

1. H & J PROPERTIES OF LEXINGTON, LLC, AND TLJ PROPERTIES OF LEXINGTON, LLC, ZONING MAP AMENDMENT & FAIRLAWN SUBDIVISION, LOTS 19-22, ZONING DEVELOPMENT PLAN

- a. MARV 2015-22: H & J PROPERTIES OF LEXINGTON, LLC, AND TLJ PROPERTIES OF LEXINGTON, LLC (1/3/16)* – petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 1.538 net (2.069 gross) acres, for property located at 1400, 1402 and 1412 North Broadway. Dimensional variances are also requested.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World. The 2013 Comprehensive Plan also encourages growing successful neighborhoods (Theme A) through adaptive reuse that respects the area's context and design features (Goal 2.a.); and creating jobs and prosperity (Theme C), with emphasis on creating jobs near where people live (Goal 1.d.).

The petitioners propose to rezone the property to a Neighborhood Business (B-1) zone, utilizing the existing buildings and parking in order to expand the number of uses permitted on these properties.

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

The Staff Recommends: Approval, for the following reasons:

1. The proposed zone change to a Neighborhood Business (B-1) zone is in agreement with the 2013 Comprehensive Plan, and is supported by several Goals and Objectives of the 2013 Comprehensive Plan, including:
 - a. Theme A (*Growing Successful Neighborhoods*), Goal #2, Objective a., which states: "Identify areas of opportunity for infill, redevelopment and adaptive reuse that respect the area's context and design features whenever possible." The petitioner is re-using the existing buildings and parking for new uses.
 - b. Theme C (*Creating Jobs and Prosperity*), Goal #1, Objective d., which encourages the creation of jobs near where people live. The property is located very near residential neighborhoods, and may provide a support or service use in the area that is not currently available.
2. The requested Neighborhood Business (B-1) zone is appropriate for this location since it is located directly across from the major tourist attraction currently located in the corridor.
3. With appropriate conditional zoning restrictions, the Neighborhood Business (B-1) zone will continue to provide an appropriate land use transition between the B-3 zoning across North Broadway (ball park) and the residential land uses further to the southeast of this location, promoting the Plan's emphasis on protecting existing neighborhoods.
4. This recommendation is made subject to the approval and certification of ZDP 2015-22: Fairlawn Subdivision Lots 19-22, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
5. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be prohibited on the subject property:
 - a. Automobile Service Stations
 - b. Miniature Golf and Putting Courses
 - c. Car Washes
 - d. Outdoor Live Entertainment
 - e. Drive-through facilities.

These use prohibitions are appropriate and necessary to ensure that future development will be compatible with the character of the adjoining residential area by prohibiting uses that are generally auto-centric and create excessive noise and light disturbances.

b. REQUESTED VARIANCES

1. To eliminate the property perimeter screening along the southeast property line of 1400 N. Broadway.
2. To eliminate vehicular use area and property perimeter screening along the southwest property line at 1412 N. Broadway.
3. To substitute the 6' high fence required for property perimeter screening with a single row of 6' tall shrubs along the southeast property line at 1412 N. Broadway.

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variances will not adversely affect the public health, safety or welfare. It will not negatively alter the essential character of the general vicinity because landscaping has existed between the commercial office uses and residential properties for many years, and appropriate alternative screening will be provided to enhance the existing landscaping, where needed.

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- b. The existing pattern of development of the property, along with some of the existing screening, creates the unique circumstances that justify consideration of an alternative screening pattern for the subject properties.
- c. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship because change in the topography on 1400 N. Broadway and the width of the existing drive aisle on 1412 N. Broadway present challenges in installing effective screening.
- d. The requested variances are not an unreasonable circumvention of the Zoning Ordinance, because alternative landscaping and screening (VJA screening, dumpster screening, and a 6' tall hedge in place of a fence) will be provided along the property boundaries where the variances are requested.
- e. The circumstances surrounding the requested variances are not the result of prior actions taken by this applicant, as no construction (or even building demolition) has yet occurred on the subject site.

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

1. Provided the Urban County Council rezones the properties B-1; otherwise, any Commission action of approval of these variances is null and void.
 2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
 3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
 4. The required screening for the dumpster on 1412 N. Broadway shall be constructed prior to the issuance of a Zoning Compliance Permit, unless otherwise requested by the Division of Waste Management to not be installed for operational purposes.
- c. ZDP 2015-103: FAIRLAWN SUBDIVISION, LOTS 19-22 (H & J PROPERTY OF LEXINGTON, LLC & TLJ PROPERTY OF LEXINGTON, LLC) (1/3/16)*- located at 1400, 1402 and 1412 North Broadway.
(S. Mark McCain, RLA)

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 Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Denote height of buildings, in feet.
6. Provided the Planning Commission grants the requested variances.
7. Denote 20' building line on plan.
8. Denote nonconformity in the existing building(s) setback in the B-1 zone.
9. Dimension exterior of all buildings.
10. Dimension access entrance and drive-through lane adjacent to Paris Avenue.
11. Dimension sidewalks internal to the site.
12. Resolve existing access to North Broadway.
13. Resolve lack of interior (landscape) tree plantings.

Zoning Presentation: Ms. Wade presented the staff report on this requested zone change, briefly orienting the Commission to the location of the subject properties, on the east side of North Broadway, between Loudon Avenue and New Circle Road. The property, which is comprised of three parcels, is located directly across from the Whitaker Bank ball park. The zoning in the immediate vicinity includes: B-1 across Withers Avenue; P-1 across Paris Avenue; and single family residential in the Fairlawn subdivision to the southeast. The area is characterized primarily by commercial development, but there is a mix of residential, professional office and business uses in the overall area between Loudon Avenue and New Circle Road.

Ms. Wade explained that there are currently three structures on the subject property, one of which has several vacancies. The petitioner is not proposing to modify the existing structures, but is requesting rezoning in order to permit new uses on the subject property. The larger property at 1412 North Broadway has "for rent" signs in place, which indicated to the staff a likelihood that the units could be filled if the rezoning were approved.

Ms. Wade displayed the following photographs of the subject property and surrounding area: 1) a view of the property at 1400 North Broadway, at the corner of Withers Avenue and North Broadway, which includes an existing house being used as a professional office; 2) a view along Withers Avenue toward the entrance to the ball park; 3) 1402 North Broadway, which is currently occupied by a veterinarian's office and an accessory structure; 4) a view from the corner of Paris Avenue and North Broadway of the property at 1412 North Broadway, which has a larger, L-shaped professional office building that includes a basement level accessible from the rear; and 5) a view down Paris Avenue. Ms.

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Wade noted that the subject properties comprise the entire block between Withers and Paris Avenues. The intersection of Withers Avenue and South Broadway is currently signalized.

With regard to the recommendations of the 2013 Comprehensive Plan, Ms. Wade stated that the subject property falls within subarea "D" of the Central Sector Small Area Plan (CSSAP), approved just a few years ago. The CSSAP provided some guidance to the staff in reviewing this application, including encouraging redevelopment and investment in the study area; it also recommended sidewalk improvements along North Broadway, which the petitioner is proposing with their corollary development plan. The petitioner opines that the proposed rezoning is in agreement with the Goals & Objectives of the 2013 Comprehensive Plan, because it supports adaptive reuse and commercial activity, which is in line with Theme A, Goal 2; and, that existing neighborhoods will benefit from business and employment opportunities within walking distance. The staff found that retail uses, which are typical in the B-1 zone, would be appropriate directly across from the Lexington Legends ball park, since it is a major tourist attraction. The staff also considered that the B-1 zone would maintain an appropriate buffer for the residential neighborhoods to the south, as long as conditional zoning restrictions were put in place.

Ms. Wade explained that the staff is recommending prohibiting five land uses on the property, via conditional zoning, which were listed in the staff report and on the agenda. She said that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, explaining that it proposes no major changes to the existing configuration on the property. The plan includes the existing structures and parking lots, with access from North Broadway and Paris Avenue. The access on North Broadway extends across the street frontage; one of the conditions for approval would require that access point to be constricted in order to make it safer and more efficient.

Mr. Martin said that the staff is recommending approval of this plan, subject to the following revised 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 Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Denote height of buildings, in feet.
6. Provided the Planning Commission grants the requested variances.
7. ~~Denote 20' building line on plan.~~
8. ~~Denote nonconformity in the existing building(s) setback in the B-1 zone.~~
- 7.9. Dimension exterior of all 2,000 square-foot two-story buildings at 1402 South Broadway.
10. ~~Dimension access entrance and drive through lane adjacent to Paris Avenue.~~
- 8.44. Dimension sidewalks internal to the site for side and rear of building at 1412 South Broadway.
- 9.42. Resolve Denote timing of revision to existing access to 1402 North Broadway.
- 10.43. Resolve lack of interior (landscape) tree plantings for 1412 North Broadway.
11. Discuss plan status.

He noted, with regard to condition #11, that the staff discussed with the petitioner the possibility of making this a Final Development Plan, since so few physical changes are proposed; but the petitioner indicated that they would prefer to maintain it as a preliminary development plan.

Variance Presentation: Mr. Emmons presented the requested variances, all of which apply to landscaping for the property. The petitioner is requesting to eliminate the zone-to-zone screening along the property boundary for 1400 North Broadway, at the corner of Withers Avenue; eliminate zone-to-zone screening at 1412 North Broadway; and substitute a different type of screening along most of the property line for 1412 North Broadway. The property at 1402 North Broadway meets all of the landscaping requirements, so no variances were necessary.

Mr. Emmons explained, with regard to the first requested variance, that there is a significant grade difference between the subject property and the adjoining parcel. That is part of the reason for the petitioner's request to eliminate zone-to-zone screening, which would require a 6' fence, in that location. The petitioner is proposing to install vehicular use area screening instead, which would include a 3' hedge. The staff believes that, along with the grade change, a 3' hedge would provide an adequate buffer.

The second requested variance, Mr. Emmons said, would apply to the rear property boundary at 1412 North Broadway. Zone-to-zone screening is required at that location; and, although some vegetation is present, it is located on the adjoining residential property. The petitioner opines that, because the building is located 20' from the property line, it would be more appropriate to keep that area free from landscaping for safety reasons. The Division of Fire and Emergency Services staff concurred.

Mr. Emmons stated that the third proposed variance would apply to the boundary to the rear of the parking lot at 1412 North Broadway. Article 18 of the Zoning Ordinance would require a 6' fence or hedge plus trees in that location; the petitioner is proposing to install a 6' hedge instead, along with the required trees. The staff believes that will be adequate, and will provide a more attractive, "softer" buffer for the adjoining residential properties than would a privacy fence. Mr. Emmons said that the staff is recommending approval of all three requested variances, for the reasons as listed in the staff report and on the agenda.

Petitioner Representation: Peter Brown, attorney, was present representing the petitioner. He stated that the petitioner was in agreement with the staff's recommendations, and he requested approval.

Citizen Comment: Although there were citizens present, none wished to comment on this request.

Zoning Action: A motion was made by Mr. Berkley, seconded by Mr. Penn, and carried 8-0 (Brewer, Drake, and Owens absent) to approve MARV 2015-22, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Berkley, seconded by Mr. Penn, and carried 8-0 (Brewer, Drake, and Owens 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. Berkley, seconded by Mr. Penn, and carried 8-0 (Brewer, Drake, and Owens absent) to approve ZDP 2015-103, subject to the revised conditions as listed, deleting #11.

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