

SUPPLEMENTAL STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-25-00008: RD PROPERTY GROUP, LLC



STAFF REVIEW

In the period following the June Subdivision and Zoning Committee meetings, the applicant met with staff to discuss the concerns described within the initial staff report and the comments received during the committee meetings. Since that time, the applicant has submitted updated application materials, including a revised development plan, and a supplemental letter of justification that discussed the zone change, removal of conditional zoning restrictions, as well as the requested variance.

The revisions to the proposed development plan include the depiction of development on the proposed B-1 zoned lots along Winchester Road, as well as the incorporation of an expanded pedestrian system. This system now provides a sidewalk along Winchester Road, as well as additional connectivity between the proposed apartment uses and Charleston Drive.

COMPREHENSIVE PLAN GOALS AND OBJECTIVES

In the initial staff report, staff requested that the applicant demonstrate how they were in agreement with the following Goals, Objectives, and Policies of the Comprehensive Plan:

Accommodate the demand for housing in Lexington responsibly, prioritizing higher-density and mixture of housing types. (Theme A, Goal #1.b)

Staff noted in the initial staff report that the proposal currently results in fewer housing units being provided than the initial plan approved with the 2004 rezoning. In their letter of justification, the applicant notes that the initial rezoning's requirements for vertical mixed-use buildings have complicated the ability to develop the site with the residential density originally anticipated. The applicant states that while the current iteration of the plan provides for fewer overall units, the requested zoning does allow for the potential to add additional units in the future, in a new zone that could potentially allow for higher levels of density than the B-1 zone, with more flexibility than the conditionally restricted B-1 zone allows.

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);

In the initial report, Staff asked the applicant to discuss opportunities to more meaningfully connect the proposed apartment uses with the proposed Kroger Marketplace. The applicant responded that the topography of the apartment areas limits the ability to construct an ADA accessible direct connection running from north to south. Instead, the applicant reduced some of the walking distance by incorporating a greater number of horizontal (east to west) sidewalk connections to Charleston Drive to cut down on the walking distance to the grocery store. The applicant also notes that the revised plan provides for a new sidewalk section near Winchester Road, which could tie into any future pedestrian improvements along Winchester Road.

Respect the context and design features of areas surrounding development projects and develop design standards and guidelines to ensure compatibility with existing urban form (Theme A, Goal #2.b).

In the initial staff report, Staff asked the applicant to explore the orientation of the grocery store structure, which is oriented towards their internal access easement and Winchester Road, rather than Charleston Drive, their public road frontage. The applicant indicated that they oriented the grocery store this way because they wished to maintain visibility from Winchester Road, and that a reorientation of the structure would impact their preferred parking configuration. The applicant opines that providing parking on the side or rear of the anchor tenant would result in a less safe environment.



Staff notes that the proposed development orientation differs significantly from the abutting commercial development to the east, which also contains Winchester Road frontage, but has its structures oriented towards the internal streets. While the majority of the residential component of the Patchen Wilkes farm has yet to materialize, when that development occurs, it will result in the neighborhood interfacing with the drive-thru, gas station, and service areas for the structure, rather than the grocery's front. A structure oriented towards Charleston Drive, with parking primarily being located to the side of the structure would be more consistent with both the current and future development patterns for the area, and would better align with the Comprehensive Plan.

While the orientation of the structure is not supported by the Comprehensive Plan, the overall proposal does meet a number of other Goals and Objectives of the Comprehensive Plan. Staff finds that the request allows for more flexibility to create higher density housing (Theme A, Goal #1.b), utilizes an underdeveloped property along a corridor for a mixed use development (Theme A, Goal #2.a; Theme E, Goal #1.d and #1.e), and will provide for neighborhood serving commercial uses (Theme A, Goal #3.d).

COMPREHENSIVE PLAN POLICIES

The applicant has provided greater information relating to the Policies of the Comprehensive Plan that they opine are being met with this request. The applicant states that the request will connect to existing stub streets, thereby increasing connectivity (Theme A, Design Policy #2 and #13). The applicant states that the proposed apartment uses will increase the variety of housing choice available in the area (Theme A, Design Policy #8). The applicant states that the request will be sensitive to the surrounding context (Theme A, Design Policy #4), and will result in a pedestrian-friendly environment (Theme A, Design Policy #5).

While Staff agrees that the request does increase connectivity and provides for additional higher density housing, Staff also finds that there are aspects of the plan that are not sensitive to the surrounding context, and do not result in a pedestrian friendly environment. The orientation of the structure and the decision to locate drive-thru and truck circulation uses between the grocery store and Charleston Drive ignore the context of future residential development in the area, and prioritize visibility from Winchester Road instead. While the applicant does provide sidewalk networks to carry pedestrians through the site, the site is not designed to interface or interact with pedestrians. For pedestrians along Charleston Drive, the frontage is primarily defined by drive-through uses, a gas station, and vehicular circulation for the grocery store.

DEVELOPMENT CRITERIA

The revised justification also addresses several of the Development Criteria previously identified by staff as requiring further clarification, and have revised their choice in Place-Type to reflect the staff's recommendation of Regional Center.

1. Land Use

A-DN3-1: Pedestrian-oriented commercial opportunities and other services should be incorporated within residential neighborhoods;

The applicant's response in the letter of justification indicates that they believe the majority of the users of the Kroger use will drive to the site, and have designed the site to cater to those users. The applicant states that they are attempting to incorporate landscaping and additional sidewalk facilities to improve the pedestrian experience for their auto-centric use. Staff disagrees that pedestrian-supportive design cannot coexist with a heavily auto-centric use, especially on a large greenfield site. Reorienting the structure, locating buildings closer to roadways, utilizing side or rear parking, and other design measures could be implemented in order to better incorporate the use into the area while still providing the necessary parking and drive-thru uses to support the customer base that relies on single-user automobiles to access the site.



While the orientation of the structure and the activation of the roadway are not in agreement with the Land Use Criteria, the request does meet other applicable criteria by providing neighborhood serving commercial areas (A-DS12-1), incorporating residential uses into their commercial center (A-DN3-2), and providing access to healthy and affordable food (C-PS15-2).

2. Transportation Connectivity and Walkability

A-DS5-2: Developments should incorporate vertical elements, such as street trees and buildings, to create a walkable streetscape.

The applicant states that street trees and plantings will be provided along the streetscape to help provide a vertical edge, but does not acknowledge that the significant distance of the uses from the roadway negatively impacts the walkability of the streetscape.

C-PS10-1: Flexible parking and shared parking arrangements should be utilized.

The applicant indicates that this is the sufficient parking they need, and that it is anticipated that the similarities in hours of operation for the anticipated operators will make flexible parking arrangements unfeasible.

While the request is not in agreement with the street activation criteria, the proposed rezoning meets several other criteria for Transportation Connectivity, and Walkability, as the request makes vehicular connections to Thunderstick Drive and allows for connectivity with future development of the Patchen Wilkes Farm and the existing Eastland Parkway neighborhood to the north and west (A-DS4-1; A-DS13-1), and provides a starting point for potential future pedestrian facilities along the Winchester Road frontage (D-CO-2).

3. Environmental Sustainability and Resiliency

B-PR7-1: Developments should be designed to minimize tree removal and to protect and preserve existing significant trees; B-RE1-1: Developments should improve the tree canopy.

Within the letter of justification, the applicant notes that the trees visible on the site in the 2024 Aerial GIS Imagery were removed prior to the submission of this application, as they prepared for the construction of Charleston Drive. The applicant notes that the request will provide for street trees as well as any required screening or canopy coverage.

B-PR2-1: Impact on environmentally sensitive areas should be minimized within and adjacent to the proposed development site; B-RE5-2: Floodplains should be incorporated into accessible greenspace, and additional protection should be provided to areas around them.

Under the revised plan, the applicant notes the location of the floodplain on site, and provides the required buffer on the plan. As a part of the construction of Thunderstick Drive, the floodplain will need to be altered, and the applicant would be required to obtain all necessary approvals in order to do so.

With the provided information, staff now find that the request meets other applicable Environmental Sustainability and Resiliency, as the request locates the structure outside of the floodplain setback (B-PR-2-1), provides for street trees (D-SP10-1), and will avoid overlighting (B-PR10-1).



4. Site Design

A-DS5-4: Development should provide a pedestrian-oriented and activated streetscapes; A-DS5-3: Building orientation should maximize connections with the street and create a pedestrian-friendly atmosphere.

As stated earlier, Staff continues to have concerns with the streetscape that would result from this development, particularly along Charleston Drive. The applicant's proposal generally locates the most auto-centric uses closest to the roadway, and requires the pedestrians to cross several drive aisles and a distance of over a hundred feet before they can enter the anchor tenant for the development.

The request does meet several other Site Design Criteria, as the development introduces a pavilion and the potential for programmatic elements within their open space (D-PL4-1), provides for connections to existing stub streets (C-Li8-1), and meets the parking requirements of the B-6P zone (C-PS1-2).

5. Building form

A-DS3-1: Multi-family residential developments should comply with the Multi-family Design Standards in Appendix 1.

In response to staff's request for more information regarding the Architectural Design components, the applicant stated that they do not have an end user or developer for this portion of the design, and that. Staff has recommended that the applicable design criteria be incorporated as requirements within a development plan note to ensure these criteria are being applied.

A-DS5-3: Building orientation should maximize connections with the surrounding area and create a pedestrian-friendly atmosphere.

The revised development plan does provide for improvements within the pedestrian system by expanding the site's internal pedestrian network, and providing for sidewalk facilities near Winchester Road. However, the applicant did not make any changes to the orientation of the structure, or the structure's relationship to its road frontage and the anticipated future residential development within the Patchen Wilkes neighborhood.

Despite the issue with the orientation of the structure and the lack of detail for the Multi-Family Design Standards, staff finds that there are several aspects in which the request meets the criteria for Building Form, as the request intensifies a development that is located along a corridor (A-DS4-2), and transitions from the most auto-centric outlots along the corridor to grocery and multi-family residential uses as the development moves away from the corridor (A-EQ5-1).

STAFF RECOMMENDS: APPROVAL, FOR THE FOLLOWING REASONS:



1. The proposed Commercial Center (B-6P) zone is in agreement with the Imagine Lexington 2045 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The request allows for more flexibility to create higher density housing (Theme A, Goal #1.b)
 - b. The proposal utilizes an underdeveloped property along a corridor for a mixed use development (Theme A, Goal #2.a; Theme E, Goal #1.d and #1.e)
 - c. The request will provide for neighborhood serving commercial uses (Theme A, Goal #3.d).
2. The proposal is in agreement with the Policies of the 2045 Comprehensive Plan for the following reasons:
 - a. The request will improve connectivity by extending existing stub streets, thereby increasing connectivity (Theme A, Design Policy #2 and #13)
 - b. The proposed apartment uses will increase the variety of housing choice available in the area (Theme A, Design Policy #8).
 - c. The request provides commercial uses that will provide for nearby residents' daily needs (Theme A, Design Policy #12).
3. The justification and corollary development plan are in agreement with the Development Criteria of the 2045 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Land Use, as the request provides neighborhood level commercial areas (A-DS12-1), incorporates residential uses into their commercial center (A-DN3-2), and provides a greater access to healthy and affordable food (C-PS15-2).
 - b. The proposed rezoning meets several criteria for Transportation, Connectivity, and Walkability, as the request makes vehicular connections to the existing commercial areas and allows for future connectivity with both Patchen Wilkes Farm and the existing Eastland Parkway neighborhood (A-DS4-1; A-DS13-1), and provides a starting point for future pedestrian facilities along the Winchester Road frontage (D-CO-2).
 - c. The request meets the criteria for Environmental Sustainability and Resiliency, as the request locates the structure outside of the floodplain setback (B-PR-2-1), provides for street trees (D-SP10-1), and will avoid overlighting B-PR10-1).
 - d. The proposal meets several criteria for Site Design, as the development introduces a pavilion and the potential for programmatic elements within their open space (D-PL4-1), provides for connections to existing stub streets (C-Li8-1), and meets the parking requirements of the B-6P zone (C-PS1-2).
 - e. The plan meets several of the criteria for Building Form, as the request intensifies a parcel that is located along a Corridor (A-DS4-2), and transitions its uses from the most auto-centric outlots along the corridor to grocery and multi-family residential further into the site (A-EQ5-1).
5. This recommendation is made subject to approval and certification of PLN-MJDP-25-00027: PATCHEN WILKES UNIT 2) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

SUPPLEMENTAL STAFF REPORT ON CONDITIONAL ZONING REMOVAL



CONDITIONAL ZONING RESTRICTION REQUEST

Within the original staff report, staff requested further information relating to changes that have occurred in the area that would make the site's conditional zoning restrictions inappropriate today.

The applicant states that part of the justification of the conditional zoning restriction was to protect the adjoining neighborhood. The applicant notes that at the time of the 2005 zone change, the zoning of the area was predominately single-family residential, with an existing professional office development to the east. The development that was approved in conjunction with the original B-1 zone change was a smaller scale, mixed-use development that was anticipated to connect and serve the low density residential uses around it. The conditions placed on the plan at that time were primarily oriented towards ensuring the developer followed through with the specific neighborhood scale mixed-use development that was used to justify the zone change. The applicant argues that part of the character of the neighborhood that the plan was intended to incorporate with changed when further portions of Patchen Wilkes farm was rezoned from an R-1C zone to an R-3 zone (MAR 2005-47). This area included the Patchen Wilkes Townhomes, and set the stage for more intense and dense residential land uses in the area.

The applicant further opines that the Urban Services Area expansion and the adoption of the Urban Growth Master Plan was another change that impacted this portion of the Winchester Road Corridor. The 2024 boundary expansion added approximately 1,000 acres to the Urban Services Area within one mile east of the subject property. The applicant notes that this expansion is anticipated to be developed with a range of 5,000 to 9,000 new dwelling units. Instead of being one of the last low density developments before reaching the Rural Service Area, the property is now located between the more dense area of the urban core, and Expansion Area #2, which is anticipated to be developed more densely than the subject property.

Finally, the applicant notes that the construction of several new regional-scale facilities has altered the character of development in the area. The applicant cites the construction of Frederick Douglass High School and the Baptist Healthcare use as examples of changes the character of the area. These facilities serve not just the surrounding neighborhoods, but also the larger region. The applicant opines that the area now serves as more of a regional center, where higher concentrations of residential development converge for commercial, educational, medical, and residential uses. The applicant argues that in order to respond to this new context, the original restrictions should be lifted.

Staff agrees with the applicant's assertion that there has been significant changes that have occurred in the area that make the current conditions inappropriate. Staff finds that the restrictions enacted in order to limit the site to a particular neighborhood-level mixed-use development are now inappropriate, as the intensification of the Winchester Road corridor now lend the site to applications as a larger, regional center.



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

1. The nearby increases in allowable land use intensity, expansion of the Urban Services Boundary, adoption of the Urban Growth Master Plan, and the construction of large regional scale institutions are changes that have occurred that have shifted the intensity of anticipated development along this portion of Winchester Road, and make the current conditions inappropriate.

SUPPLEMENTAL STAFF REPORT ON VARIANCE REQUEST



CASE REVIEW

In the initial variance staff report, Staff asked the applicant to expand on several aspects of their justification letter in order to address the criteria needed in order to grant a variance. First, Staff asked the applicant to provide information as to what special circumstances apply to the property that would necessitate the variance. In response, the applicant opined that the topography of the property was a unique limitation that would preclude them from creating additional access points to separate the truck traffic and the drive-through/pick-up circulation. In staff's review, staff did not find that the topographical features of the property to be a unique feature that would justify the need for the variance. The applicant's proposal would already necessitate extensive grading in order to construct the Kroger, parking lot, and surrounding uses. The applicant has the ability to adjust the grading and the location of retention walls in order to facilitate an access pattern that meets ordinance requirements.

Secondly, staff asked the applicant to provide information relating to the hardship that would result from meeting the 60-foot VUA requirement. The applicant stated that this design was Kroger's preferred layout for operational reasons, and that they desired to maintain visibility and quick access for the pick-up locations. Staff does not find that the Zoning Ordinance requirement is creating an unnecessary hardship in this situation. The regulation is not depriving the applicant of the ability to operate their proposed drive-through pharmacy, drive-through liquor store, or grocery pick up uses, or to provide for adequate delivery circulation. The regulation does not even prohibit the applicant from locating some of these functions in the front yard area; it simply provides a maximum distance that these facilities can extend between the building and the street. The applicant's contention that an alternative design is not feasible is inconsistent with the pattern of development seen in other similar Kroger Marketplace uses within Fayette County, which developed their pharmacies, liquor stores, and delivery areas in a variety of configurations. On a large greenfield site, the applicant has significant flexibility in their ability to design a use that meets ordinance requirements.

Overall, staff cannot support the requested variance. There are no special circumstances that are unique to the property, and staff finds that the application of the standard would not be an unnecessary hardship for the applicant. Staff finds that the increase in intense VUA between the structure and the road would be detrimental to the public health, safety and welfare.

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



1. The applicant has not provided a sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance or KRS 100.243. There do not appear to be special circumstances that are unique to the subject property that do not generally apply to land in the general vicinity, or in the same zone that justify the need for the variance.
2. The applicant has not provided sufficient information to determine that strict enforcement of the Zoning Ordinance will result in an unnecessary hardship or deprive the applicant of the reasonable use of their land
3. Approval of the requested variance would negatively impact the pedestrian experience in the area, and is not consistent with the character of development in the area.