

ORDINANCE NO. 82 -2018

AN ORDINANCE CHANGING THE ZONE 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 STREET. (525 UPPER, LLC; COUNCIL DISTRICT 3).

WHEREAS, at a Public Hearing held on September 27, 2018 a petition for a zoning ordinance map amendment for property located at 521-523 S. Upper Street from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.14 net (0.18 gross) acre, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change by a vote of 8-0; 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 521-523 S. Upper Street from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.14 net (0.18 gross) acre, 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 restrictions shall apply to the subject 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 and necessary because they have been offered by the applicant and will limit inappropriate uses and maintain the historic character of the property.

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: November 1, 2018

MAYOR 

ATTEST:



CLERK OF URBAN COUNTY COUNCIL

Published: November 8, 2018-1t

Legal Description of the
525 Upper LLC Property
Zone Change From P-1 to B-1
521 & 523 South Upper Street
Lexington, Fayette County, Kentucky

ALL THAT TRACT OR PARCEL OF LAND SITUATED ON THE NORTHWESTERLY SIDE OF SOUTH UPPER STREET APPROXIMATELY 50 FEET NORTHEAST OF THE CEDAR STREET RIGHT OF WAY IN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning at a point in the centerline of South Upper Street approximately 50 feet northeast of the north right of way of Cedar Street; thence leaving South Upper Street north 45 degrees 00 minutes 00 seconds west 155.00 feet; thence north 45 degrees 00 minutes 00 seconds east 50.00 feet; thence south 45 degrees 00 minutes 00 seconds east 155.00 feet to the centerline of South Upper Street; thence along the centerline of South Upper Street south 45 degrees 00 minutes 00 seconds west 50.00 feet to the point of beginning and containing 0.178 gross acres and 0.144 net acres.

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

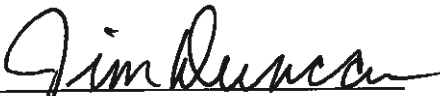
IN RE: **PLN-MAR-18-00019: 525 UPPER, LLC** - petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.14 net (0.18 gross) acre, for property located at 521-523 S. Upper St. (Council District 3)

Having considered the above matter on **September 27, 2018**, at a Public Hearing, and having voted **8-0** 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 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.

ATTEST: This 15th day of October, 2018.


Secretary, Jim Duncan

WILLIAM WILSON
CHAIR

Note: The corollary development plan, PLN-MJDP-18-00068: PEGASUS HOLDINGS, LLC (AMD) was approved by the Planning Commission on September 27, 2018 and certified on October 10, 2018.

K.R.S. 100.211(7) requires that the Council take action on this request by December 26, 2018.

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

OBJECTORS

- Jennifer Kaufman, President of the Historic South Hill Neighborhood Association
- Mary Morgan, local business owner

OBJECTIONS

- The existing zoning is adequate to serve the neighborhood and the proposed zone change is not necessary.
- Concerned about the possibility of noise associated with neighborhood business uses, such as outdoor restaurants and live music.

VOTES WERE AS FOLLOWS:

AYES: (7) Bell, Berkley, Forester, Mundy, Nichol, Owens, Penn and Wilson

NAYS: (0)

ABSENT: (2) Brewer and Plumlee

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **APPROVAL** of **PLN-MAR-18-00019** carried.

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

MAP AMENDMENT REQUEST (MAR) APPLICATION

1. CONTACT INFORMATION (Name, Address, City/State/Zip & Phone No.)

Applicant:

525 UPPER LLC, 343 WALLER AVE, STE 100, LEXINGTON, KY 40504

Owner(s):

525 UPPER LLC 343 WALLER AVE STE 100 LEXINGTON KY 40504

Attorney:

Jacob Walbourn, McBrayer McGinnis Leslie & Kirkland, PLLC, 201 E Main Street, Suite 100, Lexington, KY 40507 PH: 859-231-8780

2. ADDRESS OF APPLICANT'S PROPERTY

521 and 523 UPPER ST, LEXINGTON, KY

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY

Zoning	Existing		Requested		Acreage	
		Use	Zoning	Use	Net	Gross
P-1		Residential	B-1	Retail	0.144	0.178

4. EXISTING CONDITIONS

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input checked="" type="checkbox"/> YES <input 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

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

Roads:	LFUCG
Storm Sewers:	LFUCG
Sanity Sewers:	LFUCG
Refuse Collection:	LFUCG
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



August 6, 2018

Mr. William Wilson, Chairman
Lexington-Fayette Urban County Planning Commission
200 East Main Street
Lexington, Kentucky 40507

RE: Zone Change Application from P-1 to B-1
521 and 523 South Upper Street

Dear Chairman Wilson:

Please be advised that we represent 525 Upper LLC. 525 Upper is the owner of 521, 523, and 525 South Upper Street in Lexington. My client desires to rezone 521 and 523 South Upper from its current Professional Office (P-1) to the Neighborhood Business (B-1) Zone. We believe these parcels can be developed in accord with the goals and objectives of the 2013 Comprehensive Plan, as well as the recently adopted Goals and Objectives for the 2018 Comprehensive Plan. We further submit that the current zoning for the property is inappropriate and the proposed zoning category is appropriate.

The subject parcels are two small parcels fronting South Upper, totaling slightly more than 0.14 acres. The properties are between Pine Street and Cedar Street, near the "Centercourt" MU-2 Development, and the recently approved B-1 project located on the former Jersey Street parking lot, previously owned by the University of Kentucky. The parcels, generally speaking, are near the commercial area that serves the University of Kentucky's staff and students. The neighboring parcel, 525 South Upper, is also owned by my client, and is already zoned B-1.

My client desires to rezone these two small parcels to bring them in conformity with the larger 525 South Upper Property. My client purchased the subject properties in 2014, but the properties have been zoned P-1 since 2005. Since their rezoning, the parcels have struggled to attract P-1 users. My client believes these properties would be more effectively utilized as B-1 parcels. The South Upper corridor, particularly in this area, has commercial uses that support the University of Kentucky area. We believe the properties, if able to obtain B-1 zoning, would be more effectively utilized in uses that more directly support the UK population.

We are mindful of the conditional zoning restrictions that were imposed on this property when it was rezoned to P-1 in 2005. We do not propose to alter these restrictions at this time. We understand that these properties are unique, and will comply with the conditions as imposed in 2005.

We have not yet identified any end users for the properties, but believe these properties would be attractive to potential retail-style users. We believe the most effective uses in this area may be retail-style uses, with residential space above, as is permitted in the B-1 zone. We believe this will address a need for residential density in Lexington generally, as well as in the UK area and downtown area specifically.

In sum, we believe that this rezoning request is in accord with many of the goals and objectives of the 2013 Comprehensive Plan (“Comp Plan”), and the recently adopted 2018 Goals and Objectives. We further submit that the current zoning is in appropriate and the proposed zoning is appropriate. Our conclusions are based on the following:

Growing Successful Neighborhoods

Theme A of the Comp Plan addresses several goals regarding residential life in Fayette County. We believe this redevelopment proposal embraces Goals 1 and 3 articulated in Theme A of the Comp Plan.

Expand housing choices. The first goal articulated in the first theme of the Comp Plan is to expand housing choices. A specific sub-objective is to plan for housing that addresses the market needs for all of Lexington-Fayette County’s residents, including, but not limited to, mixed-use and housing near employment. As you are well aware, the University of Kentucky is one of Lexington’s largest employers, and this site is a short walk to the campus area. It further is located in close proximity to the central business district. And, the proposal would permit “mixed-use” housing, inasmuch as the first floor could be utilized for businesses to support the neighborhood, while maintaining needed housing density in the area.

Support infill and redevelopment. The Comp Plan calls infill and redevelopment that respect the area’s context whenever possible. The first-floor business/upper level retail model has proven effective in the University of Kentucky campus area, and is common in the area generally. Permitting this zone change will provide for neighborhood business support, while maintaining residential density, that remains in context of the area. Further, as the applicant does not propose to amend the previously imposed conditional zoning restrictions, the elements of the existing building that were constructed in the 1800s will remain, further respecting the context of the neighborhood.

Provide well designed neighborhoods and communities. The Comp Plan emphasizes that our neighborhoods must be designed in a manner that allows existing neighborhoods to continue to flourish, and also looks towards mixed-use housing options that serve various modes of transportation. Due to its proximity to UK, we believe this project would assist those who may rely on transportation methods other than owning a personal vehicle. Permitting neighborhood business uses would allow area residents to potentially walk to obtain goods and services, and the residential uses will provide for walkability to significant employers, thus serving those who may not desire to have an automobile.

Protecting the Environment

Theme B of the Comp Plan states goals related to protecting our natural resources. We believe this proposal addresses Goal 2 of Theme B of the 2013 Comp Plan.

Reduce Lexington-Fayette County's carbon footprint. The Comp Plan adopts a goal to reduce Lexington's impact on the environment, particularly our carbon footprint. By locating services and residential uses in highly trafficked and populated areas, we reduce our dependence on automobiles. This, in turn, reduces our carbon footprint.

Creating Jobs and Prosperity

Theme C of the Comp Plan articulates goals related to continued economic prosperity in Fayette County. We believe this redevelopment proposal embraces elements of Goals 1 and 2 of Theme C of the Comp Plan.

Support and showcase local assets to further the creation of a variety of jobs. We submit that our proposed development directly addresses this stated goal of the Comp Plan. Notwithstanding its current P-1 status, this property has struggled to identify P-1 users that are interested in this site. We believe the broader B-1 uses will likely permit these properties to flourish without negatively impacting the area. Further, the employment opportunities created can be utilized by UK students who may only need part-time jobs as they pursue educational goals.

Attract the world's finest jobs, encourage entrepreneurial spirit, and enhance our ability to recruit and retain a talented, creative workforce by establishing opportunities that embrace diversity with inclusion in our community. One way to attract new jobs and young professionals to Lexington is by providing quality of life opportunities that will bring a workforce of all ages and talents to the city. As has been exhaustively discussed, *supra*, this development can provide housing choices near employment centers, as well as near entertainment opportunities (both those hosted downtown and those hosted by UK).

Improving a Desirable Community

Theme D of the Comp Plan addressed ways to foster a desirable community. We submit that our proposal addresses Goal 2 of Theme D of the Comp Plan.

Provide for accessible community facilities and services to meet the health, safety and quality of life needs of Lexington-Fayette County's residents and visitors. Again, as has been noted extensively, *supra*, the instant proposal provides for the provision of necessary neighborhood services in close proximity to long-standing residential areas, without any necessary reduction in urban density. This proposal will allow the property to identify users that can serve the University of Kentucky community more effectively than the current P-1 zoning, which has not effectively developed over many years.

Maintaining a Balance Between Planning for Urban Uses and Safeguarding Rural Land

Theme E of the Comp Plan embraces goals related to preserving rural land while encouraging growth. We believe this redevelopment proposal embraces elements of Theme E of the Comp Plan.

Uphold the Urban Services Area concept. This goal requires close monitoring of the absorption of vacant or under-utilized land in the Urban Service Area as well as encouraging the compact, contiguous, and/or mixed-use sustainable development within the Urban Service Area to accommodate future growth needs. As discussed above, this proposal proposes context-sensitive infill that reduces the stresses on our urban service boundary.

2018 Goals and Objectives

Though the 2018 Comprehensive Plan is not yet complete, we believe that this proposal also is in accord with many of the goals and objectives adopted by the Urban County Council earlier this year. Though these goals have not yet been elaborated upon, in brief, we believe this proposal addresses the following adopted goals and objectives:

Theme A: Growing Successful Neighborhoods

- Goal 1, Subgoal B – accommodate the demand for housing in Lexington responsibly, prioritizing higher-density and mixture of housing types
- Goal 2, Subgoal A – Identify areas of opportunity for infill, development, adaptive reuse, and mixed-use development.
- Goal 2, Subgoal B – respect the context and design features of areas surround development projects and develop design standards and guidelines to ensure compatibility with existing urban form.
- Goal 3, Subgoal A – enable existing and new neighborhoods to flourish through improved regulation, expanded opportunities for neighborhood character preservation, and public commitment to expand options for mixed-use and mixed-type housing throughout Lexington-Fayette County.
- Goal 3, Subgoal B – strive for positive and safe social interactions in neighborhoods, including, but not limited to, neighborhoods that are connected for pedestrians and various modes of transportation.
- Goal 4, Subgoal A – incorporate schools, libraries, and other community-focused educational institutions into neighborhoods in order to maximize safe routes for all pedestrians and bicyclists.

Theme B: Protecting the Environment

- Goal 2, Subgoal D – prioritize multi-modal options that de-emphasize single-occupancy vehicle dependence.

Theme C: Creating Jobs and Prosperity

- Goal 1, Subgoal A – strengthen efforts to develop a variety of job opportunities that lead to prosperity for all.
- Goal 2, Subgoal A – prioritize the success and growth of strategically-targeted employment sectors (healthcare, education, high-tech, advanced manufacturing, agribusiness, agritourism, and the like) and enable infill and redevelopment that creates jobs where people live.
- Goal 2, Subgoal D – provide entertainment and other quality of life opportunities that attract young, and culturally diverse professionals, and a work force of all ages and talents to Lexington

Theme D: Improving a Desirable Community

- Goal 1, Subgoal B – develop a viable network of accessible transportation alternatives for residents and commuters, which may include... other strategies.
- Goal 2, Subgoal B – collaborate with educational and healthcare entities to meet the needs of Lexington-Fayette County’s residents and visitors
- Goal 3, Subgoal B – incentivize the renovation, restoration, development and maintenance of historic residential and commercial structures

Theme E: Maintaining a Balance between Planning for Urban uses & Safeguarding Rural Land

- Goal 1, Subgoal A – continue to monitor the absorption of vacant and underutilized land within the Urban Service Area
- Goal 1, Subgoal D – maximize development on vacant land within the Urban Service Area and promote redevelopment of underutilized land in a manner that enhances urban form and/or historic features.

Current Zoning Inappropriate, Proposed Zone Appropriate

In further support of our application, we submit that the present Professional Office (P-1) Zone is inappropriate and the proposed Neighborhood Business (B-1) is appropriate. As was mentioned above, finding P-1 users has been a challenge in the thirteen (13) years that have passed since these properties were previously rezoned. Office users often require more substantial parking than is available at this location, and there is an abundance of office space in the nearby downtown area. The small nature of these properties make it challenging to develop for general office users, and specific single users have not found the space appropriate. In short, though the P-1 rezoning was likely pursued with the best intentions, it has not shown as fruitful as perhaps initially believed.

Conversely, B-1 uses appear more appropriate for this area. There are a number of housing locations in close proximity, both new and old, housing a variety of residents – professionals and students alike. Providing these residents with walkable neighborhood services has shown to be a viable business model for neighborhood properties. Via the conditional zoning restrictions that the applicant is not seeking to change, we submit that we can provide appropriate neighborhood services without changing the character of the zone. Furthermore, the first floor business/upper floor residential model has proven most effective in the campus context.

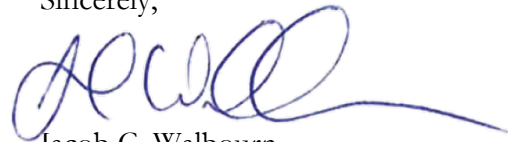
Accordingly, for the foregoing reasons, we submit that P-1 zoning is no longer appropriate at this location, and B-1 zoning is appropriate.

Conclusion

As you can see, this proposal comports with many of the applicable goals and objectives of the Comp Plan, and the goals and objectives contemplated for our next Comprehensive Plan. We also believe we have demonstrated the inappropriateness of the current category and appropriateness of the propose category. We believe this project is important in that it implements numerous goals and objectives of the Comp Plan, while minimally impacting the existing neighborhood and area residents, and likely enhancing their community.

Based on the foregoing, we respectfully request approval of our application as submitted. We look forward to presenting this application to you and discussing it with you.

Sincerely,



Jacob C. Walbourn

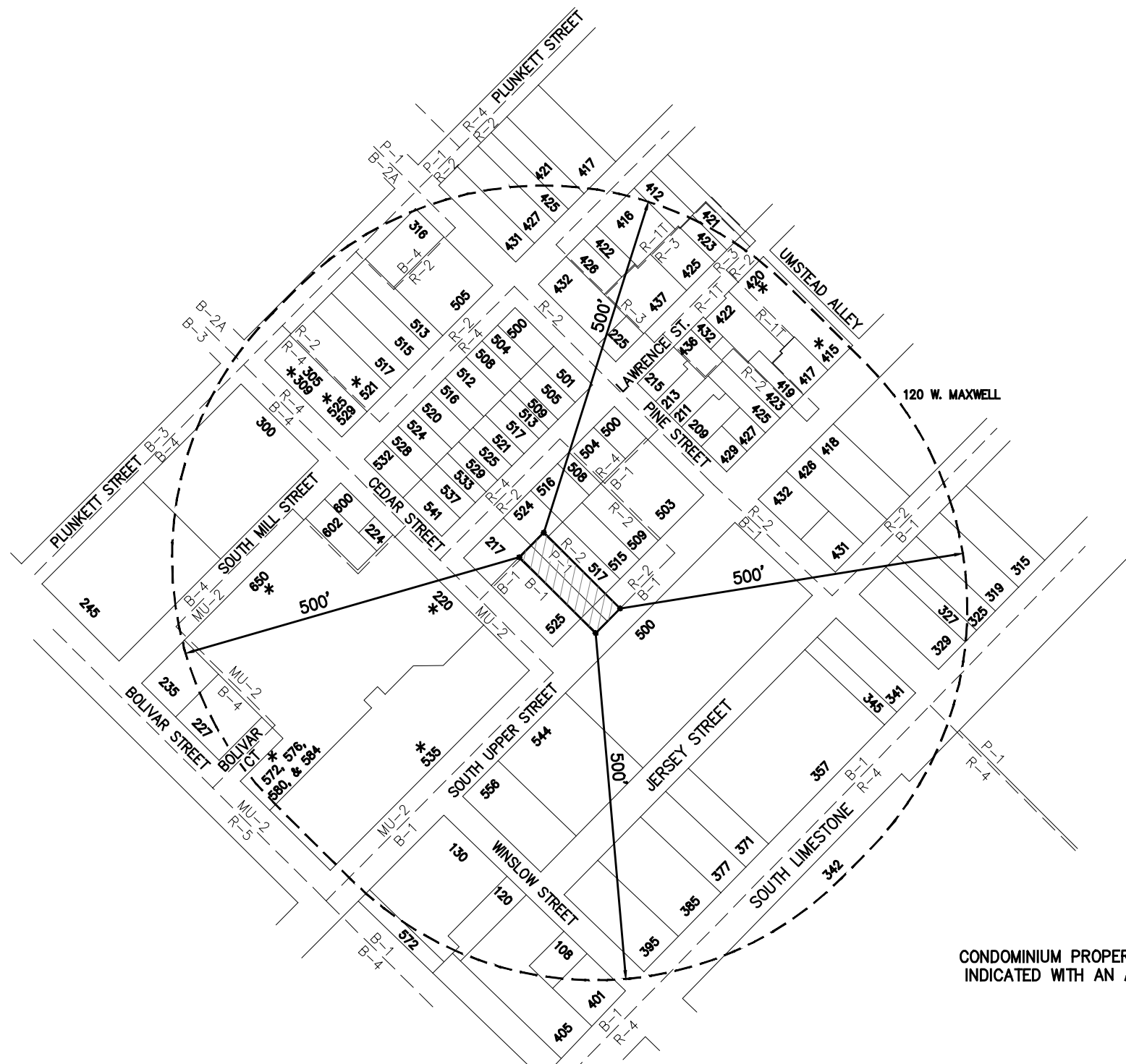
JCW/klm
Enclosures

4810-5134-7008, v. 1

Legal Description of the
525 Upper LLC Property
Zone Change From P-1 to B-1
521 & 523 South Upper Street
Lexington, Fayette County, Kentucky

ALL THAT TRACT OR PARCEL OF LAND SITUATED ON THE NORTHWESTERLY SIDE OF SOUTH UPPER STREET APPROXIMATELY 50 FEET NORTHEAST OF THE CEDAR STREET RIGHT OF WAY IN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

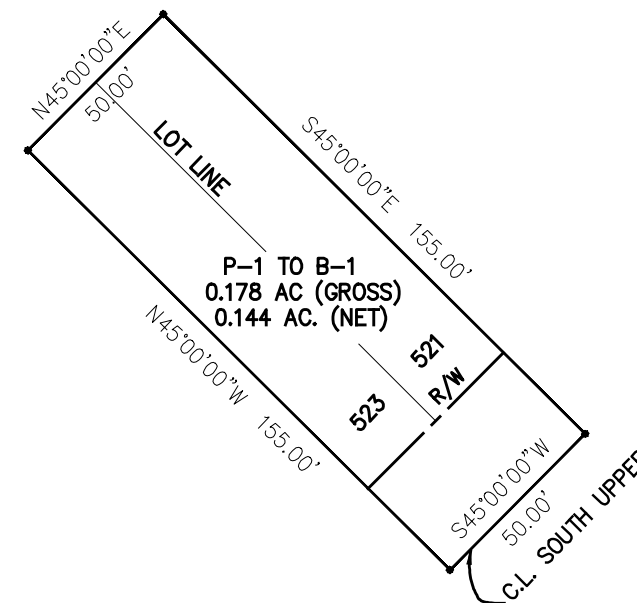
Beginning at a point in the centerline of South Upper Street approximately 50 feet northeast of the north right of way of Cedar Street; thence leaving South Upper Street north 45 degrees 00 minutes 00 seconds west 155.00 feet; thence north 45 degrees 00 minutes 00 seconds east 50.00 feet; thence south 45 degrees 00 minutes 00 seconds east 155.00 feet to the centerline of South Upper Street; thence along the centerline of South Upper Street south 45 degrees 00 minutes 00 seconds west 50.00 feet to the point of beginning and containing 0.178 gross acres and 0.144 net acres.



AREA NOTIFICATION MAP
1"=200'



VICINITY MAP
NTS



PROPERTY MAP
1"=50'

CONDOMINIUM PROPERTIES ARE
INDICATED WITH AN ASTERISK

STATE OF KENTUCKY
WESLEY B.
WITT
2187
LICENSED
PROFESSIONAL
LAND SURVEYOR

Wesley B. Witt

ZOMAR: FROM P-1 TO B-1				
PROPERTY ADDRESS: 521 & 523 SOUTH UPPER STREET	FROM	TO	GROSS	NET
OWNER/APPLICANT: 525 UPPER LLC. 343 WALLER AVE. STE 100 LEXINGTON, KY 40504	P-1		0.178 AC.	0.144 AC.
PREPARED BY: WESLEY B WITT, INC.				
DATE PREPARED: AUGUST 6, 2018			TOTAL	0.178 AC. 0.144 AC.

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

PLN-MAR-18-00019: 525 UPPER, LLC

DESCRIPTION

Zone Change: From: Professional Office (P-1) Zone
To: Neighborhood Business (B-1) Zone

Acreage: 0.144 net (0.178 gross) acres

Location: 521 and 523 S. Upper Street

EXISTING ZONING & LAND USE

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Property	P-1	Office/Residential
To North	R-2	Residential
To East	R-2	Residential
To South	B-1	Mixed-Use Project
To West	B-1	Residential

URBAN SERVICES REPORT

Roads – The subject property is located along S. Upper Street, approximately 60 feet northeast of the intersection with Cedar Street. Cedar Street acts as a collector street that services the Historic South Hill Neighborhood between S. Broadway and S. Upper Street. S. Upper Street is a major arterial roadway that consists of two lanes of one-way traffic running southwest from Downtown. S. Upper Street intersects with S. Limestone, and they form Nicholasville Road (US 27). The development proposes to utilize an existing access easement across the current parking lot along the back of 525 S. Upper Street for access and parking for the subject property.

Curb/Gutter/Sidewalks – S. Upper and Cedar Streets have been developed with curb, gutter and sidewalks.

Storm Sewers - The subject property is located within the upper reaches of the Town Branch watershed. There are no known stormwater problems in the area. However, in older areas of the city such as this, the storm sewers are often inadequate. Stormwater improvements do not exist on the subject property, although “The HUB” development being constructed southeast of the subject property will incorporate a large underground stormwater vault. The Division of Engineering will need to verify that the existing stormwater facilities comply with the Engineering Manual. No FEMA floodplain or major flooding problems exist on the site or in the immediate area.

Sanitary Sewers – This area is currently served by sanitary sewers. The subject property is in the Town Branch watershed and is served by the Town Branch Wastewater Treatment Facility, located on Lisle Industrial Avenue. There are no known issues associated with the existing sanitary sewers in the immediate vicinity of the subject property. A new sanitary sewer trunk line has been planned for this area, with the purpose of updating some of the aging systems in compliance with the EPA Consent Decree. Sanitary sewer capacity will need to be verified prior to certification of the final development plan for the proposed change of use at this location.

Refuse – The Urban County Government serves this portion of the Urban Service Area with refuse collection on Mondays.

Police – The nearest police station is located at the Police Headquarters, approximately ½ mile to the northeast of the subject property.

Fire/Ambulance – The nearest fire station (#1) is located approximately one mile northeast of the subject property, near the intersection of N. Martin Luther King Boulevard and E. Third Street.

Utilities – Natural gas, telephone service, internet, electric, water, streetlights, and cable television are all available to the subject property and the surrounding area.

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.

CASE REVIEW

The petitioner has requested a zone change from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone for 0.14 acres of property, located along S. Upper Street, near the corner of Cedar Street and S. Upper Street.

The site is comprised of two small lots located along the north side of S. Upper Street. It is located within a mixed-use block that is bounded by S. Upper Street, Pine Street, Lawrence Street, and Cedar Street. The subject site is located very near the University of Kentucky campus, and is directly across S. Upper Street from the mixed-use HUB development, which is currently under construction. Other than the HUB, there have been several new developments in the area near the site in the past decade. This includes the construction of townhomes along Lawrence Street and S. Mill Street, the construction of the Center Court Mixed-Use project, and the construction of the Raising Cane's restaurant. A single commercial use separates the subject property from Cedar Street, currently occupied by The Rooster's Nest Barber Shop & Shave Parlor and Cha Cha's Hair Salon. The Bleed Blue Tattoo Shop is currently closed.

The applicant proposes to modify the use of the property to create a mix of retail and residential use, with off-street parking to the rear of the property. This parking lot is physically separated from Cedar Street by the parking lot of the adjacent commercial use at the corner of Cedar Street and S. Upper Street. The structure on the subject property has historic value. Although not located in a local Historic District (H-1) Overlay zone, or registered with the Blue Grass Historic Trust or the Nation Register of Historic

Properties, it dates to the middle of the 19th century, and was reportedly “built and owned by free blacks before the Civil War.”

Until the mid-1990’s, the subject property was located in a High Density Apartment (R-4) zone. The subject property was downzoned to the Two-Family Residential (R-2) zone, despite the property being historically bordered on two sides by Neighborhood Business (B-1) zoning with conditional zoning restrictions (toward Cedar Street and across S. Upper Street). The property was rezoned in 2005 to the Professional Office (P-1) zone. At that time the applicant contended that the property could not be redeveloped as a duplex, nor increased in intensity (thus economically justifying its renovation) without removal of the historic structure. At the time, staff could not offer a rebuttal and sought to retain the historic property.

The designated Professional Office (P-1) zone for the subject property permitted an acceptable step-down in land use intensity at this location. More importantly, through the use of conditional zoning on the subject property, staff provided a mechanism to protect the historic elements of the structure that would not have protected by the previous zoning of the property. Furthermore, the P-1 zone allowed for residential use of one or two dwelling units above any offices located on the first floor of the historic structure. A form of mixed use that has been common historically, and more effectively utilized the urban landscape.

During the 2005 rezoning, the petitioner opined that the request was compatible with adjoining business and residential land uses, and that the proposed development respected the area’s context and design features. The petitioners sought to develop underutilized land for a greater function, while utilizing the existing infrastructure and transportation networks (which are adequate to serve the use). The petitioner also cited the potential to create jobs near where people live, and the potential for existing business expansion. The Planning Commission and the Urban County Council agreed, and adopted the following conditional zoning restrictions: prohibited branch banks, and drive-thru facilities; required the retention of the historic structure; and limited the size and height of permitted signage.

The current application requests to rezone of the subject property to a Neighborhood Business (B-1) zone, and makes similar justifications. However, through this proposal for a zone change, the applicant indicates both an inability to occupy the property with professional office uses, suggesting an inappropriateness of the current zone, as well as a desire to expand the potential uses in an effort to attract commercial users. The petitioner indicates that any new businesses that would occupy this space would more directly service and support the University of Kentucky student, faculty, and staff populations, although they could address nearby neighborhood needs as well.

The petitioner cited several of the 2013 Comprehensive Plan’s Goals and Objectives, and stated that the application is “consistent” with those adjoining zoning. 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 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. The location of this site is within an area of mixed zoning and land use, including B-1, B-4, MU-2, R-1T, R-2, R-3, and R-4 zones. Furthermore, the applicant has agreed to maintain the current conditional zoning restrictions. With the current variability of the area, as well as the restrictions in the modification of the structure and the use, staff finds that a restricted B-1 zone can be considered compatible with the immediate area and is in agreement with the Goals and Objectives of the 2013 and 2018 Comprehensive Plans.

The petitioner indicates that the rezoning will conform to all five themes of the adopted Goals and Objectives of the 2018 Comprehensive Plan. They opine that the rezoning and associated plan

accommodates the demand for housing in Lexington responsibly, prioritizing higher-density and a mixture of housing types (Theme A, Goal #1.B), while identifying areas of opportunity for adaptive reuse and mixed-use development (Theme A, Goal #2.A). Additionally, the plan seeks to respect the context and design features of the surrounding development projects and develop design standards and guidelines to ensure compatibility with existing urban form (Theme A, Goal #2.B). The petitioner indicates that the zone change will also allow for preservation of cultural resources by maintaining the historic structure (Theme A, Goal #3.A).

The petitioner suggests that the change in zone and the development plan will strive for positive and safe social interactions in neighborhoods, including, but not limited to, neighborhoods that are connected for pedestrians and various modes of transportation (Theme A, Goal #3.B), while prioritizing multi-modal options that de-emphasize single-occupancy vehicle dependence (Theme B, Goal #2.D). The proposed mixed-use on the site may also enable infill and redevelopment that creates jobs where people live (Theme C, Goal #2.A). The petitioner suggests that the rezoning and plan will also develop a viable network of accessible transportation alternatives for residents and commuters (Theme D, Goal #1.B), and incentivize the renovation, restoration, development and maintenance of historic residential and commercial structures (Theme D, Goal #3.B).

The petitioner further suggests that the rezoning will allow for the absorption of vacant and underutilized land within the Urban Service Area (Theme E, Goal #1.A), and maximize development on vacant and underutilized land in a manner that enhances urban form and/or historic features (Theme E, Goal #1.D).

Finally, the petitioner suggests that P-1 zone is inappropriate and the proposed B-1 zone is appropriate. The owner of the property has had difficulty occupying the office space, indicating that office users often require more substantial parking than is available at this location. They state that the competition caused by the office space in the nearby downtown area, coupled with the small nature of these properties, make it challenging for general office users, and specific single users have not found the space appropriate. The petitioner indicates that retail space would be a more appropriate use of the available first floor space.

While the petitioner suggests that the rezoning touches upon all levels of the adopted Goals and Objectives of the 2018 Comprehensive Plan, many of the referenced Goals are already being met and will not be modified in any way by the zone change. Staff recognizes the desire to allow for a greater utilization of the space, while maintaining the sense of place. The rezoning of the two lots will allow for a higher intensity of use of the site, while also keeping and maintaining the historic structure. Staff also finds that through the incorporation of bike infrastructure on the subject property will support multi-modal options. Finally, 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.

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.

HBB/TLW

9/5/18

Planning Services/Staff Reports/MAR/2018/PLN-MAR-18-00019 525 Upper LLC.doc

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.

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

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.

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

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