

AN ORDINANCE CHANGING THE ZONE FROM A PROFESSIONAL OFFICE (P-1) ZONE TO A NEIGHBORHOOD BUSINESS (B-1) ZONE, FOR 1.538 NET (2.069 GROSS) ACRES, FOR PROPERTY LOCATED AT 1400, 1402 AND 1412 NORTH BROADWAY, INCLUDING DIMENSIONAL VARIANCES (H & J PROPERTIES OF LEXINGTON, LLC AND TLJ PROPERTIES OF LEXINGTON, LLC; COUNCIL DISTRICT 1).

WHEREAS, at a Public Hearing held on November 19, 2015, a petition for a zoning ordinance map amendment for property located at 1400, 1402 and 1412 North Broadway from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 1.538 net (2.069 gross) acres, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change including a dimensional variances by a vote of 8-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a change in zone for property located at 1400, 1402 and 1412 North Broadway from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 1.538 net (2.069 gross) acres, being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - That the granting of this zone change is made subject to the following use restrictions as conditions of granting the zone change:

Under the provisions of Article 6-7 of the Zoning Ordinance, the following use and buffering restrictions are proposed for the subject property via conditional zoning:

Prohibited Uses

1. Automobile Service Stations.
2. Miniature Golf and putting Courses.
3. Car Washes.
4. Outdoor Live Entertainment.
5. Drive-through facilities.

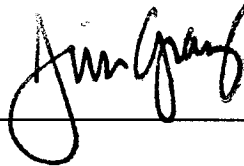
Section 3 - That the Lexington-Fayette Urban County Planning Commission is directed to show the amendment on the official zone map atlas and to make reference

to the number of this Ordinance.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: February 4, 2016

MAYOR

A handwritten signature in black ink, appearing to read "Jim Gray", written over a horizontal line.

ATTEST:

A handwritten signature in black ink, appearing to read "Martha Mall", written over a horizontal line.

CLERK OF URBAN COUNTY COUNCIL

Published: February 11, 2016

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LEGAL DESCRIPTION
of
1400-1412 North Broadway
in
Lexington, Fayette County, Kentucky

All those tracts or parcels of land located on the southeastern side of the intersection of North Broadway and bound by Withers Avenue and Paris Avenue, in the city of Lexington, Fayette County, Kentucky and being more fully described and bounded as follows, to wit:

BEGINNING at a point, said point being the intersection of the centerlines of North Broadway and Withers Avenue; thence with the centerline of North Broadway N47°52'16"E 408.89' to a point, said point being the intersection of the centerlines North Broadway and Paris Avenue; thence, leaving the centerline of North Broadway with the centerline of Paris Avenue S44°57'33"E 235.78' to a point; thence, leaving the centerline of Paris Avenue S42°54'19"W 220.45' to a point; thence, N43°50'00"W 64.67' to a point; thence, S47°52'16"W 193.44' to a point in the centerline of Withers Avenue; thence, with the centerline of Withers Avenue N43°50'00"W 190.02' to the point of beginning, and containing a Gross area of 90,129.60 Sq. Ft. (2.069 acres) and a Net area of 67,043.20 Sq. Ft. (1.538 acres).

End of Legal Description

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

IN RE: MARV 2015-22: H & J PROPERTIES OF LEXINGTON, LLC, AND TLJ PROPERTIES OF LEXINGTON, LLC – petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 1.538 net (2.069 gross) acres, for property located at 1400, 1402 and 1412 North Broadway. Dimensional variances are also requested. (Council District 1)

Having considered the above matter on **November 19, 2015**, at a Public Hearing, and having voted **8-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **CONDITIONAL APPROVAL** of this matter for the following reasons:

1. The proposed zone change to a Neighborhood Business (B-1) zone is in agreement with the 2013 Comprehensive Plan, and is supported by several Goals and Objectives of the 2013 Comprehensive Plan, including:
 - a. Theme A (*Growing Successful Neighborhoods*), Goal #2, Objective a., which states: “Identify areas of opportunity for infill, redevelopment and adaptive reuse that respect the area’s context and design features whenever possible.” The petitioner is re-using the existing buildings and parking for new uses.
 - b. Theme C (*Creating Jobs and Prosperity*), Goal #1, Objective d., which encourages the creation of jobs near where people live. The property is located very near residential neighborhoods, and may provide a support or service use in the area that is not currently available.
2. The requested Neighborhood Business (B-1) zone is appropriate for this location since it is located directly across from the major tourist attraction currently located in the corridor.
3. With appropriate conditional zoning restrictions, the Neighborhood Business (B-1) zone will continue to provide an appropriate land use transition between the B-3 zoning across North Broadway (ball park) and the residential land uses further to the southeast of this location, promoting the Plan’s emphasis on protecting existing neighborhoods.
4. This recommendation is made subject to the approval and certification of ZDP 2015-22: Fairlawn Subdivision Lots 19-22, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
5. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be prohibited on the subject property:
 - a. Automobile Service Stations
 - b. Miniature Golf and Putting Courses
 - c. Car Washes
 - d. Outdoor Live Entertainment
 - e. Drive-through facilities.

These use prohibitions are appropriate and necessary to ensure that future development will be compatible with the character of the adjoining residential area by prohibiting uses that are generally auto-centric and create excessive noise and light disturbances.

ATTEST: This 6th day of January, 2016.


Secretary, Jim Duncan

MIKE OWENS
CHAIR

Note: Variances to reduce the property perimeter screening were approved by the Planning Commission for this property, subject to the rezoning being granted.

Note: The corollary development plan, ZDP 2015-22: Fairlawn Subdivision Lots 19-22, was approved by the Planning Commission and certified on December 3, 2015.

K.R.S. 100.211(7) requires that the Council take action on this request by February 17, 2016.

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

OBJECTORS

- None

OBJECTIONS

- None

VOTES WERE AS FOLLOWS:

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

NAYS: (0)

ABSENT: (3) Brewer, Drake, Owens

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for CONDITIONAL APPROVAL of MARV 2015-22 carried.

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

GENERAL INFORMATION: MAP AMENDMENT REQUEST (MAR) APPLICATION

1. ADDRESS INFORMATION (Name, Address, City/State/Zip & PHONE NO.)

APPLICANT:	H & J Properties of Lexington, LLC & TLJ Properties of Lexington, LLC
OWNER:	H & J Properties of Lexington, LLC & TLJ Properties of Lexington, LLC
ATTORNEY:	Peter E. Brown

2. ADDRESS OF APPLICANT'S PROPERTY (Please attach Legal Description)

1400, 1402 & 1412 N. Broadway, Lexington, KY
--

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY (Use attachment, if needed--same format.)

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
P-1	Private Club	B-1	Retail	0.197	0.349
P-1	Veterinarian Clinic	B-1	Veterinarian Clinic	0.390	0.494
P-1	Retail	B-1	Retail	0.951	1.226

4. SURROUNDING PROPERTY, ZONING & USE

Property	Use	Zoning
North	Commercial	B-1 & B-3
East	Office	P-1
South	Residential	R-1C
West	Commercial	B-1

5. 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 ____ % 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 _____ Units

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

Roads	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Storm Sewers	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Sanitary Sewers	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Curb/Gutter/Sidewalks	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Refuse Collection	<input checked="" type="checkbox"/> LFUCG	<input type="checkbox"/> Other		
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

7. DESCRIBE YOUR JUSTIFICATION FOR REQUESTED CHANGE (Please provide attachment.)

This is in... <input checked="" type="checkbox"/> in agreement with the Comp. Plan <input checked="" type="checkbox"/> more appropriate than the existing zoning <input type="checkbox"/> due to unanticipated changes.

8. APPLICANT/OWNER SIGNS THIS CERTIFICATION

I do hereby certify that to the best of my knowledge and belief, all application materials are herewith submitted, and the information they contain is true and accurate. I further certify that I am OWNER or HOLDER of an agreement to purchase this property since _____.

APPLICANT <u>John Hummer</u>	<u>Tiffany Jabal</u>	DATE <u>9/30/15</u>
OWNER <u>John Hummer</u>	<u>Tiffany Jabal</u>	DATE <u>9/30/15</u>
LFUCG EMPLOYEE/OFFICER, if applicable _____		DATE _____

STATEMENT OF JUSTIFICATION

7. The applicants, H & J Properties of Lexington, LLC and TLJ Properties of Lexington, LLC, request your approval of a zone change from the professional office (P-1) zone to the neighborhood business (B-1) zone for the parcels located at 1400, 1402, and 1412 North Broadway. These properties front North Broadway and are bounded on either side by Withers Avenue and Paris Avenue. They are across from the Legends Ballpark. The properties to the South and those across the street from the subject properties are all zoned business.

No new construction is planned for these properties. The applicants are seeking this change to increase the number of principal and accessory uses permitted at the properties. Granting the zone change will permit the diversity of uses to expand greatly, thus allowing the properties to better serve the adjacent residential neighborhoods and the general community.

The requested variances are sought as fences currently exist on the property lines between the subject properties and their neighbors. Given these existing fences, we are requesting to substitute shrubs to provide the zone to zone privacy screening in place of wooden fencing. The applicants want to provide the required screening but would like to utilize shrubs to comply, instead of a wooden fence. No dimensional variance is requested as the space currently serving as landscape buffers exceeds the amount required.

The Goals and Objectives of the 2013 Comprehensive Plan support redevelopment, adaptive reuse and commercial activity (A.2.) Existing neighborhoods will benefit from local businesses their residents can walk to for shopping and employment. (A.3., B.2., C.1. & 2.)

Therefore, we request approval of a zone change from P-1 to B-1 for the following reasons:

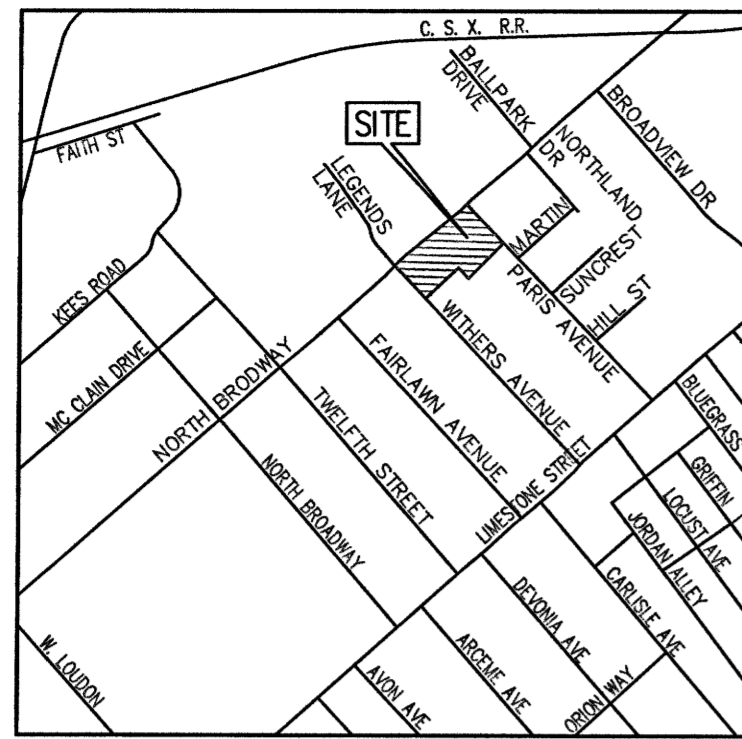
1. Allowing an expansion of the permitted and conditional uses for these properties furthers the goals and objectives of the 2013 Comprehensive Plan by benefitting the surrounding residential neighborhoods.
2. B-1 zoning is compatible with the B-1, B-3, and P-1 zoned areas found in the vicinity of the subject properties.
3. The properties consist of three small parcels that together include 2.069 gross and 1.538 net acres.
4. The existing fencing and requested variances provide for the fencing and screening buffer contemplated by Article 18-3(a)(1)(FN7).

LEGAL DESCRIPTION
of
1400-1412 North Broadway
in
Lexington, Fayette County, Kentucky

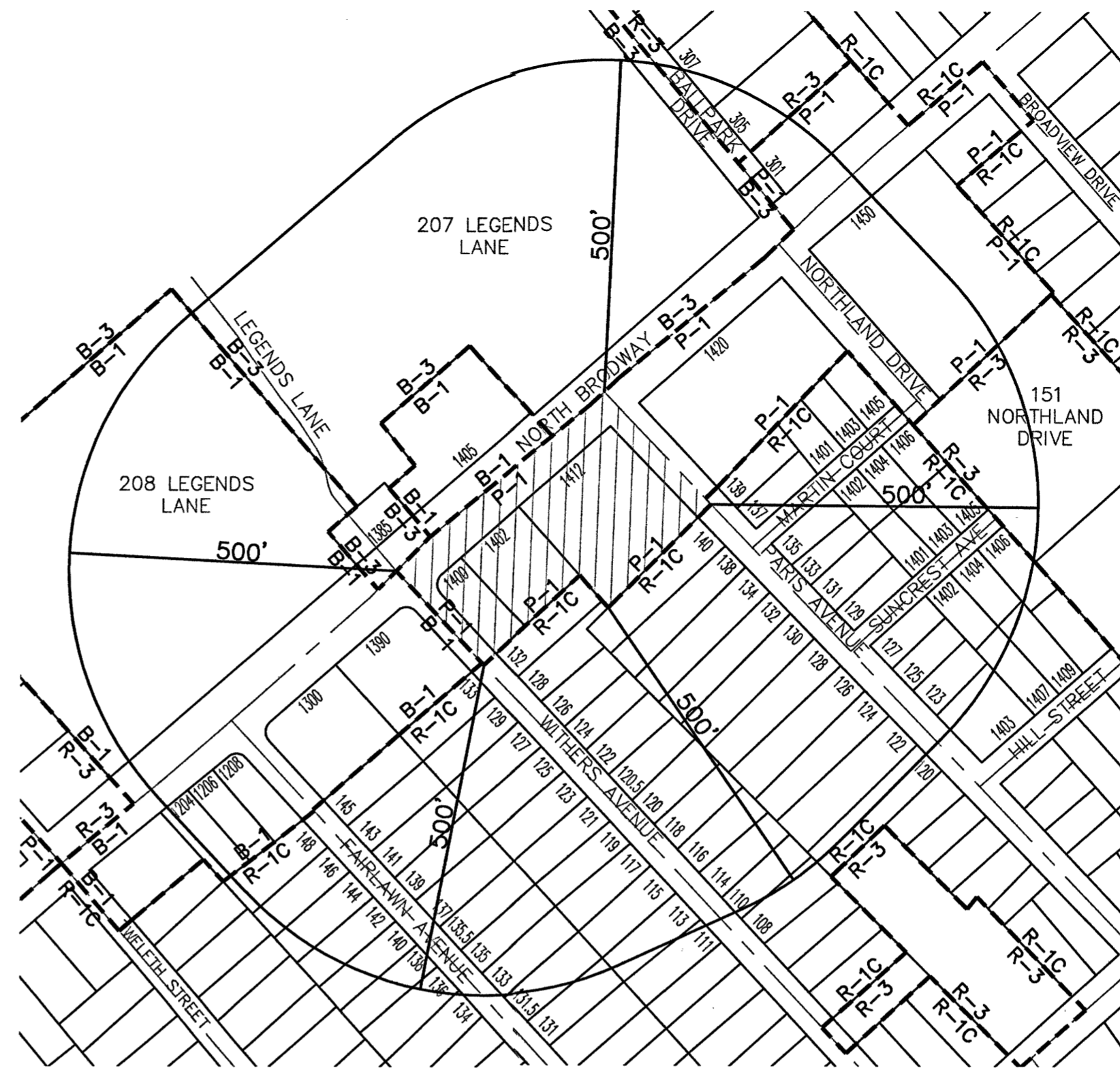
All those tracts or parcels of land located on the southeastern side of the intersection of North Broadway and bound by Withers Avenue and Paris Avenue, in the city of Lexington, Fayette County, Kentucky and being more fully described and bounded as follows, to wit:

BEGINNING at a point, said point being the intersection of the centerlines of North Broadway and Withers Avenue; thence with the centerline of North Broadway N47°52'16"E 408.89' to a point, said point being the intersection of the centerlines North Broadway and Paris Avenue; thence, leaving the centerline of North Broadway with the centerline of Paris Avenue S44°57'33"E 235.78' to a point; thence, leaving the centerline of Paris Avenue S42°54'19"W 220.45' to a point; thence, N43°50'00"W 64.67' to a point; thence, S47°52'16"W 193.44' to a point in the centerline of Withers Avenue; thence, with the centerline of Withers Avenue N43°50'00"W 190.02' to the point of beginning, and containing a Gross area of 90,129.60 Sq. Ft. (2.069 acres) and a Net area of 67,043.20 Sq. Ft. (1.538 acres).

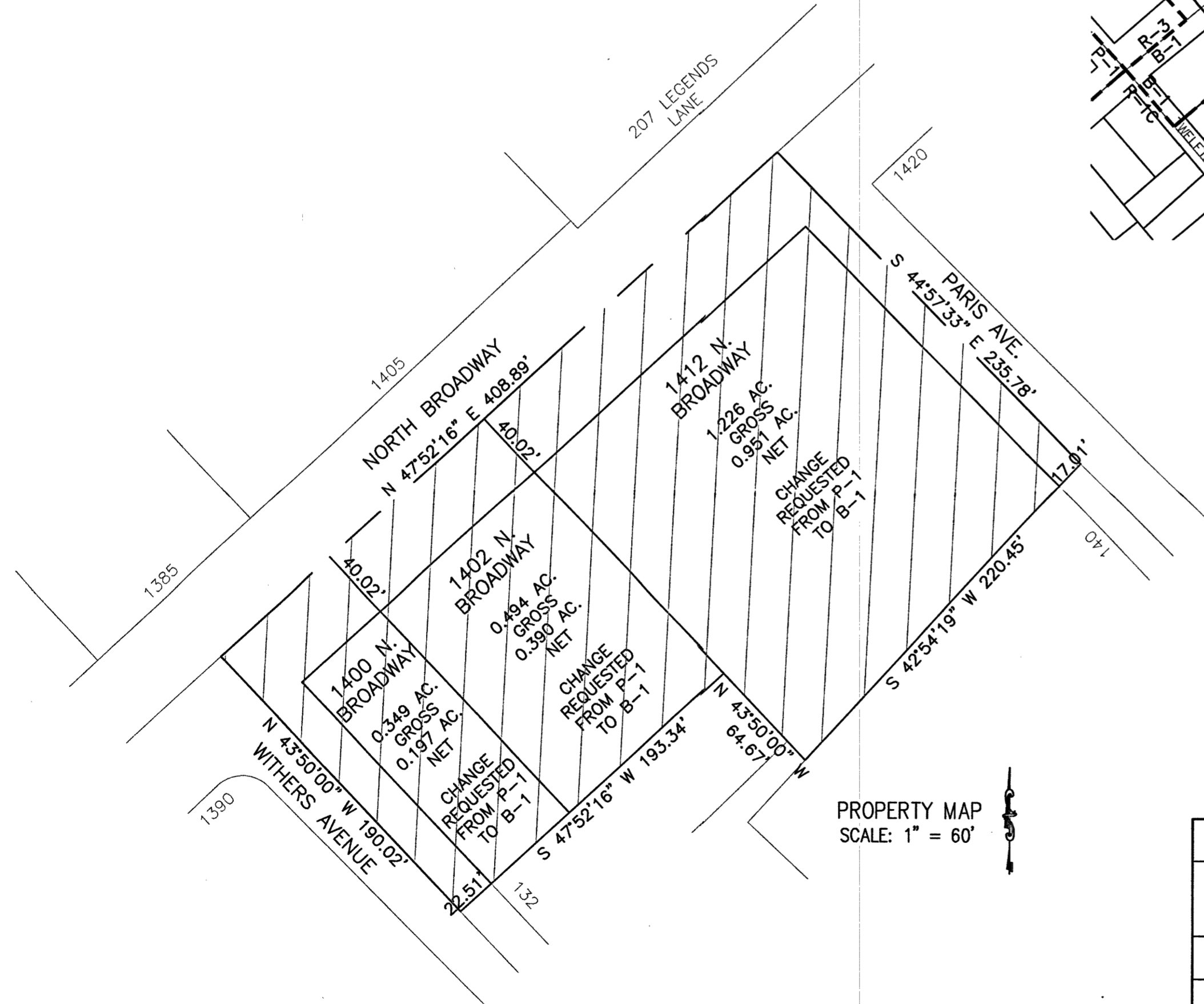
End of Legal Description



VICINITY MAP
N.T.S.



NOTIFICATION MAP
SCALE: 1" = 200'



PROPERTY MAP
SCALE: 1" = 60'

JOHN W. HILL
684 ESTRELLA DRIVE
LEXINGTON, KY 40511
PHONE: (859) 621-9155
john.hill4378@yahoo.com

TITLE:	H & J PROPERTIES OF LEXINGTON, LLC AND TLJ PROPERTIES OF LEXINGTON, LLC			
PROPERTY ADDRESS	FROM	TO	NET	GROSS
1400 N. BROADWAY	P-1	B-1	0.197 AC.	0.349 AC.
1402 N. BROADWAY	P-1	B-1	0.390 AC.	0.494 AC.
1412 N. BROADWAY	P-1	B-1	0.951 AC.	1.226 AC.
APPLICANT	H & J PROPERTIES OF LEXINGTON, LLC AND TLJ PROPERTIES OF LEXINGTON, LLC			
OWNER	H & J PROPERTIES OF LEXINGTON, LLC AND TLJ PROPERTIES OF LEXINGTON, LLC			
PREPARED BY	S. MARK McCAIN, RLA			
DATE FILED	OCTOBER 5, 2015			
	TOTAL		1.538 AC.	2.069 AC.



H and J PROPERTIES, LLC and
TLJ PROPERTIES, LLC
1400, 1402 and 1412 NORTH BROADWAY
LEXINGTON, FAYETTE COUNTY, KENTUCKY

PROPERTY INFORMATION MAP

S. Mark McCain, RLA
LANDSCAPE ARCHITECTURE / SITE DEVELOPMENT
3797 WHITE PINE DR, LEXINGTON, KENTUCKY 40514
PHONE: (859)-489-8921 EMAIL: SMARKMCCAIN@GMAIL.COM

JOB NO: 2015.16
DATE: 10/05/15
DRAWN BY: SMM
CHECKED BY: JWH

STAFF REPORT ON AMENDED PETITION FOR ZONE MAP AMENDMENT

MARV 2015-22: H & J PROPERTIES OF LEXINGTON, LLC & TLJ PROPERTIES OF LEXINGTON, LLC

DESCRIPTION

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

Acreage: 1.583 net (2.069 gross) acre

Location: 1400, 1402 & 1412 North Broadway

EXISTING ZONING & LAND USE

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Property	P-1	Veterinary, Private Club, Offices
To North	B-1 & B-3	Lexington Legends Ball Park
To East	R-1C	Single Family Residential
To South	R-1C	Single Family Residential
To West	B-1	Parking Lot, Shopping Center

URBAN SERVICES REPORT

Roads – The subject properties front along North Broadway (US 68) between the Withers Avenue intersection to the southeast and Paris Avenue intersection to the northwest. North Broadway is a four-lane major arterial roadway. Directly in front of these properties the road widens to six lanes to accommodate a dedicated left and right turn lanes at the signalized intersection, with Withers Avenue, which is opposite of the main entrance to the Lexington Legends Whitaker Bank Ball Park. Both Withers Avenue and Paris Avenue are local residential streets that connect N. Broadway to N. Limestone Street.

Curb/Gutter/Sidewalks – Curb, gutters, and sidewalks exist along Withers Avenue and North Broadway, but only for 1400 N. Broadway. 1402 and 1412 N. Broadway only have a drainage ditch and no sidewalks along this section of N. Broadway. The Paris Avenue frontage of 1412 North Broadway also has curb, gutters, and sidewalks.

Storm Sewers – The subject properties are located within the upper reaches of the Cane Run Creek watershed, and the site is located in the Royal Spring Aquifer Recharge Area. Currently, stormwater facilities are not located anywhere on the properties for the existing commercial use, except for the drainage ditch along N. Broadway. Some nearby commercial projects have been developed with storm sewers or stormwater basins. Since each of the properties is less than one acre in size and they are already developed, stormwater facilities may not be required for the property under the adopted Engineering Manuals. No FEMA floodplain or major flooding problems exist on the subject properties.

Sanitary Sewers – The subject properties are located in the Town Branch sewershed, which is served by the Town Branch Wastewater Treatment Plant. Sanitary sewer capacity will need to be verified prior to certification or occupancy for the proposed change of land use at this location.

Refuse – The Urban County Government serves this portion of the Urban Service Area with refuse collection on Tuesday. Commercial developments often contract for additional service.

Police – The nearest police station is located on Goodwin Drive, about 1½ miles northwest of the subject property.

Fire/Ambulance – The nearest fire station (#8) is located approximately 2/3 mile northeast of the subject property on North Broadway.

Utilities – Utilities, including natural gas; electric; water; cable television; and telephone service are all existing and readily available in the area.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan’s mission statement is to “provide flexible planning guidance to ensure that development of our community’s resources and infrastructure preserves our quality of life, and fosters regional planning and economic development.” The 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 Comprehensive Plan also encourages growing successful neighborhoods (Theme A) through adaptive reuse that respects the area’s context and design features (Goal 2.a.); and creating jobs and prosperity (Theme C), with emphasis on creating jobs near where people live (Goal 1.d.).

The petitioners propose to rezone the property to a Neighborhood Business (B-1) zone, utilizing the existing buildings and parking in order to expand the number of uses permitted on these properties.

CASE REVIEW

The applicants request a rezoning from the a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone for a total of three properties (1400, 1402, & 1412 North Broadway) located directly across from the Lexington Legends Whitaker Bank Ball Park. These three properties comprise the entire block front along the east side of North Broadway from Paris Avenue to Withers Avenue, the subject property being about 1.5 acres in total size.

The applicants are not proposing any new construction, but seek the approval to utilize the existing buildings and parking layout to accommodate a greater diversity of businesses than is currently allowed in the P-1 zone. At this time, there is not a proposed change of use for any of the properties, but one could assume that as current tenants relocate the area will be gradually change to offer more office and retail uses. “For Rent” signs already advertise vacant space on these properties.

The North Broadway corridor from West Loudon Avenue to New Circle Road currently has a nearly even mixture of residential, professional office, and neighborhood business zoning for those lots that front on the corridor. By and large, though, this portion of the corridor is commercial in nature. With the exception of the Legends’ ball park, which is zoned B-3, all other business-zoned properties in this corridor are B-1.

The 2013 Comprehensive Plan focuses on general land use policies, such as land use compatibility; well-designed neighborhoods; improving a desirable community; and making the best use of land inside the Urban Service Boundary for the protection of the surrounding rural areas. However, the Plan no longer utilizes a land use map. The subject properties are located within the Central Sector Small Area Plan boundaries, more specifically within Sub-Area D. The SAP identified redevelopment and investment as a guiding principle, and recommended sidewalk improvements along the N. Broadway corridor. The petitioner contends that the proposal is in agreement with the 2013 Comprehensive Plan because the Goals and Objectives support adaptive reuse and commercial activity (Theme A, Goal #2). In addition, they opine that existing neighborhoods will benefit from local businesses that residents can walk to for shopping and employment opportunities (Theme C, Goals #1 & #2).

The retail uses allowed in the B-1 zone would be well suited for these properties, especially being directly across from the ball park, which is a major tourist attraction. They would also be adjacent to other B-1 zoning to the south across Withers Avenue. However, these properties also serve as a buffer to the residential neighborhood, Fairlawn Subdivision, that is between N. Broadway and N. Limestone. As such, a few conditional zoning restrictions prohibiting uses that may generate excessive noise and light are appropriate, because of the close proximity of the subject properties to the neighborhood. With

appropriate conditional zoning restrictions, the Neighborhood Business (B-1) zone will continue provide an appropriate land use transition between the B-3 zoned ball park and the residential land uses further to the southeast of this location, promoting the Plan's emphasis on protecting existing neighborhoods.

The subject properties are located within the defined Infill & Redevelopment Area, and although the proposed rezoning would not be considered a type of infill redevelopment, they are proposing reuse of the property, and would be utilizing the existing built environment. Should these properties be completely redeveloped in the future, the setback regulations of the B-1 zone will favor a development that will require the area's context and design features, and new buildings will need to be located physically closer to North Broadway.

The Staff Recommends: Approval, for the following reasons:

1. The proposed zone change to a Neighborhood Business (B-1) zone is in agreement with the 2013 Comprehensive Plan, and is supported by several Goals and Objectives of the 2013 Comprehensive Plan, including:
 - a. Theme A (*Growing Successful Neighborhoods*), Goal #2, Objective a., which states: "Identify areas of opportunity for infill, redevelopment and adaptive reuse that respect the area's context and design features whenever possible." The petitioner is re-using the existing buildings and parking for new uses.
 - b. Theme C (*Creating Jobs and Prosperity*), Goal #1, Objective d., which encourages the creation of jobs near where people live. The property is located very near residential neighborhoods, and may provide a support or service use in the area that is not currently available.
2. The requested Neighborhood Business (B-1) zone is appropriate for this location since it is located directly across from the major tourist attraction currently located in the corridor.
3. With appropriate conditional zoning restrictions, the Neighborhood Business (B-1) zone will continue to provide an appropriate land use transition between the B-3 zoning across North Broadway (ball park) and the residential land uses further to the southeast of this location, promoting the Plan's emphasis on protecting existing neighborhoods.
4. This recommendation is made subject to the approval and certification of ZDP 2015-22: Fairlawn Subdivision Lots 19-22, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
5. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be prohibited on the subject property:
 - a. Automobile Service Stations
 - b. Miniature Golf and Putting Courses
 - c. Car Washes
 - d. Outdoor Live Entertainment
 - e. Drive-through facilities.

These use prohibitions are appropriate and necessary to ensure that future development will be compatible with the character of the adjoining residential area by prohibiting uses that are generally auto-centric and create excessive noise and light disturbances.

1. H & J PROPERTIES OF LEXINGTON, LLC, AND TLJ PROPERTIES OF LEXINGTON, LLC, ZONING MAP AMENDMENT & FAIRLAWN SUBDIVISION, LOTS 19-22, ZONING DEVELOPMENT PLAN

- a. MARV 2015-22: H & J PROPERTIES OF LEXINGTON, LLC, AND TLJ PROPERTIES OF LEXINGTON, LLC (1/3/16)* – petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 1.538 net (2.069 gross) acres, for property located at 1400, 1402 and 1412 North Broadway. Dimensional variances are also requested.

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The petitioners propose to rezone the property to a Neighborhood Business (B-1) zone, utilizing the existing buildings and parking in order to expand the number of uses permitted on these properties.

The Zoning Committee Recommended: Approval, for the reasons provided by staff.

The Staff Recommends: Approval, for the following reasons:

1. The proposed zone change to a Neighborhood Business (B-1) zone is in agreement with the 2013 Comprehensive Plan, and is supported by several Goals and Objectives of the 2013 Comprehensive Plan, including:
 - a. Theme A (*Growing Successful Neighborhoods*), Goal #2, Objective a., which states: "Identify areas of opportunity for infill, redevelopment and adaptive reuse that respect the area's context and design features whenever possible." The petitioner is re-using the existing buildings and parking for new uses.
 - b. Theme C (*Creating Jobs and Prosperity*), Goal #1, Objective d., which encourages the creation of jobs near where people live. The property is located very near residential neighborhoods, and may provide a support or service use in the area that is not currently available.
2. The requested Neighborhood Business (B-1) zone is appropriate for this location since it is located directly across from the major tourist attraction currently located in the corridor.
3. With appropriate conditional zoning restrictions, the Neighborhood Business (B-1) zone will continue to provide an appropriate land use transition between the B-3 zoning across North Broadway (ball park) and the residential land uses further to the southeast of this location, promoting the Plan's emphasis on protecting existing neighborhoods.
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 - a. Automobile Service Stations
 - b. Miniature Golf and Putting Courses
 - c. Car Washes
 - d. Outdoor Live Entertainment
 - e. Drive-through facilities.

These use prohibitions are appropriate and necessary to ensure that future development will be compatible with the character of the adjoining residential area by prohibiting uses that are generally auto-centric and create excessive noise and light disturbances.

b. REQUESTED VARIANCES

1. To eliminate the property perimeter screening along the southeast property line of 1400 N. Broadway.
2. To eliminate vehicular use area and property perimeter screening along the southwest property line at 1412 N. Broadway.
3. To substitute the 6' high fence required for property perimeter screening with a single row of 6' tall shrubs along the southeast property line at 1412 N. Broadway.

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variances will not adversely affect the public health, safety or welfare. It will not negatively alter the essential character of the general vicinity because landscaping has existed between the commercial office uses and residential properties for many years, and appropriate alternative screening will be provided to enhance the existing landscaping, where needed.

* - Denotes date by which Commission must either approve or disapprove request.

- b. The existing pattern of development of the property, along with some of the existing screening, creates the unique circumstances that justify consideration of an alternative screening pattern for the subject properties.
- c. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship because change in the topography on 1400 N. Broadway and the width of the existing drive aisle on 1412 N. Broadway present challenges in installing effective screening.
- d. The requested variances are not an unreasonable circumvention of the Zoning Ordinance, because alternative landscaping and screening (VJA screening, dumpster screening, and a 6' tall hedge in place of a fence) will be provided along the property boundaries where the variances are requested.
- e. The circumstances surrounding the requested variances are not the result of prior actions taken by this applicant, as no construction (or even building demolition) has yet occurred on the subject site.

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

1. Provided the Urban County Council rezones the properties B-1; otherwise, any Commission action of approval of these variances 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 variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
 4. The required screening for the dumpster on 1412 N. Broadway shall be constructed prior to the issuance of a Zoning Compliance Permit, unless otherwise requested by the Division of Waste Management to not be installed for operational purposes.
- c. ZDP 2015-103: FAIRLAWN SUBDIVISION, LOTS 19-22 (H & J PROPERTY OF LEXINGTON, LLC & TLJ PROPERTY OF LEXINGTON, LLC) (1/3/16)*- located at 1400, 1402 and 1412 North Broadway.
(S. Mark McCain, RLA)

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

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
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. Denote height of buildings, in feet.
6. Provided the Planning Commission grants the requested variances.
7. Denote 20' building line on plan.
8. Denote nonconformity in the existing building(s) setback in the B-1 zone.
9. Dimension exterior of all buildings.
10. Dimension access entrance and drive-through lane adjacent to Paris Avenue.
11. Dimension sidewalks internal to the site.
12. Resolve existing access to North Broadway.
13. Resolve lack of interior (landscape) tree plantings.

Zoning Presentation: Ms. Wade presented the staff report on this requested zone change, briefly orienting the Commission to the location of the subject properties, on the east side of North Broadway, between Loudon Avenue and New Circle Road. The property, which is comprised of three parcels, is located directly across from the Whitaker Bank ball park. The zoning in the immediate vicinity includes: B-1 across Withers Avenue; P-1 across Paris Avenue; and single family residential in the Fairlawn subdivision to the southeast. The area is characterized primarily by commercial development, but there is a mix of residential, professional office and business uses in the overall area between Loudon Avenue and New Circle Road.

Ms. Wade explained that there are currently three structures on the subject property, one of which has several vacancies. The petitioner is not proposing to modify the existing structures, but is requesting rezoning in order to permit new uses on the subject property. The larger property at 1412 North Broadway has "for rent" signs in place, which indicated to the staff a likelihood that the units could be filled if the rezoning were approved.

Ms. Wade displayed the following photographs of the subject property and surrounding area: 1) a view of the property at 1400 North Broadway, at the corner of Withers Avenue and North Broadway, which includes an existing house being used as a professional office; 2) a view along Withers Avenue toward the entrance to the ball park; 3) 1402 North Broadway, which is currently occupied by a veterinarian's office and an accessory structure; 4) a view from the corner of Paris Avenue and North Broadway of the property at 1412 North Broadway, which has a larger, L-shaped professional office building that includes a basement level accessible from the rear; and 5) a view down Paris Avenue. Ms.

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Wade noted that the subject properties comprise the entire block between Withers and Paris Avenues. The intersection of Withers Avenue and South Broadway is currently signalized.

With regard to the recommendations of the 2013 Comprehensive Plan, Ms. Wade stated that the subject property falls within subarea "D" of the Central Sector Small Area Plan (CSSAP), approved just a few years ago. The CSSAP provided some guidance to the staff in reviewing this application, including encouraging redevelopment and investment in the study area; it also recommended sidewalk improvements along North Broadway, which the petitioner is proposing with their corollary development plan. The petitioner opines that the proposed rezoning is in agreement with the Goals & Objectives of the 2013 Comprehensive Plan, because it supports adaptive reuse and commercial activity, which is in line with Theme A, Goal 2; and, that existing neighborhoods will benefit from business and employment opportunities within walking distance. The staff found that retail uses, which are typical in the B-1 zone, would be appropriate directly across from the Lexington Legends ball park, since it is a major tourist attraction. The staff also considered that the B-1 zone would maintain an appropriate buffer for the residential neighborhoods to the south, as long as conditional zoning restrictions were put in place.

Ms. Wade explained that the staff is recommending prohibiting five land uses on the property, via conditional zoning, which were listed in the staff report and on the agenda. She said that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, explaining that it proposes no major changes to the existing configuration on the property. The plan includes the existing structures and parking lots, with access from North Broadway and Paris Avenue. The access on North Broadway extends across the street frontage; one of the conditions for approval would require that access point to be constricted in order to make it safer and more efficient.

Mr. Martin said that the staff is recommending approval of this plan, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
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. Denote height of buildings, in feet.
6. Provided the Planning Commission grants the requested variances.
7. ~~Denote 20' building line on plan.~~
8. ~~Denote nonconformity in the existing building(s) setback in the B-1 zone.~~
- 7.9. Dimension exterior of all 2,000 square-foot two-story buildings at 1402 South Broadway.
10. ~~Dimension access entrance and drive through lane adjacent to Paris Avenue.~~
- 8.44. Dimension sidewalks internal to the site for side and rear of building at 1412 South Broadway.
- 9.42. Resolve Denote timing of revision to existing access to 1402 North Broadway.
- 10.43. Resolve lack of interior (landscape) tree plantings for 1412 North Broadway.
11. Discuss plan status.

He noted, with regard to condition #11, that the staff discussed with the petitioner the possibility of making this a Final Development Plan, since so few physical changes are proposed; but the petitioner indicated that they would prefer to maintain it as a preliminary development plan.

Variance Presentation: Mr. Emmons presented the requested variances, all of which apply to landscaping for the property. The petitioner is requesting to eliminate the zone-to-zone screening along the property boundary for 1400 North Broadway, at the corner of Withers Avenue; eliminate zone-to-zone screening at 1412 North Broadway; and substitute a different type of screening along most of the property line for 1412 North Broadway. The property at 1402 North Broadway meets all of the landscaping requirements, so no variances were necessary.

Mr. Emmons explained, with regard to the first requested variance, that there is a significant grade difference between the subject property and the adjoining parcel. That is part of the reason for the petitioner's request to eliminate zone-to-zone screening, which would require a 6' fence, in that location. The petitioner is proposing to install vehicular use area screening instead, which would include a 3' hedge. The staff believes that, along with the grade change, a 3' hedge would provide an adequate buffer.

The second requested variance, Mr. Emmons said, would apply to the rear property boundary at 1412 North Broadway. Zone-to-zone screening is required at that location; and, although some vegetation is present, it is located on the adjoining residential property. The petitioner opines that, because the building is located 20' from the property line, it would be more appropriate to keep that area free from landscaping for safety reasons. The Division of Fire and Emergency Services staff concurred.

Mr. Emmons stated that the third proposed variance would apply to the boundary to the rear of the parking lot at 1412 North Broadway. Article 18 of the Zoning Ordinance would require a 6' fence or hedge plus trees in that location; the petitioner is proposing to install a 6' hedge instead, along with the required trees. The staff believes that will be adequate, and will provide a more attractive, "softer" buffer for the adjoining residential properties than would a privacy fence. Mr. Emmons said that the staff is recommending approval of all three requested variances, for the reasons as listed in the staff report and on the agenda.

Petitioner Representation: Peter Brown, attorney, was present representing the petitioner. He stated that the petitioner was in agreement with the staff's recommendations, and he requested approval.

Citizen Comment: Although there were citizens present, none wished to comment on this request.

Zoning Action: A motion was made by Mr. Berkley, seconded by Mr. Penn, and carried 8-0 (Brewer, Drake, and Owens absent) to approve MARV 2015-22, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Berkley, seconded by Mr. Penn, and carried 8-0 (Brewer, Drake, and Owens absent) to approve the requested variances, for the reasons provided by staff, subject to the conditions as recommended by staff.

Development Plan Action: A motion was made by Mr. Berkley, seconded by Mr. Penn, and carried 8-0 (Brewer, Drake, and Owens absent) to approve ZDP 2015-103, subject to the revised conditions as listed, deleting #11.

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