

ORDINANCE NO. 184 -2016

AN ORDINANCE CHANGING THE ZONE FROM A LIGHT INDUSTRIAL (I-1) ZONE TO A NEIGHBORHOOD BUSINESS (B-1) ZONE, FOR 0.35 NET (0.54 GROSS) ACRE, FOR PROPERTIES LOCATED AT 561, 563 AND 565 E. THIRD STREET; AND A DOWNTOWN FRAME BUSINESS (B-2A) ZONE, FOR 2.38 NET (3.95 GROSS) ACRES, FOR PROPERTIES LOCATED AT 556 AND 576 E. THIRD STREET; AND 225, 261 AND 265 MIDLAND AVENUE, AND 250 LEWIS STREET. (COMMUNITY VENTURES PROPERTIES, LLC; COUNCIL DISTRICT 1).

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WHEREAS, at a Public Hearing held on September 22, 2016 a petition for a zoning ordinance map amendment for property located at 561, 563 and 565 E. Third Street from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone for 0.35 net (0.54 gross) acre; and a Downtown Frame Business (B-2A) zone for 2.38 net (3.95 gross) acres for properties located at 556 and 576 E. Third Street, and 225, 261 and 265 Midland Avenue, and 250 Lewis Street, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change by a vote of 10-0; 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 561, 563 and 565 E. Third Street from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone for 0.35 net (0.54 gross) acre; and a Downtown Frame Business (B-2A) zone for 2.38 net (3.95 gross) acres for properties located at 556 and 576 E. Third Street, and 225, 261 and 265 Midland Avenue, and 250 Lewis Street, 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:

B-2A-Prohibited Uses:

1. Establishments for the display, rental or sale of automobiles, motorcycles, trucks, farm equipment, or boats or supplies for such vehicles.
2. Minor automobile and truck repair.
3. Pawnshops.
4. Wholesale establishments.
5. Machine shop.
6. Passenger transportation terminals (does not include bus stops).
7. Establishments for the retail or package sale of liquor, beer or wine.

**B-1 Zone-Prohibited Uses**

1. Automobile service stations, automobile and vehicle refueling stations, and/or gas pumps.
2. Repair of household appliances, other than computers or electronics.
3. Outdoor miniature golf or putting courses.
4. Circuses or carnivals, even on a temporary basis.
5. Indoor theaters and arcades, including pinball and electronic games.
6. Drive-through facilities.
7. Establishments for the retail or package sale of liquor, beer or wine.

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: November 3, 2016

ATTEST:

  
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CLERK OF URBAN COUNTY COUNCIL

Published: November 10, 2016-1t

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MAYOR

  
\_\_\_\_\_

BOOK 19 PAGE 425  
**CERTIFICATE OF LAND USE RESTRICTION**

**1. NAME AND ADDRESS OF PROPERTY OWNER(s)**

Community Ventures Properties, LLC 1450 N BROADWAY, LEXINGTON, KY 40505

**2. ADDRESS OF PROPERTY**

556, 561, 563, 565 and 576 E THIRD ST, LEXINGTON, KY  
225, 261 and 265 MIDLAND AVE, LEXINGTON, KY  
250 LEWIS ST, LEXINGTON, KY

**3. NAME OF SUBDIVISION OR DEVELOPMENT (If Applicable)**

Community Ventures Properties, LLC

**4. TYPE OF RESTRICTION(s) (Check all that apply):**

Zoning Map Amendment to: B-2A and B-1 Zones

Variances

1. Increase the maximum height from 35 feet to 44 feet in the B-1 zone. (561, 563 & 565 E Third St)
2. Reduce the minimum front yard from 10 feet to 5 feet along Withrow Way.
3. Reduce the minimum off-street parking from 28 spaces to 16 spaces in the B-1 zone. (561, 563 & 565 E Third St)

Conditions:

- a. The property 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 by the Zoning Ordinance.
- b. 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].
- c. Prior to obtaining an Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.
- d. The parking lot shall be screened and landscaped as required by Article 18 of the Zoning Ordinance.
- e. A pedestrian crosswalk shall be installed by the applicant across Withrow Way at the corner of East Third Street, to the approval of the Division of Traffic Engineering.

Conditional Zoning

**The following use restrictions shall apply to subject properties:**

a. B-2A Zone - Prohibited Uses: (applies to 556 & 576 E Third St, 225, 261 & 265 Midland Ave, and 250 Lewis St)

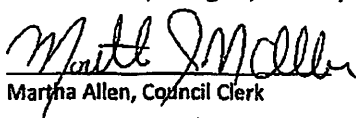
1. Establishments for the display, rental or sale of automobiles, motorcycles, trucks, farm equipment, or boats or supplies for such vehicles.
2. Minor automobile and truck repair.
3. Pawnshops.
4. Wholesale establishments.
5. Any type of adult entertainment, adult arcades, massage parlors, adult video stores and adult bookstores.
6. Passenger transportation terminals (does not include bus stops).
7. Drive-through facilities.

b. B-1 Zone - Prohibited Uses: (applies to 561, 563 and 565 E Third Street)

1. Automobile service stations, automobile and vehicle refueling stations, and/or gas pumps.
2. Repair of household appliances, other than computers or electronics.
3. Outdoor miniature golf or putting courses.
4. Circuses or carnivals, even on a temporary basis.
5. Indoor theaters and arcades, including pinball and electronic games.
6. Drive-through facilities.
7. Establishments for the retail or package sale of liquor, beer or wine.

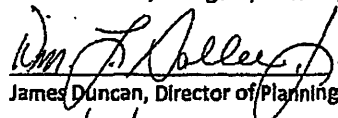
**5. NAME AND ADDRESS OF PLANNING COMMISSION, BOARD OF ADJUSTMENT, LEGISLATIVE BODY OR FISCAL COURT WHICH MAINTAINS THE ORIGINAL RECORDS CONTAINING THE RESTRICTION**

Lexington-Fayette Urban County Government  
Council Clerk's Office  
200 E. Main Street, Lexington, Kentucky 40507

  
Martha Allen, Council Clerk

12/27/16  
Date

Lexington-Fayette Urban County Government  
Urban County Planning Commission  
200 E. Main Street, Lexington, Kentucky 40507

  
James Duncan, Director of Planning

12/22/16  
Date

Reference Application Number: PLN-MAR-16-00007

Please return to the LEXINGTON - FAYETTE URBAN COUNTY GOVERNMENT  
Department of Planning, Preservation & Development, Division of Planning  
101 E. Vine St. \*Suite 700\* Lexington, Kentucky 40507

Rec'd by T. W. H. K.

Date: 10/13/16

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

**IN RE: PLN-MAR-16-00007: COMMUNITY VENTURES PROPERTIES, LLC** – petition for a zone map amendment from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone, for 0.35 net (0.54 gross) acres, for properties located at 561, 563, and 565 E Third Street; and a Downtown Frame Business (B-2A) zone, for 2.38 net (3.95 gross) acres, for properties located at 556 and 576 E Third Street; and 225, 261 and 265 Midland Avenue, and 250 Lewis Street. (Council District 1)

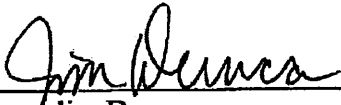
Having considered the above matter on September 22, 2016, at a Public Hearing, and having voted 10-0 that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **CONDITIONAL APPROVAL** of this matter for the following reasons:

1. The requested Neighborhood Business (B-1) zone and Downtown Frame Business (B-2A) zone are in agreement with the 2013 Comprehensive Plan and the East End Small Area Plan, an adopted element of the Comprehensive Plan, for the following reasons:
  - a. The Goals and Objectives of the 2013 Comprehensive Plan recommend expanded housing choices (Theme A, Goal #1); support infill and redevelopment as a strategic component of growth and identify areas of opportunity for infill that respects the area's context and design features (Theme A, Goal #2 and #2a); provide well-designed neighborhoods and communities, including mixed-use and mixed type housing and multi-modal transportation networks (Theme A, Goal #3); support and showcase local assets to further the creation of a variety of jobs (Theme C, Goal # 1); attract the world's finest jobs, encourage entrepreneurial spirit, and enhance our ability to recruit and retain our workforce (Theme C, Goal #2); provide for accessible community services to meet the health, safety and quality of life of residents and visitors (Theme D, Goal #2); and uphold the Urban Service Area concept (Theme E, Goal #1).
  - b. East End Small Area Plan goals and objectives recommend to: create housing that is affordable, accessible and attractive to a diverse range of people (#2); promote new commercial development to create a mix of uses that respects and enhances the residential neighborhoods of the East End (#3); create a neighborhood where daily needs can be met by walking, cycling or transit (#5); ensure compatibility and encourage a complimentary relationship between adjacent land uses through strong urban design (#7); protect and enhance personal health and the environment (#9); and grow a locally based economy that offers opportunities to all residents (#12).
  - c. The SAP, as well as the Downtown Master Plan that preceded it in 2007, recommends infill mixed-use future land use along the Midland Avenue and E. Third Street corridors (p.60-62).
  - d. The proposed zone change and land uses meet these goals and objectives in that the petitioner is proposing three mixed-use structures; about 130 dwelling units, some designated for senior living; a community space for area senior citizens, a greenhouse and multiple business opportunities that respects and enhances the residential neighborhoods of the East End; and the project will help to improve the gateway into the East End and downtown Lexington.
  - e. The subject properties are located at a principal intersection that is a gateway into downtown. The proposed business zoning will help meet the vision to create a thriving, and dynamic corridor with a mixture of land uses, urban design, and density.

- f. The proposed B-2A zone is located within the area commonly and historically thought of as "downtown Lexington," and restrictions will ensure compatibility with surrounding land uses, especially the Charles Young Community Center.
2. This recommendation is made subject to approval and certification of PLN-MJDP-16-00015: Community Ventures Properties, LLC, 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 use restrictions shall apply to subject properties:
- a. **B-2A Zone – Prohibited Uses:**
1. Establishments for the display, rental or sale of automobiles, motorcycles, trucks, farm equipment, or boats or supplies for such vehicles.
  2. Minor automobile and truck repair.
  3. Pawnshops.
  4. Wholesale establishments.
  5. Any type of adult entertainment, adult arcades, massage parlors, adult video stores and adult bookstores.
  6. Passenger transportation terminals (does not include bus stops).
  7. Drive-through facilities.
- b. **B-1 Zone – Prohibited Uses:**
1. Automobile service stations, automobile and vehicle refueling stations, and/or gas pumps.
  2. Repair of household appliances, other than computers or electronics.
  3. Outdoor miniature golf or putting courses.
  4. Circuses or carnivals, even on a temporary basis.
  5. Indoor theaters and arcades, including pinball and electronic games.
  6. Drive-through facilities.
  7. Establishments for the retail or package sale of liquor, beer or wine.

These use restrictions are necessary and appropriate for the subject properties in order to ensure compliance with the 2013 Comprehensive Plan and East End Small Area Plan, and to better protect the surrounding neighborhood and the Charles Young Community Center.

ATTEST: This 12<sup>th</sup> day of October, 2016.

  
Secretary, Jim Duncan

WILLIAM WILSON  
CHAIR

Note: The corollary development plan, PLN-MJDP-16-00015: COMMUNITY VENTURES PROPERTIES, LLC was approved by the Planning Commission on September 22, 2016 and certified on October 6, 2016.

Note: Dimensional variances were approved for the B-1 portion of this request by the Planning Commission at this hearing.

K.R.S. 100.211(7) requires that the Council take action on this request by December 21, 2016.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by Dick Murphy, attorney.

**OBJECTORS**

- Alvin Seals, 772 Caden Lane

**OBJECTIONS**

- Has concerns regarding the impact of the

development on the Charles Young recreation center and the consideration of the youth in the area.

**VOTES WERE AS FOLLOWS:**

**AYES:** (10) Berkley, Brewer, Cravens, Drake, Mundy, Owens, Plumlee, Richardson, Smith, and Wilson

**NAYS:** (0)

**ABSENT:** (1) Penn

**ABSTAINED:** (0)

**DISQUALIFIED:** (0)

Motion for **CONDITIONAL APPROVAL** of **PLN-MAR-16-00007** carried.

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

**STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT**

**PLN-MAR-16-00007: COMMUNITY VENTURES PROPERTIES, LLC**

**DESCRIPTION**

**Zone Change:**

		<u>REQUEST</u>	<u>ACREAGE</u>	
	<u>FROM</u>	<u>TO</u>	<u>NET</u>	<u>GROSS</u>
	I-1	B-1	0.35	0.54
	I-1	B-2A	2.38	3.95
		Total .....	2.73	4.49

**Location:** 556, 561, 563, 565, & 576 E Third Street; 225, 261 & 265 Midland Avenue and 250 Lewis Street

**EXISTING ZONING & LAND USE**

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Properties	I-1	Vacant, Community Ventures Corporation
To North	I-1 & B-1	Catering Establishment
To East	I-1 & R-3	Industrial, Residential, Park
To South	I-1, MU-3, B-1	Townhouses/Mixed-Use Project, Industrial
To West	R-3	Charles Young Community Center

**URBAN SERVICES REPORT**

**Roads** – Midland Avenue/Winchester Road (US 60) is a four-lane, major arterial roadway into downtown from the east. It handles more than 18,000 vehicle trip per day near its intersection with E. Third Street. The signalized intersection of Midland Avenue and E. Third Street, due to the odd angle of the street intersection, functions so that left-hand turns from Midland Avenue on to E. Third Street are possible, but highly discouraged. Lewis Street, Withrow Way and Nelson Avenue are all local streets that form minor T-intersections with E. Third Street. Lewis Street is currently a one-way street from E. Third Street to Midland Avenue, but the petitioner proposes that it become a two-way street in order to improve ingress and egress from the subject site. Primary access to each of the sites will be from the local streets and not from the arterial roadways.

**Curb/Gutter/Sidewalks** – Curb, gutter and sidewalks do exist along Midland Avenue, and E. Third Street; however, these urban improvements do not exist along the subject properties' frontage along Lewis Street. With the proposed redevelopment, typical street cross-section improvements will be required to be constructed by the developer. The Town Branch Commons Trail is planned to be located along the site's Midland Avenue frontage, occupying the right-of-way and connecting across E. Third Street to the Isaac Murphy Garden, which serves as a trailhead for the Legacy Trail.

**Storm Sewers** – The subject properties are located within the Town Branch watershed. Stormwater improvements, such as detention basins, do not exist on the subject properties; however, storm sewer lines do exist within the right-of-way of Midland Avenue, Lewis Street, and portions of E. Third Street and Nelson Avenue. Although historically no detention basins existed to serve the subject properties, on-site stormwater quantity and quality may need to be addressed by the developer in order to comply with the Division of Engineering Stormwater Manuals. For mixed-use developments, underground storage basins are often constructed.

**Sanitary Sewers** – Sanitary sewers lines exist along Midland Avenue, E. Third Street, and Lewis Street, but may need to be improved in this older portion of the community to adequately serve the proposed high density/mixed-use development. The Capacity Assurance Program can issue reservation letters to applicants to ensure available capacity remains accessible for a proposed project. The Town Branch Wastewater Treatment Plant, located about 2½ miles to the northwest of the subject properties, will service this area of the Urban Service Area.

**Refuse** – The Urban County Government serves this portion of the Urban Service Area on Tuesday. Mixed-Use developments often utilize compactors which are serviced by private refuse companies.

**Police** – The Police Headquarters, located on E. Main Street, is located approximately ¾ mile to the northwest of the site. The property is located within the Central Sector (Sector 2).

**Fire/Ambulance** – The closest station is Fire Station #1 and Headquarters, located on E. Third Street, between Elm Tree Lane and Martin Luther King Boulevard, located approximately one-half mile northwest of the subject properties.

**Utilities** – All public utilities are available to serve the redevelopment site, including gas, electric, cable, water and telephone services. Street lights are also available in the immediate 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 Plan's 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. In addition, the Plan encourages a mix of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; and provision of land for a diverse workforce.

The subject site is located within the boundary of the Downtown Master Plan (2007) as well as the adopted East End Small Area Plan (2009). Both plans encourage infill mixed-use development along the Midland Avenue and E. Third Street corridors.

The petitioner proposes a rezoning to create a mixed-use project with about 272,000 square feet of space. The project is planned to include retail space, a greenhouse, 102 apartment/condominium dwelling units, 30 senior living dwelling units, a senior community space, a greenhouse, professional offices, and an associated off-street parking area. Dimensional variances are requested with the zone change and a traffic impact study has also been prepared.

### **CASE REVIEW**

The petitioner has requested a zone change from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone and a Downtown Frame Business (B-2A) zone for less than three acres of property at the eastern edge of downtown Lexington.

The subject properties are generally located at the intersection of Midland Avenue and E. Third Street. The area proposed for the Downtown Frame Business (B-2A) zone includes six parcels bounded by E. Third Street, Midland Avenue and Lewis Street – a triangular site. The area proposed for the Neighborhood Business (B-1) zone is comprised of another three parcels bounded by E. Third Street, Withrow Way and Nelson Avenue (on the north side of E. Third Street).

The Midland Avenue corridor is one of several primary gateways into downtown Lexington. It has historically been characterized as a business and industrial corridor near downtown with uses such as the Lexington Herald-Leader printing and office building, Smuckers Jif Peanut Butter manufacturing plant, Big Ass Fans offices and warehouses, Lexington Cut Stone and several other smaller businesses. The area between Main Street and Walton Avenue is primarily zoned B-1, B-4, and I-1, which naturally provides a mixture of land uses. E. Third Street, between its intersection with Midland Avenue and Race Street to the northwest was once a popular commercial area for the East End neighborhoods (B-1 zoning), and serves as a gateway entrance to the East End of downtown. Lewis Street (one-way traffic from north to south), Withrow Way and Nelson Avenue are all local streets that intersect with E. Third Street within 500 feet of its intersection with Midland Avenue.

The petitioner proposes a rezoning to create a mixed-use project with about 272,000 square feet of space, split between two sites - the larger triangular site and the Third Street site. The project is planned to include retail space, a greenhouse, 102 apartment/condominium dwelling units, 30 senior living dwelling units, a senior community space, a greenhouse, professional offices, and an associated off-street parking area. Dimensional variances are requested with the zone change and a traffic impact study has been prepared.

The 2013 Comprehensive Plan no longer relies upon a future land use map, but does focus 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. The subject properties are also located within the East End Small Area Plan (SAP) boundary, which encompasses the area bounded by Midland Avenue, E. Short Street, Elm Tree Lane, the RJ Corman Railroad, and Winchester Road. This SAP was adopted by the Planning Commission in April 2009. After much public input, the East End developed a neighborhood vision through 13 goal statements (p. 18) and a top ten list of planning priority projects (p. 19). The site is also situated within the Downtown Master Plan boundary, which was prepared by the Downtown Development Authority in 2007.



The petitioner contends that the proposal is in agreement with both the 2013 Comprehensive Plan and the adopted 2009 East End SAP. They opine that the proposed zone and development proposal will: provide for expanded housing choices (Theme A, Goal #1); support infill and redevelopment as a strategic component of growth and identify areas of opportunity for infill that respects the area's context and design features (Theme A, Goal #2 and #2a); provide well-designed neighborhoods and communities, including mixed-use and mixed type housing and multi-modal transportation networks (Theme A, Goal #3); support and showcase local assets to further the creation of a variety of jobs (Theme C, Goal # 1); attract the world's finest jobs, encourage entrepreneurial spirit, and enhance our ability to recruit and retain our workforce (Theme C, Goal #2); provide for accessible community services to meet the health, safety and quality of life of residents and visitors (Theme D, Goal #2); and uphold the Urban Service Area concept (Theme E, Goal #1).

Additionally, the petitioner states that their proposal will further the following East End Small Area Plan goals and objectives: create housing that is affordable, accessible and attractive to a diverse range of people (#2); promote new commercial development to create a mix of uses that respects and enhances the residential neighborhoods of the East End (#3); create a neighborhood where daily needs can be met by walking, cycling or transit (#5); ensure compatibility and encourage a complimentary relationship between adjacent land uses through strong urban design (#7); protect and enhance personal health and the environment (#9); and grow a locally based economy that offers opportunities to all residents (#12). The SAP, as well as the Downtown Master Plan, recommends infill mixed-use future land use along the Midland Avenue and E. Third Street corridors (p.60-62).

The staff agrees that the proposed zone change application is in agreement with the Comprehensive Plan and the East End Small Area Plan for this site for the following reasons: mixed-use future land use is recommended and the applicant is proposing three mixed-use structures; the Plan encourage a diversity of housing that is affordable and accessible and the applicant proposes about 130 dwelling units, some designated for senior living; the Comprehensive Plan calls for accessible community facilities and employment opportunities for all, and the applicant is proposing a community space for area senior citizens, a greenhouse and multiple business opportunities that respects and enhances the residential neighborhoods of the East End; and the proposed mixed-use project will help to improve the gateway into the East End and downtown Lexington.

The staff would note that a extensive discussion was had about extending B-2A zoning to Third Street in this vicinity, because the proposed zone would not be contiguous to another downtown business zone. The staff reviewed the Small Area Plan and the Downtown Master Plan, and determined that both corridors are envisioned to be thriving corridors with a mixture of land uses, urban design, and density so that the area can regain its dynamic. The staff opines that Third Street and Midland Avenue have historically been the "edge" of downtown and the B-2 zones offer a lot of design and land use flexibility for the applicant. That being said, since the proposed B-2A zone is not contiguous to another downtown business zone and the Charles Young Community Center and park (recently listed on the National Register of Historic Places) are located to the immediate northwest, conditional zoning restrictions are necessary for the triangle site. Likewise, the staff recommends restrictions for the Third Street site, similar to those established for other nearby neighborhood business zoning.

A traffic impact study was required by the Zoning Ordinance for the proposed development. A separate staff report, prepared by the Transportation Planning staff in the Metropolitan Planning Organization (MPO), will be presented at the public hearing for this case. Several dimensional variances have also been requested with the proposed rezoning and will also be addressed with a separate staff report.

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

1. The requested Neighborhood Business (B-1) zone and Downtown Frame Business (B-2A) zone are in agreement with the 2013 Comprehensive Plan and the East End Small Area Plan, an adopted element of the Comprehensive Plan, for the following reasons:
  - a. The Goals and Objectives of the 2013 Comprehensive Plan recommend expanded housing choices (Theme A, Goal #1); support infill and redevelopment as a strategic component of growth and identify areas of opportunity for infill that respects the area's context and design features (Theme A, Goal #2 and #2a); provide well-designed neighborhoods and communities, including mixed-use and mixed type housing and multi-modal transportation networks (Theme A, Goal #3); support and showcase local assets to further the creation of a variety of jobs (Theme C, Goal # 1); attract the world's finest jobs, encourage entrepreneurial spirit, and enhance our ability to recruit and retain our workforce (Theme C, Goal #2); provide for accessible

community services to meet the health, safety and quality of life of residents and visitors (Theme D, Goal #2); and uphold the Urban Service Area concept (Theme E, Goal #1).

- b. East End Small Area Plan goals and objectives recommend to: create housing that is affordable, accessible and attractive to a diverse range of people (#2); promote new commercial development to create a mix of uses that respects and enhances the residential neighborhoods of the East End (#3); create a neighborhood where daily needs can be met by walking, cycling or transit (#5); ensure compatibility and encourage a complimentary relationship between adjacent land uses through strong urban design (#7); protect and enhance personal health and the environment (#9); and grow a locally based economy that offers opportunities to all residents (#12).
  - c. The SAP, as well as the Downtown Master Plan that preceded it in 2007, recommends infill mixed-use future land use along the Midland Avenue and E. Third Street corridors (p.60-62).
  - d. The proposed zone change and land uses meet these goals and objectives in that the petitioner is proposing three mixed-use structures; about 130 dwelling units, some designated for senior living; a community space for area senior citizens, a greenhouse and multiple business opportunities that respects and enhances the residential neighborhoods of the East End; and the project will help to improve the gateway into the East End and downtown Lexington.
  - e. The subject properties are located at a principal intersection that is a gateway into downtown. The proposed business zoning will help meet the vision to create a thriving, and dynamic corridor with a mixture of land uses, urban design, and density.
  - f. The proposed B-2A zone is located within the area commonly and historically thought of as "downtown Lexington," and restrictions will ensure compatibility with surrounding land uses, especially the Charles Young Community Center.
2. This recommendation is made subject to approval and certification of PLN-MJDP-16-000015: Community Ventures Properties, LLC, 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 use restrictions shall apply to subject properties:
    - a. **B-2A Zone – Prohibited Uses:**
      1. Establishments for the display, rental or sale of automobiles, motorcycles, trucks, farm equipment, or boats or supplies for such vehicles.
      2. Minor automobile and truck repair.
      3. Pawnshops.
      4. Wholesale establishments.
      5. Any type of adult entertainment, adult arcades, massage parlors, adult video stores and adult bookstores.
      6. Passenger transportation terminals (does not include bus stops).
      7. Drive-through facilities.
    - b. **B-1 Zone – Prohibited Uses:**
      1. Automobile service stations, automobile and vehicle refueling stations, and/or gas pumps.
      2. Repair of household appliances, other than computers or electronics.
      3. Outdoor miniature golf or putting courses.
      4. Circuses or carnivals, even on a temporary basis.
      5. Indoor theaters and arcades, including pinball and electronic games.
      6. Drive-through facilities.
      7. Establishments for the retail or package sale of liquor, beer or wine.

These use restrictions are necessary and appropriate for the subject properties in order to ensure compliance with the 2013 Comprehensive Plan and East End Small Area Plan, and to better protect the surrounding neighborhood and the Charles Young Community Center.

**2. COMMUNITY VENTURES PROPERTIES, LLC, ZONING MAP AMENDMENT & COMMUNITY VENTURES PROPERTIES, LLC ZONING DEVELOPMENT PLAN**

- a. PLN-MAR-16-00007: COMMUNITY VENTURES PROPERTIES, LLC – petition for a zone map amendment from a Light Industrial (I-1) zone to a Neighborhood Business (B-1) zone, for 0.35 net (0.54 gross) acres, for properties located at 561, 563, and 565 E Third Street; and a Downtown Frame Business (B-2A) zone, for 2.38 net (3.95 gross) acres, for properties located at 556 and 576 E Third Street; and 225, 261 and 265 Midland Avenue, and 250 Lewis Street. Dimensional variances are also requested.

**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 Plan's 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. In addition, the Plan encourages a mix of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; and provision of land for a diverse workforce.

The subject site is located within the boundary of the Downtown Master Plan (2007) as well as the adopted East End Small Area Plan (2009). Both plans encourage infill mixed-use development along the Midland Avenue and E. Third Street corridors.

The petitioner proposes a rezoning to create a mixed-use project with about 272,000 square feet of space. The project is planned to include retail space, a greenhouse, 102 apartment/condominium dwelling units, 30 senior living dwelling units, a senior community space, a greenhouse, professional offices, and an associated off-street parking area. Dimensional variances are requested with the zone change and a traffic impact study has also been prepared.

**The Zoning Committee Recommended: Approval.**

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

1. The requested Neighborhood Business (B-1) zone and Downtown Frame Business (B-2A) zone are in agreement with the 2013 Comprehensive Plan and the East End Small Area Plan, an adopted element of the Comprehensive Plan, for the following reasons:
  - a. The Goals and Objectives of the 2013 Comprehensive Plan recommend expanded housing choices (Theme A, Goal #1); support infill and redevelopment as a strategic component of growth and identify areas of opportunity for infill that respects the area's context and design features (Theme A, Goal #2 and #2a); provide well-designed neighborhoods and communities, including mixed-use and mixed type housing and multi-modal transportation networks (Theme A, Goal #3); support and showcase local assets to further the creation of a variety of jobs (Theme C, Goal # 1); attract the world's finest jobs, encourage entrepreneurial spirit, and enhance our ability to recruit and retain our workforce (Theme C, Goal #2); provide for accessible community services to meet the health, safety and quality of life of residents and visitors (Theme D, Goal #2); and uphold the Urban Service Area concept (Theme E, Goal #1).
  - b. East End Small Area Plan goals and objectives recommend to: create housing that is affordable, accessible and attractive to a diverse range of people (#2); promote new commercial development to create a mix of uses that respects and enhances the residential neighborhoods of the East End (#3); create a neighborhood where daily needs can be met by walking, cycling or transit (#5); ensure compatibility and encourage a complimentary relationship between adjacent land uses through strong urban design (#7); protect and enhance personal health and the environment (#9); and grow a locally based economy that offers opportunities to all residents (#12).
  - c. The SAP, as well as the Downtown Master Plan that preceded it in 2007, recommends infill mixed-use future land use along the Midland Avenue and E. Third Street corridors (p.60-62).
  - d. The proposed zone change and land uses meet these goals and objectives in that the petitioner is proposing three mixed-use structures; about 130 dwelling units, some designated for senior living; a community space for area senior citizens, a greenhouse and multiple business opportunities that respects and enhances the residential neighborhoods of the East End; and the project will help to improve the gateway into the East End and downtown Lexington.
  - e. The subject properties are located at a principal intersection that is a gateway into downtown. The proposed business zoning will help meet the vision to create a thriving, and dynamic corridor with a mixture of land uses, urban design, and density.
  - f. The proposed B-2A zone is located within the area commonly and historically thought of as "downtown Lexington," and restrictions will ensure compatibility with surrounding land uses, especially the Charles Young Community Center.

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2. This recommendation is made subject to approval and certification of PLN-MJDP-16-000015: Community Ventures Properties, LLC, 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 use restrictions shall apply to subject properties:
  - a. **B-2A Zone – Prohibited Uses:**
    1. Establishments for the display, rental or sale of automobiles, motorcycles, trucks, farm equipment, or boats or supplies for such vehicles.
    2. Minor automobile and truck repair.
    3. Pawnshops.
    4. Wholesale establishments.
    5. Any type of adult entertainment, adult arcades, massage parlors, adult video stores and adult bookstores.
    6. Passenger transportation terminals (does not include bus stops).
    7. Drive-through facilities.
  - b. **B-1 Zone – Prohibited Uses:**
    1. Automobile service stations, automobile and vehicle refueling stations, and/or gas pumps.
    2. Repair of household appliances, other than computers or electronics.
    3. Outdoor miniature golf or putting courses.
    4. Circuses or carnivals, even on a temporary basis.
    5. Indoor theaters and arcades, including pinball and electronic games.
    6. Drive-through facilities.
    7. Establishments for the retail or package sale of liquor, beer or wine.

These use restrictions are necessary and appropriate for the subject properties in order to ensure compliance with the 2013 Comprehensive Plan and East End Small Area Plan, and to better protect the surrounding neighborhood and the Charles Young Community Center.

b. **REQUESTED VARIANCES**

1. Increase the maximum height from 35' to 50' (in the B-1 zone)
2. Reduce the minimum front yard from 10' to 5' along Withrow Way
3. Reduce the minimum off-street parking from 28 spaces to 16 spaces (in the B-1 zone)
4. Reduce the minimum front yard from 10' to 0' (in the B-2A zone)

The Staff Recommends: Postponement of the requested front yard variance from 10' to 0' in a B-2A zone, for the following reasons:

- a. Approval of this variance could compromise the integrity of the Town Branch Trail project, since no detailed construction plans have been created for that work. Building setbacks from property are justified through Zoning Ordinances to protect private property from work in public rights-of-way, and vice versa.
- b. The existing building at the corner is justified in seeking a variance to these setback requirements, but the extent of the variances requested exceeds the applicant's request.
- c. A variance to the required Midland Avenue setback could be sought in the near future from the Board of Adjustment, once more information is known about the extent of the Town Branch Trail project.
- d. The two new B-2A buildings, as proposed, can be redesigned on the site to meet the required 10' front yard.

The Staff Recommends: Approval of a height variance from 35' to 44', and approval of the other two requested variances in a B-1 zone, for the following reasons:

- a. There will be no adverse health, safety or welfare impact to the adjoining neighborhood from these variances. The height variance is necessary to add a roof feature on the proposed building, and to allow it to have a pitched roof, as have others in the East End neighborhood. Parking will be available on the street and across the street in the future, and Withrow Way will be improved with curb, gutter and sidewalk once the B-1 building is completed. There will be no adverse impact to the Isaac Murphy Memorial Garden, directly across Nelson Avenue from this location.
- b. The unusual circumstance surrounding the proposed B-1 property is that it is encumbered by three (out of four) front yard requirements, which is rare for a single building, even in and near the downtown area.
- c. Strict application of the Zoning Ordinance would make the B-1 building less interesting and diverse from other (smaller) buildings in the general vicinity, with the exception of the applicant's building directly across East Third Street from this location. The applicant firmly believes that this project is infeasible without the granting of these variances.
- d. Approval of these variances would not result in an unreasonable circumvention of the Zoning Ordinance, as other commercial and mixed use buildings within ¼ mile of this location are similarly situated and/or deficient in off-street parking on their lots.
- e. The variances have been requested prior to construction and development of the property, and thus, there is no willful violation of any existing zoning regulation by the applicant.

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

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval of this variance 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. Prior to obtaining an Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.
5. The parking lot shall be screened and landscaped as required by Article 18 of the Zoning Ordinance.
6. A pedestrian crosswalk shall be installed by the applicant across Withrow Way at the corner of East Third Street, to the approval of the Division of Traffic Engineering.

- c. PLN-MJDP-16-00015: COMMUNITY VENTURES PROPERTIES, LLC (10/30/16)\* - located at 561 E. Third Street. (Carman & Assoc.)

The Subdivision Committee Recommended: Postponement. There were some questions regarding the requested variances and compliance with the open space requirements of the zone.

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

1. Provided the Urban County Council rezones the property B-2A/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. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Documentation of Division of Water Quality's approval of the Capacity of Assurance Program requirements, prior to plan certification.
8. Dimension the proposed buildings.
9. Denote building height in feet.
10. Clarify lot coverage and floor area ratio in site statistics.
11. Delete rear and side yard no limitation references.
12. Provided the Planning Commission grants the requested variances.
13. Denote adjoining property owner's information for B-1 property.
14. Delete notes #4 and #11.
15. Denote compliance with the Downtown Streetscape Master Plan will be achieved at time of Final Development Plan.
16. Dimension exterior of all buildings.
17. Denote required open space area per B-2 requirements.
18. Delete TPA information and replace with required Tree Inventory.
19. Discuss right-of-way and Legacy Trail on Midland Avenue.
20. Discuss timing of the construction of the proposed B-1 and B-2A properties.
21. Discuss street improvements and two way movement on Lewis Street.
22. Discuss stormwater detention and water quality measures.
23. Discuss environmental easement (covenant) under Building B.
24. Discuss sanitary sewer easement under Building B.
25. Discuss use of small building behind Building C.

Staff Zoning Presentation – Ms. Wade presented the staff report and recommendations on this zone change. She said that she has received a letter of support from the East End Community Development Corporation. She said that the staff as well as the Zoning Committee is recommending approval of this zone change.

Commission Comments – There were questions in regard to the proximity of the Town Branch Trail, which will run along Midland Avenue.

Development Plan Presentation - Mr. Martin presented the updated staff report on this development plan, which was handed out to the Commission. He pointed out that the underground parking is vital to this development. The revised conditions are:

1. Provided the Urban County Council rezones the property B-2A/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.

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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. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Clarify limits of existing building and label as such.
8. Denote that existing building shall have no front yard setback limitation along Midland Avenue and E. Third Street.
9. Provided the Planning Commission grants the requested variances.
10. Denote right-of-way and Legacy Trail on Midland Avenue shall be resolved at the time of Final Development Plan.
11. Denote timing of the construction of the proposed B-1 and B-2A properties shall be resolved at the time of Final Development Plan.
12. Denote street improvements and two way movement on Lewis Street shall be resolved at the time of Final Development Plan.
13. Denote stormwater detention and water quality measures shall be resolved at the time of Final Development Plan.
14. Denote sanitary sewer easement under Building B conflict shall be resolved at the time of Final Development Plan.
15. Denote that architectural elements and fenestration shall be discussed at the time of Final Development Plan.

Variance – Mr. Sallee presented the staff report on the variances for this development and discussed the four conditions that the staff has recommended. He said that the staff understands that the petitioner will be withdrawing requested variance number four.

Traffic Impact Study – Mr. Emmons presented the staff report of the Traffic Study, prepared by Adam Kirk Engineering, for this development and said that this will have a traffic calming effect as a dense urban environment will slow the vehicular traffic.

Petitioner Presentation – Jacob Walbourn, McBrayer, McGinnis, Leslie & Kirkland, PLLC, was present representing the petitioner and said that he believes the applicant is in agreement with the staff's recommendations. He said the applicant is not in favor of vehicular transportation; that he is a large proponent of bicycling and pedestrian facilities, which is the focus of this development.

Mr. Walbourn said that the applicant has withdrawn the requested variance number four, to reduce the minimum front yard setback from 10' to 0' (in the B-2A zone). He also said that the applicant had met with the neighborhood, and listened to their concerns, before the application was filed. He said that the applicant is committed to working with the neighborhood to address issues before the Final Development Plan stage.

Mr. Phil Halobeck, developer representing Community Ventures, presented the design guidelines of the proposed development and discuss how it met the goals of the East End Small Area Plan and the 2013 Comprehensive Plan.

The following citizens were present in favor to this case:

Mr. Thomas Tolliver, 335 E. 3<sup>rd</sup> Street, said that he welcomes this development and wants the East End to have more diversity and is exactly is the East End needs.

Ms. Anita Franklin, near E. 6<sup>th</sup> Street, President of the Windmills Round Association and member of the Board of Charles Young Community Center, does welcome Community Ventures' vision, but has concerns about the young adults in the neighborhood finding employment.

The following citizens were present in opposition to this case:

Mr. Alvin Seals, 772 Caden Lane and member of the Board of Charles Young Community Center, has concerns about the recreation center and consideration of the youth in the area.

Petitioner Rebuttal – Mr. Walbourn said that he believes this proposed development will be an asset to the Charles Young Center.

Chairman's Comments – Chairman Wilson stated that the hearing was now "closed," and he opened the floor for discussion.

Zoning Action – A motion was made by Mr. Brewer, seconded by Mr. Owens, and carried 10-0 (Penn absent) to approve PLN-MAR-16-00007: COMMUNITY VENTURES PROPERTIES, LLC, for the reasons provided by the staff, including the conditional zoning restrictions.

Variance Action – A motion was made by Mr. Brewer, seconded by Ms. Richardson, carried 9-0 (Owens abstained, Penn absent) to approve the Requested Variances, for the reasons provided by the staff and to amend condition number one to the maximum height to 44' and to withdraw variance number 4 (in the B-2A zone).

Development Plan Action – A motion was made by Mr. Brewer, seconded by Ms. Richardson, carried 10-0 (Penn absent) PLN-MJDP-16-00015: COMMUNITY VENTURES PROPERTIES, LLC, with the revised conditions provided by the staff.