

AN ORDINANCE CHANGING THE ZONE FROM A LIGHT INDUSTRIAL (I-1) ZONE TO A NEIGHBORHOOD BUSINESS (B-1) ZONE, FOR 1.84 NET (2.74 GROSS) ACRES, FOR PROPERTY LOCATED AT 362 NEWTOWN PIKE (D & D REALTY, LLC; COUNCIL DISTRICT 2).

WHEREAS, at a Public Hearing held on December 15, 2016 a petition for a zoning ordinance map amendment for property located at 362 Newtown Pike from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone for 1.84 net (2.74 gross) acres, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change by a vote of 8-0; and

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

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

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

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a change in zone for property located at 362 Newtown Pike from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone for 1.84 net (2.74 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 uses are prohibited on the subject property via conditional zoning:

- a. Animal hospitals or clinics.
- b. Drive-through facilities.
- c. Automobile repair, service stations and gasoline pumps, closer than 125' from West Fourth Street.
- d. Automobile and vehicle refueling stations, closer than 125' from West Fourth Street.

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 23, 2017

ATTEST:



CLERK OF URBAN COUNTY COUNCIL

MAYOR



Published: March 2, 2017-1t

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Legal Description of the
D & D Realty, LLC Property
Zone Change From I-1 to B-1
362 Newtown Pike
Lexington, Fayette County, Kentucky

ALL THAT TRACT OR PARCEL OF LAND SITUATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NEWTON PIKE (KY 922) AND WEST FOURTH STREET IN LEXINGTON, FAYETTE COUNTY, KENTUCKY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning at the intersection of the centerline of Newtown Pike (KY 922) and the centerline of West Fourth Street; thence with the centerline of West Fourth Street south 41 degrees 09 minutes 11 seconds east 506.55 feet to a point; thence leaving West Fourth Street south 44 degrees 34 minutes 45 seconds west 170.02 feet to a point; thence south 05 degrees 47 minutes 27 seconds west 20.00 feet to a point; thence along a curve to the left having an arc length of 227.20 feet, a radius of 640.23 feet, and a chord bearing south 85 degrees 37 minutes 28 seconds west, a distance of 226.01 feet to a point; thence north 14 degrees 32 minutes 31 seconds west 20.00 feet to a point; thence north 15 degrees 47 minutes 01 seconds east 56.31 feet to a point; thence north 47 degrees 54 minutes 00 seconds west 49.15 feet to a point; thence north 41 degrees 38 minutes 00 seconds east 18.20 feet to a point; thence north 48 degrees 36 minutes 00 seconds west 26.30 feet to a point; thence north 40 degrees 41 minutes 00 seconds east 22.30 feet to a point; thence north 15 degrees 54 minutes 00 seconds east 32.40 feet to a point; thence north 45 degrees 04 minutes 10 seconds west 72.46 feet to a point in the centerline of Newtown Pike; thence with the centerline of Newtown Pike north 13 degrees 55 minutes 01 seconds east 312.08 feet to the point of beginning and containing 2.74 gross acres and 1.84 net acres.

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

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


IN RE: PLN-MAR-16-00023: D & D REALTY, LLC – a petition for a zone map amendment from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone, for 1.84 net (2.74 gross) acres, for property located at 362 Newtown Pike. (Council District 2)

Having considered the above matter on **December 15, 2016**, at a Public Hearing, and having voted **8-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **CONDITIONAL APPROVAL** of this matter for the following reasons:

1. The existing Light Industrial (I-1) zone is not appropriate, and a Neighborhood Business (B-1) zone is appropriate for the subject property, for the following reasons:
 - a. The site is located within the boundary of the *Downtown Lexington Masterplan* and the more recent *Fourth Street Zoning Study*. The *Masterplan* and the *Zoning Study* both recommend mixed-use development for the site. In addition, the *Masterplan* states that the Downtown Edge West precinct “has the potential to be a true mixed-use neighborhood with retail, offices, and residential as a signature entryway to the downtown.” A B-1 zone would permit this type of development.
 - b. The proposed B-1 zone allows much more flexibility in its setback and other zoning requirements, which will permit a redevelopment of the subject site to better match the area’s character and form. The petitioner’s corollary development plan now proposes a more urban environment.
 - c. The I-1 zone permits the site to be under-performing and underutilized, while B-1 uses would be a better compliment to the surrounding institutional and residential neighborhoods in this area.
 - d. A B-1 zone would be more consistent with the themes, goals and objectives of the 2013 Comprehensive Plan, and the other plans and studies previously conducted in this immediate area.
 - e. B-1 zoning would match that approved for the Thistle Station site immediately to the south of this location, and that for land uses located to the west across Newtown Pike.
2. This recommendation is made subject to approval and certification of PLN-MJDP-16-00051: Whistle Stop, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses are recommended to be prohibited on the subject property:
 - a. Animal hospitals or clinics.
 - b. Drive-through facilities.
 - c. Automobile repair, service stations and gasoline pumps, closer than 125’ from West Fourth Street.
 - d. Automobile and vehicle refueling stations, closer than 125’ from West Fourth Street.

These use prohibitions are appropriate and necessary to ensure that future development will be compatible with the character of the adjoining area by prohibiting certain uses that would be contrary to its more urban and mixed-use character.

ATTEST: This 13th day of January, 2017.


Secretary, Jim Duncan

WILLIAM WILSON
CHAIR

Note: The corollary development plan, PLN-MJDP-16-00051: WHISTLE STOP was approved by the Planning Commission on December 15, 2016 and certified on December 22, 2016.

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

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Tony Barrett, representative.**

OBJECTORS

- John Cirigliano, Managing member of Thistle Station
- Mark Klar, 321 Blackburn Ave.
- Barbara Grossman, 321 Blackburn Ave.

OBJECTIONS

- Increased traffic.
- Auto-oriented development is inappropriate.
- Auto-oriented development is inappropriate.

VOTES WERE AS FOLLOWS:

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

NAYS: (0)

ABSENT: (3) Brewer, Drake, and Richardson

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **CONDITIONAL APPROVAL** of **PLN-MAR 16-00023** carried.

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

MAP AMENDMENT REQUEST (MAR) APPLICATION

1. CONTACT INFORMATION (Name, Address, City/State/Zip & Phone No.)

Applicant: D & D REALTY LLC, 944 Wishbone Circle, LEXINGTON, KY 40516
Owner(s): D & D REALTY LLC 1501 MUIR STATION RD LEXINGTON KY 40516
Attorney:

2. ADDRESS OF APPLICANT'S PROPERTY

362 NEWTOWN PIKE LEXINGTON KY

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY

Zoning	Existing	Zoning	Requested	Acreage	
	Use		Use	Net	Gross
I-1	Auto Repair	B-1	Commercial	1.84	2.74

4. EXISTING CONDITIONS

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

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

Roads:	LFUCG
Storm Sewers:	LFUCG
Sanity Sewers:	LFUCG
Refuse Collection:	LFUCG
Utilities:	<input checked="" type="checkbox"/> Electric <input checked="" type="checkbox"/> Gas <input checked="" type="checkbox"/> Water <input checked="" type="checkbox"/> Phone <input checked="" type="checkbox"/> Cable





October 31, 2016

Lexington Fayette Urban County Planning Commission
200 E Main Street
Lexington, KY 40507

Re: Zone Map Amendment Request – 362 Newtown Pike

Dear Commission Members,

We represent D&D Realty, LLC. who is seeking a zone change for their property located at 362 Newtown Pike from Light Industrial (I-1) Zone to Neighborhood Business (B-1) Zone. The property consists of 1.83 net acres (2.74 gross acres) and is currently occupied by the Foreign Auto Werks business. D&D Realty is owned by Barbara J. Deifel whose family owned and operated the Color & Supply Co. paint store on the property for many years prior.

We believe the zone change request is supported by many of the Goals and Objectives of the 2013 Comprehensive Plan as follows:

Theme A: Growing Successful Neighborhoods

Goal 2: Support infill and redevelopment throughout the Urban Service Area as strategic component of growth.

Theme C: Creating Jobs and Prosperity

Goal 2: Attract the world's finest jobs, encourage entrepreneurial spirit, and enhance our ability to create and retain a talented, creative workforce by establishing opportunities that embrace diversity with inclusion in our community.

Objective b. Improve opportunities for small business development and workers who rely on personal technology.

Theme D: Improving a Desirable Community

Goal 2: Provide for accessible community facilities and services to meet the health, safety and quality of life needs of Lexington-Fayette County's residents and visitors.

Objective b. Collaborate with educational and healthcare entities to meet the needs of Lexington-Fayette County's residents and visitors.

Theme E: Maintaining a Balance between planning for Urban Uses and Safeguarding Rural Land

Goal 1: Uphold the Urban Services Area concept.



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

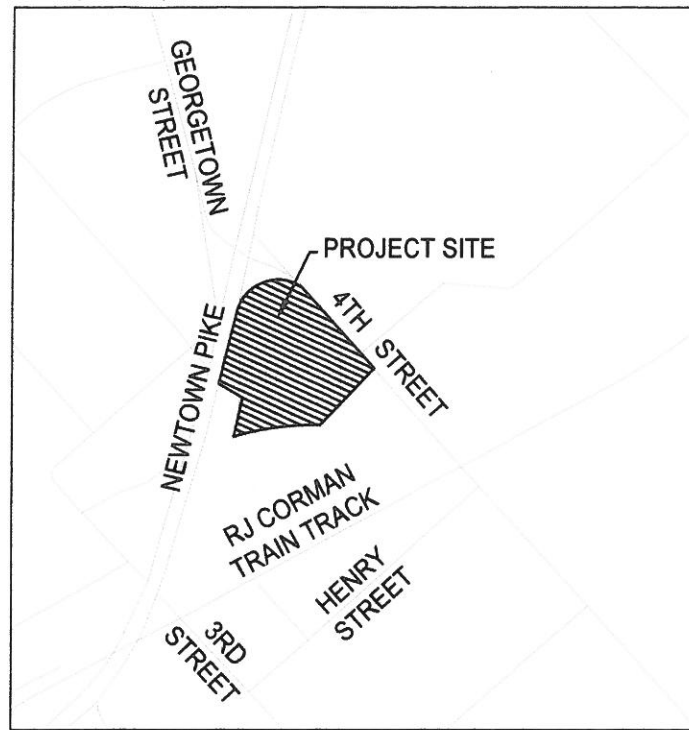
In addition to these specific Goals and Objectives of the 2013 Comprehensive Plan we believe the proposed rezoning will offer needed services and employment opportunity to the nearby neighborhoods. Additionally, anticipated services will serve the needs of the Newtown Pike traveling public and specifically to the BCTC staff and student community. The redevelopment of the property will also provide services for the Transylvania University's athletic complex and complement the nearby Jefferson Street corridor.

The subject property will be compatible to and serve the adjoining Thistle Station development that was rezoned from I-1 Zone to B-1 Zone in 2015. The property to the west of the subject property is also zoned for B-1 uses around the Georgetown Street intersection with Newtown Pike.

Based on the supportive Goals and Objectives of the 2013 Comprehensive Plan and other support referenced above we request that the zoning for the property located at 362 Newtown Pike be changed from I-1 Zone to B-1 Zone.

Sincerely,

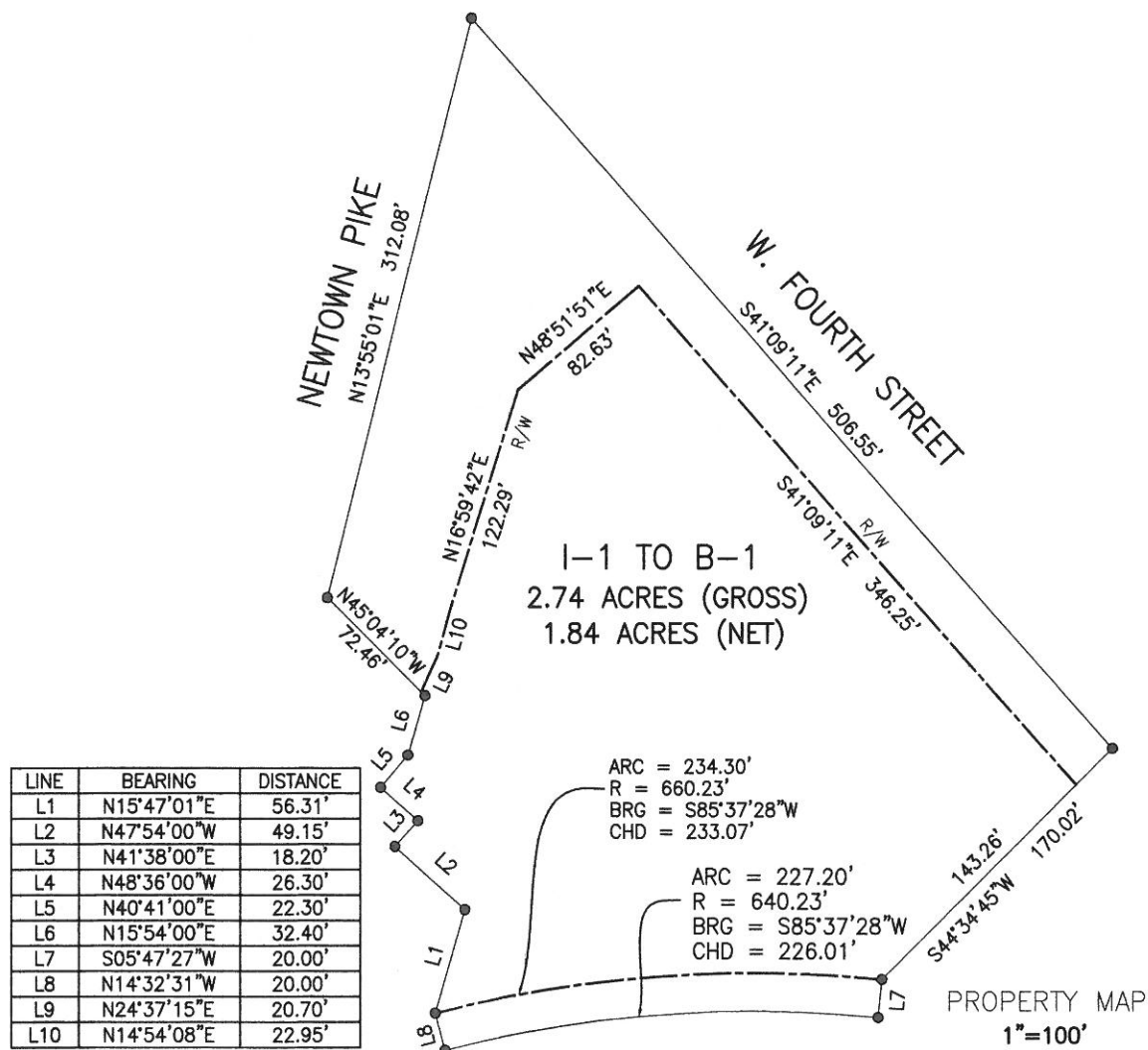
Tony Barrett
Barrett Partners



VICINITY MAP
SCALE: NTS



AREA NOTIFICATION MAP
1"=200'



OWNER / APPLICANT:
D&D REALTY LLC
944 WISHBONE CIR
LEXINGTON KY 40502

PREPARED BY:
BARRETT PARTNERS INC &
WESLEY B WITT, INC.

D&D REALTY PROPERTY
PROPERTY ADDRESS
362 NEWTOWN PIKE

STATE OF KENTUCKY
WESLEY B. WITT
2187
LICENSED PROFESSIONAL
LAND SURVEYOR

Wesley B. Witt

DATE FILED: OCTOBER 31, 2016, Rev: 11/10/2016
2.74 AC GROSS & 1.84 AC NET

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

PLN-MAR-16-00023: D & D REALTY, LLC

DESCRIPTION

Zone Change: From a Light Industrial (I-1) zone
To a Neighborhood Business (B-1) zone

Acreage: 1.84 net (2.74 gross) acres

Location: 362 Newtown Pike

EXISTING ZONING & LAND USE

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Property	I-1	Auto Repair Shop
To North	A-U	Bluegrass Community & Technical College
To East	I-1	Crematory, Railroad & Light Industrial
To South	B-1 & I-1	Railroad, & Vacant
To West	B-1 & I-1	Drive-in Restaurant, Light Industrial & Liquor Store

URBAN SERVICES REPORT

Roads – Newtown Pike (US 25 & KY 922) borders the subject property to the west, which is an urban major arterial roadway. Both it and Georgetown Road (US 25) divert at the intersection of West Fourth Street, and that arterial road extends from downtown into Scott County. Newtown Pike carries approximately 27,600 vehicles per day. West Fourth Street borders the site to the north, and has seen recent improvement to complete a modification from one-way travel to two-way travel. Significant sidewalk upgrades and restriping has been completed from Newtown Pike east as far as Jefferson Street. The petitioner plans to utilize both Newtown Pike and Fourth Street for vehicular access to the subject property.

Curb/Gutter/Sidewalks – With recent improvements, Newtown Pike and Fourth Street both have adequate curbs, gutters, and sidewalks. A shared path is planned to be constructed along the Newtown Pike frontage of the subject property for a future connection to the Town Branch Trail Project and the Legacy Trail.

Storm Sewers – This site is located in the Town Branch watershed. The Town Branch emerges (flowing north) from underground near Rupp Arena, less than ½ of a mile to the southwest of the subject properties. No known flooding problems exist within the immediate vicinity of the subject site, and street drainage has been recently improved as a result of the completion of the Fourth Street roadway project. Underground stormwater detention is proposed for the site in order to meet the requirement of the Engineering Stormwater Manuals at the time this site may redevelop.

Sanitary Sewers – The subject property is currently served by sanitary sewer service. However, improvements to the lines along West Fourth Street and Newtown Pike may need to be upgraded, especially since a major mixed-use development is proposed immediately to the south of the subject property. The property is located within the Town Branch sewershed, and is served by the Town Branch Sewage Treatment Facility, which has seen recent improvement with the completion of a wet-weather storm water holding tank on Lisle Industrial Avenue.

Refuse – The local government currently serves this portion of the Urban Service Area with collection on Thursdays. Daily service is available within a defined area downtown, but does not include the area of the subject property. Commercial developments also contract for more frequent service from private refuse haulers.

Police – The nearest police station is the Main Headquarters located on East Main Street, about ¾ mile to the southwest of the subject properties.

Fire/Ambulance – The nearest fire station (#4) is only about three blocks to the east of the subject property, located on Jefferson Street between West Second and West Third Streets.

Utilities – All utilities, including phone, water, gas, electric, and cable television currently serve the subject properties. All should be able to accommodate the proposed change in land use.

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 subject property is located within the boundary of the *Central Sector Small Area Plan*, the *Downtown Lexington Masterplan* and the *Fourth Street Zoning Study*. Each document suggests future mixed-use development for the subject site.

The petitioner proposes to rezone the properties to the B-1 zone in order to construct a convenience store/gas station/restaurant and a small commercial building oriented to the intersection of Newtown Pike and West Fourth Street.

CASE REVIEW

The petitioner has requested a zone change from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone for 1.84 net acres of property, located on the east side Newtown Pike, at the southeast corner of West Fourth Street.

The site is comprised of a mostly underutilized parcel at a prominent location along the Newtown Pike corridor. The site fronts on both Newtown Pike and West Fourth Street, and is bordered to the south by a former railroad spur. The CSX railroad tracks cross Newtown Pike less than a block to the south at West Third Street. This area is characterized primarily by light industrial land uses. The subject property, currently home to a foreign auto repair business, is very prominent from the intersection of Georgetown Road and Newtown Pike, which is directly across from West Fourth Street. The petitioner wishes to remove the existing structures on the subject site, and they propose to construct three new commercial buildings on the subject property. Access to the site is proposed to both West Fourth and Newtown Pike.

The subject site is also across West Fourth Street from land exchanged a few years ago from Eastern State Hospital to Bluegrass Community and Technical College (BCTC) and the subsequent opening of the new BCTC campus have resulted in new redevelopment interest in this portion of the Urban Service Area. The subject properties are primarily surrounded by Light Industrial (I-1) zoning, with the exception of the BCTC campus, which remains located in an Agricultural Urban (A-U) zone, and the Thistle Station site (still vacant, and not yet under development) which was rezoned to a Neighborhood Business (B-1) zone about 18 months ago.

Thistle Station was approved as a form-based project, permitted in the Neighborhood Business (B-1) zone based on the submission of a detailed “area character and context study.” The plans approved by the Commission for that site were to construct a signature mixed-use building along Newtown Pike and a two-story commercial building along West Fourth Street. That project had proposed 202 residential dwelling units, 28,000+ square feet of commercial space, and associated off-street parking, again, immediately south of the subject site.

The 2013 Comprehensive Plan has themes that are relevant to the proposed request for rezoning and the proposed redevelopment. Specifically, the filed application cites Theme A “Growing Successful

Neighborhoods;" Theme C "Creating Jobs and Prosperity;" Theme D "Improving a Desirable Community;" and Theme E "Maintaining a Balance between Planning for Urban Uses and Safeguarding Rural Land." Theme E, Goal #1b of the Plan is to "encourage compact, contiguous, and/or mixed-use sustainable development within the Urban Services Area, as guided by market demand, to accommodate future growth needs." The applicant's justification mentions several of the Plan's Goals and Objectives, but without any supporting statements.

The staff is not sure that a new convenience store and a small retail building for multiple tenants is actually what was envisioned by the Plan three years ago when the Commission wanted to create "jobs and prosperity" for our community. However, the subject site is located within the boundary of the *Central Sector Small Area Plan*, the *Downtown Lexington Masterplan* and the more recent *Fourth Street Zoning Study*.

While the recommendations are not binding, the *Downtown Lexington Masterplan* and the *Fourth Street Zoning Study* can also inform the Planning Commission's consideration of the petitioner's request for B-1 zoning. The subject properties are located within the boundary of the *Downtown Lexington Masterplan*, and it and the *Zoning Study* both recommend mixed-use development for the site. They identify the property for mixed use within the Downtown Edge West study precinct (north of the downtown core), noting that "this area has the potential to be a true mixed-use neighborhood with retail, offices, and residential as a signature entryway to the downtown" (page 54). All of these recommendations are relevant to the proposed rezoning but the applicant's actual land use is not proposed for that purpose.

The *Central Sector Small Area Plan*, adopted in 2009 by the Planning Commission, calls for a "proposed reinvestment area" for the subject property, and for the Thistle Station property to the immediate south. This concept was attributed to the prior *Lexington Non-Residential Infill Study*, which was completed in April of 2009. While the proposed development could meet this recommendation, it may not meet the Small Area Plan's recommendation that "off-street parking for new development should be in the rear or on the side" of new buildings (page 69).

The *Fourth Street Zoning Study* is a recently completed study for the area in close proximity to the new BCTC campus on Newtown Pike, the area along Jefferson Street, and the West Fourth Street corridor connecting the two areas. The subject property is identified as part of a focus area where an urban mixed-use zone should be created. Again, the B-1 zone does permit mixed-use development, but this request is not for a mixed-use project of any type.

Still, even if there is not a justification for this requested zone change to be in agreement with the Comprehensive Plan, the rezoning and existing Neighborhood Business (B-1) zone approved for the Thistle Station site is a change that might have a justification. It is logical to have the zoning of the subject property match that approved for the Thistle Station site immediately to the south of this site.

The petitioner contends that the proposed Neighborhood Business (B-1) zoning is in agreement with the 2013 Comprehensive Plan, while the staff is not so sure. Although the proposed B-1 zone can implement the goals and objectives recommendations of the Comprehensive Plan; and specifically the *Masterplan* and *Fourth Street Zoning Study* both recommend mixed-use development for the subject property. Given the recent changes accomplished recently achieved around BCTC and the new Transylvania University improvements in the Fourth Street corridor, the staff would request changes to the proposed development to better implement these more detailed planning recommendations.

A traffic impact study has been submitted with the requested zone change. The Metropolitan Planning Organization (MPO) and the Transportation Planning Staff is currently reviewing the study and will make known their findings at the Commission's public hearing on this request.

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

1. The proposed Neighborhood Business (B-1) zone does not propose a mixed-use development or project, while these uses have been recommended by both the *Downtown Lexington Masterplan* and the *Fourth Street Zoning Study*.
2. It is not certain that the rezoning and redevelopment request is in agreement with the themes, goals and objectives of the 2013 Comprehensive Plan, as currently proposed.

WLS/TLW

11/23/2016

Planning Services/Staff Reports/2016/MAR/PLN-MAR-16-00023.doc

SUPPLEMENTAL STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

PLN-MAR-16-00023: D & D REALTY, LLC

STAFF REVIEW

The petitioner has met with the staff since the Subdivision Committee and Zoning Committee meetings two weeks ago. Also, a revised preliminary development plan has been submitted from the applicant, since these meetings have occurred. Thus, the staff can provide a revised recommendation to the Planning Commission on this zone change from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone.

The site at the corner of Newtown Pike and West Fourth Street is “underperforming,” according to the applicant’s representatives, and there is a very low level of building lot coverage on the site, currently. Thus, intensification is requested. The form that this intensification might take has been the source of the discussion points between the staff and the applicant’s representatives over the past few weeks. With the revised development plan submission of this week, the “face” of the proposed redevelopment across West Fourth Street from the Bluegrass Community and Technical College (BCTC) campus is more conventional now, except that the one-story buildings proposed are to be very tall – nearly 30’ in height, according to the submitted development plan. The retail and restaurant uses proposed along West Fourth should provide supportive and complementary uses to that institution, its faculty and students.

The physical form of the redevelopment of the subject site is now proposed to be much more in keeping with the Fourth Street Study, save one issue. A convenience store with gas pumps is still part of the applicant’s proposal, although the location of that facility has shifted $\pm 100'$ to the south, and off of the West Fourth Street frontage. It is now proposed for orientation to Newtown Pike, immediately across that street from an existing liquor store. The applicant has told the staff that the nearby neighborhood favors the development of a modern convenience store on the subject site, and the staff is not aware of much neighborhood opposition to this proposed use.

The Thistle Station development immediately south of this location was approved with Conditional Zoning restrictions on some future B-1 uses, including prohibitions on auto repair, gasoline pumps and live entertainment land uses. The applicant is not interested in the adoption of those same restrictions on the subject property, and the staff has discussed whether or not to recommend those same land use restrictions for the subject site. Regardless, the staff is still inclined to recommend some conditional zoning restrictions as part of this zone change.

The staff, nor the applicant, could find a detailed justification that the present request is “in agreement” with the 2013 Comprehensive Plan themes, goals and objectives. However given the rezoning of the Thistle Station site, and that the *Central Sector Small Area Plan* calls for a “proposed reinvestment area” for the subject property, the staff can recommend that the zone change be made to the B-1 zone.

It remains logical to have the zoning of the subject property match that approved for the Thistle Station site immediately to the south of this site. The proposed B-1 zone can implement the goals and objectives recommendations of the Comprehensive Plan; and specifically the *Masterplan* and *Fourth Street Zoning Study*, which both recommend mixed-use development for the subject property. Given the speculative nature of the request, it is still possible that this will one day be proposed for the subject property.

The Staff Recommends: Approval, for the following reasons:

1. The existing Light Industrial (I-1) zone is not appropriate, and a Neighborhood Business (B-1) zone is appropriate for the subject property, for the following reasons:

- a. The site is located within the boundary of the *Downtown Lexington Masterplan* and the more recent *Fourth Street Zoning Study*. The *Masterplan* and the *Zoning Study* both recommend mixed-use development for the site. In addition, the *Masterplan* states that the Downtown Edge West precinct “has the potential to be a true mixed-use neighborhood with retail, offices, and residential as a signature entryway to the downtown.” A B-1 zone would permit this type of development.
 - b. The proposed B-1 zone allows much more flexibility in its setback and other zoning requirements, which will permit a redevelopment of the subject site to better match the area’s character and form. The petitioner’s corollary development plan now proposes a more urban environment.
 - c. The I-1 zone permits the site to be under-performing and underutilized, while B-1 uses would be a better compliment to the surrounding institutional and residential neighborhoods in this area.
 - d. A B-1 zone would be more consistent with the themes, goals and objectives of the 2013 Comprehensive Plan, and the other plans and studies previously conducted in this immediate area.
 - e. B-1 zoning would match that approved for the Thistle Station site immediately to the south of this location, and that for land uses located to the west across Newtown Pike.
2. This recommendation is made subject to approval and certification of PLN-MJDP-16-00051: Whistle Stop, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission’s approval.
 3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses are recommended to be prohibited on the subject property:
 - a. Animal hospitals or clinics.
 - b. Drive-through facilities.
 - c. Automobile repair, service stations and gasoline pumps, closer than 125’ from West Fourth Street.
 - d. Automobile and vehicle refueling stations, closer than 125’ from West Fourth Street.

These use prohibitions are appropriate and necessary to ensure that future development will be compatible with the character of the adjoining area by prohibiting certain uses that would be contrary to its more urban and mixed-use character.

WLS/TLW
11/23/2016
12/14/16 rev

Planning Services/Staff Reports/2016/MAR/PLN-MAR-16-00023 supp.doc

7. **D & D REALTY, LLC ZONING MAP AMENDMENT & WHISTLE STOP**

- a. PLN-MAR-16-00023: D & D REALTY, LLC (1/29/17)* – petition for a zone map amendment from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone, for 1.84 net (2.74 gross) acres, for property located at 362 Newtown Pike.

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 subject property is located within the boundary of the *Central Sector Small Area Plan*, the *Downtown Lexington Masterplan* and the *Fourth Street Zoning Study*. Each document suggests future mixed-use development for the subject site.

The petitioner proposes to rezone the properties to the B-1 zone in order to construct a convenience store/gas station/restaurant and a small commercial building oriented to the intersection of Newtown Pike and West Fourth Street.

The Zoning Committee made no recommendation on the proposal.

The Staff Recommends: Postponement, for the following reasons:

1. The proposed Neighborhood Business (B-1) zone does not propose a mixed-use development or project, while these uses have been recommended by both the *Downtown Lexington Masterplan* and the *Fourth Street Zoning Study*.
2. It is not certain that the rezoning and redevelopment request is in agreement with the themes, goals and objectives of the 2013 Comprehensive Plan, as currently proposed.

- b. PLN-MJDP-16-00051: WHISTLE STOP (1/29/17)* - located at 362 Newtown Pike.

(Barrett Partners)

The Subdivision Committee Recommended: Postponement. There were some questions regarding the proposed access complying with Article 18 and the Newtown Pike Landscape Ordinance.

Should this plan be approved, the following requirements should be considered:

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. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Denote location of the Legacy Trail on plan.
7. Denote lot coverage and floor area ratio in site statistics per Article 21 requirements.
8. Denote height of building in feet.
9. Denote canopy height in feet.
10. Denote that compliance with Newtown Pike Landscaping Ordinance shall be determined at the time of the Final Development Plan.
11. Replace Tree Protection Plan with required Tree Inventory Map and information.
12. Discuss proposed dumpster location or remove from the plan.
13. Discuss proposed access to Newtown Pike and to Fourth Street.
14. Discuss compliance with Fourth Street Study recommendations.
15. Discuss compliance with Newtown Pike Landscaping Ordinance.
16. Discuss compliance with Article 18 requirements adjacent to 338-340 Newtown Pike.

Staff Zoning Presentation – Mr. Sallee presented and summarized the staff report on this zone change. He displayed aerial photographs of the subject property. He summarized the supplemental staff report that was distributed to the Planning Commission, which states that the staff is now recommending approval for the following reasons:

The Staff Recommends: Approval, for the following reasons:

1. The existing Light Industrial (I-1) zone is not appropriate, and a Neighborhood Business (B-1) zone is appropriate for the subject property, for the following reasons:
 - a. The site is located within the boundary of the *Downtown Lexington Masterplan* and the more recent *Fourth Street Zoning Study*. The *Masterplan* and the *Zoning Study* both recommend mixed-use development for the site. In addition, the *Masterplan* states that the Downtown Edge West precinct "has the potential to be a true

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- mixed-use neighborhood with retail, offices, and residential as a signature entryway to the downtown." A B-1 zone would permit this type of development.
- b. The proposed B-1 zone allows much more flexibility in its setback and other zoning requirements, which will permit a redevelopment of the subject site to better match the area's character and form. The petitioner's corollary development plan now proposes a more urban environment.
 - c. The I-1 zone permits the site to be under-performing and underutilized, while B-1 uses would be a better compliment to the surrounding institutional and residential neighborhoods in this area.
 - d. A B-1 zone would be more consistent with the themes, goals and objectives of the 2013 Comprehensive Plan, and the other plans and studies previously conducted in this immediate area.
 - e. B-1 zoning would match that approved for the Thistle Station site immediately to the south of this location, and that for land uses located to the west across Newtown Pike.
2. This recommendation is made subject to approval and certification of PLN-MJDP-16-00051: Whistle Stop, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
 3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses are recommended to be prohibited on the subject property:
 - a. Animal hospitals or clinics.
 - b. Drive-through facilities.
 - c. Automobile repair, service stations and gasoline pumps, closer than 125' from West Fourth Street.
 - d. Automobile and vehicle refueling stations, closer than 125' from West Fourth Street.

Commission Comments – There was a question regarding the sanitary sewers and the need to upgrade the lines for the developments. There was another question regarding the service station, which will not closer than 125' to West Fourth Street.

Development Plan Presentation – Mr. Martin presented the updated staff report on this development plan, which was handed out to the Commission with 6 total conditions, as follows:

The Staff Recommends: Approval, 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. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Addition of tree sizes to the required Tree Inventory Map and information (generalized).

Traffic Impact Study – Mr. Emmons presented the staff report on the submitted Traffic Study for this zone change. He said that the applicant's consultant found that the proposed development will have a very minimum impact on the roadways.

Petitioner Presentation – Tony Barrett, landscape architect, was present representing the petitioner. He said that the applicant is in agreement with the staff's recommendations.

The following citizens were present in opposition to this application:

John Cirigliano, Managing member of Thistle Station, LLC, is concerned about the traffic with the drive-thru facilities. He said the neighborhood associations have voiced that they don't want bars, liquor stores, or gas stations. He also stated that any implications that they cooperated in this application is untrue.

Mark Klar, 321 Blackburn Ave., has concerns with a gas station being built at this location.

Barbara Grossman, 321 Blackburn Ave., believes that a gas station is not suitable for this area, and she would prefer to see a grocery store built on the subject property.

Petitioner Rebuttal – Mr. Barrett said that the staff recommendation prohibits drive-thru facilities. He said that the need for a gas and convenience store is warranted by the traffic counts along Newtown Pike. Also, the Georgetown Road neighborhood has stated that they are seeking convenience type services in the area.

Citizen Rebuttal – Mr. Cirigliano said that there seems to be an overabundance of convenience stores and he doesn't believe that neither the Georgetown Road neighborhood nor the Northside Neighborhood Association wants this use.

Staff Rebuttal – Mr. Sallee said that, as to the previous question regarding the sewer capacity, that both the subject property development and Thistle Station should be able to occur at the level of 22,000 available gallons per day.

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Commission Comments – There was a question regarding the prohibited use of services stations and gasoline pumps. Mr. Sallee said that they cannot be closer than 125 feet from West Fourth Street, under the staff's recommendation.

Zoning Action – A motion was made by Mr. Owens, seconded by Mr. Smith, and carried 8-0 (Brewer, Drake, and Richardson absent) to approve PLN-MAR-16-00023: D & D REALTY, LLC, with the revised staff recommendations, and with the conditions provided by the staff.

Development Plan Action – A motion was made by Mr. Owens, seconded by Mr. Smith, and carried 8-0 (Brewer, Drake, and Richardson absent) to approve PLN-MJDP-16-00051: WHISTLE STOP, with the revised staff recommendations and conditions provided by the staff.

