

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

IN RE: **PLN-MAR-21-00009: BLUEGRASS CUSTARD, LLC** - a petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone, for 0.53 net (0.62 gross) acre, for property located at 355 American Avenue. (Council District 3)

Having considered the above matter on **August 26, 2021**, at a Public Hearing, and having voted **9-0** 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. The Neighborhood Business (B-1) zone is in agreement with the 2018 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The proposed rezoning addresses the goal of growing successful neighborhoods by supporting infill and redevelopment throughout the Urban Service Area (Theme A, Goal #2), while also addressing community facilities at a neighborhood scale (Theme A, Goal #4). The increase of modernized pedestrian facilities and the reduction of potential conflict points between pedestrian activity and vehicular movement is imperative to the development of a safer and more walkable community.
 - b. The proposed project will improve a desirable community that is focused on a people first design that provide accessible amenities to meet the quality of life needs of Lexington residents and visitors (Theme D, Goal #1). The proposed project includes a new restaurant facility that provides an activated street frontage and delineated pedestrian facilities, while also improving a portion of the property that auto oriented and removing conflict points between pedestrian and vehicular movement.
 - c. The proposed development will allow for the improvement of a parking lot and will modernize the layout of the parking area with landscaping to improve the visual impact on the neighborhood (Design Policy #7).
 - d. The proposed development will increase the available tree canopy coverage to off-set the impacts of the heat island effect caused by Lexington's paved areas (Restoration Pillar III, Protection Policy #7).
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 safer development that supports pedestrian mobility, while also including a buffer between the higher intensity drive-through facilities and the existing single-family residential land use along the southeastern portion of the property.
 - b. The proposed rezoning includes safe facilities for the potential users, through the incorporation of enhanced pedestrian facilities along the property's frontages and leading to the development frontage along South Broadway. Additionally, the proposed development delineates the access and egress into the site, while also increasing the buffering between the vehicular uses and the surrounding properties. 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 will increase tree canopy coverage and establish green infrastructure that will help alleviate the impact on the surrounding development and the stormwater system.

3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following buffering restriction is recommended via conditional zoning:
- a. There shall be no exterior lighting greater than 12 feet in height and all lighting be shielded and directed downward.
 - b. The following uses shall be prohibited:
 - i. Automobile Service Stations.
 - ii. Car Washes.

These restrictions are appropriate and necessary to reduce the potential impact of the allowable uses on the neighboring lower intensity uses, while also restricting the highest nuisances producing uses in the zone.

4. This recommendation is made subject to approval and certification of PLN-MJDP-21-00038: Oldham Property (Lots 1-3, 10-13, & 21-24)(Andy's Frozen Custard), 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 17th day of September, 2021.



Secretary, Jim Duncan

LARRY FORESTER
CHAIR

Note: The corollary development plan, PLN-MJDP-21-00038: OLDHAM ADDITION (LOTS 1-3, 10-13 & 21-24) (ANDY'S FROZEN CUSTARD) was approved by the Planning Commission on August 26, 2021 and certified on September 9, 2021.

Note: A dimensional variance was approved by the Planning Commission on August 26, 2021.

K.R.S. 100.211(7) requires that the Council take action on this request by November 24, 2021.

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

OBJECTORS

- Virginia Daley, 136 Burley Avenue

OBJECTIONS

- Concerned with the traffic because of the configuration of American Avenue and Burley Avenue and doesn't believe that this proposed zone complies with the 2018 Comprehensive Plan of our city. It doesn't promote walkable neighborhoods or high density living along major corridors.

VOTES WERE AS FOLLOWS:

AYES: (8) Barksdale, Bell, Davis, de Movellan, Forester, Nicol, Penn, and Pohl

NAYS: (0)

ABSENT: (1) Meyer

ABSTAINED: (1) Michler

DISQUALIFIED: (0)

Motion for APPROVAL of PLN-MAR-21-00009 carried.

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

MAP AMENDMENT REQUEST (MAR) APPLICATION

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

Applicant: BLUEGRASS CUSTARD, LLC
Owner(s): BROOMHALL COMMERCIAL PROP., LLC, 2264 SAVANNAH LANE, LEXINGTON, KY 40513
Attorney: BRUCE SIMPSON, 300 W. VINE STREET, LEXINGTON, KY 40507 PH: 8592293436

2. ADDRESS OF APPLICANT'S PROPERTY

355 AMERICAN AVENUE, LEXINGTON, KY 40503
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3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY

Existing Use		Requested Use		Acreage	
Zoning		Zoning		Net	Gross
R-1D	COMMERCIAL (PARKING LOT)	B-1	COMMERCIAL (PARKING LOT AND DRIVE THRU FACILITY)	0.5311	0.6234

4. COMPREHENSIVE PLAN

a. Utilizing Placebuilder, what Place-Type is proposed for the subject site?	CORRIDOR
b. Utilizing Placebuilder, what Development Type is proposed for the subject site? If residential, provide the proposed density	MEDIUM DENSITY NON-RESIDENTIAL / MIXED-USE

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 type="checkbox"/> NO

6. URBAN SERVICES STATUS (Indicate whether existing, or how to be provided)

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



John and Connie Broomhall
Broomhall Commercial Properties
2264 Savannah Lane
Lexington, KY 40513

Mr. Larry Forester, Chairperson
Lexington Fayette Urban County Planning Commission
c/o Hal Baillie
Division of Planning
101 East Vine Street 7th Floor
Lexington, Kentucky 40507

July 7th, 2021

Re: Owner's Permission To File Zone Amendment For 355 American Ave

Dear Chairperson Forrster,

This is to confirm that my business, Broomhall Commercial Properties, LLC, which owns the property located at 355 American Avenue consents to the filing of a zone map amendment application on this property from R-1D (Single Family Residential) to B-1 (Neighborhood Business) by Bluegrass Custard, LLC.

If you have any questions about this consent please contact me.

Thank you

Broomhall Commercial Properties, LLC by its authorized representative,


Connie Broomhall.
859 396 5278



T. BRUCE SIMPSON, JR.
DIRECT DIAL: (859) 231-3621
DIRECT FAX: (859) 259-3521
bruce.simpson@skofirm.com

300 WEST VINE STREET
SUITE 2100
LEXINGTON, KY 40507-1801
MAIN: (859) 231-3000
FAX: (859) 253-1093

July 6, 2021

Chairperson Larry Forester
Lexington Fayette Urban County Planning Commission
c/o Hal Baillie, Division of Planning
101 East Vine Street
Lexington, KY 40507

Re: Zone Map Amendment request for property located at
355 American Avenue

Dear Chairperson Forester,

I represent Bluegrass Custard, LLC in connection with this zone map amendment request for the property located at 355 American Avenue. The property has been used for decades as a non-conforming use (parking lot) in support of the business located at 1200 South Broadway which is zoned Neighborhood Business (B-1). There are no structures on the subject property. The existing zoning of the property is R-1D (Single Family Residential) and the proposed zoning matches up to the property it has been serving, B-1 (Neighborhood Business). There will be no substantive change in the use of the subject property should the zone map amendment request be approved as it will be primarily used for parking and interior motor vehicle traffic to serve the new business to be constructed at 1200 South Broadway. The existing commercial building located at 1200 South Broadway will be replaced with a new building and business to be known as "Andy's Frozen Custard".

Andy's Frozen Custard, <https://www.eatandys.com/> will be a new business for Lexington and Kentucky. However, this desert only type business has been successfully operating in 14 states since it started in 1986. Andy's Frozen Custard is a quick service frozen dessert business. It is a freestanding restaurant, with drive through and walk-up service windows. It exclusively sells frozen custard treats. The Board of Adjustment has previously approved the drive through window use.

Prior to the filing of this application, letters were mailed to all of the property owners who owned property within 500 feet of the subject property to attend a meeting where the within

zone map amendment request would be shared and questions addressed. The meeting was held on July 1, 2021, at the Gay Brewer Jr. Golf Course, Picadome Clubhouse. However, no one attended the meeting. (See mailing list and invitation letter attached hereto.)

This application is not only in compliance with the 2018 Comprehensive Plan, it will also eliminate a non-conforming use. Article 4-2 of the zoning ordinance states that non-conforming uses should not be encouraged to survive. Approval of this zone map amendment request will comply with this land use policy. The application complies with the 2018 Comprehensive Plan as set out below.

COMPLIANCE WITH THE 2018 COMPREHENSIVE PLAN

The following Goals and Objectives support this request:

1. THEME A GROWING SUCCESSFUL NEIGHBORHOODS

Objective 2: Support Infill and Redevelopment throughout the Urban Services Area as a strategic component of growth.

Objective 4: Address community facilities at a nationhood scale.

2. THEME C CREATING JOBS AND PROSPERITY

Objective 1: Support and showcase local assets to further the creation of a variety of jobs.

3. THEME D IMPROVING A DESIRABLE COMMUNITY

Objective 2: Support a model of development that focuses on people first to provide accessible community facilities and services to meet the health safety and quality of life needs of Lexington Fayette County residents and visitors.

4. THEME F IMPLEMENTING THE PLAN FOR LEXINGTON FAYETTE COUNTY AND THE BLUEGRASS

Objective 1: Engage and educate Lexington Fayette County residents in the planning process.

Approval of this application with provided a small desert type restaurant located within walking distance of hundreds of University of Kentucky students who live on American and Burley Avenues. The location will also provide safe and efficient access to the motoring public to a new business in Lexington which will provide new employment opportunities. This is also a infill development located along a major corridor which is also consistent with the development

July 6, 2021

Page 3

principles embodied in the 2018 Comprehensive Plan. The scale of this new eatery is compatible in size with the existing buildings and the surrounding neighborhood.

This application is filed pursuant to the Corridor place type and the Medium Density Non-Residential Mixed Use Development type as provided for in the Placebuilder section of the 2018 Comprehensive Plan. The following development criteria apply to this application:

A-DS4-2 New construction should be at an appropriate scale to respect the context of neighboring structures; however, along major corridors, it should set the future context in accordance with other Imagine Lexington corridor policies and Placebuilder priorities.

A-DS5-3 Building orientation should maximize connections with the surrounding area and create a pedestrian-friendly atmosphere.

A-DS5-4 Development should provide a pedestrian-oriented and activated ground level.

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

A-DS7-2 Any non-residential or multi-family parking not buffered by a building should be screened from the streetscape view and adjacent properties.

Development should minimize significant contrasts in scale, massing and design, particularly along the edges of historic areas and neighborhoods.

(D-PL9, E-GR6)

A-DN3-1 Pedestrian-oriented commercial opportunities should be incorporated within residential neighborhood

C-DI1-1 Consider flexible zoning options that will allow for a wide range of jobs

C-LI7-1 Developments should create mixed-use neighborhoods with safe access to community facilities, greenspace, employment, businesses, shopping, and entertainment

D-PL7-1 Stakeholders should be consulted to discuss site opportunities and constraints prior to submitting an application

July 6, 2021

Page 4

E-GR10-2 Developments should provide walkable service and amenity-oriented commercial spaces

A-DS4-3 Development should work with the existing landscape to the greatest extent possible, preserving key natural features.

The remaining development criteria do not apply because there is no residential use proposed. Likewise, the existing roadways and their use in terms of multimodal transportation are already in existence. There will be no development in any floodplain. This is a very small site which will simply be used for parking and internal traffic circulation much like it has been for the past 50 plus years. This application will eliminate a non-conforming use which conflicts with the 2018 Comprehensive Plan. Most of residential units within 500 feet of the subject property are being used to house UK students. Pedestrian activity will be an important component of this application and these safe connections are reflected on the development plan.

I will be pleased to supplement this application should there be a need to do so. I look forward to presenting this application to the full Planning Commission in August.

Sincerely,

A handwritten signature in black ink that reads "T. Bruce Simpson, Jr." in a cursive style.

T. Bruce Simpson, Jr.,



T. BRUCE SIMPSON, JR.
DIRECT DIAL: (859) 231-3621
DIRECT FAX: (859) 259-3521
bruce.simpson@skofirm.com

300 WEST VINE STREET
SUITE 2100
LEXINGTON, KY 40507-1801
MAIN: (859) 231-3000
FAX: (859) 253-1093

August 4, 2021

Chairperson Larry Forester
Lexington Fayette Urban County Planning Commission
c/o Hal Baillie, Division of Planning
101 East Vine Street
Lexington, KY 40507

Re: Variances Requested for 355 American Avenue

Dear Chairperson Forester,

As you know, I represent Bluegrass Custard, LLC in connection with a zone map amendment request scheduled to be heard by the Planning Commission on August 26, 2021. During the staff's review of this application, it was discovered that there is a relatively tiny parcel, 12 feet by 12 feet in size, owned by Columbia Gas Company located along the western edge of the subject property and which is zoned R-1B. Because there are certain set back requirements which will have to be met from this Columbia Gas property if our requested zone change is approved, we need to request a variance from the regulations which apply between properties zoned R-1B and B-1. Also, this is to request a variance for the required vehicular use area buffer and landscaping requirements that apply between the adjacent property located at 1214 South Broadway, zoned B-3 and the subject property. The property located at 1214 South Broadway has been used as a restaurant with drive-thru service for decades.

Specifically, this is to request the following variances:

1. Variance to reduce required property perimeter requirements from 15 feet to 0 feet for the portion of the property that surrounds the Columbia Gas property and eliminate the landscaping requirements.
2. Variance to reduce the required vehicular use area buffer from 3 feet to 0 feet and remove the required vehicular use area landscaping for the portion of the property that abuts 1214 South Broadway.

August 4, 2021

Page 2

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. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone. Likewise, 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. Additionally, the circumstances applicable to the need for this variance are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

Although the small Columbia Gas parcel is zoned R-1B, it is not large enough to meet the zoning requirements for an R-1B lot. It most certainly is not large enough to construct a single-family home under any of the zones. Additionally, as a public utility, Columbia Gas is exempt from zoning. So, its property does not need to have a zoning designation. Columbia Gas has had access to and the use of its property for many years. This will not change should the variance be approved. There is nothing the applicant will be doing should this zone change be approved that will have an adverse impact on Columbia Gas Company's access to or use of its property. The land use policies which underpin the setback and landscape provisions that apply between properties zoned R-1B and B-1, respectively, do not apply here because there is no residential use of this 12 feet by 12 feet property.

Finally, the adjacent property located at 1214 South Broadway is zoned more intensely B-3 than rezoning the applicant is requesting, B-1 and this property has had a drive-thru option since it commenced its restaurant operations years ago. There is no need to have a buffer with landscape screening between two commercial restaurants which will have parallel drive thru service routes. Granting this variance will not have any adverse impact on this adjacent restaurant's drive-thru service or any other use of its property. No meaningful purpose will be accomplished by requiring a buffer and landscaping between these identical uses.

Accordingly, this is to request the Planning Commission's approval of these variance requests.

Sincerely,

A handwritten signature in black ink that reads "T. Bruce Simpson, Jr." in a cursive style.

T. Bruce Simpson, Jr.,

ZONE CHANGE LEGAL DESCRIPTION

of

Broomhall Commercial Properties, LLC

355 American Avenue

Deed Book, Page 2986, Page 20

being all of

Lots 10,11,12,13, 21, 22, 23 and 24 of Oldham Addition

Plat Cabinet B, Slide 730

Zone Change R-1D to B-1

Lexington, Fayette County, Kentucky

Being a parcel of land in Lexington, Fayette County, Kentucky approximately 130 feet south of the South Broadway (US 68) right-of-way between American Avenue and Burley Avenue and being more particularly described as:

Beginning at a 24"-long, 5/8" diameter rebar with plastic identification cap (PLS 3350) set in the north right-of-way of American Avenue, said point having Kentucky State Plane Coordinates of N(Y) = 195,110.34', E(X) = 1,562,775.37'; thence leaving the American Avenue right-of-way and with the south line of Ruth Smith Bradley (Deed Book 181, Page 219; Deed Book 235, Page 627),

North 51°04'41" East a distance of 116.50 feet to a 24"-long, 5/8" diameter rebar with plastic identification cap (PLS 3350) set in the west line of Central Kentucky Natural Gas Company (Deed Book 635, Page 62); thence leaving said Bradley and with the line of said Gas Company for three (3) calls:

South 38°55'19" East a distance of 12.00 feet to a MAG Nail with stainless steel ID washer (set; PLS 3350); thence

North 51°04'41" East a distance of 12.00 feet to a MAG Nail with stainless steel ID washer (set; PLS 3350); thence

North 38°55'19" West a distance of 12.00 feet to a 24"-long, 5/8" diameter rebar with plastic identification cap (PLS 3350) set in the south line of said Bradley; thence with the south line of Bradley,

North 51°04'41" East a distance of 29.50 feet to a 24"-long, 5/8" diameter rebar with plastic identification cap (PLS 3350) set at the southwest corner of Broomhall Commercial Properties, LLC (Deed Book 2986, Page 20); thence with the south line of said Broomhall,

North 51°04'41" East a distance of 74.58 feet to a MAG Nail with stainless steel ID washer (PLS 3350) set in the west right-of-way of Burley Avenue; thence leaving said Broomhall and with a line through the Burley Avenue right-of-way,

North 51°04'41" East a distance of 20.42 feet to a point in the center of the road; thence with the center of said Burley Avenue,

South 38°55'19" East a distance of 100.00 feet to a point; thence leaving the center of the road and through the right-of-way of the same Avenue,

South 51°04'41" West a distance of 20.00 feet to a 24"-long, 5/8" diameter rebar with plastic identification cap (PLS 3350) set at the northeast corner of Judy P. & Bradley D. Asher (Deed Book 1716, Page 188); thence leaving the Burley Avenue right-of-way and with the north line of said Asher,

South 51°04'41" West a distance of 233.00 feet to a 24"-long, 5/8" diameter rebar with plastic identification cap (PLS 3350) set in the east right-of-way of American Avenue, said point also being the northwest corner of Kenneth & Lisa Kaleher (Deed Book 2670, Page 639); thence leaving said Kaleher and through the American Avenue right-of-way,

South 51°04'41" West a distance of 20.00 feet to a point in the centerline of Said American Avenue; thence with the centerline of the same,

North 38°55'19" West a distance of 100.00 feet to a point; thence leaving the centerline and through the right-of-way of American Avenue,


North 51°04'41" East a distance of 20.00 feet to a 24"-long, 5/8" diameter rebar with plastic identification cap (PLS 3350);

which is the Point of Beginning, **having a Gross Area of 27,156.0 square feet, 0.6234 acre and Net Area of 23,134.8 square feet, 0.5311 acre.**

The bearings and coordinates used in the description above being based on KY State Plane coordinates, KY North Zone, NAD 83 (2011) as determined by a GNSS survey to the site using a Trimble R8 receiver and the KYTC CORS system.

The description above being based on a survey of the property by Kevin M. Phillips, PLS 3350, Endris Engineering, PSC, 771 Enterprise Drive, Lexington, KY 40510 concluded on December 4, 2020.




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

July 6, 2021
Date

BLUEGRASS CUSTARD, LLC (PLN-MAR-21-00009)

355 AMERICAN AVENUE

Rezoning to allow for the utilization and modernization of a non-conforming parking lot.

Applicant

BLUEGRASS CUSTARD, LLC
Po Box 109
Camdenton, MO 65020
bruce.simpson@skofirm.com



Owner

BROOMHALL COMMERCIAL PROP, LLC
2264 Savannah Lane
Lexington, KY 40503



Application Details

Acreage:

0.531 net (0.6235 gross) acres

Current Zoning:

Single Family Residential (R-1D) Zone

Proposed Zoning:

Neighborhood Business (B-1) Zone

Place-type / Development Type:

Corridor

Medium Density Non-Residential / Mixed Use

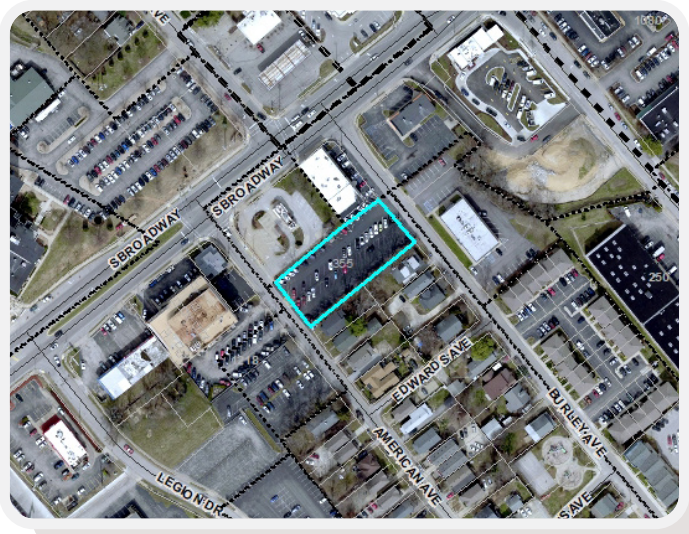
For more information about the Corridor Place-Type see *Imagine Lexington* pages 303-304. For more information on Medium Density Non-Residential / Mixed-Use Development Type see page 272.

Description:

The applicant is seeking to modify a non-conforming parking lot to allow for its continued use and to provide access and egress to the drive-through facility for the property located at 1200 S. Broadway.

Public Engagement

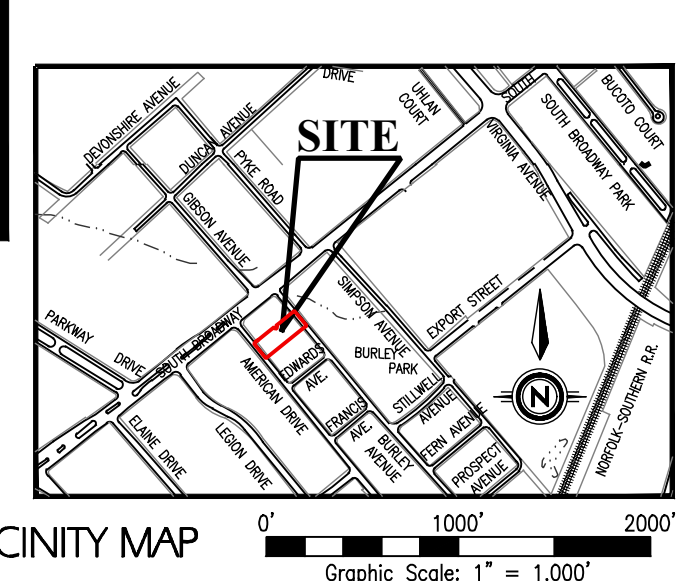
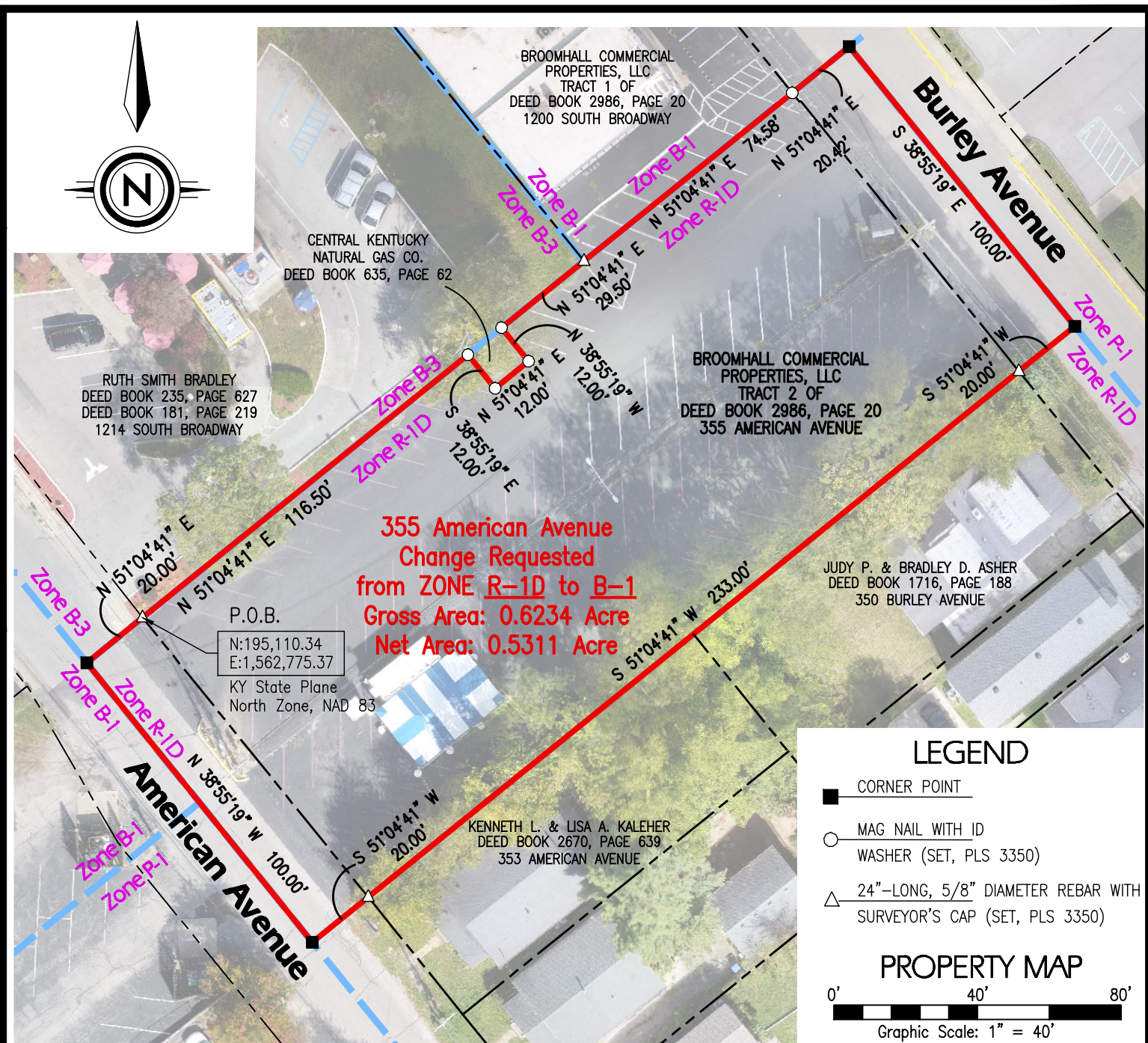
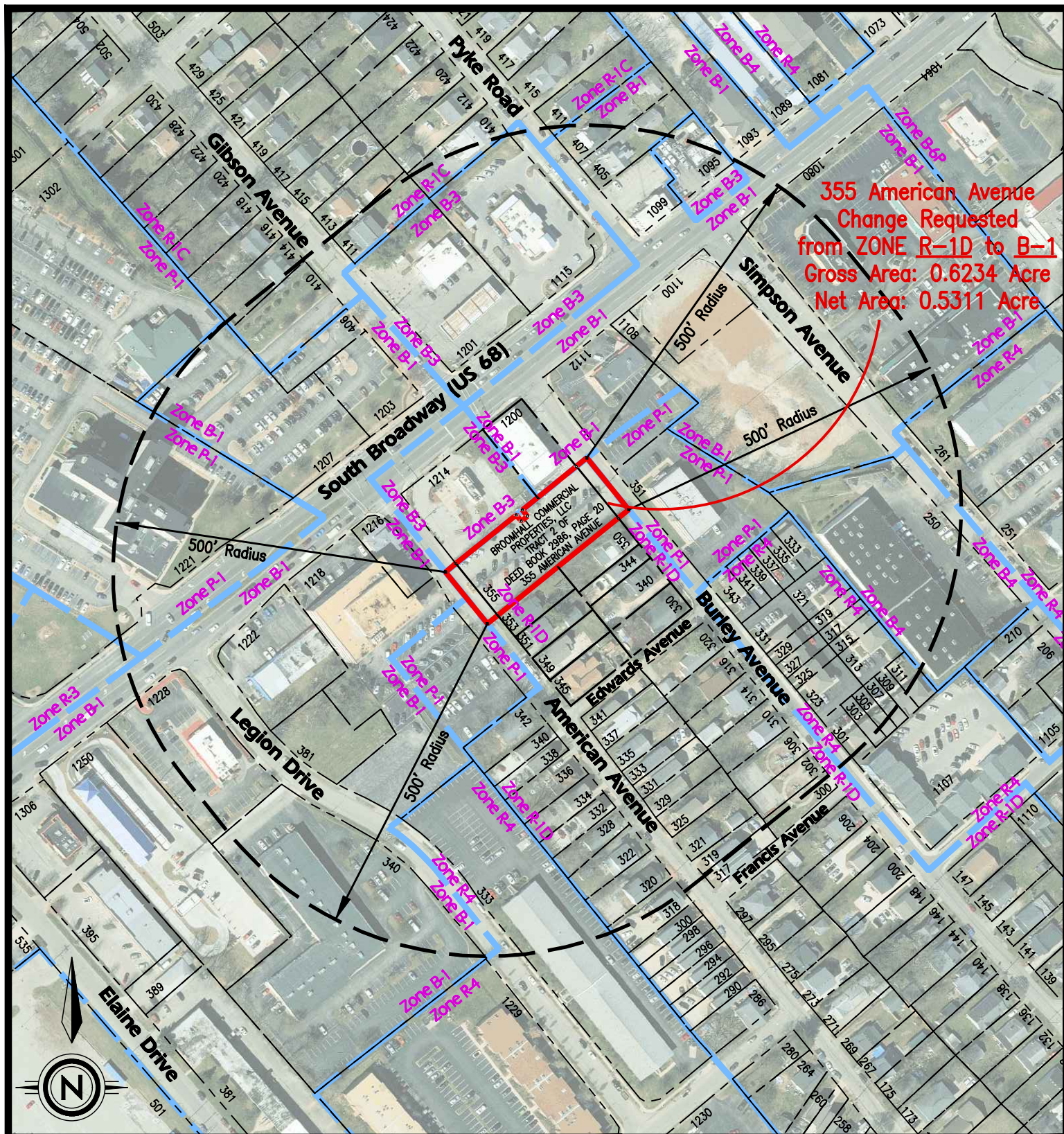
- The applicant mailed invitations to all properties within the notification area and held a meeting on July 1, 2021 for neighbors to voice concerns or learn about the proposal.



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

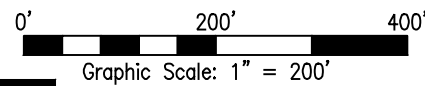
DISCLAIMER: Plans are subject to change. Visit the Accela Citizen Portal (lexingtonky.gov/plans) or contact Planning for the latest information.



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

[Signature]
 07-06-2021

NOTIFICATION AREA MAP
 PREPARED BY:

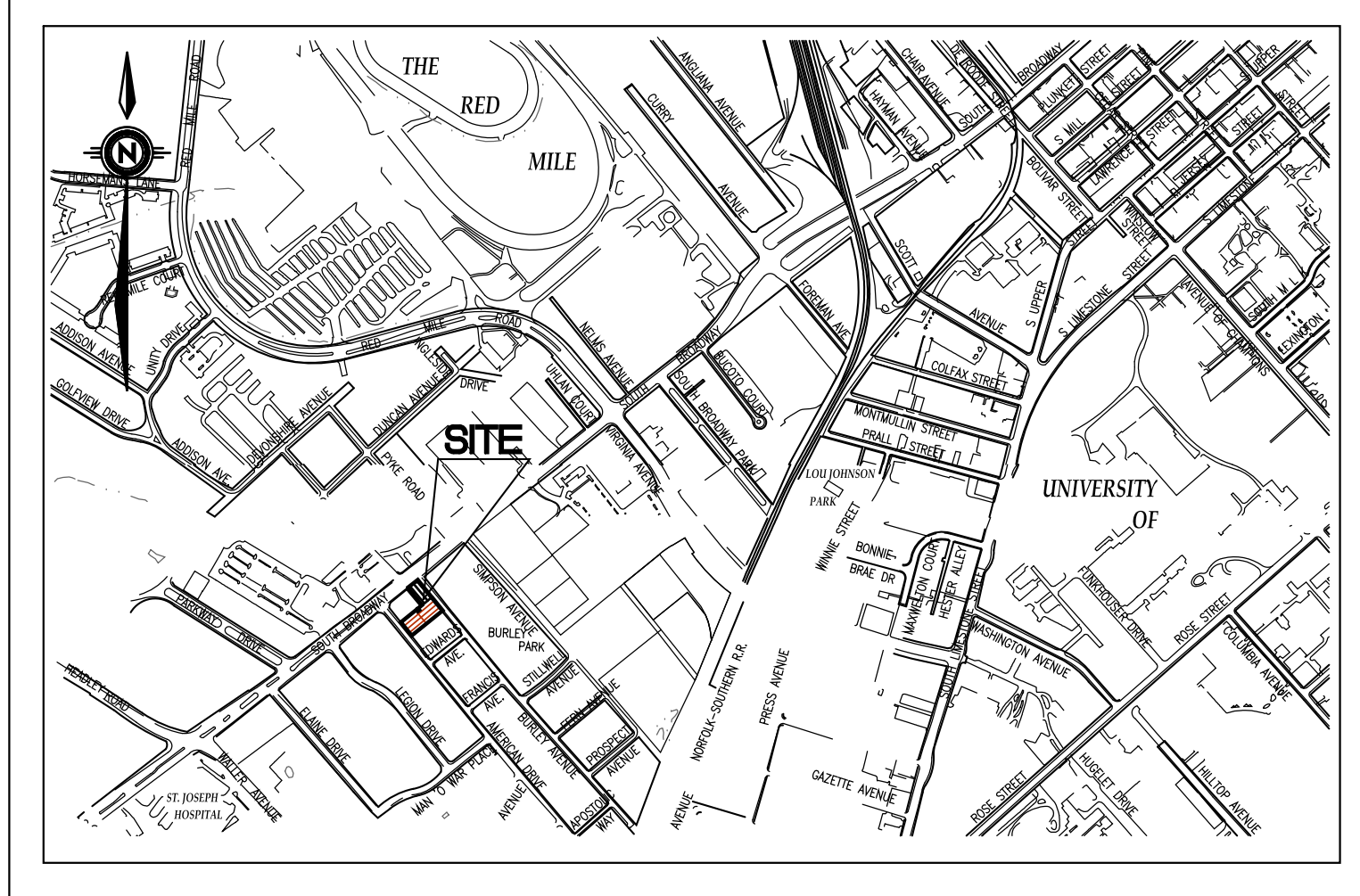


EE ENDRIS engineering
 Land Surveyors • Construction Layout • GPS

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

FROM	TO	NET	GROSS
R-1D	B-1	0.5311 Acres	0.6234 Acres

TITLE: Broomhall Commercial Properties, LLC
 ADDRESS: 355 American Avenue
 APPLICANT: Bluegrass Custard, LLC
 P.O. Box 109, Camdenton, Missouri 65020
 OWNER: Broomhall Commercial Properties, LLC
 2264 Savannah Lane, Lexington, KY 40513
 DATE FILED OR AMENDED: July 6, 2021



LOCATION MAP
SCALE 1" = 100'

PROPERTY DATA

OWNER	=	BROOMHALL COMMERCIAL PROPERTIES, LLC
DEVELOPER (UNDER CONTRACT)	=	BLUEGRASS CUSTARD, LLC
SITE ADDRESSES	=	1200 S. BROADWAY, LEXINGTON, KY 40504 355 AMERICAN AVENUE, LEXINGTON, KY 40504
PVA NUMBERS	=	14893900 & 43428000
ACREAGE	=	0.224± AC. & 0.531± AC. (0.755± AC. TOTAL)
ZONING DISTRICTS EXISTING	=	B-1 (NEIGHBORHOOD BUSINESS) & B-10 (SINGLE-FAMILY RESIDENTIAL)
ZONING DISTRICTS PROPOSED	=	B-1 (NEIGHBORHOOD BUSINESS)
BUILDING COVERAGE	=	1,500 S.F./32,941 S.F. X 100 = 4.5%
FLOOR AREA	=	1,500 S.F./32,941 S.F. = 0.045
OPEN SPACE	=	10,825 S.F./32,941 S.F. = 32%

PARKING CALCULATIONS

REQUIRED:
ONE (1) SPACE FOR EVERY TWO HUNDRED (200) SQUARE FEET OF FLOOR AREA; OR ONE (1) SPACE FOR EVERY FOUR (4) OUTDOOR SEATS, PLUS ONE (1) FOR EVERY EIGHT (8) OUTDOOR SEATS, WHICH EVER IS GREATER

FLOOR AREA=1,500 S.F.; 1,500/200 = 7.5 OR 8 SPACES
OR
OUTDOOR SEATS=28 SEAT; 28/4 = 7 SPACES
INDOOR SEATS=0
REQUIRED = 8 SPACES
PROPOSED = 33 SPACES

UTILITY OWNERS

ELECTRIC KENTUCKY UTILITIES 500 STONE ROAD, LEXINGTON, KY RICHARD COMPTON (859) 367-4309	NATURAL GAS COLUMBIA GAS 2001 MERCER ROAD LEXINGTON, KY BRYAN SLOAN (859) 268-0253
WASTEWATER LFUCO DIVISION OF WATER QUALITY 1050 INDUSTRIAL ROAD, LEXINGTON, KY (859) 425-2400	TELEPHONE WINDSTREAM 130 WEST NEW ORCLE ROAD LEXINGTON, KY LEZLIE ALSTON (859) 357-6205
WATER KENTUCKY AMERICAN WATER COMPANY 2300 RICHMOND ROAD, LEXINGTON, KY OLE MITCHELL/AUSTIN THORE (859) 268-6362	CABLE TELEVISION SPECTRUM 5576 WASHINGTON ROAD SUITE 140 LEXINGTON, KY RALPH MCDONNE (859) 514-2417
STATE ROADS TRANSPORTATION CABINET DEPARTMENT OF HIGHWAYS DISTRICT OFFICE NO. 7 763 NEW ORCLE ROAD NW LEXINGTON, KENTUCKY	

LEGEND

○ MAG NAIL WITH ID WASHER (SET, PLS 3350)	○ STORM MANHOLE
△ SURVEYOR'S CAP (SET, PLS 3350)	⊕ ELECTRIC METER
◇ FOUND MONUMENT AS NOTED	⊖ SIGNS
⊕ CONTROL POINT / BENCHMARK	⊖ CORRUGATED METAL PIPE (STORM)
⊖ GROUND LIGHT	⊖ PLASTIC PIPE
⊖ LIGHT POLE (LP)	⊖ CONCRETE PIPE
⊖ STREET LIGHT (LF)	⊖ METAL PIPE
⊖ FIRE HYDRANT (FH)	⊖ VITRIFIED CLAY PIPE
⊖ POWER POLE (PP)	⊖ MANHOLE
⊖ TELEPHONE POLE (TP)	⊖ INVERT ELEVATION
⊖ WATER VALVE (WV)	⊖ F.L. FLOW LINE ELEVATION
⊖ WATER METER (WM)	⊖ S.E. SURFACE ELEVATION (TOP-OF-GRATE)
⊖ POST INDICATOR VALVE (PIV)	⊖ T.R. SURFACE ELEVATION (TOP-OF-RIM)
⊖ GAS METER (GM)	⊖ D.S. DOWN SPOUT FROM ROOF
⊖ GAS VALVE (GV)	⊖ BRACKETED DIMENSIONS ARE PER RECORD SOURCE (DEED, PLAT)
⊖ SANITARY MANHOLE	⊖ CHAIN LINK FENCE
	⊖ BOARD FENCE
	⊖ WATER LINE
	⊖ GAS LINE
	⊖ OVERHEAD ELECTRIC
	⊖ OVERHEAD TELEPHONE/CABLE
	⊖ UNDERGROUND ELECTRIC
	⊖ UNDERGROUND TELEPHONE/CABLE

PREPARED FOR:
BLUEGRASS CUSTARD, LLC
C/O GREG ANDERSON
60 FOURTH STREET
CAMDENTON, MO 65020

PREPARED BY:
CEDC
CIVIL ENGINEERING
DESIGN CONSULTANTS

10820 Sunset Office Drive
Suite 200
St. Louis, Missouri 63127
314.729.1400
Fax: 314.729.1404
www.cedc.net

OWNERS 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.

OWNER(S)	DATE	Commissioner's Secretary	DATE
OWNER(S)	DATE		DATE

PLANNING COMMISSIONERS CERTIFICATION

I DO HEREBY CERTIFY THAT THIS DEVELOPMENT PLAN WAS APPROVED BY THE URBAN COUNTY PLANNING COMMISSION AT ITS MEETING HELD ON _____ DATE.

Commissioner's Secretary	DATE
	DATE

GENERAL NOTES

- SANITARY SEWERS AND STORM WATER MANAGEMENT SHALL MEET THE REQUIREMENTS OF THE L.F.U.C.C. ENGINEERING MANUALS.
- PRIOR TO BEGINNING ANY WORK ON THE SITE, THE CONTRACTOR SHALL CONTACT THE ENGINEER FOR SPECIFIC INSTRUCTIONS RELEVANT TO THE SEQUENCING OF WORK.
- ALL FILLS AND BACKFILLS SHALL BE MADE OF SELECTED EARTH MATERIALS, FREE FROM BROKEN MASONRY, ROCK, FROZEN EARTH, RUBBISH, ORGANIC MATERIAL, AND DEBRIS.
- GRADING CONTRACTOR SHALL KEEP EXISTING ROADWAYS CLEAN OF MUD AND DEBRIS AT ALL TIMES.
- PROPOSED CONTOURS SHOWN ARE FINISHED ELEVATIONS ON PAVED AREAS.
- ACCESS IS TO THE APPROVAL OF THE DIVISION OF TRAFFIC ENGINEERING.
- SEEDING, SODDING, MULCHING AND PLANTINGS FOR ALL DISTURBED AREAS SHALL BE SPECIFIED ON THE LANDSCAPE PLAN.
- SIDEWALKS ALONG THE ACCESSIBLE ROUTE SHALL NOT HAVE A SLOPE EXCEEDING 1V:20H. SLOPES GREATER THAN 1V:20H MUST BE DESIGNED AS A RAMP.
- SIDEWALKS, CURB RAMPS, RAMPS AND ACCESSIBLE PARKING SPACES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE CURRENT APPROVED "AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES" (ADAAG) ALONG WITH THE REQUIRED GRADING AND CONSTRUCTION MATERIALS, SPECIFICATIONS AND SIGNAGE. IF ANY CONFLICT OCCURS BETWEEN THE ADAAG GUIDELINES AND THE INFORMATION ON THE PLANS, THE ADAAG GUIDELINES SHALL TAKE PRECEDENCE AND THE CONTRACTOR SHALL NOTIFY THE PROJECT ENGINEER PRIOR TO ANY CONSTRUCTION.
- BUILDING SETBACKS PER ZONING B-1 DISTRICT
FRONT = 10 FEET MIN. & 20 FEET MAX. (ALONG S. BROADWAY)
SIDE = 0 FEET (ALL OTHER PROPERTY LINES)
REAR = 0 FEET (NOT APPLICABLE)
- ALL NEW AND RELOCATED ON-SITE UTILITIES SHALL BE PLACED UNDERGROUND.
- NO ON-SITE ILLUMINATION SOURCE SHALL BE SO SITUATED THAT LIGHT IS CAST DIRECTLY ON ADJOINING PROPERTIES OR PUBLIC ROADWAYS. ILLUMINATION LEVELS SHALL COMPLY WITH THE PROVISIONS OF THE LIGHTING SECTION, L.F.U.C.C. ALL LIGHTING TO BE DOWNCAST STYLE.
- SIGNAGE SHALL COMPLY WITH ARTICLE 17 OF THE ZONING ORDINANCE.
- NO GRADING, STRIPPING, EXCAVATION, FILLING OR OTHER DISTURBANCE OF THE NATURAL GROUND COVER SHALL TAKE PLACE PRIOR TO APPROVAL OF AN EROSION CONTROL PLAN. SUCH PLAN MUST BE SUBMITTED IN ACCORDANCE WITH CHAPTER 16 OF THE CODE OF ORDINANCES.
- NO BUILDING PERMITS SHALL BE ISSUED UNLESS AND UNTIL A FINAL DEVELOPMENT PLAN IS APPROVED BY THE PLANNING COMMISSION.

UNDERGROUND UTILITIES

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY OF OBSERVED EVIDENCE ONLY. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED, ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM THE INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.

FEMA FLOOD HAZARD AREA

BASED ON AN INSPECTION OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S MAP NUMBER 2100670117E WITH A DATE OF IDENTIFICATION OF MARCH 03, 2014 FOR COMMUNITY NUMBER 210067, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, WHICH IS THE CURRENT FLOOD INSURANCE RATE MAP (FIRM) FOR THE COMMUNITY IN WHICH THE SUBJECT PROPERTY LIES, NO PORTION OF THE SUBJECT PROPERTY LIES WITHIN A FEMA SPECIAL FLOOD HAZARD AREA. THE PROPERTY LIES WITHIN ZONE "X" AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.

BOARD OF ADJUSTMENT

PURPOSE: FOR A DRIVE THRU
CASE NUMBER: PLN-BOA-21-00013 ANDY'S FROZEN CUSTARD
APPROVAL DATE: MAY 10, 2021

PURPOSE OF AMENDMENT

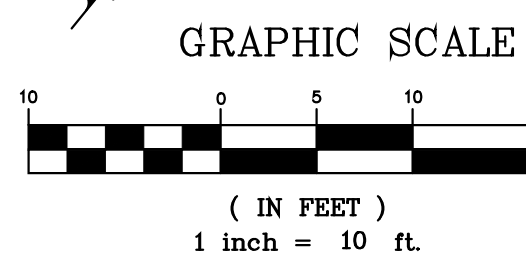
TO REZONE R1-D PROPERTY TO B-1 ZONE

ORIGIN OF ELEVATIONS

THE ELEVATIONS SHOWN HEREON ARE BASED ON NORTH AMERICAN VERTICAL DATUM OF 1988. PARTICULARLY, THE ORIGIN OF ELEVATIONS IS THE CORS STATION "KYTC" DESCRIBED ABOVE. THE PUBLISHED ELEVATION OF THIS MONUMENT IS 978.93 FEET (NAVD 88).

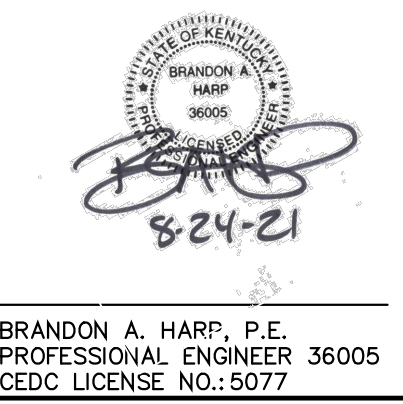
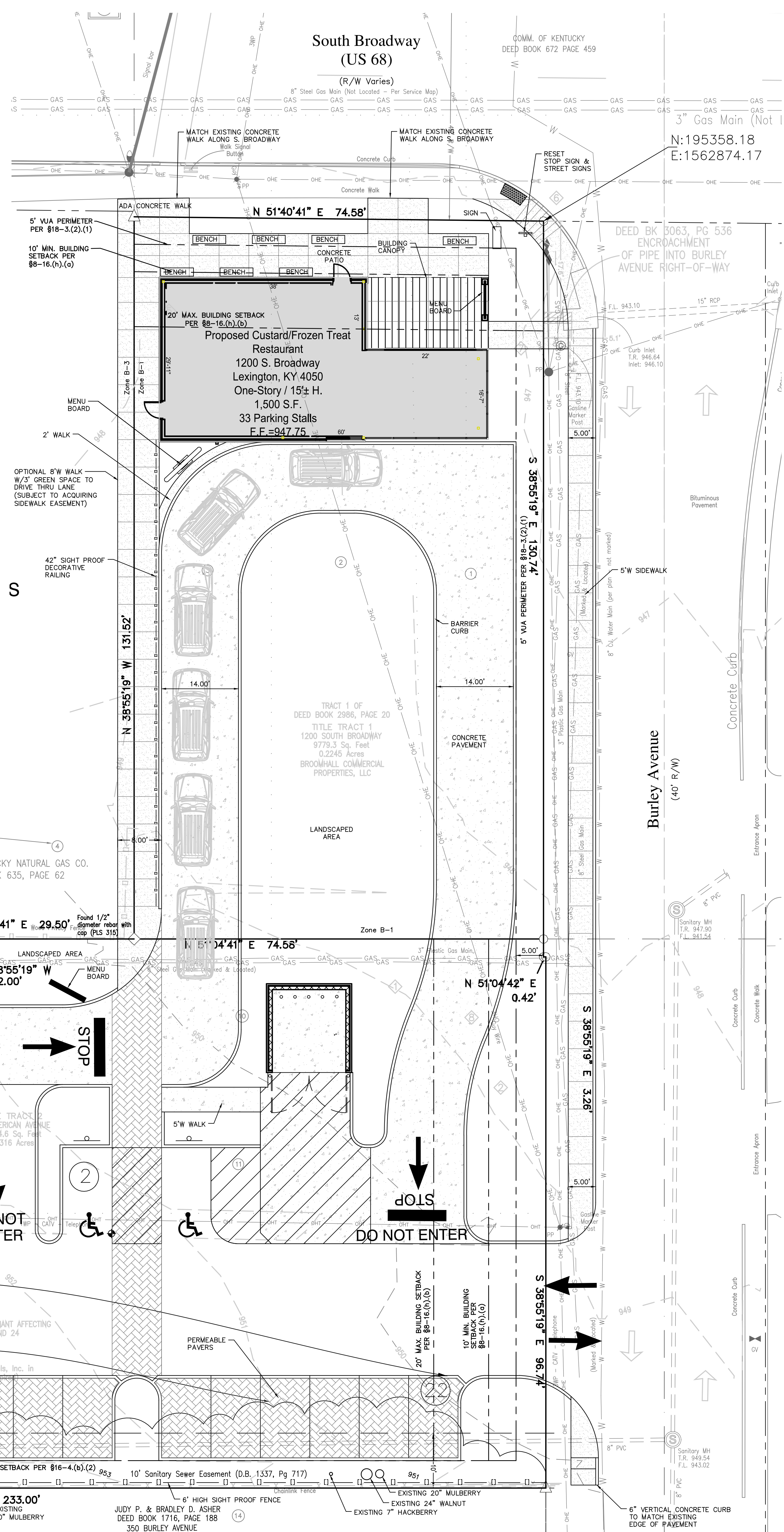
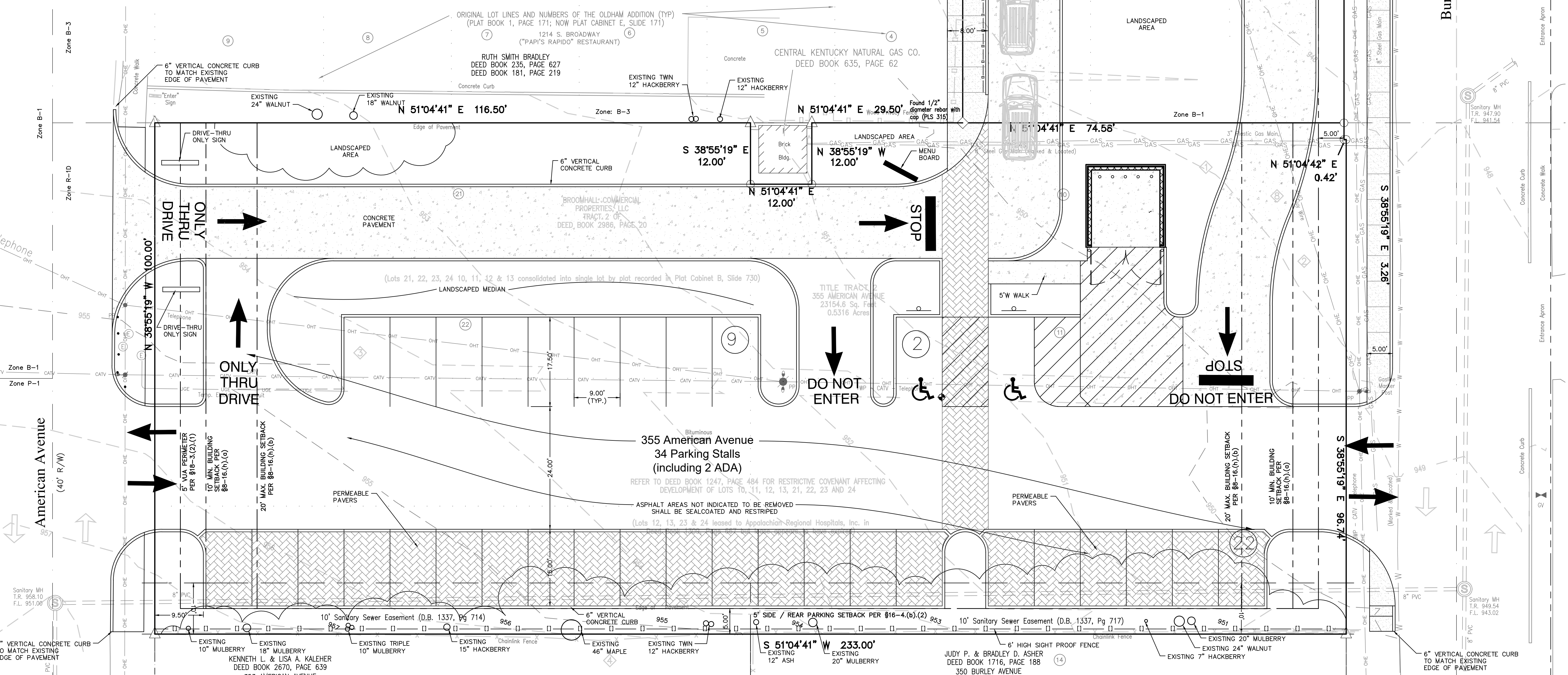
LEGEND FOR NEW PAVEMENT

[Pattern]	PROPOSED CONCRETE WALK
[Pattern]	PROPOSED CONCRETE PAVEMENT
[Pattern]	PROPOSED ASPHALT PAVEMENT
[Pattern]	PROPOSED PAVERS



ORIGIN OF BEARINGS AND COORDINATES

THE BEARINGS SHOWN HEREON ARE BASED ON KENTUCKY STATE PLANE GRID NORTH, NORTH AMERICAN DATUM OF 1983 (NAD 83). PARTICULARLY, THE BEARINGS ARE BASED ON A GPS SURVEY UTILIZING CONTINUOUSLY OPERATING REFERENCE STATION (CORS) "KYTC", HAVING A POINT DESIGNATION OF "KY HWY DIST 7 CORS APT" AND HAVING GEOGRAPHIC COORDINATES OF N 38° 04' 31.96484" W 084° 20' 31.91207" AND KENTUCKY STATE PLANE COORDINATES (NORTH ZONE, NAD 83) OF N=209,682.94', E=1,570,696.89'.



BRANDON A. HARP, P.E.
PROFESSIONAL ENGINEER
STATE OF MISSOURI
LICENSE NO. 63127

CEDC
CIVIL ENGINEERING
DESIGN CONSULTANTS

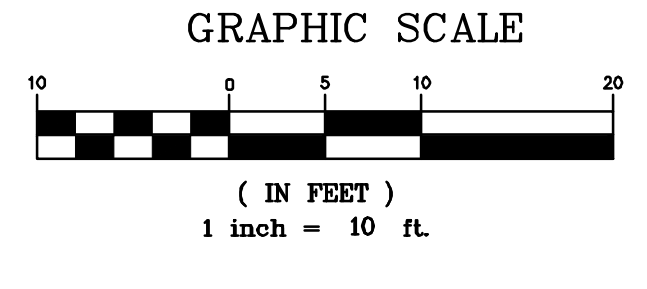
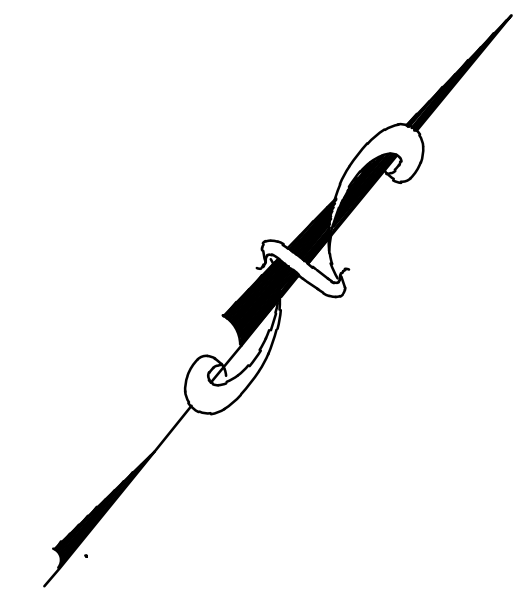
Final Development Plan for
OLDHAM ADDITION (LOTS 1-3, 10-13, & 21-24)
ANDY'S FROZEN CUSTARD
1200 S. BROADWAY
Lexington, Kentucky

Proj. # 2078

No.	Description	Date
To City		07-5-2021
To City		07-30-2021
To City		08-24-2021

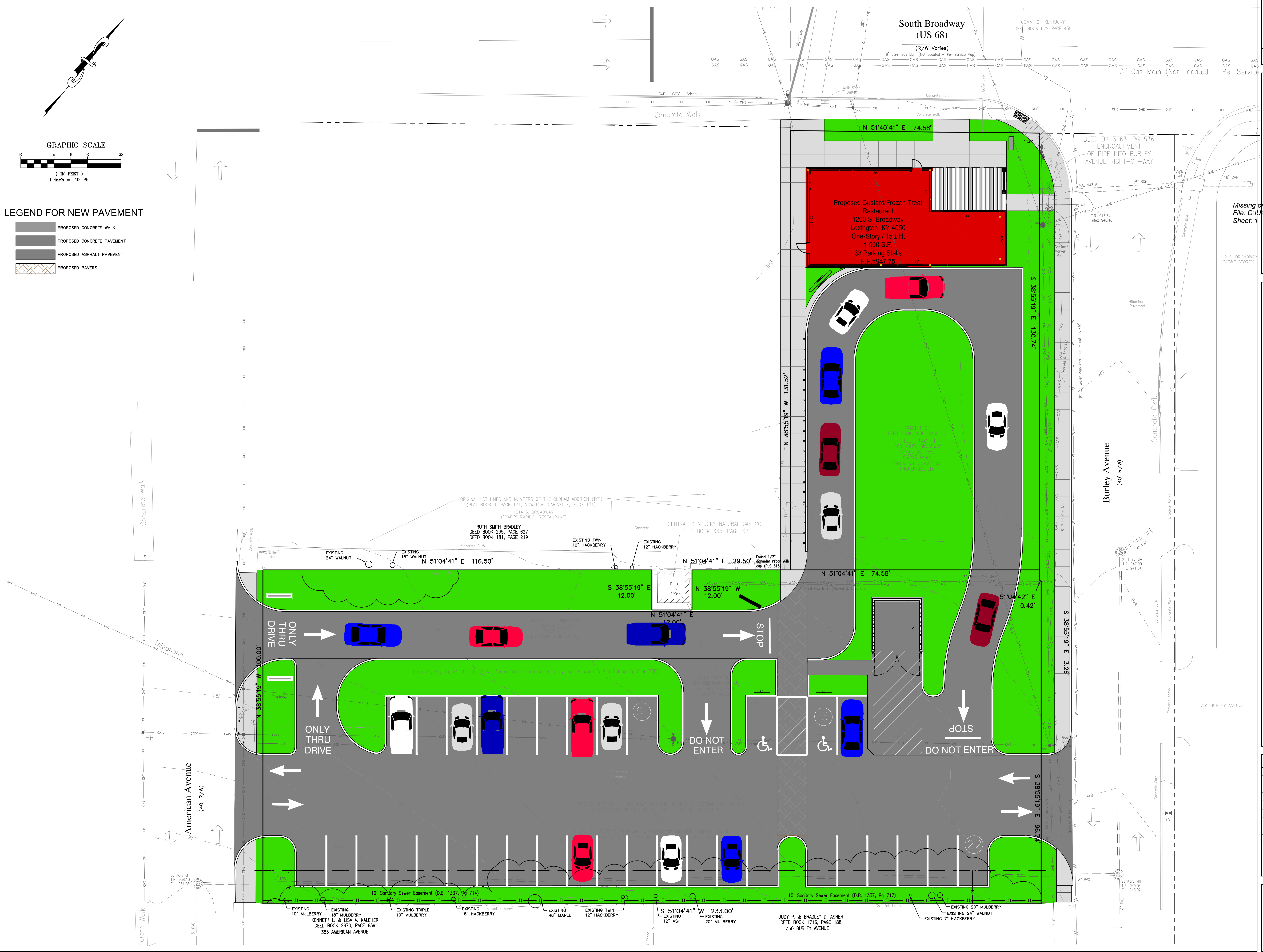
FINAL DEVELOPMENT PLAN

C-1



LEGEND FOR NEW PAVEMENT

- PROPOSED CONCRETE WALK
- PROPOSED CONCRETE PAVEMENT
- PROPOSED ASPHALT PAVEMENT
- PROPOSED PAVERS



BRANDON A. HARP, P.E.
PROFESSIONAL ENGINEER 36005
CEDC LICENSE NO. 8077

10820 Sumner Office Drive
St. Louis, Missouri 63127
314.729.1400
Fax: 314.729.1404
www.cedc.net

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Final Development Plan for
OLDHAM ADDITION (LOTS 1-3, 10-13, & 21-24)
ANDY'S FROZEN CUSTARD
1200 S. Broadway
Lexington, Kentucky

Proj. #	Description	Date
2078	To City	07-5-2021
	To City	07-30-2021

SITE DEVELOPMENT PLAN

SDP-3

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-21-00009: BLUEGRASS CUSTARD, LLC

DESCRIPTION OF ZONE CHANGE

Zone Change:	From a Single Family Residential (R-1D) zone To a Neighborhood Business (B-1) zone
Acreage:	0.531 net (0.623 gross) acres
Location:	355 American Avenue



EXISTING ZONING & LAND USE

PROPERTIES	ZONING	EXISTING LAND USE
Subject Property	R-1D	Parking Lot (non-conform.)
To North	P-1 / B-1	Offices / Retail
To East	R-1D	Single Family Residential
To South	P-1 / B-1	Offices
To West	B-1 / B-3	Restaurants

URBAN SERVICE REPORT

Roads - The subject property is a through-lot with frontage along American Avenue and Burley Avenue. Both American and Burley Avenues are local streets that serve the commercial uses near the intersection with South Broadway (US 68) and the residential neighborhood located to the southeast. Both roadways terminate at the Norfolk Southern rail-line. South Broadway is a major arterial roadway and is identified as one of Lexington's urban corridors. The roadway experiences approximately 25,950 average daily trips.

Curb/Gutter/Sidewalks - The frontages of the property are representative of the historical development of the area. The property frontages do not have curb, gutters, or sidewalks at this location. Roadway improvements are required at the time of development of the site due to the constriction of the roadway along South Broadway.

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

Storm Sewers - The subject property is located within the Wolf Run watershed. Storm sewers are currently located along the right-of-way; however, the developer will be required to address water quality on their site in accord with the adopted Engineering Manuals. There are no special flood hazard areas in this location.

Sanitary Sewers - The subject properties are located within the Wolf Run watershed, which is served by the Town Branch Wastewater Treatment Facility, located on Lisle Industrial, east of New Circle Road. Sanitary sewer capacity will need to be verified prior to certification of the final development plan for the proposed redevelopment.

Refuse - The Urban County Government serves this area with refuse collection on Mondays. However, supplemental service by private refuse haulers is commonly utilized for commercial land uses, such as those proposed on the associated development plan.

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

Fire/Ambulance - Fire Station #11 is the nearest station to this site. It is located approximately 1/2 mile to the southwest on Harrodsburg Road between St. Joseph Hospital and Picadome Elementary School.

Transit - LexTran service is available within the immediate area along South Broadway. Outbound and inbound service for the South Broadway Route (#13) and the Night Versailles Route (#58) are available less than 1/4 mile of the subject property. Outbound and inbound service for the Red Mile Route (#15) is available less than 1/3 mile of the subject property.

Parks - There are two parks within proximity of the development. Burley Park is located 400 feet southeast of the subject property located on Burley Avenue. Additionally, the Picadome Golf Course is located approximately 1/4 mile walking distance west of the subject property on Parkway Drive.

SUMMARY OF REQUEST

The applicant is seeking to rezone the subject property from a Single Family Residential (R-1D) zone to the Neighborhood Business (B-1) zone in an effort to modify a non-conforming parking lot and allow for a drive-through facility.

PLACE-TYPE

CORRIDOR

The Corridor Place-Type is Lexington’s major roadways focused on commerce and transportation. The overriding emphasis of Imagine Lexington is significantly overhauling the intensity of the major corridors. The future of Lexington’s corridors lies in accommodating the shifting retail economic model by incorporating high density residential and offering substantial flexibility to available land uses. Adding a mix of land uses to support the existing retail will provide a built-in customer base, create a more desirable retail experience, and allow a greater return on investment for landholders. Additional focus is on increasing the viability of enhanced mass transit, thereby reducing the reliance on single-occupancy vehicles and improving Lexington’s overall transportation efficiency.

DEVELOPMENT TYPE

MEDIUM DENSITY NON-RESIDENTIAL / MIXED-USE

Primary Land Use, Building Form, & Design

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

Transit Infrastructure & Connectivity

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

Parking

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

PROPOSED ZONING



This zone is intended to accommodate neighborhood shopping facilities to serve the needs of the surrounding residential area. Generally, they should be planned facilities and should be located as recommended in the Comprehensive Plan. This zone should be oriented to the residential neighborhood, and should have a roadway system which will be adequate to accommodate the anticipated vehicular traffic.

PROPOSED USE



The petitioner proposes the rezoning of the subject property to allow the modification of a non-conforming parking lot and the addition of a drive-through facility. The applicant is seeking to group the subject property with the proposed custard restaurant located at 1200 South Broadway. The parking lot will provide the required parking for the proposed project, while also allowing for access and egress to the drive-through facility. A zone change is required for the addition of the drive-through facility, as it increases the intensity of the non-conforming land use.

APPLICANT & COMMUNITY ENGAGEMENT



The applicant mailed invitations to a virtual meeting to all properties within the 500 foot notification area. The meeting, which was held on July 1, 2021, at the Gay Brewer Jr. Gold Course. The meeting was meant to provide information regarding the zone change and take comments and concerns from attendees. No attendees were present at the meeting.

PROPERTY & ZONING HISTORY



Prior to 1969, the subject property was zoned Two-Family Residential (R-2) District. During the comprehensive rezoning of the City of Lexington in 1969 the city reviewed the built environment to look for either consistency with the zoning, up-zoning and down-zoning certain properties to more accurately comply with the 1969 Zoning Ordinance. The subject property and those properties along American and Burley Avenues were down-zoned from the R-2 District to the Single Family Residential (R-1D) zone. Despite the down-zoning, the subject property, which has operated as a parking lot since 1966, remained parking to support those properties located along what was then Harrodsburg Pike.

Since the subject property has been consistently been operated as a parking lot and was established prior to the adoption of the zoning regulations that precluded parking lots in low density residential zones, it is considered to be grandfathered as a legal non-conforming use. As such, the parking lot is able to continue to operate so long as the intensity or density of the non-conformity is not increased.

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 the proposed rezoning for the subject property is in agreement with the 2018 Comprehensive Plan. They indicating that the project is located within the Corridor Place-Type and is a Medium Density Non-Residential / Mixed Use Development Type. While the subject property is not located along the frontage of the South Broadway Corridor, the property at 1200 South Broadway, which is the location of the structure associated with the parking and the drive-through facility is fronting on the Corridor. As such, staff agrees that the overall project is representative of a Corridor Place-Type. Furthermore, while the density of the proposed use is not representative of the Medium Density Non-Residential / Mixed Use Development Type, staff agrees that the intensity of the proposed use is representative of the Development Type and can be appropriate for the subject property. Finally, the Neighborhood Business (B-1) zone is not a recommended zone within this Place-Type and Development Type, which necessitates additional justification and review.

Within the Corridor Place-Type and Medium Density Non-Residential / Mixed Use Development Type, there are six recommended zones: Commercial Center (B-6P), Neighborhood Business (B-1) with a form-based project, Mixed-Use Corridor (MU-2), Mixed-Use Community (MU-3), High Density Apartment (R-4), and High-Rise Apartment (R-5) zones. While there is overlap between the B-1 zone and the B-1 zone with a form-based project, the intent of the B-1 zone with a form-based project is to better integrate infill projects into an area with an established character. Those projects that have occurred in Lexington have typically been multi-storied and have matched or established higher densities and intensities of land use. In this case, the proposed rezoning would result in the elimination of a non-conforming use, while also allowing for the intensification of uses allowable on the property. This intensification of Lexington's Corridors is called for within the Comprehensive Plan. Furthermore, the zone requested is consistent with the established zoning of the neighboring property that is part of the associated development plan, as well as the majority of those properties that front on the South Broadway. This rezoning would result in a greater intensification of the Corridor and would match the established character of the area. Staff agrees that the applicant's request to the B-1 zone can be appropriate for the subject property.

GOALS & OBJECTIVES

The applicant opines that they are in agreement with the adopted Goals, Objectives, and Policies of the 2018 Comprehensive Plan. The applicant indicates that the project addresses the goal of growing successful neighborhoods by supporting infill and redevelopment throughout the Urban Service Area (Theme A, Goal #2), while also addressing community facilities at a neighborhood scale (Theme A, Goal #4). The increase of modernized pedestrian facilities and the reduction of potential conflict points between pedestrian activity and vehicular movement is imperative to the development of a safer and more walkable community. Through



the revised development plan submitted and the revised points of access and egress, the applicant is creating a far safer situation than what is currently operating. The applicant also indicates that by allowing for the drive-through facility, they are able to support local assets to further the creation of a variety of jobs (Theme C, Goal #1.a). Finally, the applicant indicates that the proposed project will improve a desirable community that is focused on a people first design to provide accessible services to meet the quality of life needs of Lexington residents and visitors (Theme D, Goal #1). Staff agrees that the applicant is able to meet these goals and objects with the proposed project.

While not addressed by the applicant, an important component of the any rezoning to allow for the intensification of a parking lot is the need to design parking areas so they are not the primary visual component of the neighborhood (Design Policy #7), while also increasing the available tree canopy coverage to off-set the impacts of the heat island effect caused by Lexington's paved areas (Restoration Pillar III, Protection Policy #7). The applicant has submitted documentation regarding the trees and landscaping that is being utilized to meet the canopy coverage, as well as some of the buffering requirements. Staff does have concerns regarding the trees that are proposed along the eastern most boundary for the subject property, as well as the applicants ability to meet some of the buffering and landscaping requirements of the Zoning Ordinance.

While the applicant is in agreement with several of the Goals and Objectives of the Comprehensive Plan, since the applicant is seeking the modification of a parking area, staff needs greater information regarding how the applicant will provide viable canopy coverage and allow for the growth of the proposed trees.

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 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 Corridor Place-Type and is seeking to create a Medium Density Non-Residential / Mixed Use Development Type. Within this Place-Type and Development Type, the Comprehensive Plan states that special care should be taken to address infill and redevelopment opportunities that will allow for mixing housing types, connecting multi-modal transportation networks, context sensitive development, and well integrated public facilities and green spaces. Staff concurs with the applicant's assessment of the Place-Type, and agrees that a medium density commercial development can be appropriate for the subject property within a Neighborhood Business (B-1) zone.

The applicant has done much to address the Development Criteria. 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 several of the criteria for Site Design, Building Form and Location, there were two criteria that necessitated added discussion and warranted a staff response.

A-DS7-2 Any non-residential or multi-family parking not buffered by a building should be screened from the streetscape view and adjacent properties.

The applicant has indicated a desire to seek relief from some of the requirements of the Zoning Ordinance for these areas. Staff needs greater information from the applicant to understand how these buffers are not necessary. Furthermore staff is concerned with the buffers along the established residential zoning to the east of the property and the viability of the planned trees.

B-SU11-1 Green infrastructure should be implemented in new development. (E-GR3)

With the intensification in the use of a parking lot, there must be a critical review of potential impact to the stormwater system. The applicant should review where and how green infrastructure can be implemented on-site.



2. Transportation and Pedestrian

The proposed rezoning includes safe facilities for the potential users, through the incorporation of enhanced pedestrian facilities along the property's frontages and within the site. These improvements address the Transportation and Pedestrian Connectivity development criteria of the 2018 Comprehensive Plan.

3. Greenspace and Environmental Health

The proposed rezoning meets some of the criteria for Greenspace and Environmental Health. There are still areas of concern that staff would like to applicant to expand upon. These include the following:

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.

An important component of the any rezoning to allow for the intensification of a parking lot is the need to design parking areas so they are not the primary visual component of the neighborhood, while also increasing the available tree canopy coverage to off-set the impacts of the heat island effect caused by Lexington's paved areas. The applicant should provide greater information regarding the inclusion of tree canopy and the viability of the canopy.

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



1. The zone change application for the subject property necessitates greater review regarding the agreement with the following Design Policy #7 of the Comprehensive Plan regarding parking areas.
2. The zone change application for the subject property, as proposed, does not completely address the development criteria for a zone change within the Corridor Place Type, and the Medium-Density Non-Residential / Mixed Use Development Type. The following criteria require further discussion by the applicant to address compliance with the Comprehensive Plan:
 - a. A-DS7-2 Any non-residential or multi-family parking not buffered by a building should be screened from the streetscape view and adjacent properties.
 - b. B-SU11-1 Green infrastructure should be implemented in new development. (E-GR3)
 - c. B-PR7-2 Trees should be incorporated into development plans, prioritize grouping of trees to increase survivability.
 - d. B-PR7-3 Developments should improve the tree canopy.

SUPPLEMENTAL STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-21-00009: BLUEGRASS CUSTARD, LLC



STAFF REVIEW

In the period following the August Subdivision and Zoning Committee meetings, the applicant provided staff with greater amounts of information regarding the proposed rezoning and requested variances. Following those meetings, the applicant reviewed staff's and zoning sub-committee's comments, and supplemented their application regarding the proposed development and its agreement with the 2018 Comprehensive Plan. New information submitted by the applicant includes a variance request, a landscaping exhibit, and letter from a Registered Landscape Architect describing the viability of trees. While the variance requests were an important aspect of the development plan and compliance with the Zoning Ordinance, the landscaping exhibit and the information provided regarding the viability of the trees along the eastern edge of the property was more heavily tied to compliance with the Comprehensive Plan.

The proposed use of the property for parking and a drive-through facility, necessitate a robust tree planting to offset the impact of the heat island effect caused by the development of impervious surfaces, and to buffer the residential uses from the intensity of the proposed land use. While the planting provides such a buffer, there was concern regarding long term viability. Additionally, the reduction of impervious surfaces allows for greater stormwater absorption on the site. Within the information provided by the applicant there are three overlapping strategies that allow for the greatest viability of the trees: 1. Irrigate the area, 2. Plant trees out of the zone where the front bumpers would conflict with the planting material in a negative way, and 3. Consider the use of permeable pavers in the adjoining parking spaces. Per the recommendation of the landscape architect, the applicant adjusted the development plan to depict the use of permeable pavers for all parking spaces along the area that abuts the Single Family Residential (R-1D) zoning, southeast of the subject property.

The use of permeable pavers also allows for greater agreement with the Comprehensive Plan. Specifically, the applicant is now utilizing green infrastructure (B-SU11-1), which allows for more sustainable stormwater management.

Staff can now recommend approval of the proposed zone change from a Single Family Residential (R-1D) zone to a restricted Neighborhood Business (B-1) zone for the property located at 355 American Avenue, as the proposal is in agreement with the 2018 Comprehensive Plan, including the applicable Goals and Objectives, Policies, and Development Criteria.

CONDITIONAL ZONING RESTRICTIONS

While the proposed rezoning is in agreement with the Comprehensive Plan, staff thinks that is important to lessen the impact of and transition from a more intense development to a lower intensity development. The staff recommends the use of Conditional Zoning Restrictions to limit the impact of the proposed zone on the established residential neighborhood. Staff recommends that there shall be no exterior lighting greater than twelve (12) feet in height and that all lighting be shielded and directed downward. The limitation on lighting, coupled with the property perimeter screening will protect against light spillage on neighboring properties. Additionally, staff recommends prohibiting automobile service stations and car washes, as these use can produce greater amounts of air and sound nuisances, which would have a negative impact on the neighboring properties.

STAFF RECOMMENDS: APPROVAL, FOR THE FOLLOWING REASONS:



1. The requested Neighborhood Business (B-1) zone is in agreement with the 2018 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The proposed rezoning addresses the goal of growing successful neighborhoods by supporting infill and redevelopment throughout the Urban Service Area (Theme A, Goal #2), while also addressing community facilities at a neighborhood scale (Theme A, Goal #4). The increase of modernized pedestrian facilities and the reduction of potential conflict points between pedestrian activity and vehicular movement is imperative to the development of a safer and more walkable community.
 - b. The proposed project will improve a desirable community that is focused on a people first design that provide accessible amenities to meet the quality of life needs of Lexington residents and visitors (Theme D, Goal #1). The proposed project includes a new restaurant facility that provides an activated street frontage and delineated pedestrian facilities, while also improving a portion of the property that auto oriented and removing conflict points between pedestrian and vehicular movement.
 - c. The proposed development will allow for the improvement of a parking lot and will modernize the layout of the parking area with landscaping to improve the visual impact on the neighborhood (Design Policy #7).
 - d. The proposed development will increase the available tree canopy coverage to off-set the impacts of the heat island effect caused by Lexington's paved areas (Restoration Pillar III, Protection Policy #7).
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 safer development that supports pedestrian mobility, while also including a buffer between the higher intensity drive-through facilities and the existing single-family residential land use along the southeastern portion of the property.
 - b. The proposed rezoning includes safe facilities for the potential users, through the incorporation of enhanced pedestrian facilities along the property's frontages and leading to the development frontage along South Broadway. Additionally, the proposed development delineates the access and egress into the site, while also increasing the buffering between the vehicular uses and the surrounding properties. 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 will increase tree canopy coverage and establish green infrastructure that will help alleviate the impact on the surrounding development and the stormwater system.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following buffering restriction is recommended via conditional zoning:
 - a. There shall be no exterior lighting greater than 12 feet in height and all lighting be shielded and directed downward.
 - b. The following uses shall be prohibited:
 - i. Automobile Service Stations.
 - ii. Car Washes.

These restrictions are appropriate and necessary to reduce the potential impact of the allowable uses on the neighboring lower intensity uses, while also restricting the highest nuisances producing uses in the zone.
4. This recommendation is made subject to approval and certification of PLN-MJDP-21-00038: Oldham Property (Lots 1-3, 10-13, & 21-24)(Andy's Frozen Custard), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

HBB/TLW
08/25/2021

G:\Planning Services\Staff Reports\2020\PLN-MAR-21-00009 BLUEGRASS CUSTARD, LLC SUPPLEMENTAL.PDF

STAFF REPORT ON VARIANCE REQUEST



Just prior to the Subdivision and Zoning Subcommittee meetings, the applicant supplemented their justification to include two dimensional variances. Since that time the applicant has removed one of the requests for relief. The remaining request is seeking a variance to reduce required property perimeter requirements from fifteen (15) feet to zero (0) feet for the portion of the property that surrounds the Columbia Gas property and eliminate all landscape material requirements.

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

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

ZONING ORDINANCE

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

Article 18-3(a)(1) states that when an office or business zone (except P-2) adjoins any residential zone, a minimum buffer area of average width of fifteen (15) feet is required adjacent to all common boundaries, which may be reduced to five (5) feet when used in conjunction with a six-foot high wall or fence. The buffer area must contain one (1) tree per 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.

CASE REVIEW

The applicant is requesting a dimensional variance to reduce the required property perimeter requirements from fifteen (15) feet to zero (0) feet for the portion of the property that surrounds the Columbia Gas property and eliminate the landscaping requirements for that area. During the staff's review of the zone change application and associated development plan, it was discovered that a small parcel, twelve (12) feet by twelve (12) feet in size, owned by Columbia Gas Company, was located along the western edge of the subject property. As this property is a utility distribution or service facility it is not bound by the restrictions of the Zoning Ordinance, including minimum lot size, frontage, and setback requirements. As the property is under the ownership of Columbia Gas, the applicant is also not able to rezone the property along with 355 American Avenue, leaving a small tract of land which is zoned Single Family Residential (R-1D). The proposed rezoning to the Neighborhood Business (B-1) zone for the property results in the need for the application of property perimeter screening requirements (often referred to as zone to zone screening) to be met between the two properties. This would result in a minimum buffer area of average width of fifteen (15) feet adjacent to all common boundaries, which may be reduced to five (5) feet when used in conjunction with a six-foot high wall or fence. The buffer area would also contain one (1) tree per 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 property perimeter screen requirement is meant to buffer against the potential impact of nuisances caused by a more intense or dense use when adjoining a less intense or dense land use.

The applicant opines that 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. They



state that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone. Furthermore, they state that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and would create an unnecessary hardship on the applicant. Additionally, the applicant indicates that the circumstances applicable to the need for this variance are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The applicant describes that although the small Columbia Gas parcel is zoned Single Family Residential (R-1D), it is not large enough to meet the zoning requirements for a R-1D zoned lot and is not large enough to construct any single family home under any of the zones. The applicant reiterates that as a public utility, Columbia Gas is exempt from zoning regulations for service facilities and has access to and the use of its property for many years. The modification of the property will not change that access should the variance be approved, and the proposed development will not have an adverse impact on Columbia Gas Company's access to or use of its property. Finally, the applicant states that the land use policies which underpin the setback and landscape provisions that apply between properties, which are in the R-1D and B-1 zones, do not apply here because there is no residential use of the small property.

As this variance would impact the landscaping of the subject property, the request was presented to the Landscape Review Committee on August 24, 2021. While there was not a quorum of members at the meeting, staff discussed the proposed variance with the members in attendance.

Staff agrees with the applicant and the informal discussion from the Landscape Review Committee regarding the appropriateness of the proposed variance to the property perimeter screening requirements.

STAFF RECOMMENDS: APPROVAL OF THE VARIANCE TO THE PROPERTY PERIMETER SCREENING, FOR THE FOLLOWING REASONS:



1. Granting the requested variance should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity, as the proposed project will impact the small lot that is occupied by a public utility service facility and not a single family residence.
2. The need for the variances arises from the special circumstances of the adjacency to a non-conforming lot, which is owned and operated by a public utility.
3. The strict application of the property perimeter screening requirements would create an unnecessary hardship on the proposed development requiring the placement of the drive-through facilities to be closer to the residential land uses and impacting the use of the proposed parking lot.
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 variances prior to commencing construction.

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

- a. Provided the Planning Commission and Urban County Council approves the requested zone change to the B-1 zone, otherwise the requested variances shall be null and void.
- b. The development shall be constructed in accordance with the approved Final Development Plan, or as amended by the Planning Commission.
- c. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
- d. Action of the Planning Commission shall be noted on the Development Plan for the subject property.

1. BLUEGRASS CUSTARD, LLC ZONING MAP AMENDMENT & OLDHAM ADDITION (LOTS 1-3, 10-13 & 21-24) (ANDY'S FROZEN CUSTARD) ZONING DEVELOPMENT PLAN

- a. PLN-MAR-21-00009: BLUEGRASS CUSTARD, LLC (9/28/21)*- a petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone, for 0.53 net (0.62 gross) acre, for property located at 355 American Avenue.

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 to rezone the subject property from a Single Family Residential (R-1D) zone to the Neighborhood Business (B-1) zone in an effort to modify a non-conforming parking lot and allow for a drive-through facility.

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

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

1. The zone change application for the subject property necessitates greater review regarding the agreement with the following Design Policy #7 of the Comprehensive Plan regarding parking areas.
2. The zone change application for the subject property, as proposed, does not completely address the development criteria for a zone change within the Corridor Place Type, and the Medium-Density Non- Residential / Mixed Use Development Type. The following criteria require further discussion by the applicant to address compliance with the Comprehensive Plan:
 - a. A-DS7-2 Any non-residential or multi-family parking not buffered by a building should be screened from the streetscape view and adjacent properties.
 - b. B-SU11-1 Green infrastructure should be implemented in new development. (E-GR3)
 - c. B-PR7-2 Trees should be incorporated into development plans, prioritize grouping of trees to increase survivability.
 - d. B-PR7-3 Developments should improve the tree canopy.
- b. VARIANCE REQUEST – One dimensional variance to reduce required property perimeter requirements from 15 feet to 0 feet for the portion of the property that surrounds the Columbia Gas property and eliminate the landscaping requirements. A second variance to reduce the required vehicular use area buffer from 3 feet to 0 feet and remove the required vehicular use area landscaping for the portion of the property that abuts 1214 South Broadway.

The Zoning Committee recommended: **Postponement** for the reasons provided by staff.

- c. PLN-MJDP-21-00038: OLDHAM ADDITION (LOTS 1-3, 10-13 & 21-24) (ANDY'S FROZEN CUSTARD) (9/28/21)* - located at 1200 SOUTH BROADWAY & 355 AMERICAN AVENUE, LEXINGTON, KY
Project Contact: CEDC

The Subdivision Committee Recommended: **Postponement**. There are questions regarding plan status and required Article 26 information.

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree inventory map.
5. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
6. United States Postal Service Office's approval of kiosk locations or easement.
7. Delete all extraneous construction information.
8. Delete all title exception information.
9. Addition of purpose of amendment note (to rezone R-1D zone property to B-1 zone).
10. Correct setback references on 355 American Avenue to Article 15-2(a)(4) of the Zoning Ordinance.
11. Clarify required parking generator.
12. Revise Note #16 to state "Signage shall comply with Article 17 of the Zoning Ordinance."
13. Delete R-1D zone setbacks from Note #13.

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

14. Combine Notes #1, 2, 4 & 8 to one note to state "Sanitary sewers and stormwater management shall meet the requirements of the LFUCG Engineering Manuals."
15. Revise Note #9 to state that access is to the approval of the Division of Traffic Engineering.
16. Revise all references to the City of Lexington to L.F.U.C.G.
17. Correct plan title to match staff report.
18. Denote Board of Adjustment approval date and case number for drive-through facility.
19. Discuss tree inventory plan.
20. Discuss plan status.

Staff Zoning Presentation – Mr. Baillie presented the revised 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 seeking to modify a non-conforming parking lot and allow a drive-through facility. He said that the applicant had previously presented to the Board of Adjustment (BOA) to allow for the redevelopment along the South Broadway corridor (1200 S. Broadway). The BOA did approve the establishment of a drive-through facility on the front portion of the site, but the drive-through could not be expanded on to the rear property, due to the non-conforming status of the parking lot. The property is surrounded by the Highway Service Business (B-3) zone and Neighborhood Business (B-1) zone along S. Broadway, and Professional Office (P-1) zone and Single Family Residential (R-1D) zone along Burley Avenue and American Avenue.

Mr. Baillie said that the proposed redevelopment will demolish the building located on the corner of American Avenue and S. Broadway, which has been approved through a BOA site plan. Currently there are no pedestrian facilities located at this site. He said that the applicant submitted their application under the Corridor Place-Type, which is located along the major arterial roadways and identified within the Comprehensive Plan. He added that the applicant is fronting on a corridor and providing activation via the restaurant. The applicant is also seeking a Medium-Density Non-Residential / Mixed Use Development Type, which is based on the scale of the structure, the density of the site, and the intensity of the land use. He said that the proposed land use is associated with a fast / casual style restaurant that includes a drive-through facility. He said that the applicant is not requesting one of the recommended zones from the Comprehensive Plan, because it is not an urban style design with greater amount of density. He said that in the applicant's letter of justification they described some of the surrounding zones, the major pedestrian improvements, and the orientation of their development. The staff did agree that the proposed zone could be appropriate.

Mr. Baillie said that at the August 5, 2021, Subdivision and Zoning Committees, the staff had concerns regarding the pedestrian facilities and the appropriate landscaping, particularly the canopy coverage and the buffering of the property. He displayed the landscape plan and said that the applicant has increased the amount of canopy coverage. The staff still had some concerns with the rear parking area and the viability of the buffered trees at that location and recommended permeable pavers be included so that the trees will be viable long term. He said that Mr. Martin will also discuss the integration of green infrastructure with permeable pavers throughout the parking area in the rear of the property.

Mr. Baillie said that the staff also had concern with the impact of this development on the surrounding properties. He said that the staff is recommending the following conditional zoning restrictions to reduce the impact to the neighboring properties and the overall area:

- a. There shall be no exterior lighting greater than 12 feet in height and all lighting be shielded and directed downward.
- b. The following uses shall be prohibited:
 - i. Automobile Service Stations.
 - ii. Car Washes.

Mr. Baillie said that the staff is recommending approval for the following reasons:

1. The requested Neighborhood Business (B-1) zone is in agreement with the 2018 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The proposed rezoning addresses the goal of growing successful neighborhoods by supporting infill and redevelopment throughout the Urban Service Area (Theme A, Goal #2), while also addressing community facilities at a neighborhood scale (Theme A, Goal #4). The increase of modernized pedestrian facilities and the reduction of potential conflict points between pedestrian activity and vehicular movement is imperative to the development of a safer and more walkable community.
 - b. The proposed project will improve a desirable community that is focused on a people first design that provide accessible amenities to meet the quality of life needs of Lexington residents and visitors (Theme D, Goal #1). The proposed project includes a new restaurant facility that provides an activated street frontage and delineated pedestrian facilities, while also improving a portion of the property that auto oriented and removing conflict points between pedestrian and vehicular movement.
 - c. The proposed development will allow for the improvement of a parking lot and will modernize the layout of the parking area with landscaping to improve the visual impact on the neighborhood (Design Policy #7).
 - d. The proposed development will increase the available tree canopy coverage to off-set the impacts of the heat island effect caused by Lexington's paved areas (Restoration Pillar III, Protection Policy #7).

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

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 safer development that supports pedestrian mobility, while also including a buffer between the higher intensity drive-through facilities and the existing single-family residential land use along the southeastern portion of the property.
 - b. The proposed rezoning includes safe facilities for the potential users, through the incorporation of enhanced pedestrian facilities along the property's frontages and leading to the development frontage along South Broadway. Additionally, the proposed development delineates the access and egress into the site, while also increasing the buffering between the vehicular uses and the surrounding properties. 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 will increase tree canopy coverage and establish green infrastructure that will help alleviate the impact on the surrounding development and the stormwater system.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following buffering restriction is recommended via conditional zoning:
 - a. There shall be no exterior lighting greater than 12 feet in height and all lighting be shielded and directed downward.
 - b. The following uses shall be prohibited:
 - i. Automobile Service Stations.
 - ii. Car Washes.

These restrictions are appropriate and necessary to reduce the potential impact of the allowable uses on the neighboring lower intensity uses, while also restricting the highest nuisances producing uses in the zone.

4. This recommendation is made subject to approval and certification of PLN-MJDP-21-00038: Oldham Property (Lots 1-3, 10-13, & 21-24)(Andy's Frozen Custard), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

Commission Questions – Mr. Michler asked if the applicant has completed a tree inventory of the trees on the rear of the property and if there is any difference to the dimensions of the parking lot from the applicant's presentation to the Zoning Committee on August 5, 2021. Mr. Baillie said that there were not any changes along the rear of the parking lot. He said that the applicant is working with the Urban Forester, to make sure that the trees are viable, which significant trees will be required to remain on the property, and, if problematic, trees can be removed. He added that Mr. Martin will present more information about the species of the trees and the dimensions of the parking lot. He said the only difference from the first review of this application to now is a letter from the applicant's landscape architect stating that the trees would be viable in the rear of the property and the proposed permeable pavers.

Development Plan Presentation – Mr. Martin presented a revised rendering of the final development plan associated with this zone change. He said that there are revised conditions were distributed to the Planning Commission, as follows:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree preservation plan.
5. ~~Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission. Provided the Planning Commission grants the requested variances.~~
6. United States Postal Service Office's approval of kiosk locations or easement.
7. ~~Delete all extraneous construction information. Addition of street cross-sections.~~
8. ~~Delete all title exception information.~~
9. ~~Addition of purpose of amendment note (to rezone R-1D zone property to B-1 zone).~~
8. ~~10. Correct setback references on 355 American Avenue to Article 15-2(a)(4) of the Zoning Ordinance.~~
11. ~~Clarify required parking generator.~~
12. ~~Revise Note #16 to state "Signage shall comply with Article 17 of the Zoning Ordinance."~~
13. ~~Delete R-1D zone setbacks from Note #13.~~
14. ~~Combine Notes #1, 2, 4 & 8 to one note to state "Sanitary sewers and stormwater management shall meet the requirements of the LFUCG Engineering Manuals."~~
15. ~~Revise Note #9 to state that access is to the approval of the Division of Traffic Engineering.~~
16. ~~Revise all references to the City of Lexington to L.F.U.C.G.~~
9. ~~17. Correct plan title to match staff report.~~
18. ~~Denote Board of Adjustment approval date and case number for drive through facility.~~

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

~~19. Discuss tree inventory plan.~~

~~20. Discuss plan status.~~

10. Correct plan scale to ensure all information prints of the plan sheet.

Mr. Martin displayed a color rendering and said that this is a redesign of a parking lot. He said that the applicant is proposing a 1,500 square foot building, with no indoor seating. There will be an area to order at the front of the structure fronting on S. Broadway, as well as the drive-through on the rear. The required parking for this property is only 8 spaces, and they are proposing 33 parking spaces, which is a reduction of 50% from the current parking lot. The parking area will allow for two-way through movement of vehicles. He pointed to the frontage along S. Broadway, Burley Avenue, and American Avenue and said that the applicant is maintaining the existing access points. He said that there is a traffic signal located at American Avenue.

Mr. Martin then displayed a rendering of the development and said that the applicant has proposed permeable pavers along the rear of the property along the residential land uses. He also pointed out the location of a decorative fence that will separate pedestrians from the drive-through. He said that there will be an open patio area and benches along the right-of-way. The applicant is proposing to construct the building at the 10-foot setback, which is permitted in the B-1 zone. He said in regards to Mr. Michler's question that the trees will remain in the rear of the property.

Mr. Martin said that there are a few items that need to be corrected on the development plan, such as the plan title and the scale of the plan. He said that the applicant needs to add the street cross-sections, and correct the setback references on 355 American Avenue to Article 15-2(a)(4) of the Zoning Ordinance. He also stated that there is a variance request and pointed to that area. He said that is a Columbia Gas regulating structure, which is deeded to Columbia Gas. This area is still residentially zoned and necessitates variances to the landscaping buffers. There was another variance request regarding the vehicular use areas, however, the applicant has reached an agreement with the adjoining property owner to meet that landscaping requirement.

Variance Presentation – Mr. Baillie presented the variance request associated with this application. He said that initially the applicant was seeking two dimensional variances. The first variance was for the vehicular use area for screening or buffering, which he pointed to on the development plan. He said that there was concern regarding the ability to meet the required tree spacing and the vegetative area. He said that the Zoning Ordinance allows the applicant to share a landscape buffer and they will be planting 2 trees, which will meet the required tree spacing for that area. He said that the vegetative area, which is approximately 18 feet wide, exceeds the 3 feet requirement. He added that the applicant is also providing a fence or railing along the drive-through facility at that location, for pedestrian safety. He said that these 3 elements removed the need for the variance in the vehicular use area.

Mr. Baillie said the second variance request is to reduce the required property perimeter requirements from 15 feet to 0 feet for the portion of the property that surrounds the Columbia Gas facility and eliminate all landscape material requirements. He displayed a photograph and said that it is a 12-foot by 12-foot area that was purchased by Columbia Gas to allow for the establishment of a service facility. He said that the zoning stays with that parcel of land and will remain a Single Family Residential (R-1D) zone. There are no single family residence currently on this site, nor could one be constructed on this site. The facility is still utilized by Columbia Gas as there is a gas line that runs across the subject property to Burley Avenue. He said that the applicant opines that there is no health, safety, or welfare impact caused by the requested relief. The applicant also indicates that this is a unique circumstance and that the removal of the landscaping in this area would deprive them of the reasonable use of the land and would create an unnecessary hardship. He said that the staff agrees with the applicant for this variance request and recommends approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity, as the proposed project will impact the small lot that is occupied by a public utility service facility and not a single family residence.
2. The need for the variances arises from the special circumstances of the adjacency to a non-conforming lot, which is owned and operated by a public utility.
3. The strict application of the property perimeter screening requirements would create an unnecessary hardship on the proposed development requiring the placement of the drive-through facilities to be closer to the residential land uses and impacting the use of the proposed parking lot.
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 variances prior to commencing construction.

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

- a. Provided the Planning Commission and Urban County Council approves the requested zone change to the B-1 zone, otherwise the requested variances shall be null and void.
- b. The development shall be constructed in accordance with the approved Final Development Plan, or as amended by the Planning Commission.
- c. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.

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

- d. Action of the Planning Commission shall be noted on the Development Plan for the subject property.

Applicant Presentation – Mr. Nick Nicholson, attorney representing the petitioner, said that he is filling in for Bruce Simpson and he has reviewed this case. He said that this is the second public hearing for Bluegrass Custard. He said that they have already been heard by the Board of Adjustment (BOA) and has been approved for the drive-through facility on the B-1 zoned portion of this site. He said that at the time of the BOA meeting for approval, a condition to allow the Planning Commission to amend the site plan that was incorporated, to allow the space for the drive-through aisle should the Planning Commission recommend approval of the zone change for 355 American Avenue. Regardless of the outcome from today's hearing, this site is approved for a drive-through facility, which can be constructed. He said that Mr. Baillie indicated that this property has been a parking lot and drive aisle for more than 50 years and this request is to modify where those parking spaces are and how the drive aisle will function and continue for that exact use as it has been.

Mr. Nicholson said that they had worked with various departments within the LFUCG to make sure that this plan doesn't have any significant discussion items. He said that the initial submittal to the BOA had the drive aisle parallel with S. Broadway in front of the structure. They then oriented the building next to S. Broadway to contain the vehicles to the rear of the site and S. Broadway was activated for greater pedestrian use. They also added significant internal and external pedestrian infrastructure. He said that currently on Burley Avenue frontage there are no curb, gutter or pedestrian facilities and that the applicant will be constructing all of those, as well as clear pedestrian facilities throughout the site. He said that they are also adding the green infrastructure, as Mr. Martin had mentioned, not encroaching any further into the tree area at the rear of the site. He said that the pavement will be approximately in the exact same place, but they will be removing the asphalt and replacing it with a pervious surface along with an irrigation system to upgrade this parking lot. He said that currently there are four access points, and the applicant will be eliminating the one closest to S. Broadway along Burley Avenue to promote more pedestrian use along S. Broadway. They are adding substantial landscaping on the site and along the boundary of the adjoining site, which is the Papi's restaurant. He added that they are in agreement with the staff's conditional zoning restrictions and he is available for any questions.

Citizen Comments – Virginia Daley, 136 Burley Avenue, said that she is opposed to this development. She is concerned with the traffic because of the configuration of American Avenue and Burley Avenue. The stacked traffic blocks the entrances to Papi's and this proposed development. She said that the neighborhood has one-way roads and the parking lot currently serves as a cut-through street, which she believes will continue to be used as such for the neighborhood. She doesn't believe that a frozen custard business will be successful at this location, because there are others nearby, and she said she doesn't want this to become another vacant lot in the near future. She said that sitting next to the drive-through or S. Broadway doesn't seem very inviting. She also said that the proposed zone doesn't comply with the *Imagine Lexington* long range growth and development of our city, because it doesn't promote walkable neighborhoods or high density living along major corridors.

Applicant Rebuttal – Mr. Nicholson said that they believe they are improving the traffic situation by rezoning this site to a very low intensity zone and by eliminating existing access points. He said that there will be no other food served at this site other than custard. In regards to the one-way connections on Burley Avenue and American Avenue, he said that by eliminating an access point they have focused on the connectivity between these two roads, which is encouraged by the 2018 Comprehensive Plan. He added that the Planning Commission doesn't judge market success, they allow property owners to determine what they would like to do with their properties. He added that this is a successful business, with stores in 11 different states and they have chosen this site for some of the reasons of Ms. Daley's concerns. He said that they believe that this it will be successful, because it is a walkable neighborhood and because they are adding pedestrian infrastructure. The pedestrian seating and the walk-up window is located on the opposite side of the building of the drive-through aisle, away from the vehicles. He believes that they are adding amenities to this corridor as called for in the 2018 Comprehensive Plan. He added that today's discussion is not about tearing down a building. It is about the parking lot and that the drive-through facility has already been approved by the BOA. Today's hearing is to make sure that the best plan is put into the best location to serve this neighborhood, and to encourage a walkable community. He said that they are in agreement with the staff's recommendation and available for questions.

Citizen Rebuttal – Ms. Daley said that adding pavers will not make this site more walkable and pedestrian friendly. She doesn't believe that this site will be used in that way.

Staff Rebuttal – Mr. Baillie clarified that the 2018 Comprehensive Plan is an adopted plan from the community's vision and wants for the future of Lexington. It was created by the Long Range Planning section, as well as other sections within the Planning Division, and adopted by the Planning Commission. He added that in reality it is not Long Range Planning's vision, but the community's vision for future development.

Commission Questions – Mr. Nicol asked if this property is grand-fathered in, does it have the by-right to be a parking lot. Mr. Baillie said that the property has a legal non-conforming land use. He said that if the parking lot changes its configuration, it would be allowed to continue to remain as a parking lot. The issue here is the inclusion of the drive-through facility, which would increase the intensity of the non-conformity. He said that initially the applicant went through the conditional use process to allow

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for a drive-through on the rear property without having to rezone it. At the time of the review of their development plan, the staff informed the applicant that if they wanted to utilize the site with that increased intensity, which was not allowable to go forward under the BOA review, they would be required to change the zone of the property. He said that this application will allow the parking to remain and to allow the inclusion of a drive-through. He said that during a zone change application, an applicant can seek a variance to that property or to the development, in association with the zone change. He added that the Planning Commission has the ability to review any variances or conditional uses. He said that with this zone change, the applicant couldn't seek any intensification of this site and keep the R-1D zone, since they wanted to utilize a portion of the site for their drive-through facility, which they worked heavily with the Division of Traffic Engineering on the orientation of the area. Mr. Nicol said that today's discussion is not in regards to the drive-through or the business use, we are discussing the intensification of the site. Mr. Baillie said that the applicant needed the zone change to allow for the drive-through use to occur. The purpose of this zone change is being reviewed in terms of the site plan, but it isn't impacting the front property that fronts onto S. Broadway.

Mr. Michler said that the 2018 Comprehensive Plan's Place-Types are seeking more intensity along major corridors and this request is to add a drive-through to parking lot. Mr. Baillie said that the applicant has applied all of the development criteria that are associated with the Place-Type and the Development Type to the best of their ability. In this case, there is an intensification of the use of the site. He added that this is also a more pedestrian-oriented development, while it is auto-centric in nature. He said that the applicant is adding pedestrian facilities along the sides of the properties, delineating locations for vehicular movement and reducing conflicts with pedestrians, which are elements that are called for within the Corridor Place-Type and Medium-Density Non-Residential / Mixed Use Development Type. He said that this application meets the Goals, Objectives, Policies & development Criteria of the 2018 Comprehensive Plan.

Ms. Wade said that the Planning Commission has a sister-body, the Board of Adjustment (BOA), who has the authority over conditional uses and variances on an everyday and month basis, and they granted approval to this site plan with a drive-through. She added that the same staff members work with the BOA to make sure that the same ideas are put forward, but they are not held to evaluate that site plan based on the Comprehensive Plan. She said that the BOA members have asked the staff for a presentation to learn more about the Comprehensive Plan, and that will be held in October.

Mr. Nicol asked for clarification of the term "by-right." Ms. Wade said that the Zoning Ordinance establishes uses for every zone. The first group of uses are called "principal uses", which means as a property owner you are allowed to develop your property with that particular use. The Planning Commission is tasked to determine how they can do that. She said that a use of a restaurant is permitted in every B-1 zone, but how an applicant orients the building, the parking, access and sidewalks is what the Planning Commission reviews. She added that sometimes the Planning Commission asks for conditions that an applicant agrees with and some that are not willing to agree to.

Mr. Penn said that the Planning Commission has reviewed this plan and what Ms. Daley outlined with the traffic situation presents itself as a tough situation, but he believes that this is the best plan for this tough situation. He said that as Mr. Nicol stated, this lot still has the right to be developed or redeveloped.

Zoning Action – A motion was made by Mr. Penn, seconded by Mr. de Movellan, and carried 8-0 (Michler abstained; Meyer absent) to approve PLN-MAR-21-00009: BLUEGRASS CUSTARD, LLC, for the reasons provided by the staff.

Development Plan Action – A motion was made by Mr. Penn, seconded by Mr. de Movellan, and carried 8-0 (Michler abstained; Meyer absent) to approve PLN-MJDP-21-00038: OLDHAM ADDITION (LOTS 1-3, 10-13 & 21-24) (ANDY'S FROZEN CUSTARD), as presented by the staff.

Variance Request Action – A motion was made by Mr. Penn, seconded by Mr. de Movellan, and carried 9-0 (Meyer absent) to approve the associated variance, for the reasons provided by the staff.

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