

**2. BLACK SOIL: OUR BETTER NATURE, LLC ZONING MAP AMENDMENT AND GALBRAITH SUBDIVISION, LOTS 19 & 20 DEVELOPMENT PLAN**

- a. **PLN- MAR-23-00019: BLACK SOIL: OUR BETTER NATURE, LLC** (12/31/2023)\* – a petition for a zone map amendment from a Mixed Low Density Residential (R-2) zone to a Neighborhood Business (B-1) zone, for 0.15 net (0.17 gross) acres, for properties located at 760 and 762 Florence Avenue. This application has a variance request to reduce the required property perimeter landscaping from 15 feet to 0 feet.

Note: The Planning Commission voted to continue this hearing on November 16, 2023.

**COMPREHENSIVE PLAN AND PROPOSED USE**

The 2018 Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community's resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. 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 is proposing the Neighborhood Business (B-1) zone in order to utilize an existing 1,200 square-foot structure for a grocery store use. The applicant is also proposing removing the on-site parking and replacing it with an outdoor patio area. A sidewalk is proposed through the middle portion of the site that will provide a connection to the community garden located on the adjoining property to the rear at 415 Roosevelt Boulevard. An area for outdoor seasonal events is located to the rear of the property.

The Zoning Committee Recommended: **Approval.**

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

1. The requested Neighborhood Business (B-1) zone is in agreement with the 2045 Comprehensive Plan's Goals and Objectives, for the following reasons:
  - a. The request will activate an underutilized parcel within the Infill and Redevelopment Area in order to provide a neighborhood-oriented use (Theme A, Goal #2). The proposed grocery store will supply daily necessities to the immediate area.
  - b. The request will prioritize multi-modal options and de-emphasize single occupancy vehicles with its proximity to transit service, pedestrian connections, and the installation of bicycle facilities (Theme B, Goal#2.d)
  - c. The proposal encourages safe interactions within the neighborhood by creating an accessible neighborhood commercial focal point and gathering space (Theme A, Goal #3). Retail sales of grocery and convenience items allows for residents to shop and interact on a routine basis.
2. The requested Neighborhood Business (B-1) zone is in agreement with the 2018 Comprehensive Plan's Policies, for the following reasons:
  - a. The proposal improves pedestrian safety and utilizes a people first design by removing the substandard parking areas in front of the structure, and providing for additional pedestrian connections. (Theme A, Policy #1)
  - b. At the proposed scale, the development provides an accessible, neighborhood level commercial area and gathering space (Theme A, Design Policy #12; Theme A, Policy #10).
  - c. The request introduces a neighborhood grocery use into an area that lacks walkable grocery options (Theme A, Density Policy #3).
  - d. The request will maintain the existing sidewalk networks and provide bicycle facilities on-site in order to promote connectivity (Theme B, Sustainability Policy #2).
3. The justification and corollary development plan are in agreement with the development criteria of the 2018 Comprehensive Plan.
  - a. The proposed rezoning meets the criteria for Site Design, Building Form and as the request reuses the existing commercial structure that has occupied the site since 1969, creates a safer pedestrian environment by removing sub-standard parking areas along Florence Avenue, and creates neighborhood level commercial opportunities in a neighborhood that lacks an accessible grocery store.
  - b. The proposed rezoning addresses the Transportation and Pedestrian Connectivity development

---

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

- criteria, as the proposed development expands on the existing pedestrian system, has several close connections to transit, and provides a safer experience for pedestrians along Florence Avenue.
- c. The proposed rezoning meets the criteria for Greenspace and Environmental Health as the proposal works with the existing landscape, will increase the overall tree canopy, and will not impact any environmentally sensitive areas.
  4. This recommendation is made subject to approval and certification of PLN-MJDP-23-00071: GALBRAITH SUBDIVISION, LOTS 19 & 20 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. **VARIANCE** – The applicant is seeking a variance to reduce the required property perimeter landscape screening from 15 feet to 0 feet along the southern property line, where the existing structure adjoins the R-2 zoned parcel at 758 Florence Avenue.

The Zoning Committee Recommended: **Approval.**

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

1. Approval of the landscape variances should not adversely affect the public health, safety, or welfare, nor should it create a hazard or nuisance to the public. The subject property has operated over 50 years without landscaping buffers between the commercial and residential uses. Providing landscaping within the narrow side yard would likely not thrive or grow to maturity to create the buffer prescribed by the ordinance.
2. The narrow lot shape and existing nonconforming structure represent special circumstances unique to the subject property that justify the need for a variance.
3. Removing the existing structure present on the site to accommodate the required landscaping buffer would unreasonably restrict the applicant's use of the property.
4. The circumstances of this variance are not a result of actions taken by the applicant subsequent to the adoption of the Zoning Ordinance.

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

- a. Provided the Planning Commission and Urban County Council approve the requested zone change to the B-1 zone, otherwise the requested variance shall be null and void.
  - b. The development shall be constructed in accordance with the approved Final Development Plan, or as amended by the Planning Commission.
  - c. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
  - d. Action of the Planning Commission shall be noted on the Development Plan for the subject property.
- c. **PLN-MJDP-23-00070: GALBRAITH SUBDIVISION, LOTS 19 & 20** (12/31/2023)\* - located at 760 & 762 FLORENCE AVENUE, LEXINGTON, KY

Council District: 2

Project Contact: Barret Partners, Inc.

Note: The purpose of this plan is to depict the use of the site for a grocery store, in support of the requested zone change from a Mixed Low d (R-2) zone to a Neighborhood Business (B-1) zone.

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

1. Provided the Urban County Council approves the zone change to B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Landscape Examiner's approval of landscaping and landscaping buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree preservation plan.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water control Office's approval of the locations of fire hydrants, fire department connections, and fire service features.
10. Documentation of Division of Water Quality's approval of Capacity Assurance Program requirements, prior to plan certification.

---

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

11. United States Postal Service Office's approval of kiosk locations or easement.
12. Provided the Planning Commission approves the requested variance.
13. Discuss proposed access to adjacent community garden.
14. Discuss proposed seasonal activities.
15. Discuss Placebuilder criteria.

Staff Presentation – Mr. Crum briefly reminded the Planning Commission of the zone change request. He briefly discussed the history of the property, as well as the variance that was being requested. He stated that staff was recommending approval of the zone change as well as the variance. Mr. Crum reiterated the concerns of the neighbors regarding the allowable uses in the B-1 zone. He stated that the applicant had met with the concerned individuals and had proposed a list of conditional zoning restrictions. The list included ten items that had been agreed upon, but also included a request to allow for sales of alcoholic beverages in a restaurant, if it became one in the future, that was not agreeable to the nearby residents.

Applicant Representation – Attorney Chris Clendenen was present to represent the applicant. He stated that there had been positive communication with the neighborhood, and noted that there was only one item of disagreement. He said that the restriction of alcoholic beverages sales in a restaurant would be too restrictive. He added that the applicant was committed to making the proposed grocery store work, and other uses would be an unlikely event.

Commission Questions – Ms. Worth asked how many neighbors had been involved in the discussions with the applicant. Mr. Clendenen replied that there had been several neighborhood meetings regarding the zone change, but he had communicated with a representative of the Georgetown Street Area Neighborhood Association regarding this particular issue.

Citizen Comments – Rolanda Woolfork was present to represent the Georgetown Street Neighborhood Association. She stated that they had sent out 300 flyers and received 150 responses with concerns. She added that they had had two neighborhood meetings as well. She stated that the neighborhood was against the sale of alcohol because of the nine sober living homes in the area. She stated that they wanted to help those residents with their sobriety. She said there were several locations that had alcohol sales already in the area.

Commission Questions - Mr. Wilson stated that he appreciated the work that had been done on the list of conditional zoning restrictions. He asked Ms. Woolfork if the condition that was being discussed was a dealbreaker for their support for the grocery store. She replied that it was not a dealbreaker because their partnership with the applicant was strong.

Mr. Owens asked Ms. Jones what their legal options were. She reminded the Commission that any conditional zoning restricts approved, would be binding, and any future applicant would be required to reapply for the removal of any of the conditions.

Mr. Forester asked for clarification regarding the grocery store use, and its ability to have alcohol sales. Ms. Jones stated that no alcohol sales would be allowed in the grocery store if it was specifically stated in the conditional zoning restrictions as a prohibited use.

Mr. Owens suggested that the 11<sup>th</sup> condition be changed to allow for a restaurant use only, without the sale of alcoholic beverages.

Applicant Rebuttal – Mr. Clendenen stated that he was sympathetic to the sober living residents. He reiterated that they were only suggesting the sale of the beverages in the event that the grocery store failed, and a restaurant was put there.

Citizen Comments – Ms. Woolfork listed the name of several area restaurants that did not sell alcohol, but were very successful.

Commission Comments – Mr. Nicol praised the efforts of the neighborhood, but was concerned about how difficult it would be to remove the restriction once it was placed.

---

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

Mr. Owens said that he could go either way with the decision.

Action – Mr. Owens made a motion, seconded by Mr. Pohl, and carried 9-0 (Davis absent), to approve PLN- MAR-23-00019: BLACK SOIL: OUR BETTER NATURE, LLC with the following conditional zoning restrictions, finding that they are appropriate and necessary, for the betterment of the neighborhood:

Under the provisions of Article 6-7, the following uses are prohibited:

1. Funeral Homes
2. Rehabilitation Homes
3. Retail Sale of Beer, Wine, or Liquor
4. Automobile Service Stations
5. Pawnshops
6. Short-Term Rental, Either Hosted or Un-Hosted
7. Retail Sale of Liquid Propane
8. Indoor Live Entertainment/Dancing as Accessory to Restaurant
9. Drive-Through Facilities
10. Adult Entertainment

Action – Mr. Owens made a motion, seconded by Mr. Pohl, and carried 9-0 (Davis absent) to approve the variance to reduce the required property perimeter landscape screening from 15 feet to 0 feet along the southern property line, where the existing structure adjoins the R-2 zoned parcel at 758 Florence Avenue.

Action – Mr. Owens made a motion, seconded by Mr. Wilson, and carried 9-0 (Davis absent), to approve PLN- MJDP-23-00070: GALBRAITH SUBDIVISION, LOTS 19 & 20 as presented.