

AN ORDINANCE CHANGING THE ZONE FROM A PROFESSIONAL OFFICE (P-1) ZONE TO A PLANNED SHOPPING CENTER (B-6P) ZONE, FOR 0.27 NET (0.42 GROSS) ACRES, FOR A PORTION OF PROPERTY LOCATED AT 3735 PALOMAR CENTRE DRIVE. (WEBB/LEXINGTON VENTURE-108, LTD.; COUNCIL DISTRICT 10.)

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WHEREAS, at a Public Hearing held on December 15, 2016, a petition for a zoning ordinance map amendment for a portion of property located at 3735 Palomar Centre Drive (a portion of) from a Professional Office (P-1) zone to a Planned Shopping Center (B-6P) zone, for 0.27 net (0.42 gross) acres, was presented to the Urban County Planning Commission; said Commission recommending 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 a portion of property located at 3735 Palomar Centre Drive (a portion of) from a Professional Office (P-1) zone to a Planned Shopping Center (B-6P) zone, for 0.27 net (0.42 gross) acres; being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - 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 3 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: February 23, 2017

  
MAYOR

ATTEST:



CLERK OF URBAN COUNTY COUNCIL

Published: March 2, 2017-1t

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**LEGAL DESCRIPTION**

WEBB LEXINGTON VENTURE – 108, LTD  
Zone Change from P-1 to B6-P  
Portion of 3735 Palomar Centre Drive  
Lexington, Fayette County, Kentucky

A TRACT OF LAND SITUATED EAST OF PALMOAR CENTRE DRIVE IN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND MORE FULL DESCRIBED AND BOUNDED AS FOLLOW:

Beginning at a point in the centerline of Harrodsburg Road (US 68), said point being in line with the south property line of 3720 Palomar Centre Drive (Private); thence along the arc of a curve to the right with chord direction of South 54 degrees 39 minutes 38 seconds West a chord distance of 120.47 feet along the centerline of Harrodsburg Road (US 68) to a point; thence North 35 degrees 20 minutes 22 seconds West a distance of 151.30 feet to a point; thence North 39 degrees 32 minutes 19 seconds East a distance of 99.47 feet to a point; thence South 43 degrees 12 minutes 26 seconds East a distance of 130.00 feet along the south property line of 3720 Palomar Centre Drive to a point; thence South 35 degrees 20 minutes 22 seconds East a distance of 60 feet to the point of beginning, containing a gross area of 0.42 acre and a net area of 0.27 acre.

Rec'd by Bm  
Date: 1-13-17

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

**IN RE:** **PLN-MAR-16-00024: WEBB/LEXINGTON VENTURE – 108, LTD** – a petition for a zone map amendment from a Professional Office (P-1) zone to a Planned Shopping Center (B-6P) zone, for 0.27 net (0.42 gross) acres, for a portion of property located at 3735 Palomar Centre Drive. (Council District 10)

Having considered the above matter on **December 15, 2016**, 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 **APPROVAL** of this matter for the following reasons:

1. The requested Planned Neighborhood Shopping Center (B-6P) zone is appropriate, and the existing Professional Office (P-1) zone is inappropriate for the subject property, for the following reasons:
  - a. The site is split-zoned, with only about ¼ of an acre located within a Professional Office zone. Split-zoned lots can create a hardship for a property owner and inhibit appropriate infill and redevelopment.
  - b. The demand for professional office land use is being met on along Palomar Centre Drive to the north and along Wellington Way to the north and west of the subject property, within the general area.
  - c. The proposed B-6P zone is appropriate in that the detention basin is part of the larger shopping center parcel and is a facility that supports the entire Palomar Shopping Center.
  - d. The B-6P zone is compatible with adjoining land uses and zoning, which include numerous other restaurants, banks, retail sales establishments, a grocery store, a gas station, and other typical land uses found in typical shopping centers.
2. This recommendation is made subject to approval and certification of **PLN-MJDP-16-00052: Joe Montgomery Property (Palomar Centre) (Amd #19)** prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

ATTEST: This 13<sup>th</sup> day of January, 2017.

  
Secretary, Jim Duncan

WILLIAM WILSON  
CHAIR

Note: The corollary development plan, **PLN-MJDP-16-00052: Joe Montgomery Property** was approved by the Planning Commission on December 15, 2016 and certified on December 28, 2016.

Note: Dimensional variances were approved for reductions of the perimeter yard requirements for this request, by the Planning Commission at this hearing.

K.R.S. 100.211(7) requires that the Council take action on this request by March 15, 2017.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Bruce Simpson, Attorney.**

**OBJECTORS**

- None

**OBJECTIONS**

- None

**VOTES WERE AS FOLLOWS:**

AYES: (8) Berkley, Cravens, Mundy, Owens, Penn, Plumlee , Smith, and Wilson

NAYS: (0)

ABSENT: (3) Brewer, Drake, and Richardson

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **APPROVAL** of **PLN-MAR 16-00024** 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.)**

<b>Applicant:</b> WEBB LEX VENTURE 108 LTD, 250 W MAIN ST STE 3000, LEXINGTON, KY 40507
<b>Owner(s):</b> WEBB LEX VENTURE 108 LTD 250 W MAIN ST STE 3000 LEXINGTON KY 40507
<b>Attorney:</b> Bruce Simpson, 300 West Vine Street, Lexington, KY 40507

**2. ADDRESS OF APPLICANT'S PROPERTY**

3735 PALOMAR CENTRE DR LEXINGTON KY (a portion of)
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**3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY**

Zoning	Existing Use	Zoning	Requested Use	Acreage	
				Net	Gross
P-1	Detention Basin	B-6P	Retail/Restaurant (Coffee Shop)	0.27	0.42

**4. EXISTING CONDITIONS**

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





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

**T. BRUCE SIMPSON, JR.**  
DIRECT DIAL: (859) 231-3621  
DIRECT FAX: (859) 259-3521  
bruce.simpson@skofirm.com

November 11, 2016

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

Re: 3735 Palomar Centre Drive/Zone Map Amendment Request/Variance Request

Dear Chairperson Wilson,

I represent Lex/108, LLC in connection with this relative small zone map amendment request to rezone a split zoned parcel within the existing Palomar Centre Shopping Center from P-1 to B6P which is the zoning for the shopping center. This is also a request for a variance from the required building setback of 50 feet to 15 feet from the adjacent P-1 zoned property. This zone change is necessary to accommodate a Starbucks restaurant. This zone change request is in conformity with the following provisions of the 2013 Provisions of the Comprehensive Plan:

- 1. Theme A, Growing Successful Neighborhoods, Goal 2, Support infill and redevelopment throughout the Urban Services Area as a strategic component of growth.**

Objectives

- a. Identify areas of opportunity for infill development and adaptive reuse that respect the area's context and design features whenever possible.

**2 Theme E, Maintaining a Balance between Planning for Urban Uses and Safeguarding Rural Land, Goal 1, Uphold the Urban Services Area Concept.**

Objectives

- b. Encourage compact, contiguous, and/or mixed use sustainable development within the Urban Services Area as guided by market demand to accommodate future growth needs.

The variance is needed to accommodate a new prototype Starbucks restaurant. The requested variance will not have any adverse impact on the adjoining property or otherwise alter the essential character of the area. The adjacent property is a bank and there is no shared ingress or egress with the subject property.

The current use of the property for which this variance is sought is as a detention basin. The applicant proposes to redesign its storm water management system to store its storm water in a vault underground so that the subject property can be developed. The proposed use will be similar to other uses within the existing boundary of the Palomar Centre Shopping Center.

The proposed application is consistent with the above stated provisions of the Comprehensive Plan. This is only a minor adjustment within the boundaries of an existing B6P shopping center.

I look forward to presenting this application before the December meeting of the Planning Commission.

Very truly yours,



T. Bruce Simpson, Jr.







**RECEIVED**  
DEC 13 2016  
BY: *WLS*

300 WEST VINE STREET  
SUITE 2100  
LEXINGTON, KY 40507-1801  
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bruce.simpson@skofirm.com

December 12, 2016

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

Re: Request for a variance from 50 feet to 15 feet for property line  
3735 Palomar Centre Drive

Dear Chairperson Wilson,

In connection with the request for the zone map amendment for the subject parcel located at 3735 Palomar Centre Drive, the applicant is also requesting a variance to a building set back requirement from the adjacent property line from 50 feet to 15 feet. This variance is justified based on the following:

The parcel being rezoned will be used for a small Starbuck's restaurant. This parcel is currently part of an existing storm water detention basin which will be replaced by underground storage vaults. Additionally, part of this parcel is the former site of a sinkhole which has been remediated. While there are other buildings located within Palomar Centre that are built over former sinkholes and have operated without any problems since 1988, the granting of this variance would keep the proposed Starbuck's building envelope out of the location of the former sinkhole area.

Mr. William Wilson, Chairperson

December 12, 2016

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This variance will not have any adverse impact on the public health, safety or welfare or alter the essential character of the general vicinity. The granting of this variance will not cause a hazard or a nuisance to the public and will not allow an unreasonable circumvention of requirements of the zoning ordinance. This is because the proposed development site has been thoroughly evaluated by qualified civil engineers and geotechnical engineers to accommodate the development which is proposed. The preliminary development plan, which is a part of this zone change request, reflects these engineered solutions.

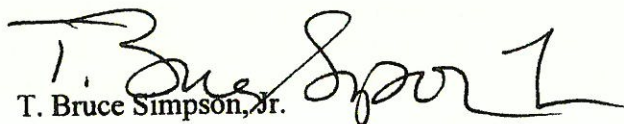
The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or in the same zone. Since Palomar Centre was approved for development in 1988, there have been many engineered storm water management solutions developed to safely and effectively manage storm water and the utilization for former karst areas. This variance request is simply a prudent effort to keep the proposed Starbuck's restaurant out of the area of the former sinkhole area.

The strict application of the 50 foot setback requirement would require that the building be constructed over the sinkhole area, which could safely be done but at considerable expense that could be avoided if the building were kept out of the sinkhole. Requiring the applicant to strictly comply with this set back provision would create an unnecessary financial hardship and make the development of this infill parcel less likely.

This variance request is both reasonable and prudent in light of all the relevant circumstances. The granting of this variance will safely allow the development of this small infill parcel in a cost efficient manner without any adverse impact on adjoining property owners.

On behalf of the applicant, we request that this variance request be approved in connection with the rezoning request.

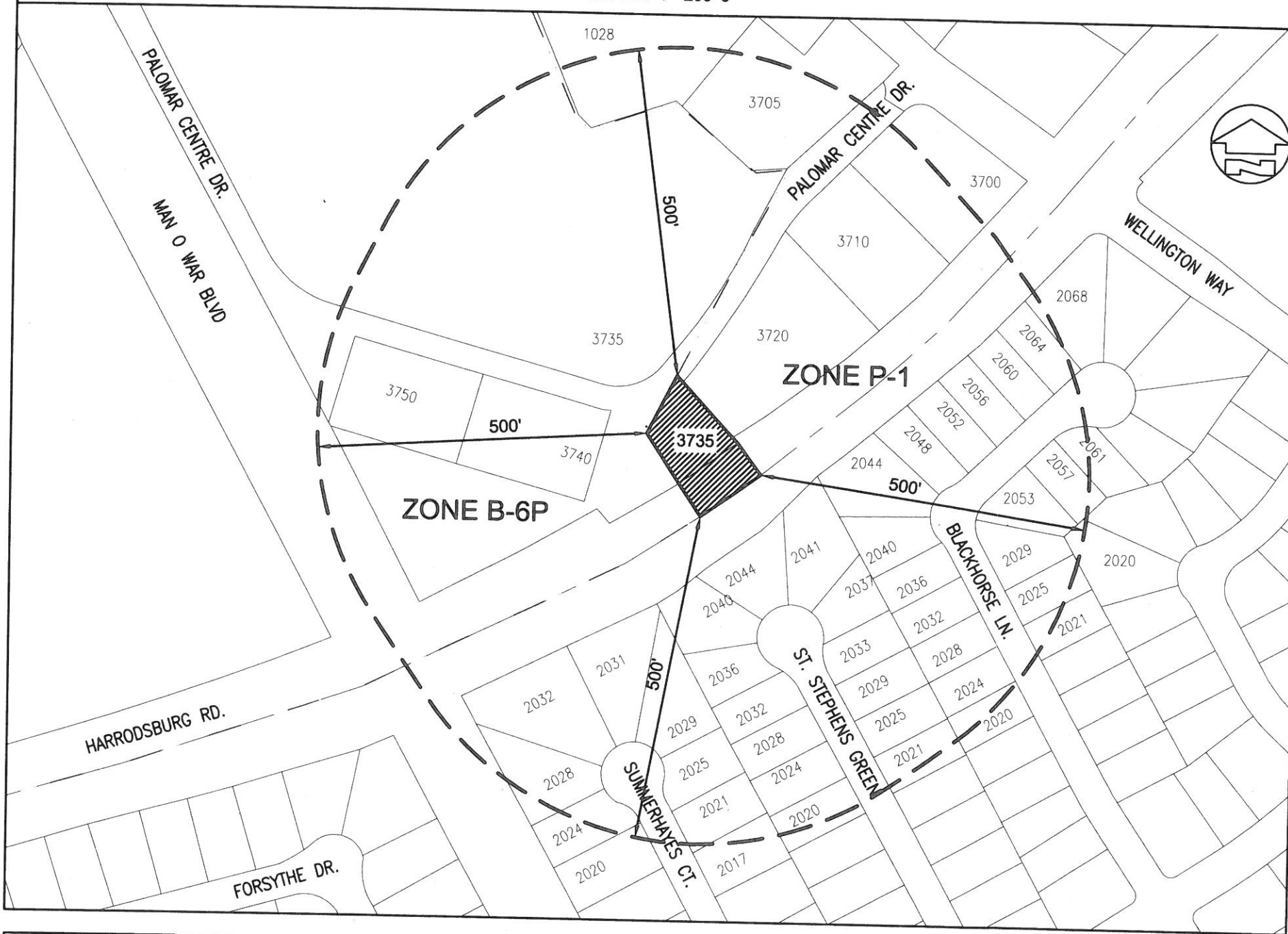
Very truly yours,

  
T. Bruce Simpson, Jr.



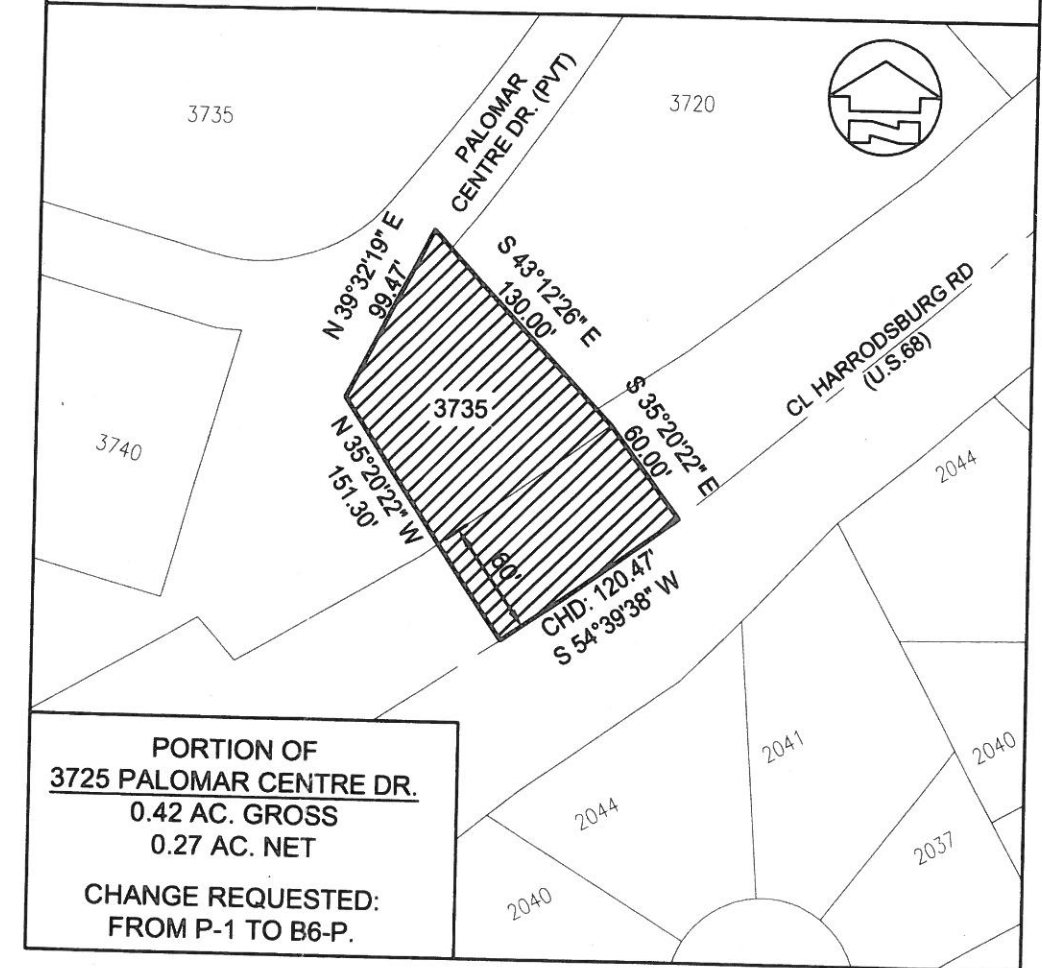
# NOTIFICATION MAP

SCALE: 1"=200'-0"



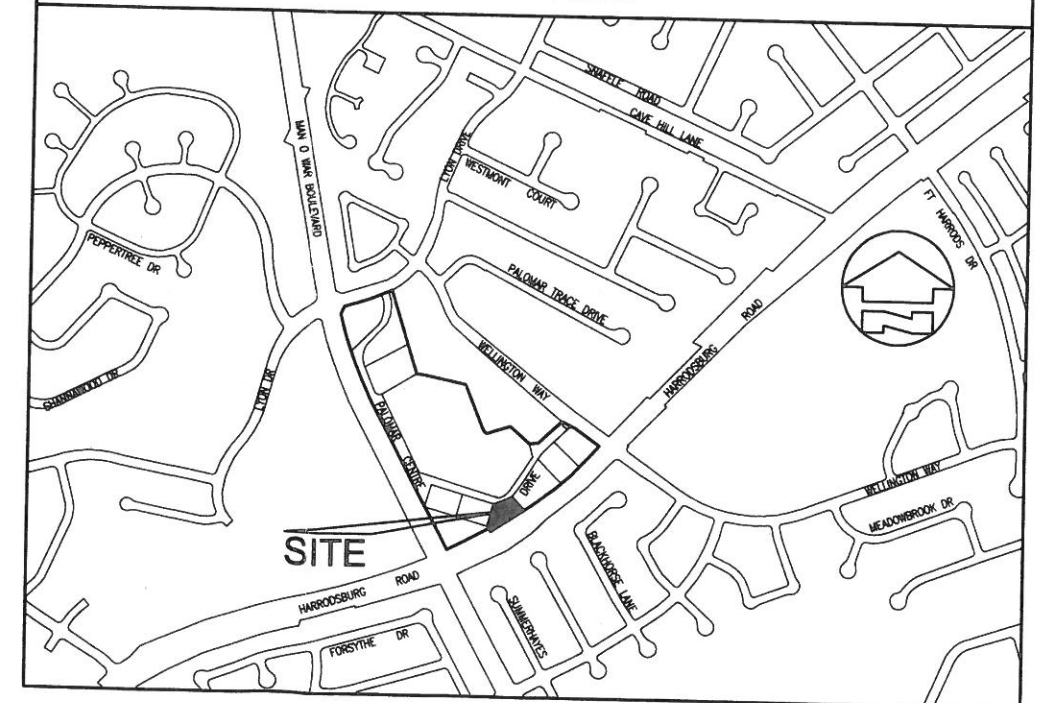
# PROPERTY MAP

SCALE: 1"=100'-0"



# VICINITY MAP

NOT TO SCALE



TITLE: WEBB LEXINGTON VENTURE-108, LTD PROPERTY

PROPERTY ADDRESS: 3735 PALOMAR CENTRE DRIVE (PORTION)

APPLICANT NAME/ADDRESS:

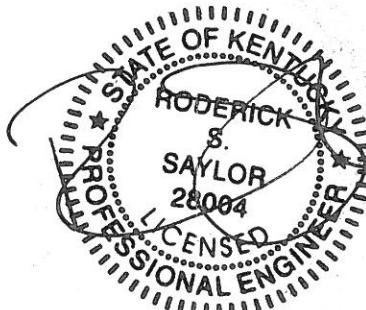
WEBB LEXINGTON VENTURE-108, LTD PROPERTY  
 250 W. MAIN ST., LEXINGTON, KY 40507

OWNER NAME/ADDRESS: SAME

PREPARED BY: GRW ENGINEERS, INC.

DATE FILED OR AMENDED: OCTOBER 31, 2016

FROM	TO	NET	GROSS
P-1	B-6P	0.27 AC.	0.42 AC.



11-11-16

**8. WEBB/LEXINGTON VENTURE – 108, LTD ZONING MAP AMENDMENT & JOE MONTGOMERY PROPERTY (AMD)**

- a. PLN-MAR-16-00024: WEBB/LEXINGTON VENTURE – 108, LTD (1/29/17)\* – petition for a zone map amendment from a Professional Office (P-1) zone to a Planned Shopping Center (B-6P) zone, for 0.27 net (0.42 gross) acres, for a portion of property located at 3735 Palomar Centre Drive. A dimensional variance is 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 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.

The 2013 Plan's Goals and Objectives emphasize the importance of growing successful neighborhoods (Theme A), protecting the environment (Theme B), creating jobs and prosperity (Theme C), improving a desirable community (Theme D) and maintaining a balance between planning for urban uses and safeguarding rural land (Theme E).

The petitioner proposes rezoning a portion of the existing Palomar Shopping Center parcel in order permit a restaurant (coffee shop) with accessory drive-through facilities and off-street parking in what is currently a portion of one of the shopping center's detention basins.

The Zoning Committee Recommended: **Approval**.

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

1. The requested Planned Neighborhood Shopping Center (B-6P) zone is appropriate, and the existing Professional Office (P-1) zone is inappropriate for the subject property, for the following reasons:
  - a. The site is split-zoned, with only about ¼ of an acre located within a Professional Office zone. Split-zoned lots can create a hardship for a property owner and inhibit appropriate infill and redevelopment.
  - b. The demand for professional office land use is being met on along Palomar Centre Drive to the north and along Wellington Way to the north and west of the subject property, within the general area.
  - c. The proposed B-6P zone is appropriate in that the detention basin is part of the larger shopping center parcel and is a facility that supports the entire Palomar Shopping Center.
  - d. The B-6P zone is compatible with adjoining land uses and zoning, which include numerous other restaurants, banks, retail sales establishments, a grocery store, a gas station, and other typical land uses found in typical shopping centers.
2. This recommendation is made subject to approval and certification of PLN-MJDP-16-00052: Joe Montgomery Property (Palomar Centre) (Amd #19) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval

b. **REQUESTED VARIANCE**

1. Reduce the minimum perimeter yard from 50' to 15'

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

1. The applicant has not provided a justification (required under KRS 100. 243) for their request for a dimensional variance for this new land use. Such documentation is needed prior to a substantive recommendation by the staff.
- c. PLN-MJDP-16-00052: JOE MONTGOMERY PROPERTY (AMD) (1/29/17)\* - located at 3735 Palomar Centre Drive.  
**(GRW)**

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

1. Provided the Urban County Council rezones the property B-6P; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
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 name and address of developer.
7. Denote record plat designation.
8. Clarify adjacent property information (eliminate duplication).
9. Denote construction access location on plan.
10. Dimension building's new restaurant parking lot and parking typical spaces.

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



11. Denote height of new restaurant building in feet.
12. Complete note #5 to reference "Chapter 16 of the Code of Ordinance".
13. Correct Planning Commission certification to major.
14. Correct total square footage in B-6P area.
15. Correct notes #1, #3 & #4.
16. Resolve note #14 under general notes and notes "E" & "H" under conditional zoning restrictions (in reference to the maximum allowable square footage of 132,000).
17. Resolve plan status for property being rezoned (Preliminary vs. Final).
18. Resolve location or transit service stop on Palomar Centre Drive on the Final Development Plan

Staff Zoning Presentation – Ms. Wade presented and summarized the staff report and recommendations on the proposed zone change. She displayed some photographs of the subject property. She stated that this parcel is currently a detention basin for the shopping center and the applicant will make the lot developable.

Commission Comments – There was a question regarding whether or not the building will have a drive-thru facility. Ms. Wade replied that the building will have a drive-thru.

Development Plan Presentation – Ms. Gallt presented the updated staff report on this development plan, which was handed out to the Commission with 9 conditions, as follows:

The Staff Recommends: Approval, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property B-6P; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
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 the submittal of Geo-tech Report to the Division of Engineering, Planning & Environmental Quality, prior to certification.
7. Correct total square footage in B-6P "shopping center" area site statistics to reduce by 2,813 sq. ft and add coffee shop GFA and parking in B-6P outlot parcel statistics.
8. Remove "19<sup>th</sup>" from the title of this amended (Preliminary) Development Plan.
9. Label relocated transit service stop on Palomar Centre Drive.

Ms. Gallt said that the applicant will be placing the detention underground. She also stated that there is a remediated sinkhole near the edge of the parking lot, which is also identified on the development plan.

Dimensional Variance – Mr. Sallee presented the revised staff report on the variance requested for this development, and he discussed the requested variance to reduce the perimeter yard from 50' to 15'.

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

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. The variance is requested to keep the proposed building out of a formerly environmentally sensitive area on the subject property.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance because the new coffee shop building is designed to be 15' off the side property line, which is not unlike those found around town in other commercial zones. The distance from the nearest commercial building will still be over 90' away, even if this variance is granted.
- c. The special circumstance that applies to this property that does not generally apply to most parcels in the general vicinity or in a B-6P zone is the location of the previously mitigated sinkhole area on the subject property immediately south of the proposed coffee shop building. It is prudent to keep any new commercial building out of an area that formerly was a sinkhole, even though it has been remediated in the past.
- d. Strict application of the requirements of the Zoning Ordinance would not only require the new building to be constructed over or adjacent to the former sinkhole area, but would create an unnecessary financial hardship to the applicant, due to added construction costs, and depriving the applicant of a reasonable use of the property.
- e. Although the circumstances surrounding the requested variance are associated with the proposed zone change, the variance is requested in an effort to accomplish an efficient site design and place the new coffee shop in a more appropriate location on the subject property. No development has commenced on the property, and the need for the variance was recognized during the pre-application conference for this zone change request.

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

1. Provided the Urban County Council rezones the property B-6P; 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 setback variance that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].

Commission Comments – There was a question regarding if the mitigation of the sinkhole was completed in the first rezoning of the subject property. Mr. Sallee said that he believed it had been completed in between the original development of the shopping center and the present time. There was another question concerning the required landscaping between the drive-thru and the bank adjacent to the property. Mr. Sallee replied that there is room and there is such a requirement.

Petitioner Presentation – Bruce Simpson, attorney, was present representing the petitioner. He said that the applicant is in agreement with the staff's recommendations.

Citizen Comments – There were no citizens present to comment on this application.

Zoning Action – A motion was made by Mr. Berkley, seconded by Mr. Penn, and carried 8-0 (Brewer, Drake, and Richardson absent) to approve PLN-MAR-16-00024: WEBB/LEXINGTON VENTURE – 108, LTD, for the reasons provided by the staff.

Requested Variance Action – A motion was made by Mr. Berkley, seconded by Mr. Penn, and carried 8-0 (Brewer, Drake, and Richardson absent) to approve the requested variances for the reasons provided by the staff, with the three conditions recommended by staff.

Development Plan Action – A motion was made by Mr. Berkley, seconded by Mr. Penn, and carried 8-0 (Brewer, Drake, and Richardson absent) to approve PLN-MJDP-16-00052: JOE MONTGOMERY PROPERTY (AMD), for the revised conditions provided by the staff.

