

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-22-00022: CALLER PROPERTIES, LLC (AMD)

DESCRIPTION OF ZONE CHANGE

Zone Change:	Modification of Conditional Zoning Restrictions in a Neighborhood Business (B-1) zone
Acreage:	0.92 net (1.15 gross) acres
Location:	2400 Versailles Road



EXISTING ZONING & LAND USE

PROPERTIES	ZONING	EXISTING LAND USE
Subject Property	B-1	Vacant
To North	R-1C	Single Family Residential
To East	B-3	Retail / Restaurant
To South	R-1A	Single Family Residential
To West	R-1A	Single Family Residential

URBAN SERVICE REPORT

Roads - The subject property is bounded to the north by Versailles Road (US 60), which is a four-lane major arterial highway in this vicinity with an additional center turn lane between the east and westbound lanes. Versailles Road is heavily traveled in this location (at least 30,000 vehicle trips) on a daily basis. The Versailles Road/Parkers Mill Road (KY 1968) intersection is a little over 200 feet to the east of the subject property.

Curb/Gutter/Sidewalks - Portions of Versailles Road are without curbs, gutters and sidewalks, although road improvements, including a sidewalk, have been made along the frontage of the property, as well as along the adjoining property to the west. The sidewalk is only a few feet from the curblines.

Utilities - All utilities, including natural gas, electric, water, phone, cable television, and internet are available in the area, and are available to serve future development of the property.

Storm Sewers - The subject property is located within the Wolf Run watershed. There is a significant amount of FEMA flood hazard area on the property, associated with the Wolf Run Creek, which encompasses at least two-thirds of the subject site. Post-development floodplain is shown to be significantly reduced via use of a retaining wall and the provision of fill on the property, which will require further work with the Division of Water Quality, as well as FEMA (LOMR/CLOMR). Any new storm sewers will be constructed by the developer in compliance with the Division of Engineering Stormwater Manual. Any detention area on the site will also be required to comply with the Engineering Stormwater Manual.

Sanitary Sewers - The subject property is in the Wolf Run watershed, and is served by the Town Branch Wastewater Treatment Plant on Lisle Industrial Avenue. Sanitary sewers do not currently serve the subject property, and service will need to be extended to the property at the time development occurs. Both a gravity and a force main are located in the immediate vicinity, which will facilitate connection and service to the property.

Refuse - The Urban County Government serves this area with refuse collection on Mondays. However, supplemental service by private refuse haulers is commonly utilized for commercial land uses, such as those proposed on the associated development plan.

Police - The site is located in West Sector Roll Call Center located on Old Frankfort Pike near New Circle Road, approximately two miles from the subject property to the northeast.

Fire/Ambulance - Fire Station #14 is the nearest station to this site and is located approximately one-third (1/3) of a mile to the southeast of the subject property at the intersection of Alexandria Drive and Roanoke Road.

Transit - While the Versailles Route (#8) passes by the subject property, there are no stops within proximity of the site.

Parks - Cross Keys Park is located along Cross Keys Road approximately one-half (1/2) of a mile walking distance south of the subject property. Wolf Run Park is also located approximately one-half (1/2) of a mile walking distance to the southeast.

SUMMARY OF REQUEST

The applicant is seeking to remove conditional zoning restrictions that were applied to the property during the 2016 zone change that established the Neighborhood Business (B-1) zone, but prohibited drive-through facilities, among other use restrictions.

PROPOSED ZONING



This zone is intended to accommodate neighborhood shopping facilities to serve the needs of the surrounding residential area. Generally, they should be planned facilities and should be located as recommended in the Comprehensive Plan. This zone should be oriented to the residential neighborhood, and should have a roadway system which will be adequate to accommodate the anticipated vehicular traffic.

PROPOSED USE



The petitioner proposes to modify the conditional zoning restrictions to allow for the construction of a coffee shop that is purely focused on the traveling public. The applicant is proposing a small structure with a double drive-through facility and a bypass lane.

APPLICANT & COMMUNITY ENGAGEMENT



The applicant indicated that they have spoken with representatives of the Holiday Hills and Valley Heights Neighborhood Associations, the Friends of Wolf Creek, and some of the surrounding land owners. The applicant indicated that those representatives had no objections to the proposed development. The applicant has indicated that they did not receive contact back from some owners and no meetings were requested. They have indicated that the contacted parties were not interested in having a meeting.

PROPERTY & ZONING HISTORY



The subject property was initially zoned Agricultural District (A-1) until 1969 when it was reclassified to the Single Family Residential (R-1A) zone during the comprehensive rezoning of the city and county. The property contained a residence until 2018, when the structure was demolished. In 2016, Flying Dutchman Properties, LLC rezoned the property from the R-1A zone to the Neighborhood Business (B-1) zone. The applicant at the time was interested in constructing a small commercial building of approximately 6,000 square feet in size, and associated off-street parking.

During the zone change to the B-1 zone there was considerable concern with the impact of the proposed development on the surrounding neighborhood and the environmentally sensitive area, while also ensuring greater compliance with the 2013 Comprehensive Plan. For this reason, the Planning Commission recommended, and the Urban County Council approved, numerous conditional zoning restrictions for the property. These restrictions included prohibited uses (drive-through facilities; the sale or provision of wine, beer or alcoholic beverages, other than by the drink; live entertainment and/or dancing; cocktail lounges, brew-pubs and nightclubs; automobile service stations; arcades, including pinball and electronic games; sale of firearms other than by federally licensed manufacturers, importers or dealers; car washing establishments; pool tables within an establishment, even as an accessory use; and automobile and vehicle refueling stations), a required buffer area, lighting restrictions, and free standing signage restrictions.

CONDITIONAL ZONING RESTRICTION PROCESS



Article 6-7(c) Amendment. Modification, removal or amendment of conditions or restrictions shall be as follows:

1. Restrictions or Conditions Designated by the Urban County Council. The Urban County Council shall have final authority to consider and act upon requests for modification, removal or other amendment of a duly imposed binding restriction or condition so designated by the Council at the time of their adoption.
 - a. Findings Required. The request may be granted by the Council only if it is found that there has been a major change of an economic, physical or social nature on the subject property or within the area in which the subject property is located, which was not anticipated at the time the binding restriction or condition was imposed, and which has substantially altered the basic character of such area making



- the restriction or condition inappropriate or improper. The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.
- b. Procedure. The procedure for review, notice and action on requests to modify, remove or amend an imposed restriction or condition shall be the same as for a zone map amendment, except that a full public hearing by the Urban County Council shall be required in all cases. The Council's decision to modify, remove or amend a duly imposed binding restriction or condition shall be final action; and any person or entity claiming to be injured or aggrieved by that action may appeal to Fayette Circuit Court within thirty (30) days after such final action pursuant to KRS 100.347.

ZONING ORDINANCE COMPLIANCE



The conditional zoning restrictions applied during the 2016 zone change (Ord. 96-2016; MAR 2016-13) were found to be appropriate and necessary to ensure greater compliance with the 2013 Comprehensive Plan, and to provide protection to the adjacent residential land uses. The protection of the residential land uses were discussed during the meeting to include safety along Versailles Road and buffering against light, air, and sound impacts caused by a drive-through facility.

Within the applicant's amended application, they have requested relief from the conditional zoning restriction applied to the subject property in 2016 prohibiting drive-through facilities. The applicant's request is based on new evidence, primarily in the form of a traffic impact study (TIS), that was not considered by the Planning Commission and Urban County Council at the time that the conditional zoning restrictions were imposed on the subject property. Furthermore, the applicant indicates that new circumstances of an economic and social nature have occurred since 2016, which were not anticipated.

The applicant has submitted a data driven review of the potential impact of traffic generated by the proposed use at this location. The submitted TIS indicates that the inclusion of the proposed Scooter's Coffee, a quick service coffee business, would not negatively impact the public right-of-way nor would it create a health, safety, or welfare impact. In review by the Division of Planning and the Division of Traffic Engineering, the staff agrees with the applicant's submitted documentation. This is further supported by the ingress and egress design that the applicant has proposed for the subject property. The applicant is proposing a right-in/left-in/right-out access point on Versailles Road. This restricts the ability for those exiting the proposed restaurant from turning left onto Versailles Road, which is the most dangerous turning movement at this location. Furthermore, should there be a warrant, the Urban County Government and the State could install median control restricting the left-in movement in the future.

Additionally, the applicant posits that the project will provide enhanced buffering between the proposed use and the adjoining residential properties. They state that the nearest residence to the immediate west of the subject property is several hundred feet from this project, and there is a substantial area of creek and floodplain related to the Gardenside Tributary of Wolf Run Creek that serves to separate the residential nature of The Colony neighborhood from the subject property. The southern boundary of the subject property is also directly adjacent to the back yard of a single-family residence at 1527 Parkers Mill Road. The proposed development will include a 35-foot landscaped buffer adjacent to this southern boundary, which is 10 feet greater than the buffering required by the conditional zoning. The applicant indicates that the typical operating hours of a Scooter's Coffee closes by 8 p.m. Any lighting in parking areas will also be arranged so as to reflect away from the adjoining residential properties and no free-standing lighting will be taller than twelve (12) feet in height. The applicant indicates that the menu board's speaker will have a system that reduces outbound volume on the system when the ambient noise levels naturally decrease early in the morning and night. To further buffer the southern property, the applicant is proposing new trees along its development. The applicant indicates that the proposed development adequately buffers against the potential nuisance impacts caused by a drive-through facility.

The applicant also indicates that the more recently adopted 2018 Comprehensive Plan and the associated Development Criteria allow for proper transitioning from the residential land uses along the south and west boundaries and create a safer vehicular and pedestrian experience.

Staff agrees with the applicant's justification for the removal of the conditional zoning restriction prohibiting the drive-through facilities on the property.

STAFF RECOMMENDS: APPROVAL, OF THE REMOVAL OF CONDITIONAL ZONING RESTRICTIONS PROHIBITING DRIVE-THROUGH FACILITIES FOR THE FOLLOWING REASONS:



1. Evidence related to the impact of traffic along Versailles Road shows that the proposed use will not negatively impact the health, safety, or welfare of those utilizing the roadway.
2. The proposed ingress and egress point is designed to limit dangerous left turn movements out of the subject property.
3. The inclusion of large buffers and new technologies reduces the impact that drive-through facilities have on the adjacent residential land uses.
4. The adoption of the 2018 Comprehensive Plan provides for greater guidance for development to appropriately transition from more intense land uses to less intense land uses.
5. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions shall apply to the subject property:
 - a. Prohibited Uses:
 1. The sale or provision of wine, beer or alcoholic beverages, other than by the drink.
 2. Live entertainment and/or dancing.
 3. Cocktail lounges, brew-pubs and nightclubs.
 4. Automobile service stations.
 5. Arcades, including pinball and electronic games.
 6. Sale of firearms other than by federally licensed manufacturers, importers or dealers.
 7. Car washing establishments.
 8. Pool tables within an establishment, even as an accessory use.
 9. Automobile and vehicle refueling stations.
 - b. Other Use Restrictions:
 1. A landscape buffer of at least twenty-five (25) feet in width shall be provided along the southern property boundary, with plantings as specified by Article 18-3(a)(1)2 of the Zoning Ordinance, including the retention of any tree that is at least 4" in diameter at breast height (DBH) in size. Any tree 4" DBH or larger may only be removed if diseased or dying, and only with the written permission of the Urban Forester.
 2. Outdoor lighting shall be shielded and directed away from any adjacent residential zone. Lighting attached to a pole or any structure shall be a maximum of twenty (20) feet in height.
 3. Any free-standing sign erected shall be a maximum of ten (10) feet in height.

These use and buffering restrictions are appropriate and necessary to ensure greater compliance with the 2013 Comprehensive Plan, and to provide protection to the adjacent residential land uses.
6. This recommendation is made subject to approval and certification of PLN-MJDP-22-00072: Fox Property, 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 requesting an increase of the maximum building line within a Neighborhood Business (B-1) zone from twenty (20) feet to forty (40) feet.

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 8-16(h)a states that the maximum front yard within the Neighborhood Business (B-1) zone is twenty (20) feet.

CASE REVIEW

The applicant is requesting a variance of the required front yard setback of the property to allow for the structure to be situated forty (40) feet from the front property line. The applicant indicates that due to the floodplain and various other setbacks, limiting the developable area to approximately $\frac{1}{3}$ of an acre in size. Staff finds that the location of the floodplain would push the building closer to Versailles Road rather than further from the roadway.

The applicant also states that both the residential properties to the west and commercial properties to the east of the subject property have front yards that exceed forty foot maximum, and very few properties in this area have a twenty-foot front yard. Many of those subdivisions occurred prior to the existing Zoning Ordinance, and consequently, numerous properties in the vicinity are legally non-conforming with respect to front building setbacks. While the proposed variance would move the buildings in closer alignment, the proposed location of the building would still not meet the character of the area.

The applicant indicates that by granting this variance there will not be an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the necessary variance as soon as it was determined that it was needed, and prior to beginning construction. Additionally, they indicate that granting the variance would not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity.

The staff acknowledges that the proposed site is difficult due to the surrounding environmentally sensitive areas. Staff recommends postponement of the application, to discuss a lesser variance for the site and operational concerns.

STAFF RECOMMENDS: **POSTPONEMENT OF THE REQUESTED VARIANCE FOR THE FOLLOWING REASON:**



1. To work with the applicant on a potential lesser variance and gain insight into operational concerns.