

AN ORDINANCE CHANGING THE ZONE FROM A SINGLE FAMILY RESIDENTIAL (R-1C) ZONE TO A NEIGHBORHOOD BUSINESS (B-1) ZONE, FOR 0.256 NET (0.299 GROSS) ACRE, FOR PROPERTY LOCATED AT 101 DENNIS DRIVE. (WILLSTONE, LLC; COUNCIL DISTRICT 10).

WHEREAS, at a Public Hearing held on November 30, 2017, a petition for a zoning ordinance map amendment for property located at 101 Dennis Drive from a Single Family Residential (R-1C) zone to a Neighborhood Business (B-1) zone for 0.256 net (0.299 gross) acre, was presented to the Urban County Planning Commission; said Commission recommending approval of the zone change by a vote of 10-0; 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 101 Dennis Drive from a Single Family Residential (R-1C) zone to a Neighborhood Business (B-1) zone for 0.256 net (0.299 gross) acre, being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - 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 3 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: January 30, 2018

ATTEST:


CLERK OF URBAN COUNTY COUNCIL

Published: February 6, 2018-1t

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MAYOR

The following description is intended for zoning purposes only. The description represents information depicted on documents of record found in the Fayette County Clerk's office. This description does not represent a boundary survey and should not be used for real estate conveyance or transfer.

**Zone Change from R-1C to B-1
For
101 Dennis Drive
Lexington, Fayette County, KY**

Beginning at point in the line of Lot 8 of the L.C. Berry Subdivision as depicted in Plat Cabinet E, Slide 595 of the Fayette County Clerk's records, said point being 22.50 feet from the centerline, and on the northern Right-of-Way line of Dennis Drive, being approximately North 66° 20' 00" West 200.00 feet from the intersection of the western Right-of-Way line Nicholasville Road and said northern Dennis Drive Right-of-Way line; thence with the western line of Lots 8, 9, 10, 11, 12, 13, 14 and 15 of said L.C. Berry Subdivision and the existing B-1 Zone delineation for two (2) calls:

1. North 15° 45' 00" East 2.50 feet;
2. North 15° 45' 00" East 154.80 feet to the southeast corner of Lot 21 of said L.C. Berry Subdivision; thence with the southern line of said Lot 21 and the existing Zone B-1 delineation for one (1) call:
3. North 65° 49' 00" West 60.20 feet to the northeast corner of Lot 5 of the Bella Vista Subdivision as depicted in Plat Cabinet C, Slide 145; thence with the eastern line of said Lot 5 and the existing Zone P-1 delineation for two (2) calls:
4. South 21° 10' 41" West 163.25 feet to the southeast corner of said Lot 5, being 25.00 feet from the centerline, and in the Northern Right-of-Way line of said Dennis Drive;
5. South 16° 35' 55" West 25.00 feet leaving the line of said Lot 5 to a point on the centerline of Dennis Drive; thence with said centerline for one (1) call:
6. South 73° 24' 05" East 75.04 feet with the existing Zone P-1 and Zone B-1 delineations to a point on the centerline of said Dennis Drive; thence with the existing Zone B-1 delineation for one (1) call:
7. North 16° 35' 55" East 22.50 feet to the Point of Beginning containing 0.289 Acre Gross and 0.246 Acre Net.

The above described being a portion of Dennis Drive Right-of-Way and being all of Lot 6 of the Bella Vista Subdivision as depicted in Plat Cabinet C, Slide 145 of the Fayette County Clerk's records.

Rec'd by TW

Date: 1/5/18

RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: **PLN-MAR-17-00038: WILLSTONE, LLC** – a petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Neighborhood Business (B-1) zone, for 0.256 net (0.299 gross) acres, for property located at 101 Dennis Drive. A dimensional variance is also requested. (Council District 10)

Having considered the above matter on **November 30, 2017**, at a Public Hearing, and having voted **10-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL** of this matter for the following reasons:

1. The proposed Neighborhood Business (B-1) zone is appropriate and the existing Single Family Residential (R-1C) zone is inappropriate, for the following reasons:
 - a. The proposed B-1 zone is compatible and consistent with the B-1 and P-1 zoning that exists within the immediate area.
 - b. Existing residentially zoned land in this area is generally suited to a future commercial land use and is awaiting redevelopment. The subject property is the only residentially zoned lot remaining on Dennis Drive, but it has not been used for residential land use for more than 20 years.
 - c. Historically land use decisions and previously adopted Comprehensive Plans have collectively encouraged a higher intensity of land use and a commercial character for the area to the point where the existing single-family residential zoning is no longer compatible or desirable in this location.
 - d. The depth of commercial land use and zoning along the west side of Nicholasville Road is approximately 225 to 275 feet within the immediate area. The proposed rezoning would be consistent with the existing land use pattern in the area.
2. This recommendation is made subject to the approval and certification of **PLN-MJDP-17-00104: Bella Vista Subdivision, Lot 6**, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

ATTEST: This 5th day of January, 2018.


Secretary, Jim Duncan

WILLIAM WILSON
CHAIR

Note: The corollary development plan, **PLN-MJDP-17-00104: BELLA VISTA SUBDIVISION, LOT 6** was approved by the Planning Commission on November 30, 2017 and certified on December 14, 2017.

Note: A dimensional variance was approved to reduce the side yard (west) from 12 feet to 5 feet, by the Planning Commission at this hearing.

K.R.S. 100.211(7) requires that the Council take action on this request by February 28, 2018.

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

OBJECTORS

- Tom Chinn, 103 Dennis Dr.

OBJECTIONS

- Owner of the adjacent daycare and is concerned with security and liability.

VOTES WERE AS FOLLOWS:

AYES: (10) Bell, Berkley, Cravens, Forester, Mundy, Owens, Penn, Plumlee, Richardson and Wilson

NAYS: (0)

ABSENT: (1) Brewer

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **APPROVAL** of **PLN-MAR-17-00038** carried.

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

MAP AMENDMENT REQUEST (MAR) APPLICATION

1. CONTACT INFORMATION (Name, Address, City/State/Zip & Phone No.)

Applicant:

WILLSTONE, LLC, 1050 MONARCH ST, STE 200, LEXINGTON, KY 40513

Owner(s):

WILLSTONE, LLC, 1050 MONARCH ST, STE 200, LEXINGTON, KY 40513

Attorney:

Richard V. Murphy, Murphy & Clendenen, 250 W. Main Street, Suite 2510, Lexington, KY 40507

2. ADDRESS OF APPLICANT'S PROPERTY

101 DENNIS DR, LEXINGTON, KY

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY

Zoning	Existing		Requested		Acreage	
	Zoning	Use	Zoning	Use	Net	Gross
R-1C		Gravel parking lot	B-1	Commercial	0.246	0.289

4. EXISTING CONDITIONS

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
c. Are these units currently occupied by households earning under 40% of the median income? If yes, how many units? If yes, please provide a written statement outlining any efforts to be undertaken to assist those residents in obtaining alternative housing.	<input type="checkbox"/> YES <input type="checkbox"/> NO

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

Roads:	LFUCG
Storm Sewers:	LFUCG
Sanity Sewers:	LFUCG
Refuse Collection:	LFUCG
Utilities:	<input checked="" type="checkbox"/> Electric <input type="checkbox"/> Gas <input checked="" type="checkbox"/> Water <input checked="" type="checkbox"/> Phone <input type="checkbox"/> Cable



Justification statement.

The applicant, Willstone LLC, is requesting approval of a zone change from the R-1C (Single Family Residential) zone to the Neighborhood Business (B-1) zone for approximately one quarter acre located at 101 Dennis Drive. This property is immediately behind 2417 Nicholasville Road, which is Stone Square Shopping Center, the home of Paisano's and Taste of Thai restaurants.

This lot has been used as a gravel parking lot for the Stone Square Shopping Center for approximately 25 years. The applicant purchased the property in December, 2015.

We are requesting the B-1 zone to make the zoning consistent with surrounding uses. Until a user is found, the property will continue to be used as it is currently.

The existing Single Family Residential (R-1C) zoning is inappropriate and the proposed Neighborhood Business (B-1) zoning is appropriate for this property. To the immediate north of the property is the parking lot for the Kentucky Fried Chicken restaurant at 2401 Nicholasville Road. (Although that portion of the parking is zoned R-1C, it is clearly used for commercial purposes.) To the west is a daycare center zoned P-1. To the south is the parking lot for the Panda Express, zoned B-1. To the east, as mentioned above, is the Stone Square Shopping Center, zoned B-1. Rezoning this property to B-1 will make the depth of commercial use from Nicholasville Road consistent in this area. Also, there are no residential uses on this block, and a residential use would be unlikely in this location. In fact, most of the residential uses further down Dennis Drive have been converted to office or similar uses. Our preliminary development plan shows a retail building at the front with the required parking on site.

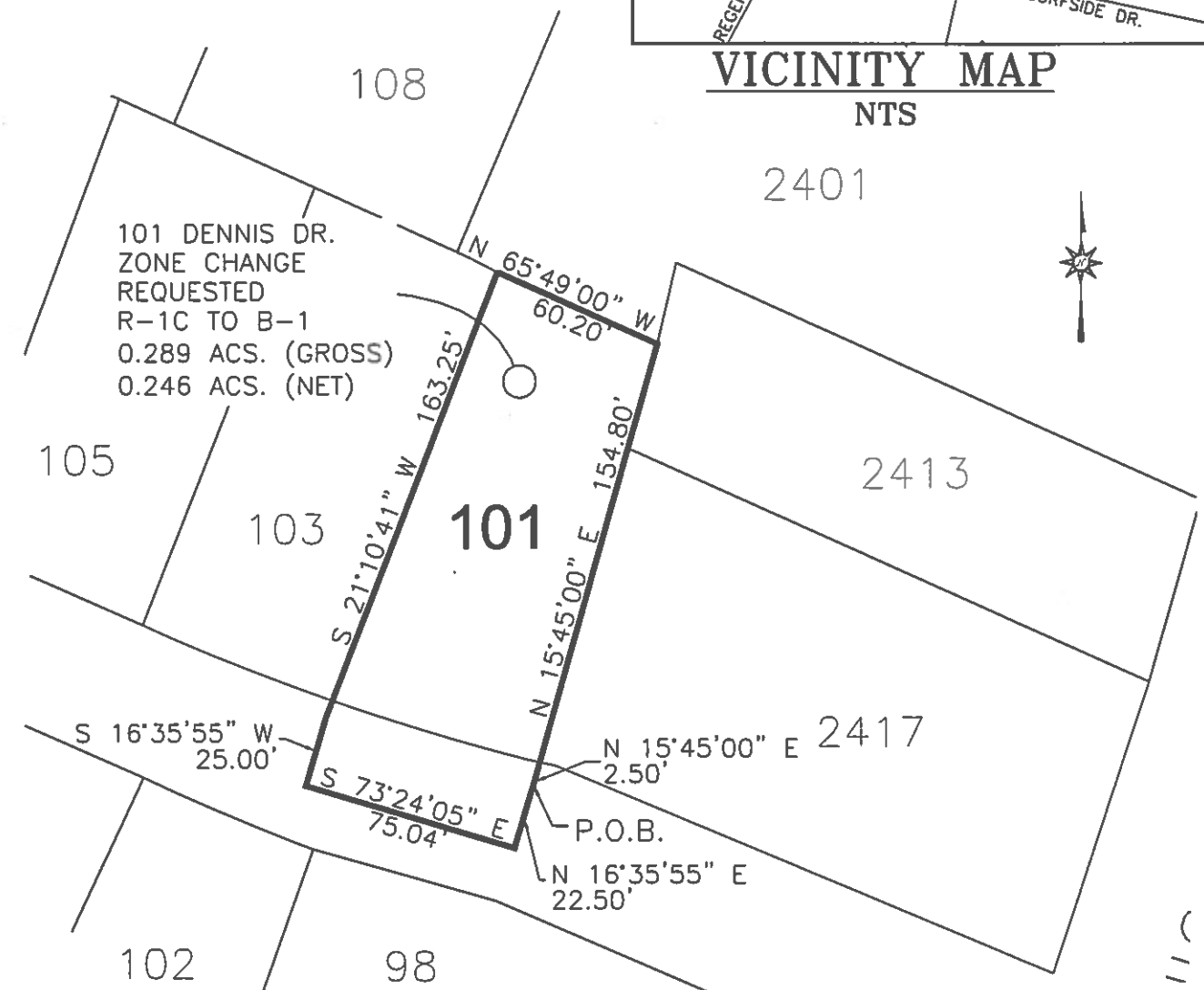
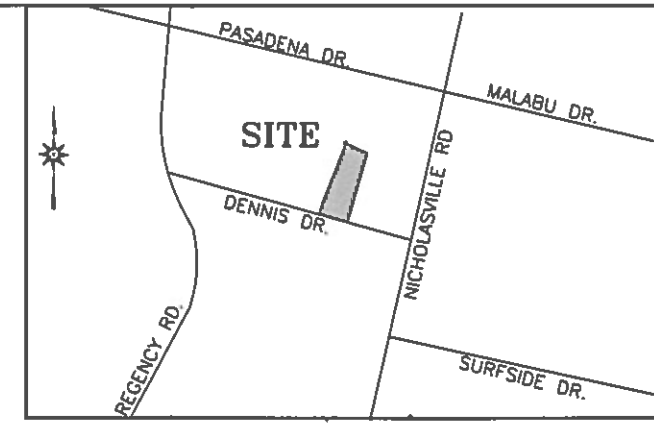
Also, this proposal is in agreement with the Goals and Objectives of the 2013 Comprehensive Plan. Use of this vacant parcel will support infill and redevelopment throughout the Urban Service Area as a strategic component of growth (Goal A.2). It is an opportunity for infill and redevelopment that respects the area's context (Objective A.2.a.). Construction on this property will minimize disruption of natural features as the property is already being used as a parking lot. (Objective A.3.c.). Allowing business use of the property will improve opportunities for small business development (Objective C.1.b). Better use of this lot will help to uphold the Urban Service Area concept (Goal E.1.) and will encourage compact, contiguous development within the Urban Service Area, as guided by market demand, to accommodate future growth needs (Objective E.1.b). It will assist in maintaining the current boundaries of the Urban Service Area (Goal E.3).

In addition, development of this property will complement the Nicholasville Road commercial area, and will allow commercial development that is accessible to transit lines.

Thank you for your consideration of this zone change request.

Richard V. Murphy, Attorney for Applicant,
Willstone LLC

Justification statement 10-2-17.docx



ZOMAR:	TITLE: WILLSTONE LLC			
PROPERTY ADDRESS:	FROM	TO	GROSS	NET
101 DENNIS DRIVE	R1-C	B-1	0.289	0.246
APPLICANT NAME / ADDRESS:				
WILLSTONE LLC				
1050 MONARCH ST, SUITE 200				
LEXINGTON, KY 40513				
OWNER: S/A				
PREPARED BY: VISION ENGINEERING, LLC				
DATE FILED OR AMENDED: OCTOBER 2, 2017			TOTAL	0.289 0.246

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

PLN-MAR-17-00038: WILLSTONE, LLC

DESCRIPTION

Zone Change: From a Single Family Residential (R-1C) Zone
To a Neighborhood Business (B-1) Zone

Acreage: 0.246 net (0.289 gross) acre

Location: 101 Dennis Drive

EXISTING ZONING & LAND USE

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Property	R-1C	Gravel Parking Lot
To North	R-1C, P-1 & B-1	Professional Offices & Restaurant
To East	B-1	Neighborhood Commercial
To South	P-1 & B-1	Child Care Center & Restaurant
To West	P-1	Child Care Center & Professional Offices

URBAN SERVICES REPORT

Roads – The subject property fronts along Dennis Drive, a local street that connects Nicholasville Road (US 27) to Regency Road. The property is situated about 200 feet to the west of the un-signalized intersection of Dennis Drive and Nicholasville Road. Nicholasville Road is a major arterial road, consisting of seven reversible lanes, which change to accommodate both morning and evening rush hour traffic in this vicinity. Regency Road is a collector street that generally runs parallel to the railroad, between Southland Drive and Moore Drive, west of Nicholasville Road. Access into the site is proposed from Dennis Drive, although access to an adjoining lot on Nicholasville Road is proposed to remain.

Curb/Gutter/Sidewalks – Curbs, gutters, and sidewalks exist along both sides of Dennis Drive.

Storm Sewers – The subject property is split between the Wolf Run and West Hickman Creek watersheds. Stormwater improvements do not currently exist on the subject property. Stormwater quality features will be required on-site, as well as connection to the stormwater sewers within the area in compliance with the Division of Engineering’s Stormwater Manual. No FEMA floodplain or major flooding problems exist on the site or in the immediate area.

Sanitary Sewers – The subject property is located in the Wolf Run sewershed, which is served by the Town Branch Wastewater Treatment Plant, located on Lisle Industrial Avenue, four miles to the northwest of the subject property. Sanitary sewer capacity will need to be verified prior to certification of the final development plan for any proposed change of land use at this location. Currently, the sanitary sewer bank has more than 15,000 gallons per day of available capacity.

Refuse – The Urban County Government serves this portion of the Urban Service Area with refuse collection on Mondays. Commercial developments frequently contract for supplemental refuse service.

Police – The nearest police station is located at the East Sector Roll Call Center on Centre Parkway in the Gainesway neighborhood, about 2½ miles to the southeast of the subject property.

Fire/Ambulance – The nearest fire station (#15) is located less than one mile southwest of the subject property, at the intersection of W. Reynolds Road and Shilito Park Drive.

Utilities – Utilities, including natural gas; electric; water; cable television; and telephone service are all available within the immediate area and can be extended to serve the site.

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 Plan’s 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 petitioner proposes a rezoning to a Neighborhood Business (B-1) zone in order to construct a retail establishment, approximately 2,050 square feet in size, and associated off-street parking.

CASE REVIEW

The petitioner has requested a zone change from a Single Family Residential (R-1C) zone to a Neighborhood Business (B-1) zone for one-quarter of an acre of property, located at 101 Dennis Drive.

The subject property is located on the north side of Dennis Drive, approximately 200 feet west of Nicholasville Road. The property is bounded to the south and east by commercial developments, to the west by a childcare center, and to the north by a parking lot associated with a fast food restaurant (still residentially zoned). Dennis Drive is characterized by a combination of professional offices, wholesale and warehouses establishments, and a church. Several properties, located within the Professional Office (P-1) zone, near Nicholasville Road are occupied by single-family residences that have been converted to general offices, medical offices or a childcare centers. The adjacent commercial development (Stone Square) at the intersection of Nicholasville Road is occupied by several small restaurants, a chiropractor, a cigar store, and a payday loan establishment.

The subject property is vacant, but customers of Stone Square have utilized the site for off-site parking for a number of years. The petitioner wishes to rezone the property so that it can be redeveloped in a fashion that is compatible with the adjoining Stone Square development and childcare center. In particular, the corollary development plan submitted in conjunction with this map amendment request depicts a small retail establishment of 2,050 square feet in size and seven off-street parking spaces.

The 2013 Comprehensive Plan no longer includes a parcel-based land use map; rather it encourages land use decisions to be made based upon small area plan recommendations, policy statements and the Goals and Objectives of the Plan. In this case, the petitioner does not contend that the request is in agreement with the Plan, but that the existing zoning is inappropriate and the proposed zoning is appropriate. Given the nature of the proposed change, and the context of the site, the staff agrees with this contention for several reasons.

The proposed use and zone are generally compatible with the B-1 and P-1 zoning that exists within the immediate area. There are no remaining residences along Dennis Drive and the subject property is the last residentially zoned lot along the street as well. The likelihood that the subject property would redevelop with a single-family residence, in conformity with the existing zoning, in such close proximity to Nicholasville Road seems remote, given the traffic volume along that corridor. The subject property itself has been utilized as a gravel parking lot for over 20 years. Other residentially zoned land in the vicinity is also generally awaiting future redevelopment or is already being utilized in a commercial manner (rear parking lot of the nearby KFC restaurant to the north of the site). Historic land use decisions and previously adopted Comprehensive Plans have collectively encouraged a higher intensity of land use and a commercial character for the area, to the point where the existing single-family residential zoning is no longer compatible or desirable in this location. Lastly, the proposed rezoning to B-1 will make the depth of commercial use from Nicholasville Road consistent in this area.

The Staff Recommends: Approval, for the following reason:

1. The proposed Neighborhood Business (B-1) zone is appropriate and the existing Single Family Residential (R-1C) zone is inappropriate, for the following reasons:
 - a. The proposed B-1 zone is compatible and consistent with the B-1 and P-1 zoning that exists within the immediate area.

- b. Existing residentially zoned land in this area is generally suited to a future commercial land use and is awaiting redevelopment. The subject property is the only residentially zoned lot remaining on Dennis Drive, but it has not been used for residential land use for more than 20 years.
 - c. Historic land use decisions and previously adopted Comprehensive Plans have collectively encouraged a higher intensity of land use and a commercial character for the area to the point where the existing single-family residential zoning is no longer compatible or desirable in this location.
 - d. The depth of commercial land use and zoning along the west side of Nicholasville Road is approximately 225 to 275 feet within the immediate area. The proposed rezoning would be consistent with the existing land use pattern in the area.
2. This recommendation is made subject to the approval and certification of PLN-MJDP-17-00104: Bella Vista Subdivision, Lot 6, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

TLW/dw

11/1/17

Planning Services/Staff Reports/MAR/2017/PLN-MAR-17-00038.doc

STAFF REPORT ON VARIANCE REQUESTED FROM PLANNING COMMISSION

PLN-MAR-17-00038: WILLSTONE, LLC

REQUESTED VARIANCE

1. Reduce the minimum side yard setback from 12 feet to 5 feet along the western property line.

ZONING ORDINANCE

Article 6-4(c) states: "The Planning Commission may hear and act upon requested conditional uses and variances associated with a zone change. If the Planning Commission should choose to hear a conditional use or variance request, the Planning Commission shall have all of the powers and responsibilities of the Board of Adjustment, as defined in Articles 7-6(a) and 7-6(b) of the Zoning Ordinance. All conditional use and variance applications shall be acted upon by the Planning Commission within ninety (90) days of the application, unless postponed further by the applicant."

Article 8-16(i) states that the side yard setback has no limitation in a B-1 zone.

Article 8-15(i) states that the minimum side yard setback for the P-1 zone is 12 feet.

Article 15-3 states that where a property adjoins the side yard of a lot in a more restrictive zone, the side yard in the zone with the less restrictive yard requirements "shall equal the adjoining side yard of the zone with the more restrictive yard. This restriction also applies to rear yards, as appropriate."

CASE REVIEW

The applicant has requested a dimensional variance to reduce the required side yard from 12' to 5' for the subject property on Dennis Drive. They seek to gain approval of a dimensional variance at the same time as their zone change, to permit a 1,950 square-foot commercial building for an undefined user. A new shop or retail space accompanied by an off-street parking lot is anticipated on the 75-foot wide site.

The B-1 zone does not have a minimum side yard requirement, per se; but the subject lot is adjacent to a P-1 lot, which is required to have a 12' side yard. Article 15-3 requires this (proposed) B-1 lot to match the side yard requirement for the adjacent lot. The applicant asks for relief from this requirement.

The subject lot narrows from front to back, making the building site non-rectangular due to the pavement (drive aisle and parking lot) site improvements currently planned for this location. There is a 10' utility easement along the east lot line, adjacent to an existing B-1 zone, but a drive aisle and 5' landscape area is proposed for that portion of the property. The drive aisle on this portion of the site is intended to connect to the rear of commercial property adjacent to the subject site to the northeast. Although the 10' easement also traverses the rear of the site, it is immaterial to the requested variance proposed along the front of the property and along the western property line, where the buildable area of this commercial site is to be located.

The applicant believes that the requested variance, which would allow a larger structure on the subject site, will not alter the existing character of the vicinity; nor will it adversely affect the public health, safety or welfare of the community. However, in the view of the staff, a compliant structure, meeting all setback requirements would fit in as well, especially when reviewing the existing setbacks of other similar commercial structures situated along Dennis Drive west of Nicholasville Road.

The staff cannot identify any special circumstances associated with the subject property, except for the 10' easement (that is immaterial to this request) that does not already apply to the other B-1 and P-1 properties in the Dennis Drive commercial neighborhood. Such a finding is a requirement for the approval of a dimensional variance by the Planning Commission (and Board of Adjustment).

Strict application of the 12' side yard requirement of the Zoning Ordinance would still allow a new commercial building on the subject property, especially if averaging provisions of Article 15 of the Zoning Ordinance are employed. Since there is no firm design currently anticipated for the building on this site, this would pose no unnecessary hardship to the applicant.

The corollary Zoning Preliminary Development Plan, under review by the Planning Commission in conjunction with this zone change, has a number of variables which have not yet been resolved. At this time, there are no known architectural details for this development, and the scale of the potential B-1 building has not been finalized. Thus, the staff's position on this variance is that this request is premature and should not be acted upon by the Commission at this time. Changes that might be incorporated into the Final Development Plan could clearly affect the need for, or the extent of, a dimensional variance, which the Board of Adjustment could consider at a future date.

The Staff Recommends: **Postponement**, for the following reasons:

- a. Strict application of the 12' side yard requirement of the Zoning Ordinance would still allow a new commercial building on the subject property, especially if averaging provisions of Article 15 of the Zoning Ordinance are employed.
- b. The staff cannot identify any special circumstances associated with the subject lot that do not already apply to the other B-1 and P-1 properties in the Dennis Drive commercial neighborhood. Such a finding is a requirement for approval of any dimensional variance by the Planning Commission (or Board of Adjustment).
- c. Strict application of the 12' side yard requirement of the Zoning Ordinance would pose no unnecessary hardship to the applicant, since a final design of the commercial building at this location has not been completed.
- d. This variance request is premature and should not be acted upon by the Commission at this time, because changes might be incorporated into the Final Development Plan that could affect the need for a dimensional variance, which the Board of Adjustment could consider at a future date.

TLW/BJR/dw
11/30/17

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1. WILLSTONE, LLC ZONING MAP AMENDMENT & BELLA VISTA SUBDIVISION, LOT 6 ZONING DEVELOPMENT PLAN

- a. PLN-MAR-17-00038: WILLSTONE, LLC (12/31/17)*- petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Neighborhood Business (B-1) zone, for 0.256 net (0.299 gross) acres, for property located at 101 Dennis Drive. A dimensional variance is 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 Plan's 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 petitioner proposes a rezoning to a Neighborhood Business (B-1) zone in order to construct a retail establishment, approximately 2,050 square feet in size, and associated off-street parking.

The Zoning Committee Recommended: Approval.

The Staff Recommends: Approval, for the following reason:

1. The proposed Neighborhood Business (B-1) zone is appropriate and the existing Single Family Residential (R-1C) zone is inappropriate, for the following reasons:
 - a. The proposed B-1 zone is compatible and consistent with the B-1 and P-1 zoning that exists within the immediate area.
 - b. Existing residentially zoned land in this area is generally suited to a future commercial land use and is awaiting redevelopment. The subject property is the only residentially zoned lot remaining on Dennis Drive, but it has not been used for residential land use for more than 20 years.
 - c. Historic land use decisions and previously adopted Comprehensive Plans have collectively encouraged a higher intensity of land use and a commercial character for the area to the point where the existing single-family residential zoning is no longer compatible or desirable in this location.
 - d. The depth of commercial land use and zoning along the west side of Nicholasville Road is approximately 225 to 275 feet within the immediate area. The proposed rezoning would be consistent with the existing land use pattern in the area.
2. This recommendation is made subject to the approval and certification of PLN-MJDP-17-00104: Bella Vista Subdivision, Lot 6, 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 VARIANCE**

1. To reduce side yard (west) from 12 feet to 5 feet. Staff will report at the meeting.

c. **PLN-MJDP-17-00104: BELLA VISTA SUBDIVISION, LOT 6 (12/31/17)*** - located at 101 Dennis Drive.
(Vision Engineering)

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. Resolve timing of resolution of plated building line conflict with B-1 zone requirements.
6. Relocate proposed building to meet the required side yard setback per Art. 15-3 and delete note #10.
7. Resolve access to adjacent lot (2413 Nicholasville Road) at final development plan.

Staff Zoning Presentation – Ms. Wade presented the staff report and recommendations for the zone change. She displayed photographs of the subject property and aerial photographs of the general area. She said the subject property is currently a vacant gravel parking lot and has been used in that manner for the past 20 years.

Ms. Wade said that the applicant is proposing to develop a use that is compatible with the adjoining offices and commercial uses along Dennis Drive. She said that the corollary development plan depicts a small retail establishment of about 2,000 square-foot and off-street parking spaces. She said the applicant states that this rezoning is speculative in nature and there is no user at this time.

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

Ms. Wade said the staff reviewed the Goals & Objectives of the 2013 Comprehensive Plan; but ultimately found that the proposed zone is appropriate and current zone is no longer appropriate. She said the proposed zone is compatible with the adjacent zones and the existing uses in the vicinity. She said that the staff and the Zoning Committee both recommended approval.

Development Plan Presentation – Ms. Galt presented a rendering of the preliminary development plan associated with the zone change. She said that the development plan depicts access from Dennis Drive and in the rear of the subject property there is a connection through a lot to Nicholasville Road. She said that the plan shows a proposed building on the property and the building setback that is required between the B-1 and the P-1 zones. She said that there are a few sign-off conditions, and that the applicant will need to submit a final development plan. She stated that a final record plat has been recorded with the County Clerk with a 40' building line setback. The minimum and maximum setback will change with the zone change. She said the proposed building is over the recorded setback line and the applicant will need to submit an amended plat to revise that setback in conformance with the B-1 zone. She said that the required side yard between the two zones could be resolved by relocating the building. She also said the staff would like to delete condition #10 and resolve the access to the adjacent property on Nicholasville Road at the time of the final development plan.

Variance Presentation – Ms. Wade presented the updated staff report for the requested variance for a portion of the subject property. She said the applicant is requesting to reduce the side yard setback, from the required 12' to 5' along the western side of the subject property. She said that the B-1 zone doesn't have a side yard setback, but according to Article 15-3 of the Zoning Ordinance, which states that when a more restrictive zone is adjacent to the property line, the side or rear yard must match that of the more restrictive zone, which is the P-1 zone.

Ms. Wade said that there is a 10' utility easement along the eastern side of the subject property, which is being used as a landscape area, as well as the drive aisle, and has caused the applicant to use other side of the property as the buildable area. She said that there is also a utility easement along the rear of the property but that doesn't affect the buildable area depicted on the development plan. She said that staff cannot identify any special circumstances, that there isn't any unique situation for this property that would allow for this dimensional variance. She said that the user is unknown, at this time, and the staff believes that it is premature to ask for a variance for the size of the building on the subject property and that the Board of Adjustment should consider a variance at a later time. She stated that the staff is recommending postponement at this time.

Commission Question – Mr. Owens asked if the current access to the subject is where the driveway is. Ms. Wade replied that access is located at the center of the property. He also asked if the setback on right is similar. Ms. Wade replied that the B-1 zone doesn't have a required side yard or a rear yard setback, so that the building could be located along the property line on that side of the property.

Mr. Wilson asked for clarification that this should go to the Board of Adjustment before the Planning Commission. Ms. Wade said that the applicant has the ability to ask the Planning Commission to consider variances and conditional uses along with their zones changes. She stated the staff prefers not to approve variances when the user is unknown.

Applicant Presentation – Mr. Murphy, attorney representing the petitioner, replied to Mr. Owens question, that access to the property is located in the middle and the frontage is entirely open. He said that this property is surrounded by commercially zoned properties and that this is the last remaining lot on Dennis Dr. that is residentially zoned. He displayed photos of the surrounding businesses. He said that as Ms. Wade stated, this zone change will permit the depth of retail as other commercial uses that currently exist along Nicholasville Rd. and that it is highly unlikely that this property will ever be developed as a single family, detached residential use. He said that they believe the request is in agreement with the 2013 Comprehensive Plan, regarding infill objectives, as well as the goals and objectives that were just passed last week, for developing parcels to a higher density along corridors. He also stated that the present zone is inappropriate and the proposed zone is appropriate.

Mr. Murphy said that the variance is needed on this property. He said that the owner is planning ahead for a future user, so that potential users will know what they have before they purchase the lot. He said that there are a few concerns with this property, but the main concern is the 10' utility easement on the side of the property and also the required driveway. He displayed photos of the utility poles on and off the subject property. Another concern is the potential driveway access next to a day care and the applicant wants to avoid traffic near that daycare, which is why they want to locate the building on the west side of the property. He said that the Zoning Ordinance requires them to build the building close to the street there must be a two-way 24' driveway. He said that the driveway is near the utility easement and OSHA requires all scaffolding must be 15' away from a 3-phase electrical line. He referred to the development plan associated with this zone change depicting the location of the building. He said that the 10-foot easement comes with 29-feet of unbuildable land because of OSHA rules, which is why they are requesting the variance. He said that there is a fixed access point into the shopping center for other access instead of Nicholasville Rd, which will remain.

Commission Question – Mr. Cravens asked if moving the driveway would alter the parking lot configuration. Mr. Carter, engineer, said that it will make it more difficult to design the parking lot.

Mr. Penn asked what would be the size of the building. Mr. Murphy said the development plan depicts a 1,950 sq. ft. building. Mr. Penn said that the applicant is requesting a variance before the use is known and is it possible that the building could be larger on the final development plan. Mr. Murphy said that it could be, but that it would need to be approved by the Planning Commission. Mr. Penn said that he is concerned the development plan is more than a sketch because of the variance. Mr. Murphy said the development plan is very precise, but lacks the end user.

Mr. Berkley said that staff is recommending averaging provision if Article 15 is employed and would that mean that less of the variance would be needed. Mr. Murphy said that averaging would allow them to move the building back from one area but will need to be made up in other areas. He said that it isn't an averaging of the two side yards.

Citizen Comment – Tim Chinn, 103 Dennis Dr., owner of the adjacent daycare property, stated his concerns about security and liability issues, and the need to install lighting between the two buildings. He believes that this property should be rezoned to the P-1 zone, which is what most of Dennis Dr. is zoned. He is also concerned about the variance, the amount of the setback allowed will allow the proposed building to be closer to his existing building. He said that the required 12' setback is agreeable with him. He said that his building will no longer be seen from Nicholasville Rd. which may affect his business. He would prefer the building line be 20' from the property line so that his building could be seen.

Commission Question – Ms. Mundy asked if the variance was along the drive aisle between the two buildings, which will provide Mr. Chinn some extra space. Mr. Chinn said that he had his property recently surveyed, and that property line is within 6" from the driveway.

Mr. Berkley said that if the building is relocated, the driveway would then be on Mr. Chinn's side of the property, which would increase the traffic near the daycare. Mr. Chinn stated that he could not comment at this time about that, since there is not a known user at this time. He said that he is concerned about children's safety and the separation of the two driveways would make him more comfortable. Mr. Berkley said that the driveway may be best on the right side of the subject property.

Petitioner Rebuttal - Mr. Murphy distributed potential findings for approval, which are as follows:

Proposed Findings and Conclusions approving variance to reduce the side yard (west) setback from 12 feet to 5 feet at 101 Dennis Drive.

Based upon the evidence presented to us, the Planning Commission does hereby approve a variance from 12 feet to 5 feet for the west side yard at 101 Dennis Drive for the following reasons:

1. Granting this variance 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 because it will allow separation of the daycare driveway from the business driveway and allow better spacing along Dennis Drive. It will allow a reasonably sized building to be constructed on the property.
2. Granting this variance will not allow an unreasonable circumvention of the requirements on the Zoning Ordinance because the need for the variance arises from the existence of a 10-foot utility easement along the east side of this property and the need for spacing of the driveways. Due to OSHA regulations, approximately 24 or 25 feet cannot be built upon along the east property line where the electric line is located. The combination of the space needed for the electric line, plus the fact that the property narrows as it goes to the back, leave very limited space for construction of a reasonable commercial building.
3. The special circumstances which apply to this property and which do not generally apply to the land in the general vicinity or in the same zone are the existence of the utility easement on the east property line which would prevent the building from being far enough to the east to allow a two-way driveway to be constructed on the west. Also, it will allow separation of the business driveway from the daycare driveway. In addition, the property narrows as it goes back.
4. Strict application of the regulations of the Zoning Ordinance would deprive the applicant of a reasonable use of its land or create an unnecessary hardship because a one-way driveway to the rear would not adequately serve the property, and it would create a situation which the driveway is next door to the daycare driveway. It would not allow a reasonably sized commercial building to be constructed on the lot.
5. The circumstances surrounding the requested variance are not the result of actions taken by this applicant subsequent to the regulation from which relief is sought. This property is now a vacant lot and the applicant is making this request before commencing any construction or activity on the property. The applicant purchased this property in 2015. The lot was created in 1958, as a residential lot.

Mr. Murphy said that the variance for the side yard setback of 12' only applies to the building, not to driveways. He said that, with or without the variance, their driveway could be as close as 3' to the day care driveway. He said the applicant is trying to avoid that by constructing the building there to create a barrier between the two driveways.

Mr. Murphy commented on Mr. Berkley's question on the size of the building; he said that they could only add another 200 square feet because of parking constraints. Mr. Penn asked if the use of the building would affect the parking. Mr. Murphy said that if a restaurant came in, it would require more parking, which would mean the building size would need to decrease.

Mr. Murphy replied to Mr. Chinn's setback comment that the applicant is following the requirements of the B-1 zone ordinance, which requires them to build close to the street and to have the parking behind the building. He believes it's best for the use of this property to use the area underneath the power lines as the two-lane driveway and the building near the daycare, which will prevent any driveway or parking near the daycare.

Citizen Rebuttal – There were no citizens rebuttal at this time.

Staff Rebuttal - Ms. Wade said the development plan conditions reflect the staff's recommendation to not approve the variance, but if it is approved by the Commission, condition #6, referring to Note #10 on the development plan, will need to be amended. The note states that "a variance to reduce the 12' to 5' is required for the building location to remain as shown." She said that the staff would rather the applicant meet the current ordinance and ask for the variance when there is a particular user for this site. She said if the Planning Commission approves the variance, this note will need to state that the Planning Commission approved the variance and today's date.

Commission Questions – Mr. Owens asked what kind of buffering will be required within the side yard. Ms. Wade replied that there is not a zone-to-zone screening requirement between the P-1 zone and the B-1 zone. Mr. Owens also asked what would be the possibility of this building being 2 stories. Ms. Wade said that the Zoning Ordinance would allow a 2-story building, but parking will most likely restrict it.

Mr. Berkley referred to the proposed 2018 Comprehensive Plan and the flexibility of the B-6P zone and asked why that wouldn't apply in the B-1 zone. Ms. Wade said the zones are different categories of uses and that it doesn't immediately transfer to the Zoning Ordinance and there is also a state law that requires the variance. She said that relaxing setbacks is something that can be applied for, however a variance is to address special circumstances or unique conditions.

Ms. Mundy also said the proposed 2018 Comprehensive Plan is reviewing the reduction of parking lot requirements. Ms. Wade said that small lots have more difficulty with parking because the parking isn't shared as it is in a shopping center.

Mr. Cravens asked if the adjacent P-1 property were to ask for a zone change, they wouldn't have a side yard setback, because it is equal to the zone beside it, which they could be right on the property line. He opined that Article 15-3 should be amended because as it is, it's whichever property owner gets there first. Ms. Wade said that section Zoning Ordinance could be reviewed to eliminate that from happening.

Ms. Plumlee verified that drive thrus are allowed in the B-1 zone. Ms. Wade said that they are allowed with the Planning Commission's approval of the development plan, otherwise it will be a conditional use.

Mr. Murphy stated that the property owner is planning to landscape the property.

Commission Discussion – Mr. Wilson clarified that if the Commission were to abide the staff's recommendations of postponement then the conditions that have been provided on the development plan would stand, but if the Commission votes in favor of the variance, a change is needed to condition #6 of the development plan.

Mr. Penn believes the variance is premature and can be requested at the time of the development plan, when there will be a specific user.

Mr. Owens believe that the Planning Commission needs more information on the variance. He also believes that fencing should be more important than landscaping, at this time.

Mr. Wilson asked Ms. Tracy Jones if the applicant's proposed findings and conclusions have been reviewed. Ms. Jones said that staff doesn't agree with finding #4 because strictly applying the Zoning Ordinance would not deprive the applicant a reasonable use of this property.

Zoning Action – A motion was made by Mr. Cravens, seconded by Mr. Forester, and carried 10-0 (Brewer absent) to approve PLN-MAR-17-00038; WILLSTONE, LLC, for the reasons provided by the staff.

Requested Variance Action – A motion was made by Mr. Cravens, seconded by Mr. Berkley, carried 6-4 (Bell, Owens, Plumlee and Wilson opposed; Brewer absent) to approve the requested variance, for the reasons provided by the applicant, with the deletion of finding #4. The Findings and Conclusions are approved as follows:

Based upon the evidence presented to us, the Planning Commission does hereby approve a variance from 12 feet to 5 feet for the west side yard at 101 Dennis Drive for the following reasons:

1. Granting this variance 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 because it will allow separation of the daycare driveway from the business driveway and allow better spacing along Dennis Drive. It will allow a reasonably sized building to be constructed on the property.
2. Granting this variance will not allow an unreasonable circumvention of the requirements on the Zoning Ordinance because the need for the variance arises from the existence of a 10-foot utility easement along the east side of this property and the need for spacing of the driveways. Due to OSHA regulations, approximately 24 or 25 feet cannot be built upon along the east property line where the electric line is located. The combination of the space needed for the electric line, plus the fact that the property narrows as it goes to the back, leave very limited space for construction of a reasonable commercial building.
3. The special circumstances which apply to this property and which do not generally apply to the land in the general vicinity or in the same zone are the existence of the utility easement on the east property line which would prevent the building from being far enough to the east to allow a two-way driveway to be constructed on the west. Also, it will allow separation of the business driveway from the daycare driveway. In addition, the property narrows as it goes back.
4. ~~Strict application of the regulations of the Zoning Ordinance would deprive the applicant of a reasonable use of its land or create an unnecessary hardship because a one-way driveway to the rear would not adequately serve the property, and it would create a situation which the driveway is next door to the daycare driveway. It would not allow a reasonably sized commercial building to be constructed on the lot.~~
5. The circumstances surrounding the requested variance are not the result of actions taken by this applicant subsequent to the regulation from which relief is sought. This property is now a vacant lot and the applicant is making this request before commencing any construction or activity on the property. The applicant purchased this property in 2015. The lot was created in 1958, as a residential lot.

Development Plan Action – A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 8-1 (Plumlee opposed; Penn abstained; Berkley absent) to approve PLN-MJDP-17-00104: BELLA VISTA SUBDIVISION, LOT 6, with the conditions provided by the staff, changing condition #6, as follows:

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. Resolve timing of resolution of plated building line conflict with B-1 zone requirements.
6. ~~Relocate proposed building to meet the required side yard setback per Art. 15-3 and delete note #10.~~ Denote approval of variance by the Planning Commission.
7. Resolve access to adjacent lot (2413 Nicholasville Road) at final development plan.

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