, otherwise it will be a conditional use.

Mr. Murphy stated that the property owner is planning to landscape the property.

Commission Discussion – Mr. Wilson clarified that if the Commission were to abide the staff's recommendations of postponement then the conditions that have been provided on the development plan would stand, but if the Commission votes in favor of the variance, a change is needed to condition #6 of the development plan.

Mr. Penn believes the variance is premature and can be requested at the time of the development plan, when there will be a specific user.

Mr. Owens believe that the Planning Commission needs more information on the variance. He also believes that fencing should be more important than landscaping, at this time.

Mr. Wilson asked Ms. Tracy Jones if the applicant's proposed findings and conclusions have been reviewed. Ms. Jones said that staff doesn't agree with finding #4 because strictly applying the Zoning Ordinance would not deprive the applicant a reasonable use of this property.

Zoning Action – A motion was made by Mr. Cravens, seconded by Mr. Forester, and carried 10-0 (Brewer absent) to approve PLN-MAR-17-00038; WILLSTONE, LLC, for the reasons provided by the staff.

Requested Variance Action – A motion was made by Mr. Cravens, seconded by Mr. Berkley, carried 6-4 (Bell, Owens, Plumlee and Wilson opposed; Brewer absent) to approve the requested variance, for the reasons provided by the applicant, with the deletion of finding #4. The Findings and Conclusions are approved as follows:

Based upon the evidence presented to us, the Planning Commission does hereby approve a variance from 12 feet to 5 feet for the west side yard at 101 Dennis Drive for the following reasons:

1. Granting this variance will not adversely affect the public health, safety or welfare and will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public because it will allow separation of the daycare driveway from the business driveway and allow better spacing along Dennis Drive. It will allow a reasonably sized building to be constructed on the property.
2. Granting this variance will not allow an unreasonable circumvention of the requirements on the Zoning Ordinance because the need for the variance arises from the existence of a 10-foot utility easement along the east side of this property and the need for spacing of the driveways. Due to OSHA regulations, approximately 24 or 25 feet cannot be built upon along the east property line where the electric line is located. The combination of the space needed for the electric line, plus the fact that the property narrows as it goes to the back, leave very limited space for construction of a reasonable commercial building.
3. The special circumstances which apply to this property and which do not generally apply to the land in the general vicinity or in the same zone are the existence of the utility easement on the east property line which would prevent the building from being far enough to the east to allow a two-way driveway to be constructed on the west. Also, it will allow separation of the business driveway from the daycare driveway. In addition, the property narrows as it goes back.
4. ~~Strict application of the regulations of the Zoning Ordinance would deprive the applicant of a reasonable use of its land or create an unnecessary hardship because a one-way driveway to the rear would not adequately serve the property, and it would create a situation which the driveway is next door to the daycare driveway. It would not allow a reasonably sized commercial building to be constructed on the lot.~~
5. The circumstances surrounding the requested variance are not the result of actions taken by this applicant subsequent to the regulation from which relief is sought. This property is now a vacant lot and the applicant is making this request before commencing any construction or activity on the property. The applicant purchased this property in 2015. The lot was created in 1958, as a residential lot.

Development Plan Action – A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 8-1 (Plumlee opposed; Penn abstained; Berkley absent) to approve PLN-MJDP-17-00104: BELLA VISTA SUBDIVISION, LOT 6, with the conditions provided by the staff, changing condition #6, as follows:

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. Resolve timing of resolution of plated building line conflict with B-1 zone requirements.
6. ~~Relocate proposed building to meet the required side yard setback per Art. 15-3 and delete note #10.~~ Denote approval of variance by the Planning Commission.
7. Resolve access to adjacent lot (2413 Nicholasville Road) at final development plan.

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