

Note: Planning Commission took a recess at 3:05 p.m. until 3:12 p.m.

3. **525 UPPER, LLC ZONING MAP AMENDMENT & PEGASUS HOLDINGS, LLC (AMD) ZONING DEVELOPMENT PLAN**

- a. PLN-MAR-18-00019: 525 UPPER, LLC (11/4/18)*- petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.14 net (0.18 gross) acre, for property located at 521-523 S. Upper St.

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. 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.

This area is within the Newtown Pike Extension Corridor Small Area Plan boundary, which the Planning Commission adopted in January, 2003 as an amendment to the 2001 Comprehensive Plan. The recommended land use for this block is the same as under the 2001 Plan. Both Plans recommend a High Density Residential land use for the subject property. This land use category is further defined in the Plan as different housing types at a density of 10-25 dwelling units per net acre. Similarly, the 2013 Comprehensive Plan recommended a High Density Residential land use for the subject property.

The petitioner proposes a rezoning in order to best utilize the property for additional neighborhood-oriented businesses. The petitioner plans to retain the historic structure, and provide retail on the first floor and two residential dwelling units on the second floor. Off-street parking is provided in the rear of the structure.

The Zoning Committee Recommended: **Approval** to the full Commission.

The Staff Recommended: **Approval**, for the following reasons:

1. A restricted Neighborhood Business (B-1) zone is substantially in agreement with the 2013 Comprehensive Plan and the Goals and Objectives of the 2018 Comprehensive Plan, for the following reasons:
 - a. The site has been an underutilized site with Professional Office (P-1) zoning. The property should be considered for a change to a restricted Neighborhood Business (B-1) zone in order to permit a use that will better serve the needs of the surrounding neighborhood within the Urban Service Area.
 - b. By maintaining the existing historic structure, the development plan will respect the context and design features of the surrounding area and the existing urban form (Theme A, #Goal 2.B).
 - c. The integration of bike infrastructure on the subject property will prioritize multi-modal options that de-emphasize single-occupancy vehicle dependence (Theme B, Goal #2.D).
 - d. The incorporation of potential new uses will incentivize the renovation, restoration, development and maintenance of the historic structure (Theme D, Goal #3.B).
 - e. Staff agrees that retail that is focused on the needs of the surrounding community can act as a draw for young and culturally diverse professionals (Theme C, Goal #2.D).
 2. This recommendation is made subject to approval and certification of PLN-MJDP-18-00068: Pegasus Holdings, LLC (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 following use restrictions shall apply to the property via conditional zoning:
 - a. Branch banks and drive-through facilities are to be prohibited at this location.
 - b. The portions of the existing structure on this property originally constructed in the 19th Century are to be retained and maintained.
 - c. Free-standing signage shall be limited to a maximum of 5' in height and 8 square feet in size.
 - d. Wall-mounted signage shall be limited in size to a maximum of 3% of the wall area to which it is affixed.

These restrictions are appropriate because they have been offered by the applicant and will limit inappropriate uses and maintain the historic character of the property.
- b. PLN-MJDP-18-00068: PEGASUS HOLDINGS, LLC (AMD) (11/4/18)* - located at 521 AND 523 S. UPPER STREET. (Barrett Partners)

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, and storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.

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4. Landscape Examiner's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree preservation plan.
7. Division of Waste Management's approval of refuse collection locations.
8. Denote 10' building line required by the B-1 zone.

Staff Zoning Presentation – Mr. Baillie presented the staff report and recommendations for the zone change. He said that the staff has received 13 letters of opposition, which were distributed to the Planning Commission. He displayed photographs of the subject properties and aerial photographs of the general area. He said that the applicant proposes to create a mixture of retail and residential land use with off-street parking to the rear of the existing structure. He said that access to the parking lot would be off of Cedar Street. He said that the current structure on the property has historic value, dating back to the 19th century, but it is not located within the local Historic District (H-1) Overlay zone, registered with the Bluegrass Historic Trust or listed on the National Register of Historic Properties.

Mr. Baillie gave a brief history of the property's zoning. He said that the property had a zone change twice in its history. The most recent applicant contended that the property could not be redeveloped nor could the intensity of the use be increased without removing the historic structure. He said that at that time, the staff could not offer a rebuttal and sought to retain the historic structure on the property. He said that the conditional zoning on the property protected the historic elements of the structure that were not protected by the previous rezoning. He said that the current conditional zoning does not preserve the rear portions of the structure.

Mr. Baillie said that the applicant states that the application was in agreement with the 2013 Comprehensive Plan and several of the Goals & Objectives from the 2018 Comprehensive Plan. Additionally, the applicant believes that the inability to occupy the property with professional office uses indicates an inappropriateness of the current zoning, and they desire to expand the potential uses in an effort to attract more appropriate commercial uses. He said that the staff and the Zoning Committee are recommending approval of this zone change. He said that this property has been underutilized and this change will better suit the needs of the surrounding neighborhood and community; will maintain the existing historic structure; will integrate bike infrastructure; will incorporate potential new uses; and will incentivize the renovation, restoration, development, and maintenance of the historic structure. The staff agrees that the proposed retail can draw young and culturally diverse professionals. He said that the staff was also proposing maintaining the existing conditional zoning, as follows:

- a. Branch banks and drive-through facilities are to be prohibited at this location.
- b. The portions of the existing structure on this property originally constructed in the 19th Century are to be retained and maintained.
- c. Free-standing signage shall be limited to a maximum of 5' in height and 8 square feet in size.
- d. Wall-mounted signage shall be limited in size to a maximum of 3% of the wall area to which it is affixed.

These restrictions are appropriate because they have been offered by the applicant and will limit inappropriate uses and maintain the historic character of the property.

Development Plan Presentation – Mr. Martin presented a rendering of the final development plan associated with this zone change. He said that there will be no physical changes to the building. He said that the applicant will maintain the existing two-story building, which is approximately 2,500 square feet. He said that there is an existing access easement on the rear of the property. He said that they are currently meeting the landscape buffer that is required for the proposed zone. He concluded by saying that there are a few conditions recommended by the Subdivision Committee, and that the staff and Subdivision Committee both recommended approval.

Applicant Presentation – Mr. Walbourn, attorney representing the petitioner, presented a PowerPoint presentation to the Planning Commission and the audience members. He gave a brief explanation of the proposed zone change indicating that this request was about the type of land use being proposed on the property, not about the development plan changing. This property has been located in a Professional Office (P-1) zone for thirteen years, but has never had a P-1 user on the site, due to the restricted amount of parking. He said that they agreed to carry forward the conditional zoning restrictions imposed as part of the 2005 rezoning. He indicated that his client was trying to broaden the type of uses to attract a leasee to this area. He then said that the B-1 zone is neighborhood-oriented and it permits residential use, as well. The University of Kentucky campus is one of the areas where mixed-use developments are being used and students do not mind living above a commercial use. The zone change request is exceedingly small in scope and the imposition of numerous conditional zoning restrictions are contrary to the purpose of both conditional zoning and this request.

Mr. Walbourn said that the applicant was in agreement with the staff's recommendations, including the conditional zoning restrictions for the property.

Commission questions – Mr. Nicol asked about the history of the property. Mr. Walbourn briefly explained the timeline of the past and current zones on this property and the nearby properties.

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Citizen Comments – Jennifer Kaufman, president of Historic South Hill Neighborhood Association, was present in opposition of the requested zone change. She indicated that even though Mr. Walbourn attended a neighborhood meeting, there are still some concerns and questions as to whether or not this proposed zone change will be neighborhood friendly. She then said that the proposed zone change does encroach into a residential area and the current zoning is appropriate for this area. She added that the neighborhood understands that the applicant has been unsuccessful in attracting users, but there are portions of the Comprehensive Plan that support maintaining the current zoning. She added that should the Planning Commission approve the requested zone change the neighborhood association requests that additional restrictions be added to prohibit liquor stores, arcades, pawn shops, live entertainment (noise), and outdoor lighting.

Mary Morgan, owner of sQecial Media and lives 517 S. Upper Street, was present to voice her concerns with the noise that could be generated from this proposed request.

Tim Condo, Bluegrass Trust for Historic Preservation, was present to voice his concerns about preserving the historic structure.

Rebuttal – Mr. Walbourn said that a Professional Office (P-1) zone was not appropriate for this site and it has failed to attract a user to this site for 13 years.

Mr. Baillie clarified that the nearby area that is zoned R-4 cannot be developed as multi-family residential, per a legal settlement agreement. He said that the reason the staff did not seek additional conditional zoning restrictions was primarily due to the fact that the building was being maintained and its continued operation as a historic structure, as well as the small size of the site. He then said that many of the neighborhood association's request to add conditional zoning restriction would had been precluded already due to the size of the site, along with other issues.

Commission questions – Mr. Owens said that there is a lot of concern with the potential noise, and asked if the applicant had thought of restricting the hours of operations. Mr. Walbourn said that they are not prepared to offer additional zoning restrictions, but they are agreeable with the staff recommendation.

Mr. Owens asked for staff comments regarding adding more restrictions, particularly for the noise. Mr. Baillie said that the size of the site and parking requirement would preclude the type of use that would be allowed.

Mr. Penn asked if a new condition #9 could be added to "Must maintain the 19th Century portion of the historic structure". Mr. Walbourn said that they would not object if condition #9 were to be added, but the conditional zoning restrictions already provide for that protection. Mr. Martin said that conditional zoning restrictions are listed on the development plan.

Mr. Nicol asked if these sites could be converted back to residential uses. Ms. Wade explained that the process would be the same, the applicant would need to seek a zone change. Mr. Nicol said that it seems this area is a mixture of commercial and residential. Ms. Wade said that within the general area it is more commercial and the staff would be surprised if one of the businesses would want to convert back to residential. She added that residential is allowed on the second floor of the building in the proposed zone.

Zoning Action – A motion was made by Mr. Penn, seconded by Mr. Owens, and carried 8-0 (Brewer and Plumlee absent) to approve **PLN-MAR-18-00019: 525 UPPER, LLC** for the reasons provided by the staff.

Development Plan Action – A motion was made by Mr. Penn, seconded by Mr. Owens, and carried 8-0 (Brewer and Plumlee absent) to approve **PLN-MJDP-18-00068: PEGASUS HOLDINGS, LLC (AMD)**, as presented by the staff