

GENERAL INFORMATION: MAP AMENDMENT REQUEST (MAR) APPLICATION

1. ADDRESS INFORMATION (Name, Address, City/State/Zip, & PHONE NUMBER)

APPLICANT: Bayer Properties, L.L.C. a Delaware limited liability company, 222 Arlington Avenue, Birmingham, AL 35205
OWNER: Fritz Farms, LLC, 4100 Nicholasville Road, Lexington KY 40503
ATTORNEY: William M. Lear, Stoll Keenon Ogden PLLC, 300 W. Vine St, Ste. 2100, Lexington, KY 40508, (859)231-3000

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

4100 Nicholasville Road, 104, 108, and 112 E. Tiverton Way

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

Existing		Requested			Acreage	
Zoning	Use	Zoning	Use	Mixed	Net	Gross
A-U	Agricultural	MU-3	Entertainment Use Project	Mixed	49.17	54.73
R-1D	Vacant	MU-3	Entertainment Use Project	Mixed	0.65	0.82

4. SURROUNDING PROPERTY, ZONING & USE

Property	Use	Zoning
North	Business/Residential/Vacant	B-1, R-1D
East	Residential	R-1D, R-1E
South	Agricultural	A-U
West	Business	B-3

5. EXISTING CONDITIONS

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input checked="" type="checkbox"/> YES <input 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 checked="" type="checkbox"/> NO ____ Units

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


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

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

This is in agreement with the Comp. Plan more appropriate than the existing zoning due to unanticipated changes.

8. APPLICANT/OWNER SIGNS THIS CERTIFICATION.

I do hereby certify that to the best of my knowledge and belief, all application materials are herewith submitted and the information they contain is true and accurate. I further certify that I am OWNER or HOLDER of an agreement to purchase this property since 2007.

APPLICANT/OWNER  Attorney for Bayer Properties
 LFUCG EMPLOYEE/OFFICER, if applicable _____

DATE 5/3/13
 DATE _____
 DATE _____



**STOLL
KEENON
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May 3, 2013

Lexington Fayette Urban County Planning Commission
101 East Vine Street
Lexington, KY 40507

Re: Amended Application for B-6P Zoning for Residential/Commercial Mixed-Use
Development - 4100 Nicholasville Road, 104, 108, and 113 East Tiverton Way

Dear Members of the Planning Commission:

We represent Bayer Properties, Inc. ("Bayer"), the developer, and Fritz Farms, LLC ("the Fritz family"), the property owners, with respect to an amended application to rezone approximately 49.82 net (55.55 gross) acres of property located at the intersection of Nicholasville Road and Man O War Boulevard from its existing A-U (Agricultural Urban) and R-1D (Single Family Residential) zones to MU-3 (Mixed Use) zone for an Entertainment Mixed-Use Project. We also will be requesting certain variances that are necessary to facilitate the integration of a large entertainment mixed-use development contemplated by the Comprehensive Plan into the surrounding neighborhood.

The Fritz family is among the last remaining long-term owners of agricultural property in the Nicholasville Road corridor, their ancestors having acquired this property in 1927. Bayer is a premier national developer of commercial and mixed-use properties which has built successful projects in Birmingham, Alabama; Louisville, Kentucky; Charleston, South Carolina; Reno, Nevada; and Fort Collins, Colorado. In addition, Bayer manages successful retail and mixed-use developments in Milwaukee, Wisconsin; Slidell, Louisiana; and Shreveport, Louisiana. Part of the Bayer philosophy is to create real estate environments which improve the quality of life in the communities it serves. This is evident at The Summit projects with entertainment and community events such as the Farmers Market, Heart Walks for the American Heart Association, and concerts performed by local ballet companies and orchestras.

The requested zone change will allow for the development of a New Urban-style mixed use entertainment project featuring retailers not currently found in this market, a pedestrian-friendly layout, free-standing residential, residential over retail construction, a hotel, and abundant site amenities all in conformance with LFUCG's adopted Comprehensive Plan. In addition, the development will address and resolve long-standing storm water drainage issues which, without this development, the Government would have to expend significant monies to correct on its own.

- **Comprehensive Plan Compliance.** The South Nicholasville Road Small Area Plan, an element of the Comprehensive Plan, projects development of the subject property in a mix of residential and non-residential uses. A sample layout for the subject property offering one concept for such a mix is found at p. 120 of the Small Area Plan and shows a cluster of 24 different buildings with total floor areas ranging up to almost 2.6 million square feet. The text of the Plan emphasizes a mix of residential and non-residential uses, the application of New Urban design concepts, extensive landscaping, and other amenities to provide an inviting pedestrian-friendly environment.

The proposed entertainment mixed-use project and the associated development plan conform to each of these concepts. As can be seen, the buildings in the proposed development are clustered in a fashion that provides a “town center” featuring a central village green, as well as urban-type streetscapes with much of the parking to the rear of the buildings, including the use of multi-level parking of a type not found in this community outside of downtown Lexington. Consistent with other projects previously constructed by Bayer, the site will feature significant landscaping and other amenities to provide the kind of environment envisioned by the Small Area Plan.

Residential development will be provided as free-standing buildings and above several of the commercial buildings, again in the fashion consistent with New Urban and “smart growth” concepts successfully implemented around the country in the past decade. Bayer Properties is among the developers that have successfully implemented this type of construction in the recent past.

- **Access/Connectivity.** The proposed development features access and connectivity consistent with, and in some instances beyond, that envisioned by the Comprehensive Plan. The two access points to Tiverton Way contemplated by the Plan are shown on the proposed development plan. The connection to Habersham and Nicholasville Road shown on the Small Area Plan are also provided. The development plan does not show a connection to Tangley Way; however, the Small Area Plan does not envision this as a “through connection” (it simply stubs into a cul-de-sac) and it is not shown on the development plan for two reasons: (1) it would introduce unnecessary commercial traffic onto a purely residential street; and (2) the connection of through traffic movement to Habersham is parallel to and a very short distance from the Tangley Way connection, thereby rendering a second connection to Habersham unnecessary.

The proposed development plan does, however, show two modifications to access for the subject property that augment the access shown on the Small Area Plan. The first is a right-in/right-out access off of Man O War Boulevard. This access point will improve the functionality of traffic flow by taking traffic out of the Man O War/Habersham and Man O War/Nicholasville Road intersections and allowing smooth direct access into the site off of Man O War Boulevard. The property has approximately 2,150 feet of frontage on Man O War Boulevard, which is more

than abundant to allow a right-in/right-out only without creating conflicts with the Man O War Boulevard/Nicholasville Road intersection. Although unplanned access points onto Man O War Boulevard are carefully scrutinized, the granting of such access points is not unprecedented. For example, on January 11, 2007, the Planning Commission approved ZDP 2006-155 that granted a new access point, not shown on the original Man O War Boulevard right-of-way acquisition plat, for the Glasford development off of Osborne Way. This access is located a short distance east of the subject property along the southern right-of-way of Man O War Boulevard.

The second access enhancement proposed for the development is a full signal on Nicholasville Road at the approximate midpoint of the subject property. This access would be located directly across from the current right-in/right-out only access for South Farm Marketplace and would convert that intersection into a full four-legged signalized intersection. This improvement is in furtherance of the objectives of the Comprehensive Plan. Traffic analyses performed by HDR have been shared with state and local traffic officials, and submitted in conjunction with this zone change application. These analyses demonstrate that if the property is developed in the uses and densities envisioned by the Comprehensive Plan, the traffic movements for Man O War Boulevard, Nicholasville Road, and all of the surrounding streets (Tiverton Way, Habersham, etc.) are handled most efficiently with a fully signalized intersection on Nicholasville Road and the proposed right-in/right-out access from Man O War Boulevard. Moreover, the operation of these roadways will be enhanced by the dedication of additional right-of-way and construction of additional lanes along the frontage of the subject property and the frontage of other property owned by the Fritz family and to be acquired by Bayer Properties south of Man O War Boulevard. The additional right-of-way and additional lanes will allow for three permanent through lanes at the Man O War Boulevard/Nicholasville Road intersection heading north into Lexington, and will eliminate the need for the reversible lanes there.

Early in the project planning process, Bayer recognized the importance of Nicholasville Road access to the success of any significant development on the Fritz property. Therefore, in August of 2012, Bayer submitted to the Kentucky Transportation Cabinet an encroachment permit application seeking approval of signalized Nicholasville Road access as shown on Bayer's proposed development plan. **On February 1, 2013, the Transportation Cabinet granted conditional approval of the permit.**

- **Other Infrastructure Improvements.** The Urban County Government is currently assessing the magnitude of its obligation to address flooding that has occurred for many years in certain properties located along Walhampton Drive, just east of the subject property. This flooding is not caused by the agricultural uses on the Fritz property which have not changed in the past 100 years and which preceded residential development along Walhampton. The flooding is primarily the result of developments south and west of the Fritz property along

Nicholasville Road which have increased the storm water flow onto the Fritz property and ultimately off of the Fritz property onto Walhampton and beyond. Storm sewer infrastructure leading into and within the downstream subdivision also adds to the problem. Absent development of the Fritz property, the Government will be required to expend significant sums to correct this drainage situation. Bayer Properties has met with storm water officials of the Urban County Government and has agreed in concept to develop storm water drainage and detention facilities on the Fritz property which will not only address the drainage from new development but also will address the current requirements for remediation. In conjunction with the development of this property, it is contemplated that an agreement will be reached whereby Bayer will construct all of the necessary improvements and the Urban County Government will contribute to the cost thereof in an amount which approximates what it would have to spend on its own to correct pre-existing problems. The necessary drainage and detention will be provided by a combination of retention basins, underground vaults, and water features that will not only address detention and water quality requirements but also provide significant site amenities.

- **Economic Impact.** The proposed development will feature construction in the range of \$85,000,000 to \$100, 000,000 and the location into the Central Kentucky market of high quality retailers not currently found here, hundreds of new jobs, and significant new taxes for the state and local governments. Coming in the aftermath of a depressed economic cycle which saw not only the significant increases in unemployment but also a shrinkage of the retail segment of the economy, this positive impact will provide a welcome boost to the local retail economy and job market.

Bayer is also requesting an elimination of the dimensional requirement found in Zoning Ordinance § 28(5)(h)(6)(c)(2); to vary the 1:1 height to yard side yard in Zoning Ordinance § 28(5)(f)(4) for Building D to 15 feet and Buildings E and F to 50 feet; and to vary 1:1 height to yard building height in Zoning Ordinance § 28(5)(h)(6)(d) to 30 feet for Building D and 70 feet for Buildings E and F. The granting of the requested variances will not adversely affect the public health, safety or welfare; nor alter the essential character of the general vicinity.

Zoning Ordinance § 28(5)(h)(6)(c)(2) requires that 15% of all front building walls maintain a 0-foot setback line. This requirement should not apply to this project as all of the buildings front internal streets within the development. As shown on the submitted development plan, this project achieves the intent of this setback with most of the retail locations fronting directly onto the pedestrian connections. It would be inappropriate to maintain a 0-foot setback off the surrounding public streets as two are major transportation corridors and two are residential in nature.

The other four variances requested are essentially the same variance. The first two are for Building D (single story retail), with a maximum building height of 25 feet, to be located within 15 feet of the property occupied by Devondale Baptist Church. The last two allow for Buildings E and F (multi-family residences), with a maximum building height of 70 feet, to be located 50

feet from the northern property line. Bayer will still comply with any and all buffer and screening requirements. These variances simply allow for extra room to locate two buildings while still maintaining a focus on pedestrian connectivity to the entire project. As explained below, while the Property in question is large, buildable area on the site is limited.

Indeed, this project in and of itself is a special circumstance that does not apply to the land in the area. Bayer is attempting to develop the last piece of development puzzle in this area. This results in having to handle the problems that have remained unremedied as Nicholasville Road expanded. One such major problem is the stormwater issues on this parcel and the Devondale Neighborhood. As addressed in our previous letters, Bayer is exerting tremendous resources in helping alleviate this problem as well as LFUCG's stormwater project responsibilities. The result of this is a large retention basin on the site. Additionally, Bayer has agreed to allow for the expansion of Nicholasville Road onto its property in order to add an additional lane between E. Tiverton Way and Toronto Road. Another special circumstance is that these variances are all a result of Bayer's efforts to create a true mixed use project. In order to increase the connectivity, Bayer is attempting to limit the large open parking lots prevalent in other B-6P parcels in Lexington. In spite of the added expense, Bayer felt that the use of multi-level parking structures would best achieve this goal. These infrastructure improvements limit the developable area of the property.

Therefore, these variances are not an unreasonable circumvention of the zoning ordinance. One only needs to look at the property's history to understand the hardship that comes with developing this parcel. Additionally, the desire to alleviate the area of stormwater problems limits the available acreage for spacing between the various buildings. Finally, strict application of the setback requirements would preclude the property from being a properly connected, pedestrian-friendly, Mixed Use development, thereby creating an unnecessary hardship on the applicant.

The proposed Fritz property development will provide a significant benefit to the immediate area and the entire community and will do so in a manner that complies with both the letter and the spirit of the Comprehensive Plan. We, therefore, respectfully request a recommendation of approval by the Planning Commission.

Sincerely,

Stoll Keenon Ogden PLLC

By: 

COUNSEL FOR BAYER PROPERTIES,
INC.

WML:lc

less than the northern property line. Bayer will still comply with any and all buffer and screening requirements. These variances simply allow for extra room to locate two buildings while still maintaining a focus on pedestrian connectivity to the entire project. As explained below, while the property in question is large, buildable area on the site is limited.

Indeed, this project is not of itself a special circumstance that does not apply to the land in the area. Bayer is attempting to develop the last parcel of development possible in this area. This results in having to handle the problems that have remained unaddressed as Nicholasville Road expanded. One such major problem is the stormwater issues on this parcel and the Devontic neighborhood. As addressed in our previous letters, Bayer is seeking numerous resources in helping alleviate this problem as well as LEUD's stormwater project responsibilities. The result of this is a large retention basin on the site. Additionally, Bayer has agreed to allow for the expansion of Nicholasville Road onto its property in order to add an additional lane between E Tiverton Way and Torrance Road. Another special circumstance is that these variances are all a result of Bayer's efforts to create a new mixed use project. In order to increase the connectivity, Bayer is attempting to limit the large open parking lots prevalent in other 60-65 parcels in Lexington. In spite of the added cost, Bayer felt that the use of multi-level parking structures would best achieve this goal. These infrastructure improvements limit the developable area of the property.

Therefore, these variances are not an unreasonable circumvention of the zoning ordinance. One only needs to look at the property's history to understand the hardship that comes with developing this parcel. Additionally, the desire to alleviate the area of stormwater problems limits the available acreage for spacing between the various buildings. Finally, since application of the setback requirements would preclude the property from being a properly connected pedestrian-friendly. Mixed use development thereby creating an unnecessary hardship on the applicant.

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BY: 
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