

**8. WEBB/LEXINGTON VENTURE – 108, LTD ZONING MAP AMENDMENT & JOE MONTGOMERY PROPERTY (AMD)**

- a. PLN-MAR-16-00024: WEBB/LEXINGTON VENTURE – 108, LTD (1/29/17)\* – petition for a zone map amendment from a Professional Office (P-1) zone to a Planned Shopping Center (B-6P) zone, for 0.27 net (0.42 gross) acres, for a portion of property located at 3735 Palomar Centre 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 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 Plan's Goals and Objectives emphasize the importance of growing successful neighborhoods (Theme A), protecting the environment (Theme B), creating jobs and prosperity (Theme C), improving a desirable community (Theme D) and maintaining a balance between planning for urban uses and safeguarding rural land (Theme E).

The petitioner proposes rezoning a portion of the existing Palomar Shopping Center parcel in order permit a restaurant (coffee shop) with accessory drive-through facilities and off-street parking in what is currently a portion of one of the shopping center's detention basins.

**The Zoning Committee Recommended: Approval.**

**The Staff Recommends: Approval, for the following reason:**

1. The requested Planned Neighborhood Shopping Center (B-6P) zone is appropriate, and the existing Professional Office (P-1) zone is inappropriate for the subject property, for the following reasons:
  - a. The site is split-zoned, with only about ¼ of an acre located within a Professional Office zone. Split-zoned lots can create a hardship for a property owner and inhibit appropriate infill and redevelopment.
  - b. The demand for professional office land use is being met on along Palomar Centre Drive to the north and along Wellington Way to the north and west of the subject property, within the general area.
  - c. The proposed B-6P zone is appropriate in that the detention basin is part of the larger shopping center parcel and is a facility that supports the entire Palomar Shopping Center.
  - d. The B-6P zone is compatible with adjoining land uses and zoning, which include numerous other restaurants, banks, retail sales establishments, a grocery store, a gas station, and other typical land uses found in typical shopping centers.
2. This recommendation is made subject to approval and certification of PLN-MJDP-16-00052: Joe Montgomery Property (Palomar Centre) (Amd #19) 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. Reduce the minimum perimeter yard from 50' to 15'

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

1. The applicant has not provided a justification (required under KRS 100. 243) for their request for a dimensional variance for this new land use. Such documentation is needed prior to a substantive recommendation by the staff.
- c. PLN-MJDP-16-00052: JOE MONTGOMERY PROPERTY (AMD) (1/29/17)\* - located at 3735 Palomar Centre Drive.  
**(GRW)**

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

1. Provided the Urban County Council rezones the property B-6P; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
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. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote name and address of developer.
7. Denote record plat designation.
8. Clarify adjacent property information (eliminate duplication).
9. Denote construction access location on plan.
10. Dimension building's new restaurant parking lot and parking typical spaces.

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

11. Denote height of new restaurant building in feet.
12. Complete note #5 to reference "Chapter 16 of the Code of Ordinance".
13. Correct Planning Commission certification to major.
14. Correct total square footage in B-6P area.
15. Correct notes #1, #3 & #4.
16. Resolve note #14 under general notes and notes "E" & "H" under conditional zoning restrictions (in reference to the maximum allowable square footage of 132,000).
17. Resolve plan status for property being rezoned (Preliminary vs. Final).
18. Resolve location or transit service stop on Palomar Centre Drive on the Final Development Plan

Staff Zoning Presentation – Ms. Wade presented and summarized the staff report and recommendations on the proposed zone change. She displayed some photographs of the subject property. She stated that this parcel is currently a detention basin for the shopping center and the applicant will make the lot developable.

Commission Comments – There was a question regarding whether or not the building will have a drive-thru facility. Ms. Wade replied that the building will have a drive-thru.

Development Plan Presentation – Ms. Gallt presented the updated staff report on this development plan, which was handed out to the Commission with 9 conditions, as follows:

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

1. Provided the Urban County Council rezones the property B-6P; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
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. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote the submittal of Geo-tech Report to the Division of Engineering, Planning & Environmental Quality, prior to certification.
7. Correct total square footage in B-6P "shopping center" area site statistics to reduce by 2,813 sq. ft and add coffee shop GFA and parking in B-6P outlot parcel statistics.
8. Remove "19<sup>th</sup>" from the title of this amended (Preliminary) Development Plan.
9. Label relocated transit service stop on Palomar Centre Drive.

Ms. Gallt said that the applicant will be placing the detention underground. She also stated that there is a remediated sinkhole near the edge of the parking lot, which is also identified on the development plan.

Dimensional Variance – Mr. Sallee presented the revised staff report on the variance requested for this development, and he discussed the requested variance to reduce the perimeter yard from 50' to 15'.

The Staff Recommends: Approval of the requested variance, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. The variance is requested to keep the proposed building out of a formerly environmentally sensitive area on the subject property.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance because the new coffee shop building is designed to be 15' off the side property line, which is not unlike those found around town in other commercial zones. The distance from the nearest commercial building will still be over 90' away, even if this variance is granted.
- c. The special circumstance that applies to this property that does not generally apply to most parcels in the general vicinity or in a B-6P zone is the location of the previously mitigated sinkhole area on the subject property immediately south of the proposed coffee shop building. It is prudent to keep any new commercial building out of an area that formerly was a sinkhole, even though it has been remediated in the past.
- d. Strict application of the requirements of the Zoning Ordinance would not only require the new building to be constructed over or adjacent to the former sinkhole area, but would create an unnecessary financial hardship to the applicant, due to added construction costs, and depriving the applicant of a reasonable use of the property.
- e. Although the circumstances surrounding the requested variance are associated with the proposed zone change, the variance is requested in an effort to accomplish an efficient site design and place the new coffee shop in a more appropriate location on the subject property. No development has commenced on the property, and the need for the variance was recognized during the pre-application conference for this zone change request.

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

1. Provided the Urban County Council rezones the property B-6P; 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 setback variance that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].

Commission Comments – There was a question regarding if the mitigation of the sinkhole was completed in the first rezoning of the subject property. Mr. Sallee said that he believed it had been completed in between the original development of the shopping center and the present time. There was another question concerning the required landscaping between the drive-thru and the bank adjacent to the property. Mr. Sallee replied that there is room and there is such a requirement.

Petitioner Presentation – Bruce Simpson, attorney, was present representing the petitioner. He said that the applicant is in agreement with the staff's recommendations.

Citizen Comments – There were no citizens present to comment on this application.

Zoning Action – A motion was made by Mr. Berkley, seconded by Mr. Penn, and carried 8-0 (Brewer, Drake, and Richardson absent) to approve PLN-MAR-16-00024: WEBB/LEXINGTON VENTURE – 108, LTD, for the reasons provided by the staff.

Requested Variance Action – A motion was made by Mr. Berkley, seconded by Mr. Penn, and carried 8-0 (Brewer, Drake, and Richardson absent) to approve the requested variances for the reasons provided by the staff, with the three conditions recommended by staff.

Development Plan Action – A motion was made by Mr. Berkley, seconded by Mr. Penn, and carried 8-0 (Brewer, Drake, and Richardson absent) to approve PLN-MJDP-16-00052: JOE MONTGOMERY PROPERTY (AMD), for the revised conditions provided by the staff.

