

REVISED STAFF REPORT ON VARIANCE REQUESTED FROM PLANNING COMMISSION

PLN-MAR-16-00024: WEBB/LEXINGTON VENTURE 108, LTD

REQUESTED VARIANCES

1. Reduce the minimum perimeter yard from 50' to 15'.

ZONING ORDINANCE

Article 6-4(c) states: "The Planning Commission may hear and act upon requested conditional uses and variances associated with a zone change. If the Planning Commission should choose to hear a conditional use or variance request, the Planning Commission shall have all of the powers and responsibilities of the Board of Adjustment, as defined in Articles 7-6(a) and 7-6(b) of the Zoning Ordinance. All conditional use and variance applications shall be acted upon by the Planning Commission within ninety (90) days of the application, unless postponed further by the applicant."

Article 12-8(b) states that the minimum setback for all buildings in the B-6P zone is 50'.

CASE REVIEW OF VARIANCE REQUEST

The applicant wishes to gain approval of a dimensional variance for their zone change on Palomar Centre Drive, to permit a new coffee shop and off-street parking lot in (what is today) a storm water detention basin in front of the Palomar Shopping Center. This shopping center is located on the northern-most corner of the Harrodsburg Road and Man o' War Boulevard intersection.

The applicant seeks approval of a setback variance to permit a new Starbucks coffee shop, and its associated parking and drive-through facility, close to the property line of the adjacent Traditional Bank property, which is located in a Professional Office (P-1) zone. The existing storm water drainage from the bank property is to be channeled under the Starbucks property, and into an underground vault. The size of the existing basin will be reduced at least by $\frac{3}{4}$ to accommodate the new coffee shop and drive-through.

A portion of the basin on the subject property is part of a sinkhole that was previously mitigated. The requested variance would keep the proposed Starbucks coffee shop out of the location of this former sinkhole area. There are other sinkholes that have been mitigated in portions of the Palomar Centre property years ago, when the shopping center was initially developed. These sinkholes are a special circumstance that does not normally apply to most other properties in a Planned Shopping Center (B-6P) zone.

The applicant has opined that the variance will not result in "any adverse impact on the adjoining property or otherwise alter the essential character of the area," and they have recently amended their justification for this variance request. Approval of this request will not result in an unreasonable circumvention of the Zoning Ordinance because the new coffee shop building will still be nearly 100' away from the adjacent bank building, if this variance is granted. It is designed to be 15' off the side property line with the bank, which is not unlike those found around town in other commercial zones for other commercial buildings and restaurants.

Strict application of the 50' perimeter setback requirements of the Zoning Ordinance would require that the new building be constructed over, or extremely close to the mitigated sinkhole area. This could pose an unnecessary financial hardship to the applicant, due to the added construction costs likely for this coffee shop, or could prohibit its construction altogether. Therefore, the staff can support the proposed variance, given the applicant's revised justification submittal.

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

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. The variance is requested to keep the proposed building out of a formerly environmentally sensitive area on the subject property.

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

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

1. Provided the Urban County Council rezones the property B-6P; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the setback variance that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].

WLS/TLW

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