

1. DUTCH BROS, LLC ZONING MAP AMENDMENT AND WILLARD DAVIS SUBDIVISION (DUTCH BROS – SOUTH LIMESTONE) ZONING DEVELOPMENT PLAN

- a. **PLN-MAR-22-00015: DUTCH BROS, LLC** (1/26/2023)*– a petition for a zone map amendment from a Planned Neighborhood (R-3) zone to a Neighborhood Business (B-1) zone, for 0.2916 net (0.3516 gross) acres, for property located at 507 S Limestone (a portion of).

COMPREHENSIVE PLAN AND PROPOSED USE

The 2018 Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community’s resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. This will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The applicant is seeking to construct a two-lane drive-through facility to support a proposed coffee shop use at this location. As proposed, the coffee shop use will have two access points on Colfax Street, with the existing access point along South Limestone being closed. Speakers and order points for the drive-through facility will be provided near the middle of the site.

The coffee shop will be a single story, 950 square-foot building that will be oriented towards South Limestone, with a pick up window located to the rear. While the building will have a walk up window to serve pedestrians along the South Limestone frontage, dine-in service will not be provided.

The Zoning Committee Recommended: No Recommendation.

The Staff Recommends: Disapproval, for the following reasons:

1. The requested rezoning to Neighborhood Business (B-1) is not in agreement with the 2018 Comprehensive Plan for the following reasons:
 - a. The requested rezoning is not in agreement with the Goals, Objectives, and Policies of the 2018 Comprehensive Plan.
 1. The proposed development does not seek to construct at a density or intensity that might be reflective of a major corridor in Lexington, and is out of context with the surrounding area (Theme A, Goal #2.b).
 2. The low density and single-user vehicle focus detract from the effectiveness of mass transit in this area (Theme D, Goal #1.c).
 3. The design of the site may reduce the effectiveness of the overall transportation system by introducing additional vehicular conflicts on Colfax Street and South Limestone (Theme D, Goal #1).
 4. The application encourages the use of single-occupancy vehicles and will increase greenhouse gas emissions at this location (Theme B, Goal #2.d).
 - b. The proposed development is not in agreement with 2021 Imagine Nicholasville Road plan.
 1. The proposal does not increase the intensity of land uses along the corridor (Goal #1).
 2. The scale of the proposed development does is not in accordance with the height design requirements for the Urban Center Typology.
 - c. The proposed development does not meet the intent of the Medium Density Non-Residential /Mixed Use Development Type as established on page 272 of the Comprehensive Plan.
 - d. The requested rezoning is not in agreement with the Development Criteria of the 2018 Comprehensive Plan. The following Development Criteria are not being meet with the proposed rezoning.
 1. A-DS4-2: New construction should be at an appropriate scale to respect the context of neighboring structures; however, along major corridors, it should set the future context in accordance with other Imagine Lexington corridor policies and Placebuilder priorities.
 2. A-DS7-3: Development should create context-sensitive transitions between intense corridor development and existing neighborhoods.
 3. C-L17-1: Developments should create mixed-use neighborhoods with safe access to community facilities, greenspace, employment, businesses, shopping, and entertainment.
 4. DPL7-1: Stakeholders should be consulted to discuss site opportunities and constraints prior to submitting an application.
 5. C-LI6-1: Developments should incorporate multi-family housing and walkable commercial uses into development along arterials/corridors.

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6. A-EQ3-2: Development on corridors should be transit-oriented (dense & intense, internally walkable, connected to adjacent neighborhoods, providing transit infrastructure & facilities)
7. D-CO2-1: Safe facilities for all users and modes of transportation should be provided.
8. D-CO2-2: Development should create and/or expand a safe, connected multi-modal transportation network that satisfies all users' needs, including those with disabilities.
9. B-SU11-1: Green infrastructure should be implemented in new development.
2. There have been no major unanticipated changes of an economic, social or physical nature in the area of the subject property since the adoption of the 2018 Comprehensive Plan.
3. The applicant has not provided evidence as to why the current zoning is inappropriate and the proposed zoning is appropriate for this location.

- b. PLN-MJDP-22-00057: WILLARD DAVIS SUBDIVISION (DUTCH BROS – SOUTH LIMESTONE) (1/26/2023)***
 - located at 127 COLFAX STREET and 507 SOUTH LIMESTONE
 Council District: 3
 Project Contact: CMW, INC.

Note: The purpose of this plan is to depict the size and location of the proposed restaurant with associated drive-through, parking, and circulation, in support of the requested zone change from Planned Neighborhood Residential (R-3) zone to Neighborhood Business (B-1) zone.

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

1. Provided the Urban County Council approves the zone change to B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree preservation plan.
5. Addressing office's approval of addresses.
6. Greenspace planner's approval of the treatment of greenways and greenspace.
7. United States Postal Service Office's approval of kiosk locations or easement.
8. Depict property perimeter screening between B-1 and R-1E zones.
9. Correct zoning labels for adjacent properties.
10. Denote canopy along South Limestone as part of the structure (solid line).
11. Discuss Placebuilder criteria.

Staff Presentation – Mr. Daniel Crum presented the staff report and recommendations for the zone change application. He displayed photographs of the subject property and the general area. He stated that the applicant was seeking a zone map amendment from a Planned Neighborhood Residential (R-3) zone to a Neighborhood Business (B-1) zone, for 0.2916 net (0.3516 gross) acres, for a portion of a property located at 507 S Limestone. Mr. Crum stated that the applicant is proposing a drive-through facility for a coffee shop.

Mr. Crum indicated that the subject property was on the South Limestone corridor, a significant roadway into Lexington, and due to its placement, has a unique traffic pattern that is not conducive for the applicant's proposed use. Mr. Crum stated that the previous use was an Arby's restaurant with an accessory drive-through that was constructed in 1974 and closed in 2019.

Mr. Crum displayed the proposed development plan and noted that the applicant has stated that the subject property caters to the traveling public and highlighted the proposed drive-through facilities, as well as some pedestrian access on the other side of the property. Additionally, Mr. Crum stated that the applicant is removing an access point on South Limestone and that all of the vehicular access would be located on Colfax Street. Further, Mr. Crum explained that the double drive-through proposed by the applicant would bring in more traffic and noise near a residential area and the intersection does not meet access standards for an egress point relative to South Limestone. Mr. Crum also stated that the stacking of cars in the drive-through could lead to further congestion on the site itself, as well as on Colfax Street and South Limestone.

Mr. Crum reviewed the applicant's Development Type and Place Type and indicated that Corridor Place Type was appropriate, but the Medium-Density Non-Residential/ Mixed-Use Development Type selection did not hold any merit. To give more context, Mr. Crum depicted the types of businesses on the South Limestone corridor and indicated that this use would be the only single-story and vehicular focused in the area. Mr. Crum noted the Imagine Nicholasville Road Corridor study and stated that the goal of that study is to increase density in a

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meaningful way. The applicant's proposal for a low-density, one story, auto-centric site is not in agreement with that mission. Additionally, Mr. Crum indicated that this application did not meet a number of goals and objectives of the Comprehensive Plan.

Mr. Crum concluded his presentation by stating that Staff is recommending disapproval and could answer any questions from the Planning Commission.

Commission Questions – Mr. Nicol asked if residential units could be developed in the B-1 zone. Mr. Crum indicated that the applicant could provide dwelling units in addition to business on the site into the proposed zone. Mr. Nicol also stated that this was complicated because more density leads to more business, but in turn leads to more congestion and traffic issues and that this is basically a decision of what amount of density is practical.

Mr. de Movellan asked how the requested zone change differs from the current zone, as to what the impact would be on Nicholasville Road. Mr. Crum answered that a lot of the problems with the site come from the conditional use (extend to zone line 50 feet), and that the impact from just a B-1 zone would be different without the conditional use.

Staff Development Plan Presentation – Ms. Autumn Goderwis oriented the Planning Commission to the location of the subject property, and highlighted a number of points made by Mr. Crum. The development plan is a drive-through development with some pedestrian access, eight parking spots, and the applicant is removing an access point on South Limestone. Ms. Goderwis indicated that the Subdivision Committee recommended approval if the zone change were to be approved, subject to the traditional sign-offs on most development plans. Ms. Goderwis stated that the applicant would need to depict the required property perimeter screening at the back of the property and the applicant would need to correct some clean-up items.

Ms. Goderwis concluded stating that Staff is recommending approval and could answer any questions from the Commission.

Commission Questions – Mr. Michler asked about the size of the vehicular use area and how much of that was due to our own regulations. Ms. Goderwis stated that was an interesting question and this application was submitted before the new parking regulations. The previous regulations would have asked for five parking spaces, and the applicant is proposing eight parking spaces. Additionally, Ms. Goderwis stated that the applicant is showing significantly more stacking area than what the regulations require.

Applicant Presentation – Mr. Bruce Simpson, attorney for the applicant, started off with a few observations from his perspective. Mr. Simpson stated while he applauded the focus of the Comprehensive Plan, it was not intended to micromanage every property in the City of Lexington. Mr. Simpson asked the Planning Commission to look at this application in the context of the size and location of the property, its historic use, and if there will be any other commercial development on the subject property that would result in intensification of commercial uses.

Mr. Simpson stated that the Planning Commission would hear from Brad Boaz, design professional for the project, who would review a report that would show that the estimated traffic would be one-third less with the proposed coffee shop use than if the original restaurant use was restarted. Mr. Simpson stated that the applicant thinks that this use is more compatible with the neighborhood and residences than any restaurant.

Mr. Simpson indicated that Staff and himself were basically on the same page on their justification, except for the car-centric aspect of the development. Mr. Simpson stated that while it is a laudable goal to not be so car-centric, in the here and now, cars are the biggest mode of transportation and Lexington does not have the infrastructure like other high density areas.

Mr. Simpson said that from his perspective the applicant is not changing the context of the use, they are reducing the impact to the residential neighborhood, decreasing the conflict to pedestrians, and the proposed development is close by to existing University of Kentucky businesses. Mr. Simpson continued his presentation by showing a map of the nearby properties that are owned by the University of Kentucky, and stated that the subject property is unlikely to be redeveloped by the University. Mr. Simpson stated that if this zone change is not approved, the subject property is going to stay vacant and an eyesore for this neighborhood.

Mr. Simpson stated that he believes this is a worthy zone change for approval, and if the Planning Commission looks at the context, that the practical and reasonable application of the Comprehensive Plan is to approve this plan.

Commission Questions – Mr. Michler asked about the assertion that the traffic impact would be one-third less than the existing land use, and what the model that was used for that number. Mr. Brad Boaz, engineer for the applicant, indicated that the number has to do with the amount of square footage, either constructed or proposed. The Arby's drive-through had a larger square footage than the 1,000 square foot coffee shop and because of the lesser square footage, there would be one-third the amount of cars.

Mr. Michler asked Mr. Simpson about the justification for the Place-Type. To Mr. Michler, it seems like they are almost using a Campus Place-Type instead and he was not sure if a drive-through fits into that. Mr. Simpson stated that they were not and that the Comprehensive Plan is broader than just the Place-Type and to take into account his opening statement about the context.

Mr. Michler also asked if the applicant had made a case that a drive-through belongs in this Place-Type and Mr. Simpson stated that he had, because of its historic use.

Public Comment – Amy Clark, 628 Kastle Road, urged the Planning Commission to disapprove this application because it introduces conflict and hazard to the pedestrians in a pedestrian-friendly area.

Applicant Rebuttal – Mr. Simpson summarized their justification stating that they cited all the Goals and Objectives of the Comprehensive Plan and that this was a historic use for the site, but their use would have less traffic. Mr. Simpson stated that this project should be approved and he asked for the Planning Commission's support.

Commission Questions – Mr. Bell asked Mr. Boaz to clarify his comment about a nearby South Broadway coffee shop. Mr. Boaz stated he was referencing the Starbucks on South Broadway. Mr. Boaz stated it was comparable and nearby and that is why he mentioned it as an example.

Mr. Bell also asked Mr. Boaz if the double lane, proposed by the applicant is comparable to Chick-Fil-A and if that is a similar model. Mr. Boaz stated that the double lane was becoming a nationwide model and that multiple franchises are adapting that model.

Additionally, Mr. Bell asked how the franchise has adapted to the demand and how that could help on Colfax Street. Mr. Terry Owens, representative for Dutch Bros., stated that the drive-through has runners that are outside in the lane taking orders, you can order via the app and pick-up your order in the drive-through, as well as walk-up to the window. In regard to the question about Colfax Street, Mr. Owens stated that he did not have a good answer for that because he has never run into a situation quite like that before, because traffic is always flowing.

Ms. Worth asked Mr. Boaz what time of day the samples were taken, and Mr. Boaz indicated that it was sampled at different times all the way across the board.

Mr. Baillie stated that the applicant has not submitted a Traffic Impact Study to Staff and they have only shown that within their presentation today.

Mr. Davis asked if you could turn left off of Colfax Street. Mr. Crum indicated you could, but it was an uncontrolled median lane.

Public Rebuttal – Amy Clark, 628 Kastle Road, stated her concern about people looping around the neighborhood on Colfax Street, because it does not connect to another street.

Staff Rebuttal – Mr. Crum stated that the numbers that were presented by the applicant having to do with Traffic Impact were not provided until today during the public hearing. Mr. Crum indicated that the applicant could use the existing drive-through if they wanted to, but what they are asking for is a dramatic expansion of that drive-through facility. Additionally Mr. Crum stated that it was up to the applicant to prove that they are in compliance with the Comprehensive Plan, and as the staff report indicates, they have not done so. They have misapplied the Development Criteria, they has misapplied the Goals and Objectives of the Comprehensive Plan and he emphasized that this is not a Medium-Density development type.

Mr. Crum concluded his presentation by emphasizing that Staff is strongly against this zone change because it is wildly out of context.

Mr. David Filiatreau, Traffic Engineering, stated that it was not fair to compare the Arby's to the expected use and that assertion by the applicant was a generalization. Additionally, Mr. Filiatreau wanted to clarify that the Arby's was not open during the morning rush.

Commission Questions – Mr. de Movellan asked what the concerns the members on the Zoning Committee had during their committee meeting, since there was no recommendation.

Ms. Wade indicated that the Zoning Committee did not have a quorum that day and that was the reason for a lack of recommendation.

Ms. Meyer stated that she was not opposed to a coffee shop in this location, she is just concerned with the type of coffee shop and thinks there is some type of coffee shop that is not as car-centric as this one.

Mr. de Movellan stated that he appreciates Dutch Bros. and their proposal, but sees a lot of difficulty with this application and has a problem with the vastness of how it conflicts currently.

Action – A motion was made by Mr. Nicol (Penn and Pohl absent) to approve PLN-MAR-22-00015: DUTCH BROS, LLC. No second was made to the motion and the motion failed.

Action – A motion was made by Ms. Meyer and seconded by Ms. Worth and carried 8-1 (Penn and Pohl absent) to disapprove PLN-MAR-22-00015: DUTCH BROS, LLC for reasons provided by Staff.

Action – A motion was made by Ms. Meyer and seconded by Ms. Worth and carried 8-1 (Penn and Pohl absent) to indefinitely postpone PLN-MJDP-22-00057: WILLARD DAVIS SUBDIVISION (DUTCH BROS – SOUTH LIMESTONE).