ORDINANCE NO. 57 -2013

AN ORDINANCE CHANGING THE ZONE FROM A PLANNED NEIGHBORHOOD RESIDENTIAL (R-3) ZONE TO A NEIGHBORHOOD BUSINESS (B-1) ZONE, FOR 0.9798 NET AND (1.0774 GROSS) ACRES, FOR PROPERTY LOCATED AT 417 EAST MAXWELL STREET INCLUDING DIMENSIONAL VARIANCES (MICHLER FLORIST, INC.; COUNCIL DISTRICT 3).

WHEREAS, at a Public Hearing held on April 25, 2013, a petition for a zoning ordinance map amendment for property located at 417 East Maxwell Street from a Planned Neighborhood Residential (R-3) zone to a Neighborhood Business zone, for 0.9798 net and (1.0774 gross) acres, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change including dimensional variances by a vote of 9-0; 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 417 East Maxwell Street from a Planned Neighborhood Residential (R-3) zone to a Neighborhood Business (B-1) zone for 0.9798 net and (1.0774 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 use and buffering restrictions are proposed for the subject property via conditional zoning:
>
> **Prohibited uses;**
> a. Automobile service stations
> b. Tattoo parlors
> c. Miniatures golf courses
> d. Carnivals and Circuses, even on a temporary basis
> e. Drive-through facilities
> f. Research and development and testing laboratories or centers
> g. Indoor theaters

h. Arcades, including pinball and electronic games
i. Pawn shops
j. Gasoline pumps
k. Mining of non-metallic minerals
l. Funeral parlors
m. Hospitals
n. Medical Offices and clinics
o. Kindergartens, nursery schools and child care centers for four or more children
p. Parking lots and structures, other than as an accessory use
q. Rental of equipment whose retails sale would otherwise be permitted in a B-1 zone
r. Minor Automobile repair

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: June 6, 2013

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: June 13, 2013-1t

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LEGAL DESCRIPTION
Michler Florist Inc.
Zone Change from R-3 to B-1
417 East Maxwell Street,
Lexington, Fayette County, Kentucky

Being a parcel of land in the city of Lexington, Fayette County, Kentucky lying on the northeast side of East Maxwell Street approximately 280 feet southeast of Arlington Avenue and more particularly described as:

BEGINNING at a 24" long, 5/8" diameter rebar with surveyor's cap (PLS 3350) at a point 370 feet southeast of the intersection of the southeast right-of-way of Arlington Avenue and the northeast right-of-way of East Maxwell Street, and said point having Kentucky State Plane Coordinates of E(X)=1,569,880.33', N(Y)=195,961.86' (NAD 83, KY North Zone, US Survey Feet); thence leaving the right-of-way of East Maxwell Street, South 48°10'51" West a distance of 25.00 feet to a point in the center of East Maxwell Street; thence with the center of East Maxwell Street, North 41°49'09" West a distance of 169.97 feet to a point; thence leaving the centerline of East Maxwell Street, North 48°10'51" East a distance of 25.00 feet to a 24" long, 5/8" diameter rebar with surveyor's cap (PLS 3350), set in the northeast right-of-way of East Maxwell Street, said point being a corner to John L & Claudia K Michler (Deed Book 1486, Page 46); thence with the southeast line of John & Claudia Michler, North 48°18'34" East a distance of 223.88 feet to a 24" long, 5/8" diameter rebar with surveyor's cap (PLS 3350), said point being in the line of the Lexington Property Group (Deed Book 2524, Page 240 - Plat Cabinet K, Slide 97); thence with the southeast line of the Lexington Property Group and David a Bottom (Deed Book 1213, Page 370), North 48°18'34" East a distance of 64.00 feet to a 24" long, 5/8" diameter rebar with surveyor's cap (PLS 3350), said point being a corner to William E Wassmer (Deed Book 1397, Page 591); thence with the line of Wassmer for two calls: South 29°34'33" East a distance of 20.00 feet to a 24" long, 5/8" diameter rebar with surveyor's cap

(PLS 3350); thence North 73°10'49" East a distance of 13.90 feet to a 24" long, 5/8" diameter rebar with surveyor's cap (PLS 3350), said point being a corner to C&K Limited, LLC (Tract 4 of Deed Book 2633, Page 538); thence with the line of C&K Limited, LLC, South 11°55'53" East a distance of 39.70 feet to a 24" long, 5/8" diameter rebar with surveyor's cap (PLS 3350), said point being a corner to Louis A Michler (Deed Book 357, Page 1); thence with the line of said C&K Limited (Tract 3), South 15°28'51" East a distance of 65.64 feet to a 24" long, 5/8" diameter rebar with surveyor's cap (PLS 3350), said point being in the line of C&K Limited, LLC (Tract 2 of Deed Book 2633, Page 538); thence with the line of said Tract 2 of C&K Limited, LLC, South 74°03'03" West a distance of 40.78 feet to a 24" long, 5/8" diameter rebar with surveyor's cap (PLS 3350); thence continuing with the line of C&K Limited, LLC, South 34°21'04" East a distance of 69.03 feet to a 24" long, 5/8" diameter rebar with surveyor's cap (PLS 3350), said point being a corner to Glenn C & Virginia M Kirk (Deed Book 1288, Page 625); thence with the line of Kirk, South 48°10'51" West a distance of 201.67 feet to a 24" long, 5/8" diameter rebar with surveyor's cap (PLS 3350); which is the point of beginning, having a Gross area of 46,930.5 square feet or 1.0774 acres, and a Net area of 42,681.3 square feet or 0.9798 acres.

The bearings used in the description above are based on Kentucky State Plane Grid North, North American Datum of 1983 (NAD'83). Particularly, the bearings are based on a GPS survey utilizing the KYTC CORS (Continuously Operating Reference Station) data broadcast from the monument located at the KYTC District 7 office having a point designation of "KY Hwy Dist 7 CORS ARP" and having geographic coordinates of N 38° 04' 31.96484", W 084° 29' 31.91127" and Kentucky State Plane Coordinates (North Zone, NAD 83) of N=209,682.94', E=1,570,696.89'.

The description above being based on an actual ground survey of the property conducted under the direct supervision of Kevin Phillips (PLS 3350), of Endris Engineering, 771 Enterprise Drive, Lexington, Kentucky concluding on February 20, 2013.

Kevin M. Phillips (PLS 3350)
Endris Engineering, PSC
771 Enterprise Drive
Lexington, KY 40510

02-23-2013
Date

Z:\3123 Michler's Florist\Legal Description\3123 Zone Boundary R3 to B1.wpd
February 23, 2013

Rec'd by KT

Date: 5/10/13

RECOMMENDATION OF THE

URBAN COUNTY PLANNING COMMISSION

OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: **MARV 2013-9: MICHLER FLORIST, INC.** - petition for a zone map amendment from a Planned Neighborhood Residential (R-3) zone to a Neighborhood Business (B-1) zone, for 0.9798 net (1.0774 gross) acres, for property located at 417 East Maxwell Street. Dimensional variances were also requested with this zone change. (Council District 3)

Having considered the above matter on **April 25, 2013,** at a Public Hearing, and having voted **9-0** 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 reason:

1. The requested Neighborhood Business (B-1) zone, if restricted via conditional zoning limitations, is more appropriate than the existing (and unrestricted) R-3 zoning for the subject property, for the following reasons:
   a. The proposed B-1 zone will allow the existing historic business, in continuous operation on this site since 1903, to operate as a conforming use in the B-1 zone.
   b. If restricted via conditional zoning, given the existing H-1 Overlay zone for this site and this area, the proposed B-1 zone should not permit a noticeably more intrusive a land use than what the long time non-conforming use has allowed.
   c. A restricted B-1 zone, will still allow a small number of additional uses in addition to the existing florist business, and will provide additional off-street parking to accommodate the proposed expansion. Those will complement the existing florist and greenhouses, as well as support the neighborhood.
2. The 2012 Goals and Objectives of the Comprehensive Plan are supportive of neighborhood character preservation, which provide safe and positive social interactions in neighborhoods. The goals and objectives are also supportive of providing incentives to renovate and maintain the historic resources that already enhance a neighborhood's unique identity and image (Goals A.3.a., A.3.b., D.3., D.3.a. and D.3.b.).
3. This recommendation is made subject to approval and certification of ZDP 2013-31: Michler Florist, Inc., prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

   Prohibited Uses:
   a. Automobile service stations
   b. Tattoo parlors
   c. Miniatures golf courses
   d. Carnivals and Circuses, even on a temporary basis
   e. Drive-through facilities

f. Research development and testing laboratories or centers
g. Indoor theaters
h. Arcades, including pinball and electronic games
i. Pawn shops
j. Gasoline pumps
k. Mining of non-metallic minerals
l. Funeral Parlors
m. Hospitals
n. Medical Offices and clinics
o. Kindergartens, nursery schools and child care centers for four or more children
p. Parking lots and structures, other than as an accessory use
q. Rental of equipment whose retail sale would otherwise be permitted in a B-1 zone
r. Minor Automobile repair

These restrictions are appropriate and necessary to ensure that any future redevelopment remains compatible in this established, historic residential neighborhood.

Note: Variances to the perimeter screening requirements along the eastern and western property boundaries were approved by the Planning Commission for this property, subject to the rezoning being granted.

ATTEST: This 10th day of May, 2013.

Secretary, Christopher D. King

MIKE OWENS
CHAIR

Note: The corollary development plan, ZDP 2013-31: Michler Florist, Inc., was approved by the Planning Commission on April 25, 2013, and certified on May 9, 2013.

K.R.S. 100.211(7) requires that the Council take action on this request by July 24, 2013.

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

OBJECTORS

- Martha Birchfield, 320 Linden Walk

OBJECTIONS

- She is concerned that rezoning the subject property could have a negative impact on property values, and that the petitioner has not specified which types of uses might be added to the property.

VOTES WERE AS FOLLOWS:

AYES:	(9)	Beatty, Brewer, Cravens, Mundy, Owens, Penn, Plumlee, Roche-Phillips, Wilson
NAYS:	(0)	
ABSENT:	(2)	Berkley, Blanton
ABSTAINED:	(0)	
DISQUALIFIED:	(0)	

Motion for **APPROVAL** of **MARV 2013-9** carried.

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

MAR 2013-9 Date Received 3/4/13 Pre-Application Date 12/11/12 Filing Fee $ 470.00

GENERAL INFORMATION: MAP AMENDMENT REQUEST (MAR) APPLICATION

1. ADDRESS INFORMATION (Name, Address, City/State/Zip & PHONE NO.)

APPLICANT:	Michler Florist, Inc., 417 East Maxwell Street, Lexington, KY 40508 859-254-0383
OWNER:	Michler Florist, Inc. and Michler family, 417 East Maxwell Street, Lexington, KY 40508
ATTORNEY:	Richard V. Murphy, PLC., 250 West Main St., Ste. 2510, Lexington, KY 40507 859-233-9811

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

417 East Maxwell Street

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

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
R-3	Florist and Greenhouses	B-1	Florist, Greenhouses, café	0.9798	1.0774
			and events		

4. SURROUNDING PROPERTY, ZONING & USE

Property	Use	Zoning
North	Residential	R-3
East	Professional Office	P-1
South	Residential, student housing	R-3
West	Residential, student housing	R-3

5. EXISTING CONDITIONS

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	☐ YES ☒ NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	☐ YES ☒ 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.	☐ YES ☒ NO _____ Units

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

Roads	☒ Existing	☐ To be constructed by	☐ Developer	☐ Other	
Storm Sewers	☒ Existing	☐ To be constructed by	☐ Developer	☐ Other	
Sanitary Sewers	☒ Existing	☐ To be constructed by	☐ Developer	☐ Other	
Curb/Gutter/Sidewalks	☒ Existing	☐ To be constructed by	☐ Developer	☐ Other	
Refuse Collection	☒ LFUCG	☐ Other			
Utilities	☒ Electric	☒ Gas	☒ Water	☒ Phone	☐ Cable

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

This is in... ☒ 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 1903.

APPLICANT Richard V. Murphy, atty for applicant and owners DATE 3/4/2013

OWNER _____ DATE _____

LFUCG EMPLOYEE/OFFICER, if applicable _____ DATE _____

7. Statement of Justification

The applicant, Michler Florist, Inc., and the Michler family, are requesting your approval of a zone change from the Planned Neighborhood Residential (R-3) zone to the Neighborhood Business zone (B-1) for approximately one acre of land located at 417 E. Maxwell Street.

After founding the business in 1903, five generations of the Michler family have operated Michler Florist and Greenhouses. It is one of the oldest continuously operating family businesses in Lexington. It has operated at this location since prior to the existence of zoning. When Michler Florist started in 1903, most of the flowers and plants were grown on premises. At that time, there were a number of other similar florist operations in Lexington. The business has changed through the years, so that now, many flowers are imported from other countries, and the Michlers have a nursery in rural Fayette County.

The Michler family is committed to downtown Lexington and wants to remain in business at the location it has used for 110 years, during which time the business has become a downtown icon. The business is a non-conforming use, however, as it is zoned residential, R-3, and cannot be altered without a zone change. We are requesting a change to the Neighborhood Business (B-1) zone which will allow the current business to remain. A zone change will also ensure the continued viability of the business by allowing it to be enhanced by the ability to operate a café and to have meetings and events at the site. Michler Florist serves as an urban oasis, and many people over the years have suggested that there be a café or other sale of food so that people can enjoy the pleasant, green atmosphere. Similarly, there have been many requests for garden club meetings, weddings, and similar events. Allowance of these activities would strengthen the core business by making new generations aware of the flowers, plants and landscape services provided by the Michler family.

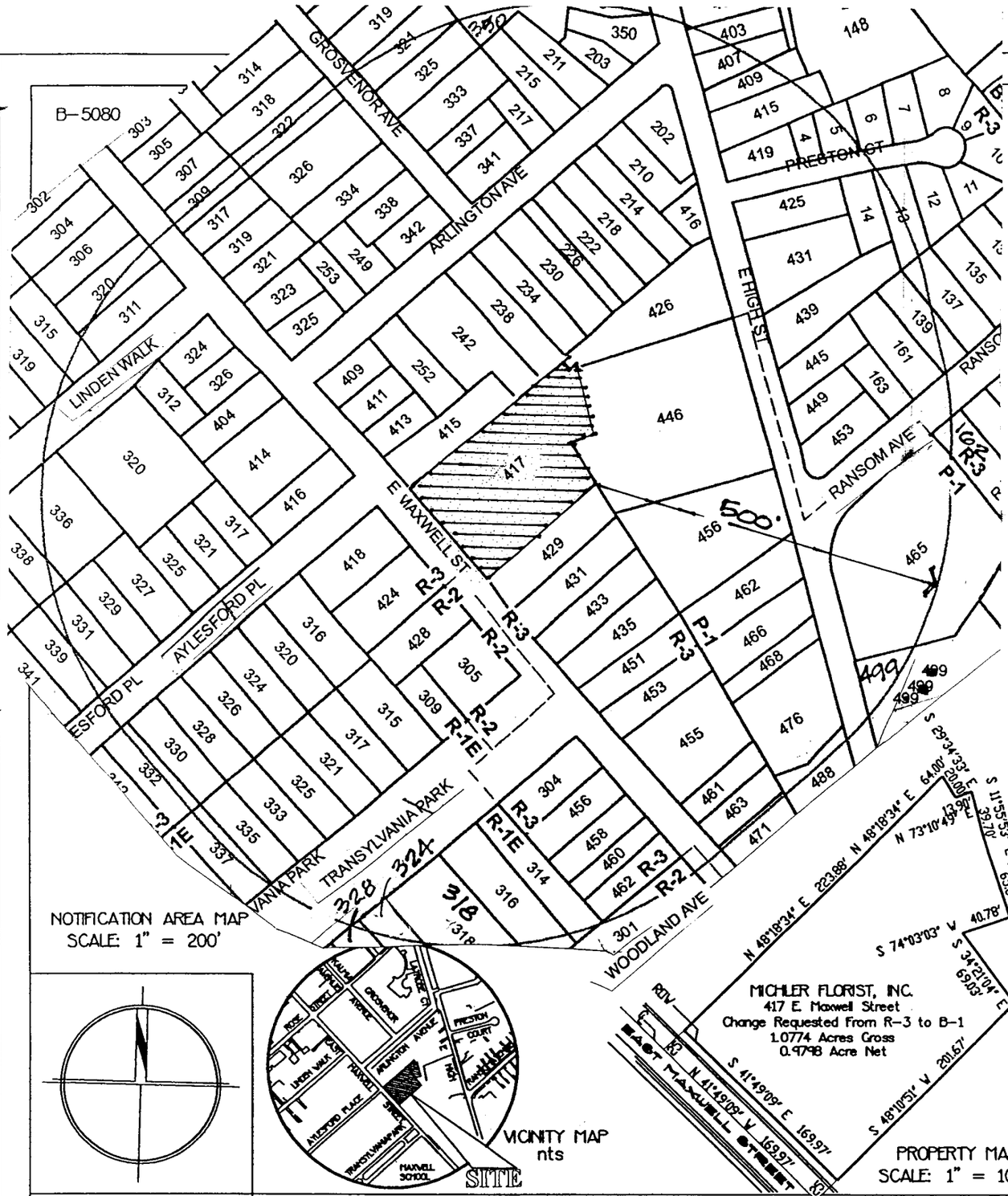
The 2007 Comprehensive Plan land use map provides little guidance for this property, because this parcel is simply placed in the downtown core area. However, other portions of the Comprehensive Plan show that this proposed zone change is in agreement with comprehensive planning principles. Retaining and strengthening community-based family businesses is an important part of the 2012 Comprehensive Plan Goals and Objectives. This proposal provides an opportunity for neighborhood character preservation by allowing this business to flourish, as advocated by Goal A3a. It will provide an opportunity for positive and safe social interactions in neighborhoods, as called for in Goal A3b. It will provide quality of life opportunities that attract young professionals and a workforce of all ages and talents to Lexington (Goal C2d). Most importantly, it will protect and enhance the cultural landscape that gives Lexington-Fayette County its unique identity and image, by protecting this historic resource, and by providing incentives for the renovation and maintenance of this historic commercial institution (Goals D3, D3a and D3b).

Thank you for your consideration of this zone change request.

Richard V. Murphy
Attorney for Applicant

Thank you for your consideration of this zone change request.

Richard V. Murphy
Attorney for Applicant



ZOMAR: MICHLER FLORIST, INC.

APPLICANT: MICHLER FLORIST, INC.	FROM	TO	GROSS	NET
PROPERTY ADDRESS: 417 EAST MAXWELL STREET, LEXINGTON, KY.	R-3	B-1	1.0774	0.9798
OWNER: MICHLER FLORIST, INC.				
ADDRESS: 417 EAST MAXWELL STREET, LEXINGTON, KY.				
PREPARED BY: WHEAT & LADENBURGER				
212 NORTH UPPER STREET, LEXINGTON, KY.				
DATE FILED: MARCH 4, 2013				
		TOTAL	1.0774	0.9798

STATE OF KENTUCKY
Roger Ladenburger
315
LICENSED
LAND SURVEYOR

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

MAR 2013-9: MICHLER FLORIST, INC.

DESCRIPTION

Zone Change: From a Planned Neighborhood Residential (R-3) zone
To a Neighborhood Business (B-1) zone

Acreage: 0.9798 net (1.0774 gross) acre

Location: 417 East Maxwell Street

EXISTING ZONING & LAND USE

Properties	Zoning	Existing Land Use
Subject Property	R-3	Florist and Greenhouse
To North	P-1 & R-3	Professional Office & Residential
To East	P-1 & R-3	Professional Office & Residential
To South	R-2 & R-3	Residential
To West	R-3	Residential

URBAN SERVICES REPORT

Roads – East Maxwell Street is a two-lane, one-way minor arterial in this location, with traffic that flows from west to east, beginning at the Versailles Road/High Street "Y" intersection and ending at the East Maxwell/East High Street "Y" intersection. Maxwell Street also serves as a dividing line between the University of Kentucky campus and downtown Lexington; therefore, it provides a traffic route for the University and the downtown workforce, as well as travelers from the west side of Lexington. As the primary connector between Versailles Road and East High Street, Maxwell Street carries a steady traffic volume at nearly all hours of the day, with an average daily traffic volume of 13,700 vehicles.

Curb/Gutter/Sidewalks – Curbs, gutters and sidewalks are available on both sides of East Maxwell Street. Sidewalks were recently improved in the immediate area to accommodate the high level of pedestrian traffic, as the property is within an area heavily used for student housing for the nearby universities, particularly the University of Kentucky.

Storm Sewers – Storm sewers exist in the area, which is within the Town Branch watershed. There are no known flooding problems in the immediate vicinity. Additional stormwater improvements may be necessary on the subject property in accordance with the Division of Engineering Stormwater Manual if there were to ever be a proposed redevelopment.

Sanitary Sewers – Sanitary sewers also exist in the area. The subject property and all of the immediately surrounding area is served by the Town Branch Wastewater Treatment Facility, located a little over 2.5 miles to the west of the property, between Old Frankfort Pike and Leestown Road.

Refuse – Refuse pickup is provided by the Urban County Government on Tuesdays in this vicinity.

Police – The nearest police station is the main headquarters facility, located on East Main Street in downtown Lexington, approximately 1/2 mile to the northwest.

Fire/Ambulance – Station #5 is located approximately 700 feet to the east of the property, at the southeast corner of East Maxwell Street and Woodland Avenue.

Utilities – Natural gas, telephone service, electric, water, and streetlights are all existing on the subject property. Should cable television or other cable service be desired, it is available to surrounding properties and can easily be extended to serve the property.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Downtown Mixed Use future land use for the subject property, as it is within the designated Downtown Master Plan (DTMP) Area. This area has an underlying recommendation of Medium Density Residential (MD) use from the 2001 Comprehensive Plan. The petitioner has requested a Neighborhood Business (B-1) zone, with conditional zoning restrictions, in order to allow special events to take place within the building, as well as the future operation of a small café.

CASE REVIEW

The petitioner has requested a zone change from a Planned Neighborhood Residential (R-3) zone to a Neighborhood Business (B-1) zone for approximately one acre just east of the intersection of Arlington Avenue and East Maxwell Street. The Historic District (H-1) Overlay zone is not proposed to be changed and will remain in place with the proposed change in the underlying zoning.

The subject property is comprised of a single one-acre lot with approximately 170 feet of frontage along East Maxwell Street. The subject property is located between Aylesford Place and Transylvania Park, on the north side of East Maxwell Street. The existing on-site facility for the Michler Florist has been in operation since 1903, long before the adoption of the first zoning ordinance in Lexington. The subject property has operated for decades as a non-conforming use at this location.

The entire property is located within the Historic Aylesford Neighborhood, much of which has been a designated local historic district since 1998. The subject property is mostly surrounded by Two Family Residential (R-2) zoning and Planned Neighborhood Residential (R-3) zoning in the Aylesford neighborhood. There is Professional Office (P-1) zoning to the northeast, for several non-residential uses on East High Street, and the applicant proposes to lease some of those P-1 parking spaces in order to accommodate the proposed expanded uses on the subject property.

The applicant proposes to rezone the subject property in order to bring it into compliance with its longstanding neighborhood business use as a florist with greenhouses, as well as to be able to offer event space, host meetings and possibly weddings and receptions. The applicant also wishes to supplement the existing land use with a café at some point in the future. Additional parking to address the additional uses on the property would be provided by an off site lease with the adjacent P-1 zoned property to the rear. The complementing hours of operation would allow these uses to share parking facilities with little to no overlap in their use.

The 2007 Comprehensive Plan recommends Downtown Master Plan (DTMP) land use for the subject property and much of the downtown area. The subject property was included in the study area of the *Downtown Lexington Masterplan*, which was conducted by a consultant under the guidance of the Downtown Development Authority. The 2007 Comprehensive Plan states that the redevelopment recommendations for this land use are found in the *Masterplan;* however if the *Masterplan* is not implemented the Planning Commission should consider the recommendations of the 2001 Comprehensive Plan update and other relevant current information to guide redevelopment decisions.

The *Downtown Lexington Masterplan* identifies the subject property in the Aylesford precinct, which is depicted for an area located next to the College Town Area and the Downtown Core. The *Masterplan* does recommend some infill and redevelopment within this precinct, but does not provide much guidance as to the specific zone recommended for such redevelopment. The *Masterplan* does recognize that the subject property is located within an existing historic residential neighborhood and calls for the preservation thereof along with selective context sensitive infill in other areas of this district. The Plan also acknowledges that the adjacent property to the rear is recommended for neighborhood business along the High Street corridor, even though there is office uses and zoning in place. For those reasons, it is difficult to conclude that the requested zone change is in complete agreement with the current Comprehensive Plan and the *Masterplan*.

With conditional zoning restrictions that match the petitioner's submitted legal justification, the proposed B-1 zoning can be considered appropriate for this historic use. This zone change will allow the existing historic business to operate in a conforming manner in the future; as a florist, café/restaurant and banquet facility, of which are all permitted uses in the B-1 zone. Also, the proposed re-zoning will enhance the applicant's ability to grow their business on its existing site, and will continue to provide for a compatible mix of uses in the Aylesford neighborhood. The applicant also indicates that the existing H-1 Overlay zoning will serve to further protect the neighborhood, as changes to any of the existing structures will be addressed by the Division of Historic Preservation.

The petitioners also contend that the 2012 Comprehensive Plan Goals & Objectives are supportive of neighborhood character preservation, which can provide opportunities for positive and safe social interactions in neighborhoods (Goals A.3.a. and A.3.b.). Further, the petitioner posits that this zone change request will protect and enhance the cultural landscape that makes the Aylesford neighborhood unique, and will further provide incentives to renovate and maintain the historic use on the subject property (Goals D.3, D.3.a. and D.3.b.). Provided that potentially disruptive future uses are prohibited, the staff is in agreement.

Considering the residents in the adjacent residential neighborhood, further restricting the allowable B-1 uses, outdoor lighting and signage on the subject property is necessary via conditional zoning restrictions. The applicant did supply the staff with some proposed conditional zoning restrictions recently; however, their submitted justification does not support the many of proposed uses that would still be allowable at this location. The staff expects to have a supplemental recommendation at the time of the Commission's public hearing in order to address the need for additional conditional zoning restrictions.

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

1. The requested Neighborhood Business (B-1) zone, if restricted via conditional zoning limitations, is more appropriate than the existing (and unrestricted) R-3 zoning for the subject property, for the following reasons:

a. The proposed B-1 zone will allow the existing historic business, in continuous operation on this site since 1903, to operate as a conforming use in the B-1 zone.
b. If restricted via conditional zoning, given the existing H-1 Overlay zone for this site and this area, the proposed B-1 zone should not permit a noticeably more intrusive a land use than what the long time non-conforming use has allowed.
c. A restricted B-1 zone, will still allow a small number of additional uses in addition to the existing florist business, and will provide additional off-street parking to accommodate the proposed expansion. Those will complement the existing florist and greenhouses, as well as support the neighborhood.

2. The 2012 Goals and Objectives of the Comprehensive Plan are supportive of neighborhood character preservation, which provide safe and positive social interactions in neighborhoods. The goals and objectives are also supportive of providing incentives to renovate and maintain the historic resources that already enhance a neighborhood's unique identity and image (Goals A.3.a., A.3.b., D.3., D.3.a. and D.3.b.).
3. This recommendation is made subject to approval and certification of ZDP 2013-31: Michler Florist, Inc., prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

CAT/WLS/JWE/src
4/4/2013
I:/Planning Services/Staff Reports/MAR/2013/MAR 2013-9.doc

SUPPLEMENTAL STAFF RECOMMENDATION ON CONDITIONAL ZONING RESTRICTIONS

MAR 2013-9: MICHLER FLORIST, INC

At the Zoning Committee meeting of the Planning Commission on April 4th, the Planning staff reported on possible conditional zoning restrictions provided by the applicant for the subject property. The staff expressed concern related to some of the remaining Neighborhood Business (B-1) zone uses that would still be permitted at this location with the applicant's rezoning proposal. After additional staff review, and some discussion with the applicant, the staff has a more comprehensive list of uses that would be most appropriate at this location.

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

1. The requested Neighborhood Business (B-1) zone, if restricted via conditional zoning limitations, is more appropriate than the existing (and unrestricted) R-3 zoning for the subject property, for the following reasons:
   a. The proposed B-1 zone will allow the existing historic business, in continuous operation on this site since 1903, to operate as a conforming use in the B-1 zone.
   b. If restricted via conditional zoning, given the existing H-1 Overlay zone for this site and this area, the proposed B-1 zone should not permit a noticeably more intrusive land use than what the long time non-conforming use has allowed.
   c. A restricted B-1 zone will still allow a small number of additional uses in addition to the existing florist business, and will provide additional off-street parking to accommodate the proposed expansion. Those uses will complement the existing florist and greenhouses, as well as support the neighborhood.
2. The 2012 Goals and Objectives of the Comprehensive Plan are supportive of neighborhood character preservation, which provides safe and positive social interactions in neighborhoods. The goals and objectives are also supportive of providing incentives to renovate and maintain the historic resources that already enhance a neighborhood's unique identity and image (Goals A.3.a., A.3.b., D.3., D.3.a. and D.3.b.).
3. This recommendation is made subject to approval and certification of ZDP 2013-31: Michler Florist, Inc., prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

Prohibited Uses:

a. Automobile service station
b. Tattoo parlors
c. Miniatures golf courses
d. Carnivals and Circuses, even on a temporary basis
e. Drive-through facilities
f. Research development and testing laboratories or centers
g. Indoor theaters
h. Arcades, including pinball and electronic games
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k. Mining of non-metallic minerals
l. Funeral Parlors
m. Hospitals
n. Medical Offices and clinics
o. Kindergartens, nursery schools and child care centers for four or more children
p. Parking lots and structures, other than as an accessory use
q. Rental of equipment whose retail sale would otherwise be permitted in a B-1 zone
r. Minor Automobile repair

These restrictions are appropriate and necessary to ensure that any future redevelopment remains compatible in this established, historic residential neighborhood.

CAT/TLW/BJR/WLS
4/23/13
Planning Services/Staff Reports/MAR Revised/201/MAR2013-9supp.doc

4. MICHLER FLORIST, INC., ZONING MAP AMENDMENT & MICHLER FLORIST, INC., ZONING DEVELOPMENT PLAN

a. MARV 2013-9: MICHLER FLORIST, INC. (6/2/13)* - petition for a zone map amendment from a Planned Neighborhood Residential (R-3) zone to a Neighborhood Business (B-1) zone, for 0.9798 net (1.0774 gross) acres, for property located at 417 East Maxwell Street.

LAND USE PLAN AND PROPOSED USE
The 2007 Comprehensive Plan recommends Downtown Mixed Use future land use for the subject property, as it is within the designated Downtown Master Plan (DTMP) Area. This area has an underlying recommendation of Medium Density Residential (MD) use from the 2001 Comprehensive Plan. The petitioner has requested a Neighborhood Business (B-1) zone, with conditional zoning restrictions, in order to allow special events to take place within the building, as well as the future operation of a small café.

The Zoning Committee made **no recommendation** on this request, due to lack of a quorum.

The Staff Recommended: **Approval**, for the following reasons:
1. The requested Neighborhood Business (B-1) zone, if restricted via conditional zoning limitations, is more appropriate than the existing (and unrestricted) R-3 zoning for the subject property, for the following reasons:
   a. The proposed B-1 zone will allow the existing historic business, in continuous operation on this site since 1903, to operate as a conforming use in the B-1 zone.
   b. If restricted via conditional zoning, given the existing H-1 Overlay zone for this site and this area, the proposed B-1 zone should not permit a noticeably more intrusive land use than what the long time non-conforming use has allowed.
   c. A restricted B-1 zone will still allow a small number of additional uses in addition to the existing florist business, and will provide additional off-street parking to accommodate the proposed expansion. Those will complement the existing florist and greenhouses, as well as support the neighborhood.
2. The 2012 Goals and Objectives of the Comprehensive Plan are supportive of neighborhood character preservation, which provide safe and positive social interactions in neighborhoods. The goals and objectives are also supportive of providing incentives to renovate and maintain the historic resources that already enhance a neighborhood's unique identity and image (Goals A.3.a., A.3.b., D.3., D.3.a. and D.3.b.).
3. This recommendation is made subject to approval and certification of ZDP 2013-31: Michler Florist, Inc., prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED VARIANCES
1. Reduce the zone-to-zone perimeter screening requirements from 15 feet to 0 feet along the western property line.
2. Reduce the zone-to-zone perimeter screening requirements from 15 feet to 3 feet along 60' of the eastern property line, and to eliminate the requirement for additional fences or hedges.

The Staff will report at the hearing.

c. ZDP 2013-31: MICHLER FLORIST, INC. (6/2/13)* - located at 417 East Maxwell Street.
(Wheat & Ladenburger)

The Subdivision Committee Recommended: **Approval**, subject to the following 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 Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
7. Denote height of buildings in feet.
8. Denote required landscape buffer adjacent to residential zones.
9. Addition of conditional zoning restrictions.
10. Denote uses and areas (other than greenhouses) to be devoted to B-1 uses.

Zoning Presentation: Mr. Taylor presented the staff's zoning report, briefly orienting the Commission to the location of the subject property on East Maxwell Street, just to the southeast of Arlington Avenue near Transylvania Park. He added that the subject property, which is just under one acre in size, is located within the Aylesford Historic District. Mr. Taylor also noted that the staff had received two items of correspondence in support of this request, which he circulated to the Commission members for their review.

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* - Denotes date by which Commission must either approve or disapprove request.

Mr. Taylor stated that the petitioner is proposing to rezone the subject property in order to bring the property into compliance with its longstanding neighborhood business use, to add event space, and to supplement the existing business with a future café. The additional parking required to support those new uses is proposed to be provided via an offsite lease agreement with the owner of the adjacent P-1 property. A pedestrian access is also provided from that parking area to the subject property. The staff believes that the hours of operation of the existing business on the subject property, and the office use on the P-1 property, will complement each other and provide adequate parking availability for both uses.

Mr. Taylor said that the 2007 Comprehensive Plan recommends Downtown Master Plan (DTMP) use for the subject property. The DTMP is intended to provide guidance for redevelopment and the existing land uses in the Master Plan area. That plan identifies the subject property in the Aylesford precinct, and recommends Infill & Redevelopment for that area; it does not, however, include specific recommendations for the type of Infill & Redevelopment. Mr. Taylor stated that the DTMP also recognizes that the subject property is located in a local Historic District, and recommends continued preservation as well as context-sensitive infill in other locations in the district. The staff was not able to find, therefore, that the proposed rezoning was in complete agreement with the recommendations of the Comprehensive Plan and the DTMP. However, with the petitioner's proposed conditional zoning restrictions, the staff does consider the proposed B-1 zone more appropriate than the existing R-3 zone. Rezoning the subject property to B-1 will bring the petitioner's longstanding, historic business use into conformance with the Ordinance, while enhancing their ability to grow the business, as well. The staff also believes that the H-1 zoning will offer additional protection for the historic character of the neighborhood, since proposed changes to the property will require the approval of the Board of Architectural Review. Mr. Taylor stated that the petitioner contends that the proposed conditional zoning restrictions will offer further protection for the neighborhood, by prohibiting potentially disruptive uses. The staff agreed with that contention, and recommended some additional prohibited uses. Mr. Taylor stated that the staff was recommending approval of this request, for the reasons as listed in the staff report and on the agenda, with the addition of the following uses to be prohibited via conditional zoning:

Prohibited Uses:

a. Automobile service station(s)
b. Tattoo parlors
c. Miniatures golf courses
d. Carnivals and Circuses, even on a temporary basis
e. Drive-through facilities
f. Research development and testing laboratories or centers
g. Indoor theaters
h. Arcades, including pinball and electronic games
i. Pawn shops
j. Gasoline pumps
k. Mining of non-metallic minerals
l. Funeral Parlors
m. Hospitals
n. Medical Offices and clinics
o. Kindergartens, nursery schools and child care centers for four or more children
p. Parking lots and structures, other than as an accessory use
q. Rental of equipment whose retail sale would otherwise be permitted in a B-1 zone
r. Minor Automobile repair

These restrictions are appropriate and necessary to ensure that any future redevelopment remains compatible in this established, historic residential neighborhood.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, noting that no physical changes are proposed for the subject property. He said that the plan depicts the existing building; parking area; driveway, which is shared with the petitioner's adjoining residence; and greenhouses and associated structures. Mr. Martin also noted the location of the off-site parking. He stated that the Subdivision Committee recommended approval of this plan, with only basic sign-off conditions and a few "clean-ups" conditions.

Variance Presentation: Mr. Sallee presented the staff's report on the requested variances. He said that the petitioner has requested two variances, both of which are to reduce the required zone-to-zone screening between the R-3 zone and the B-1 zone. Mr. Sallee noted that this report was not presented to the Zoning Committee at their meeting three weeks ago, because the variances had not yet been requested at that time.

Using the rendered development plan, Mr. Sallee indicated the areas requested for variances to the required zone-to-zone screening, along each side of the subject property. The first requested variance is from the corner of one of the existing greenhouses, forward to the building line; the other is along the western property boundary, where the existing driveway is located. Mr. Sallee displayed an aerial photograph of the subject property, and

noted that oblique photographs had been distributed to the Commission members, in order to provide a closer view of the area proposed for the variances.

Mr. Sallee said, with regard to the variance requested along the western property boundary, that there is no existing screening in that location. The petitioner resides on the adjoining property, and they have no desire to install the required zone-to-zone screening in that area, as it would obstruct their view of the business property. Mr. Sallee noted that, along the rear of the property, it appears that the existing screening is either compliant or very nearly so. The petitioner has informed the staff that they intend to fully comply with the zone-to-zone screening requirement along that property line. Along the eastern property line, between the greenhouses and the existing parking area, there are a number of existing trees and a mature honeysuckle hedge. Mr. Sallee explained that, although honeysuckle is not an approved species listed in the Planting Manual, the petitioner is requesting a variance in that location to reduce the required landscape buffer to three feet, in order to allow the existing materials to remain. The Zoning Ordinance does allow for a reduction of the landscape buffer from 15 feet to five feet if a solid fence is installed, but the petitioner does not wish to remove the existing plant material in order to install a fence. The existing material straddles the property line in that location, and the adjoining property owner has expressed a wish to the applicant that the honeysuckle be allowed to remain.

Mr. Sallee stated that the requested variances were required to be reviewed by the Landscape Review Committee. That committee did meet to review this item, but did not have a quorum, so no formal recommendation was made. The members that were present reviewed this application thoroughly, and had a discussion about it. The staff incorporated some of the committee's ideas into the staff report on this request, primarily the suggestion that a long-term plan should be made for the removal of the honeysuckle along the eastern property boundary.

Mr. Sallee said that the staff was recommending approval of the requested variances, for the following reasons:

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

a. Granting the requested landscape variances will not adversely affect the public health, safety or welfare; and will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The variances are requested because no physical change or expansion of the existing buildings or parking lot is proposed by the applicant, and because it would be difficult to locate additional fences or hedges along these property lines due to the location and layout of existing driveways, parking spaces, trees and hedges.
b. Granting the requested landscape variances will not result in an unreasonable circumvention of the Zoning Ordinance because the florist business and greenhouses predate the Ordinance, and there is a well-established landscape screen in place along the parking lot to the rear of the property.
c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is that the house on the adjoining lot to the west is owned and occupied by the owners of the florist business. The ability to retain the existing trees and shrubs will continue a mature landscape screening along the eastern property line.
d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship to the applicant because of the limited space available for the required plantings, exclusive of existing paved areas, that have been at this location for decades, and since some of the new screening would be redundant.
e. The circumstances surrounding the requested variances are not the result of the actions of this applicant, as the current land use is a legal non-conforming use of the property, now located in a designated local historic district, which has been substantially screened from neighboring properties for many years.

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, or 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 any new Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.

Commission Questions: Ms. Mundy asked if the Commission should add a further condition to require the removal of the honeysuckle along the eastern property boundary. Mr. Sallee answered that the Commission could choose to do so; however, it could affect the timing of the development plan, which would need to be certified within the next two weeks. He said that the discussion at the Landscape Review Committee was more long-term, in terms of the next several years. He suggested that the Commission members listen to the petitioner's presentation, see what their plans are for removal of the honeysuckle, and then decide whether to make an additional requirement based on that information.

Ms. Plumlee said that she would like to see the honeysuckle removed as soon as possible.

Ms. Beatty asked how the proposed rezoning would affect the existing Historic District. Mr. Sallee answered that the H-1 zoning will remain unchanged, no matter the underlying zone, and many changes to the property will still be required to be approved by the Board of Architectural Review. He said that the rezoning of the property would allow additional uses on the property; but all external changes would require not only the approval of the BOAR, but the Planning Commission's approval of an amended development plan for the property.

Mr. Owens said that the Subdivision Committee members discussed the off-site parking at their meeting three weeks ago, and he wondered if the Commission should include a requirement for the parking agreement in the conditions for approval of this plan. Mr. Sallee answered that that parking lot, which is associated with an office building on High Street, was designed to be used for the new activities on the subject property. He added that, prior to certification of the development plan, the petitioner will need to document on the plan the number of spaces in that lot to be applied to uses on the subject property. Mr. Sallee added that no additional condition is needed, because the development plan identifies 17 parking spaces on the adjoining property.

Mr. Penn asked, if the Commission grants this rezoning request, and the subject property is later sold, the Commission would see a revised development plan. Mr. Sallee answered that this is a final development plan; so it is possible that, if no changes were proposed for the property, it could change ownership without further development plan review by the Commission.

Ms. Roche-Phillips asked if there is an existing parking lot near the front of the property as well. Mr. Sallee answered that there is an existing parking lot near the front of the property, which is shown on the development plan and can accommodate seven vehicles.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner, which he considers "one of the iconic family businesses in Lexington," as the company has existed in its present location for 110 years. The current owners represent the fourth and fifth generations of the Michler family. Mr. Murphy stated that, given the company's history at this location, the petitioner has no intention of selling the property and relocating; rather, they hope to introduce the younger generation of Lexington residents to their florist business by hosting receptions, weddings, and other similar functions on their property. In addition, it is difficult to operate a thriving florist business and greenhouse on such a small property, so the petitioner supplements their business by growing some plants and shrubs on a farm in a rural area of Lexington-Fayette County. They intend to use the revenue received from the new uses on the subject property to restore and upgrade the existing greenhouses located there.

Mr. Murphy stated that John and Claudia Michler live next door to the subject property, at 415 East Maxwell Street, in a residence which was constructed in 1906. They intend to continue to reside on that property, which they believe serves as a buffer from the business uses for the residents to the west side of the subject property.

Mr. Murphy said that, in reviewing the 2007 Comprehensive Plan, 2012 Comprehensive Plan Goals & Objectives, and the Downtown Master Plan, he found three common themes that the petitioner contends are supported by the proposed zone change: promotion of neighborhood interaction; promotion of tourism; and preservation and enhancement of historic and family-owned businesses. The subject property will remain in the existing H-1 zone, wherein review by the BOAR will serve to protect the historic character of the area from any possible inappropriate updates to the subject property.

With regard to Mr. Penn's question about the possible sale of the subject property, Mr. Murphy stated that the petitioner has no intent to sell. He explained that, should the property be sold, the same use and development plan could be continued without the approval of the Planning Commission. Any proposal to change the use or the structures on the property would require the Commission's approval of an amended development plan.

Mr. Murphy said, with regard to the proposed new uses on the property, that the petitioner intends to expand slowly initially, beginning with adding weddings and receptions, and could possibly add a café in the future. The front portion of the property, which is visible from East Maxwell Street, will remain as it currently exists, and no changes are proposed to the parking area or greenhouses. All of the reception activity is proposed to take place at the rear of the property, with parking leased from an office building on High Street, to which pedestrian access is already provided.

Mr. Murphy stated that the petitioner is requesting two variances in order to prevent the construction of a fence or landscape buffer all the way around the property, which would require the removal of the driveway. The petitioner intends to meet all of the tree canopy and landscaping requirements, with the exception of the areas requested for variances and the honeysuckle, which the adjoining property owner (who is the petitioner's daughter) wishes to leave intact. Mr. Murphy noted that the petitioner does have a five-to-six-year plan to remove the honeysuckle and replace it with approved plant materials.

Mr. Murphy stated that the Aylesford Neighborhood Association submitted a letter in support of this request, copies of which had been distributed to the Commission members. He noted that the petitioner is in agreement with all of the staff recommendations, including the recommended conditional zoning restrictions, and he requested approval.

Citizen Support: Bill Wassmer, owner of several properties in the area, including one adjoining property, stated that he supports the proposed rezoning to B-1. He said he believes that it is impressive that, in the current economic climate, less than one acre of commercial property can support two families. Mr. Wassmer does not believe that the proposed rezoning will have a negative impact on the surrounding neighborhood, and he believed that the Planning Commission should recommend approval of this request.

Citizen Opposition: Martha Birchfield, 320 Linden Walk, stated that her home is the iconic house for the Aylesford neighborhood. It was the original location of St. Joseph Hospital, and it was built before Michler Florist located on East Maxwell.

Ms. Birchfield stated that she has lived around the corner from the petitioner's property for 28 years and has been a steady customer of their business, but she would like for the use and zoning of the property to remain as they currently exist. She said that she believes that rezoning the property to B-1 could negatively impact property values in the area, and have a "domino effect on the neighborhood," particularly if the subject property should be sold. In addition, Ms. Birchfield is concerned that the development plan does not depict any possible future changes to the property, and she would be more comfortable if the petitioner provided more specifics about the future of the business.

Commission Question: Mr. Owens asked if any major changes to the subject property would require Commission approval of an amended development plan. Mr. Sallee answered that internal changes to the existing buildings might not require a development plan amendment; but any changes requiring additional ground area, such as the construction of restrooms, could require a revised development plan, as could possible changes to the use of the existing greenhouses.

Commission Comments: Mr. Wilson stated that he appreciated the historic character of the subject property, and added that he also appreciated the polite and eloquent manner in which Ms. Birchfield presented her opposing remarks.

Zoning Action: A motion was made by Mr. Wilson, seconded by Mr. Brewer, and carried 9-0 (Berkley and Blanton absent) to approve MARV 2013-9, for the reasons provided by staff, including the conditional zoning restrictions as recommended by staff.

Variance Action: A motion was made by Mr. Wilson, seconded by Mr. Brewer, and carried 9-0 (Berkley and Blanton absent) to approve the requested variances, for the reasons provided by staff, subject to the conditions as recommended by staff.

Development Plan Action: A motion was made by Mr. Wilson, seconded by Mr. Brewer, and carried 9-0 (Berkley and Blanton absent) to approve ZDP 2013-21, subject to the 10 conditions as listed on the agenda.