

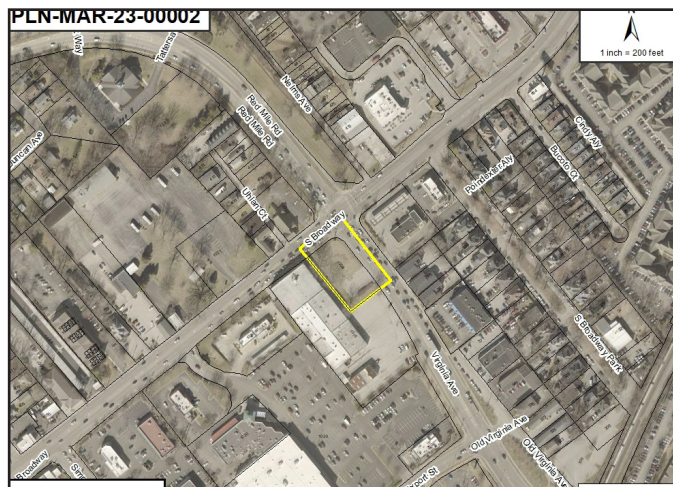
# STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-23-00002: DUTCH BROS, LLC

## DESCRIPTION OF ZONE CHANGE

Zone Change: From a Professional Office (P-1) zone  
To a Neighborhood Business (B-1) zone  
Acreage: 0.5705 net (0.8986 gross) acres  
Location: 1008 South Broadway

## EXISTING ZONING & LAND USE

PROPERTIES	ZONING	EXISTING LAND USE
Subject Property	P-1	Vacant
To North	B-1 / B-4	Gas Station / Residential
To East	B-1	Mixed Use
To South	B-1	Mixed Use
To West	B-1 / B-4	Sign Company / Right-of-way



## URBAN SERVICE REPORT

**Roads** - The subject property is located at the corner of South Broadway (US 68) and Virginia Avenue (US 27), with frontage along both roadways. South Broadway (US 68) is a major arterial roadway and is identified as one of Lexington's urban corridors. The roadway experiences approximately 25,950 average daily trips. Virginia Avenue is a minor arterial roadway and experiences approximately 17,100 average daily trips. Virginia Avenue becomes Red Mile Road west of its intersection with South Broadway. Due to the constriction of South Broadway caused by historical development and the high amount of traffic at this location there is significant slowdown of the northbound traffic caused by the shortened left only turn lane that allows access to Red Mile Road. Access to the site is proposed solely from Virginia Avenue.

**Curb/Gutter/Sidewalks** - Both South Broadway and Virginia Avenue have curb, gutters, and sidewalks at this location. Roadway improvements may be required at the time of development of the site due to the historic constriction of South Broadway.

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

**Storm Sewers** - The subject property is located within the Wolf Run watershed. Storm sewers are currently located along the right-of-way; however, the developer will be required to address water quality on their site in accord with the adopted Engineering Manuals. There are no special flood hazard areas in this location.

**Sanitary Sewers** - The subject property is located within the Wolf Run sewershed, which is served by the Town Branch Wastewater Treatment Facility, located on Lisle Industrial, east of New Circle Road. Sanitary sewer capacity will need to be verified prior to certification of the final development plan for the proposed redevelopment.

**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.

**Police** - The nearest police station is the main headquarters, located approximately one and a half miles to the northeast on East Main Street.

**Fire/Ambulance** - Fire Station #11 is the nearest station to this site. It is located approximately ¾ mile to the southwest on Harrodsburg Road between St. Joseph Hospital and Picadome Elementary School.

**Transit** - LexTran service is available within the immediate area along both South Broadway and Virginia Avenue. Outbound and inbound service for the South Broadway Route (#13) and the Old Franfort Pike (#24) are available less than ¼ mile of the subject property. Outbound and inbound service for the Red Mile Route (#15) is available within 300 feet of the subject property.

**Parks** - There are two parks within proximity of the development. Lou John Park is located ½ mile northeast of the subject property located on Prall Street and Lou Johnson Way. Additionally, the Picadome Golf Course is located approximately ½ mile southwest of the subject property on Parkway Drive.

## SUMMARY OF REQUEST

The applicant is seeking a zone change from Professional Office (P-1) zone to the Neighborhood Business (B-1) zone for the subject property in order to establish drive-through facilities for a coffee shop use.

## PLACE-TYPE

CORRIDOR

Lexington's major roadways focused on commerce and transportation. The overriding emphasis of Imagine Lexington is significantly overhauling the intensity of the major corridors. The future of Lexington's corridors lies in accommodating the shifting retail economic model by incorporating high density residential and offering substantial flexibility to available land uses. Adding a mix of land uses to support the existing retail will provide a built-in customer base, create a more desirable retail experience, and allow a greater return on investment for landholders. Additional focus is on increasing the viability of enhanced mass transit, thereby reducing the reliance on single-occupancy vehicles and improving Lexington's overall transportation efficiency.

## DEVELOPMENT TYPE

MEDIUM DENSITY NON-RESIDENTIAL / MIXED-USE

### Primary Land Use, Building Form, & Design

Primarily community-serving commercial uses, services, places of employment, and/or a mix of uses within mid-rise structures with a higher Floor Area Ratio. Mixed-use structures typically include more multi-family residential units and places of employment, and retail and commercial options generally draw from a larger geographic area. An activated and pedestrian-scale ground level should be provided. These developments may include more employment space for professional office and can include some larger entertainment spaces.

### Transit Infrastructure & Connectivity

Though they draw more external users, they should still include multi-modal connections allowing for easy neighborhood access. Mass transit infrastructure is to be provided on par with that of other modes, and the higher-density housing types should be located in close proximity.

### Parking

The buildings should be oriented to the street, and developments should avoid over-parking, with provided parking located internally.

## 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 applicant is seeking to construct a two-lane drive-through facility to support a proposed coffee shop use at this location. As proposed, the coffee shop use will provide access and egress to the site along Virginia Road. Speakers and order points for the drive-through facility will be provided near the middle of the site.

The coffee shop will be a single story, 950 square-foot building that will be oriented towards South Broadway, with a pick up window located to the rear. While the building will have a walk up window to serve pedestrians along the South Broadway frontage, dine-in service will not be provided.

## APPLICANT & COMMUNITY ENGAGEMENT



The letter of justification submitted by the applicant has indicated that no public outreach or community engagement had taken place prior to the submission of the application, but they were seeking to hold a meeting with interested stakeholders. The applicant should provide information regarding the outreach they have conducted.

## PROPERTY & ZONING HISTORY



Prior to 1980, the subject property was zoned Wholesale and Warehouse Business (B-4), which was reflective of much of the area and its association with the warehousing of tobacco products. While the property was recommended for retail and professional services by the Comprehensive Plan, the Planning Commission and the Urban County Council found that the Professional Office (P-1) zone would promote the preservation of the existing structure and limit the potential impacts of increased traffic at a complex intersection (MAR 80-50).

While the property is currently vacant, it was previously the location of the Thomas Watkins House. The historic structure was built in the late 1880s by John McCurtry, an important builder and architect in central Kentucky during the end of the 19th century. Despite the intent of the 1980 zone change to preserve the structure, no binding language to retain the structure was established. The structure was demolished in 2021, following which the property has remained unoccupied.

## COMPREHENSIVE PLAN COMPLIANCE



The 2018 Comprehensive Plan, *Imagine Lexington*, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community's resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. This will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

### GOALS & OBJECTIVES

Within their letter of justification, the applicant describes the Goals and Objectives of the Comprehensive Plan that they believe the proposed rezoning meets. First, the applicant indicates that by utilizing a vacant lot, they are supporting infill and redevelopment throughout the Urban Services Area (Theme A, Goal #2.a). They further opine that the requested zone change of the subject property to the B-1 zone for use as a coffee shop would promote “[d]iversity within . . . land uses”, and will create a welcoming space by providing citizens within the surrounding community with a viable neighborhood business use with significant pedestrian connectivity and functionality, as shown by the walk-up window/patio depicted in the accompanying preliminary development plan. At the same time, they opine that the development would also promote a use of the subject property that would maintain consistency with the character of the other surrounding properties and those in the close vicinity, which have been put to retail and commercial uses.

Staff sees no merit in the applicant's suggestion that the proposed development creates a well-designed neighborhood or community that is in context with the surrounding and planned area. The proposed development fails to meet Comprehensive Plan goals relating to respecting the context of the surrounding development (Theme A, Goal #2.b). The subject property is a corner lot at the intersection of two major arterial roadways. While the applicant indicates that the B-1 zoning would be in character with surrounding zoning, the regulatory and built environment for this portion of South Broadway has changed significantly since 2018. The first major change that occurred was the modification of the B-6P zoning located south and west of the subject property, which included a focus on increasing Floor Area Ratio on commercial sites and emphasized the inclusion of residential development. Further development within the South Broadway Place shopping center will concentrate on intensification of the property. Additionally, in 2020, the property which neighbors the subject property on the south and east property boundaries was rezoned to the Form Based Neighborhood Business (B-1) zone to allow for the construction of a six-story mixed-use development with a Floor Area Ratio of 2.1, or 52.5 times greater than the proposed development on the subject property.

Additionally, the applicant states that the proposed rezoning is seeking to utilize a people-first design, which achieves an effect and comprehensive transportation system and is specifically designed to accommodate pedestrian access (Theme B, Goal #2.d, Theme D, Goal #1.d and #2). Staff disagrees with this assertion. While the applicant is meeting the build to line within the proposed B-1 zone and has placed a front facing order point on the right-of-way, the use of the site is clearly focused on providing goods and services via the double drive-through facilities and vehicular use area, which occupies greater than 60% of the total site. Furthermore, establishing such a low density, auto-centric land use also works against creating an environment that can



effectively support mass transit (Theme D, Goal#1.c) and is more heavily focused on the single-occupancy vehicle, which increase Lexington's carbon footprint (Theme B, Goal #2.d).

Staff cannot find that the proposed rezoning and development are in agreement with the Goals and Objectives of the Comprehensive Plan as indicated in the applicant's justification.

### **PLACE TYPE, DEVELOPMENT TYPE, AND ZONE**

In an effort to allow for the greatest contextual development of Lexington's Urban Service Area, applicants are asked to identify a Place-Type based on the location of the subject properties. Within each Place-Type there are recommended Development Types based on the form and function of the proposed development. Based on the Place-Type and Development Type there are also several recommended zones that are most appropriate based on the Goals, Objectives, and Policies of the 2018 Comprehensive Plan. While these zones are the ideal zoning categories to develop within a specified area, other zones may be considered, provided there is an appropriate justification addressing the unique situation and provided the development is able to adequately meet the associated Development Criteria.

The applicant has indicated that the site is located within the Corridor Place-Type and is seeking to redevelop the property as a Medium Density Non-Residential / Mixed Use Development Type. Staff concurs with the applicant's assessment of the Place-Type, as the site is located along a major arterial roadway, and South Broadway and Virginia Avenue are both identified within the 2018 Comprehensive Plan as a "major corridor." Staff also agrees that a Medium Density Non-Residential / Mixed Use Development Type can be appropriate for the subject property, as it is a recommended Development Type within the Comprehensive Plan and can fit the context of the established area. However, staff finds that the applicant's proposal does not accurately reflect the Development Type indicated within the letter of justification. The 2018 Comprehensive Plan characterizes Medium Density Non-Residential/ Mixed Use development as consisting of "Community serving commercial uses, services, places of employment, and/or a mix of uses within mid-rise structures with a higher Floor Area Ratio" (Pg. 272). As proposed, the applicant's development consists of a single story, single user building with a total floor area of 950 square-feet, and a Floor Area Ratio of less than 0.04. Based on the small structure size and extremely low density of the site, the applicant's development is more accurately characterized as Low Density Non-Residential/ Mixed Use Development Type, which is not a recommended development type for the Corridor Place-Type. The applicant opines that the size of the parcel precludes them from being able to develop the site at a medium density; however, the staff finds that the site is large enough to accommodate denser, multi-story development if the vast majority of the site were not being occupied by the proposed double drive-through facility. The ability to utilize the property for a more dense or intense land-use is supported by the former use of the lot itself. Prior to its demolition, the Thomas Watkins House had a footprint of nearly 2,900 square feet and served as a professional office.

As it is a recommended zone within the Corridor Place-Type, staff finds that Neighborhood Business (B-1) zone could be appropriate for this location, provided the applicant is able to demonstrate agreement with the Imagine Lexington Comprehensive Plan, that the proposed development is reflective of the character and context of the area, and that the use is allowable within the zone. The staff disagrees that the proposed development is in agreement with the adopted Comprehensive Plan.

The applicant indicates that they are seeking to establish a coffee shop. While coffee shops are not specifically defined within the Zoning Ordinance, the retail sale of prepared beverages and food is often associated with a restaurant land use, which is defined as an eating establishment where food is served and/or consumed primarily within the building and where consumption of food in motor vehicles on the premises is not encouraged. A restaurant may only include drive-through facilities (where food is served to patrons while in their motor vehicles through a window or other facilities and consumption on the premises in motor vehicles is not encouraged) as permitted and regulated in the zone in which the restaurant is located. The proposed use includes no indoor seating and the primary function of the site is the drive-through facility. The focus on the drive-through facility, with no indoor seating or ordering suggests that the proposed development does not fully meet the intent of the B-1 zone, which is to accommodate neighborhood shopping facilities to serve the needs of the surrounding residential area, and which should be oriented to the residential neighborhood, and should have a roadway system which will be adequate to accommodate the anticipated vehicular traffic.



## DEVELOPMENT CRITERIA

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

### 1. Site Design, Building Form and Location

Despite compliance with some of the criteria for Site Design, Building Form and Location, there are several criteria that warrant further discussion

*A-DS4-2: New construction should be at an appropriate scale to respect the context of neighboring structures; however, along major corridors, it should set the future context in accordance with other Imagine Lexington corridor policies and Placebuilder priorities.*

*E-GR-9-4: Development should intensify underutilized properties and develop vacant and underutilized gaps within neighborhoods.*

The applicant opines within their letter of justification that their single story building with a Floor Area Ratio of 0.04 is appropriate as they are matching the current scale of the adjacent neighborhood. The adjacent property is under construction and has a proposed Floor Area Ratio of 2.1. The Thomas Watkins House had a footprint of nearly 2,900 square feet and was two-stories in height.

*A-DS7-3: Development should create context-sensitive transitions between intense corridor development and existing neighborhoods*

Rather than provide a context sensitive increase in the intensity and density of land uses approaching the corridor, the applicant's proposal results in a FAR that is significantly less dense than the adjoining development. This low density development stands out, rather than blends in, with the recently changed context of the corridor.

*C-L17-1 Developments should create mixed-use neighborhoods with safe access to community facilities, greenspace, employment, businesses, shopping, and entertainment.*

*C-LI6-1: Developments should incorporate multi-family housing and walkable commercial uses into development along arterials/corridors.*

While the Comprehensive Plan calls for an intentional mixing of uses along our major corridors, the applicant's proposal is a low density, single-user development that is oriented towards the traveling public. This stands in contrast to much of the adjacent mixed-use development on this portion of South Broadway and Virginia Avenue, and is contrary to the development which is promoted by the nearby B-6P zone, which includes a minimum FAR of 0.35.

### 2. Transportation and Pedestrian

Despite compliance with some of the criteria for Transportation and Pedestrian, there are areas of concern with the proposed development. The applicant should expand upon the following development criteria and staff comments.

*A-EQ3-2 Development on corridors should be transit-oriented (dense & intense, internally walkable, connected to adjacent neighborhoods, providing transit infrastructure & facilities).*

Under the applicant's proposal, the majority of the site is dedicated to providing stacking areas to serve its drive-through component. The area focused on providing safe pedestrian use of the site is less than 10%, whereas the vehicular use area comprises greater than 60% of the site. With its low density, single use, and single-occupancy automobile emphasis, the proposed use detracts from the viability of transit in this area and is not a pedestrian first design.

*D-CO2-1: Safe facilities for all users and modes of transportation should be provided.*

*D-CO2-2: Development should create and/or expand a safe, connected multi-modal transportation network that satisfies all users' needs, including those with disabilities.*



The design of the site, especially in regards to functionality is problematic. First, the proposed high turnover rate of a drive-through facility along Virginia Avenue, which is a major pedestrian corridor for students walking to/from the University of Kentucky campus, can result in dangerous conflicts between vehicles and pedestrians. Furthermore, potential left turn movements out of the proposed development on Virginia Avenue is an area of significant concern, not only due to the danger of crossing the two lanes of east bound traffic, but also the back up that can occur on-site. The proposed access and egress necessitate a drive to cross the access point to exit the parking area and the drive-through facility. If an individual is seeking to turn left, which has a higher potential for longer wait times, other vehicles will queue behind the vehicle and block off access into the site. This can create down the line impacts on Virginia Avenue and can block sidewalks, forcing the pedestrians to walk in the road or through the site's vehicular use area.

### 3. Greenspace and Environmental Health

Despite compliance with some of the criteria for Greenspace and Environmental Health, there is one area of concern with the proposed development. The applicant should expand upon the following development criterion and staff comments.

*B-RE1-1: Developments should incorporate street trees to create a walkable streetscape.*

The applicant indicates that street trees will be provided per the Zoning Ordinance. The B-1 zone does not require the incorporation of street trees within commercial development. The applicant should consider the use of street trees within the development, and continue the context that has been set with the adjacent mixed-use development.



### **ALTERNATIVE JUSTIFICATION**

In addition to their contention that the proposed project is in agreement with the adopted Comprehensive Plan, the applicant indicates that the current zoning of Professional Office (P-1) is inappropriate and that the proposed Neighborhood Business (B-1) zone is appropriate. The applicant indicates that the current zoning is out of character with respect to the zoning in the general vicinity of the subject property, which they indicate is primarily comprised of B-1, B-6P or B-4 zones. The applicant also indicates that the P-1 zoning is not a recommended zone within the Comprehensive Plan for the Corridor Place-Type and Medium Density Non-Residential / Mixed Use Development Type.

Next, the applicant indicates that the B-1 zone is the most appropriate zone as the Comprehensive Plan recommends the B-1 zone for the Corridor Place-Type and Medium Density Non-Residential / Mixed Use Development Type. Additionally, the applicant contends that the B-1 zone is more in context with the surrounding development in the area.

The applicant's suggestion that the current zoning is inappropriate and the proposed zoning is appropriate based on the recommendations of the Comprehensive Plan is significantly flawed in reasoning. KRS 100.213 states that before any map amendment is granted, the planning commission or the legislative body or fiscal court must find that the map amendment is in agreement with the adopted comprehensive plan, or, in the absence of such a finding, that one (1) or more of the following apply and such finding shall be recorded in the minutes and records of the planning commission or the legislative body or fiscal court: (a) That the existing zoning classification given to the property is inappropriate and that the proposed zoning classification is appropriate; (b) That there have been major changes of an economic, physical, or social nature. Where an applicant has the opportunity to make alternative arguments as to the inappropriateness/appropriateness of the zoning, they cannot use the Comprehensive Plan to make such an argument since by seeking the alternative justification the applicant has conceded that there is an absence of such agreement with Comprehensive Plan. The staff contends that the application is not in agreement with the Comprehensive Plan and the applicant



is not proposing a development of a Medium Density Non-Residential / Mixed Use Development Type. The applicant's suggestion that the P-1 zone is also inappropriate as the zone is not recommended by the Comprehensive Plan is also mute, as the Comprehensive Plan is not the focus of this alternative justification.

Additionally, while the applicant has suggested that the P-1 zone is inappropriate for the subject property, as it is out of character with the zoning in the area, they do not seek to address the historical application of the P-1 zone and the reasons why the P-1 zone was deemed appropriate for this area. The 1980 rezoning of the property specifically highlighted the concerns with increased traffic at the complex intersection of South Broadway and Virginia Avenue/Red Mile Road. Since 1980, Lexington has grown significantly, traffic has only increased at this location, and this intersection has remained complex. The P-1 zone allows for the establishment of commercial uses at this location, but limits the potential impacts that can be caused on the road, specifically those uses that have significant vehicular turnover rates like drive-through facilities.

The applicant has not made the argument that there have been major changes of an economic, physical, or social nature and staff agrees that there has not been any unanticipated change since the adoption of the 2018 Comprehensive Plan.

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



1. The requested rezoning to the Neighborhood Business (B-1) zone is not in agreement with the 2018 Comprehensive Plan for the following reasons:
  - a. The requested rezoning is not in agreement with the Goals, Objectives, and Policies of the 2018 Comprehensive Plan.
    1. The proposed development does not seek to construct at a density or intensity that might be reflective of a major corridor in Lexington, and is out of context with the surrounding area (Theme A, Goal #2.b). The applicant's proposal is 52.5 times less dense than the adjacent development, and is 8.75 times less dense than the minimum requirements of the nearby B-6P zone.
    2. The proposed development does not provide a pedestrian first design and development (Theme D, Goal #1.a) and reduces the effectiveness of the overall transportation system by introducing additional vehicular conflicts along Virginia Avenue (Theme D, Goal #1).
    3. The low density and single-user vehicle focus detract from the effectiveness of mass transit in this area (Theme D, Goal #1.c).
    4. The application encourages the use of single-occupancy vehicles and will increase greenhouse gas emissions at this location (Theme B, Goal #2.d).
  - b. The proposed development does not meet the intent of the Medium Density Non-Residential / Mixed Use Development Type as established on page 272 of the Comprehensive Plan.
  - c. The requested rezoning is not in agreement with the Development Criteria of the 2018 Comprehensive Plan. The following Development Criteria are not being met with the proposed rezoning.
    1. A-DS4-2: New construction should be at an appropriate scale to respect the context of neighboring structures; however, along major corridors, it should set the future context in accordance with other Imagine Lexington corridor policies and Placebuilder priorities.
    2. E-GR-9-4: Development should intensify underutilized properties and develop vacant and underutilized gaps within neighborhoods.
    3. A-DS7-3: Development should create context-sensitive transitions between intense corridor development and existing neighborhoods
    4. C-L17-1 Developments should create mixed-use neighborhoods with safe access to community facilities, greenspace, employment, businesses, shopping, and entertainment.
    5. C-LI6-1: Developments should incorporate multi-family housing and walkable commercial uses into development along arterials/corridors.
    6. A-EQ3-2 Development on corridors should be transit-oriented (dense & intense, internally walkable, connected to adjacent neighborhoods, providing transit infrastructure & facilities).
    7. D-CO2-1: Safe facilities for all users and modes of transportation should be provided.
    8. D-CO2-2: Development should create and/or expand a safe, connected multi-modal transportation network that satisfies all users' needs, including those with disabilities.
    9. B-RE1-1: Developments should incorporate street trees to create a walkable streetscape.
2. There have been no major unanticipated changes of an economic, social or physical nature in the area of the subject property since the adoption of the 2018 Comprehensive Plan.
3. The applicant has not provided sufficient evidence as to why the current zoning is inappropriate, addressing the historical establishment of the zone, and why the proposed zoning is appropriate for this location. The Professional Office (P-1) zone is still appropriate due to the complex intersection of South Broadway and Virginia Avenue / Red Mile Road and the need to limit high turnover traffic entering and exiting the site.