

2. **COMMUNITY VENTURES PROPERTIES, LLC, ZONING MAP AMENDMENT & COMMUNITY VENTURES PROPERTIES, LLC ZONING DEVELOPMENT PLAN**

- a. PLN-MAR-16-00007: COMMUNITY VENTURES PROPERTIES, LLC – petition for a zone map amendment from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone, for 0.35 net (0.54 gross) acres, for properties located at 561, 563, and 565 E Third Street; and a Downtown Frame Business (B-2A) zone, for 2.38 net (3.95 gross) acres, for properties located at 556 and 576 E Third Street; and 225, 261 and 265 Midland Avenue, and 250 Lewis Street. Dimensional variances are 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. 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 subject site is located within the boundary of the Downtown Master Plan (2007) as well as the adopted East End Small Area Plan (2009). Both plans encourage infill mixed-use development along the Midland Avenue and E. Third Street corridors.

The petitioner proposes a rezoning to create a mixed-use project with about 272,000 square feet of space. The project is planned to include retail space, a greenhouse, 102 apartment/condominium dwelling units, 30 senior living dwelling units, a senior community space, a greenhouse, professional offices, and an associated off-street parking area. Dimensional variances are requested with the zone change and a traffic impact study has also been prepared.

The Zoning Committee Recommended: Approval.

The Staff Recommends: Approval, for the following reasons:

1. The requested Neighborhood Business (B-1) zone and Downtown Frame Business (B-2A) zone are in agreement with the 2013 Comprehensive Plan and the East End Small Area Plan, an adopted element of the Comprehensive Plan, for the following reasons:
 - a. The Goals and Objectives of the 2013 Comprehensive Plan recommend expanded housing choices (Theme A, Goal #1); support infill and redevelopment as a strategic component of growth and identify areas of opportunity for infill that respects the area's context and design features (Theme A, Goal #2 and #2a); provide well-designed neighborhoods and communities, including mixed-use and mixed type housing and multi-modal transportation networks (Theme A, Goal #3); support and showcase local assets to further the creation of a variety of jobs (Theme C, Goal # 1); attract the world's finest jobs, encourage entrepreneurial spirit, and enhance our ability to recruit and retain our workforce (Theme C, Goal #2); provide for accessible community services to meet the health, safety and quality of life of residents and visitors (Theme D, Goal #2); and uphold the Urban Service Area concept (Theme E, Goal #1).
 - b. East End Small Area Plan goals and objectives recommend to: create housing that is affordable, accessible and attractive to a diverse range of people (#2); promote new commercial development to create a mix of uses that respects and enhances the residential neighborhoods of the East End (#3); create a neighborhood where daily needs can be met by walking, cycling or transit (#5); ensure compatibility and encourage a complimentary relationship between adjacent land uses through strong urban design (#7); protect and enhance personal health and the environment (#9); and grow a locally based economy that offers opportunities to all residents (#12).
 - c. The SAP, as well as the Downtown Master Plan that preceded it in 2007, recommends infill mixed-use future land use along the Midland Avenue and E. Third Street corridors (p.60-62).
 - d. The proposed zone change and land uses meet these goals and objectives in that the petitioner is proposing three mixed-use structures; about 130 dwelling units, some designated for senior living; a community space for area senior citizens, a greenhouse and multiple business opportunities that respects and enhances the residential neighborhoods of the East End; and the project will help to improve the gateway into the East End and downtown Lexington.
 - e. The subject properties are located at a principal intersection that is a gateway into downtown. The proposed business zoning will help meet the vision to create a thriving, and dynamic corridor with a mixture of land uses, urban design, and density.
 - f. The proposed B-2A zone is located within the area commonly and historically thought of as "downtown Lexington," and restrictions will ensure compatibility with surrounding land uses, especially the Charles Young Community Center.

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

2. This recommendation is made subject to approval and certification of PLN-MJDP-16-000015: Community Ventures Properties, LLC, 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 subject properties:
 - a. **B-2A Zone – Prohibited Uses:**
 1. Establishments for the display, rental or sale of automobiles, motorcycles, trucks, farm equipment, or boats or supplies for such vehicles.
 2. Minor automobile and truck repair.
 3. Pawnshops.
 4. Wholesale establishments.
 5. Any type of adult entertainment, adult arcades, massage parlors, adult video stores and adult bookstores.
 6. Passenger transportation terminals (does not include bus stops).
 7. Drive-through facilities.
 - b. **B-1 Zone – Prohibited Uses:**
 1. Automobile service stations, automobile and vehicle refueling stations, and/or gas pumps.
 2. Repair of household appliances, other than computers or electronics.
 3. Outdoor miniature golf or putting courses.
 4. Circuses or carnivals, even on a temporary basis.
 5. Indoor theaters and arcades, including pinball and electronic games.
 6. Drive-through facilities.
 7. Establishments for the retail or package sale of liquor, beer or wine.

These use restrictions are necessary and appropriate for the subject properties in order to ensure compliance with the 2013 Comprehensive Plan and East End Small Area Plan, and to better protect the surrounding neighborhood and the Charles Young Community Center.

b. **REQUESTED VARIANCES**

1. Increase the maximum height from 35' to 50' (in the B-1 zone)
2. Reduce the minimum front yard from 10' to 5' along Withrow Way
3. Reduce the minimum off-street parking from 28 spaces to 16 spaces (in the B-1 zone)
4. Reduce the minimum front yard from 10' to 0' (in the B-2A zone)

The Staff Recommends: Postponement of the requested front yard variance from 10' to 0' in a B-2A zone, for the following reasons:

- a. Approval of this variance could compromise the integrity of the Town Branch Trail project, since no detailed construction plans have been created for that work. Building setbacks from property are justified through Zoning Ordinances to protect private property from work in public rights-of-way, and vice versa.
- b. The existing building at the corner is justified in seeking a variance to these setback requirements, but the extent of the variances requested exceeds the applicant's request.
- c. A variance to the required Midland Avenue setback could be sought in the near future from the Board of Adjustment, once more information is known about the extent of the Town Branch Trail project.
- d. The two new B-2A buildings, as proposed, can be redesigned on the site to meet the required 10' front yard.

The Staff Recommends: Approval of a height variance from 35' to 44', and approval of the other two requested variances in a B-1 zone, for the following reasons:

- a. There will be no adverse health, safety or welfare impact to the adjoining neighborhood from these variances. The height variance is necessary to add a roof feature on the proposed building, and to allow it to have a pitched roof, as have others in the East End neighborhood. Parking will be available on the street and across the street in the future, and Withrow Way will be improved with curb, gutter and sidewalk once the B-1 building is completed. There will be no adverse impact to the Isaac Murphy Memorial Garden, directly across Nelson Avenue from this location.
- b. The unusual circumstance surrounding the proposed B-1 property is that it is encumbered by three (out of four) front yard requirements, which is rare for a single building, even in and near the downtown area.
- c. Strict application of the Zoning Ordinance would make the B-1 building less interesting and diverse from other (smaller) buildings in the general vicinity, with the exception of the applicant's building directly across East Third Street from this location. The applicant firmly believes that this project is infeasible without the granting of these variances.
- d. Approval of these variances would not result in an unreasonable circumvention of the Zoning Ordinance, as other commercial and mixed use buildings within ¼ mile of this location are similarly situated and/or deficient in off-street parking on their lots.
- e. The variances have been requested prior to construction and development of the property, and thus, there is no willful violation of any existing zoning regulation by the applicant.

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

1. Provided the Urban County Council rezones the property B-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 variances that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
4. Prior to obtaining an Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.
5. The parking lot shall be screened and landscaped as required by Article 18 of the Zoning Ordinance.
6. A pedestrian crosswalk shall be installed by the applicant across Withrow Way at the corner of East Third Street, to the approval of the Division of Traffic Engineering.

- c. PLN-MJDP-16-00015: COMMUNITY VENTURES PROPERTIES, LLC (10/30/16)* - located at 561 E. Third Street. **(Carman & Assoc.)**

The Subdivision Committee Recommended: Postponement. There were some questions regarding the requested variances and compliance with the open space requirements of the zone.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property B-2A/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. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Documentation of Division of Water Quality's approval of the Capacity of Assurance Program requirements, prior to plan certification.
8. Dimension the proposed buildings.
9. Denote building height in feet.
10. Clarify lot coverage and floor area ratio in site statistics.
11. Delete rear and side yard no limitation references.
12. Provided the Planning Commission grants the requested variances.
13. Denote adjoining property owner's information for B-1 property.
14. Delete notes #4 and #11.
15. Denote compliance with the Downtown Streetscape Master Plan will be achieved at time of Final Development Plan.
16. Dimension exterior of all buildings.
17. Denote required open space area per B-2 requirements.
18. Delete TPA information and replace with required Tree Inventory.
19. Discuss right-of-way and Legacy Trail on Midland Avenue.
20. Discuss timing of the construction of the proposed B-1 and B-2A properties.
21. Discuss street improvements and two way movement on Lewis Street.
22. Discuss stormwater detention and water quality measures.
23. Discuss environmental easement (covenant) under Building B.
24. Discuss sanitary sewer easement under Building B.
25. Discuss use of small building behind Building C.

Staff Zoning Presentation – Ms. Wade presented the staff report and recommendations on this zone change. She said that she has received a letter of support from the East End Community Development Corporation. She said that the staff as well as the Zoning Committee is recommending approval of this zone change.

Commission Comments – There were questions in regard to the proximity of the Town Branch Trail, which will run along Midland Avenue.

Development Plan Presentation - Mr. Martin presented the updated staff report on this development plan, which was handed out to the Commission. He pointed out that the underground parking is vital to this development. The revised conditions are:

1. Provided the Urban County Council rezones the property B-2A/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.

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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. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Clarify limits of existing building and label as such.
8. Denote that existing building shall have no front yard setback limitation along Midland Avenue and E. Third Street.
9. Provided the Planning Commission grants the requested variances.
10. Denote right-of-way and Legacy Trail on Midland Avenue shall be resolved at the time of Final Development Plan.
11. Denote timing of the construction of the proposed B-1 and B-2A properties shall be resolved at the time of Final Development Plan.
12. Denote street improvements and two way movement on Lewis Street shall be resolved at the time of Final Development Plan.
13. Denote stormwater detention and water quality measures shall be resolved at the time of Final Development Plan.
14. Denote sanitary sewer easement under Building B conflict shall be resolved at the time of Final Development Plan.
15. Denote that architectural elements and fenestration shall be discussed at the time of Final Development Plan.

Variance – Mr. Sallee presented the staff report on the variances for this development and discussed the four conditions that the staff has recommended. He said that the staff understands that the petitioner will be withdrawing requested variance number four.

Traffic Impact Study – Mr. Emmons presented the staff report of the Traffic Study, prepared by Adam Kirk Engineering, for this development and said that this will have a traffic calming effect as a dense urban environment will slow the vehicular traffic.

Petitioner Presentation – Jacob Walbourn, McBrayer, McGinnis, Leslie & Kirkland, PLLC, was present representing the petitioner and said that he believes the applicant is in agreement with the staff's recommendations. He said the applicant is not in favor of vehicular transportation; that he is a large proponent of bicycling and pedestrian facilities, which is the focus of this development.

Mr. Walbourn said that the applicant has withdrawn the requested variance number four, to reduce the minimum front yard setback from 10' to 0' (in the B-2A zone). He also said that the applicant had met with the neighborhood, and listened to their concerns, before the application was filed. He said that the applicant is committed to working with the neighborhood to address issues before the Final Development Plan stage.

Mr. Phil Halobeck, developer representing Community Ventures, presented the design guidelines of the proposed development and discuss how it met the goals of the East End Small Area Plan and the 2013 Comprehensive Plan.

The following citizens were present in favor to this case:

Mr. Thomas Tolliver, 335 E. 3rd Street, said that he welcomes this development and wants the East End to have more diversity and is exactly is the East End needs.

Ms. Anita Franklin, near E. 6th Street, President of the Windmills Round Association and member of the Board of Charles Young Community Center, does welcome Community Ventures' vision, but has concerns about the young adults in the neighborhood finding employment.

The following citizens were present in opposition to this case:

Mr. Alvin Seals, 772 Caden Lane and member of the Board of Charles Young Community Center, has concerns about the recreation center and consideration of the youth in the area.

Petitioner Rebuttal – Mr. Walbourn said that he believes this proposed development will be an asset to the Charles Young Center.

Chairman's Comments – Chairman Wilson stated that the hearing was now "closed," and he opened the floor for discussion.

Zoning Action – A motion was made by Mr. Brewer, seconded by Mr. Owens, and carried 10-0 (Penn absent) to approve PLN-MAR-16-00007: COMMUNITY VENTURES PROPERTIES, LLC, for the reasons provided by the staff, including the conditional zoning restrictions.

Variance Action – A motion was made by Mr. Brewer, seconded by Ms. Richardson, carried 9-0 (Owens abstained, Penn absent) to approve the Requested Variances, for the reasons provided by the staff and to amend condition number one to the maximum height to 44' and to withdraw variance number 4 (in the B-2A zone).

Development Plan Action – A motion was made by Mr. Brewer, seconded by Ms. Richardson, carried 10-0 (Penn absent) PLN-MJDP-16-00015: COMMUNITY VENTURES PROPERTIES, LLC, with the revised conditions provided by the staff.

