

- a. MARV 2013-11: 562 SHORT STREET, LLC (6/30/13)* – petition for a zone map amendment from a High Density Apartment (R-4) zone to a Lexington Center Business (B-2B) zone, for 0.137 net (0.205 gross) acre, for property located at 562 West Short Street. A dimensional variance is also requested.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 1) recommends Downtown Mixed Use future land use for the subject property, as it is within the designated Downtown Master Plan (DTMP) Area. This area has an underlying recommendation of Medium Density Residential (MD) land use from the 2001 Comprehensive Plan. The petitioner has requested a Downtown Center Business (B-2B) zone in order to renovate the existing residential structure for commercial uses – possibly offices or retail shops.

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

The Staff Recommended: Approval, for the following reasons:

1. The requested Lexington Center Business (B-2B) zone is in agreement with the 2007 Comprehensive Plan and the *Downtown Masterplan*, for the following reasons:
 - a. The *Masterplan* identifies the west side of West Short Street as a mixed-use area that should be expanded to include a wider range of uses with the "goal of creating a vibrant active corridor connecting the surrounding neighborhoods."
 - b. The *Masterplan* calls for additional convenience retail and office uses in the Western Suburb precinct, which also includes part of Jefferson Street.
 - c. The proposed B-2B zone will allow a mixture of uses, including convenience retail and offices that are mostly appropriate in this urban environment.
2. The 2012 Goals and Objectives of the Comprehensive Plan are supportive of historic preservation and context-sensitive adaptive reuse/redevelopment. The petitioner's proposal to renovate the existing 2-story residential structure and provide space for small retail or offices is aligned with such goals (Goals A.3.a., D.3.a., and D.3.c.).
3. This recommendation is made subject to approval and certification of ZDP 2013-44: 562 Short Street, LLC, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

Prohibited Uses:

- a. Civic Center and convention facilities.
- b. Retail sale of plant, nursery or greenhouse products, or agricultural produce.
- c. Hotels or motels.
- d. Establishments for the display, rental or sale of automobiles, motorcycles, trucks, and boats.
- e. Amusement enterprises, such as circuses; carnivals; and horse or automobile racing.
- f. Outdoor live entertainment.

These restrictions are appropriate and necessary to ensure that any reuse of the property remains compatible in this established, historic neighborhood, given its location in such close proximity to existing dwellings.

b. REQUESTED VARIANCE

- a. Reduce the zone-to-zone perimeter screening requirements from 15 feet to 5 feet and eliminate the requirement for a 6-foot privacy fence or wall from the rear plane of the structure to the Short Street right-of-way.

The Zoning Committee made no recommendation on this request.

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

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, create a nuisance to the general public, nor alter the character of the general vicinity. The side lot lines of the subject property will be augmented with new landscaping material.
- b. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The granting of this variance will allow the applicant to adhere to the Division of Historic Preservation's Design Review Guidelines, while still providing landscape screening between this property and those it adjoins.
- c. The special circumstance that applies to the subject property, justifying the landscape variance, is its location between dwellings in one of the older local historic districts and an adjacent pay parking lot.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant because it would require the razing and relocation of part of the existing building, solely in order to comply with the 15' landscape screening requirements.
- e. The circumstances surrounding this request are not the direct result of actions taken by the applicant. The structure, fencing and lack of landscaping on this lot have existed in this fashion for decades.

* - Denotes date by which Commission must either approve or disapprove request.

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

1. Provided the Urban County Council rezones the property B-2B; otherwise, any Commission action of approval of this variance is null and void.
2. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
3. Prior to occupancy for any commercial use, the applicant shall obtain all applicable permits from State and local agencies, including the LFUCG Divisions of Building Inspection, Historic Preservation and Planning.
4. Trees, and other landscaping and/or shorter walls, shall be installed along this zoning boundary, in accordance with the requirements of the Division of Historic Preservation. This shall be accomplished prior to issuance of a Zoning Compliance Permit.

- c. ZDP 2013-44: 562 SHORT STREET, LLC (6/30/13)* - located at 562 West Short Street.
(EA Partners)

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

1. Provided the Urban County Council rezones the property B-2B; 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. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Addition of building dimensions.
8. Clarify status of gravel and paved areas.
9. Denote proposed uses on plan.
10. Remove garage from plan.
11. Resolve zone-to-zone and vehicular use area screening and buffering.
12. Resolve adequacy of off-street parking for new use(s).

Citizen Comments: Bill Johnston, 645 West Short Street, stated that, as the president of the Western Suburb Neighborhood Association, he has had several conversations with the petitioner about this proposed rezoning. He said that the petitioner has agreed to the addition of a conditional zoning restriction to restrict bars and restaurants at this location. With that change, Mr. Johnston stated that he and the other members of the Western Suburb NA are now in agreement with this rezoning request.

Staff Comment: Mr. Sallee stated that this matter could then be considered in an abbreviated hearing.

Zoning Presentation: Ms. Wade entered into the record several opposition emails that the staff had received from individuals in the neighborhood prior to the Planning Commission's May meeting, when this request was postponed. Mr. Johnston has since submitted a letter indicating their support for this request, and the staff has received a letter of support from the Bluegrass Trust for Historic Preservation, as well.

Ms. Wade stated that the subject property is located on the west side of West Short Street, and is surrounded on three sides by R-4 zoning. Referring to an aerial photograph of the area on the overhead projector, she noted an adjacent church property, as well as a property to the rear that is currently zoned B-2B. Also in the immediate vicinity are the Opera House Square townhouses and other residential uses along Short Street up to its intersection with Jefferson Street. Ms. Wade said that there is currently a house located on the subject property, which has been used for multiple purposes in the past. The petitioner is proposing to re-use the existing structure, which is included in the Historic Western Suburb H-1 overlay zone, for a commercial or office use. A detached garage has been removed from the rear of the property, and the petitioner is proposing to use that space to construct three parking spaces. Ms. Wade displayed a photograph of the subject property, noting the existing structure and the area of the demolition of the garage.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Downtown Master Plan (DTMP) land use. The Comprehensive Plan notes that redevelopment recommendations for this land use category are included in the DTMP itself; should the DTMP not be implemented in an area, the Commission should consider the 2001 Comprehensive Plan's Land Use element when evaluating a rezoning request. Ms. Wade said that the 2001 Comprehensive Plan recommends Medium Density land use for the subject property. The DTMP identifies the subject property as part of the Western Suburb, which is recommended for some infill and redevelopment, but the DTMP does not indicate which zones would be most appropriate to accomplish that redevelopment. The DTMP calls for additional Convenience, Retail, and Office uses in the area, which includes Jefferson Street. It identifies the west side of West Short Street as a mixed-use area that should be expanded to include a wider range of uses, with the goal of creating a vibrant, active corridor connecting the existing surrounding neighborhoods.

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Ms. Wade stated that the petitioner contends that the existing H-1 overlay zone provides some protection for the neighborhood, since any exterior changes to the subject property will need to be approved by the Board of Architectural Review. The petitioner also contends that the 2012 Comprehensive Plan Goals and Objectives are supportive of this type of redevelopment, particularly by providing adaptive reuse that is context and design sensitive; protecting and enhancing the cultural landscape that makes the Western Suburb neighborhood unique; and affecting further historic preservation efforts within that community. Ms. Wade stated that the staff opined, based on the DTMP recommendation and the Goals and Objectives, that more flexibility is suggested within the areas identified for mixed use, and the B-2B zone can achieve that flexibility. Since the Zoning Committee meeting three weeks ago, the petitioner has met with members of the neighborhood association, who were concerned that restaurants, cocktail lounges, and nightclubs could occupy this location. The petitioner has volunteered to prohibit those uses, in addition to the conditional zoning restrictions recommended by staff.

Ms. Wade said that the staff and the Zoning Committee are recommending approval of this request, with conditional zoning restrictions as recommended by the staff, and the additional restrictions as recently proposed by the petitioner for restaurants, cocktail lounges, and nightclubs.

Development Plan Presentation: Mr. Martin presented the corollary final development plan, noting that the staff had distributed revised conditions for approval prior to the start of the hearing on this item. He said that the development plan depicts the existing structure on the property, with a driveway and three parking spaces to be constructed at the rear of the property at the location of an existing garage, which is proposed to be removed. Mr. Martin stated that the staff is recommending approval, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-2B; 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. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
- ~~7. Addition of building dimensions.~~
- ~~8. Clarify status of gravel and paved areas.~~
- ~~7.9. Denote proposed uses on plan.~~
- ~~10. Remove garage from plan.~~
- 8.11. Resolve zone-to-zone and vehicular use area screening and buffering.
- ~~12. Resolve adequacy of off-street parking for new use(s).~~

The Subdivision Committee is also recommending approval of this plan. Mr. Martin stated that the conditions include denoting the proposed use of the property, and resolving the zone-to-zone and vehicular use area screening and buffering. Mr. Martin explained that, since the site is existing and developed, there was some concern about the buffering along the perimeter of the property, which will need to be resolved prior to certification of the plan.

Variance Presentation: Mr. Sallee presented the staff's variance report. Referring to an aerial photograph of the subject property, he said that, if the subject property is rezoned to B-2B, zone-to-zone screening will be required on each side property line. The subject lot is just over 65 feet in width, and the Ordinance requires a 15-foot landscape buffer where a business zone adjoins a residential zone. That buffer may be reduced to five feet when, in conjunction with the buffer, a six-foot tall or higher fence, wall, or earth mound is also constructed. Mr. Sallee said that the existing dwelling on the subject property is closer to the property line than five feet; in addition, the staff questioned the necessity of separating the vehicular use area, which is to serve the parking spaces, and the existing parking lot. The staff referred the petitioner to the Division of Historic Preservation, since the property is also in the Western Suburb Historic District. Upon consultation with the Historic Preservation staff, it was discovered that a six-foot-high fence between this structure and the adjoining residence, as well as between the driveway and the parking lot, would not likely meet the adopted Historic Preservation guidelines; that realization was the impetus for this request to the Planning Commission.

Mr. Sallee stated that the staff and the Landscape Review Committee have reviewed this request. The Committee did not have a quorum at that meeting, and the two members (of five) who were present did not agree on whether or not this variance should be granted. The staff believes that that the variance is justifiable, given that the subject property is located in an historic district; there is not sufficient minimum space to have a five-foot buffer; and six-foot fences are not typically constructed between residential structures in an historic district. Mr. Sallee stated that the staff is therefore recommending approval of the requested variances, for the reasons as listed in the staff report and on the agenda; knowing that the petitioner intends to plant trees along the landscape buffer, possibly along with other landscape material, which would need to be approved by the BOAR.

Petitioner Representation: Rory Kahly, EA Partners, was present representing the petitioner. He stated that the

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petitioner is in agreement with the staff's recommendations, including the conditional zoning restrictions. Mr. Kahly asked, with regard to condition #7, if the plan notes should include all of the allowable B-2B uses that were not included in the conditional zoning restrictions. Mr. Martin answered that, if the petitioner denotes the conditional zoning restrictions on the plan, the allowable uses would be implied.

Citizen Comments: No other citizens were present to speak to this request.

Zoning Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 9-0 (Brewer and Roche-Phillips absent) to approve MARV 2013-11, for the reasons provided by staff, subject to the conditional zoning restrictions as recommended by staff.

Variance Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 9-0 (Brewer and Roche-Phillips absent) to approve the requested variances, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 9-0 (Brewer and Roche-Phillips absent) to approve ZDP 2013-44, subject to the eight conditions as listed in the revised staff recommendation.