

RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: **PLN-MAR-21-00004: COLLINS AND MILLER PROPERTIES, LLC** - a petition for a zone map amendment from a Neighborhood Residential (B-1) zone to a Light Industrial (I-1) zone for 3.13 net (6.97 gross) acres, and from a Wholesale and Warehouse Business (B-4) zone to a Light Industrial (I-1) zone, for 1.69 net (1.83 gross) acre, for properties located at 804-808 and 805 Newtown Circle. (Council District 1)

Having considered the above matter on **April 22, 2021**, at a Public Hearing, and having voted **6-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **CONDITIONAL APPROVAL** of this matter for the following reasons:

1. A restricted Light Industrial (I-1) zone is in agreement with the 2018 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The proposed rezoning will create jobs and prosperity (Theme C) by allowing for the creation of a variety of jobs that will lead to prosperity for all (Theme C, Goal #2.a).
 - b. The proposed rezoning will improve opportunities for small businesses (Theme C, Goal #2.b) by providing space for businesses that exceed the intensity of use typically found in B-1 and B-4 zones.
 - c. The proposed rezoning will also reduce the pressure on the Urban Service Area (Theme E, Goal #1.a) by allowing greater utilization of the subject property, which is currently underutilized (Theme E, Goal #1.c and d).
2. The justification and corollary development plan are in agreement with the policies and development criteria of the 2018 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Site Design, Building Form and Location as the site creates an industrial development that works with the established infrastructure and will allow for safe pedestrian mobility.
 - b. The proposed rezoning will include safe facilities for the potential users of the site and include safe pedestrian facilities. These improvements address the Transportation and Pedestrian Connectivity development criteria of the 2018 Comprehensive Plan.
 - c. The proposed rezoning meets the criteria for Greenspace and Environmental Health as it limits the impacts on the surrounding environment, and will add tree canopy coverage.
3. **Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are recommended via conditional zoning:**
 - a. Prohibited Uses:
 - i. Self-storage warehousing
 - ii. Outdoor storage
 - iii. Billboards
 - iv. All above ground and underground storage tanks for liquid fuel
 - v. On-site disposal of any hazardous waste materials
 - vi. Mining of non-metallic minerals and/or radium extraction.
 - b. All establishments and facilities that store, or transport hazardous materials shall be designed to provide spill containment facilities and shall have emergency response plans approved by the appropriate Hazmat regulator (DEEM, Fire Department, or EPA, as necessary).

These restrictions are appropriate and necessary for the following reasons:

1. To protect the appearance of the Newtown Pike corridor as a gateway into Lexington, while promoting employment that is appropriate along Lexington’s freight corridor.
2. The Planning Commission has adopted a Wellhead Protection Plan for the Royal Spring Aquifer, which sets forth a plan to ensure a continual source of potable groundwater from Royal Spring for Georgetown and Scott County, and to preserve the integrity of surface waters. This plan has been adopted by both the Planning Commissions of Fayette and Scott Counties, and has most recently been approved by the Kentucky Division of Water on 8/28/03.
3. The proposed restrictions within the Wellhead Protection Area will better protect the surface and groundwater in the area by prohibiting some uses and requiring “best management practices” for other uses that could potentially be harmful to the wellhead, thus ensuring greater compliance with the Royal Spring Wellhead Protection Plan.
4. This recommendation is made subject to approval and certification of PLN-MJDP-21-00013: Newtown Distribution Center, Lots 1 & 2 (AMD), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission’s approval.

ATTEST: This 14th day of May, 2021.



 Secretary, Jim Duncan

LARRY FORESTER
 CHAIR

Note: The corollary development plan, PLN-MJDP-21-00010: EASTLAND SUBDIVISION was approved by the Planning Commission on April 22, 2021 and certified on May 6, 2021.

Note: One dimensional variance was approved by the Planning Commission on April 22, 2021.

K.R.S. 100.211(7) requires that the Council take action on this request by July 21, 2021.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Richard Murphy, attorney.**

OBJECTORS
 ▪ None

OBJECTIONS
 ▪ None

VOTES WERE AS FOLLOWS:

- AYES: (6) Bell, Davis, Nicol, Penn, Pohl, and Wilson
- NAYS: (0)
- ABSENT: (5) Barksdale, de Movellan, Forester, Meyer, and Plumlee
- ABSTAINED: (0)
- DISQUALIFIED: (0)

Motion for **APPROVAL** of **PLN-MAR-21-00004** carried.

Enclosures: Application
 Justification
 Plat
 Staff Report
 Applicable excerpts of minutes of above meeting

MAP AMENDMENT REQUEST (MAR) APPLICATION

1. CONTACT INFORMATION (Name, Address, City/State/Zip & Phone No.)

Applicant: COLLINS & MILLER PROPERTIES, LLC, 771 CORPORATE DRIVE, STE 500, LEXINGTON, KY 40503
Owner(s): COLLINS & MILLER PROPERTIES, LLC, 771 CORPORATE DRIVE, STE 500, LEXINGTON, KY 40503
Attorney: RICHARD V. MURPHY, 250 WEST MAIN STREET, STE 2510, LEXINGTON, KY 40507 PH: 8592339811

2. ADDRESS OF APPLICANT'S PROPERTY

804 AND 805 NEWTOWN CIRCLE, LEXINGTON, KY 40511

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY

Existing Use		Requested Use		Acreage	
Zoning		Zoning		Net	Gross
B-4	OFFICES/WAREHOUSE	I-1	INDUSTRIAL	3.1311	6.9747
B-1	OFFICES	I-1	INDUSTRIAL	1.6899	1.8316

4. COMPREHENSIVE PLAN

a. Utilizing Placebuilder, what Place-Type is proposed for the subject site?	INDUSTRIAL AND PRODUCTION CENTER
b. Utilizing Placebuilder, what Development Type is proposed for the subject site? If residential, provide the proposed density	INDUSTRIAL AND PRODUCTION NON RESIDENTIAL

5. EXISTING CONDITIONS

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
c. Are these units currently occupied by households earning under 40% of the median income? If yes, how many units? If yes, please provide a written statement outlining any efforts to be undertaken to assist those residents in obtaining alternative housing.	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

6 URBAN SERVICES STATUS (Indicate whether existing, or how to be provide

Roads:	LFUCG
Storm Sewers:	LFUCG
Sanity Sewers:	LFUCG
Refuse Collection:	LFUCG
Utilities:	<input checked="" type="checkbox"/> Electric <input checked="" type="checkbox"/> Gas <input checked="" type="checkbox"/> Water <input checked="" type="checkbox"/> Phone <input checked="" type="checkbox"/> Cable



MURPHY & CLENDENEN, PLLC

ATTORNEYS AT LAW

LEXINGTON FINANCIAL CENTER

250 West Main Street, Suite 2510
Lexington, Kentucky 40507

TEL (859) 233-9811

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E-MAIL

Richard@MurphyClendenen.com

Chris@MurphyClendenen.com

RICHARD V. MURPHY
CHRISTOPHER M. CLENDENEN

March 1, 2021

Mr. Larry Forester, Chairman
and Members of the Lexington-Fayette Urban County Planning Commission
200 East Main Street
Lexington, KY 40507

Re: Proposed zone change for 804-808 and 805 Newtown Circle

Dear Chairman Forester and Members of the Planning Commission:

This letter is written on behalf of Collins & Miller Properties, LLC, which owns the property located at 804-808 and 805 Newtown Circle. We are requesting a zone change from the Wholesale and Warehouse Business (B-4) zone to the Light Industrial (I-1) zone for the property at 804-808 Newtown Circle. We are requesting a zone change from the Neighborhood Business (B-1) zone to the Light Industrial (I-1) zone for the property at 805 Newtown Circle.

Description of Project

Newtown Circle is a short cul-de-sac which intersects with Newtown Pike just north of New Circle Road. The Newtown Circle/Newtown Pike intersection is fully signalized. There are four lots on Newtown Circle. The front two, 1051 and 1065 Newtown Pike, are **not** included in this zone change request. Both of those lots have frontage on both Newtown Pike and Newtown Circle and are oriented to Newtown Pike and are zoned B-1 and B-3, respectively. A gas station/convenience store is located at 1065 Newtown Pike.

The two subject lots, 804-808 and 805 Newtown Circle, are located at the end of the cul-de-sac, and are not directly visible from Newtown Pike.

There are three buildings located on these two properties. All three are similar in architecture and are industrial style buildings built in the mid 1980's. All three have roll-up truck access doors in the rear of the buildings.

This zone change was prompted by the fact that 804 Newtown Circle is currently half vacant, and the temporary tenant who occupies half of the building will be vacating in a few months. The owners have had difficulty in leasing the building to a neighborhood business (B-1) user because retail opportunities are extremely limited for this property. It has no visibility from Newtown Pike. It is bordered on the north and east by light industrial uses on Nandino Boulevard. However, there is no vehicular nor pedestrian connection between this property and the properties on Nandino Boulevard. Thus, there is no "neighborhood" to utilize "neighborhood business" uses in the current B-1 zoning category. Similarly, the property at 804-808 Newtown Circle is zoned B-4, but as mentioned above, both the buildings on that lot are industrial style buildings.

We feel that Light Industrial (I-1) zoning on both lots would be better for the property, and would also contribute more to the community. This is an industrial area. Newtown Pike is a designated freight corridor for this community, offering connections to Interstate 75/64, New Circle Road, and downtown. It is scheduled for further widening. Industrial zoning makes sense on both of these properties. The intersection at Newtown Circle and Newtown Pike is fully signalized. These buildings are located adjacent to an industrial area.

Most important, zoning these properties I-1 would allow a better opportunity for job creation than the current B-4 (Warehouse and Wholesale) or B-1 (Neighborhood Business) zoning. These buildings provide opportunities for smaller businesses which need office, production and storage space, but need the flexibility to alter the arrangement of individual units. I-1 would provide a greater opportunity for creation of quality jobs.

Please note that there will be little, if any, alteration to these buildings. They are already constructed as industrial buildings. The zone change will simply allow more flexible use of the existing buildings.

Goals and Objectives of the 2018 Comprehensive Plan

The proposed I-1 zoning is in agreement with the Goals and Objectives of the 2018 Comprehensive Plan. It agrees with Theme C, creating jobs and prosperity. It supports Goal C.1, which is to further the creation of a variety of jobs. Objective C.1.a is to develop a variety of job opportunities that lead to prosperity for all. This zone change will improve opportunities for small business, as called for in Objective C.2.b. The zone change is also in agreement with Theme E, which relates to urban and rural balance. It assists in Goal 1, which is to uphold the Urban Service Area concept. As the property is underutilized in its current zone category, it is in agreement with Objective E.1.c. It promotes redevelopment of underutilized land, as called for in Objective E.1.d. As mentioned above, it supports small business development, as called for throughout the Comprehensive Plan.

Engagement

As most of the property on Newtown Circle is owned by the applicant, the applicant has engaged with its tenants regarding this zone change. The applicant has met with support and encouragement to proceed.

Place-Type development type and requested zone

The PlaceBuilder portion of the Comprehensive Plan places most industrial properties in the Industry & Production Center place-type. Page 337 of PlaceBuilder states that “these places should be located near major corridors to facilitate efficient and affordable shipping and transportation of goods throughout the region while minimizing the impact on the traffic infrastructure throughout the rest of the community.” This location agrees with that designation as it is located within close proximity to Newtown Pike, a designated freight corridor for the community.

Similarly, the development type is Industry & Production Non-Residential (INR).

We are requesting Light Industrial (I-1) zoning for this property.

Development criteria

Here is a discussion of some of the criteria that were not addressed on the development plan, or which need further discussion:

- B-PR9-1. There will be very little change to the existing property, so there will be minimal disturbance to the land.
- C-DI1-1. This criteria relates to flexible zoning options that will allow for a wide range of jobs. That is the goal of this zone change, to provide a more flexible zone to allow for a wider range of jobs than is available under the current B-4 and B-1 zoning.
- C-PS8-1. The I-1 zone will provide the greatest opportunity for industry and special trade employment.
- C-PS10-2 and C-PS10-3. These criteria relate to avoiding over parking and opportunity for shared and flexible parking. Since the applicant owns both the lots involved in this zone change, the applicant can avoid over parking and encourage flexible parking arrangements.
- D-PL7-1. As mentioned above, existing businesses have been consulted and are supportive of the zone change application.
- E-GR4-1. This development will reuse viable existing industrial-type structures, as called for in this criteria.

- C-PS10-1, D-CO1-1, D-CO2-1 and D-CO2-2. These criteria relate to transportation and pedestrian connectivity. As mentioned above, the owner can coordinate flexible and shared parking arrangements. The rights-of-way reflect the industrial character of the area. The predominant traffic in this area is by truck and car, but it is safely removed from any residential or other conflicting traffic pattern. It is near the Newtown Pike freight corridor into the community.
- D-CO4-3 and D-CO5-1. These criteria relate to street patterns. The street patterns will not be changed, however, the current patterns are suitable for the proposed use. These streets were designed with shorter block lengths and minimized grade and other topographic issues. They are properly designed for industrial traffic. The intersection of Newtown Circle and Newtown Pike is fully signalized.
- A-DS4-3. This development will not result in a change in the existing landscape.
- B-PR7-2, B-PR7-3 and B-RE1-1. These criteria relate to trees, and improving the tree canopy and utilizing street trees. The tree canopy will be improved by increasing the street tree canopy in this existing development.

Variance request

In addition to the zone change, the applicant is requesting a variance to eliminate the property perimeter landscape requirement between the properties at 804 Newtown Circle and 1051 Newtown Pike.

Article 18-3(a)(1) of the Zoning Ordinance requires a 15-foot landscape buffer between any property zoned Industrial and any property zoned for business use. We are requesting elimination of this landscape requirement.

These two properties are owned by the same applicant. They were developed on a joint development plan. The area along the property line between 804 Newtown Circle and 1051 Newtown Pike is the driving aisle which gives access to the rear loading area for 1051 Newtown Pike, and access to the loading and parking areas for 804 Newtown Circle. Neither of these properties could function if the access were removed to install a landscape area. Access to parking and loading would be eliminated. As mentioned in the zone change application, the layout and access to the buildings will not be changed as a result of this zone change application. We are requesting the zone change to allow additional uses to be made of the buildings.

Therefore, we are requesting this dimensional variance for the following reasons:

1. Granting this variance will not adversely affect the public health, safety or welfare and will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public because the layout of the property will not change as a result of this zone change. 804 Newtown Circle and 1051 Newtown Pike were shown on the same original development plan. The property line between these two properties is a joint driveway which gives access to the

loading area at the rear of 1051 Newtown Pike, and it gives access to the parking and loading areas for the two buildings at 804 Newtown Circle.

2. Granting this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the buildings and parking on this property were constructed in the mid 1980's and have successfully functioned since then. The joint driveway gives access to the two properties.

3. The special circumstances which apply to this property and which do not generally apply to land in the general vicinity or the same zone are that this property was developed under a joint development plan in the mid 1980's. These properties are owned by the same property owner. The joint driveway along the property line was created by the original development plan.

4.. Strict application of the regulations of the Zoning Ordinance would deprive the applicant of a reasonable use of its land or create an unnecessary hardship because construction of the landscape buffer would eliminate vehicular access to the rear of 1051 Newtown Pike, and to the loading dock and parking for the two buildings at 804 Newtown Circle.

5. The circumstances surrounding the requested variance are not the result of the actions of this applicant taken subsequent to the regulation to which relief is sought. The current configuration of the property was created by the development plan many years before this applicant purchased both properties.

Conclusion

This proposed zone change will allow greater flexibility and job creation potential utilizing existing buildings which are industrial in design.

Thank you for your consideration of this zone change application.

Sincerely,



Richard V. Murphy

RVM/prb

ZONE CHANGE LEGAL DESCRIPTION

of

Collins & Miller Properties, LLC

805 Newtown Circle

Deed Book, Page 3366, Page 425

being

Lot 2 of the Newtown Distribution Center subdivision

Plat Cabinet D, Slide 369

Zone Change B-1 to I-1

Lexington, Fayette County, Kentucky

Being a parcel of land in the city of Lexington, Fayette County, Kentucky lying approximately 450 feet west, more or less, from the centerline of Newtown Pike at Newtown Circle, and being more particularly described as:

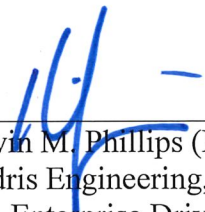
BEGINNING at a point in north right-of-way of Newtown Circle, said point also being the southwest corner of Tract B of the Newtown Development, Inc. subdivision (Plat Cabinet B, Slide 30), and the existing B-1 / B-3 Zone Line, said point having Kentucky State Plane Coordinates of E(X)=1,569,921.06, N(Y)=210,444.56 (NAD '83, KY North Zone, US Survey Feet); thence leaving the aforementioned Tract B and with the B-1/B-3 zone line South 21°44'06" West a distance of 31.07 feet to a point in the centerline of Newtown Circle; thence with the centerline of Newtown Circle, North 71°24'54" West a distance of 45.39 feet to the existing B-1/B-4 zone line in the cul-de-sac of Newtown Circle; thence with the existing zone line, North 71°07'28" West a distance of 85.41 feet to corner of Lot 1 of the Newtown Distribution Center subdivision; thence with the aforementioned Lot 1 and the existing B-4/B-1 zone line, North 71°24'54" West a distance of 183.85 feet to a point in the east line of Lot 13 of the Melbourn Industrial Park – Unit 1-G (Plat Cabinet A, Slide 616); thence with the aforementioned Lot 13, North 18°52'06" East a distance of 249.63 feet to the northeast corner of the aforementioned Lot 13 and being in the south line of the Melbourne Industrial Park – Unit 1-H (Plat Cabinet C, Slide 40), said point being a corner to the existing B-1/I-1 zone; thence with the south line of Lots 14 & 15 of Melbourne Industrial Park – Unit 1-H and the existing B-1/I-1

zone, South 71°01'31" East a distance of 327.06 feet to the northwest corner of the
aforementioned Tract B and corner to the existing B-1/B-3 zone; thence with the west line of
Tract B and the existing B-1/B-3 zone, South 21°44'06" West a distance of 217.14 feet to a
point; which is the Point of Beginning, having a Gross area of 1.8316 Acres and a Net area of
1.6899 Acres.

The Bearings and coordinates hereon are based on Kentucky State Plane North Zone,
North American Datum of 1983 (NAD '83-US Feet). Particularly, the bearings and coordinates
are based on a GNSS Survey Utilizing a Trimble R6 GNSS Receiver and the KYTC VRS
System.

The description above being based on an actual ground survey of the property conducted
under the direct supervision of Kevin Phillips (PLS 3350), of Endris Engineering, 771 Enterprise
Drive, Lexington, Kentucky concluding on February 22, 2021.





Kevin M. Phillips (PLS 3350)
Endris Engineering, PSC
771 Enterprise Drive
Lexington, KY 40510

03-01-2021
Date

ZONE CHANGE LEGAL DESCRIPTION

of

Collins & Miller Properties, LLC

804-808 Newtown Circle

Deed Book, Page 3366, Page 425

being

Lot 1 of the Newtown Distribution Center subdivision

Plat Cabinet D, Slide 369

Zone Change B-4 to I-1

Lexington, Fayette County, Kentucky

Being a parcel of land in the city of Lexington, Fayette County, Kentucky lying approximately 450 feet west, more or less, from the centerline of Newtown Pike at Newtown Circle, and being more particularly described as:

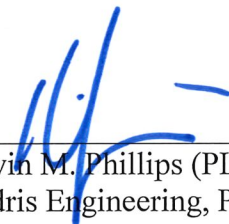
BEGINNING at a point in south right-of-way of Newtown Circle, said point being the northwest corner of Lot 3 of the Newtown Distribution Center subdivision (Plat Cabinet D, Slide 369), and the existing B-4 / B-1 Zone Line, said point having Kentucky State Plane Coordinates of $E(X)=1,569,849.21$, $N(Y)=210,378.65$ (NAD '83, KY North Zone, US Survey Feet); thence along the aforementioned Lot 3 and said existing zone line South $18^{\circ}35'06''$ West a distance of 376.83 feet to the southwest corner of the aforementioned Lot 3 and said existing zone line; thence continuing with the existing zone line, South $18^{\circ}35'06''$ West a distance of 666.71 feet to the centerline of West New Circle Road; thence with the centerline of West New Circle Road, North $79^{\circ}08'27''$ West a distance of 277.39 feet to a point, being the existing B-4/I-1 zone line; thence with the existing zone line, North $18^{\circ}52'06''$ East a distance of 526.75 feet to a point, said point being the southeast corner of Lot 11 of the Melbourne Industrial Park, Unit 1-G (Plat Cabinet A, Slide 616) and the existing B-4/I-1 zone; thence with the east line of the aforementioned Melbourne Industrial Park and existing B-4/I-1 zone line, North $18^{\circ}52'06''$ East a distance of 608.89 feet to the southwest corner of Lot 2 of the aforementioned Newtown Distribution Center subdivision; thence with Lot 2 South $71^{\circ}24'54''$ East a distance of 183.85 feet to a point in the right-of-way of Newtown Circle; thence continuing with the centerline of

Newtown Circle, South 71°07'28" East a distance of 85.41 feet to a point being the corner to the existing B-4/B-1 zone; thence leaving the centerline of Newtown Circle, South 18°35'06" West a distance of 54.35 feet to a point; which is the Point of Beginning, having a Gross area of 6.9747 Acres and a Net area of 3.1311 Acres.

The Bearings and coordinates hereon are based on Kentucky State Plane North Zone, North American Datum of 1983 (NAD '83-US Feet). Particularly, the bearings and coordinates are based on a GNSS Survey Utilizing a Trimble R6 GNSS Receiver and the KYTC VRS System.

The description above being based on an actual ground survey of the property conducted under the direct supervision of Kevin Phillips (PLS 3350), of Endris Engineering, 771 Enterprise Drive, Lexington, Kentucky concluding on February 22, 2021.





Kevin M. Phillips (PLS 3350)
Endris Engineering, PSC
771 Enterprise Drive
Lexington, KY 40510

03-01-2021
Date

Collins & Miller Properties, LLC (PLN-MAR-21-00004)

804 AND 805 NEWTOWN CIRCLE

Increase the flexibility of uses within the established structures.

Applicant/Owner

Collins & Miller Properties, LLC
219 Southland Drive, STE 100
Lexington, KY 40503
rcollins@qx.net



Application Details

Acresage:

10.11 net (8.81 gross) acres

Current Zoning:

Neighborhood Business (B-1) zone
Wholesale and Warehouse Business (B-4) zone

Proposed Zoning:

Light Industrial (I-1) zone

Place-type / Development Type:

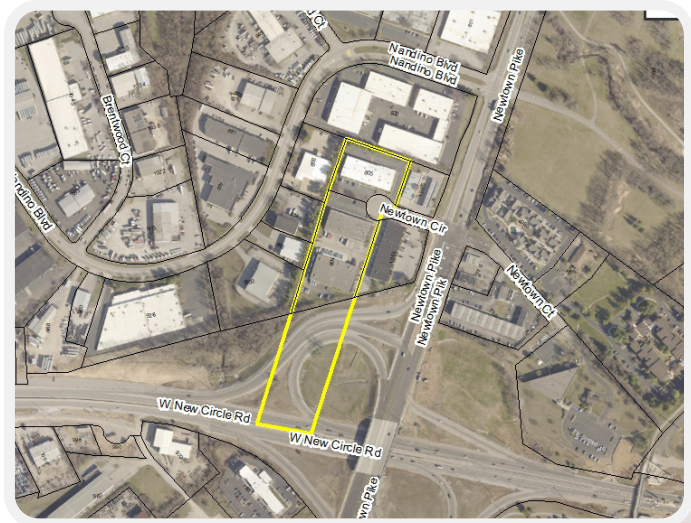
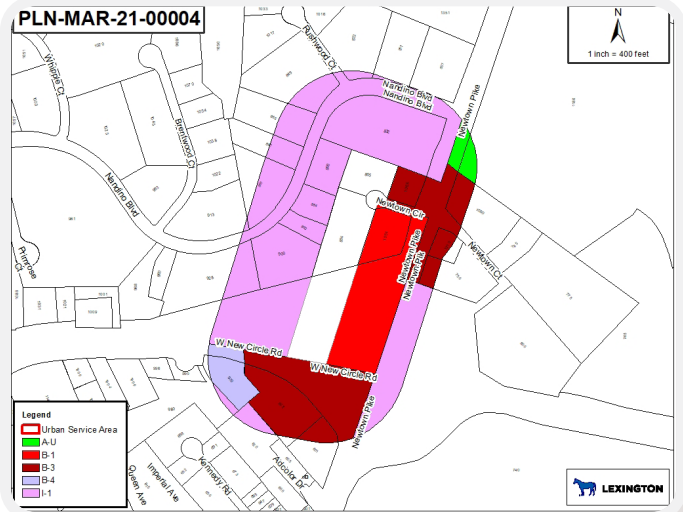
Industrial and Production Center*
Industrial and Production Non-Residential
* For more information about the Industrial and Production Center Place-Type see Imagine Lexington pages 337-339.

Description:

The applicant is seeking to allow for greater flexibility in uses to attract new tenants. The proposed rezoning is not seeking to modify the layout of the current buildings.

Public Engagement

- The applicant has met with the tenants of 804 and 805 Newtown Circle. There has been no other outreach to the other surrounding properties.

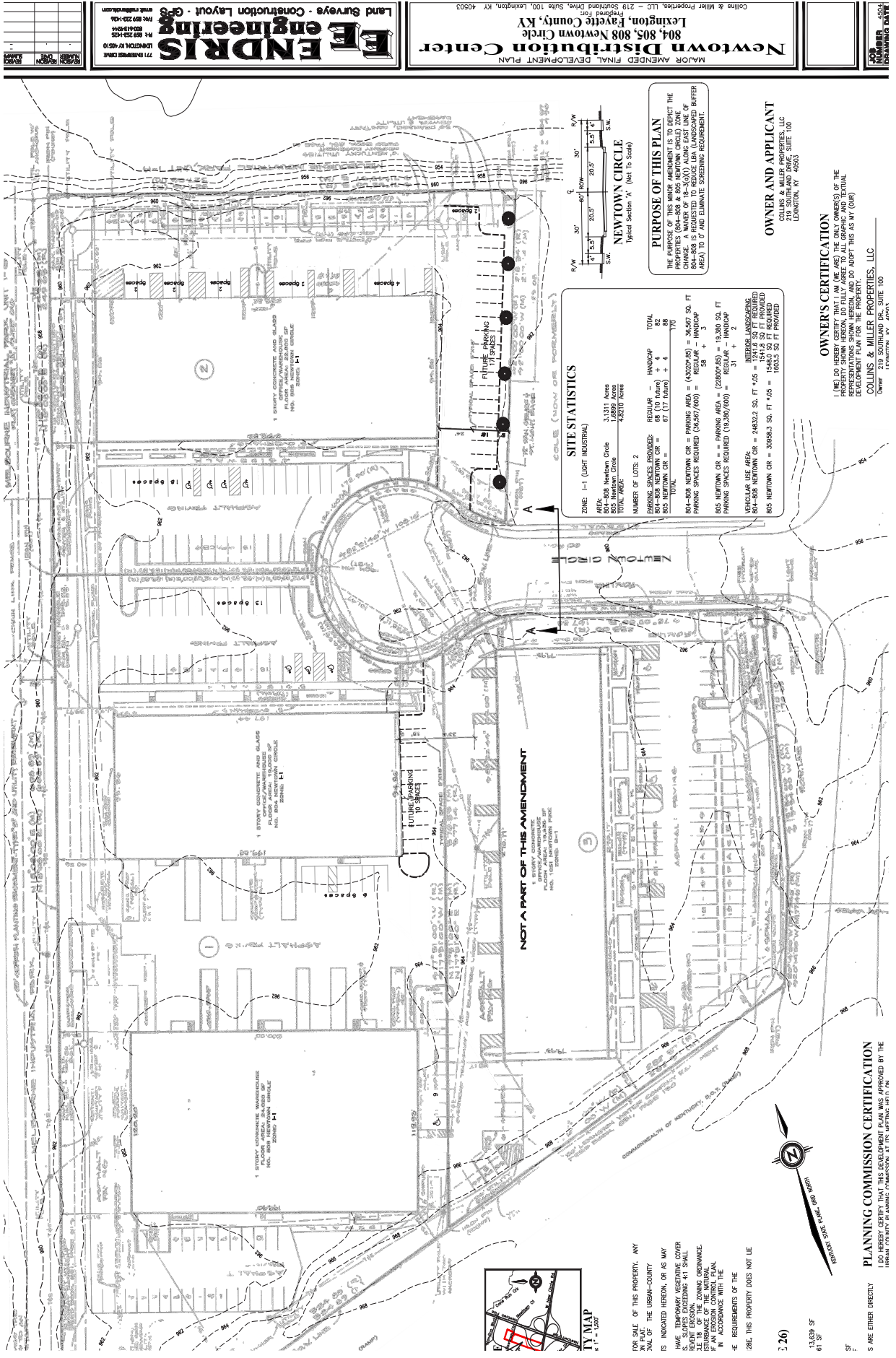


Status

- Public Engagement
- Pre-Application Meeting
- Application Review
- Planning Staff Review
- Technical Review Committee
- Zoning/Subdivision Committee Meetings
- Planning Commission Hearing
- Urban County Council Meeting

DISCLAIMER: Plans are subject to change. Visit the Accela Citizen Portal (lexingtonky.gov/plans) or contact Planning for the latest information.

Development Plan



FE ENDRIS
 Land Surveys - Construction Layout - CFS
 771 LAWRENCE DRIVE
 LEXINGTON, KY 40510
 502.254.2525
 FAX: 502.223.1455
 email: mfe@feendris.com

NEWTON DISTRIBUTION CENTER
 804, 805, 808 NEWTOWN CIRCLE
 LEXINGTON, KY 40503
 COLLINS & MILLER PROPERTIES, LLC
 219 SOUTHLAND DRIVE, SUITE 100
 LEXINGTON, KY 40503

MAJOR AMENDED FINAL DEVELOPMENT PLAN
 NEWTOWN DISTRIBUTION CENTER
 804, 805, 808 NEWTOWN CIRCLE
 LEXINGTON, KY 40503
 COLLINS & MILLER PROPERTIES, LLC
 219 SOUTHLAND DRIVE, SUITE 100
 LEXINGTON, KY 40503

OWNER AND APPLICANT
 COLLINS & MILLER PROPERTIES, LLC
 219 SOUTHLAND DRIVE, SUITE 100
 LEXINGTON, KY 40503

OWNER'S CERTIFICATION
 I (WE) DO HEREBY CERTIFY THAT I (AM WE ARE) THE ONLY OWNER(S) OF THE PROPERTY SHOWN HEREON, AND DO ADAPT THIS AS MY (OUR) DEVELOPMENT PLAN FOR THE PROPERTY.
 COLLINS & MILLER PROPERTIES, LLC
 Owner
 219 SOUTHLAND DR., SUITE 100
 LEXINGTON, KY 40503

PURPOSE OF THIS PLAN
 THE PURPOSE OF THIS PLAN IS TO OBTAIN THE CHANGING OF ZONING FROM LIGHT INDUSTRIAL ZONE (LI) TO COMMERCIAL ZONE (C) ALONG EAST LINE OF NEWTOWN CIRCLE. A WALKER OF 18'-0" (0) ALONG EAST LINE OF NEWTOWN CIRCLE IS REQUIRED TO OBTAIN BUFFER AREA(S) TO OBTAIN ELIMINATE SEWERAGE REQUIREMENT.

SITE STATISTICS

ZONE	AREA	THICKNESS	NUMBER OF LOTS	REGULAR	HANDICAP	TOTAL
I-1 (LIGHT INDUSTRIAL)	3,131.1	Acres	1	87	4	91
804-808 Newtown Circle	1,879.0	Sq. Ft.	1	17	4	21
805 Newtown Circle	462.0	Sq. Ft.	1	17	4	21
808 Newtown Circle	790.1	Sq. Ft.	1	17	4	21
TOTAL			3	111	12	123

VEHICULAR USE AREAS
 804-808 NEWTOWN CIR = PARKING AREA = 19,300 SQ. FT
 805 NEWTOWN CIR = PARKING AREA = 19,300 SQ. FT
 808 NEWTOWN CIR = PARKING AREA = 19,300 SQ. FT
 TOTAL PARKING AREAS = 57,900 SQ. FT
 804-808 NEWTOWN CIR = 24832.2 SQ. FT * .05 = 12416.1 SQ. FT REQUIRED
 805 NEWTOWN CIR = 30688.3 SQ. FT * .05 = 15344.15 SQ. FT REQUIRED
 808 NEWTOWN CIR = 30688.3 SQ. FT * .05 = 15344.15 SQ. FT REQUIRED
 TOTAL VEHICULAR USE AREAS = 43104.45 SQ. FT PROVIDED

NOT A PART OF THIS AMENDMENT
 1 STORY CONCRETE AND GLASS FLOOR AREA 10,000 SQ. FT. ZONE I-1
 FUTURE PARKING 10 SPACES
 1 STORY CONCRETE AND GLASS FLOOR AREA 10,000 SQ. FT. ZONE I-1
 1 STORY CONCRETE AND GLASS FLOOR AREA 10,000 SQ. FT. ZONE I-1

PLANNING COMMISSION CERTIFICATION
 I DO HEREBY CERTIFY THAT THIS DEVELOPMENT PLAN WAS APPROVED BY THE PLANNING COMMISSION OF THE CITY OF LEXINGTON, KY ON 03/12/2021.

PLANNING COMMISSION CERTIFICATION
 I DO HEREBY CERTIFY THAT I (AM WE ARE) THE ONLY OWNER(S) OF THE PROPERTY SHOWN HEREON, AND DO ADAPT THIS AS MY (OUR) DEVELOPMENT PLAN FOR THE PROPERTY.
 COLLINS & MILLER PROPERTIES, LLC
 Owner
 219 SOUTHLAND DR., SUITE 100
 LEXINGTON, KY 40503

PLANNING COMMISSION CERTIFICATION
 I DO HEREBY CERTIFY THAT I (AM WE ARE) THE ONLY OWNER(S) OF THE PROPERTY SHOWN HEREON, AND DO ADAPT THIS AS MY (OUR) DEVELOPMENT PLAN FOR THE PROPERTY.
 COLLINS & MILLER PROPERTIES, LLC
 Owner
 219 SOUTHLAND DR., SUITE 100
 LEXINGTON, KY 40503

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INDUSTRIAL & PRODUCTION NON-RESIDENTIAL

SITE DESIGN, BUILDING FORM, & LOCATION

- B-PR9-1** Minimize disturbances to environmentally sensitive areas by utilizing the existing topography to the greatest extent possible.
- B-SU11-1** Green infrastructure should be implemented in new development. (E-GR3)
- C-DI1-1** Consider flexible zoning options that will allow for a wide range of jobs.
- C-DI5-1** In Opportunity Zones with a clearly defined local context, consider adaptive reuse to enhance the existing context.
- C-PS3-1** Development potential in the Rural Activity Centers should be maximized. (E-ST5)
- C-PS8-1** Opportunities for industry and special trade employment should be increased.
- C-PS10-2** Developments should explore options for shared and flexible parking arrangements for currently underutilized parking lots.
- C-PS10-3** Over-parking of new developments should be avoided. (B-SU5)
- D-PL7-1** Stakeholders should be consulted to discuss site opportunities and constraints prior to submitting an application.
- D-PL9-1** Historically significant structures should be preserved.
- D-SP3-1** Adequate right-of-way, lease areas and easements for infrastructure, with emphasis on wireless communication networks should be provided to create reliable service throughout Lexington.
- D-SP3-2** Cellular tower antennae should be located to minimize intrusion and negative aesthetic impacts, and stealth towers and landscaping should be used to improve the visual impact from the roadway and residential areas.
- E-GR4-1** Developments should incorporate reuse of viable existing structures.
- E-GR5-1** Structures with demonstrated historic significance should be preserved or adapted.

TRANSPORTATION & PEDESTRIAN CONNECTIVITY

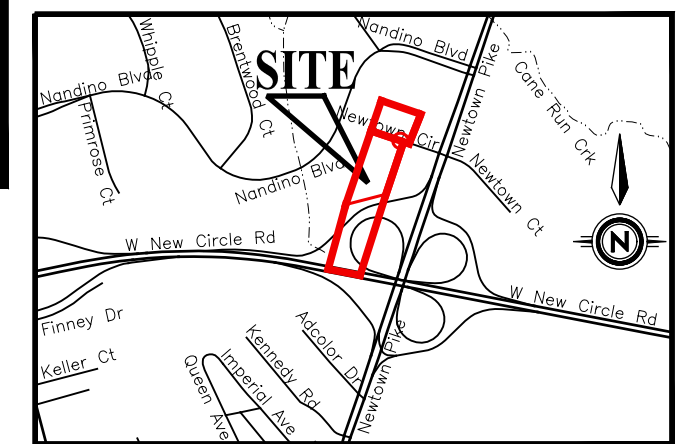
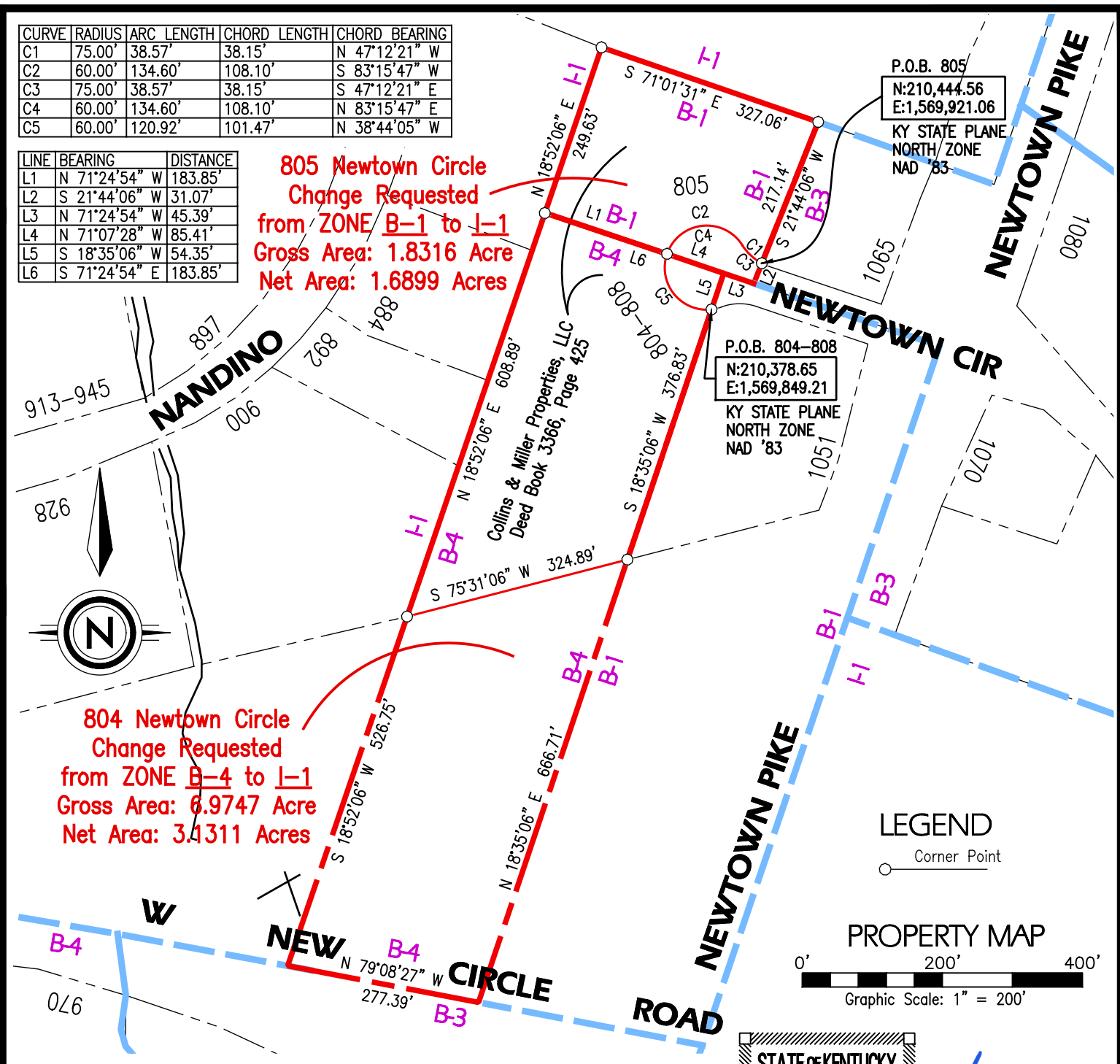
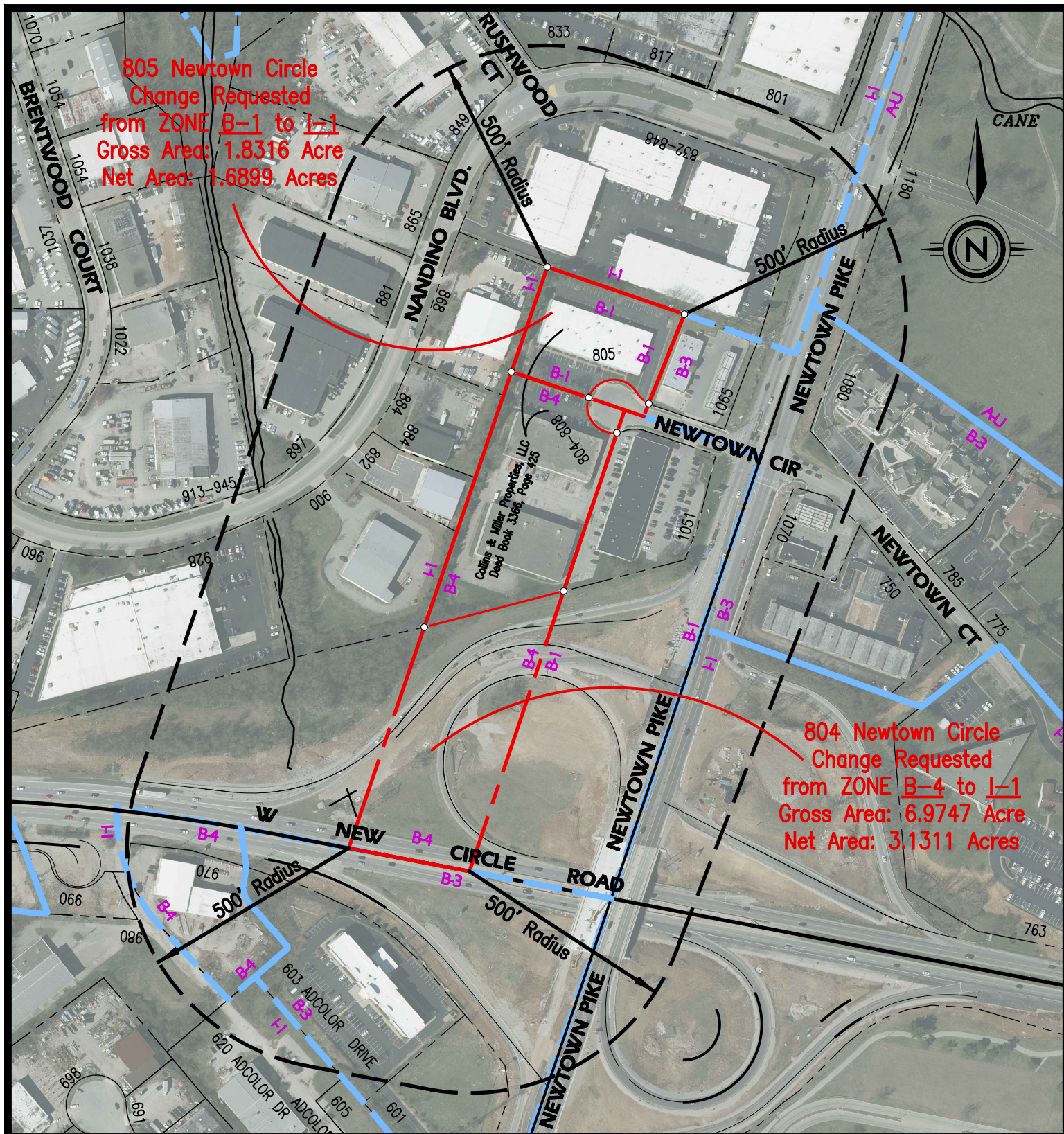
- C-PS10-1** Flexible parking and shared parking arrangements should be utilized.
- D-CO1-1** Rights-of-way and multimodal facilities should be designed to reflect and promote the desired place-type.
- D-CO2-1** Safe facilities for all users and modes of transportation should be provided.
- D-CO2-2** Development should create and/or expand a safe, connected multimodal transportation network that satisfies all users' needs, including those with disabilities.

GREENSPACE & ENVIRONMENTAL HEALTH

- D-CO4-1** Dead-end streets and Cul-de-sacs should be discouraged except where connections are not topographically or environmentally feasible.
 - D-CO4-2** Roadway capacity should be increased by providing multiple parallel streets, which alleviate traffic and provide multiple route options, in lieu of additional lanes.
 - D-CO4-3** Street pattern and design should consider site topography and minimize grading where possible.
 - D-CO5-1** Streets should be designed with shorter block lengths, narrower widths, and traffic calming features.
 - E-ST3-1** Development along major corridors should provide for ride sharing pick up and drop off locations along with considerations for any needed or proposed park and ride functions of the area. (E-GR10, E-GR7)
- A-DS4-3** Development should work with the existing landscape to the greatest extent possible, preserving key natural features.
 - A-EQ7-3** Community open spaces should be easily accessible and clearly delineated from private open spaces.
 - B-PR2-1** Impact on environmentally sensitive areas should be minimized within and adjacent to the proposed development site.
 - B-PR2-2** Dividing floodplains into privately owned parcels with flood insurance should be avoided.
 - B-PR2-3** Floodplains should be incorporated into accessible greenspace, and additional protection should be provided to areas around them.
 - B-PR7-1** Connections to greenways, tree stands, and stream corridors should be provided.
 - B-PR7-2** Trees should be incorporated into development plans, prioritize grouping of trees to increase survivability.
 - B-PR7-3** Developments should improve the tree canopy.
 - B-RE1-1** Developments should incorporate street trees to create a walkable streetscape.
 - B-RE2-1** Green infrastructure should be used to connect the greenspace network.
 - E-ST5-1** Increased intensity in the Rural Activity Centers should not negatively impact surrounding rural areas.
 - E-GR3-1** Physical and visual connections should be provided to existing greenway networks.
 - E-GR3-2** New focal points should emphasize geographic features unique to the site.

Theme Letter - Pillar Abbreviation & Policy Number - Criteria Number
Ex: from Theme A - Design Pillar & Policy #1 - Criteria #1 = A-DS1-1. Full decoder on page ##

Criteria that include additional policy items in parentheses refer to companion policies that will provide additional context to the related criteria.



STATE OF KENTUCKY
KEVIN M. PHILLIPS
3350
LICENSED
PROFESSIONAL
LAND SURVEYOR

[Signature]
03-09-2021

FROM	TO	NET	GROSS
B-1	I-1	1.6899 Acres	1.8316 Acres
B-4	I-1	3.1311 Acres	6.9747 Acres

TITLE: Newtown Development Inc.
ADDRESS: 804-808 and 805 Newtown Circle
APPLICANT: Collins & Miller Properties, LLC (Robert M. Collins - member)
219 Southland Drive, Suite 100, Lexington, KY 40503
OWNER: Collins & Miller Properties, LLC c/o Isaac Commercial Properties Inc,
771 Corporate Drive, Suite 500, Lexington, KY 40503
DATE FILED OR AMENDED: March 9, 2021

NOTIFICATION AREA MAP
PREPARED BY:

EE ENDRIS engineering
Land Surveyors • Construction Layout • GPS

771 ENTERPRISE DRIVE
LEXINGTON, KY 40510
PH: 859 253-1425
FAX: 859 233-1436

0' 300' 600'
Graphic Scale: 1" = 300'

UTILITY OWNERS

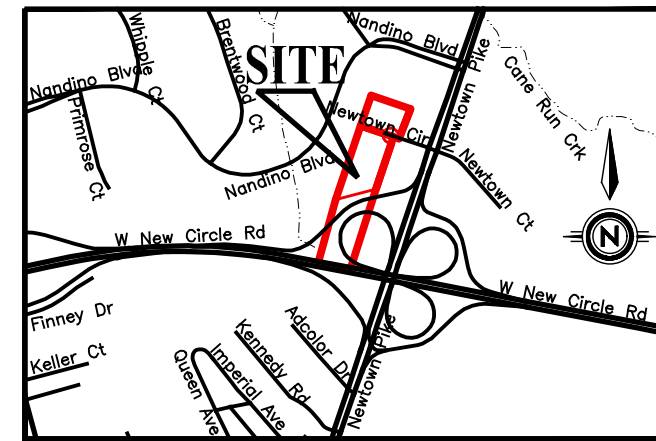
ELECTRIC
 KENTUCKY UTILITIES
 500 STONE ROAD,
 LEXINGTON, KY
 RICHARD COMPTON
 (859) 367-4309

WATER
 KENTUCKY AMERICAN
 WATER COMPANY
 2300 RICHMOND ROAD,
 LEXINGTON, KY
 COLE MITCHAM/
 AUSTIN THORE
 (859) 268-6362

TELEPHONE
 WINDSTREAM
 130 WEST NEW CIRCLE ROAD
 LEXINGTON, KY
 LEZLIE ALISON
 (859) 357-6205

CABLE TELEVISION
 SPECTRUM
 1575 WINCHESTER ROAD
 SUITE 140
 LEXINGTON, KY
 RALPH MCDONIE
 (859) 514-2417

NATURAL GAS
 COLUMBIA GAS COMPANY
 2001 MERCER ROAD,
 LEXINGTON, KY
 BRYAN SLOANE
 (859) 288-0253



VICINITY MAP
 Graphic Scale: 1" = 1,500'

NOTES

1. THIS DEVELOPMENT PLAN SHALL NOT BE USED AS A BASIS FOR SALE OF THIS PROPERTY. ANY SALE OF LAND SHALL BE BASED UPON A RECORDED SUBDIVISION PLAT.
2. THIS DEVELOPMENT PLAN MAY BE AMENDED WITH THE APPROVAL OF THE URBAN-COUNTY PLANNING COMMISSION.
3. ACCESS TO THIS PROPERTY SHALL BE LIMITED TO THE POINTS INDICATED HEREON, OR AS MAY BE AMENDED.
4. ALL AREAS THAT HAVE BEEN DISTURBED BY GRADING SHALL HAVE TEMPORARY VEGETATIVE COVER PROVIDED, CONSISTING OF ANNUAL GRASSES, OR SMALL GRAINS. SLOPES EXCEEDING 4:1 SHALL HAVE ADDITIONAL PROTECTION OF MULCHING OR SODDING TO PREVENT EROSION.
5. DEVELOPMENT OF THIS PROPERTY SHALL COMPLY WITH ARTICLE 18 OF THE ZONING ORDINANCE.
6. NO GRADING, STRIPPING, EXCAVATION, FILLING OR OTHER DISTURBANCE OF THE NATURAL GROUND COVER SHALL TAKE PLACE PRIOR TO THE APPROVAL OF AN EROSION CONTROL PLAN.
7. STORMWATER MANAGEMENT AND SANITARY SEWERS SHALL BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE DIVISION OF ENGINEERING MANUALS.
8. THIS DEVELOPMENT PLAN SHALL BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE URBAN-COUNTY TRAFFIC ENGINEER.
9. BASED ON FEMA FLOOD HAZARD BOUNDARY MAP 210067 0128E, THIS PROPERTY DOES NOT LIE WITHIN A FLOOD PLAIN.

TREE PLANTING PLAN (ARTICLE 26)

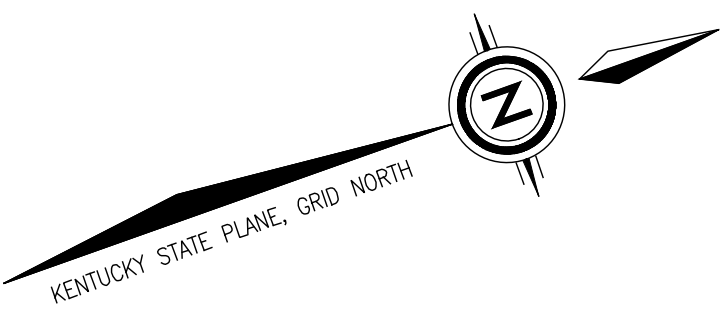
TOTAL SITE AREA = 4.8210 ACRES (209,999.8 SF)
 TOTAL CANOPY REQUIRED @ 10% = 804-808 NEWTOWN CIR = 13,639 SF
 805 NEWTOWN CIR = 7,361 SF
 EX. CANOPY TO REMAIN = 24,520 SF
 CANOPY TO BE ADDED: 2,400 SF (6 MEDIUM SPECIES TREES)
 TOTAL CANOPY PROVIDED = 804-808 NEWTOWN CIR = 16,192 SF
 805 NEWTOWN CIR = 10,728 SF

(THE FENCELINE TREE CANOPY WILL REMAIN BECAUSE THE TREES ARE EITHER DIRECTLY ON THE PROPERTY LINE OR ON THE ADJACENT PROPERTY.)

TREE INVENTORY
 THE EXISTING TREES CONSIST OF CHERRY, HACKBERRY, MAPLE, LOCUST AND ASH.

● = MEDIUM SPECIES TREE TO BE PLANTED

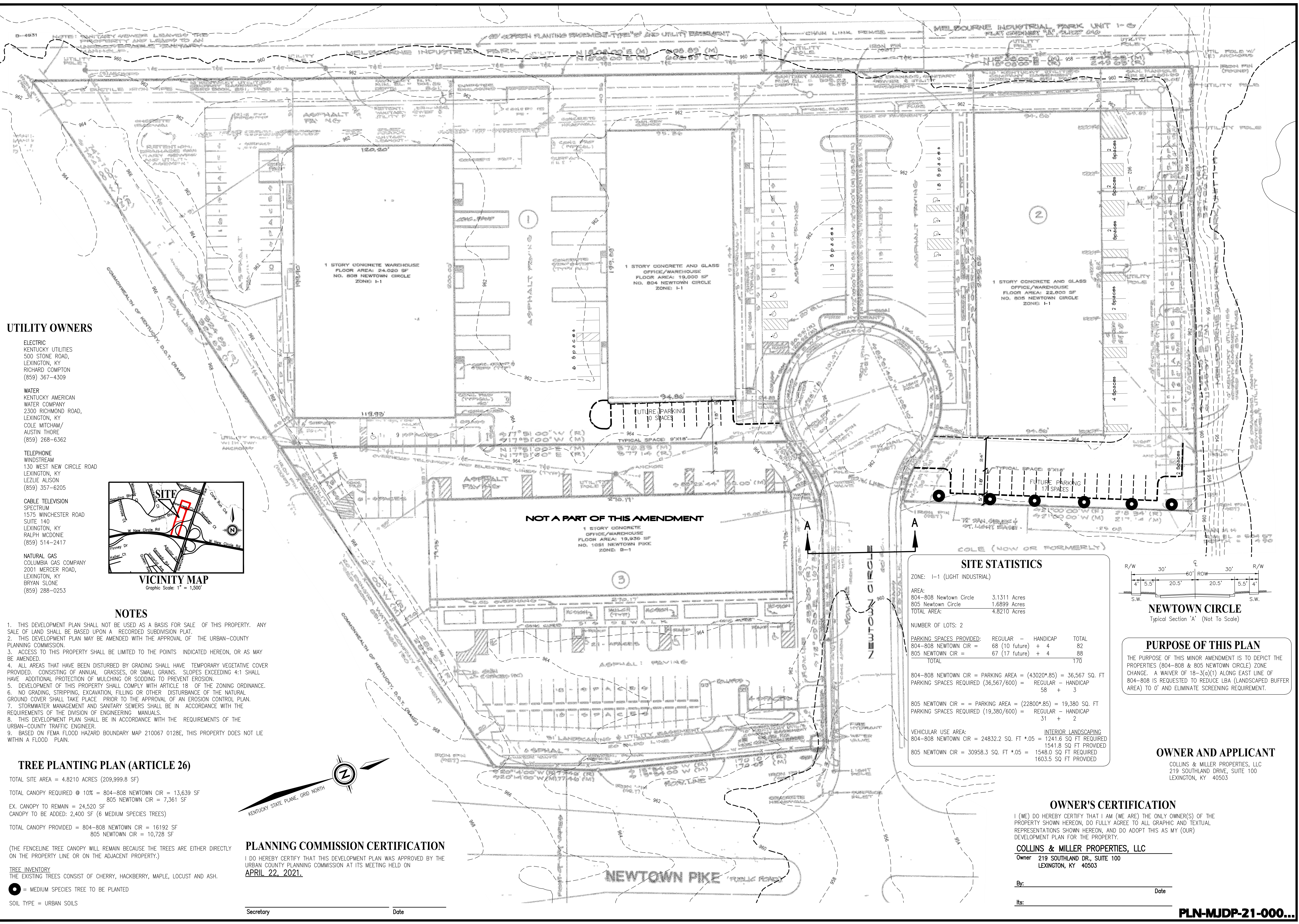
SOIL TYPE = URBAN SOILS



PLANNING COMMISSION CERTIFICATION

I DO HEREBY CERTIFY THAT THIS DEVELOPMENT PLAN WAS APPROVED BY THE URBAN-COUNTY PLANNING COMMISSION AT ITS MEETING HELD ON **APRIL 22, 2021.**

Secretary _____ Date _____



NOT A PART OF THIS AMENDMENT

SITE STATISTICS

ZONE: I-1 (LIGHT INDUSTRIAL)

AREA:	
804-808 Newtown Circle	3.1311 Acres
805 Newtown Circle	1.6899 Acres
TOTAL AREA:	4.8210 Acres

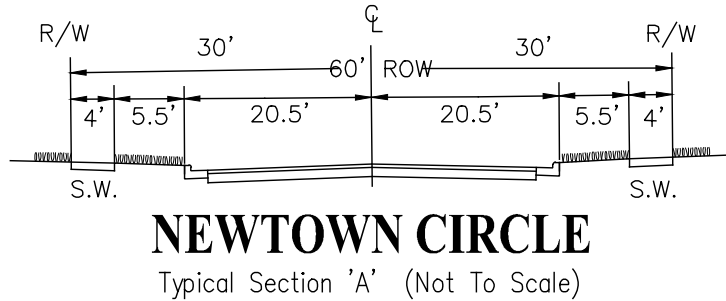
NUMBER OF LOTS: 2

PARKING SPACES PROVIDED:	REGULAR	HANDICAP	TOTAL
804-808 NEWTOWN CIR =	68 (10 future)	+ 4	82
805 NEWTOWN CIR =	67 (17 future)	+ 4	88
TOTAL			170

804-808 NEWTOWN CIR = PARKING AREA = (43020*85) = 36,567 SQ. FT
 PARKING SPACES REQUIRED (36,567/600) = REGULAR - HANDICAP
 58 + 3

805 NEWTOWN CIR = PARKING AREA = (22800*85) = 19,380 SQ. FT
 PARKING SPACES REQUIRED (19,380/600) = REGULAR - HANDICAP
 31 + 2

VEHICULAR USE AREA:	INTERIOR LANDSCAPING
804-808 NEWTOWN CIR = 24832.2 SQ. FT * .05 = 1241.6 SQ FT REQUIRED	1541.8 SQ FT PROVIDED
805 NEWTOWN CIR = 30958.3 SQ. FT * .05 = 1548.0 SQ FT REQUIRED	1603.5 SQ FT PROVIDED



PURPOSE OF THIS PLAN

THE PURPOSE OF THIS MINOR AMENDMENT IS TO DEPICT THE PROPERTIES (804-808 & 805 NEWTOWN CIRCLE) ZONE CHANGE. A WAIVER OF 18-3(a)(1) ALONG EAST LINE OF 804-808 IS REQUESTED TO REDUCE LBA (LANDSCAPED BUFFER AREA) TO 0' AND ELIMINATE SCREENING REQUIREMENT.

OWNER AND APPLICANT

COLLINS & MILLER PROPERTIES, LLC
 219 SOUTHLAND DRIVE, SUITE 100
 LEXINGTON, KY 40503

OWNER'S CERTIFICATION

I (WE) DO HEREBY CERTIFY THAT I AM (WE ARE) THE ONLY OWNER(S) OF THE PROPERTY SHOWN HEREON, DO FULLY AGREE TO ALL GRAPHIC AND TEXTUAL REPRESENTATIONS SHOWN HEREON, AND DO ADOPT THIS AS MY (OUR) DEVELOPMENT PLAN FOR THE PROPERTY.

COLLINS & MILLER PROPERTIES, LLC
 Owner 219 SOUTHLAND DR., SUITE 100
 LEXINGTON, KY 40503

By: _____ Date _____
 Its: _____

PLN-MJD-21-000...

REVISION NUMBER	REVISION DATE	SUMMARY

E E ENDRIS
engineering
 Land Surveys · Construction Layout · GPS

771 ENTERPRISE DRIVE
 LEXINGTON, KY 40510
 PH: 804/373-7245
 FX: 859/253-1436
 email: mndrisc@a.com

MAJOR AMENDED FINAL DEVELOPMENT PLAN
Newtown Distribution Center
 804, 805, 808 Newtown Circle
 Lexington, Fayette County, KY

Collins & Miller Properties, LLC - 219 Southland Drive, Suite 100, Lexington, KY 40503

JOB NUMBER 4504
DRAWING DATE March 1, 2021
DRAWING FILE 4504 - Development Plan
SCALE: 1" = 30'

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-21-00004: COLLINS & MILLER PROPERTIES, LLC

DESCRIPTION OF ZONE CHANGE

Zone Change B-1 to I-1: 1.69 net (1.83 gross) acres
& Acreage: B-4 to I-1: 3.13 net (6.97 gross) acres
Total: 4.82 net (8.80 gross) acres
Location: 804-808 & 805 Newtown Circle



EXISTING ZONING & LAND USE

PROPERTIES	ZONING	EXISTING LAND USE
Subject Property	B-4 / B-1	Offices / Warehousing
To North	I-1	Shops of Specialty Trade / Warehousing
To East	B-1 / B-3	Offices / Fueling Station
To South	B-3	Extended Stay Hotel
To West	I-1	Shops of Specialty Trade / Warehousing

URBAN SERVICE REPORT

Roads - The subject properties are located at the end of Newtown Circle, which is a short cul-de-sac that serves four properties. Newtown Circle, a local road, is situated off of Newtown Pike, between Nandino Boulevard and New Circle Road. Newtown Pike (KY 922) is a major arterial roadway that connects downtown Lexington to the interstate system to the north. As one of the primary connector roadways to the interstate and the identified freight corridor for Lexington, Newtown Pike carries a high volume of traffic, approximately 44,300 average daily trips.

Curb/Gutter/Sidewalks - Newtown Circle has curb, gutter, and sidewalks at this location.

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 Cane Run watershed. Storm sewers are currently located along the right-of-way. There are no special flood hazard areas in this location.

Sanitary Sewers - Sanitary sewers exist in the immediate area. The subject property will be served by the Town Branch Wastewater Treatment Facility, located about 2.5 miles to the southwest of the property, between Old Frankfort Pike and Leestown Road.

Refuse - The Urban County Government serves this area with refuse collection on Thursdays. However, supplemental service by private refuse haulers is commonly utilized for industrial land uses, such as those proposed.

Police - The nearest police station is the main headquarters, located approximately two and a half miles to the southwest on East Main Street.

Fire/Ambulance - Fire Station #10 is located less than a mile to the southwest of the property, along Finney Drive near the Georgetown Road and New Circle Road interchange.

Transit - LexTran transit stop is available in proximity to the subject properties on the Newtown Pike Route (#4); however, there are no immediate stops available for the subject property. The applicant should work with LexTran to develop a potential stop at this location.

Parks - There are no available parks within walking distance of the subject properties.

SUMMARY OF REQUEST

The applicant is seeking a zone change from the Neighborhood Business (B-1) and Wholesale and Warehouse Business (B-4) zones to the Light Industrial (I-1) zone for the properties located at 804-808 and 805 Newtown Circle Road. The zone change application is seeking to allow for greater flexibility for the use of the established structures. The applicant is not proposing any major modification of the current properties. A dimension variance is also requested by the applicant.

PLACE-TYPE

INDUSTRY & PRODUCTION CENTER
The Industry and Production Center Place-Type is where Lexington’s most intense types of economic development and job creation occur. These places should be located near major corridors to facilitate efficient and affordable shipping and transportation of goods throughout the region while minimizing the impact on the traffic infrastructure throughout the rest of the community. Special care should be taken to address the environmental impact of these places as well as their impact on residents.

DEVELOPMENT TYPE

INDUSTRIAL & PRODUCTION NON-RESIDENTIAL
Primary Land Use, Building Form, & Design
Primarily employment land dedicated to the most intense types of employment-centric development. This is the only category where uses are inherently incompatible and are best separated from adjacent uses. These uses are best suited in areas where they already exist, collocating to utilize industrial-scale infrastructure to serve the needs of the users. Environmental protection measures should be taken to minimize impacts.
Transit Infrastructure & Connectivity
These uses are also heavy employers and should incorporate mass transit infrastructure, on par with that of other modes, to connect residents to their jobs.

PROPOSED ZONING



This zone is intended for manufacturing, industrial and related uses not involving a potential nuisance in terms of smoke, noise, odor, vibration, heat, light or industrial waste. In addition, the Comprehensive Plan recognizes that it is important to promote adaptive reuse of older industrial areas and to allow Industrial Mixed-Use projects and Adaptive Reuse Projects. The Comprehensive Plan should be used to determine appropriate locations for this zone and for Industrial Mixed-Use Projects. Consideration should be given to the relationship of this zone to the surrounding land uses and to the adequacy of the street system to serve the anticipated traffic needs.

PROPOSED USE



This petitioner is proposing the Light Industrial (I-1) zone to allow for greater flexibility in use of the current site and to better match the surrounding land uses.

APPLICANT & COMMUNITY ENGAGEMENT



The applicant currently owns three of the four properties located on Newtown Circle. They have meet with the tenants of those properties who are supportive of the rezoning. The applicant should reach out to those properties in the area, including those that are not currently under their ownership.

PROPERTY & ZONING HISTORY



The subject properties were initially rezoned from an Agricultural 1 zone to a Business 1 zone in 1964 in an effort to construct a hotel on the property. This zone change coincided with the construction of greater amounts of access and commercial development along Newtown Pike. The construction of New Circle Road between Newtown Pike and Richmond Road in 1952, also spurred greater amounts of development in northern Lexington. By the time New Circle Road was complete in 1967, there was increased desire to provide for both residential and commercial opportunities.

At the time of the comprehensive rezoning of the County in 1969, the area that includes the subject properties was rezoned to the Highway Service Business District (B-3) zone, which conformed with the original intent of the 1964 zone change. The hotel was never constructed on the property and in 1979, an application was approved, changing the zoning for the subject properties from the B-3 zone to the Neighborhood Business (B-1) zone and the Wholesale and Warehouse Business (B-4) zone.

The current layout of the properties located at 804-808 and 805 Newtown Circle, as well as 1051 Newtown Pike are the result of the 1979 zone change and the associated development plan. The structures themselves were constructed in 1982 and have been utilized primarily as office and warehousing space.

COMPREHENSIVE PLAN COMPLIANCE



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 applicant opines that their proposed rezoning is in agreement with several goals, objectives, and policies of the 2018 Comprehensive Plan. In the following section, the staff describes some of the elements that are in agreement with the Comprehensive Plan.

GOALS & OBJECTIVES

The applicant opines that they are in agreement with the adopted Goals and Objectives of the 2018 Comprehensive Plan. They state that the proposed rezoning will create jobs and prosperity (Theme C) by allowing for the creation of a variety of jobs that will lead to prosperity for all (Theme C, Goal #2.a). Additionally, the applicant posits that zone change will improve opportunities for small businesses (Theme C, Goal #2.b) by providing space for businesses that exceed the intensity of use typically found in B-1 and B-4 zones. Finally, the applicant indicates that this zone change will also reduce the pressure on the Urban Service Area (Theme E, Goal #1.a) by allowing greater utilization of the subject property, which is currently underutilized (Theme E, Goal #1.c and d).

Staff agrees with these elements of the applicants justification and that the proposed rezoning can meet the Goals and Objectives of the Comprehensive Plan.

CRITERIA

The development criteria for a zone change are the distillation of the adopted Goals and Objectives, as well as the policies put forth in the 2018 Comprehensive Plan. The development criteria for development represent the needs and desires of the Lexington-Fayette Urban County community in hopes of developing a better built environment. The applicable criteria are defined based on the proposed Place-Type and Development Type.

The applicant has indicated that the site is located within the Industry and Production Place-Type and is seeking to create an Industry and Production Non-Residential Development Type. Within this Place-Type and Development Type, the Comprehensive Plan states that special care should be taken to address the environmental impact of these places, as well as their impact on residents. Typically, the appropriateness of the Industry and Production Place-Type is heavily reliant, not only on the surrounding land use, but the infrastructure that is available to support such a development. The proposed site is located along Newtown Pike, which is the freight corridor for the Urban County. Staff agrees that the Industry and Production Place-Type can be appropriate for the subject property with appropriate buffers and consideration given to



environmentally sensitive areas.

While the applicant has addressed some of the Development Criteria, there are areas of concern as to how the applicant has applied or not applied the development criteria.

1. Site Design, Building Form and Location

Despite compliance with some of the criteria for Site Design, Building Form and Location, there were several criteria that necessitated added discussion and warranted a staff response.

C-PS10-3 Over-parking of new developments should be avoided. (B-SU5)

The applicant is currently depicting a total of 168 parking spaces on their development plan, with 78 located on the 804-808 Newtown Circle property and 88 located on the 805 Newtown Circle property. While the site is proposing to reuse the established development, 25 of the proposed parking spaces are not part of the established development. The inclusion of the 25 parking spaces leads to an overparking of the site and adds impermeable areas to the site.

2. Transportation and Pedestrian

Despite compliance with some of the criteria for Transportation and Pedestrian, there is still an area of concern. The applicant should expand upon the following development criterion and staff comments.

D-CO2-2 Development should create and/or expand a connected multi-modal transportation network that satisfies all users' needs, including those with disabilities.

The applicant should provide connections between the structures for safe pedestrian movement through the site.

3. Greenspace and Environmental Health

The proposed rezoning meets the criteria for Greenspace and Environmental Health as it works with the current landscape, limits the impacts on the surrounding environment, and adds both street trees and internal tree canopy coverage.

B-PR7-2 Trees should be incorporated into development plans; prioritize grouping of trees to increase survivability.

B-PR7-3 Developments should improve the tree canopy.

Associated with the proposed development, the applicant is seeking a dimensional variance to the required zone to zone screen between the property located at 804-808 Newtown Circle and 1051 Newtown Pike. The applicant should incorporate the trees recommended by the informal decision of the Landscape Review Committee.

CONDITIONAL ZONING RESTRICTIONS

In an effort to alleviate some of the potential adverse impacts on the environment, while also promoting the employment factors for the proposed development and protecting a major gateway into Lexington, staff recommends the restriction of some uses that would otherwise be available in the I-1 zone. Staff recommends prohibiting self-storage warehousing, outdoor storage, and billboards. These uses are typically low employment generators and are not desired with a project that is seeking to promote economic development.

Additionally, due to the location of the subject property within the Royal Springs Aquifer, staff recommends prohibiting all above ground and underground storage tanks, on-site disposal of any hazardous waste materials, and mining of non-metallic minerals and/or radium extraction. Furthermore, all establishments and facilities that store, or transport hazardous materials shall be designed to provide spill containment facilities and shall have emergency response plans approved by the appropriate Hazmat regulator (DEEM, Fire Department, or EPA, as necessary).

The Planning Commission adopted a Wellhead Protection Plan for the Royal Spring Aquifer, which sets forth a plan to ensure a continual source of potable groundwater from Royal Spring for Georgetown and Scott County, and to preserve the integrity of surface waters. This plan has been adopted by both the Planning Commissions of Fayette and Scott Counties, and has most recently been approved by the Kentucky Division of Water on 8/28/03. The proposed restrictions within the Wellhead Protection Area will better protect the



surface and groundwater in the area by prohibiting some uses and requiring “best management practices” for other uses that could potentially be harmful to the wellhead, thus ensuring greater compliance with the Royal Spring Wellhead Protection Plan.

STAFF RECOMMENDS: APPROVAL, FOR THE FOLLOWING REASONS:



1. A restricted Light Industrial (I-1) zone is in agreement with the 2018 Comprehensive Plan’s Goals and Objectives, for the following reasons:
 - a. The proposed rezoning will create jobs and prosperity (Theme C) by allowing for the creation of a variety of jobs that will lead to prosperity for all (Theme C, Goal #2.a).
 - b. The proposed rezoning will improve opportunities for small businesses (Theme C, Goal #2.b) by providing space for businesses that exceed the intensity of use typically found in B-1 and B-4 zones.
 - c. The proposed rezoning will also reduce the pressure on the Urban Service Area (Theme E, Goal #1.a) by allowing greater utilization of the subject property, which is currently underutilized (Theme E, Goal #1.c and d).
2. The justification and corollary development plan are in agreement with the policies and development criteria of the 2018 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Site Design, Building Form and Location as the site creates a industrial development that works with the established infrastructure and will allow for safe pedestrian mobility.
 - b. The proposed rezoning will include safe facilities for the potential users of the site and include safe pedestrian facilities. These improvements address the Transportation and Pedestrian Connectivity development criteria of the 2018 Comprehensive Plan.
 - c. The proposed rezoning meets the criteria for Greenspace and Environmental Health as it limits the impacts on the surrounding environment, and will add tree canopy coverage.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are recommended via conditional zoning:
 - a. Prohibited Uses:
 - i. Self-storage warehousing
 - ii. Outdoor storage
 - iii. Billboards
 - iv. All above ground and underground storage tanks.
 - v. On-site disposal of any hazardous waste materials.
 - vi. Mining of non-metallic minerals and/or radium extraction.
 - b. All establishments and facilities that store, or transport hazardous materials shall be designed to provide spill containment facilities and shall have emergency response plans approved by the appropriate Hazmat regulator (DEEM, Fire Department, or EPA, as necessary).

These restrictions are appropriate and necessary for the following reasons:

 1. To protect the appearance of the Newtown Pike corridor as a gateway into Lexington, while promoting employment that is appropriate along Lexington’s freight corridor.
 2. The Planning Commission has adopted a Wellhead Protection Plan for the Royal Spring Aquifer, which sets forth a plan to ensure a continual source of potable groundwater from Royal Spring for Georgetown and Scott County, and to preserve the integrity of surface waters. This plan has been adopted by both the Planning Commissions of Fayette and Scott Counties, and has most recently been approved by the Kentucky Division of Water on 8/28/03.
 3. The proposed restrictions within the Wellhead Protection Area will better protect the surface and groundwater in the area by prohibiting some uses and requiring “best management practices” for other uses that could potentially be harmful to the wellhead, thus ensuring greater compliance with the Royal Spring Wellhead Protection Plan.
4. This recommendation is made subject to approval and certification of PLN-MJDP-21-00013: Newtown Distribution Center, Lots 1 & 2 (AMD), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission’s approval.

STAFF REPORT ON VARIANCE REQUEST



As part of their application, the petitioner is seeking a dimensional variance reducing the required property perimeter requirements between a Light Industrial (I-1) zone and a Neighborhood Business (B-1) zone from fifteen (15) feet to zero (0) feet and eliminate all landscape materials. Article 18-3(a)(1)3 of the Zoning Ordinance requires that when any industrial or P-2 zone adjoins any residential, office, or business zone, a minimum buffer area of fifteen (15) feet is necessary along all common boundaries, except the street frontage. 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 18-3(a)(1)3 of the Zoning Ordinance requires that when any industrial or P-2 zone adjoins any residential, office, or business zone, a minimum buffer area of fifteen (15) feet is necessary along all common boundaries, except the street frontage. The Landscape Buffer Area (LBA) shall include one tree per every forty (40) feet of linear boundary, or fraction thereof, from Group A or B only, plus, 1) a double row of six feet high hedge or 2) a six feet high fence, wall or earth mound. The 15-foot Landscape Buffer Area (LBA) may be reduced to five feet when used in conjunction with a six-foot high wall or fence.

CASE REVIEW

The applicant is requesting a variance to eliminate the property perimeter requirement between a Light Industrial (I-1) zone and a Neighborhood Business (B-1) zone for the property located at 804-808 Newtown Circle. The applicant indicates that the two properties are owned by the same entity and were developed on a joint development plan. They state that the area along the property line between 804 Newtown Circle and 1051 Newtown Pike is the driving aisle which gives access to the rear loading area for 1051 Newtown Pike, and access to the loading and parking areas for 804 Newtown Circle. The applicant opines that neither of the properties would function if the access were removed to install a landscape area and would eliminate access to their parking.

The applicant contends that granting this 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 because the layout of the property will not change as a result of this zone change. 804-808 Newtown Circle and 1051 Newtown Pike were shown on the same original development plan.

Further, the applicant suggests that the granting this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the buildings and parking on this property were constructed in the mid 1980's and have successfully functioned since then. They indicate that there is a special circumstance, stating that the properties are zoned differently, but are depicted jointly on the development plan, which dates to the 1980's. These properties are owned by the same property owner. The joint driveway along the property line was created by the original development plan.

As this application pertains to the landscape requirements in Article 18 of the Zoning Ordinance, the information was presented to the Landscape Review Committee on March 23, 2021. While there was not a quorum of voting members at the meeting, staff presented the proposed variance and heard comment from the attending members. Following their discussion, the members in attendance indicated that they were in



support of the application with conditions. They indicated that the proposed development could eliminate the buffer, provided that the tree canopy associated with such a buffer be provided elsewhere on site. The committee informally recommended trees from Group A, B, or C be utilized, but the total canopy coverage should equal the coverage of ten (10) Group B medium trees on the property located at 804-808 Newtown Circle.

Staff agrees with these elements of the applicant's justification regarding the historical development of the site. Staff recommends that the variance be conditioned requiring the canopy coverage that is being eliminated by this variance to be placed elsewhere on the site. The applicant shall provide an additional canopy coverage of 4,000 square feet, which is the average of ten (10) medium trees.

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



1. The 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 because the layout of the property will not change as a result of this zone change.
2. The variance will not be an unreasonable circumvention of the requirements of the Zoning Ordinance because the buildings and parking on this property were constructed in the mid 1980's and have successfully functioned since then.
3. The need for the variance arises from the special circumstances of the proposed development, due to the interrelated nature of the properties and the variable zoning between the two properties.
4. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process for this project and has requested the variance during the rezoning process.

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

- a. Provided the Urban County Council approves the requested zone change to the I-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 to address design requirements of the Divisions of Engineering, Traffic Engineering, or Building Inspection.
- c. All necessary permits shall be obtained from the Divisions of Planning, 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.
- e. The applicant shall provide 4,000 square feet of canopy coverage, which is the average of ten (10) medium trees, utilizing trees from Group A, B, or C.

2. COLLINS AND MILLER PROPERTIES, LLC ZONING MAP AMENDMENT & NEWTOWN DISTRIBUTION CENTER, LOTS 1 & 2 (AMD) ZONING DEVELOPMENT PLAN

- a. PLN-MAR-21-00004: COLLINS AND MILLER PROPERTIES, LLC (5/30/21)*- a petition for a zone map amendment from a Neighborhood Residential (B-1) zone to a Light Industrial (I-1) zone for 3.13 net (6.97 gross) acres, and from a Wholesale and Warehouse Business (B-4) zone to a Light Industrial (I-1) zone, for 1.69 net (1.83 gross) acre, for properties located at 804-808 and 805 Newtown Circle. A dimensional variance has also been requested.

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 applicant is seeking a zone change from the Neighborhood Business (B-1) and Wholesale and Warehouse Business (B-4) zones to the Light Industrial (I-1) zone for the properties located at 804-808 and 805 Newtown Circle Road. The zone change application is seeking to allow for greater flexibility for the use of the established structures. The applicant is not proposing any major modification of the current properties. A dimension variance is also requested by the applicant.

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

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

1. A restricted Light Industrial (I-1) zone is in agreement with the 2018 Comprehensive Plan’s Goals and Objectives, for the following reasons:
 - a. The proposed rezoning will create jobs and prosperity (Theme C) by allowing for the creation of a variety of jobs that will lead to prosperity for all (Theme C, Goal #2.a).
 - b. The proposed rezoning will improve opportunities for small businesses (Theme C, Goal #2.b) by providing space for businesses that exceed the intensity of use typically found in B-1 and B-4 zones.
 - c. The proposed rezoning will also reduce the pressure on the Urban Service Area (Theme E, Goal #1.a) by allowing greater utilization of the subject property, which is currently underutilized (Theme E, Goal #1.c and d).
2. The justification and corollary development plan are in agreement with the policies and development criteria of the 2018 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Site Design, Building Form and Location as the site creates an industrial development that works with the established infrastructure and will allow for safe pedestrian mobility.
 - b. The proposed rezoning will include safe facilities for the potential users of the site and include safe pedestrian facilities. These improvements address the Transportation and Pedestrian Connectivity development criteria of the 2018 Comprehensive Plan.
 - c. The proposed rezoning meets the criteria for Greenspace and Environmental Health as it limits the impacts on the surrounding environment, and will add tree canopy coverage.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are recommended via conditional zoning:
 - a. Prohibited Uses:
 - i. Self-storage warehousing
 - ii. Outdoor storage
 - iii. Billboards
 - iv. All above ground and underground storage tanks.
 - v. On-site disposal of any hazardous waste materials.
 - vi. Mining of non-metallic minerals and/or radium extraction.
 - b. All establishments and facilities that store, or transport hazardous materials shall be designed to provide spill containment facilities and shall have emergency response plans approved by the appropriate Hazmat regulator (DEEM, Fire Department, or EPA, as necessary).

These restrictions are appropriate and necessary for the following reasons:

 1. To protect the appearance of the Newtown Pike corridor as a gateway into Lexington, while promoting employment that is appropriate along Lexington’s freight corridor.
 2. The Planning Commission has adopted a Wellhead Protection Plan for the Royal Spring Aquifer, which sets forth a plan to ensure a continual source of potable groundwater from Royal Spring for Georgetown and Scott County, and to preserve the integrity of surface waters. This plan has been adopted by both the Planning Commissions of Fayette and Scott Counties, and has most recently been approved by the Kentucky Division of Water on 8/28/03.

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

3. The proposed restrictions within the Wellhead Protection Area will better protect the surface and groundwater in the area by prohibiting some uses and requiring "best management practices" for other uses that could potentially be harmful to the wellhead, thus ensuring greater compliance with the Royal Spring Wellhead Protection Plan.
 4. This recommendation is made subject to approval and certification of PLN-MJDP-21-00013: Newtown Distribution Center, Lots 1 & 2 (AMD), 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 REQUEST - a variance to reduce the required property perimeter requirements between a Light Industrial (I-1) zone and a Neighborhood Business (B-1) zone from fifteen (15) feet to zero (0) feet and eliminate all landscape materials.

The Zoning Committee recommended: **Approval** with a sixth condition that requires the use of permeable pavement if existing open space areas are removed.

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

1. The 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 because the layout of the property will not change as a result of this zone change.
2. The variance will not be an unreasonable circumvention of the requirements of the Zoning Ordinance because the buildings and parking on this property were constructed in the mid 1980's and have successfully functioned since then.
3. The need for the variance arises from the special circumstances of the proposed development, due to the interrelated nature of the properties and the variable zoning between the two properties.
4. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process for this project and has requested the variance during the rezoning process.

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

- a. Provided the Urban County Council approves the requested zone change to the I-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 to address design requirements of the Divisions of Engineering, Traffic Engineering, or Building Inspection.
 - c. All necessary permits shall be obtained from the Divisions of Planning, 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.
 - e. The applicant shall provide 4,000 square feet of canopy coverage, which is the average of ten (10) medium trees, utilizing trees from Group A, B, or C.
- c. PLN-MJDP-21-00013: NEWTOWN DISTRIBUTION CENTER, LOTS 1 & 2 (AMD) (5/30/21)* - located at 804 - 808 & 805 NEWTOWN CIR., LEXINGTON, KY.
Project Contact: Endris Engineering (Council District 1)

Note: The purpose of this amendment is to reflect rezoning information.

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

1. Provided the Urban County Council rezones the property to the I-1 zone; 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 street cross-sections and access.
4. Urban Forester's approval of tree preservation plan.
5. Landscape Examiner's approval of landscaping and landscape buffers.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Correct plan type in Purpose of Plan.
8. Addition of missing property boundary dimensions.
9. Addition of driveway entrance widths.
10. Correct language in Note 6 to reference Chapter 16 of the Code of Ordinances.
11. Provided the Planning Commission approves the requested variance of the Landscape Buffer Area.
12. Remove "future" from parking in Site Statistics.
13. Discuss Placebuilder criteria.
 - C-PS10-3 Over-parking of new developments should be avoided. (B-SU5)
 - D-CO2-2 Development should create and/or expand a connected multi-modal transportation network that satisfies all users' needs, including those with disabilities.
 - B-PR7-2 Trees should be incorporated into development plans; prioritize grouping of trees to increase survivability.

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

- B-PR7-3 Developments should improve the tree canopy.

Staff Zoning Presentation – Mr. Baillie presented the staff report and recommendations for the zone change application. He displayed photographs of the subject property and aerial photographs of the general area. He said the applicant is proposing this zone change to allow for greater flexibility for the use of the established structures. The applicant is not proposing any major modification of the existing structures. He said that the subject properties are located near the Newtown Pike and Nandino Boulevard intersection, and New Circle Road. The subject property is surrounded by Light Industrial (I-1) zoning to the north and west, and Neighborhood Business (B-1) and Highway Service Business (B-3) zones to the east and south, with a small portion of Agricultural Urban (A-U) zoning to the east, which is part of the Lexmark property. He said that the applicant will use the Industrial and Production Center Place-Type, which is designed to provide jobs and economic development.

Mr. Baillie said that the proposed development is seeking to keep things similar with only moderate changes that are related to the variance request, which allows for additional parking. He said that the applicant intends to utilize the subject property as office/warehouse spaces, which are allowable in the B-4 and I-1 zones. He said that there are conditional zoning restrictions being proposed with this zone change because of three main concerns. The first concern was the Royal Springs Aquifer, which Mr. Baillie displayed on an aerial photo and said the applicant will meet with their committee for approval. He added that the main concern is potential infiltration into the Royal Springs Aquifer. The second concern is the designation of Newtown Pike as a Gateway into the City of Lexington. The final concern is Newtown Pike and its designation as the city's Freight Corridor Route. The staff's intent is that any new type of industrial development will be promoting that freight network and not negatively impacting this gateway. He said that the staff is recommending approval of this zone change because it has been found to be in agreement with the Comprehensive Plan.

Development Plan Presentation – Ms. Hedge presented the final development plan associated with this zone change. She displayed a color rendering of the development plan and identified the existing buildings. She said that for condition #7, the applicant will need to change the title of the plan from "minor" to "major." She said that condition #8 needs to be addressed, there are some property boundary labels that are missing from the plan. In regards to condition #9, the widths of the driveway entrances have been added to the latest rendering of the plan. For condition #10, a note will need to be added to the plan to include Chapter 16 of the Code of Ordinances. She said that for condition #11, the applicant will need approval of the variance, to be considered today by the Planning Commission, address the required Landscape Buffer Area. She said that the applicant has added permeable pavement, per the Zoning Committee recommendations. She said that condition #12 has also been addressed on the color rendering. In regards to condition #13, Discuss Placebuilder criteria, she said that can also be removed, as per Mr. Baillie's presentation.

Variance Presentation – Mr. Baillie presented the variance request associated with this application. He said that the applicant is seeking a dimensional variance reducing the required property perimeter requirements between a Light Industrial (I-1) zone and a Neighborhood Business (B-1) zone from fifteen (15) feet to zero (0) feet and eliminating all landscape materials. He displayed the development plan and pointed to an access easement that will be utilized as parking and access to the rear building. He said that the applicant met with the Landscape Review Committee, which recommended approval, subject to additional conditions. He said that the Committee did have concerns that eliminating all of the landscape materials would permit the applicant to reduce the necessary canopy coverage. They were specifically concerned with the heat island effect that may occur from eliminating some of the tree canopy. He said that the Landscape Review Committee stated that the applicant needed to provide the same amount of canopy coverage that would have been required with the landscape buffer on this site. He said that the applicant has depicted those requirements on their revised development plan. He said that the staff is recommending approval of this variance, with the revised conditions as follows:

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

- Provided the Urban County Council approves the requested zone change to the I-1 zone, otherwise the requested variance shall be null and void.
- The development shall be constructed in accordance with the approved Final Development Plan, or as amended to address design requirements of the Divisions of Engineering, Traffic Engineering, or Building Inspection.
- All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection prior to construction and occupancy.
- Action of the Planning Commission shall be noted on the Development Plan for the subject property.
- The applicant shall provide 4,000 square feet of canopy coverage, which is the average of ten (10) medium trees, utilizing trees from Group A, B, or C.
- Should the area of greenspace between 804 Newtown Circle and 1051 Newtown Pike be removed for parking, the area will be replaced with permeable pavement.

Applicant Presentation – Mr. Richard Murphy, attorney; Kevin Phillips, Endris Engineering; Robert Collins, property owner, were present representing the applicant. Mr. Murphy said that they are mostly in agreement with the staff's recommendations with the exception of the conditional zoning restrictions and a condition on the variance request. He said that he was concerned with # iv. of the prohibited uses under the recommended conditional zoning restrictions. He said that some companies have containerized gas supplies delivered to many industrial uses, such as offices, retail stores, and restaurants. He was concerned that if above ground storage tanks were prohibited that

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would prohibit a number of businesses that may want to locate here, particularly medical offices. He requested that the Planning Commission only restrict all above ground storage tanks.

Mr. Murphy said that the second change was on the condition on the variance request. He said that at the April 1, 2021, Zoning Committee Mr. Pohl had made the recommendation that the area next to 804 Newtown Circle be permeable paving. He said that they have added that to the development plan. He said in that the Royal Springs Wellhead Committee would be meeting on Monday, May 3, 2021, and they would present the plan to them at that meeting. He added that he has spoken with the chair of that Committee and was told that they do not generally approve permeable paving, because if a spill happens, it will be much more difficult to contain. He said that they are in agreement to use permeable paving, if approved by the Committee. He asked if the additional condition proposed by the Zoning Committee could include a caveat of "if approved by the Royal Springs Wellhead Committee."

Mr. Collins stated that he was in agreement with Mr. Murphy's requests and available for any questions.

Staff Comment – Mr. Baillie clarified that above ground storage tanks are different than the tanks Mr. Murphy described that are utilized for medical offices. He said that the above ground storage tanks that have been approved in the past, have included language regarding the requirement of spill containment units that are approved to the specifications of the Urban County Government. He added that the staff still has concerns with approving all above ground and underground storage tanks, but if the Planning Commission approves the removal of above ground storage tanks they should require spill containment units associated with them. He also reiterated that there will not be any underground storage tanks.

Mr. Penn asked what happens with a propane fuel spill. Mr. Baillie said that the leakage could contaminate the soil.

Mr. Penn asked the applicant for their comments. Mr. Murphy and Mr. Collins said that they are in agreement with Mr. Baillie's recommendation.

Ms. Wade asked Mr. Baillie to clarify what Division would be responsible for this additional requirement. Mr. Baillie said that the appropriate Hazardous Material Regulator is DEEM, Fire Department, or the EPA, as necessary. He said that in other cases, the staff has limited any above ground storage for liquid fuel as well.

Ms. Wade asked Mr. Murphy if they had prepared a revised conditional zoning restriction, rather than just strike it all together.

Mr. Murphy said that they are still in agreement with the staff's additional recommendations. Mr. Collins said that he agrees also; however, he would like to be able to have the tanks that are for medical offices and restaurants. Mr. Baillie specified that liquid fuels will be prohibited and gas, such as propane would be allowed above ground with spill containment units.

Ms. Wade suggested to change the restriction to state "all above ground and underground storage tanks for liquid fuel." Mr. Murphy and Mr. Collins agree.

Citizen Comment – There were no citizens present to speak to this application.

Applicant Rebuttal – Mr. Murphy stated that he had no rebuttal at this time.

Staff Rebuttal – Mr. Baillie said that the staff also does not have a rebuttal at this time.

Zoning Action – A motion was made by Mr. Nicol, seconded by Mr. Bell, and carried 6-0 (Barksdale, de Movellan, Forester, Meyer and Plumlee absent) to approve PLN-MAR-21-00004: COLLINS AND MILLER PROPERTIES, LLC, for the reasons provided by the staff, including the revised conditional zoning restrictions, as follows:

- c. Prohibited Uses:
 - i. Self-storage warehousing
 - ii. Outdoor storage
 - iii. Billboards
 - iv. All above ground and underground storage tanks for liquid fuel.
 - v. On-site disposal of any hazardous waste materials.
 - vi. Mining of non-metallic minerals and/or radium extraction.

Variance Request Action – A motion was made by Mr. Nicol, seconded by Mr. Bell, and carried 6-0 (Barksdale, de Movellan, Forester, Meyer and Plumlee absent) to approve the associated variance request, for the reasons provided by the staff.

- a. Provided the Urban County Council approves the requested zone change to the I-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 to address design requirements of the Divisions of Engineering, Traffic Engineering, or Building Inspection.

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- c. All necessary permits shall be obtained from the Divisions of Planning, 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.
- e. The applicant shall provide 4,000 square feet of canopy coverage, which is the average of ten (10) medium trees, utilizing trees from Group A, B, or C.
- f. Should the area of greenspace between 804 Newtown Circle and 1051 Newtown Pike be removed for parking, the area will be replaced with permeable pavement, if approved by the Royal Springs Wellhead Committee.

Development Plan Action – A motion was made by Mr. Nicol, seconded by Mr. Bell, and carried 6-0 (Barksdale, de Movellan, Forester, Meyer and Plumlee absent) to approve PLN-MJDP-21-00013: NEWTOWN DISTRIBUTION CENTER, LOTS 1 & 2 (AMD), as presented by the staff, with the following changes

- 1. Provided the Urban County Council rezones the property to the I-1 zone; 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 street cross-sections and access.
- 4. Urban Forester's approval of tree preservation plan.
- 5. Landscape Examiner's approval of landscaping and landscape buffers.
- 6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
- 7. Correct plan type in Purpose of Plan.
- 8. Addition of missing property boundary dimensions.
- 9. Addition of driveway entrance widths.
- 10. Correct language in Note 6 to reference Chapter 16 of the Code of Ordinances.
- 11. Provided the Planning Commission approves the requested variance of the Landscape Buffer Area.
- ~~12. Remove "future" from parking in Site Statistics.~~
- ~~13. Discuss Placebuilder criteria.~~
 - ~~• C-PS10-3 Over parking of new developments should be avoided. (B-SU5)~~
 - ~~• D-CO2-2 Development should create and/or expand a connected multi-modal transportation network that satisfies all users' needs, including those with disabilities.~~
 - ~~• B-PR7-2 Trees should be incorporated into development plans; prioritize grouping of trees to increase survivability.~~
 - ~~• B-PR7-3 Developments should improve the tree canopy.~~

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