

1. **STRONGBOX, LLC, ZONING MAP AMENDMENT & MAN O' WAR DEVELOPMENT, UNIT 2A, LOTS A-2 & A-3 (AMD.) ZONING DEVELOPMENT PLAN**

- a. MARV 2015-28: STRONGBOX, LLC (1/31/16)\* - petition for a zone map amendment from an Interchange Service Business (B-5P) zone to a Light Industrial (I-1) zone, for 3.08 net (6.35 gross) acres, for property located at 1973 Bryant Road.

**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. 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 petitioner proposes a Light Industrial (I-1) zone in order to operate an establishment for the display, sale, service and minor repair of all-terrain vehicles (ATVs) and motorcycles on the subject property. The site is currently vacant, and would require only minor modifications in order for the proposed use to occupy the site.

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

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

1. A restricted Light Industrial (I-1) zone is in substantial compliance with the 2013 Comprehensive Plan, for the following reasons:
  - a. The site has been an underutilized site after more than two decades of B-5P zoning and a decade of failed restaurants. The property should be considered for a possible change to an alternative business zone (and use) in order to better serve the needs of the community within the Urban Service Area.
  - b. The proposed zoning and land use are generally compatible with the nearby "motorsports node" that has developed along Bryant Road. Conditional zoning restrictions to limit uses that may disturb visitors and guests in the adjacent hotels would be appropriate for the subject property to ensure land use compatibility.
  - c. The proposed redevelopment will be able to use the existing infrastructure and transportation networks (which are adequate to serve the use), and the proposed land use will not impair existing environmental conditions on the site. This is consistent with the guiding principles of the Comprehensive Plan, specifically Chapter 4: "Protecting the Environment," and Chapter 6: "Improving a Desirable Community."
2. This recommendation is made subject to approval and certification of ZDP 2015-120: Man o' War Development, Unit 2A, Sec. 2, Lots A-2 & A-3 (Amd), 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 subject property shall be restricted in the following manner, via conditional zoning:

**Prohibited Uses**

  - a. Ice plant.
  - b. Tire re-treading and recapping.
  - c. Machine shop.
  - d. Outdoor kennels.
  - e. Establishments and lots for the display, rental, sale, service, and minor repair of farm equipment; contractor equipment; travel trailers; mobile homes; and/or precut, prefabricated or shell homes.
  - f. Outdoor storage of supplies or materials.
  - g. Auto-parts rebuilding; battery manufacturing; dextrine and starch manufacturing; enameling, lacquering and japanning; electric foundry; radium extraction; and tool manufacturing.
  - h. Vehicle storage yards.
  - i. Truck terminals.
  - j. Advertising signs, also known as billboards, as regulated and defined by Article 17.

These restrictions are necessary and appropriate in order to restrict the most intense land uses on the subject property. Such uses could have a negative impact on the nearby hotels related to noise and their hours of operation.

b. **REQUESTED VARIANCE**

1. Eliminate the property perimeter landscaping (zone-to-zone screening) for the entire property.

\* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

The Staff Recommends: Approval of the requested landscape variance, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public; conversely, if the required zone-to-zone screening were in place, this site would be out of character with the general vicinity.
- b. There are special circumstances that apply to this property that do not generally apply to land in the general vicinity: 1) there will be a business to business relationship with the adjacent B-5P zoned properties, and uses that would traditionally be a nuisance to the adjacent properties will be prohibited via conditional zoning; and 2) there are existing impediments on the subject property that greatly restrict the applicant from installing the full extent of the required landscaping, including an existing building, parking, and a large detention basin.
- c. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship for the applicant because of the limited space available. The applicant intends to retain the existing vehicular use area screening, which will be a sufficient buffer for this property based on the unique circumstances of this request.
- d. The circumstances surrounding the requested variance are not the result of prior actions taken by this applicant, as no construction (or even building demolition) has yet occurred on the subject site.

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

1. Provided the Urban County Council rezones the property I-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 variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
- c. ZDP 2015-120: MAN O' WAR DEVELOPMENT, UNIT 2A, SEC. 2, LOTS A-2 & A-3 (AMD) (1/31/16)\* - located at 1973 Bryant Road. **(EA Partners)**

Note: The Planning Commission postponed this item at their December 17, 2015, meeting. The purpose of this amendment is to change the use of the property from a restaurant to retail sales of vehicles, and revise parking.

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

1. Provided the Urban County Council rezones the property I-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
6. Denote height of building, in feet.
7. Dimension area between sidewalk and parking lot.
8. Dimension sidewalks internal to the site.
9. Dimension area between west parking lot and building.
10. Addition of purpose of amendment note.
11. Discuss relocating fence to inside of landscape islands to better comply with Article 18 of the Zoning Ordinance.
12. Discuss display area fencing and compliance with Article 18 of the Zoning Ordinance, per Article 16-4(b)(5) of the Zoning Ordinance.
13. Discuss perimeter screening along the eastern property line, per Article 18 of the Zoning Ordinance.
14. Discuss plan status.

Zoning Presentation: Ms. Wade presented the staff report on this rezoning request, briefly orienting the Commission to the location of the subject property. The property is located in the southern quadrant of the Interstate 75 & Man o' War Boulevard interchange, abutting the southern on-ramp, and it includes a portion of the right-of-way of the interstate. Bryant Road, which serves as the access to the subject property, includes mostly commercial uses, with a mix of B-5P and B-6P zoning. There is also a 15-acre section of I-1 zoning to the southeast of the subject property. Across Pleasant Ridge Drive from the commercial area is primarily single-family residential development, with some commercial uses closer to Man o' War Boulevard.

Referring to an aerial photograph of the subject property and surrounding area, Ms. Wade noted that some of the property in the area remains vacant. The subject property includes an existing building, which was built in 2004, and was formerly occupied by three different chain restaurants. There are other restaurants in the general vicinity, as well as several hotels. One hotel is directly adjacent to the subject property.

Ms. Wade stated that the petitioner is proposing to rezone the subject property in order to operate an establishment for the display, sale, service, and minor repair of all-terrain vehicles (ATVs) and motorcycles, which is a permitted use in the I-

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1 zone. That use is also permitted in several other zones, but the petitioner indicated in their justification that, since I-1 zoning already exists in the general vicinity, they felt that zone might be the most appropriate.

Ms. Wade said that the petitioner contends that the proposed rezoning is in agreement with the 2013 Comprehensive Plan, and that there has been a change in the area that was unanticipated by the Plan. The staff agrees that the proposed rezoning is substantially in agreement with the recommendations of the Comprehensive Plan, for the reasons as listed in the staff report and on the agenda. The staff believes that an I-1 zone, with conditional zoning restrictions, would be appropriate on the subject property, given its proximity to the nearby hotels. The staff is proposing to prohibit 10 uses via conditional zoning, primarily ones that would involve noise in the off-hours. Ms. Wade stated that the staff and the Zoning Committee recommended approval of this request.

Development Plan Presentation: Mr. Hunter presented the rendered preliminary development plan, noting the location of the existing retail building on the property. He also indicated the locations of the proposed reconfigured parking area; a display area for vehicles; and a fenced area to secure vehicles overnight.

Mr. Hunter stated that the Subdivision Committee recommended approval of this plan, subject to the 14 conditions as listed on the agenda. Conditions #6 - #10 refer to primarily "clean-up" items on the plan. Condition #11 refers to the fenced area depicted on the plan, which is proposed to be used to secure vehicles overnight. The required landscape islands in the parking area are currently proposed to be located inside that fence; the staff is concerned that the islands could be removed, if they are not relocated outside the fence. Condition #13 is related to the variance request, which was filed in conjunction with this zone change. Mr. Hunter said that the staff recommended condition #14 because they thought the petitioner might like to change the plan status to final, but the petitioner has indicated a desire for this to remain a preliminary development plan.

Variance Presentation: Mr. Emmons presented the variance report, noting that perimeter landscaping, including a 6' fence, trees, and a hedge, is required by the Zoning Ordinance whenever an industrial zone adjoins any other zone. The petitioner is requesting to eliminate the required perimeter landscaping.

Mr. Emmons said that the staff is recommending approval of the requested variance, for the reasons as listed in the staff report and on the agenda. He noted that, due to the commercial nature of the area, requiring the landscaping would actually result in the subject property being out of character with the surrounding properties.

Mr. Emmons explained that, in addition, there are several unique circumstances that justify the requested variance. On the east side of the property, the building is located very near the property line, which would preclude the ability to install the minimum required landscaping there. The petitioner has agreed to maintain the vehicular use area parking screening, which includes a 3' hedge, which the staff believes is appropriate for the proposed use of the property.

Commission Questions: Ms. Mundy asked if the existing landscaping would be replaced if it died. Mr. Emmons answered that the vehicular use area screening is required, and it is included on the development plan, so it would need to be replaced.

Mr. Cravens asked what type of fence is proposed in the parking area. Mr. Emmons answered that he did not know, but he would defer to the petitioner. Mr. Cravens asked if the petitioner would need to install additional landscaping in the parking area. Mr. Emmons responded that the staff is recommending that the fence be relocated to the inside of the landscape islands, rather than outside, as depicted on the current plan.

Petitioner Representation: Nick Nicholson, attorney, was present representing the petitioner. He said that their development plan will remain a Preliminary one, and the petitioner will defer the issues with the fence and landscaping to the Final Development Plan stage. The petitioner hopes to find a different means with which to secure vehicles overnight, in which case the fence would be removed from the plan. Mr. Nicholson noted, with regard to Ms. Mundy's question, that the petitioner would be required to replace any landscaping that has died. There are basic Zoning Ordinance requirements that must be met, and additional requirements for parking areas for the sale of automobiles.

Mr. Nicholson stated that the petitioner is attempting to maintain the existing appearance of the property, which is very open. He said that all of the lots in the area have the same shrubs and trees, and the same spacing, and the petitioner wants to maintain the subject property in keeping with the existing character of the area. With regard to concerns about proximity to hotels, Mr. Nicholson noted that there is a hotel directly adjacent to the subject property, but it is bordered on its other side by a use very similar to what is proposed for the subject property. That property has the same type of screening as the subject property.

Commission Questions: Mr. Cravens asked if parts or scrap vehicles would be stored outside. Mr. Nicholson answered that the petitioner does not propose to store any such items outdoors, particularly given the proximity of the adjacent hotel. Mr. Nicholson explained that the back wall of the hotel adjoins the subject property, so the view should not be an issue.

He added that the petitioner is proposing to install bay doors in order to keep materials inside the building, and only small repairs would be done on the site.

Mr. Owens asked if condition #14 could be deleted, since the petitioner has indicated that the plan should remain preliminary. Mr. Sallee suggested that the Planning Commission could delete conditions #11 - #14. He said that the staff was concerned about maintaining the landscape islands, but the petitioner indicated they would like that condition removed.

Mr. Nicholson stated that the petitioner would be agreeable to maintaining condition #11, since they understand the staff's concern about the fence. He asked that the Commission change it to resolve the fence issue at the time of the Final Development Plan. Mr. Sallee suggested that, rather than changing the plan at this point with a "resolve" condition, that that condition could be deleted.

**Zoning Action:** A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-1 (Brewer and Penn absent; Cravens opposed) to approve MARV 2015-28, for the reasons provided by staff, subject to the conditional zoning restrictions as recommended by staff.

**Variance Action:** A motion was made by Mr. Berkley, seconded by Ms. Richardson, and carried 8-1 (Brewer and Penn absent; Cravens opposed) to approve the requested variance, for the reasons provided by staff, subject to the conditions as listed in the staff report and on the agenda.

**Development Plan Action:** A motion was made by Mr. Berkley, seconded by Mr. Wilson, and carried 8-1 (Brewer and Penn absent; Cravens opposed) to approve ZDP 2015-120, subject to the first ten conditions as listed; deleting conditions #11, #12, #13, and #14.

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