

# STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-25-00008: RD PROPERTY GROUP, LLC

## DESCRIPTION OF ZONE CHANGE

Zone Change: From: Neighborhood Business (B-1) with Conditional Zoning Restrictions and Planned Neighborhood Residential (R-3) zones  
To: Commercial Center (B-6P) and Neighborhood Business (B-1) zones without Conditional Zoning Restrictions

Acreage: 32.30 net (34.28 gross) acres

Location: 1811 Winchester Road (a portion of)



## EXISTING ZONING & LAND USE

PROPERTIES	ZONING	EXISTING LAND USE
Subject Property	B-1, R-3	Agricultural
To North	R-3	Agricultural
To East	P-1, B-5P	Professional Offices/ Hotel
To South	R-3, A-U	Frederick Douglass High School and Ag.
To West	R-3	Agricultural

## URBAN SERVICE REPORT

**Roads** - Winchester Road (US 60) is a major arterial road that carries more than 30,000 vehicles on a daily basis. It is a five-lane highway (the middle lane is used as a divider and left turn lane) in the vicinity of the subject property. The development includes the extension of two collector streets, Charleston Drive and Thunderstick Drive, through this development. These roads intersect at a traffic circle at the northeastern portion of the development.

**Curb/Gutter/Sidewalks** - Curb, gutter and sidewalks are proposed along the extensions of Thunderstick Drive and Charleston Drive. No curb, gutter, or sidewalk facilities are currently present along Winchester Road.

**Utilities** - All utilities, including natural gas, electric, water, phone, cable television, and internet are available in the area, and are available to serve the proposed development.

**Storm Sewers** - The subject property is located within the North Elkhorn watershed. The portion of the subject property that is included in this request has a small FEMA Special Flood Hazard Area (100-year floodplain) associated with the confluence of the Eastland Park tributary and the I-75 tributary both of North Elkhorn Creek. Development on this parcel will require compliance with Article 19 of the Zoning Ordinance; and stormwater management will need to be addressed by the developer in accordance with the adopted Engineering Stormwater Manual.

**Sanitary Sewers** - The property is located within the North Elkhorn sewershed, which is served by the West Hickman Wastewater Treatment Plant in northern Jessamine County.

**Refuse** - The Urban County Government serves this portion of the Urban Service Area with refuse collection on Tuesdays. Commercial and multi-family development often supplement this service with additional private collection.

**Police** - The nearest police station is located near Eastland Shopping Center at the Central Sector Roll Call Center, approximately two miles west of the subject property, just off Winchester Road.

**Fire/Ambulance** - Fire Station #2 is located approximately 1.3 miles to the west of the site, along Eastland Parkway.

**Transit** - This area is served by Lextran Route #10, which has a stop on Buena Vista Drive, approximately 0.15 miles east of this portion of the subject property.

**Parks** - Dixie Park is located approximately half a mile northwest of the subject property, along Eastland Parkway.

## SUMMARY OF REQUEST

The applicant is seeking to rezone the subject property from a Restricted Neighborhood Business (B-1) and Planned Neighborhood Residential (R-3) zones to a Commercial Center (B-6P) and unrestricted Neighborhood Business (B-1) zones. Additionally, the applicant is seeking a variance in order to increase the maximum amount of vehicular use area between a structure and the street from 60 feet to 110 feet.

## PLACE-TYPE

### CORRIDOR

Corridors are Lexington's major roadways focused on commerce and transportation. The overriding emphasis of Imagine Lexington 2045 is significantly overhauling the intensity of the major corridors. The future of Lexington's corridors lies in accommodating the shifting retail economic model by incorporating high density residential and offering substantial flexibility to available land uses.

## DEVELOPMENT TYPES

### MEDIUM DENSITY NON- RESIDENTIAL/ MIXED USE

#### Primary Land Use, Building Form, & Design

Primarily community-serving commercial uses, services, places of employment, and/ or a mix of uses within mid-rise structures with a higher Floor Area Ratio. Mixed-use structures typically include more multi-family residential units and places of employment, and retail and commercial options generally draw from a larger geographic area. An activated and pedestrian-scale ground level should be provided. These developments may include more employment space for professional office and can include some larger entertainment spaces.

#### Transit Infrastructure & Connectivity

Though they draw more external users, they should still include multi-modal connections allowing for easy neighborhood access. Mass transit infrastructure is to be provided on par with that of other modes, and the higher-density housing types should be located in close proximity.

#### Parking

The buildings should be oriented to the street, and developments should avoid over-parking, with provided parking located internally.

## PROPOSED ZONING

**B-1**

The intent of this zone is to accommodate neighborhood shopping facilities to serve the needs of the surrounding residential area. This zone should be located in areas of the community where services and facilities are/will be adequate to serve the anticipated population. This zone should be oriented to support and enhance a residential neighborhood. This zone should be established in accordance with the Goals, Objectives, Policies, and Development Criteria of the Comprehensive Plan.

**B-6P**

The intent of the Commercial Center (B-6P) zone is to create centers of activity that promote commerce and retail along major corridors within the community, while supporting existing residential neighborhoods and incorporating new residential opportunities in accordance with the Comprehensive Plan.

## PROPOSED USE



The applicant is proposing the rezoning of a portion of the subject property to construct a mixed-use development that consists of a grocery store, a gas station, commercial outlots, as well as a multi-family residential component.

The grocery store is proposed to be a total of 127,000 square feet, and includes an attached pharmacy and liquor store, and a total of 492 parking spaces. The store is oriented towards an internal access drive that runs parallel to Winchester Road. A gas station is proposed along Charleston Drive, west of the proposed grocery. The proposal includes five outlots along Winchester Road, which will be accessed through internal access driveways.

The multi-family residential component consists of two multi-family residential buildings, with a total of 154 units. These buildings are proposed to be accessed from Thunderstick Drive, and feature 154 parking spaces

At this time, the Development Plan associated with the request does not show any development of the proposed outparcels along Winchester Road. This development will need to be detailed in order for the corresponding development plan to be approved.

## APPLICANT & COMMUNITY ENGAGEMENT



The applicant conducted a neighborhood meeting on May 14th, 2025 to discuss the request at Frederick Douglass High School. Comments from the community at that time included questions about future development on the remaining portion of the farm, improvements to Winchester Road, multi-modal facilities present for the development, and connectivity. Staff answered questions related to the zone change and preliminary development plan processes.

## PROPERTY & ZONING HISTORY



The subject property was the historic location of the Patchen Wilkes horse farm, and was zoned Agricultural Urban (A-U) at the time of the 1969 comprehensive rezoning of the City and County. In 1994, the farm was rezoned to several different zones including: R-1C, R-1D, R-1E, R-1T, and R-3 (MAR 94-27). At that time, the owner also sought approximately 30 acres of B-1 zoning; however, the B-1 component of the zone change was not approved at that time.

In 2004, the property owner brought a revised commercial zone change back to the Planning Commission, seeking to once again rezone a portion of the site to B-1(MAR 2004-39). The request was recommended for disapproval by the Planning Commission, and the application was withdrawn by the applicant prior to the Council's review. The applicant filed for an early rehearing later that year, which was granted based on an updated plan, depicting a new mixed-use development that the applicant opined was in keeping with New Urbanist principles and design. The applicant at the time proposed a number of Conditional Zoning Restrictions that included limits on the number of drive-through uses and gas stations, a requirement of a minimum of 125 dwelling units within the B-1 zoned area, requirements for mixed-use buildings, and protection of an existing tree-line along Winchester Road. This zone change was ultimately recommended for approval with the proposed restrictions by the Planning Commission, and adopted by the Urban County Council.

Finally, in 2005 the property owner rezoned approximately 50 acres of the Patchen Wilkes farm from various single-family residential zones to the R-3 zone in order to establish a townhouse development (MAR 2005-47). Today, only a portion of the residential development anticipated the parcel has taken place, featuring townhomes and single-family residential units in the areas closest to the intersection of Patchen Wilkes Drive and Winchester Road.

## COMPREHENSIVE PLAN COMPLIANCE



The 2045 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.

### GOALS AND OBJECTIVES

The applicant opines in their letter of justification that they are in agreement with the adopted Goals, Objectives, and Policies of the Comprehensive Plan. The applicant states that their proposal will increase the utilization of a large undeveloped parcel within the Urban Services Boundary (Theme A, Goal #2. a; Theme E. Goal#1.e) They state that by providing apartment units in an area primarily consisting of single-family attached and detached uses that they are increasing housing choice (Theme A, Goal #3.a), and that the request will create employment opportunities within a primarily residential area (Theme C, Goal #2.a).

While agrees that these Goals and Objectives, can be met with this request; however, there are several other elements that the applicant should address in greater detail:

*Strive for positive and safe social interactions in neighborhoods, including, but not limited to, neighborhoods that are connected for pedestrians and various modes of transportation (Theme A, Goal #3.b);*

As a part of this proposal, the applicant is proposing both a grocery store, as well as an adjoining residential multi-family residential use. Despite being included within the same project, these uses do not have any direct connectivity. While a sidewalk network is proposed along the roadway, these uses have the potential for more direct connectivity.

*Respect the context and design features of areas surrounding development projects and develop design standards and guidelines to ensure compatibility with existing urban form (Theme A, Goal #2.b).*

Similarly, the orientation of the grocery store places the rear service and delivery areas to the areas closest to the proposed residential use, rather than towards the eastern portion of the site, where it would adjoin the rear areas of the existing commercial development. The applicant should explore opportunities to re-orient the structure, or more effectively integrate the residential uses.

*Accommodate the demand for housing in Lexington responsibly, prioritizing higher-density and mixture of housing types. (Theme A, Goal #1.b).*

The applicant states that the request will provide for increased residential density; however, the request appears to be a decrease in residential density relative to the previously approved zone change and development scenario (Theme A, Goal #1.b).

### POLICIES

The letter of justification provided by the applicant only mentions two Comprehensive Plan Policies: Design Policy #2, and Sustainability Policy #4, but does not provide an explanation as to how they are being met. The applicant should provide a more in-depth review of the relevant Comprehensive Plan policies.

### PLACE-TYPE, DEVELOPMENT TYPE, AND ZONE

The applicant has indicated that the site is located within the Corridor Place-Type and is seeking to utilize the property as a Medium Density Non-Residential/ Mixed-use Development Type. While Winchester Road is a major corridor, the layout and utilization of the property appears to be inconsistent with this designation. The bulk of the development being proposed is not located along the corridor, but rather, deeper within the site. The applicant has not depicted any development in the lots that directly adjoin Winchester Road. In staff's opinion, a regional center development would more accurately portray the applicant's intended use, where a large commercial anchor tenant serving a larger region is present, and is anchored by multi-family development and smaller commercial outlots. The applicant should provide greater information on



the consideration of the appropriate place-type.

Staff agrees with the applicant's choice of the Medium-Density Non-Residential/ Mixed-use Development Type; however, Staff does not agree with the choice of one of the proposed zones. The B-6P zone which comprises the majority of the applicant's request is recommended for both Corridor and Regional Center Place-Types; however, the B-1 zone is not recommended as a zone within the Regional Center, and is only recommended on a corridor as a dense Form-based Project. The result of the applicant's request to remove all conditional zoning restrictions for the eight acres adjoining Winchester Road would be the creation of an unrestricted B-1 zone along a corridor, which is not in line with the recommendations of the Comprehensive Plan. The applicant has provided some detail on the intentions behind the lot, stating that the parcels would be out-lots for restaurants, retailers, and/or professional services. Extending the B-6P zone to this area or rezoning the area to the Corridor Business (B-3) zone would allow the same types of development, while being in agreement with the Comprehensive Plan's recommended zones. The applicant should provide greater information on their choice in zones and their agreement with the Comprehensive Plan.

### **PLACEBUILDER CRITERIA**

While staff does not agree that the applicant's development would be best categorized as a Corridor Place-Type, there are significant areas of overlap in applicable Development Criteria between the Corridor and Regional Center Place-Type. Below, staff have identified several criteria shared between both Place-Types that the applicant should address in greater detail:

#### 1. LAND USE

*A-DN3-1: Pedestrian-oriented commercial opportunities and other services should be incorporated within residential neighborhoods;*

The applicant opines that their proposed development is pedestrian-oriented; however, the commercial component is almost entirely oriented towards the Winchester Road corridor, which is devoid of sidewalks. The applicant's proposed grocery store is oriented so that the rear service areas adjoin the residential use, with no direct connection proposed to the development's residential portion. As the rest of the Patchen Wilkes tract develops, there will be an increasingly large number of pedestrians accessing the site from Charleston Drive. Under the proposed design, the pedestrians from Charleston Drive will encounter the side of the building, drive through uses, and a gas station. Additionally, the applicant is seeking a variance in order to almost double the amount of vehicular use area that can be present between the structure and the street. The applicant should address these criteria and explore opportunities to better orient the site towards pedestrians.

#### 2. TRANSPORTATION, CONNECTIVITY, AND WALKABILITY

*A-DS5-2: Developments should incorporate vertical elements, such as street trees and buildings, to create a walkable streetscape.*

As noted within the Land Use criteria, the proposal currently is vehicular-oriented, and does not attempt to meaningfully activate the streetscape along Charleston Drive, which features a gas station, drive through, and the side of the grocery store building.

*C-PS10-1: Flexible parking and shared parking arrangements should be utilized.*

The arrangement of the proposed parking areas is situated so that each user has separate and distinct parking areas, rather than a design that encourages shared parking.

#### 3. ENVIRONMENTAL SUSTAINABILITY AND RESILIENCY

*B-PR2-1: Impact on environmentally sensitive areas should be minimized within and adjacent to the proposed development site; Floodplains should be incorporated into accessible greenspace, and additional protection should be provided to areas around them (B-RE5-2)*



The letter of justification states that there are no floodplain areas located on the property; however, according to 2014 FEMA flood map data, portions of 100-year floodplain are present in the northeastern portion of the project area, near the stub street connection for Thunderstick Drive. While not shown on the development plan, this area appears to be located approximately 25 feet from the proposed second apartment building, and appears to be impacted with the extension of Thunderstick Drive. This area should be detailed on the plan, and the applicant should detail how the area will be protected.

*B-PR7-1: Developments should be designed to minimize tree removal and to protect and preserve existing significant trees; B-RE1-1: Developments should improve the tree canopy.*

The development plan notes the trees present along Winchester Road, but does not appear to provide information relative to the existing trees present interior to the site. Additionally, the applicant indicates that they will improve the tree canopy present on-site, but do not provide statistics for the current coverage to demonstrate the claim.

#### 4. SITE DESIGN

*A-DS5-4: Development should provide a pedestrian-oriented and activated streetscapes; A-DS5-3: Building orientation should maximize connections with the street and create a pedestrian-friendly atmosphere.*

The multi-family residential component of the request are located along the streetscape, and serve to reinforce the roadways. However, the current configuration of the grocery store is not in agreement with these criteria as they locate parking, truck access, drive-through lanes, and a gas station between their use and the roadway. The applicant should explore opportunities to create an activated and pedestrian-friendly streetscape.

*A-DS7-1: Parking should be oriented to the interior or rear of the property for non-residential or multi-family developments.*

While the multi-family residential component of the request locates parking internal to the site, the vast majority of the parking for the grocery store use is located at the front of the structure.

#### 5. BUILDING FORM

*A-DS3-1: Multi-family residential developments should comply with the Multi-family Design Standards in Appendix A*

The applicant addresses the criteria for the Multi-family Design Standards within their letter of justification, but does not adequately address the following criteria:

- i. *SP.2: Provide as many private ground level entries as possible.*
- ii. *SP.5: Encourage access to surrounding uses through a continuous pedestrian network*
- iii. *All Architectural Design criteria.*

In order to evaluate compliance with this element, further information is needed.

*A-DS5-3: Building orientation should maximize connections with the street and create a pedestrian-friendly atmosphere.*

As stated earlier, the commercial portion of the proposal does not address Charleston Drive, and results in approximately 1,000 feet of roadway without building interaction. The commercial structures are oriented internally, towards the vehicular use areas.

**STAFF RECOMMENDS: POSTPONEMENT, FOR THE FOLLOWING REASONS:**

1. The applicant should provide greater information regarding the choice in Place-Type and Zones.
2. The applicant should provide greater information regarding the following Goals and Objectives of the Comprehensive Plan:
  - a. Accommodate the demand for housing in Lexington responsibly, prioritizing higher-density and mixture of housing types. (Theme A, Goal #1.b).
  - b. Strive for positive and safe social interactions in neighborhoods, including, but not limited to, neighborhoods that are connected for pedestrians and various modes of transportation (Theme A, Goal #3.b);
  - c. Respect the context and design features of areas surrounding development projects and develop design standards and guidelines to ensure compatibility with existing urban form (Theme A, Goal #2.b).
3. The applicant should include a discussion of the relevant Comprehensive Plan Policies.
4. The applicant should address the following development criteria within the Placebuilder Element of the Comprehensive Plan
  - a. A-DN3-1: Pedestrian-oriented commercial opportunities and other services should be incorporated within residential neighborhoods;
  - b. A-DS5-2: Developments should incorporate vertical elements, such as street trees and buildings, to create a walkable streetscape.
  - c. C-PS10-1: Flexible parking and shared parking arrangements should be utilized.
  - d. B-PR2-1: Impact on environmentally sensitive areas should be minimized within and adjacent to the proposed development site.
  - e. B-RE5-2: Floodplains should be incorporated into accessible greenspace, and additional protection should be provided to areas around them.
  - f. B-PR7-1: Developments should be designed to minimize tree removal and to protect and preserve existing significant trees.
  - g. B-RE1-1: Developments should improve the tree canopy.
  - h. A-DS5-4: Development should provide a pedestrian-oriented and activated streetscapes;
  - i. A-DS5-3: Building orientation should maximize connections with the street and create a pedestrian-friendly atmosphere.
  - j. A-DS7-1: Parking should be oriented to the interior or rear of the property for non-residential or multi-family developments.
  - k. A-DS3-1: Multi-family residential developments should comply with the Multifamily Design Standards in Appendix A.
  - l. A-DS5-3: Building orientation should maximize connections with the street and create a pedestrian-friendly atmosphere.

## STAFF REPORT ON CONDITIONAL ZONING REMOVAL



### CONDITIONAL ZONING RESTRICTION REQUEST

As part of their overall zone change application, the petitioner is also seeking to modify the existing Conditional Zoning Restrictions that were placed on the B-1 zoned portions of the property as a part of the 2004 zone change. These restrictions are as follows:

1. *There shall be a minimum of 125 residential dwelling units in the B-1 zone.*
2. *Signage shall be provided only as per the B-6P zone.*
3. *Sixty percent (60%) of all commercial square footage shall be in multi-story buildings with a mixture of residential units.*
4. *Existing trees within 30 feet of the Winchester Road right-of-way are to be preserved, except those trees that are diseased or dying, and those needed to be removed for right-of-way improvements.*
5. *The sale of gasoline shall be restricted only to one business, only as an accessory use to a convenience store, with no more than eight gasoline pumps.*
6. *No more than four drive-through facilities shall be provided on the subject property.*

*These land use restrictions are appropriate and necessary at this location to ensure that the proposed development is appropriate for the nearby neighborhood, and implements the residential land use recommendation of the Comprehensive Plan for the subject property.*

These Conditional Zoning Restrictions were volunteered by the applicant at the time of the 2005 change in order to address concerns that had led to the failure of the two previous attempts to zone the property for commercial use. At the time, the proposed commercial use conflicted with the land-use element of 2001 Comprehensive Plan, which recommended medium density residential land uses units at this location. The applicant's conditions ensured that the development would contain a minimum level of residential development, would create a commercial development that was compatible with the planned future residential development in the area, and preserving the tree line along Winchester Road.

### CONDITIONAL ZONING RESTRICTION PROCESS

Per Article 6-7(c): Amendment. Modification, removal or amendment of conditions or restrictions shall be as follows:

1. Restrictions or Conditions Designated by the Urban County Council. The Urban County Council shall have final authority to consider and act upon requests for modification, removal or other amendment of a duly imposed binding restriction or condition so designated by the Council at the time of their adoption.
  - a. Findings Required. The request may be granted by the Council only if it is found that there has been a major change of an economic, physical or social nature on the subject property or within the area in which the subject property is located, which was not anticipated at the time the binding restriction or condition was imposed, and which has substantially altered the basic character of such area making the restriction or condition inappropriate or improper. The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.
  - b. Procedure. The procedure for review, notice and action on requests to modify, remove or amend an imposed restriction or condition shall be the same as for a zone map amendment, except that a full public hearing by the Urban County Council shall be required in all cases. The Council's decision to modify, remove or amend a duly imposed binding restriction or condition shall be final action; and any person or entity claiming to be injured or aggrieved by that action may appeal to Fayette Circuit Court within thirty (30) days after such final action pursuant to KRS 100.347.





### APPLICANT'S JUSTIFICATION

In their letter of justification, the applicant addresses each Conditional Zoning Restriction individually, and opines as to why each respective condition is no longer appropriate.

1. *There shall be a minimum of 125 residential dwelling units within the B-1 zone.*

The applicant states that the dwelling unit requirement arose from the 2001 Comprehensive Plan, which recommended the area for Medium Density Land Uses of 5-10 units per net acre. Based on the size of the parcel, the 125 dwelling unit requirement was instituted in order to ensure that the area was still receiving the level of residential development that was called for in the plan. The applicant opines that the shift away from a map-based Future Land Use plan to the current Placebuilder based plan is a social change that would result in the residential density requirement being no longer appropriate.

2. *Signage shall be provided as per the B-6P zone*

The applicant opines that because they are seeking to rezone the majority of the parcel to the B-6P zone, leaving this condition in place for the remaining eight acres would be inappropriate. The applicant argues that these lots will no longer function as a part of a cohesive development, and should be allowed to have individual signage. The applicant did not cite any economic, social, or physical changes that have already occurred that would make this condition inappropriate.

3. *Sixty percent of all commercial square footage shall be in multi-story buildings with a mix of residential uses*

Here, the applicant opines that the market for mixed-use buildings is no longer economically feasible, and that the requirement to utilize mixed-use buildings is therefore no longer appropriate. The applicant did not provide any evidence to back up the proposed economic change claim.

4. *Existing trees within 30 feet of Winchester Road right-of-way are to be preserved, except those trees that are diseased or dying, and those needed to be removed for right-of-way improvements.*

The applicant opines that with the update to the tree preservation standards within the 2024 Landscaping and Tree Preservation Zoning Ordinance Text Amendment (ZOTA-24-00005), the tree preservation requirement is no longer necessary.

5. *The sale of gasoline shall be restricted only to one business, only as an accessory use to a convenience store, with no more than eight gasoline pumps.*

The applicant notes that the Urban Growth Management ZOTA (ZOTA-23-00006) now prohibits new gas stations within the B-1 zone. The applicant opines that change makes the site's current prohibition duplicative and inappropriate.

6. *No more than four drive-through facilities shall be provided on the subject property.*

The applicant once again claims that the changes instituted as a result of the 2024 Urban Growth Management ZOTA make the drive-through condition inappropriate. When the zone change was approved in 2004, drive-through uses were accessory uses when approved by the Planning Commission on a development plan. Under the revised regulations, drive through uses in the B-1 zone require Conditional Use Permits to operate, and must meet locational requirements. The applicant opines that because the regulations regarding where drive-through uses are permitted changed, that the condition limiting the proliferation of the uses on the development is inappropriate. Additionally, the applicant states that with the proposed zone change on the remainder of the parcel, the condition would apply to a smaller area than initially anticipated.

### STAFF REVIEW

In review of the applicant's justification, Staff has concerns with several of the arguments put forth by the applicant.

First, in several instances the applicant uses their own proposed zone change as a justification for removing several of the conditional zoning restrictions. However, in order to remove or amend Conditional Zoning Restrictions, the applicant must demonstrate an economic, social, or physical change that has already occurred in the area. Citing a zone change that has not yet been approved is not grounds for amending a condition.

Second, the applicant makes several economic arguments as to why certain conditions should be removed, but does not provide any evidence or information to back up their claims. The ordinance requires that the decision to amend or remove the restrictions be based on a preponderance of evidence. The applicant should provide sufficient evidence to support their claims.

Third, the applicant makes the argument that changes to the Zoning Ordinance and a new Comprehensive Plan somehow invalidates conditional zoning restrictions that relate to the same topic. However, changes to how the ordinance generally deals with a land use or development criteria differ from a specific determination regarding those aspects for a parcel. In this example, the site's current landscaping condition offers greater protections than afforded by the updated Zoning Ordinance, and this condition was determined by the Planning Commission and Urban County Council to be necessary in order to properly screen the commercial development. Similarly, the site's restriction on drive-through uses was a site-specific determination that was aimed at not adversely impacting the existing and upcoming residential development. Changes to the process of review for the drive-through uses in general do not change the Planning Commission and Council's desire to avoid proliferating the use at this location.

Lastly, changes to planning policies or adopting a new Comprehensive Plan are not social changes, and cannot be cited as reasons for the removal of conditional zoning restrictions. These changes impact the entire community and are not site-specific or unique for the subject property.

### STAFF RECOMMENDS: **POSTPONEMENT** FOR THE FOLLOWING REASONS:

1. The applicant should provide further information regarding the social, economic, or physical changes that have occurred on or near the property that make the respective conditions inappropriate.

## STAFF REPORT ON VARIANCE REQUEST



As part of their application, the petitioner is also seeking a dimensional variance to increase the allowable width of Vehicular Use Area in front of the building from 60 feet to 110 feet.

Before any variance is granted, the Planning Commission must find the following:

- a. The granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Planning Commission shall consider whether:
  1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or in the same zone.
  2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
  3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
- b. The Planning Commission shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

### ZONING ORDINANCE

Article 6-4(c) states that the Planning Commission may hear and act upon requested variances associated with a zone change. In such cases, they may assume all of the powers and responsibilities of the Board of Adjustment, as defined in Article 7-6(b) of the Zoning Ordinance.

Article 16-6(a)(2) states that a maximum of two (2) bays of surface parking with a single drive aisle, or a vehicular use area of up to sixty (60) feet in depth as measured perpendicular to the street, whichever is greater, shall be permitted between the building and the street, except otherwise prohibited by a maximum setback.

### CASE REVIEW

The applicant is seeking a dimensional variance for the western portion of the B-6P lot in order to increase the maximum amount of allowable pavement from 60 feet to 110 feet.

The applicant's proposed design features a 127,000 square-foot grocery store use, with an attached pharmacy drive-through, an attached liquor store drive-through, a service drive that circles the building, and grocery pick-up areas. Under this proposal, there is a 110-foot wide vehicular use area that extends between the building and Charleston Drive. The applicant opines that the operational needs of their grocery store use dictate that a greater amount of paving is needed within this area to support the store, and that the pick-up, drive-through, and truck access facilities are safer when they are separated from the standard parking areas.

There are several aspects of the request that require further explanation by the applicant. The applicant should provide further information regarding the special circumstances unique to the subject property that would necessitate the requested variance, as the site is a large greenfield development. The applicant should also provide information as to why the design of the structure could not be altered to meet the requirement, as it appears that the vehicular use areas serving the liquor store drive through and service drive along the eastern portion of the structure would meet the requirement if the locations of the facilities were switched. Finally, the applicant should discuss the impact of the proposed variance on the pedestrian circulation and experience within the area.

**STAFF RECOMMENDS: POSTPONEMENT FOR THE FOLLOWING REASONS:**

1. The applicant should provide further information regarding the special circumstances of the property that justify the need for the variance.
2. The applicant should provide greater information on as to how redesigning the site or its layout to meet the regulation is depriving the applicant of use of the property.
3. The applicant should provide greater information discussing the impact of the proposed variance on the pedestrian experience within the area.