

AN ORDINANCE CHANGING THE ZONE FROM A PROFESSIONAL OFFICE (P-1) ZONE TO A NEIGHBORHOOD BUSINESS (B-1) ZONE, FOR 0.95 NET (1.25 GROSS) ACRES; AND FROM PLANNED NEIGHBORHOOD RESIDENTIAL (R-3) ZONE TO A PROFESSIONAL OFFICE (P-1) ZONE, FOR 0.25 NET (0.29 GROSS) ACRE, FOR PROPERTY LOCATED AT 3600 PALOMAR CENTRE DRIVE AND 2101 PALOMAR TRACE DRIVE (A PORTION OF), INCLUDING A DIMENSIONAL VARIANCE (SOLAR ECLIPSE, LLC; COUNCIL DISTRICT 10).

WHEREAS, at a Public Hearing held on February 25, 2016, a petition for a zoning ordinance map amendment for property located at 3600 Palomar Centre Drive and 2101 Palomar Trace Drive from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone for 0.95 net (1.25 gross) acres; and from a Planned Neighborhood Residential (R-3) zone to a Professional Office (P-1) zone, for 0.25 net (0.29 gross) acre, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change including a dimensional variance by a vote of 6-1; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a change in zone for property located at 3600 Palomar Centre Drive and 2101 Palomar Trace Drive from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone for 0.95 net (1.25 gross) acres; and from a Planned Neighborhood Residential (R-3) zone to a Professional Office (P-1) zone, for 0.25 net (0.29 gross) acre, being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - That the granting of this zone change is made subject to the following use restrictions as conditions of granting the zone change:

Under the provisions of Article 6-7 of the Zoning Ordinance, the following use and buffering restrictions are proposed for the subject property via conditional zoning:

Prohibited Uses

1. Automobile service stations.
2. Retail sale of plant, nursery or greenhouse products.
3. Miniature golf or putting courses.
4. Carnivals and circuses.
5. Arcades, including pinball and electronic games.
6. Rental of equipment whose retail sale is permitted in the B-1 zone.
7. Automobile and vehicle refueling stations.
8. Retail sale of convenience products (i.e., convenience stores).

Other Use Restrictions

1. Any free-standing sign shall be a maximum of ten (10) feet in height.
2. Any outdoor lighting shall be shielded and directed away from any residential zone. Lighting attached to a pole or any structure shall be a maximum of twenty (20) feet in height.

Section 3 - That the Lexington-Fayette Urban County Planning Commission is directed to show the amendment on the official zone map atlas and to make reference to the number of this Ordinance.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: May 10, 2016

MAYOR



ATTEST:



CLERK OF URBAN COUNTY COUNCIL

Published: May 19, 2016-1t

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LEGAL DESCRIPTION

SCHROYER PROPERTY

Zone Change from P-1 to B-1
3600 Palomar Centre Drive
Lexington, Fayette County, Kentucky

A TRACT OF LAND SITUATED NORTHEAST OF PALOMAR CENTRE DRIVE IN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND MORE FULLY DESCRIBED AND BOUNDED AS FOLLOWS:

Beginning at a point in the centerline of Harrodsburg Road (Hwy. 68); thence within the right-of-way of Harrodsburg Road N 56°33'55" W for 81.09 feet to a point, said point being the intersection of the northerly right-of-way of Harrodsburg Road and the southwesterly corner of Tract 1; thence along the southwesterly property line of Tract 1 for the following two courses and distances: N 56°33'55" W for 230.19 feet to a point; thence N 50°17'50" W for 23.07 feet to a point, said point be the northwesterly corner of Tract 1; thence along the northwesterly property line of Tract 1 N 36°42'40" E for 149.70 feet to a point, said point being the northeasterly corner of Tract 1; thence along the northeasterly property line of Tract 1 S 58°58'54" E for 275.53 feet to a point, said point being the intersection of the southeasterly corner of Tract 1 and the northerly right-of-way of Harrodsburg Road; thence within the right-of-way of Harrodsburg Road S 58°58'54" E for 77.29 feet to a point in the centerline of Harrodsburg Road; thence along the centerline of Harrodsburg Road S 42°34'36" W for 169.00 feet to the point of beginning and containing 1.25 GROSS acres and 0.95 NET acres.

LEGAL DESCRIPTION

DOZIER PROPERTY

Zone Change from R-3 to P-1
2101 Palomar Trace Drive
Lexington, Fayette County, Kentucky

A PORTION OF A TRACT OF LAND SITUATED SOUTHEAST OF PALOMAR TRACE DRIVE IN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND MORE FULLY DESCRIBED AND BOUNDED AS FOLLOWS:

Beginning at a point in the centerline of Harrodsburg Road (Hwy. 68), thence within the right-of-way of Harrodsburg Road N 47°25'24" W for 63.61 feet to a point, said point being the intersection of the northerly right-of-way of Harrodsburg Road and the southwesterly corner of Tract 2; thence along the southwesterly property line of Tract 2 N 62°07'50" W for 312.95 feet to a point, said point being the northwesterly corner of Tract 2; thence along the northwesterly property line of Tract 2 N 66°14'21" E for 46.86 feet to a point, said point being the northeasterly corner of Tract 2; thence along the northeasterly property line of Tract 2 for the following two courses and distances: S 62°07'48" E for 242.25 feet to a point, thence S 49°42'45" E for 50.26 feet to a point, said point being the common corner of the southeasterly corner of Tract 2 and the northerly right-of-way of Harrodsburg Road; thence within the right-of-way of Harrodsburg Road S 47°25'24" E for 62.97 feet to a point in the centerline of Harrodsburg Road; thence along the centerline of Harrodsburg Road S 42°34'36" W for 26.98 feet to the point of beginning and containing 0.29 GROSS acres and 0.25 NET acres.

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

IN RE: **MARV 2016-4: SOLAR ECLIPSE LLC** - petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.95 net (1.25 gross) acres; and from a Planned Neighborhood Residential (R-3) zone to a Professional Office (P-1) zone, for 0.25 net (0.29 gross) acre, for property located at 3600 Palomar Centre Drive and 2101 Palomar Trace Drive (a portion of). A dimensional variance was also requested. (Council District 10)

Having considered the above matter on **February 25, 2016**, at a Public Hearing, and having voted **6-1** 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 reason:

1. Although the requested zone change is not in agreement with the 2013 Comprehensive Plan, there have been unanticipated changes of an economic nature within the area of the subject property, for these reasons:
 - a. The neighboring properties at 1009 & 1017 Wellington Way were rezoned from P-1 to B-1 in 2014, as is proposed with this application.
 - b. With the Board of Adjustment's approval of a child care center on the bulk of the 2101 Palomar Trace Drive property (a use which is now proposed for relocation to the southwest), the properties with frontage along Harrodsburg Road and Wellington Way are now approved to be significantly more commercial than residential in character, compared to three years ago when the Comprehensive Plan was initially adopted.
2. The combination of the requested Neighborhood Business (B-1) and the Professional Office (P-1) zone is appropriate for these 1.25 acres of the subject property, and the existing combination of R-3 and P-1 zoning is no longer appropriate, for the following reasons:
 - a. The proposed connection of Palomar Centre Drive, incumbent with this rezoning and redevelopment proposal, has the potential to partially relieve existing traffic congestion at the Wellington Way/Palomar Centre Drive intersection to the benefit of the general public and some of the nearby commercial uses.
 - b. The proposed B-1 zone would permit a restaurant to be developed in a manner consistent with other existing commercial uses in this general area.
 - c. The P-1 zone proposed would align with the access from Wellington Way (collector street) to Harrodsburg Road (arterial highway) via Palomar Centre Drive, which would serve other professional and business uses located in this general vicinity.
 - d. Retaining the existing single family home on 2101 Palomar Trace Drive will provide an excellent land use buffer between existing homes in the Harrods View and Palomar Trace subdivisions from the newly developing commercial uses in this vicinity.
3. This recommendation is made subject to approval and certification of ZDP 2016-6: Schroyer Property, Dozier Property, Unit 2, and Palomar Trace Subd., Unit 3C, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of any Planning Commission approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are recommended via conditional zoning for the subject properties:

PROHIBITED USES (Within the B-1 Zone only)

- a. Automobile service stations.
- b. Retail sale of plant, nursery or greenhouse products.
- c. Miniature golf or putting courses.
- d. Carnivals and circuses.
- e. Arcades, including pinball and electronic games.
- f. Rental of equipment whose retail sale is permitted in the B-1 zone.
- g. Automobile and vehicle refueling stations.
- h. Retail sale of convenience products (i.e., convenience stores).

OTHER USE RESTRICTIONS

- a. Any free-standing sign shall be a maximum of ten (10) feet in height.
- b. Any outdoor lighting shall be shielded and directed away from any residential zone. Lighting attached to a pole or any structure shall be a maximum of twenty (20) feet in height.

These restrictions are appropriate and necessary in order to protect the adjacent residential properties to the north and west from the possible noise and light pollution associated with the proposed development, and to maintain the character of the immediate area.

ATTEST: This 23rd day of March, 2016.



Secretary, Jim Duncan

MIKE OWENS
CHAIR

Note: The corollary development plan, ZDP 2016-6: Schroyer Property, Dozier Property, Unit 2, and Palomar Trace Subd., Unit 3C, was approved by the Planning Commission on February 25, 2016, and certified on March 9, 2016.

Note: The Planning Commission approved a (dimensional variance) increase of the front yard setback from 20' to 40' for 3600 Palomar Centre Drive.

K.R.S. 100.211(7) requires that the Council take action on this request by May 25, 2016.

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

OBJECTORS

- Bruce Simpson, attorney, representing the Harrods View Neighborhood Association
- Doug Martin, attorney, representing the owner of Petitudes Grooming Salon

OBJECTIONS

- His clients do not believe that the existing deed restrictions on a portion of the property allow for the commercial uses in the proposed development.
- His client has an existing five-year lease on the subject property, which is currently under negotiation.

VOTES WERE AS FOLLOWS:

AYES: (6) Brewer, Cravens, Mundy, Owens, Smith, Wilson

NAYS: (1) Plumlee

ABSENT: (4) Berkley, Drake, Penn, Richardson

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **CONDITIONAL APPROVAL** of **MARV 2016-4** carried.

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

GENERAL INFORMATION: MAP AMENDMENT REQUEST (MAR) APPLICATION

1. ADDRESS INFORMATION (Name, Address, City/State/Zip & PHONE NO.)

APPLICANT:	Solar Eclipse L.L.C. 3600 Palomar Centre Drive, Lexington, KY 40513
OWNER:	Charlsey Y. Schroyer, 2285 Savannah Lane, Lexington, KY 40513 and Solar Eclipse L.L.C., 3600 Palomar Centre Drive, Lexington, KY 40513
ATTORNEY:	Richard V. Murphy, Murphy & Clendenen, PLLC, 3250 West Main Street, Suite 2510 Lexington, KY 40507

2. ADDRESS OF APPLICANT'S PROPERTY (Please attach Legal Description)

3600 Palomar Centre Drive and 2101 Palomar Trace Drive (portion)
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3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY (Use attachment, if needed--same format.)

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
P-1	Veterinarian clinic	B-1	Restaurant	0.95	1.25
R-3	Vacant	P-1	Driveway	0.25	0.29
TOTAL				1.20	1.54

4. SURROUNDING PROPERTY, ZONING & USE

Property	Use	Zoning
North	Residential	R-3
East	Residential	R-3
South	Bank	P-1
West	Day care and tae kwan do facility	P-1 and B-1

5. EXISTING CONDITIONS

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

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

Roads	<input checked="" type="checkbox"/> Existing	<input checked="" type="checkbox"/> To be constructed by	<input checked="" type="checkbox"/> Developer	<input type="checkbox"/> Other
Storm Sewers	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Sanitary Sewers	<input checked="" type="checkbox"/> Existing	<input checked="" type="checkbox"/> To be constructed by	<input checked="" type="checkbox"/> Developer	<input type="checkbox"/> Other
Curb/Gutter/Sidewalks	<input checked="" type="checkbox"/> Existing	<input checked="" type="checkbox"/> To be constructed by	<input checked="" type="checkbox"/> Developer	<input type="checkbox"/> Other
Refuse Collection	<input checked="" type="checkbox"/> LFUCG	<input type="checkbox"/> Other		
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

7. DESCRIBE YOUR JUSTIFICATION FOR REQUESTED CHANGE (Please provide attachment.)

This is in... <input checked="" type="checkbox"/> in agreement with the Comp. Plan <input checked="" type="checkbox"/> more appropriate than the existing zoning <input checked="" type="checkbox"/> due to unanticipated changes.
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8. APPLICANT/OWNER SIGNS THIS CERTIFICATION

I do hereby certify that to the best of my knowledge and belief, all application materials are herewith submitted, and the information they contain is true and accurate. I further certify that I am OWNER or HOLDER of an agreement to purchase this property since October, 2015.

APPLICANT Richard V. Murphy, atty for applicant DATE 11/23/15

OWNER Richard V. Murphy, atty for owner DATE 11/23/15

LFUCG EMPLOYEE/OFFICER, if applicable _____ DATE _____

7. Justification of zone change

The Applicant, Solar Eclipse, L.L.C., is requesting your approval of a zone change from the P-1 zone to the B-1 zone for the property at 3600 Palomar Centre Drive. Although it has an address on Palomar Centre Drive, this property actually fronts on Harrodsburg Road and is the current site of Dr. Andrew Schroyer's Animal Care Clinic. Dr. Schroyer is purchasing a larger facility nearby at the intersection of Wellington Way and Lyon Drive. The Subject Property is now available for redevelopment. We are proposing a restaurant on this property.

This zone change also includes a small portion of the property at 2101 Palomar Trace, which also has frontage on Harrodsburg Road. The zone change on 2101 Palomar Trace is solely for the purpose of a driveway.

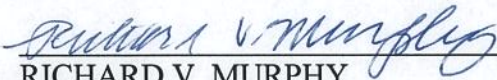
Our development plan shows the three adjacent properties which Solar Eclipse will own along Harrodsburg Road. We will be lowering the intensity of land use compared to what has already been approved for these three properties. The southernmost property, 3600 Palomar Centre Drive, as mentioned above, is the current location of the veterinary clinic. It will be replaced by a restaurant use. The property immediately to the north, 3581 Harrodsburg Road, was approved in 2014 for a three-story, 27,000 foot office building. We are proposing a one-story daycare facility on this property. The third property, which is the northernmost tract, is 2101 Palomar Trace Drive. This property was approved by the Board of Adjustment for a daycare facility last year. Under our proposed development plan, this property will remain a single-family house, with the edge of the property having a driveway to serve the other two properties. A similar configuration had previously been approved. Thus, the overall density of development will be reduced, both in coverage and in height.

We feel the proposal is in keeping with the Comprehensive Plan, because it is in agreement with the Goals & Objectives which call for compact and contiguous growth, redevelopment of existing properties and preservation of the Urban Service Area Boundary. In addition, the existing P-1 zoning is no longer appropriate for the property, and the B-1 zoning is appropriate. There have also been major changes of a physical, economic or social nature within the area which have occurred since the adoption of the Comprehensive Plan.

Last year, neighboring properties at 1009 and 1017 Wellington Way were rezoned from professional office to neighborhood residential. Like the subject property, those properties are planned for redevelopment from professional office to neighborhood business. This is in keeping with the Palomar Centre shopping area, which is immediately across Wellington Way. It is appropriate to have the B-1 use fronting along a major arterial, Harrodsburg Road. The driveway from Harrodsburg Road to Palomar Centre Drive will relieve traffic congestion at the intersection of Wellington Way and Palomar Centre Drive. In addition, the Applicant plans to reduce the grade of the subject property so that it relates better to the surrounding land uses, all of which are commercial.

We are also requesting a variance in the maximum setback along Harrodsburg Road from 20 feet to 40 feet. As you know, the B-1 zone imposes a "build to" front yard line. On the subject property, however, there is a sanitary sewer easement along the front of the property. We are proposing to build the building at the edge of the easement, as close to Harrodsburg Road as feasible. Because of the easement, a variance is needed. It is a unique circumstance which makes it impossible to comply with the "build to" line. We are constructing the building as close to the road as the existing easement will allow.

Thank you for your consideration of this zone change and variance request.



RICHARD V. MURPHY
Attorney for Applicant

LEGAL DESCRIPTION

SCHROYER PROPERTY

Zone Change from P-1 to B-1
3600 Palomar Centre Drive
Lexington, Fayette County, Kentucky

A TRACT OF LAND SITUATED NORTHEAST OF PALOMAR CENTRE DRIVE IN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND MORE FULLY DESCRIBED AND BOUNDED AS FOLLOWS:

Beginning at a point in the centerline of Harrodsburg Road (Hwy. 68); thence within the right-of-way of Harrodsburg Road N 56°33'55" W for 81.09 feet to a point, said point being the intersection of the northerly right-of-way of Harrodsburg Road and the southwesterly corner of Tract 1; thence along the southwesterly property line of Tract 1 for the following two courses and distances: N 56°33'55" W for 230.19 feet to a point; thence N 50°17'50" W for 23.07 feet to a point, said point be the northwesterly corner of Tract 1; thence along the northwesterly property line of Tract 1 N 36°42'40" E for 149.70 feet to a point, said point being the northeasterly corner of Tract 1; thence along the northeasterly property line of Tract 1 S 58°58'54" E for 275.53 feet to a point, said point being the intersection of the southeasterly corner of Tract 1 and the northerly right-of-way of Harrodsburg Road; thence within the right-of-way of Harrodsburg Road S 58°58'54" E for 77.29 feet to a point in the centerline of Harrodsburg Road; thence along the centerline of Harrodsburg Road S 42°34'36" W for 169.00 feet to the point of beginning and containing 1.25 GROSS acres and 0.95 NET acres.

LEGAL DESCRIPTION

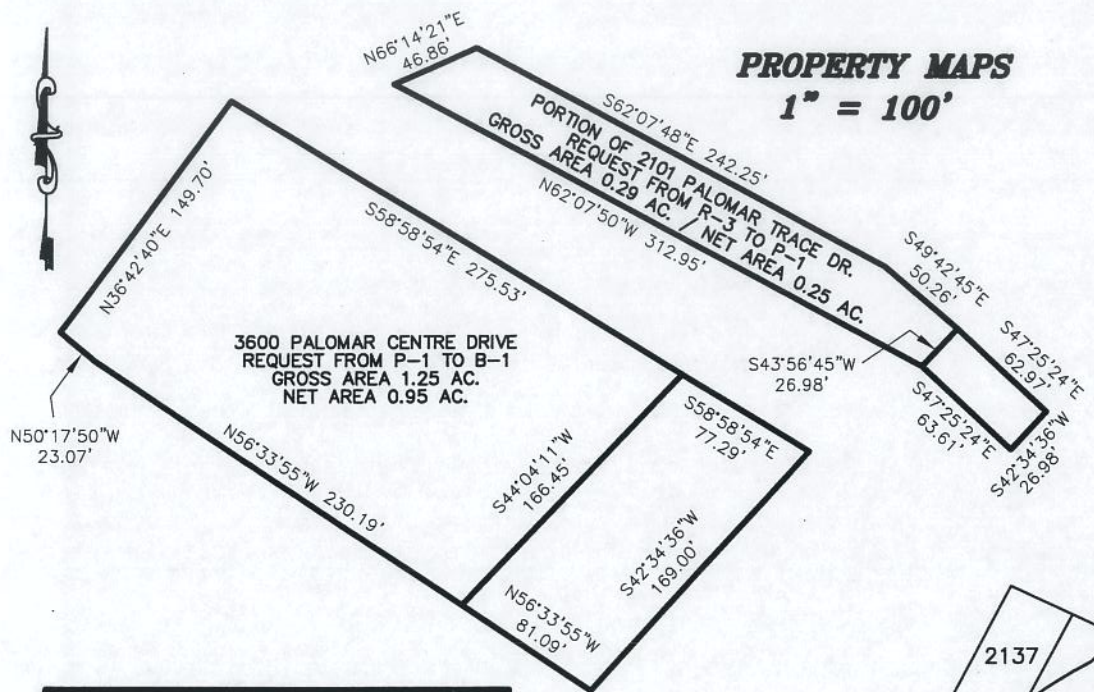
DOZIER PROPERTY

Zone Change from R-3 to P-1
2101 Palomar Trace Drive
Lexington, Fayette County, Kentucky

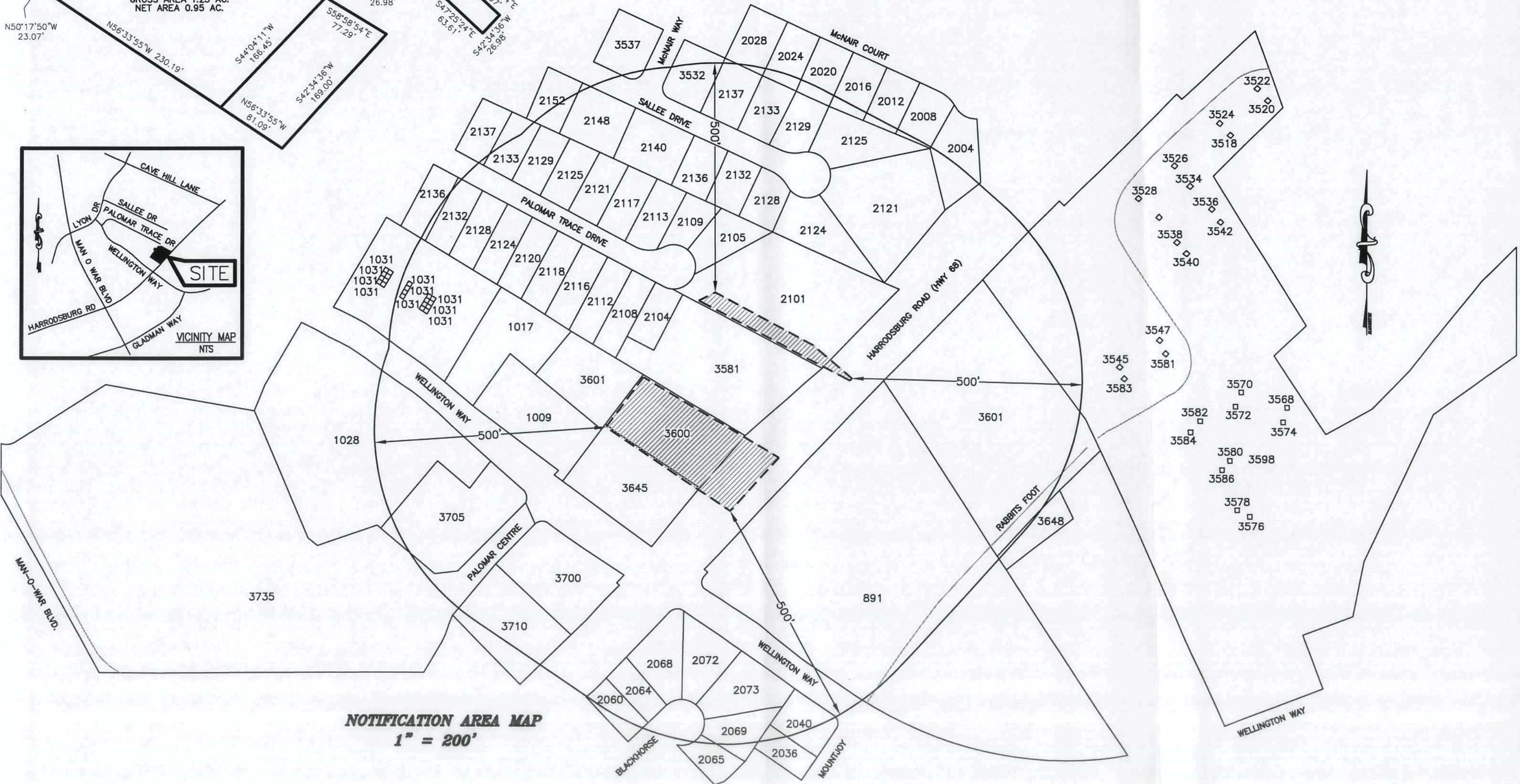
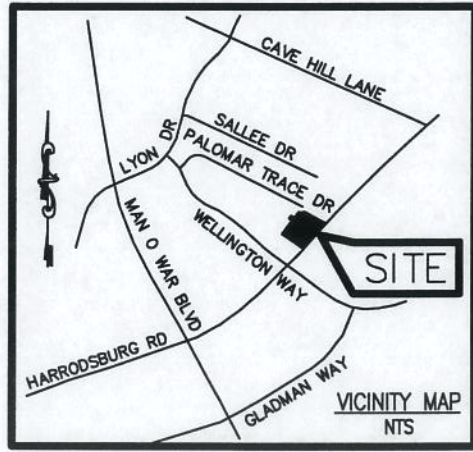
A PORTION OF A TRACT OF LAND SITUATED SOUTHEAST OF PALOMAR TRACE DRIVE IN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND MORE FULLY DESCRIBED AND BOUNDED AS FOLLOWS:

Beginning at a point in the centerline of Harrodsburg Road (Hwy. 68), thence within the right-of-way of Harrodsburg Road N 47°25'24" W for 63.61 feet to a point, said point being the intersection of the northerly right-of-way of Harrodsburg Road and the southwesterly corner of Tract 2; thence along the southwesterly property line of Tract 2 N 62°07'50" W for 312.95 feet to a point, said point being the northwesterly corner of Tract 2; thence along the northwesterly property line of Tract 2 N 66°14'21" E for 46.86 feet to a point, said point being the northeasterly corner of Tract 2; thence along the northeasterly property line of Tract 2 for the following two courses and distances: S 62°07'48" E for 242.25 feet to a point, thence S 49°42'45" E for 50.26 feet to a point, said point being the common corner of the southeasterly corner of Tract 2 and the northerly right-of-way of Harrodsburg Road; thence within the right-of-way of Harrodsburg Road S 47°25'24" E for 62.97 feet to a point in the centerline of Harrodsburg Road; thence along the centerline of Harrodsburg Road S 42°34'36" W for 26.98 feet to the point of beginning and containing 0.29 GROSS acres and 0.25 NET acres.

PROPERTY MAPS
1" = 100'



	TITLE: DOZIER PROPERTY / SCHROYER PROPERTY	3600 PALOMAR CENTRE DRIVE
	ADDRESS: 3600 PALOMAR CENTRE DRIVE AND A PORTION OF 2101 PALOMAR TRACE DR.	FROM: P-1
	APPLICANT NAME/ADDRESS: SOLAR ECLIPSE LLC 3600 PALOMAR CENTRE DRIVE LEXINGTON, KY 40513	TO: B-1
	PREPARED BY: EAGLE ENGINEERING & ASSOC. 2351 VERSAILLES ROAD LEXINGTON, KY 40504	NET: 0.95 ac.
DATE FILED: NOVEMBER 23, 2015		GROSS: 1.25 ac.
		2101 PALOMAR TRACE DRIVE
		FROM: R-3
		TO: P-1
		NET: 0.25 ac.
		GROSS: 0.29 ac.



NOTIFICATION AREA MAP
1" = 200'

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

MAR 2016-4: SOLAR ECLIPSE, LLC

DESCRIPTION

Zone Change:

<u>REQUEST</u>		<u>ACREAGE</u>	
<u>FROM</u>	<u>TO</u>	<u>NET</u>	<u>GROSS</u>
P-1	B-1	0.95	1.25
R-3	P-1	<u>0.25</u>	<u>0.29</u>
TOTAL		1.20	1.54

Location: 3600 Palomar Center Drive & 2101 Palomar Trace Drive (a portion of)

EXISTING ZONING & LAND USE

Properties

Subject Property
To North
To East
To South
To West

Zoning

P-1 & R-3
R-3
R-3
P-1
P-1 & B-1

Existing Land Use

Veterinary Clinic & Residential
Single Family Residential
Multi-Family Residential
Bank
Day Care Center & Commercial

URBAN SERVICES REPORT

Roads – Harrodsburg Road (US 68) is a four-lane divided arterial highway that provides access to the subject property. Wellington Way is a collector street just to the west of this location that provides a direct connection from Harrodsburg Road to Lyon Drive. The subject property is also near Palomar Trace Drive, a cul-de-sac that was developed almost two decades ago to serve several single family homes. The single family lots on the south side of that street were recently rezoned, and are now under development. The commercial development (existing and proposed) along the frontage of Harrodsburg Road is also able to access Palomar Centre Drive, a commercial access easement that also intersects with Wellington Way. That access easement is proposed for extension to Harrodsburg Road.

Curb/Gutter/Sidewalks – It is expected that the petitioner will complete the curb, gutter and sidewalks along the frontage of Palomar Centre Drive. No improvements are expected along Harrodsburg Road, which has curbing and gutters, but no sidewalks. Such improvements would require the approval of the Kentucky Transportation Cabinet.

Storm Sewers – The developer will need to provide stormwater management in accordance with the adopted Engineering Manuals. This property is within the South Elkhorn Creek watershed, and there are not any floodplain problem areas on or near the subject property denoted in the Floodplain Management Plan. A large detention basin is contemplated to the east of the subject site, behind several homes in the Harrods View subdivision (on Sallee Drive).

Sanitary Sewers – Sanitary sewers are available in the area and should be able to be extended into this property at the time of development. Most properties surrounding this land have already been developed. This property lies within the South Elkhorn sewershed and is served by the West Hickman Wastewater Treatment Plant. The South Elkhorn pump station serving this area has recently been upgraded. Assurance of sewer capacity will be required prior to any development of the subject site.

Refuse – The Urban County Government serves this area with collection on Mondays. Commercial developments, including restaurants, often contract for more frequent service during the week.

Police – The nearest police station is the Headquarters located on East Main Street downtown, approximately 5 miles to the northeast of the subject property.

Fire/Ambulance – The nearest fire station (#20) is located about one mile to the northeast, at the corner of Arrowhead Drive and Harrodsburg Road.

Utilities – All utilities, including phone, electric, water, natural gas, cable television, and streetlights are available in the areas surrounding this development, and can easily be extended to serve this property.

LAND USE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan’s mission statement is to “provide flexible planning guidance to ensure that development of our community’s resources and infrastructure preserves our quality of life, and fosters regional planning and economic development.” The mission statement notes that 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 2013 Plan's Goals and Objectives emphasize the importance of growing successful neighborhoods (Theme A), protecting the environment (Theme B), creating jobs and prosperity (Theme C), improving a desirable community (Theme D) and maintaining a balance between planning for urban uses and safeguarding rural land.

The petitioner proposes rezoning all of one property and a portion of another to create a lot for a fast food restaurant, and complete a service road (access easement) connection to Harrodsburg Road for commercial development.

CASE REVIEW

The petitioner has requested a zone change from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone for about one acre, and from a Planned Neighborhood Residential (R-3) to a Professional Office (P-1) zone for about ¼ acre of property, located a short distance east of Wellington Way and the Palomar Shopping Centre on Harrodsburg Road.

Most of the subject property is currently being used as a veterinary clinic and pet grooming facility, as it has for several decades. The largest parcel involved with this zone change (3600 Palomar Centre Drive) was originally platted as a residential lot. The property is accessed from Palomar Centre Drive, and that access is proposed to remain. A small portion of 2101 Palomar Trace is also included in this zone change application, to allow Palomar Centre Drive to be extended to an existing driveway access to Harrodsburg Road. A vacant P-1 zoned lot is situated between the two subject lots.

The Palomar Trace Subdivision abuts two office buildings in that complex, on the northeast side of Wellington Way. On the southern edge, closer to Harrodsburg Road, are located a daycare center, and several banks near the entrance to the Palomar Shopping Centre.

The petitioner originally proposed to develop a three-story, 27,000 square-foot office building on the P-1 lot they also own (which was rezoned in 2013) between the two lots comprising the subject property. It also would also have been accessed from Harrodsburg Road and by the access easement through the Schroyer veterinary clinic property, which extends southwest to Wellington Way. A one-story child care center is now contemplated for that vacant property, and not the office building. The proposed roadway connection has the potential to partially relieve existing traffic congestion at the Wellington Way/Palomar Centre intersection for the public and some of the nearby commercial uses.

The current Comprehensive Plan has general policy recommendations rather than a detailed land use (map) element, since its adoption in 2013. The applicant's justification is that their zone change to a Neighborhood Business (B-1) and to a Professional Office (P-1) zone is in agreement with the Plan. However, no specifics were cited. Since the proposal 1) will not create many new jobs, 2) is not proposed for any type of medical land use, 3) will not increase or maintain allowable residential density, and 4) will not result in significant "place-making" for this area, the staff does not agree that this zone change is in agreement with the 2013 recommendation.

The petitioner's justification for this change is also based on findings that the existing zoning is inappropriate and that the proposed zoning is appropriate, and that there have been major unanticipated changes within the area since the adoption of the 2013 Comprehensive Plan. In fact, neighboring properties at 1009 & 1017 Wellington Way were rezoned from P-1 to B-1 in 2014, as is proposed with this application. In addition, with the Board of Adjustment's approval of a child care center on the bulk of 2101 Palomar Trace Drive (which is now proposed for relocation to the southwest), the frontages along Harrodsburg Road and Wellington Way are now approved to be significantly more commercial than residential, compared to three years ago when the Comprehensive Plan was adopted. Conversely, retaining the existing single family home on the 2101 Palomar Trace lot will provide a good buffer between existing homes in Harrods View and Palomar Trace from these newly developing commercial uses.

For these reasons (i.e., the appropriateness of the proposed zoning and the unanticipated changes in the area), the staff agrees with the applicant that the combination of B-1 and P-1 zoning now proposed is justified for the subject properties. Between the Zoning Committee meeting and the scheduled public hearing, the staff may review the allowable uses in the B-1 zone in the context of their potential proximity to nearby residential uses. A result of that review may include additional staff recommendations for conditional zoning restrictions for all or part of the subject property.

Based on the proposed use of the subject property for a fast food restaurant, this zone change request did require the submission of a traffic impact study. The staff of the Metropolitan Planning Organization (Transportation Planning Section) will report their findings of that study at the scheduled public hearing on this rezoning request later this month.

The Staff Recommends: Approval, for the following reasons:

1. Although the requested zone change is not in agreement with the 2013 Comprehensive Plan, there have been unanticipated changes of an economic nature within the area of the subject property, for these reasons:
 - a. The neighboring properties at 1009 & 1017 Wellington Way were rezoned from P-1 to B-1 in 2014, as is proposed with this application.
 - b. With the Board of Adjustment's approval of a child care center on the bulk of 2101 Palomar Trace Drive property (a use which is now proposed for relocation to the southwest), the properties with frontage along Harrodsburg Road and Wellington Way are now approved to be significantly more commercial than residential in character, compared to three years ago when the Comprehensive Plan was initially adopted.
2. The combination of the requested Neighborhood Business (B-1) and the Professional Office (P-1) zone is appropriate for these 1.25 acres of the subject property, and the existing combination of R-3 and P-1 zoning is no longer appropriate, for the following reasons:
 - a. The proposed connection of Palomar Centre Drive, incumbent with this rezoning and redevelopment proposal, has the potential to partially relieve existing traffic congestion at the Wellington Way/Palomar Centre intersection to the benefit of the general public and some of the nearby commercial uses.
 - b. The proposed B-1 zone would permit a restaurant to be developed in a manner consistent with other existing commercial uses in this general area.
 - c. The P-1 zone proposed would align with the access from Wellington Way (collector street) to Harrodsburg Road (arterial highway) via Palomar Centre Drive, which would serve other professional and business uses located in this general vicinity.
 - d. Retaining the existing single family home on 2101 Palomar Trace Drive will provide an excellent land use buffer between existing homes in the Harrods View and Palomar Trace subdivisions from the newly developing commercial uses in this vicinity.
3. This recommendation is made subject to approval and certification of ZDP 2016-6: Schroyer Property, Dozier Property, Unit 2, and Palomar Trace Subd., Unit 3C, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of any Planning Commission approval.

6. **SOLAR ECLIPSE L.L.C. ZONING MAP AMENDMENT & SCHROYER PROPERTY, DOZIER PROPERTY, UNIT 2 & PALOMAR TRACE SUBDIVISION, UNIT 3C ZONING DEVELOPMENT PLAN**

- a. **MARV 2016-4: SOLAR ECLIPSE L.L.C. (2/25/16)*** - petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 0.95 net (1.25 gross) acres; and from a Planned Neighborhood Residential (R-3) zone to a Professional Office (P-1) zone, for 0.25 net (0.29 gross) acre, for property located at 3600 Palomar Centre Drive and 2101 Palomar Trace Drive (a portion of). A dimensional variance is also requested.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that 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 2013 Plan's Goals and Objectives emphasize the importance of growing successful neighborhoods (Theme A), protecting the environment (Theme B), creating jobs and prosperity (Theme C), improving a desirable community (Theme D) and maintaining a balance between planning for urban uses and safeguarding rural land.

The petitioner proposes rezoning all of one property and a portion of another to create a lot for a fast food restaurant, and complete a service road (access easement) connection to Harrodsburg Road for commercial development.

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

The Staff Recommends: Approval, for the following reasons:

1. Although the requested zone change is not in agreement with the 2013 Comprehensive Plan, there have been unanticipated changes of an economic nature within the area of the subject property, for these reasons:
 - a. The neighboring properties at 1009 & 1017 Wellington Way were rezoned from P-1 to B-1 in 2014, as is proposed with this application.
 - b. With the Board of Adjustment's approval of a child care center on the bulk of the 2101 Palomar Trace Drive property (a use which is now proposed for relocation to the southwest), the properties with frontage along Harrodsburg Road and Wellington Way are now approved to be significantly more commercial than residential in character, compared to three years ago when the Comprehensive Plan was initially adopted.
2. The combination of the requested Neighborhood Business (B-1) and the Professional Office (P-1) zone is appropriate for these 1.25 acres of the subject property, and the existing combination of R-3 and P-1 zoning is no longer appropriate, for the following reasons:
 - a. The proposed connection of Palomar Centre Drive, incumbent with this rezoning and redevelopment proposal, has the potential to partially relieve existing traffic congestion at the Wellington Way/Palomar Centre Drive intersection to the benefit of the general public and some of the nearby commercial uses.
 - b. The proposed B-1 zone would permit a restaurant to be developed in a manner consistent with other existing commercial uses in this general area.
 - c. The P-1 zone proposed would align with the access from Wellington Way (collector street) to Harrodsburg Road (arterial highway) via Palomar Centre Drive, which would serve other professional and business uses located in this general vicinity.
 - d. Retaining the existing single family home on 2101 Palomar Trace Drive will provide an excellent land use buffer between existing homes in the Harrods View and Palomar Trace subdivisions from the newly developing commercial uses in this vicinity.
3. This recommendation is made subject to approval and certification of **ZDP 2016-6: Schroyer Property, Dozier Property, Unit 2, and Palomar Trace Subd., Unit 3C**, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of any Planning Commission approval.
4. **Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are recommended via conditional zoning for the subject properties:**

PROHIBITED USES (Within the B-1 Zone only)

- a. Automobile service stations.
- b. Retail sale of plant, nursery or greenhouse products.
- c. Miniature golf or putting courses.
- d. Carnivals and circuses.
- e. Arcades, including pinball and electronic games.
- f. Banquet facilities.
- g. Rental of equipment whose retail sale is permitted in the B-1 zone.
- h. Outdoor live entertainment, cocktail lounges, brew-pubs or nightclubs.
- i. Automobile and vehicle refueling stations.
- j. Retail sale of convenience products (i.e., convenience stores).

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OTHER USE RESTRICTIONS

- a. Any free-standing sign shall be a maximum of ten (10) feet in height.
- b. Any outdoor lighting shall be shielded and directed away from any residential zone. Lighting attached to a pole or any structure shall be a maximum of twenty (20) feet in height.

These restrictions are appropriate and necessary in order to protect the adjacent residential properties to the north and west from the possible noise and light pollution associated with the proposed development, and to maintain the character of the immediate area.

b. REQUESTED VARIANCE

Increase the maximum allowable front yard in a Neighborhood Business (B-1) zone from 20 feet to 40 feet.

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

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

- a. Granting the requested variance to allow a maximum front setback of 40 feet will not adversely affect the public health, safety or welfare. It will not negatively impact the essential character of the general vicinity because buildings on other nearby properties have been at a similar setback, in part due to this sanitary sewer easement, and are likely to remain so.
- b. The special circumstance associated with the subject property is the existing sanitary sewer easement, which makes compliance with the required setback practically impossible. Although this feature does apply to other properties along this easement, it does not generally apply to most B-1 zoned properties in this area.
- c. To build a structure at the maximum building line in this case would likely require a relocation of the sanitary sewer facility and a release of the easement. This would be a hardship on this property, especially considering that most commercial structures in this vicinity are built to a similar setback to that now proposed, because of the easement.
- d. The requested variance is not an unreasonable circumvention of the Zoning Ordinance, based on the unique circumstances of this property, and the relationship of other commercial structures to US 68 in the vicinity.
- e. This variance is not the result of prior actions taken by this applicant, as no new construction has yet occurred on the subject site.

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

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval of this variance is null and void.
 2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
 3. A note shall be placed on the Zoning Development Plan, indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
- c. ZDP 2016-6: SCHROYER PROPERTY; DOZIER PROPERTY, UNIT 2; AND PALOMAR TRACE SUBD., UNIT 3C (2/25/16)* - located at 3581 Harrodsburg Road, 2101 Palomar Trace Drive and 3600 Palomar Centre Drive.
(Eagle Engineering)

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

1. Provided the Urban County Council rezones the property P-1 & 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 parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. Addition of tree inventory information on plan, and clarify tree protection plan information.
6. Denote that access to Harrodsburg Road will be subject to the approval of the Kentucky Transportation Cabinet.
7. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
8. Denote record plat designation on plan or in title block.
9. Addition of topography and cite source on plan.
10. Addition of sidewalks and crosswalks to right-of-way.
11. Denote location and direction of street cross-section on plan.
12. Discuss proposed dumpster location next to residential zone.
13. Discuss zone-to-zone screening necessary along residential property boundaries.

Zoning Presentation: Mr. Sallee presented the staff report, explaining that this was a two-part rezoning application. The petitioner is requesting rezoning from P-1 to B-1 for just under one net acre of property, and from R-3 to P-1 for .25 net acre. Mr. Sallee distributed to the Commission members a copy of the MPO's staff report on the required Traffic Impact Study that was submitted as part of this request.

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Referring to the rendered zoning map, Mr. Sallee stated that a small portion of the subject property at 2101 Palomar Trace Drive, which is currently zoned R-3, is proposed for the P-1 zone; a parcel just to the south was rezoned to P-1 a few years ago. The larger portion of the subject property, at 3600 Palomar Centre Drive, is proposed for the B-1 zone, which would match several properties to the west along Wellington Way and Palomar Centre Drive.

Mr. Sallee displayed several photographs of the subject property, noting that the northernmost parcel currently contains a single-family residence, which is proposed to remain in an R-3 zone. The other parcel includes a veterinary clinic. Mr. Sallee noted on the photographs the substantial grade change between the subject property and the Harrodsburg Road right-of-way, which is considerably lower, making access to the site difficult. Access is proposed to the property via two driveways on Harrodsburg Road, as well as along Wellington Way.

Mr. Sallee stated that the staff reviewed the 2013 Comprehensive Plan, and was not able to find that this request was in agreement with the Plan's recommendations. However, the staff did note that the other B-1 zoning in the area, at the corner of Wellington Way and Palomar Centre Drive, has been approved since the adoption of the 2013 Plan. The staff also noted that the property at 2101 Palomar Trace Drive, where the driveway is being requested for rezoning, has been approved by the Board of Adjustment for a childcare center use, which is now proposed for the parcel located between the two zone change properties. That approval indicates that there are more commercial uses in the area than residential since the time the Comprehensive Plan was adopted, which is significant. Mr. Sallee said that the staff agrees that the combination of B-1 and P-1 zoning proposed is appropriate, and the existing zoning inappropriate, for the reasons as listed in the staff report and on the agenda. The Zoning Committee also recommended approval of this request, for those reasons.

Mr. Sallee stated that the staff was recommending several prohibited uses via conditional zoning, which were listed in the staff report and on the agenda, along with restrictions on free-standing signage and outdoor lighting on this site.

Development Plan Presentation: Ms. Gallt presented the preliminary development plan, noting the locations of the proposed drive-through restaurant and childcare center, as well as the proposed access to Harrodsburg Road.

With regard to the conditions for approval, Ms. Gallt said that #12 refers to the dumpster location. The staff discussed this item briefly with the petitioner prior to this hearing, but the petitioner has not provided any additional information or a revised plan to address the issue. Condition #13 refers to the need for zone-to-zone screening along the residential property boundaries, which has also not been addressed.

Variance Presentation: Mr. Emmons presented the staff report on the requested variance, explaining that the petitioner is proposing to vary the maximum allowable front yard in the B-1 zone from 20' to 40'. The B-1 zone has a minimum setback of 10', and a maximum of 20'. In this instance, there is a 40' sanitary sewer easement that runs parallel to the frontage of the subject property along Harrodsburg Road, which creates a unique circumstance that provides a justification for approval of the variance.

Mr. Emmons said that, if the variance is approved at 40', it will create a setback that is similar to where the building has been located on the property, and to that of the structures on the adjoining properties. The staff is recommending approval of the requested variance, for the reasons as listed in the staff report and on the agenda, and subject to the three conditions as listed.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioner. He noted that the staff had reviewed the required Traffic Impact Study, as they had found that it met the Zoning Ordinance requirements.

Mr. Murphy explained that this request primarily involves the property at 3600 Palomar Centre Drive, which is the current location of Dr. Schroyer's veterinary clinic. The clinic also includes a pet grooming facility, which operates at the rear of the building. The property faces Harrodsburg Road, but has its address on Palomar Centre Drive. To the rear of the subject property is a daycare center, which is located on a parcel that was rezoned to B-1 in 2015. Under the development plan that accompanied that zone change, the daycare center was proposed to be demolished; this has not yet occurred. A P-1 development, which includes a martial arts studio and a chiropractor's office, is also located to the rear of the subject property. To the north is a parcel with Harrodsburg Road frontage, which is also owned by the petitioner, but is not part of this rezoning request. That parcel is zoned P-1, and is currently approved for a three-story office building. The petitioner also owns the next property to the north along Harrodsburg Road, which is accessed from Palomar Trace Drive, and is zoned R-3. The petitioner is proposing to construct a commercial driveway to the subject property on a small sliver located between the second and third properties.

Mr. Murphy said that, approximately six weeks prior to this hearing, Dr. Schroyer purchased property at the corner of Lyon Drive and Wellington Way, which was the former location of a Lexington Clinic office. A deed restriction on the property prevented any other medical clinics from being located there, so Dr. Schroyer believed that it would be suitable to his medical use. The veterinary clinic will be relocated there at some point in the future, so the petitioner decided to seek an appropriate use for the subject property once the clinic has vacated it. The petitioner is proposing to construct a restaurant on the subject

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property, while leaving the adjoining P-1 property and most of the parcel on Palomar Trace Drive with their current zoning designations.

Referring to the rendered development plan, Mr. Murphy stated that the adjoining property has been approved for a daycare center, while the parcel to its other side was approved by the Board of Adjustment for a daycare center approximately a year ago. The petitioner is now proposing to leave the existing single-family residence on the R-3 parcel, and to construct the daycare center on the middle parcel. The net result is a reduction in commercial density on the subject properties, by retaining the existing residence and having one fewer commercial building on the properties. Mr. Murphy stated that, during the previous zone change and BOA case on the properties, the access point was encouraged by the Kentucky Department of Highways. That office encouraged the use of that access point, as well as merging it with the driveway access for the adjoining property.

Mr. Murphy explained that the petitioner has had a good relationship with the residents of the Palomar Trace neighborhood over the course of development of the subject properties. The petitioner also owns the rear portion of the middle property, which is currently being developed in an R-3 zone for single-family residences. Mr. Murphy noted that the staff had received a letter of support from Michael Walsh, president of the Palomar Trace Neighborhood Association.

With regard to the existing tenant in the veterinary clinic building, Mr. Murphy said that it is being operated as a pet grooming business. The business owner has a lease with Dr. Schroyer, and is in the process of negotiating a termination of that lease. If the petitioner cannot negotiate acceptable terms with the grooming facility owner, both parties will seek mediation. If an agreement can be reached, the lease will be terminated. If no agreement is reached, and the grooming facility remains on the property, the Final Development Plan for the property will show that the groomer will continue to operate in the existing structure.

Mr. Murphy explained that the petitioner is also currently in litigation over the BOA approval of the daycare center, with the Harrods View Neighborhood Association and several residents of Sallee Drive. Those residents believe that the existing deed restrictions for the property do not allow a daycare center, so they filed suit against the petitioner. Under the current proposal, the petitioner would allow the existing single-family residence to remain on the property, and would no longer plan to construct a daycare center there.

Mr. Murphy said that the petitioner contends that the proposed development is in agreement with the 2013 Comprehensive Plan, based on several of the Goals & Objectives. The subject property is surrounded by other business uses, and is located adjacent to a major arterial roadway. A new connection has been approved to Harrodsburg Road, and the petitioner believes that the proposed restaurant would be an appropriate use for the property. The petitioner is requesting a variance to the required front setback in the B-1 zone, as Mr. Emmons explained, because the property is constrained by an existing sanitary sewer easement.

With regard to the development plan conditions, Mr. Murphy said that the petitioner thought it had been agreed at the Subdivision Committee meeting that it would be acceptable to defer those items to the Final Development Plan for the property. Based on that assumption, the petitioner did not file a new development plan prior to this hearing. Mr. Murphy noted that one of the owners of Solar Eclipse LLC is constructing a house on the property immediately adjacent to the dumpster location, so there is added incentive to ensure that the issue is properly resolved. The petitioner is also committed to resolving the zone-to-zone screening.

Mr. Murphy said, with regard to the staff's proposed conditional zoning restrictions, that the petitioner had not had an opportunity to review those prior to this hearing. The petitioner is generally in agreement with those, but is concerned about the prohibition of banquet facilities. The petitioner would like to allow a banquet facility on the subject property, particularly given the proximity to Malone's restaurant. Mr. Murphy said that the petitioner would also like to eliminate the conditional zoning restriction against outdoor live entertainment, cocktail lounges, brew-pubs and nightclubs, since those are conditional uses in the B-1 zone. Each request for one of those uses would require the approval of the BOA to allow for outdoor entertainment, which includes a notification mailing to property owners within 500'. Approval of a conditional zoning restriction would prohibit a prospective user of the property from even trying to obtain BOA approval for an outdoor live entertainment use. Mr. Murphy asked that items "f" and "h" be removed from the proposed conditional zoning restrictions, and he requested approval.

Opposition: Bruce Simpson, attorney, was present representing residents of the Harrods View Neighborhood Association. Displaying several photographs of the subject property, he said that he moved into Harrods View in 1988. He said that the neighborhood association was formed around that time, in response to a commercial zone change request that was filed in the area. Residents put a great deal of effort in defining the character of their neighborhood, in order to preserve it, particularly around its boundaries. Harrods View residents worked with developers, Planning staff, the Planning Commission, and the Urban County Council during the rezoning of Palomar Trace in 1990, placing particular importance on the creation of deed restrictions, which provided explicitly that the only uses permitted in the 12 acres adjoining the neighborhood were single-family residential uses. Those efforts preserved the character of the Harrods View neighborhood, and allowed for the development of Palomar Trace, where at least one resident supports this rezoning request.

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Mr. Simpson said that, when the development of Harrods View began in 1988, the area included only a single-family residence; a small farm; and Dr. Schroyer's veterinary clinic. Despite the existing deed restrictions, Dr. Schroyer filed an application a little over a year ago, seeking a conditional use for the single-family lot to serve as a parking area for a proposed three-story office building. In August of 2014, that plan was revised to include a 10,000 square-foot daycare center, a 3,000 square-foot outdoor play center, and a parking lot. The petitioner filed suit in order to obtain a declaration from the court that the existing deed restrictions were enforceable. Mr. Simpson stated that, for a number of years, the Harrods View Neighborhood Association had allowed its charter to expire; however, it has since paid its fees, and the charter for the corporation is once again valid according to the Secretary of State's office. The members of the association hope that this zone change does not result in yet another court action, which could be costly and difficult for the neighborhood; but they believe that it is important to enforce the covenants that designate their area for single-family residential use only.

Mr. Simpson said that his clients do not believe that it is appropriate to rezone a portion of a residential property in order to provide a driveway for a daycare center and fast-food restaurant. The petitioner could have reduced the size of the daycare center, and would not have needed to expand to the residential property to create a driveway. The neighborhood residents are concerned that there is no condition that could be placed on the single-family lot to require that it remain single-family, since it is not a part of this rezoning request. Mr. Simpson's clients believe that the petitioner will continue to rezone properties for business use until all of the company's holdings in the area have been redeveloped.

Mr. Simpson stated that the edges of neighborhoods are typically the most vulnerable to change. He displayed photographs of the existing house on the single-family property, noting the area in the rear of the house that was proposed for parking and a detention basin as part of the previous BOA case.

Mr. Simpson read the following from his exhibit packet, previously distributed to the Commission members:

"Before any map amendment is granted, the Planning Commission, or the legislative body, or the fiscal court, must find that the map amendment is in agreement with the adopted Comprehensive Plan."

He said that, although they recommended approval of this request, the Planning staff does not believe that it is in agreement with the Comprehensive Plan. Their recommendation of approval is based on changes of a physical, social, or economic nature in the vicinity, which includes recent zone changes on Wellington Way and "makes everything in the neighborhood fair game." Mr. Simpson asked the Planning Commission to honor the residents' concerns, and recommend disapproval of this request.

Note: Mr. Berkley departed the meeting at this time.

Doug Martin, attorney, was present representing Petitude Grooming Salon, which is located immediately behind Dr. Schroyer's veterinary clinic. He said that it was a surprise to his client to see the proposed development plan for the subject property, which does not include their grooming facility, but instead depicts a fast-food restaurant at that location. "Substantial issues" still exist between the petitioner and Mr. Martin's client, but she has agreed to withhold objections to this request at this time, in hopes that a reasonable settlement can be reached to address the five-year lease she holds on the property.

Staff Comment: Mr. Sallee distributed an email from Michael Walsh to the Commission for their review, noting that Mr. Walsh is in support of this zone change.

Petitioner Rebuttal: Mr. Murphy stated that Mr. Simpson had performed a rerun of the BOA hearing that was held in April, 2015, for the daycare center at 2101 Palomar Trace Drive. He noted that the deed restrictions apply only to the single-family residential lot, not to the other lots included in this request. Mr. Murphy's clients contend that the deed restrictions no longer apply because of a change in circumstances to the property, but those issues are immaterial to this hearing, and will be decided through the ongoing court case. In April of 2015, the BOA approved the petitioner's request for a daycare center on the adjoining property, and the Planning Commission has likewise approved it on a development plan. The petitioner now wants to maintain the residential use on the property, rather than construct the daycare center; and the only reason for including that parcel in the rezoning request is to use the street that was previously approved as access to the remaining property.

Mr. Murphy said that the petitioner is not proposing to construct a large parking lot as part of this request; rather, the rendering that was shown was one of the early renditions of the plan that was presented to the BOA. He noted that none of Mr. Simpson's exhibits accurately presented the uses that are currently proposed on the subject property.

With regard to the ongoing litigation pertaining to the deed restrictions with the Harrods View neighborhood, Mr. Murphy said that the petitioner believes that the court case could no longer be valid, since a single-family house will be maintained on the residential lot. He said that the petitioner has agreed to many restrictions and changes to the lots they are developing along Palomar Trace Drive, which are currently selling well and in high demand. The petitioner has met with the Palomar Trace residents, who are in support of this request, and is trying to create a relationship with the residents of Harrods View.

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Citizen Rebuttal: Mr. Simpson stated, with regard to his exhibits for the daycare center and the parking lot, that they were included as part of applications filed by the petitioner with the BOA. He said that his clients believe that the petitioner should reduce the size of the proposed daycare center, which would negate the need for the road.

Mr. Simpson opined that Mr. Murphy's case is "illusory," in that the petitioner's plans keep changing. His clients do not believe that the petitioner will retain the single-family home, since they have not honored the existing single-family deed restrictions on the property.

Mr. Simpson agreed with Mr. Murphy that the Planning Commission does not have enforcement authority over deed restrictions, but noted that they do have the right to deny the petitioner's rezoning request in order to protect the residential character of the adjoining neighborhood.

Staff Rebuttal: Mr. Sallee stated, with regard to the proposed conditional zoning restrictions, that the staff included banquet facilities in the listing of prohibited uses due to the likelihood of late hours of operation and the proximity to the nearby residential uses. The staff was similarly concerned about outdoor live entertainment uses. Mr. Sallee noted that, some time ago, brew-pubs became a permitted use in the B-1 zone, so such a use would not require any further approval from the BOA, as Mr. Murphy contended.

With regard to the conditions for approval of the development plan, Mr. Sallee said that the staff would be agreeable to changing the discussion items to "Resolve...at the time of the Final Development Plan."

Commission Questions: Mr. Wilson asked if the staff would be agreeable to the petitioner's request to remove banquet facilities from the list of prohibited uses. Mr. Sallee said that the staff is respectful of their request, and wanted to share the rationale behind their recommendation to the Commission to still prohibit such uses.

Mr. Owens asked, with regard to the supplemental staff report, what types of revisions took place to the conditional zoning restrictions between January 7th and January 28th, which were the dates listed on the report. Mr. Sallee answered that the original staff report was dated January 7th; at the Zoning Committee meeting, the staff indicated a desire to look at recommending conditional zoning for the property. The January 28th date reflects the completion of the supplemental staff report, which included the recommended conditional zoning restrictions.

Legal Comments: Ms. Jones stated, with regard to the deed restrictions mentioned by Mr. Simpson, that the Planning Commission has no purview to enforce those issues; since it involves a private agreement. The related litigation is a private matter as well, of which the Planning Commission and LFUCG are not parties. The BOA case has been appealed to Circuit Court, and the BOA is a party to that action. Ms. Jones explained that the appeal is based on the premise that the findings that the BOA made were inappropriate, which does not relate to this rezoning issue. She said that she does not believe that either one of those existing issues could prohibit the Planning Commission from making a recommendation on this request.

Chairman Comments: Mr. Owens declared the hearing closed, and opened the floor for Commission comments or a motion.

Commission Comments: Ms. Plumlee said that this case represents the third time on today's agenda that the Planning Commission has been asked to address neighborhoods, and how the proposed zone changes could alter the character of existing residential areas. She said that she would oppose this request, because she empathizes with the neighbors of the subject property, and the staff agreed that the proposed zone change is not in agreement with the Comprehensive Plan.

Zoning Action: A motion was made by Mr. Cravens, seconded by Mr. Wilson, and carried 6-1 (Plumlee opposed; Berkley, Drake, Penn, and Richardson absent) to approve MARV 2016-4, eliminating items "f. banquet facilities" and "h. outdoor live entertainment, cocktail lounges, brew-pubs or nightclubs" from the list of proposed conditional zoning restrictions.

Variance Action: A motion was made by Mr. Cravens, seconded by Mr. Wilson, and carried 6-1 (Plumlee opposed; Berkley, Drake, Penn, and Richardson absent) to approve the requested variance, for the reasons provided by staff, subject to the conditions as listed.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Mr. Wilson, and carried 6-1 (Plumlee opposed; Berkley, Drake, Penn, and Richardson absent) to approve ZDP 2016-6, subject to the 13 conditions as listed, changing #12 and #13 to read: "Resolve...at the time of the Final Development Plan."

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