

AN ORDINANCE CHANGING THE ZONE FROM AN INTERCHANGE SERVICE BUSINESS (B-5P) ZONE TO A LIGHT INDUSTRIAL (I-1) ZONE, FOR 3.08 NET (6.35 GROSS) ACRES, FOR PROPERTY LOCATED AT 1973 BRYANT ROAD, INCLUDING A DIMENSIONAL VARIANCE (STRONGBOX, LLC; COUNCIL DISTRICT 6).

WHEREAS, at a Public Hearing held on January 28, 2016, a petition for a zoning ordinance map amendment for property located at 1973 Bryant Road from an Interchange Service Business (B-5P) zone to a Light Industrial (I-1) zone, for 3.08 net (6.35 gross) acres, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change including a dimensional variance by a vote of 8-1; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a change in zone for property located at 1973 Bryant Road from an Interchange Service Business (B-5P) zone to a Light Industrial (I-1) zone, for 3.08 net (6.35 gross) acres, being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - That the granting of this zone change is made subject to the following use restrictions as conditions of granting the zone change:

Under the provisions of Article 6-7 of the Zoning Ordinance, the following use and buffering restrictions are proposed for the subject property via conditional zoning:

Prohibited Uses

- a. Ice Plant.
- b. Tire re-treading and recapping.
- c. Machine shop
- d. Outdoor kennels
- e. Establishments and lots for the display; rental; sale; service and minor repair of farm equipment; contractor equipment; travel trailers; mobile homes; and/or precut, prefabricated or shell homes.
- f. Outdoor storage or supplies or materials.
- g. Auto-parts rebuilding; battery manufacturing; dextrine and starch manufacturing; enameling; lacquering and japanning;

- electric foundry; radium extraction; and tool manufacturing.
- h. Vehicle storage yards.
- i. Truck terminals.
- j. Advertising signs, also known as billboards, as regulated and defined by Article 17.

Section 3 - That the Lexington-Fayette Urban County Planning Commission is directed to show the amendment on the official zone map atlas and to make reference to the number of this Ordinance.

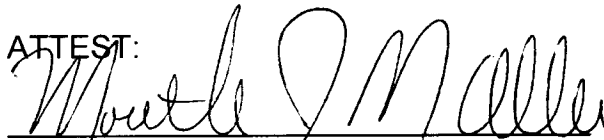
Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: March 17, 2016

MAYOR



ATTEST:



CLERK OF URBAN COUNTY COUNCIL

Published: March 24, 2016 -1t

TWJ:X:\CASES\PLANNING\16-LE0001\LEG\00524204.DOCX

HMMR REALTY, LLC PROPERTY
1973 Bryant Road
Lexington, Fayette County, Kentucky
Zone Change from B-5P to I-1

BEING A TRACT OF LAND SITUATED ADJACENT TO AND NORTHEAST OF BRYANT ROAD IN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND BEING MORE FULLY DESCRIBED AND BOUNDED AS FOLLOWS:

BEGINNING AT A POINT in the centerline of Bryant Road, said point also lying in the extended western lot line of Parcel 1 and Parcel 2 of Man-O-War Unit 2A, Phase 2 as recorded in Plat Cabinet "M", Slide 364 in the Fayette County Clerk's Office; thence with said western line North 30 degrees 25 minutes 21 seconds East, 746.49 feet to a point in the centerline of Interstate 75; thence with said centerline South 37 degrees 11 minutes 55 seconds East, 517.68 feet to a point in the extended eastern lot line of Parcel 1 and Parcel 2 of Man-O-War Unit 2-A, Phase 2 as recorded in Plat Cabinet "M", Slide 364 in the Fayette County Clerk's Office; thence with said western line South 44 degrees 13 minutes 16 seconds West, 609.90 feet to a point in the centerline of Bryant Road; thence with said centerline for the following two (2) calls: North 46 degrees 33 minutes 02 seconds West, 175.08; thence 163.83 feet along a curve to the left having a radius of 400.00 feet and a chord which bears North 58 degrees 21 minutes 49 seconds West, 162.69 feet to **THE POINT OF BEGINNING** and containing 6.35 acres (gross) and 3.08 acres (net).

MAR 2015-28

Date Received 11/2/2015

Pre-Application Date 10/23/15

Filing Fee \$500

GENERAL INFORMATION: MAP AMENDMENT REQUEST (MAR) APPLICATION

1. ADDRESS INFORMATION (Name, Address, City/State/Zip, & PHONE NUMBER)

APPLICANT Strongbox, LLC, P.O. Box 288, Zionsville, IN 46077
OWNER: HMMR Realty, LLC, 2208 Poplar Grove Place Lexington, KY 40515
ATTORNEY: Nick Nicholson, Stoll Keenon Ogden PLLC, 300 W. Vine St, Ste. 2100, Lexington, KY 40507, (859) 231-3000

2. ADDRESS OF APPLICANT'S PROPERTY (Please attach Legal Description)

1973 Bryant Road

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY (Use attachment, if needed--same format.)

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
B-5P	Vacant Commercial	I-1	ATV & Motorcycle Sale/Repair Lot	3.08	6.35

4. SURROUNDING PROPERTY, ZONING & USE

Property	Use	Zoning
North	Commercial	B-5P
East	Commercial	B-5P
South	Commercial (Vacant)	B-6P
West	Commercial	B-5P

5. EXISTING CONDITIONS

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
c. Are these units currently occupied by households earning under 40% of the median income? If yes, how many units? If yes, please provide a written statement outlining any efforts to be undertaken to assist those residents in Obtaining alternative housing.	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO ____ Units

6. URBAN SERVICES STATUS (Indicate whether existing or how to be provided.)

Roads	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Storm Sewers	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
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Curb/Gutter/Sidewalks	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Refuse Collection	<input checked="" type="checkbox"/> LFUCG	<input type="checkbox"/> Other		
Utilities	<input checked="" type="checkbox"/> Electric	<input checked="" type="checkbox"/> Gas	<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Phone <input checked="" type="checkbox"/> Cable

7. DESCRIBE YOUR JUSTIFICATION FOR REQUESTED CHANGE (Please provide attachment.)

This is in agreement with the Comp. Plan more appropriate than the existing zoning due to unanticipated changes.

8. APPLICANT/OWNER SIGNS THIS CERTIFICATION.

I do hereby certify that to the best of my knowledge and belief, all application materials are herewith submitted and the information they contain is true and accurate. I further certify that I am OWNER or HOLDER of an agreement to purchase this property since 2007.

APPLICANT *[Signature]* Attorney for Strongbox, LLC

OWNER _____ DATE 10/29/15

LFUCG EMPLOYEE/OFFICER, if applicable _____ DATE _____

October 29, 2015

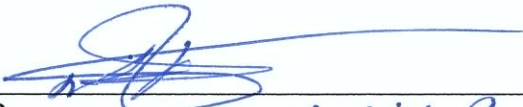
Lexington-Fayette Urban County Planning Commission
Lexington-Fayette Urban County Government
101 E. Vine Street, 7th Floor
Lexington, Kentucky 40507
ATTN: William Sallee

Re: 1973 Bryant Road

Dear Mr. Sallee:

I am writing to advise the Planning Commission that StrongBox Commercial LLC, an Indiana limited liability company, has the permission of HMMR Realty, LLC, a Kentucky limited liability company, to file an application for a zone change to allow for an establishment and lot for the display, sale, service, and minor repair of motorcycles and all-terrain vehicles and related supplies on the above listed address which property is owned by HMMR Realty, LLC.

HMMR Realty, LLC


By: _____
Its: _____
Masid Rezaee
Member



**STOLL
KEENON
OGDEN**

PLLC

300 WEST VINE STREET
SUITE 2100
LEXINGTON, KY 40507-1801
MAIN: (859) 231-3000
FAX: (859) 253-1093

NICK NICHOLSON
DIRECT DIAL: (859) 231-3950
DIRECT FAX: (859) 246-3649
Nick.Nicholson@skofirm.com

October 27, 2015

Lexington Fayette Urban County Planning Commission
Lexington-Fayette Urban County Government
101 East Vine Street
Lexington, KY 40507

Re: Zone Map Amendment 1973 Bryant Road.

Dear Members of the Planning Commission:

The applicant, Strongbox, LLC (“Strongbox”), requests a zoning map amendment for the a the property located at 1973 Bryant Road (the “Property”) from Planned Shopping Center (B5-P) to Light Industrial (I-1) for 3.08 net (6.35 gross) acres to allow an establishment and lot for the display, sale, service, and minor repair of motorcycles and all-terrain vehicles (ATVs) and related supplies.

The proposed zone change is in compliance with the Comprehensive Plan and is consistent with and supported by the following "General Land-Use Considerations for the Urban Service Area" as adopted by the Planning Commission on April 29, 2014:

1. The change will address a community need such as . . . significant employment opportunities. . . .
2. The proposed land use enhances, and is compatible with, adjacent land uses.
7. The land use will not impair existing environmental conditions of the site.
8. The existing utility and transportation networks will accommodate the new land use.
9. Underutilized land should be promoted for greater utility, function. . . .
10. The land use will attract or retain a skilled work force and/or further economic prosperity.

13. The land use should maximize opportunities to accommodate future growth within the Urban Services Area, including land that is underutilized, vacant or planned for a reuse."

The Property has been a revolving door of restaurants since it was originally developed in 2004. In just 10 years, there have been three restaurant chains on the Property: Fire Mountain Grill, Ryan's Steakhouse, and Show Me's Restaurant and Bar. In fact, this parcel has been a vacant restaurant building for a greater time period that it has been an occupied restaurant. In spite of the success of restaurants in the general area, it is quite clear that this type of use is not right for this particular parcel.

Contrary to the Property's history, the I-1 motor-based uses along Bryant Road have thrived. Within 1,000 feet, there is a Harley Davidson store, Monro Muffler and Brake store, and a Lexington Motorsports complex with new and used Honda, Kawaski, Sea Doo, Yamaha, Suzuki, and Polaris recreational vehicles for sale. This area of Bryant Road has clearly demonstrated the appropriateness of the proposed use. Allowing the proposed zone change would certainly enhance the success mix of zones in the Bryant Road corridor without any negative impact.

Further, the recent zone change (MAR 2015-14) of 1750 Pleasant Ridge Drive, 1976 Justice Drive & 2008 & 2024 Bryant Road from B-6P to B-5P is a significant and unanticipated change. This action has led to an overabundance of Interchange Service business zoned properties that are mostly vacant. All of the following properties are vacant parcels that are zoned B-5P or B-6P within 1000 feet of the Property: 1908, 1916, 1990, 1940, 1956, 1988, 2008, 2024 Bryant Lane; 1916, 1975, and 1976 Justice Drive; and, 1750 Pleasant Ridge Drive. While we are not necessarily arguing that business zones are inappropriate in this area, it is worth noting the high number of vacant business parcels as opposed to the entirely occupied Industrial zoned land.

As was noted in the recent Staff Report for MAR 2015-14, a zone change of 4 parcels across Bryant Road from the Property:

The existing B-6P zoning is no longer appropriate at this location because the demand for general commercial use is being met on alternate sites within the larger general area. The fact that a rezoning in 2004 to a zoning category that permits more commercial land uses (but not a hotel) did not spur development, speaks to the market demand in this particular area of the Urban County. It is likely that Hamburg Pavilion and now Hamburg East (across the interstate), have met the general business zoning demands, but neither of these two developments has successfully incorporated hotels. The site remains an underutilized site after a decade of vacancy, and should be considered for a possible change to an alternative business use in order to better serve the needs of the community and infill vacant lands within the Urban Service Area.

A very similar argument can be made for the proposed zone change. The Property has been mostly vacant since 2004, in spite of several attempts at a business use. Just as these properties looked for a use (hotel) that is appropriate for their parcels and demonstrably working across

the street, Strongbox believes that an industrial use similar to the successful motorsports-themed industrial use down the street is appropriate on the Property.

For the foregoing reasons the proposed zone change is in substantial compliance with the Comprehensive Plan and in furtherance of its guiding principles. There has also been a substantial change in the area, thereby making B-5P no longer necessary or appropriate for the Property. Light Industrial (I-1) is a much more needed and appropriate zoning for the Property especially in light of the motorsports use already existing in the industrial corridor along Bryant Road.

The proposed development will provide a benefit to the immediate area and the entire community and will do so in a manner that complies with both the letter and the spirit of the Comprehensive Plan. The applicant, therefore, respectfully submits that the land use action described above is entirely appropriate and should be approved.

Best Regards;

Stoll Keenon Ogden PLLC



Nick Nicholson

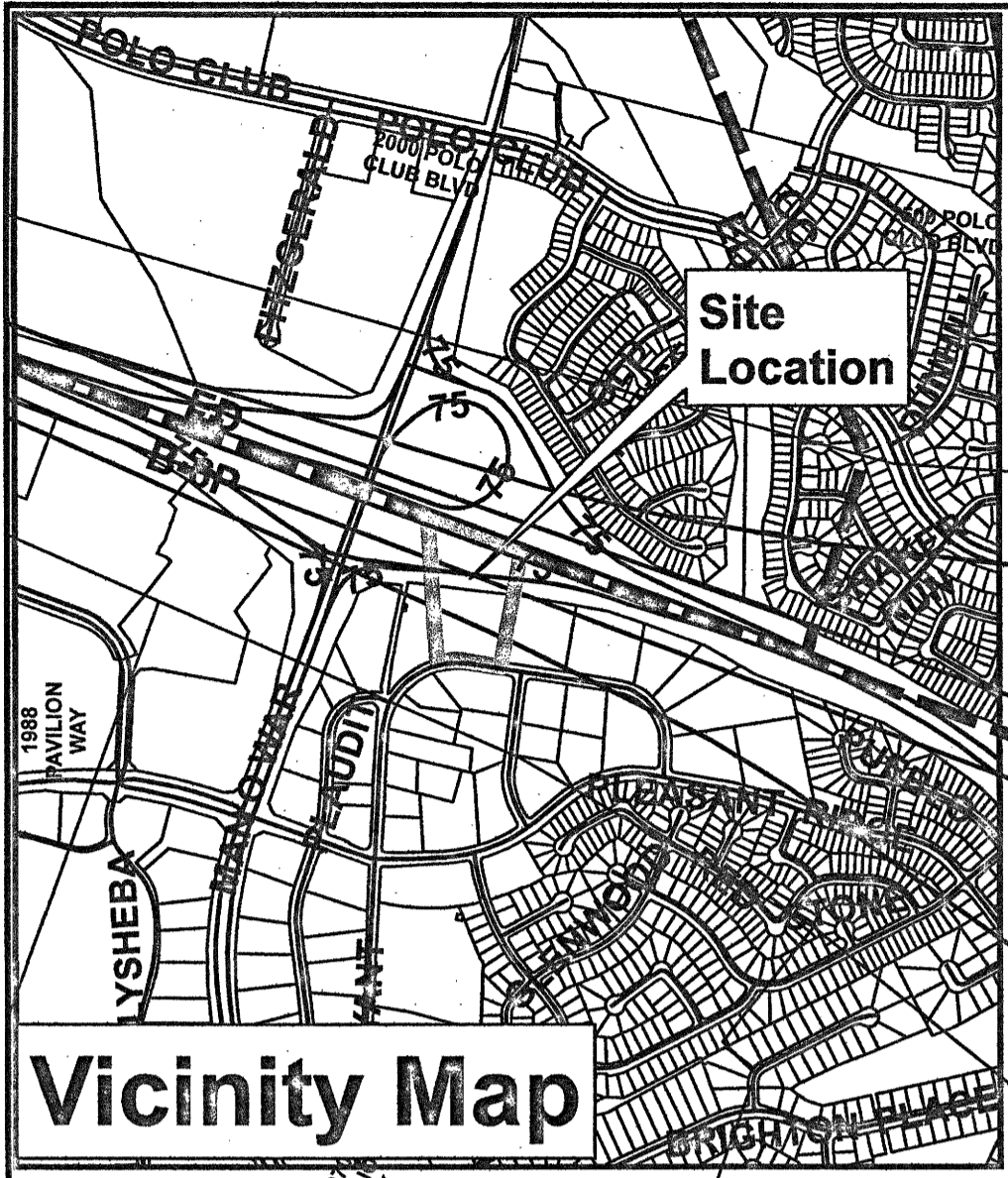
NN:NN

Enclosure

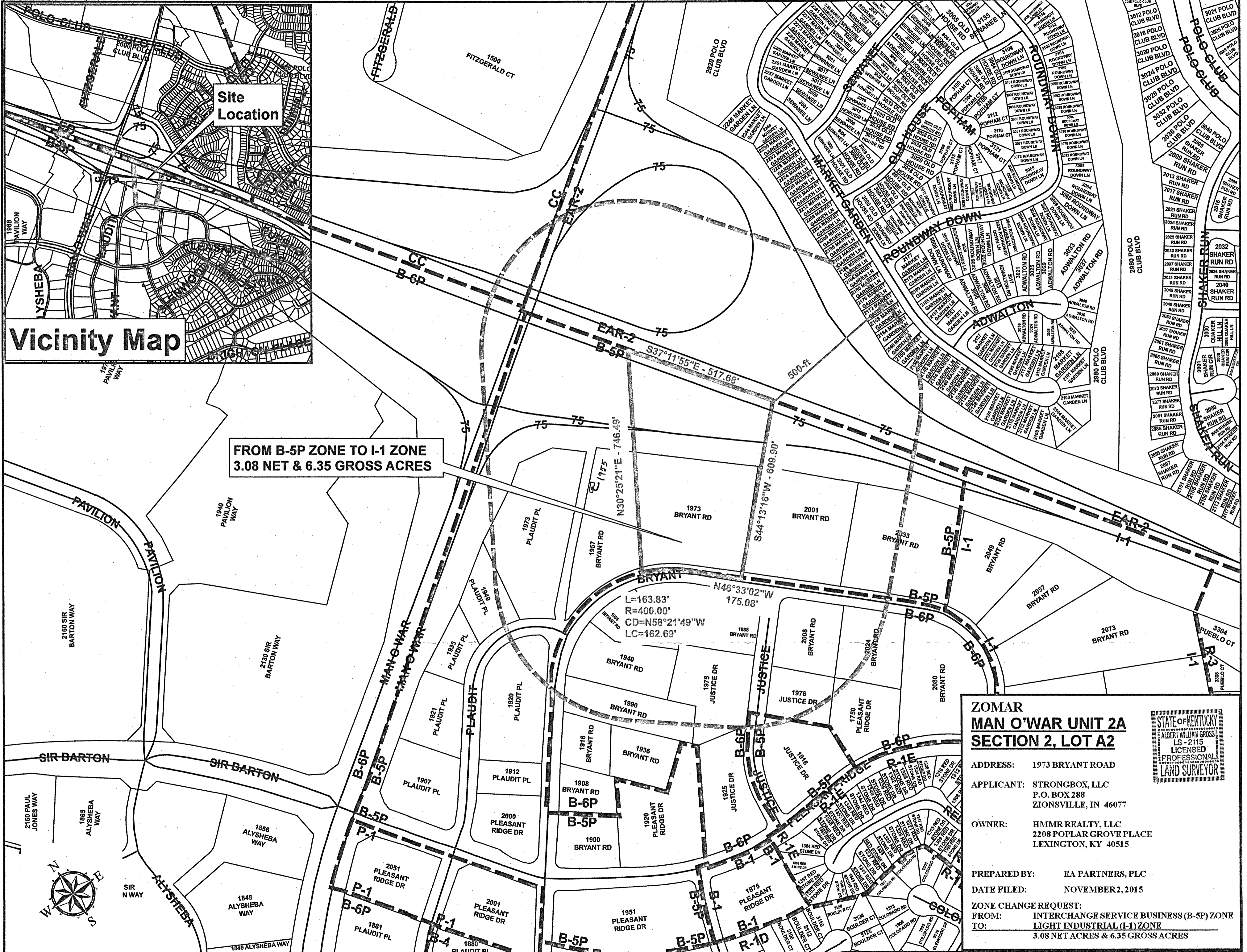
HMMR REALTY, LLC PROPERTY
1973 Bryant Road
Lexington, Fayette County, Kentucky
Zone Change from B-5P to I-1

BEING A TRACT OF LAND SITUATED ADJACENT TO AND NORTHEAST OF BRYANT ROAD IN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND BEING MORE FULLY DESCRIBED AND BOUNDED AS FOLLOWS:

BEGINNING AT A POINT in the centerline of Bryant Road, said point also lying in the extended western lot line of Parcel 1 and Parcel 2 of Man-O-War Unit 2A, Phase 2 as recorded in Plat Cabinet "M", Slide 364 in the Fayette County Clerk's Office; thence with said western line North 30 degrees 25 minutes 21 seconds East, 746.49 feet to a point in the centerline of Interstate 75; thence with said centerline South 37 degrees 11 minutes 55 seconds East, 517.68 feet to a point in the extended eastern lot line of Parcel 1 and Parcel 2 of Man-O-War Unit 2-A, Phase 2 as recorded in Plat Cabinet "M", Slide 364 in the Fayette County Clerk's Office; thence with said western line South 44 degrees 13 minutes 16 seconds West, 609.90 feet to a point in the centerline of Bryant Road; thence with said centerline for the following two (2) calls: North 46 degrees 33 minutes 02 seconds West, 175.08; thence 163.83 feet along a curve to the left having a radius of 400.00 feet and a chord which bears North 58 degrees 21 minutes 49 seconds West, 162.69 feet to **THE POINT OF BEGINNING** and containing 6.35 acres (gross) and 3.08 acres (net).



Vicinity Map



**FROM B-5P ZONE TO I-1 ZONE
3.08 NET & 6.35 GROSS ACRES**

L=163.83'
R=400.00'
CD=N58°21'49"W
LC=162.69'

**ZOMAR
MAN O'WAR UNIT 2A
SECTION 2, LOT A2**

ADDRESS: 1973 BRYANT ROAD

APPLICANT: STRONGBOX, LLC
P.O. BOX 288
ZIONSVILLE, IN 46077

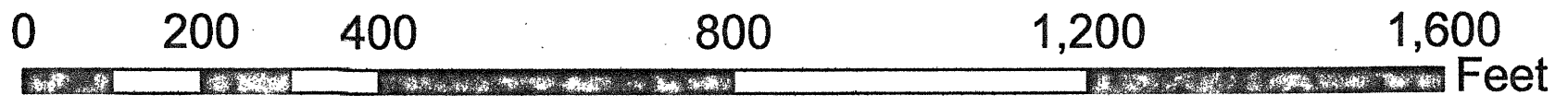
OWNER: HMMR REALTY, LLC
2208 POPLAR GROVE PLACE
LEXINGTON, KY 40515

PREPARED BY: EA PARTNERS, PLC
DATE FILED: NOVEMBER 2, 2015

ZONE CHANGE REQUEST:
FROM: INTERCHANGE SERVICE BUSINESS (B-5P) ZONE
TO: LIGHT INDUSTRIAL (I-1) ZONE
3.08 NET ACRES & 6.35 GROSS ACRES

STATE OF KENTUCKY
ALBERT WILLIAM GROSS
LS - 2115
LICENSED
PROFESSIONAL
LAND SURVEYOR

Notification Map



Rec'd by _____

Date: _____

RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

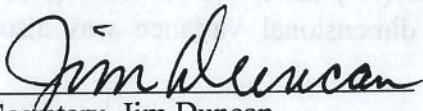
IN RE: **MARV 2015-28: STRONGBOX, LLC** - petition for a zone map amendment from an Interchange Service Business (B-5P) zone to a Light Industrial (I-1) zone, for 3.08 net (6.35 gross) acres, for property located at 1973 Bryant Road. A dimensional variance was also requested. (Council District 6)

Having considered the above matter on **January 28, 2016**, at a Public Hearing, and having voted **8-1** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **CONDITIONAL APPROVAL** of this matter for the following reason:

1. A restricted Light Industrial (I-1) zone is in substantial compliance with the 2013 Comprehensive Plan, for the following reasons:
 - a. The site has been an underutilized site after more than two decades of B-5P zoning and a decade of failed restaurants. The property should be considered for a possible change to an alternative business zone (and use) in order to better serve the needs of the community within the Urban Service Area.
 - b. The proposed zoning and land use are generally compatible with the nearby "motorsports node" that has developed along Bryant Road. Conditional zoning restrictions to limit uses that may disturb visitors and guests in the adjacent hotels would be appropriate for the subject property to ensure land use compatibility.
 - c. The proposed redevelopment will be able to use the existing infrastructure and transportation networks (which are adequate to serve the use), and the proposed land use will not impair existing environmental conditions on the site. This is consistent with the guiding principles of the Comprehensive Plan, specifically Chapter 4: "Protecting the Environment," and Chapter 6: "Improving a Desirable Community."
2. This recommendation is made subject to approval and certification of ZDP 2015-120: Man O' War Development, Unit 2A, Sec. 2, Lots A-2 & A-3 (Amd), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be restricted in the following manner, via conditional zoning:
Prohibited Uses
 - a. Ice plant.
 - b. Tire re-treading and recapping.
 - c. Machine shop.
 - d. Outdoor kennels.
 - e. Establishments and lots for the display, rental, sale, service, and minor repair of farm equipment; contractor equipment; travel trailers; mobile homes; and/or precut, prefabricated or shell homes.
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 - h. Vehicle storage yards.
 - i. Truck terminals.
 - j. Advertising signs, also known as billboards, as regulated and defined by Article 17.

These restrictions are necessary and appropriate in order to restrict the most intense land uses on the subject property. Such uses could have a negative impact on the nearby hotels related to noise and their hours of operation.

ATTEST: This 17th day of February, 2016.


Secretary, Jim Duncan

MIKE OWENS
CHAIR

Note: A variance to reduce the property perimeter landscaping (zone-to-zone screening) for the entire property was approved by the Planning Commission for this property, subject to the rezoning being granted.

Note: The corollary development plan, ZDP 2015-120: Man O' War Development, Unit 2A, Sec. 2, Lots A-2 & A-3 (Amd), was approved by the Planning Commission on January 28, 2016, and certified on February 11, 2016.

K.R.S. 100.211(7) requires that the Council take action on this request by April 27, 2016.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Nick Nicholson, attorney.**

OBJECTORS

- None

OBJECTIONS

- none

VOTES WERE AS FOLLOWS:

AYES: (8) Berkley, Drake, Mundy, Owens, Plumlee, Richardson, Smith, Wilson

NAYS: (1) Cravens

ABSENT: (2) Brewer, Penn

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for CONDITIONAL APPROVAL of MARV 2015-28 carried.

Enclosures: Application
Plat
Staff Report
Applicable excerpts of minutes of above meeting

MAR 2015-28

Date Received 11/2/2015

Pre-Application Date 10/23/15

Filing Fee \$500

GENERAL INFORMATION: MAP AMENDMENT REQUEST (MAR) APPLICATION

1. ADDRESS INFORMATION (Name, Address, City/State/Zip, & PHONE NUMBER)

APPLICANT Strongbox, LLC, P.O. Box 288, Zionsville, IN 46077
OWNER: HMMR Realty, LLC, 2208 Poplar Grove Place Lexington, KY 40515
ATTORNEY: Nick Nicholson, Stoll Keenon Ogden PLLC, 300 W. Vine St, Ste. 2100, Lexington, KY 40507, (859) 231-3000

2. ADDRESS OF APPLICANT'S PROPERTY (Please attach Legal Description)

1973 Bryant Road

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY (Use attachment, if needed--same format.)

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
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4. SURROUNDING PROPERTY, ZONING & USE

Property	Use	Zoning
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West	Commercial	B-5P

5. EXISTING CONDITIONS

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
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6. URBAN SERVICES STATUS (Indicate whether existing or how to be provided.)

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7. DESCRIBE YOUR JUSTIFICATION FOR REQUESTED CHANGE (Please provide attachment.)

This is in agreement with the Comp. Plan more appropriate than the existing zoning due to unanticipated changes.

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I do hereby certify that to the best of my knowledge and belief, all application materials are herewith submitted and the information they contain is true and accurate. I further certify that I am OWNER or HOLDER of an agreement to purchase this property since 2007.

APPLICANT *[Signature]* Attorney for Strongbox, LLC

OWNER _____ DATE 10/29/15

LFUCG EMPLOYEE/OFFICER, if applicable _____ DATE _____

October 29, 2015

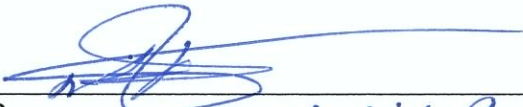
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HMMR Realty, LLC


By: _____ Masid Rezaee
Its: _____ Member



**STOLL
KEENON
OGDEN**

PLLC

300 WEST VINE STREET
SUITE 2100
LEXINGTON, KY 40507-1801
MAIN: (859) 231-3000
FAX: (859) 253-1093

NICK NICHOLSON
DIRECT DIAL: (859) 231-3950
DIRECT FAX: (859) 246-3649
Nick.Nicholson@skofirm.com

October 27, 2015

Lexington Fayette Urban County Planning Commission
Lexington-Fayette Urban County Government
101 East Vine Street
Lexington, KY 40507

Re: Zone Map Amendment 1973 Bryant Road.

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Contrary to the Property's history, the I-1 motor-based uses along Bryant Road have thrived. Within 1,000 feet, there is a Harley Davidson store, Monro Muffler and Brake store, and a Lexington Motorsports complex with new and used Honda, Kawaski, Sea Doo, Yamaha, Suzuki, and Polaris recreational vehicles for sale. This area of Bryant Road has clearly demonstrated the appropriateness of the proposed use. Allowing the proposed zone change would certainly enhance the success mix of zones in the Bryant Road corridor without any negative impact.

Further, the recent zone change (MAR 2015-14) of 1750 Pleasant Ridge Drive, 1976 Justice Drive & 2008 & 2024 Bryant Road from B-6P to B-5P is a significant and unanticipated change. This action has led to an overabundance of Interchange Service business zoned properties that are mostly vacant. All of the following properties are vacant parcels that are zoned B-5P or B-6P within 1000 feet of the Property: 1908, 1916, 1990, 1940, 1956, 1988, 2008, 2024 Bryant Lane; 1916, 1975, and 1976 Justice Drive; and, 1750 Pleasant Ridge Drive. While we are not necessarily arguing that business zones are inappropriate in this area, it is worth noting the high number of vacant business parcels as opposed to the entirely occupied Industrial zoned land.

As was noted in the recent Staff Report for MAR 2015-14, a zone change of 4 parcels across Bryant Road from the Property:

The existing B-6P zoning is no longer appropriate at this location because the demand for general commercial use is being met on alternate sites within the larger general area. The fact that a rezoning in 2004 to a zoning category that permits more commercial land uses (but not a hotel) did not spur development, speaks to the market demand in this particular area of the Urban County. It is likely that Hamburg Pavilion and now Hamburg East (across the interstate), have met the general business zoning demands, but neither of these two developments has successfully incorporated hotels. The site remains an underutilized site after a decade of vacancy, and should be considered for a possible change to an alternative business use in order to better serve the needs of the community and infill vacant lands within the Urban Service Area.

A very similar argument can be made for the proposed zone change. The Property has been mostly vacant since 2004, in spite of several attempts at a business use. Just as these properties looked for a use (hotel) that is appropriate for their parcels and demonstrably working across

the street, Strongbox believes that an industrial use similar to the successful motorsports-themed industrial use down the street is appropriate on the Property.

For the foregoing reasons the proposed zone change is in substantial compliance with the Comprehensive Plan and in furtherance of its guiding principles. There has also been a substantial change in the area, thereby making B-5P no longer necessary or appropriate for the Property. Light Industrial (I-1) is a much more needed and appropriate zoning for the Property especially in light of the motorsports use already existing in the industrial corridor along Bryant Road.

The proposed development will provide a benefit to the immediate area and the entire community and will do so in a manner that complies with both the letter and the spirit of the Comprehensive Plan. The applicant, therefore, respectfully submits that the land use action described above is entirely appropriate and should be approved.

Best Regards;

Stoll Keenon Ogden PLLC



Nick Nicholson

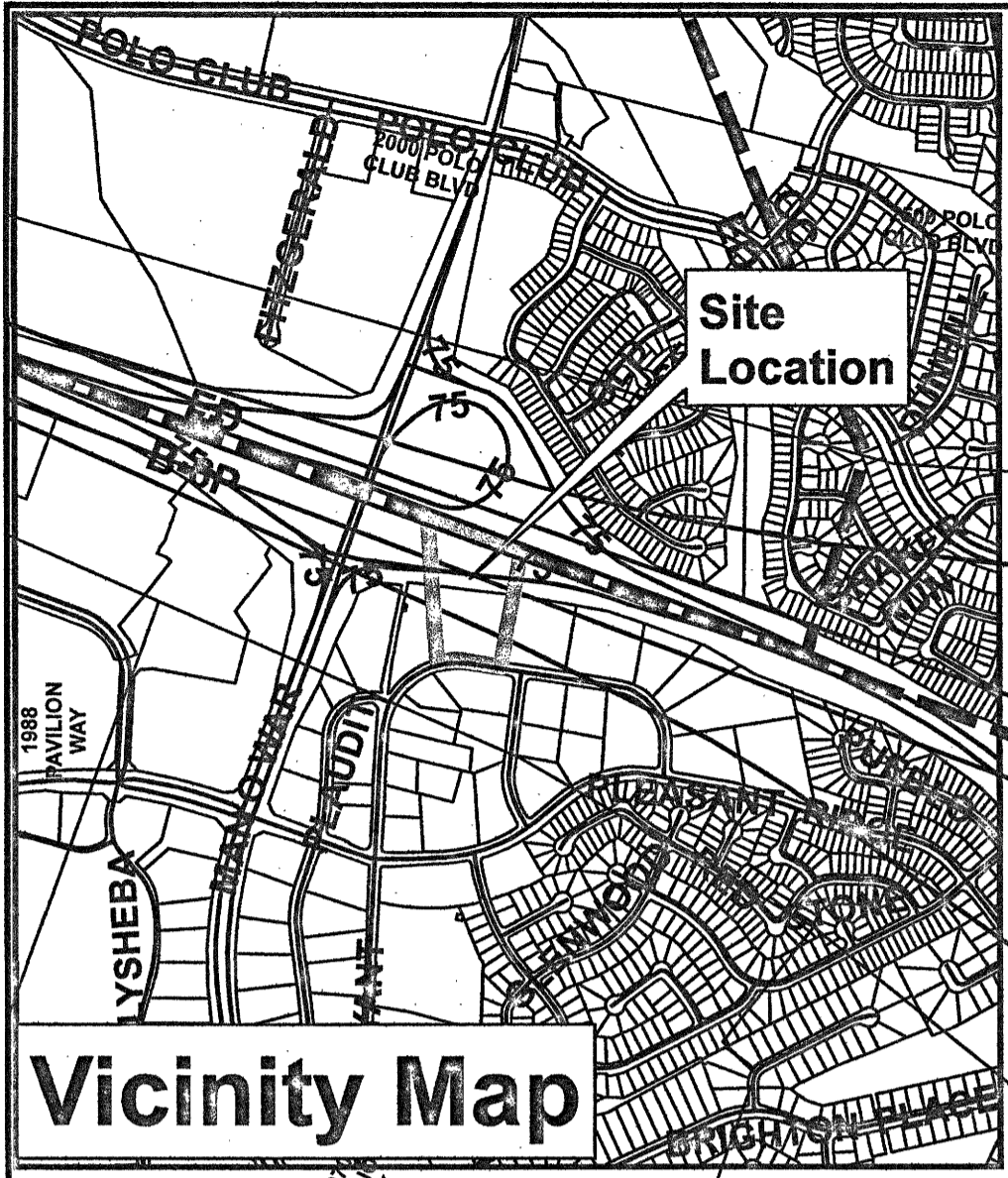
NN:NN

Enclosure

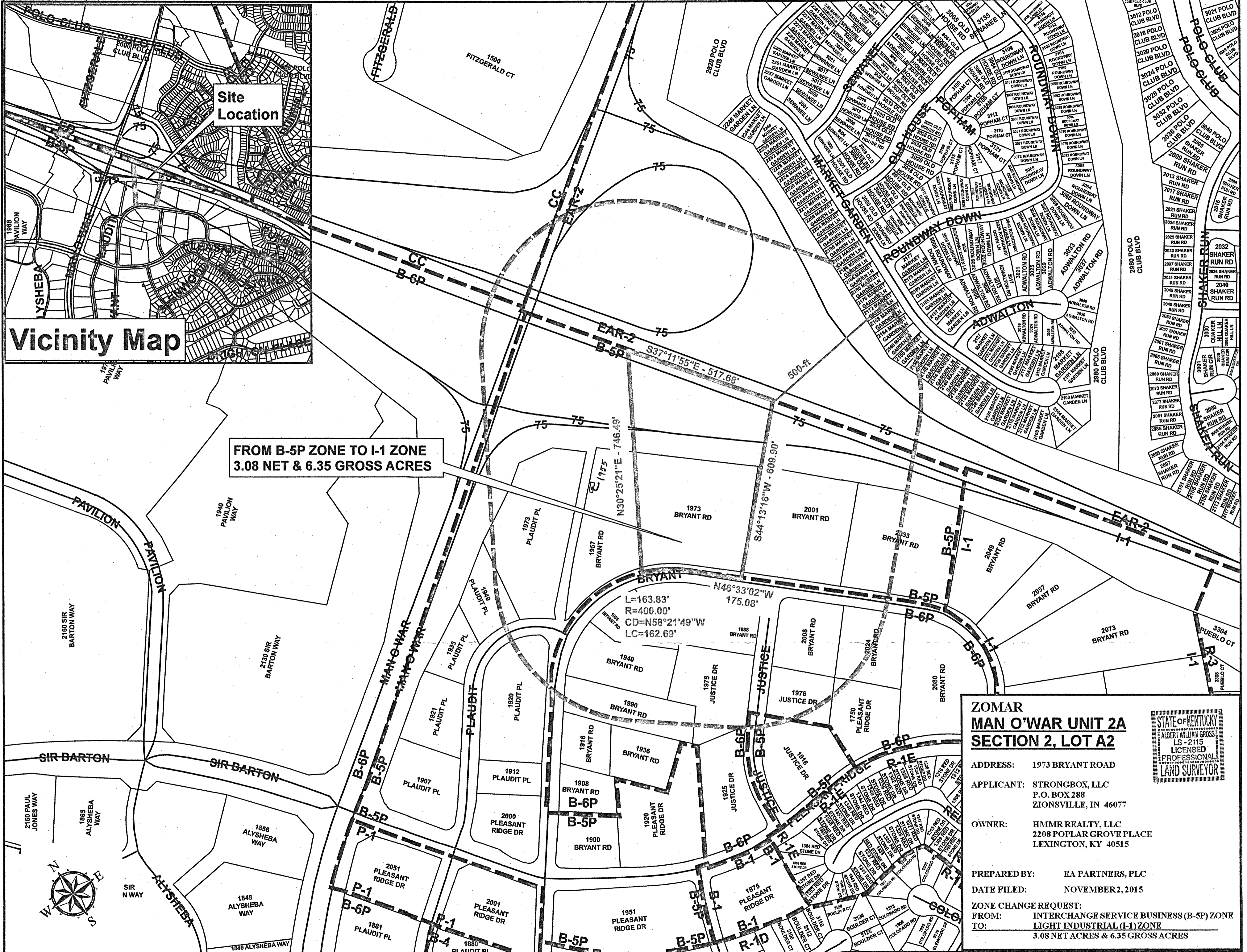
HMMR REALTY, LLC PROPERTY
1973 Bryant Road
Lexington, Fayette County, Kentucky
Zone Change from B-5P to I-1

BEING A TRACT OF LAND SITUATED ADJACENT TO AND NORTHEAST OF BRYANT ROAD IN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND BEING MORE FULLY DESCRIBED AND BOUNDED AS FOLLOWS:

BEGINNING AT A POINT in the centerline of Bryant Road, said point also lying in the extended western lot line of Parcel 1 and Parcel 2 of Man-O-War Unit 2A, Phase 2 as recorded in Plat Cabinet "M", Slide 364 in the Fayette County Clerk's Office; thence with said western line North 30 degrees 25 minutes 21 seconds East, 746.49 feet to a point in the centerline of Interstate 75; thence with said centerline South 37 degrees 11 minutes 55 seconds East, 517.68 feet to a point in the extended eastern lot line of Parcel 1 and Parcel 2 of Man-O-War Unit 2-A, Phase 2 as recorded in Plat Cabinet "M", Slide 364 in the Fayette County Clerk's Office; thence with said western line South 44 degrees 13 minutes 16 seconds West, 609.90 feet to a point in the centerline of Bryant Road; thence with said centerline for the following two (2) calls: North 46 degrees 33 minutes 02 seconds West, 175.08; thence 163.83 feet along a curve to the left having a radius of 400.00 feet and a chord which bears North 58 degrees 21 minutes 49 seconds West, 162.69 feet to **THE POINT OF BEGINNING** and containing 6.35 acres (gross) and 3.08 acres (net).



Vicinity Map



**FROM B-5P ZONE TO I-1 ZONE
3.08 NET & 6.35 GROSS ACRES**

**ZOMAR
MAN O'WAR UNIT 2A
SECTION 2, LOT A2**

ADDRESS: 1973 BRYANT ROAD

APPLICANT: STRONGBOX, LLC
P.O. BOX 288
ZIONSVILLE, IN 46077

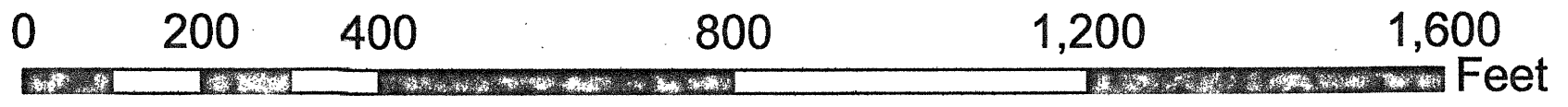
OWNER: HMMR REALTY, LLC
2208 POPLAR GROVE PLACE
LEXINGTON, KY 40515

PREPARED BY: EA PARTNERS, PLC
DATE FILED: NOVEMBER 2, 2015

ZONE CHANGE REQUEST:
FROM: INTERCHANGE SERVICE BUSINESS (B-5P) ZONE
TO: LIGHT INDUSTRIAL (I-1) ZONE
3.08 NET ACRES & 6.35 GROSS ACRES

STATE OF KENTUCKY
ALBERT WILLIAM GROSS
LS - 2115
LICENSED
PROFESSIONAL
LAND SURVEYOR

Notification Map



STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

MARV 2015-28: STRONGBOX, LLC

DESCRIPTION

Zone Change: From an Interchange Service Business (B-5P) zone
To a Light Industrial (I-1) zone

Acreage: 3.08 net (6.35 gross) acres

Location: 1973 Bryant Road

EXISTING ZONING & LAND USE

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Property	B-5P	Vacant Restaurant
To North	EAR-2	Interstate 75 & Residential
To East	B-5P	Interstate 75 & Hotels
To South	B-6P & B-5P	Vacant, Restaurants & Hotels
To West	B-5P	Restaurant & Hotel

URBAN SERVICES REPORT

Roads – The subject property is bounded to the northeast by Interstate 75 (southbound on-ramp at the Man o’ War Boulevard/I-75 interchange), and to the southwest by Bryant Road. Bryant Road is a collector street that serves only commercial and industrial properties in this portion of the Urban Service Area. Bryant Road was built to full urban standards, and no improvements appear to be needed at this time.

Curb/Gutter/Sidewalks – Bryant Road is built with curb, gutter and sidewalks as required by the Subdivision Regulations, and no improvements are anticipated.

Storm Sewers – The subject property is located within the North Elkhorn Creek watershed, and stormwater improvements have been completed within this commercial area. A stormwater basin, which will handle stormwater for the subject property, is located to the rear of the property, along the I-75 on-ramp. No FEMA special flood hazard area or known flooding issues exist within the immediate area.

Sanitary Sewers – The subject properties are located within the East Hickman sewershed, and will be serviced by the West Hickman Wastewater Treatment Facility in northern Jessamine County. Sanitary sewers have been constructed within the area; however, capacity of the sewer system will need to be verified prior to construction and/or change of land use. The North Elkhorn Pump Station bank, under the Capacity Assurance Program, currently indicates that there is available sanitary sewer capacity in this area.

Refuse – Refuse collection to residential properties is provided by the Urban County Government to this portion of the Urban Service Area on Tuesdays. However, commercial uses often contract for more frequent service with private refuse haulers.

Police – The Central Sector Roll Call Center is the nearest police station to this location. It is located on Industry Road, near the interchange of Winchester Road and New Circle Road, about 3½ miles to the northwest of the subject property.

Fire/Ambulance – The subject property is located nearest Fire Station #21, which is on Mapleleaf Drive, south of Man o’ War Boulevard, approximately 1½ miles to the southwest. In addition, a new fire station is planned for the Hamburg area near the intersection of Winchester Road and Man o’ War Boulevard, but a site has not yet been identified. This proposed fire station would most likely be less than one mile from the site, once it is constructed and operational.

Utilities – All utilities, including electric, gas, water, telephone, and cable are available to serve the subject property.

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. In addition, the Plan encourages a mix of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; and provision of land for a diverse workforce.

The petitioner proposes a Light Industrial (I-1) zone in order to operate an establishment for the display, sale, service and minor repair of all-terrain vehicles (ATVs) and motorcycles on the subject property. The site is currently vacant, and would require only minor modifications in order for the proposed use to occupy the site.

CASE REVIEW

The petitioner has requested a zone change from an Interchange Service Business (B-5P) zone to a Light Industrial (I-1) zone for just over three acres of land located on Bryant Road. The subject property is generally located within the southeast quadrant of the Man o' War Boulevard and Interstate 75 interchange, and lies adjacent to the I-75 south on-ramp.

The area is characterized by commercial land uses that are developed mostly for patronage by the traveling public along the interstate. Many restaurants, gas stations and hotels occupy this quadrant of the Man o' War Boulevard and I-75 interchange, and there is mostly a mix of B-6P and B-5P zoning in this area. In addition, several light industrial properties exist to the south of the subject property, which are occupied by motor-based land uses, similar to that proposed for the site (approximately 15 acres total). The two quadrants on the east side of I-75 are located within the Expansion Area, which does not currently permit establishments for the display, sale, service or repair of vehicles in any of its zoning categories.

The petitioner proposes to renovate the existing building in order to operate an establishment for the display, sale, service and minor repair of all-terrain vehicles (ATVs) and motorcycles. The site is currently vacant, and would require minor modifications in order for the proposed use to occupy the site. A dimensional variance to eliminate the property perimeter screening requirements has also been requested in association with the zone change.

In 1989, the subject property was part of a zone change from an A-R zone to the B-5P zone in order to develop a sizeable area for interstate-oriented commercial businesses. In 2004, the subject site was developed for a restaurant. Three different restaurant chains have occupied the site, but with limited success in the 11 years since it was constructed. The site is once again vacant, now that 2015 is coming to a close.

The 2013 Comprehensive Plan focuses on general land use policies, such as land use compatibility; well-designed neighborhoods; improving a desirable community; and making the best use of land inside the Urban Service Boundary for the protection of the surrounding rural areas. The Plan no longer relies upon a future land use map. The petitioner contends that the proposal is in substantial compliance with the 2013 Comprehensive Plan and that there has been an unanticipated change in the immediate area. It is the intent of the petitioner for the proposed redevelopment to complement the existing motorsport land uses nearby.

In terms of the Comprehensive Plan, they opine that the proposed zone is compatible with adjoining land uses, will redevelop underutilized land for a greater utility or function, will utilize the existing infrastructure and transportation networks (which are adequate to serve the use), and the proposed land use will not impair existing environmental conditions on the site. The petitioner also claims that the proposed

rezoning will address a community need, such as significant employment opportunities, and will attract or retain a skilled work force and/or will further economic prosperity; however, they provide these opinions without evidence or statistics to substantiate the claims. Secondary to their justification related to the Comprehensive Plan, the petitioner also contends that there has been an unanticipated change in the immediate area due to a recent zone change from B-6P to B-5P. The staff cannot find that there has been a major unanticipated change in this area, since no physical, social or economic change has yet occurred on the nearby properties, and no building permits have been sought for new construction.

The 2013 Comprehensive Plan does not specifically address modest or minor changes in commercial land use that have a negligible impact on job creation or tourism. However, the general concepts, policies and guiding principles of the Plan should always be considered. As referenced in the petitioner's justification, the staff can agree that the request, if restricted, is in substantial compliance with the 2013 Comprehensive Plan. As mentioned in the previous rezoning in this immediate area, it is likely that Hamburg Pavilion and now Hamburg East (across the interstate), have met the area's general business zoning demands; but neither of these two developments has successfully incorporated the proposed use, whereas the Bryant Road corridor has created a "motorsport node" of sorts. The site remains an underutilized site, and should be considered for a possible change to an alternative business use in order to better serve the needs of the community and permit one underutilized site to be re-purposed within the Urban Service Area. In addition, the development will be able to use the existing infrastructure and transportation networks (which are adequate to serve both the traveling public and the proposed use), and this new land use will not impair existing environmental conditions on the site.

A restricted I-1 zone is appropriate at this location because it is generally compatible with the nearby I-1 zoning, which includes a number of other motorsport uses within the immediate area (e.g. Harley Davidson, S&S Tire Center, and the Lexington Motorsports Complex, featuring several well-known recreational vehicle brands). However, several hotels also exist or are planned within the immediate area; therefore, not all allowable light industrial uses would be appropriate for this location. For these reasons, the staff is in support of the proposed zone change, if restricted.

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

1. A restricted Light Industrial (I-1) zone is in substantial compliance with the 2013 Comprehensive Plan, for the following reasons:
 - a. The site has been an underutilized site after more than two decades of B-5P zoning and a decade of failed restaurants. The property should be considered for a possible change to an alternative business zone (and use) in order to better serve the needs of the community within the Urban Service Area.
 - b. The proposed zoning and land use are generally compatible with the nearby "motorsports node" that has developed along Bryant Road. Conditional zoning restrictions to limit uses that may disturb visitors and guests in the adjacent hotels would be appropriate for the subject property to ensure land use compatibility.
 - c. The proposed redevelopment will be able to use the existing infrastructure and transportation networks (which are adequate to serve the use), and the proposed land use will not impair existing environmental conditions on the site. This is consistent with the guiding principles of the Comprehensive Plan, specifically Chapter 4: "Protecting the Environment," and Chapter 6: "Improving a Desirable Community."
2. This recommendation is made subject to approval and certification of ZDP 2015-120: Man O' War Development, Unit 2A, Sec. 2, Lots A-2 & A-3 (Amd), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be restricted in the following manner, via conditional zoning:

Prohibited Uses

- a. Ice plant.
- b. Tire re-treading and recapping.

- c. Machine shop.
- d. Outdoor kennels.
- e. Establishments and lots for the display, rental, sale, service, and minor repair of farm equipment; contractor equipment; travel trailers; mobile homes; and/or precut, prefabricated or shell homes.
- f. Outdoor storage of supplies or materials.
- g. Auto-parts rebuilding; battery manufacturing; dextrine and starch manufacturing; enameling, lacquering and japanning; electric foundry; radium extraction; and tool manufacturing.
- h. Vehicle storage yards.
- i. Truck terminals.
- j. Advertising signs, also known as billboards, as regulated and defined by Article 17.

These restrictions are necessary and appropriate in order to restrict the most intense land uses on the subject property. Such uses could have a negative impact on the nearby hotels related to noise and their hours of operation.

TLW/BJR/WLS

12/3/2015

Planning Services/Staff Reports/MAR/2015/MARV 2015-28.doc

1. **STRONGBOX, LLC, ZONING MAP AMENDMENT & MAN O' WAR DEVELOPMENT, UNIT 2A, LOTS A-2 & A-3 (AMD.) ZONING DEVELOPMENT PLAN**

- a. MARV 2015-28: STRONGBOX, LLC (1/31/16)* - petition for a zone map amendment from an Interchange Service Business (B-5P) zone to a Light Industrial (I-1) zone, for 3.08 net (6.35 gross) acres, for property located at 1973 Bryant Road.

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. In addition, the Plan encourages a mix of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; and provision of land for a diverse workforce.

The petitioner proposes a Light Industrial (I-1) zone in order to operate an establishment for the display, sale, service and minor repair of all-terrain vehicles (ATVs) and motorcycles on the subject property. The site is currently vacant, and would require only minor modifications in order for the proposed use to occupy the site.

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

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

1. A restricted Light Industrial (I-1) zone is in substantial compliance with the 2013 Comprehensive Plan, for the following reasons:
 - a. The site has been an underutilized site after more than two decades of B-5P zoning and a decade of failed restaurants. The property should be considered for a possible change to an alternative business zone (and use) in order to better serve the needs of the community within the Urban Service Area.
 - b. The proposed zoning and land use are generally compatible with the nearby "motorsports node" that has developed along Bryant Road. Conditional zoning restrictions to limit uses that may disturb visitors and guests in the adjacent hotels would be appropriate for the subject property to ensure land use compatibility.
 - c. The proposed redevelopment will be able to use the existing infrastructure and transportation networks (which are adequate to serve the use), and the proposed land use will not impair existing environmental conditions on the site. This is consistent with the guiding principles of the Comprehensive Plan, specifically Chapter 4: "Protecting the Environment," and Chapter 6: "Improving a Desirable Community."
2. This recommendation is made subject to approval and certification of ZDP 2015-120: Man o' War Development, Unit 2A, Sec. 2, Lots A-2 & A-3 (Amd), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be restricted in the following manner, via conditional zoning:

Prohibited Uses

 - a. Ice plant.
 - b. Tire re-treading and recapping.
 - c. Machine shop.
 - d. Outdoor kennels.
 - e. Establishments and lots for the display, rental, sale, service, and minor repair of farm equipment; contractor equipment; travel trailers; mobile homes; and/or precut, prefabricated or shell homes.
 - f. Outdoor storage of supplies or materials.
 - g. Auto-parts rebuilding; battery manufacturing; dextrine and starch manufacturing; enameling, lacquering and japanning; electric foundry; radium extraction; and tool manufacturing.
 - h. Vehicle storage yards.
 - i. Truck terminals.
 - j. Advertising signs, also known as billboards, as regulated and defined by Article 17.

These restrictions are necessary and appropriate in order to restrict the most intense land uses on the subject property. Such uses could have a negative impact on the nearby hotels related to noise and their hours of operation.

b. **REQUESTED VARIANCE**

1. Eliminate the property perimeter landscaping (zone-to-zone screening) for the entire property.

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

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

- a. Granting the requested variance 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; conversely, if the required zone-to-zone screening were in place, this site would be out of character with the general vicinity.
- b. There are special circumstances that apply to this property that do not generally apply to land in the general vicinity: 1) there will be a business to business relationship with the adjacent B-5P zoned properties, and uses that would traditionally be a nuisance to the adjacent properties will be prohibited via conditional zoning; and 2) there are existing impediments on the subject property that greatly restrict the applicant from installing the full extent of the required landscaping, including an existing building, parking, and a large detention basin.
- c. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship for the applicant because of the limited space available. The applicant intends to retain the existing vehicular use area screening, which will be a sufficient buffer for this property based on the unique circumstances of this request.
- d. The circumstances surrounding the requested variance are not the result of prior actions taken by this applicant, as no construction (or even building demolition) has yet occurred on the subject site.

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

1. Provided the Urban County Council rezones the property I-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, 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 variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
- c. ZDP 2015-120: MAN O' WAR DEVELOPMENT, UNIT 2A, SEC. 2, LOTS A-2 & A-3 (AMD) (1/31/16)* - located at 1973 Bryant Road. **(EA Partners)**

Note: The Planning Commission postponed this item at their December 17, 2015, meeting. The purpose of this amendment is to change the use of the property from a restaurant to retail sales of vehicles, and revise parking.

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

1. Provided the Urban County Council rezones the property I-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. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
6. Denote height of building, in feet.
7. Dimension area between sidewalk and parking lot.
8. Dimension sidewalks internal to the site.
9. Dimension area between west parking lot and building.
10. Addition of purpose of amendment note.
11. Discuss relocating fence to inside of landscape islands to better comply with Article 18 of the Zoning Ordinance.
12. Discuss display area fencing and compliance with Article 18 of the Zoning Ordinance, per Article 16-4(b)(5) of the Zoning Ordinance.
13. Discuss perimeter screening along the eastern property line, per Article 18 of the Zoning Ordinance.
14. Discuss plan status.

Zoning Presentation: Ms. Wade presented the staff report on this rezoning request, briefly orienting the Commission to the location of the subject property. The property is located in the southern quadrant of the Interstate 75 & Man o' War Boulevard interchange, abutting the southern on-ramp, and it includes a portion of the right-of-way of the interstate. Bryant Road, which serves as the access to the subject property, includes mostly commercial uses, with a mix of B-5P and B-6P zoning. There is also a 15-acre section of I-1 zoning to the southeast of the subject property. Across Pleasant Ridge Drive from the commercial area is primarily single-family residential development, with some commercial uses closer to Man o' War Boulevard.

Referring to an aerial photograph of the subject property and surrounding area, Ms. Wade noted that some of the property in the area remains vacant. The subject property includes an existing building, which was built in 2004, and was formerly occupied by three different chain restaurants. There are other restaurants in the general vicinity, as well as several hotels. One hotel is directly adjacent to the subject property.

Ms. Wade stated that the petitioner is proposing to rezone the subject property in order to operate an establishment for the display, sale, service, and minor repair of all-terrain vehicles (ATVs) and motorcycles, which is a permitted use in the I-

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

1 zone. That use is also permitted in several other zones, but the petitioner indicated in their justification that, since I-1 zoning already exists in the general vicinity, they felt that zone might be the most appropriate.

Ms. Wade said that the petitioner contends that the proposed rezoning is in agreement with the 2013 Comprehensive Plan, and that there has been a change in the area that was unanticipated by the Plan. The staff agrees that the proposed rezoning is substantially in agreement with the recommendations of the Comprehensive Plan, for the reasons as listed in the staff report and on the agenda. The staff believes that an I-1 zone, with conditional zoning restrictions, would be appropriate on the subject property, given its proximity to the nearby hotels. The staff is proposing to prohibit 10 uses via conditional zoning, primarily ones that would involve noise in the off-hours. Ms. Wade stated that the staff and the Zoning Committee recommended approval of this request.

Development Plan Presentation: Mr. Hunter presented the rendered preliminary development plan, noting the location of the existing retail building on the property. He also indicated the locations of the proposed reconfigured parking area; a display area for vehicles; and a fenced area to secure vehicles overnight.

Mr. Hunter stated that the Subdivision Committee recommended approval of this plan, subject to the 14 conditions as listed on the agenda. Conditions #6 - #10 refer to primarily "clean-up" items on the plan. Condition #11 refers to the fenced area depicted on the plan, which is proposed to be used to secure vehicles overnight. The required landscape islands in the parking area are currently proposed to be located inside that fence; the staff is concerned that the islands could be removed, if they are not relocated outside the fence. Condition #13 is related to the variance request, which was filed in conjunction with this zone change. Mr. Hunter said that the staff recommended condition #14 because they thought the petitioner might like to change the plan status to final, but the petitioner has indicated a desire for this to remain a preliminary development plan.

Variance Presentation: Mr. Emmons presented the variance report, noting that perimeter landscaping, including a 6' fence, trees, and a hedge, is required by the Zoning Ordinance whenever an industrial zone adjoins any other zone. The petitioner is requesting to eliminate the required perimeter landscaping.

Mr. Emmons said that the staff is recommending approval of the requested variance, for the reasons as listed in the staff report and on the agenda. He noted that, due to the commercial nature of the area, requiring the landscaping would actually result in the subject property being out of character with the surrounding properties.

Mr. Emmons explained that, in addition, there are several unique circumstances that justify the requested variance. On the east side of the property, the building is located very near the property line, which would preclude the ability to install the minimum required landscaping there. The petitioner has agreed to maintain the vehicular use area parking screening, which includes a 3' hedge, which the staff believes is appropriate for the proposed use of the property.

Commission Questions: Ms. Mundy asked if the existing landscaping would be replaced if it died. Mr. Emmons answered that the vehicular use area screening is required, and it is included on the development plan, so it would need to be replaced.

Mr. Cravens asked what type of fence is proposed in the parking area. Mr. Emmons answered that he did not know, but he would defer to the petitioner. Mr. Cravens asked if the petitioner would need to install additional landscaping in the parking area. Mr. Emmons responded that the staff is recommending that the fence be relocated to the inside of the landscape islands, rather than outside, as depicted on the current plan.

Petitioner Representation: Nick Nicholson, attorney, was present representing the petitioner. He said that their development plan will remain a Preliminary one, and the petitioner will defer the issues with the fence and landscaping to the Final Development Plan stage. The petitioner hopes to find a different means with which to secure vehicles overnight, in which case the fence would be removed from the plan. Mr. Nicholson noted, with regard to Ms. Mundy's question, that the petitioner would be required to replace any landscaping that has died. There are basic Zoning Ordinance requirements that must be met, and additional requirements for parking areas for the sale of automobiles.

Mr. Nicholson stated that the petitioner is attempting to maintain the existing appearance of the property, which is very open. He said that all of the lots in the area have the same shrubs and trees, and the same spacing, and the petitioner wants to maintain the subject property in keeping with the existing character of the area. With regard to concerns about proximity to hotels, Mr. Nicholson noted that there is a hotel directly adjacent to the subject property, but it is bordered on its other side by a use very similar to what is proposed for the subject property. That property has the same type of screening as the subject property.

Commission Questions: Mr. Cravens asked if parts or scrap vehicles would be stored outside. Mr. Nicholson answered that the petitioner does not propose to store any such items outdoors, particularly given the proximity of the adjacent hotel. Mr. Nicholson explained that the back wall of the hotel adjoins the subject property, so the view should not be an issue.

He added that the petitioner is proposing to install bay doors in order to keep materials inside the building, and only small repairs would be done on the site.

Mr. Owens asked if condition #14 could be deleted, since the petitioner has indicated that the plan should remain preliminary. Mr. Sallee suggested that the Planning Commission could delete conditions #11 - #14. He said that the staff was concerned about maintaining the landscape islands, but the petitioner indicated they would like that condition removed.

Mr. Nicholson stated that the petitioner would be agreeable to maintaining condition #11, since they understand the staff's concern about the fence. He asked that the Commission change it to resolve the fence issue at the time of the Final Development Plan. Mr. Sallee suggested that, rather than changing the plan at this point with a "resolve" condition, that that condition could be deleted.

Zoning Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-1 (Brewer and Penn absent; Cravens opposed) to approve MARV 2015-28, for the reasons provided by staff, subject to the conditional zoning restrictions as recommended by staff.

Variance Action: A motion was made by Mr. Berkley, seconded by Ms. Richardson, and carried 8-1 (Brewer and Penn absent; Cravens opposed) to approve the requested variance, for the reasons provided by staff, subject to the conditions as listed in the staff report and on the agenda.

Development Plan Action: A motion was made by Mr. Berkley, seconded by Mr. Wilson, and carried 8-1 (Brewer and Penn absent; Cravens opposed) to approve ZDP 2015-120, subject to the first ten conditions as listed; deleting conditions #11, #12, #13, and #14.

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