

6. COWGILL PARTNERS, LP ZONING MAP AMENDMENT & YELLMAN'S SUBDIVISION

- a. PLN-MAR-16-00019: COWGILL PARTNERS, LP (1/29/17)* – petition for a zone map amendment from Light Industrial (I-1) zone to a High Rise Apartment (R-5) zone, for 1.49 net (1.78 gross) acres, and from a Neighborhood Business (B-1) zone to a High Rise Apartment (R-5) zone, for 0.24 net (0.27 gross) acres, for properties located at 339, 341, 345, and 349 Blackburn Avenue and adjacent former railroad right-of-way.

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.

In addition to the Comprehensive Plan mission statement, the Goals and Objectives of the Plan also encourage growing successful neighborhoods (Theme A), creating jobs and prosperity (Theme C) and maintaining a balance between planning for urban uses and safeguarding rural land (Theme E).

The subject properties are located within the boundary of the *Central Sector Small Area Plan*, the *Downtown Lexington Masterplan* and the *Fourth Street Zoning Study*. Each document suggests further intensification of the near downtown neighborhoods through infill development, where possible; increasing residential density; and encouraging the redevelopment of underutilized properties.

The petitioner proposes to rezone the properties to the R-5 zone in order to construct a multi-family residential building with 72 dwelling units, a density of 41.62 dwelling units per acre, and associated off-street parking. Dimensional variances are also requested in association with the zone change.

The Zoning Committee Recommended: Approval.

The Staff Recommends: Approval, for the following reasons:

1. The proposed High Rise Apartment (R-5) zone is in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. Theme A "Growing Successful Neighborhoods" recommends expanding housing choices, with emphasis on mixed-use and higher density development in certain situations to address a variety of community needs (Goals #1b. and #1d.). It also recommends supporting infill and redevelopment as a strategic component of growth, with focus on context sensitive design (Goal #2a.), and providing well-designed neighborhoods through mixed use and multi-type housing, and multi-modal transportation connections (Goals #3a. and #3b.).
 - b. The petitioners proposed zone change will enable redevelopment of an industrial site in the near downtown Northside neighborhood, very close the West Fourth Street corridor between Newtown Pike and Jefferson Street. The petitioner's proposed project will provide additional housing options for the area Newtown Pike corridor in a context-sensitive manner, while offering multi-modal transportation connections (vehicular, bicycle, pedestrian and transit) to the urban core as well as Transylvania University and the BCTC Campus.
 - c. Theme C "Creating Jobs and Prosperity" encourages locating jobs where people live (Goal #, and vice versa, making it easier for citizens to get to employment centers and reduce congestion in the process. The petitioner's proposed project is situated between the BCTC Campus, Transylvania University and downtown, thus an opportunity exists to provide high density housing near existing jobs and higher education.
 - d. Theme E "Maintaining a Balance between Planning for Urban Uses and Safeguarding Rural Land" also encourages the utilization of underutilized land to uphold the Urban Service Area concept (Goal #1a.) and building in a compact, contiguous, and/or sustainable manner (Goal #1b). The petitioner is redeveloping an underutilized industrial site along West Fourth Street, which has been identified as a focus area for redevelopment in several supporting plans, thus fulfilling the intent of the Comprehensive Plan.
2. The subject properties are located within the boundary of the Central Sector Small Area Plan, adopted by the Planning Commission in 2009. The SAP identifies the Fourth Street corridor west of Jefferson Street as a focus area to better connect the new BCTC campus to Transylvania University.
3. The *Downtown Lexington Masterplan* recommends maximizing residential density of vacant sites (Recommendation #6), and this proposal furthers that recommendation.
4. The *Fourth Street Zoning Study* identifies the subject properties as part of a focus area, where an urban mixed-use zone should be created, which is a recommendation that is consistent with the *Central Sector Small Area Plan*. The *Study* also described an "opportunity district" for mid-density residential or mid-low density mixed-use development which could create a transition from more intense uses to single-family residences. The proposed R-5 zone will create a higher density and intensity along the West Fourth Street corridor to create a more urban environment, and

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which will act as a step down in land use (transition) between the more intense uses to the west and north and the single-family residences and church along Blackburn Avenue.

5. This recommendation is made subject to approval and certification of PLN-MJDP-16-00045: Yellman's Subdivision (Blackburn Avenue), 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. Increase the maximum height from a 4:1 height-to-yard ratio to 50'
2. Reduce the minimum front yard from 20' to 5' along Blackburn Avenue
3. Reduce the minimum side yard from 10' to 5'
4. Reduce the minimum open space from 20% to 15%

The Staff Recommends: Postponement of the requested front yard variance from 20' to 5', and for a reduction of required open space from 20% to 15%, for the following reasons:

- a. The open space areas proposed are not defined as to their purpose or usability, which is needed prior to a substantive recommendation on the granting of a variance to this minimum requirement of the R-5 zone.
- b. The proposed building near the corner of West Fourth Street and Blackburn Avenue might be able to provide some balconies or a small rooftop area, which could permit the development to meet the minimum 20% requirement for useable open space. Required open space also provides room for the 30% required tree canopy for the site.
- c. The new Building, as proposed, can be redesigned on the site to meet a 10' front yard along Blackburn Avenue.

The Staff Recommends: Approval of a height variance to 50', and approval of the requested side yard variance from 10' to 5', for the following reasons:

- a. There will be no adverse health, safety or welfare impact to the adjoining neighborhood from these variances. The height variance is reasonable, given the applicant's hope to maximize the provision of off-street parking for their 72-unit development.
- b. The unusual circumstance surrounding the proposed R-5 property is that it is bordered by an open space parcel, formerly a railroad spur, now controlled by Transylvania University. That open space lot requires no meaningful separation from the proposed residential building on the subject site.
- c. Strict application of the Zoning Ordinance would deprive the applicant from a reasonable use of this formerly industrial site, since the former railroad spur separating this location from West Fourth Street results in a much greater setback from the street. The applicant believes that this project is infeasible without the granting of these variances.
- d. Approval of these variances would not result in an unreasonable circumvention of the Zoning Ordinance, as the height and orientation of this building will not be unlike the Blue Grass Grain building located one block to the west of this location on Henry Street.
- e. The variances have been requested prior to construction and development of the property, and thus, there is no willful violation of any existing zoning regulation by the applicant.

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

1. Provided the Urban County Council rezones the property R-5; 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, 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 parking lot shall be screened and landscaped as required by Article 18 of the Zoning Ordinance.
- c. PLN-MJDP-16-00045: YELLMAN'S SUBDIVISION (BLACKBURN AVENUE) (1/29/17)* - 341 Blackburn Avenue.
(Carman & Associates)

The Subdivision Committee Recommended: Postponement. There were some questions regarding the required building setbacks, compliance with the minimum open space and Article 18 landscaping requirements.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property R-5; 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. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Addition of total square footage of the proposed building.
7. Denote number of stories and proposed height of building in feet.
8. Delete note #12.
9. Provided the Planning Commission grants the requested variances.

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10. Document how the proposed open space is being provided on site.
11. Discuss conceptual storm water detention and water quality measures.
12. Discuss compliance with Article 18 requirements.
13. Discuss proposed floor area ratio.
14. Discuss compliance with Fourth Street Study recommendations.

Staff Zoning Presentation – Ms. Wade presented and summarized the staff report on this zone change. She displayed aerial photographs of the subject property.

Commission Comments – There was a question regarding the justification to do away with the Light Industrial (I-1) land. Ms. Wade replied that the I-1 zone is not as desirable near a single family residential neighborhood. She said that near the downtown area, a mixture of commercial, office, and residential is encouraged. There was a comment that the railroad access to this community is no longer available to benefit the industrial land.

Development Plan Presentation – Mr. Martin presented a rendering and the updated staff report on this development plan, which was displayed and handed out to the Commission with these conditions, as follows:

The Staff Recommends: **Approval**, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property R-5; 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. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Delete note #12.
7. Provided the Planning Commission grants the requested variances, or revise the plan accordingly.
8. Document how the proposed open space is being provided on site, prior to certification.
9. Denote that planned storm water detention and water quality measures shall be determined at the time of the Final Development Plan.
10. Demonstrate compliance with Article 18 requirements prior to certification.
11. Denote floor area ratio in the site statistics.
12. Denote that compliance with Fourth Street Study recommendations shall be determined at the time of the Final Development Plan.

He said that there are four variance associated with the property that have a significant impact; a height, front yard, side yard, and an open space. He said that one condition needs to be documented of how the applicant plans to meet the open space requirement.

Dimensional Variance – Mr. Sallee presented the staff report on the requested variances for this development, which was handed out to the Commission with the staff's revised recommendation, as follows:

The Staff Recommends: **Postponement Disapproval of the requested front yard variance from 20' to 5', and for a reduction of required open space from 20% to 15%**, for the following reasons:

- a. The open space areas proposed are not defined as to their purpose or usability, which is needed prior to a substantive recommendation on the granting of a variance to this minimum requirement of the R-5 zone.
- b. The proposed building near the corner of West Fourth Street and Blackburn Avenue might be able to provide some balconies or a small rooftop area, which could permit the development to meet the minimum 20% requirement for useable open space. Required open space also provides room for the 30% required tree canopy for the site.
- c. The new Building, as proposed, can be redesigned on the site to meet a 10' front yard along Blackburn Avenue.

The Staff Recommends: **Approval of a height variance to 50', approval of a front yard variance from 20' to 10', and approval of the requested side yard variance from 10' to 5'**, for the following reasons:

- a. There will be no adverse health, safety or welfare impact to the adjoining neighborhood from these variances. The height variance is reasonable, given the applicant's hope to maximize the provision of off-street parking for their 72-unit development.
- b. The unusual circumstance surrounding the proposed R-5 property is that it is bordered by an open space parcel, formerly a railroad spur, now controlled by Transylvania University. That open space lot requires no meaningful separation from the proposed residential building on the subject site.
- c. Strict application of the Zoning Ordinance would deprive the applicant from a reasonable use of this formerly industrial site, since the former railroad spur separating this location from West Fourth Street results in a much greater setback from the street. The applicant believes that this project is infeasible without the granting of these variances.

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- d. Approval of these variances would not result in an unreasonable circumvention of the Zoning Ordinance, as the height and orientation of this building will not be unlike the Blue Grass Grain building located one block to the west of this location on Henry Street.
- e. The variances have been requested prior to construction and development of the property, and thus, there is no willful violation of any existing zoning regulation by the applicant.

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

1. Provided the Urban County Council rezones the property R-5; 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, 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 parking lot shall be screened and landscaped as required by Article 18 of the Zoning Ordinance.

Mr. Sallee said that the required open space area could also provide room for the minimum tree canopy coverage for the development.

Commission Comments – There were comments regarding the open space and the amount required to obtain approval from the staff.

Petitioner Presentation – Jacob Walbourn, attorney, was present representing the petitioner. He said that the applicant is in agreement with the staff's recommendations. He believes that the open space is not vitally necessary because of the provided tangible amenities; pool, outdoor grill space, etc. Their site is located a block and half away from Coolavin Park, which contains three bicycle polo courts. He also said that the Legacy Trail is set to come down West Fourth Street in the future.

Commission Comments – There were comments regarding open space and the tree canopy requirement may not be reached. There was a question regarding the Legacy Trail and its location. Mr. Walbourn said that currently there are two proposed areas that the trail could be built on; one of them is on Third St. and the other is on Fourth St. There was also a question of who maintains the strip of land near Transylvania University and if the opportunity to purchase it has ever been discussed. Mr. Walbourn said that the University does maintain it and that it has been discussed to purchase, which is highly unlikely.

The following citizens were present in opposition to this application:

Faith Harders, 539 West Third St., commented on the Fourth Street Study that was completed in 2014, is appropriate and the Central Small Sector Area Plan. She displayed photos and said that Blackburn Avenue currently acts like a one lane two way street, there is parking on both sides of the street. She believes that this is too high density for this area.

Marlee Bauman, 550 West Third St., she has concerns regarding how protecting the environment would be incorporated into this plan. She also asked when the subject was last up for sale.

Barbara Grossman, 321 Blackburn Ave., she said that this property is currently used for parking for Transylvania events. She also stated that this is a one lane, two way road. She has concerns has parking on the street and of this property being turned over to BCTC as student housing. She also asked if the property at 333 Blackburn Avenue has already been purchased by the Cowgill's.

Mark Klar, 321 Blackburn Ave., distributed a handout of a map and displayed photos. He said that he believes this zone change is inappropriate for this neighborhood. He also agreed that the Fourth Street Study is appropriate and that the mixed-use and low to medium density housing will be more suitable. He submitted petitions to the Planning Commission.

Petitioner Rebuttal – Mr. Walbourn said that Mr. Cowgill is intending to purchase the two vacant adjacent to the subject property, but they are not included in this zone change. He said that there are no current plans for this to become student housing. He said that the Technical Committee had discussed making Blackburn Avenue a "No Parking" on the side of the applicant's. He commented on protecting the environment that not every element of the Comprehensive Plan is met on every development. He said that there are guideline and requirements that need to be met. He said that this property was purchased in 2013 as I-1. He clarified that open space is not open community oriented space; it's designed to serve the residents of the particular development.

Citizen Rebuttal – Mr. Klar said the Transylvania athletic field is not open space. Ms. Harders stated that the warehouse was once a fertilizer plant/storage space and is concerned that the property may be contaminated. She also said that parking can't be limited to one side on Blackburn Ave. because many residents don't have off-street parking.

Staff Rebuttal – Ms. Wade explained that the Fourth Street Study identified the following for this district:

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1. Adaptive re-use of industrial properties where relevant
2. Mid-Low density Mixed-Use
3. Mid-Density residential, may involve Infill & Redevelopment Guidelines

Ms. Wade said the Planning Commission has not adopted the Fourth Street Study; it is advisory to the staff.

Mr. Sallee said the staff is agreeable to permit balconies as open space on the top three levels of the building. He said that the environmental issues mentioned by the citizens will be reviewed for compliance at the time of a Final Development Plan.

Ms. Kaucher, Division of Traffic Engineering, said that the on-street parking conditions were discussed at the Technical Committee, as was the planned trail near this proposed property. She believed that the on street parking should be provided.

Commission Comments – There was a question of how to address the parking issue at this time. Ms. Kaucher replied that there could be a right-of-way dedication along the frontage of Blackburn Avenue. There was concern that if the right-of-way is dedicated would that effect the open space. Ms. Kaucher said that it would affect the open space but the parking is needed for residents and guests. There was another question of how many spaces could be provided along this frontage. Ms. Kaucher replied that it would 10-15 additional parking spaces.

Mr. Walbourn said that the applicant is not opposed to the right-of-way dedication on Blackburn but doing so will cost them to lose 20 parking spaces within the development.

Zoning Action – A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 8-0 (Brewer, Drake, and Richardson absent) to approve PLN-MAR-16-00019: COWGILL PARTNERS, LP, for the reasons provided by the staff.

Development Plan Action – A motion was made by Mr. Cravens, seconded by Mr. Penn, carried 8-0 (Brewer, Drake, and Richardson absent) to approve PLN-MJDP-16-00045: YELLMAN'S SUBDIVISION (BLACKBURN AVENUE), for the reasons provided by the staff.

Requested Variance Action – A motion was made by Mr. Cravens, seconded by Ms. Mundy, carried 7-1 (Berkley opposed; Brewer, Drake, and Richardson) to approve three of the four requested variances, for the revised reasons, and as recommended by the staff.

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