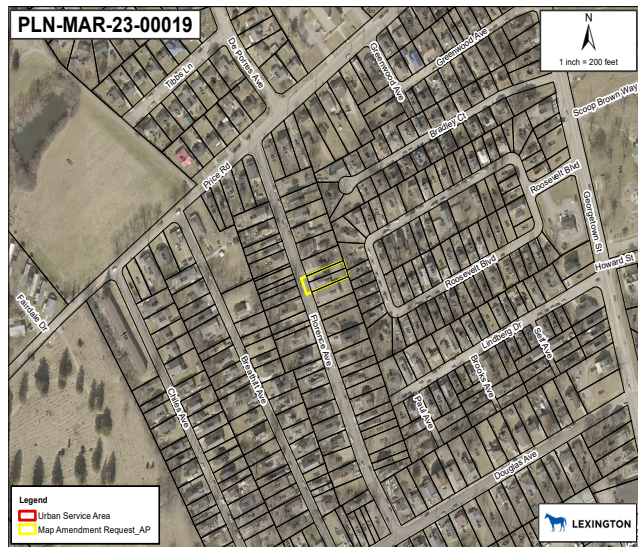


STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-23-00019 BLACK SOILS: OUR BETTER NATURE, LLC.

DESCRIPTION OF ZONE CHANGE

Zone Change:	From a Mixed Low Density Residential (R-2) To a Neighborhood Business (B-1) zone
Acreeage:	0.15 net (0.17gross) acres
Location:	760 & 762 Florence Avenue



EXISTING ZONING & LAND USE

PROPERTIES	ZONING	EXISTING LAND USE
Subject Properties	R-2	Vacant
To North	R-2	Residential
To East	R-2	Community Garden/ Residential
To South	R-2	Residential
To West	R-2	Residential

URBAN SERVICE REPORT

Roads - The subject properties are located on Florence Avenue, a two-lane local roadway. Florence Avenue connects Price Road to the north of the site to Douglass Avenue to the south within the Galberith neighborhood.

Curb/Gutter/Sidewalks - Curb, gutter and sidewalks exist along Florence Avenue.

Storm Sewers - The subject properties are located within the Town Branch watershed. There are no FEMA Special Flood Hazard Areas on the site or in the immediate vicinity. Storm sewers exist in this portion of the Urban Service Area.

Sanitary Sewers - The subject properties are located within the Town Branch sewershed. The property is served by the Town Branch Waste Water Treatment Facility, located on Lisle Industrial Avenue, inside New Circle Road, and west of Leestown Road approximately 3 miles to the northwest of the subject property.

Utilities - All utilities, including natural gas, electric, water, phone, cable television, and internet are available in the area.

Refuse - The Urban County Government serves this area with refuse collection on Thursdays.

Police - The subject properties are located within the and are served by the Central Sector Roll Call Center, located on Industry Road, approximately 3 miles southeast of the subject properties. The downtown Police Headquarters is approximately 1.5 miles southwest of the subject properties, on East Main Street.

Fire/Ambulance - Fire Station #10 is located approximately 1/2 of a mile northeast of the subject properties, on Finney Drive.

Transit - Lextran Route #2 has several stops on Florence Avenue, less than 300 feet from the subject properties.

Parks - The subject properties are less than 1/4 of a mile west of Douglass Park, and approximately 1/3 of a mile southeast of Whitney Young Park.

SUMMARY OF REQUEST

The applicant is seeking a zone change from the Mixed Low Density Residential (R-2) zone to the Neighborhood Business (B-1) zone in order to establish a grocery store use. In addition, the applicant is also seeking a variance to reduce the required property perimeter landscape screening from 15 feet to 0 feet along the southern property line, where the existing structure adjoins the R-2 zoned parcel at 758 Florence Avenue.

PLACE-TYPE

ENHANCED NEIGHBORHOOD
The Enhanced Neighborhood Place-Type is an existing residential area to be enhanced with additional amenities, housing types, and neighborhood serving retail, services, and employment options. Development should be context sensitive to surrounding areas and should add to the sense of place. Incorporating multi-modal connections is crucial to neighborhood success and viability.

DEVELOPMENT TYPE

LOW DENSITY NON-RESIDENTIAL / MIXED USE
Primary Land Use, Building Form, & Design
Primarily neighborhood serving commercial uses, services, or places of employment and/or a mix of uses within low to mid-rise structures appropriately scaled to the surrounding neighborhood.

Mixed-use structures can include a mix of residential, commercial, services, and or employment uses, and an activated and pedestrian-scale ground level should be provided.

Transit Infrastructure & Connectivity
Bicycle and pedestrian connections to adjoining neighborhoods, and buildings oriented towards the street are required to ensure the non-residential enhances nearby neighborhoods by creating a truly walkable environment.

Parking
Parking should be minimized, and where necessary, located internally.

PROPOSED ZONING



The intent of this zone is to accommodate neighborhood shopping facilities to serve the needs of the surrounding residential area. This zone should be located in areas of the community where services and facilities are/will be adequate to serve the anticipated population. This zone should be oriented to support and enhance a residential neighborhood. This zone should be established in accordance with the Goals, Objectives, Policies, and Development Criteria of the Comprehensive Plan.

PROPOSED USE



The petitioner is proposing the Neighborhood Business (B-1) zone in order to utilize an existing 1,200 square-foot structure for a grocery store use. The applicant is also proposing removing the on-site parking and replacing it with an outdoor patio area. A sidewalk is proposed through the middle portion of the site that will provide a connection to the community garden located on the adjoining property to the rear at 415 Roosevelt Boulevard. An area for outdoor seasonal events is located to the rear of the property.

APPLICANT & COMMUNITY ENGAGEMENT



The applicant has indicated that they spoke with the president of the Georgetown Street Neighborhood Association, and that meetings with the neighborhood groups are planned in the future. The applicant should provide further information on these meetings, and the response from the surrounding neighborhood.

PROPERTY & ZONING HISTORY



The properties at 760 & 762 Florence Avenue have been zoned Mixed Low Density Residential (R-2) since before the 1969 comprehensive rezoning of the city and county. Historically, the property at 762 Florence Avenue was utilized as a single-family residence; however, this structure was demolished in 1972 and the lot has remained vacant since. Since that time, this property has served as an informal path for residents of the neighborhood to walk between Florence Avenue and Roosevelt Boulevard. A variance to reduce various setbacks in order to establish a new single-family residence at this location was approved by the Board of Adjustment in early 2023 (PLN-BOA-23-00010); but the proposed home was never built.

The property at 760 Florence Avenue historically contained a legal nonconforming convenience store use that was in operation prior to the comprehensive rezoning of the city and county. This nonconforming use was recently discontinued, and as a result, a zone change is required to establish another retail use (grocery store) in its place.

COMPREHENSIVE PLAN COMPLIANCE



The Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community's resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. 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.

GOALS, OBJECTIVES, & POLICIES

The applicant opines that they are in agreement with the adopted Goals and Objectives of the 2045 Comprehensive Plan. The applicant further states that by adaptively reusing the existing vacant structure, the proposed request supports infill and redevelopment (Theme A, Goal #2). The applicant states that the request will prioritize multi-modal options to de-emphasize single occupancy vehicles with its proximity to transit service, pedestrian connections, and the installation of bicycle facilities (Theme B, Goal#2.d). The applicant states that the commercial use will be a neighborhood gathering point, promoting safe social interactions in neighborhoods (Theme A, Goal #3.b).

In addition, the applicant identifies several of the policies of the 2018 Comprehensive Plan that opine are being met with this request. The applicant states the proposal improves pedestrian safety and utilizes a people first design by removing the substandard parking areas in front of the structure, and providing for additional pedestrian connections. (Theme A, Policy #1). At the proposed scale, the development provides an accessible, neighborhood level commercial area and gathering space (Theme A, Design Policy #12; Theme A, Design Policy #10). The request introduces a neighborhood grocery use into an area that lacks walkable food options (Theme A, Density Policy #3). The request will maintain the existing sidewalk networks and provide bicycle facilities on-site in order to promote connectivity (Theme B, Sustainability Policy #2).

Staff agrees that the Goals, Objectives, and Policies of the Comprehensive Plan that were identified by the applicant can be met with this request.

PLACE TYPE, DEVELOPMENT TYPE, AND ZONE

In an effort to allow for the greatest contextual development of Lexington's Urban Service Area, applicants are asked to identify a Place-Type based on the location of the subject properties. Within each Place-Type there are recommended Development Types based on the form and function of the proposed development. Based on the Place-Type and Development Type there are also several recommended zones that are most appropriate based on the Goals, Objectives, and Policies of the Comprehensive Plan. While these zones are the ideal zoning categories to develop within a specified area, other zones may be considered, provided there is an appropriate justification addressing the unique situation and provided the development is able to adequately meet the associated Development Criteria.



The applicant has indicated that the site is located within the Enhanced Neighborhood Place-Type, and is seeking to utilize the property as Low Density Non-Residential / Mixed-Use Development Type. The property is located within an existing residential neighborhood, which the applicant is seeking to improve with a neighborhood serving use. Within the Enhanced Neighborhood Place-Type, the Low Density Non-Residential/ Mixed-Use Development Type is a recommended Development Type, and is in keeping with the scale of the detached single-family residential development in the area. The applicant's proposed Neighborhood Business (B-1) zone is a recommended zone for the chosen Place-Type and Development Type.

Staff concurs with the applicant's assessment of the Place-Type, and agrees that a low density commercial development can be appropriate for the subject property within a Neighborhood Business (B-1) zone.

DEVELOPMENT CRITERIA

The development criteria for a zone change are the distillation of the adopted Goals and Objectives from the 2045 Comprehensive Plan, as well as the policies put forth in the 2018 Comprehensive Plan. The development criteria for development represent the needs and desires of the Lexington-Fayette Urban County community in hopes of developing a better built environment. The applicable criteria are defined based on the proposed Place-Type and Development Type.

1. Site Design, Building Form and Location

Staff finds that the request meets the requirements for Site Design, Building Form, and Location, as the request reuses the existing commercial structure that has occupied the site since 1969, creates a safer pedestrian environment by removing substandard parking areas along Florence Avenue, and creates mixed-use commercial opportunities in a neighborhood that lacks an accessible grocery store.

There was one aspect of the applicant's proposal that staff would like the applicant to address.

A-DS4-1: A Plan for a connected multi-modal network to adjacent neighborhoods, greenspaces, developments, and contemporary uses should be provided.

The development plan shows a sidewalk connection from the Florence Avenue right-of-way that connects to the rear of the property, where the subject properties adjoin the community garden parcel on Roosevelt Street. This area is shown to be fenced and gated. In order to ensure this pedestrian connection still functions when the use is not operating, the applicant should explore relocating the fencing/gate further into the interior of the property, and providing the sidewalk outside of the proposed fencing. This would allow the applicant to secure their commercial use without impeding pedestrians from the neighborhood utilizing the proposed sidewalk.

2. Transportation and Pedestrian

Staff finds that this request meets the requirements for Transportation and Pedestrian Connectivity, as the proposed development expands on the existing pedestrian system, has several close connections to transit, and provides a safer experience for pedestrians along Florence Avenue.

3. Greenspace and Environmental Health

The proposed rezoning meets the criteria for Greenspace and Environmental Health as the proposal works with the existing landscape, will increase the overall tree canopy, and will not impact any environmentally sensitive areas.

STAFF RECOMMENDS: APPROVAL, FOR THE FOLLOWING REASONS:



1. The requested Neighborhood Business (B-1) zone is in agreement with the 2045 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - b. The request will activate an underutilized parcel within the Infill and Redevelopment Area in order to provide a neighborhood-oriented use (Theme A, Goal #2). The proposed grocery store will supply daily necessities to the immediate area.
 - c. The request will prioritize multi-modal options and de-emphasize single occupancy vehicles with its proximity to transit service, pedestrian connections, and the installation of bicycle facilities (Theme B, Goal#2.d)
 - d. The proposal encourages safe interactions within the neighborhood by creating an accessible neighborhood commercial focal point and gathering space (Theme A, Goal #3). Retail sales of grocery and convenience items allows for residents to shop and interact on a routine basis.
2. The requested Neighborhood Business (B-1) zone is in agreement with the 2018 Comprehensive Plan's Policies, for the following reasons:
 - a. The proposal improves pedestrian safety and utilizes a people first design by removing the substandard parking areas in front of the structure, and providing for additional pedestrian connections. (Theme A, Policy #1)
 - b. At the proposed scale, the development provides an accessible, neighborhood level commercial area and gathering space (Theme A, Design Policy #12; Theme A, Policy #10).
 - c. The request introduces a neighborhood grocery use into an area that lacks walkable grocery options (Theme A, Density Policy #3).
 - d. The request will maintain the existing sidewalk networks and provide bicycle facilities on-site in order to promote connectivity (Theme B, Sustainability Policy #2).
3. The justification and corollary development plan are in agreement with the development criteria of the 2018 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Site Design, Building Form and as the request reuses the existing commercial structure that has occupied the site since 1969, creates a safer pedestrian environment by removing sub-standard parking areas along Florence Avenue, and creates neighborhood level commercial opportunities in a neighborhood that lacks an accessible grocery store.
 - b. The proposed rezoning addresses the Transportation and Pedestrian Connectivity development criteria, as the proposed development expands on the existing pedestrian system, has several close connections to transit, and provides a safer experience for pedestrians along Florence Avenue.
 - c. The proposed rezoning meets the criteria for Greenspace and Environmental Health as the proposal works with the existing landscape, will increase the overall tree canopy, and will not impact any environmentally sensitive areas.
4. This recommendation is made subject to approval and certification of PLN-MJDP-23-00071: GALBRAITH SUBDIVISION, LOTS 19 & 20 prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

STAFF REPORT ON VARIANCE REQUEST



As part of their application, the petitioner is also seeking several dimensional variances that are requesting relief from the required property perimeter screening requirements for the portions of the property that abut Mixed Low Density Residential (R-2) zoning. The applicant is seeking to reduce the minimum required property perimeter requirements as regulated in Article 18-3(a)(1) of the LFUCG Zoning Ordinance.

Before any variance is granted, the Planning Commission must find the following:

- a. The granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Planning Commission shall consider whether:
 1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or in the same zone.
 2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
 3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
- b. The Planning Commission shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

ZONING ORDINANCE

Article 6-4(c) states that the Planning Commission may hear and act upon requested variances associated with a zone change. In such cases, they may assume all of the powers and responsibilities of the Board of Adjustment, as defined in Article 7-6(b) of the Zoning Ordinance.

Article 18-3(a)(1) states that for any office or business zone (except P-2), that adjoins any residential zone, there shall be a minimum buffer area of 15 feet adjacent to all common boundaries (located behind the building line) except street frontage, which will contain one tree per 40 feet of linear boundary, or fraction thereof, from Group A or B only, plus, 1) a double row of six feet high hedge or 2) a six feet high fence, wall or earth mound.

CASE REVIEW

The applicant is seeking a dimensional variance for a portion of the property perimeter screening requirements. These requirements are for the portions of the property that abut the Mixed Low Density Residential (R-2) zones to the north, south, and east. The Zoning Ordinance requires buffering of a specific distance and regulated planting materials to provide screening between more intense commercial land uses and surrounding residential land uses. The specific provisions were added to the Ordinance to decrease the impact of light and sound on adjacent properties, which may be caused by events or activities, such as those that the applicant has expressed interest in developing on the property.

The area between the proposed B-1 zone and the R-2 zone requires a minimum buffer area of 15 feet adjacent to all common boundaries (located behind the building line) except street frontage, to contain one tree per 40 feet of linear boundary, or fraction thereof, from Group A or B only, plus, 1) a double row of six feet high hedge or 2) a six feet high fence, wall or earth mound. Thus buffer can be reduced to 5 feet with the inclusion of a 6 foot tall solid fence. While the applicant will provide the required landscape buffer around much of the property, they are seeking to reduce the landscape buffer to zero feet to waive the required landscaping along the portions of the property that adjoin the commercial structure.

The applicant states that there is less than three feet between the existing structure and the property line, and as such, there is not sufficient room to establish a 5-foot wide landscape buffer. The applicant opines that demolishing the structure in order to accommodate the thin strip of required landscaping would create an unnecessary hardship. Installing the required landscaping would also require demolishing part of an encroaching driveway along 758 Florence Avenue.



The Landscape Review Committee evaluated the proposed landscape variance at their October 24th, 2023 meeting. The committee recommended approval of the request, with no additional conditions of approval recommended.

Staff finds the request will not negatively impact the health safety or welfare of the general public, as the previous non-conforming commercial use operated at this location since before 1969 without any landscaping or screening between the structure and the adjoining parcel. The subject properties have a unique circumstance in that they are narrow lots that feature existing nonconforming structures that predates the current zoning regulations that encroaches less than 3 feet from the adjoining property line.

STAFF RECOMMENDS: **APPROVAL FOR THE FOLLOWING REASONS:**



1. Approval of the landscape variances should not adversely affect the public health, safety, or welfare, nor should it create a hazard or nuisance to the public. The subject property has operated over 50 years without landscaping buffers between the commercial and residential uses. Providing landscaping within the narrow side yard would likely not thrive or grow to maturity to create the buffer prescribed by the ordinance.
2. The narrow lot shape and existing nonconforming structure represent special circumstances unique to the subject property that justify the need for a variance.
3. Removing the existing structure present on the site to accommodate the required landscaping buffer would unreasonably restrict the applicant's use of the property.
4. The circumstances of this variance are not a result of actions taken by the applicant subsequent to the adoption of the Zoning Ordinance.

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

- a. Provided the Planning Commission and Urban County Council approve the requested zone change to the B-1 zone, otherwise the requested variance shall be null and void.
- b. The development shall be constructed in accordance with the approved Final Development Plan, or as amended by the Planning Commission.
- c. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
- d. Action of the Planning Commission shall be noted on the Development Plan for the subject property.