

ORDINANCE NO. 003 - 2021

AN ORDINANCE CHANGING THE ZONE FROM AN AGRICULTURAL URBAN (A-U) ZONE TO A NEIGHBORHOOD BUSINESS (B-1) ZONE, FOR 0.241 NET (0.759 GROSS) ACRE, AND FROM AN AGRICULTURAL URBAN (A-U) ZONE TO A TOWNHOUSE RESIDENTIAL (R-1T) ZONE, FOR 0.002 NET (0.019 GROSS) ACRE, FOR PROPERTY LOCATED AT 4235 HARRODSBURG ROAD (A PORTION OF). (JN HARRODSBURG, LLC.; COUNCIL DISTRICT 10).

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WHEREAS, at a Public Hearing held on November 19, 2020, a petition for a zoning ordinance map amendment for property located at 4235 Harrodsburg Road (a portion of) from an Agricultural-Urban (A-U) zone to a Neighborhood Business (B-1) zone, for 0.241 net (0.759 gross) acre, and for an Agricultural Urban (A-U) zone to a Townhouse Residential (R-1T) zone for 0.002 net (0.019 gross) acre was presented to the Urban County Planning Commission; said Commission recommending approval of the zone change by a vote of 10-0; 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 4235 Harrodsburg Road (a portion of) from an Agricultural-Urban (A-U) zone to a Neighborhood Business (B-1) zone, for 0.241 net (0.759 gross) acre, and for an Agricultural Urban (A-U) zone to a Townhouse Residential (R-1T) zone for 0.002 net (0.019 gross) acre, being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - 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 3 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: January 28, 2021

Linda Gorton  
MAYOR

ATTEST:

[Signature]  
CLERK OF URBAN COUNTY COUNCIL  
PUBLISHED: February 4, 2021-1t

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Rec'd by \_\_\_\_\_

Date: \_\_\_\_\_


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

IN RE: **PLN-MAR-20-00013: JN HARRODSBURG, LLC** – a petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Neighborhood Business (B-1) zone, for 0.241 net (0.759 gross) acre, and from an Agricultural Urban (A-U) zone to a Townhouse Residential (R-1T) zone, for 0.002 net (0.019 gross) acre, for property located at 4235 Harrodsburg Road (a portion of). (Council District 10)

Having considered the above matter on **November 19, 2020**, at a Public Hearing, and having voted **10-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL** of this matter for the following reasons:

1. The applicant has not provided sufficient and complete information to demonstrate agreement with the Goals, Objectives, Policies, or Development Criteria of the 2018 Comprehensive Plan. As these portions of land are the uneconomic remnants associated with the construction of Madrone Way and due to the incredibly small size of the Agricultural Rural (A-U) zoned portions of land, staff cannot find that the zone change request is in agreement with the 2018 Comprehensive Plan.
2. The existing Agricultural Urban (A-U) zoning is inappropriate for the subject property, for the following reasons:
  - a. The subject property is too small and oddly shaped for feasible agricultural use, and Madrone Way separates the property from the remaining A-U zoned land in the vicinity.
  - b. For the subject property to be utilized for those uses permitted in the A-U zone, the applicant would need to apply for variances and waivers to allow for any use to occur on site.
  - c. The subject property has available public facilities and services adequate to serve urban uses.
3. The proposed Neighborhood Business (B-1) and Townhouse Residential (R-1T) zones are appropriate for the subject property, for the following reasons:
  - a. The proposed zoning is compatible with the surrounding land uses and zoning at this location.
  - b. The proposed zoning allows for the full utilization of the neighborhood supporting commercial uses.
  - c. The subject property is located within the Urban Service Area and is currently supported by urban services, including the transportation network and sewer services.
4. This recommendation is made subject to approval and certification of **PLN-MJDP-20-00066: Ethington and Ethington Tract 1**, 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 28<sup>th</sup> day of December, 2020.

  
Secretary, Jim Duncan

**LARRY FORESTER**  
CHAIR

**Note:** The corollary development plan, **PLN-MJDP-20-00066: ETHINGTON & ETHINGTON, TRACT 1** was approved by the Planning Commission on November 19, 2020 and certified on December 3, 2020.

K.R.S. 100.211(7) requires that the Council take action on this request by February 17, 2021.

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

**OBJECTORS**

- Beth O'Donnell, 4340 ;Gum Tree Lane

**OBJECTIONS**

- Concerned with decrease of property value and stormwater runoff

**VOTES WERE AS FOLLOWS:**

AYES: (10) Barksdale, Bell, Davis, de Movellan, Forester, Meyer, Penn, Plumlee, Pohl, and Wilson

NAYS: (0)

ABSENT: (1) Nicol

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **APPROVAL** of **PLN-MAR-20-00013** carried.

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

## MAP AMENDMENT REQUEST (MAR) APPLICATION

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

|   |
|---|
| <b>Applicant:</b><br>JN HARRODSBURG LLC, 1150 HUGHES LN, LEXINGTON, KY 40511                            |
| <b>Owner(s):</b><br>JN HARRODSBURG LLC, 1150 HUGHES LN, LEXINGTON, KY 40511                             |
| <b>Attorney:</b><br>BRANDEN GROSS, 380 WEST VINE STREET, STE 1200, LEXINGTON, KY 40507 PH: 859-231-8500 |

**2. ADDRESS OF APPLICANT'S PROPERTY**

|  |
|--|
| 4235 HARRODSBURG RD, LEXINGTON, KY 40513 |
|--|

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

| Zoning | Existing |        | Requested |            | Acreage |       |
|--------|----------|--------|-----------|------------|---------|-------|
|        | Zoning   | Use    | Zoning    | Use        | Net     | Gross |
| A-U    |          | VACANT | B-1       | RESTAURANT | 0.241   | 0.759 |
| A-U    |          | VACANT | R-1T      | TOWNHOMES  | 0.002   | 0.019 |

**4. COMPREHENSIVE PLAN**

|  |    |
|--|----|
| a. Utilizing Placebuilder, what Place-Type is proposed for the subject site?   | NA |
| b. Utilizing Placebuilder, what Development Type is proposed for the subject site?<br>If residential, provide the proposed density | NA |

**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?<br>If yes, how many units?<br>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 |



October 5, 2020

Urban County Planning Commission  
Division of Planning – Planning Services Section  
200 East Main Street  
Lexington, Kentucky 40507

Re: Zone Change Request: 4235 Harrodsburg Road (a portion)  
Parcel 1: From: Agricultural Urban (A-U Zone)  
To: Neighborhood Business (B-1) Zone  
Parcel 2: From: Agricultural Urban (A-U Zone)  
To: Townhouse Residential (R-1T) Zone

Dear Members of the Planning Commission:

We submit this justification letter for JN Harrodsburg LLC's ("Applicant") application for a zone map amendment request for land located at 4235 Harrodsburg Road (a portion) (1) from Agricultural Urban (A-U Zone) to Neighborhood Business (B-1) Zone ("Parcel 1") and (2) from Agricultural Urban (A-U Zone) to Townhouse Residential (R-1T) Zone ("Parcel 2"). These amendments affect approximately ¼ acres (net) of land (the "Parcels", and collectively, the "Land").

KRS 100.213 provides that an applicant may proceed, at its option, with several different justifications for a zone map amendment. An applicant may argue that the map amendment is in agreement with the adopted comprehensive plan (KRS 100.213(1)). An applicant may argue that the existing classification is an inappropriate zoning classification and the proposed zoning classification is appropriate (KRS 100.213(1)(a)). Lastly, an applicant may argue that there have been major changes in the area that were not anticipated in the adopted comprehensive plan and those changes have substantially altered the basic character of such area (KRS 100.213(1)(b)). An applicant has the discretion to determine which of the aforementioned three statutory options it intends to use, and more importantly, an applicant is not obligated to provide for alternative justifications. If an applicant chooses to proceed under either KRS 100.213(1)(a) or KRS 100.213(1)(b), then an analysis of the comprehensive plan is not applicable to its argument. In this instant case, the Applicant is proceeding under KRS 100.213(1)(a) and KRS 100.213(1)(b), and therefore, it has not addressed the 2018 Comprehensive Plan or Placebuilder.

The grant of the map amendment is appropriate under KRS 100.213: (1) the A-U Zone is an inappropriate use of the Land and the B-1 and R-1T Zones are appropriate uses of the Land (KRS 100.213(1)(a)), and, (2) alternatively, there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted

comprehensive plan and which have substantially altered the basic character of such area (KRS 100.213(1)(b)).

The Ethington & Ethington Subdivision is a new development located on Harrodsburg Road. The development was previously zoned A-U Zone, and it was rezoned to allow for a mix of single-family homes, townhouses, restaurants and other retail uses serving area neighborhoods. The Parcels are located on the south side of the development and north of Madrone Way. The Land is currently zoned A-U Zone. Approximately 0.002 acres of the Land is adjacent to the R-1T Zone, and approximately 0.241 acres of the Land is adjacent to the B-1 Zone, in the development. The Applicant desires to incorporate these Parcels into the balance of the development.

In conjunction with the development, the Applicant built an extension of Madrone Way. Madrone Way intersects with Old Higbee Mill Road. The latter is a state highway, and the Applicant worked with the city and District 7 of the Kentucky Department of Transportation to determine the appropriate location of Madrone Way. The new public road divided the property owned by South Elkhorn Christian Church (4285 Harrodsburg Road), with approximately the Parcels acres (church's property (A-U Zone)) located on the north half of the new public road. The aforementioned subdivision of the church's property created a narrow and long lot separated from the balance of the church's property. The church sold the Land to the Applicant, creating a split zone lot for 4235 Harrodsburg Road. The Applicant desires to rezone the Land to match the adjacent zones for the balance of its property that is already zoned B-1 and R1-T Zones.

The land is currently zoned A-U Zone, which is an inappropriate zone for the Land. The A-U Zone controls rural land within the Urban Service Boundary. The Zoning Ordinance provides that it is the intent of the ordinance to rezone A-U Zone land to urban uses in the future. The city designated the Land as being within the Urban Service Boundary in 1967. This portion of the Urban Service Area is no longer rural and current public facilities, utilities, sanitary services and other public services are present to serve urban uses, promoting the rationality of the zone changes. There are adequate public facilities and services to serve urban uses. By definition, the A-U Zone is inappropriate. The Land consists of approximately  $\frac{1}{4}$  acres (net). The Land is too small and oddly shaped for feasible use as agricultural land, and the new public road separates the Land from the balance of land in the A-U Zone. The Applicant is requesting amendments to rezone the Parcels to appropriate zones on the north side of Madrone Way.

First, the Applicant is requesting to rezone Parcel 1 from A-U Zone to B-1 Zone. As set forth above, the A-U Zone is an inappropriate zone. The Zoning Ordinance is clear as to the intent of the B-1 Zone:

This zone is intended to accommodate neighborhood shopping facilities to serve the needs of the surrounding residential area ... This zone should be oriented to the

residential neighborhood, and should have a roadway system which will be adequate to accommodate anticipated vehicular traffic.<sup>1</sup>

As discussed above, the Applicant's adjacent land is already zoned B-1 Zone. Given the size and dimensions of Parcel 1, it is not an economically viable parcel (approximately 0.241 net acres). The Applicant is proposing to utilize Parcel 1 as portion of the land necessary for a restaurant to serve the needs of the residential users in the immediate vicinity of Parcel 1. The development (including Parcel 1) is oriented to the existing and proposed residential neighborhoods, and the Applicant is proposing adequate integration of the development (including Parcel 1) with the residential neighborhoods through its roadway and sidewalk system. The B-1 Zone is an appropriate zone for the Parcel 1.

Second, at the suggestion of planning staff, the Applicant is requesting to rezone Parcel 2 from A-U Zone to R-1T Zone. As set forth above, the A-U Zone is an inappropriate zone. The Zoning Ordinance is clear as to the intent of the R-1T Zone:

This zone is intended to provide for attached single family dwellings and supporting uses ... in areas of the community where necessary services and facilities will be adequate to serve the anticipated population.<sup>2</sup>

As discussed above, the Applicant's adjacent land is already zoned R-1T Zone. Given the size and dimensions of Parcel 2, it is not an economically viable parcel (approximately 0.002 net acres). The Applicant is proposing to utilize Parcel 2 as a portion of the open space at the intersection of Madrone Way and the private access easement. There are already townhouses planned on the land located adjacent to Parcel 2. The Applicant's development will provide the necessary services and facilities to serve the anticipated population in the townhouses. The R-1T Zone is an appropriate zone for the Parcel 2.

Alternatively, KRS 100.213(1)(b) provides that a zone change is justified when "there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area." The Parcels are zoned A-U Zone and separated from the balance of the A-U Zone land by the new public road. The Land is too small and oddly shaped to be feasibly used for agricultural purposes, and the Parcels (approximately 0.243 net acres) are not economically viable as a single parcel. The Parcels are adjacent to newly proposed townhouses and neighborhood businesses that have altered the basic character of the area. Further, there is a need for both townhouses and neighborhood businesses in this area. The zoning of the Parcels B-1 and R-1T Zones will allow them to conform to new character of the area.

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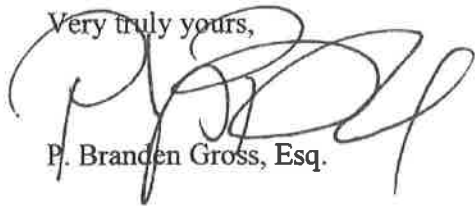
<sup>1</sup> As discussed above, an analysis of the comprehensive plan is not applicable for a justification under KRS 100.213(1)(a).

<sup>2</sup> As discussed above, an analysis of the comprehensive plan is not applicable for a justification under KRS 100.213(1)(b).



Thank you for your consideration.

Very truly yours,



P. Branden Gross, Esq.

cc: JN Harrodsburg LLC

# JN Harrodsburg LLC

(PLN-MAR-20-00013)

4235 HARRODSBURG ROAD

The inclusion of small portions of land associated with the construction of Madrone Way to the current development.

## Applicant

JN HARRODSBURG LLC

1150 Hughes Lane

Lexington, KY 40511

jake@tmdeveloplex.com

Current Property Owner



## Application Details

### Acres:

Parcel 1: 0.241 net (0.759 gross) acres

Parcel 2: 0.002 net (0.019 gross) acres

### Current Zoning:

Parcel 1: Agricultural Urban (A-U) zone

Parcel 2: Agricultural Urban (A-U) zone

### Proposed Zoning:

Parcel 1: Neighborhood Business (B-1) zone

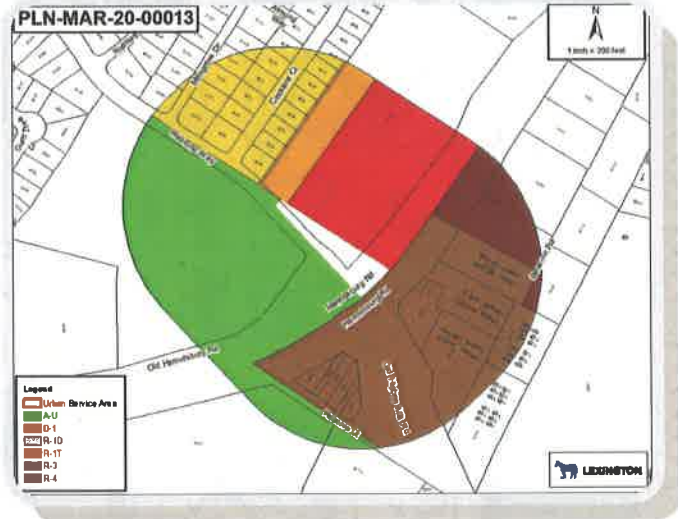
Parcel 2: Townhouse Residential (R-1T) zone

### Place-type / Development Type:

N/A

### Description:

The proposed rezoning is seeking to incorporate the uneconomic remnant portions of land that remained following the construction of Madrone Way. The two zones are proposed to match the existing zoning adjacent to the parcels.



## Status

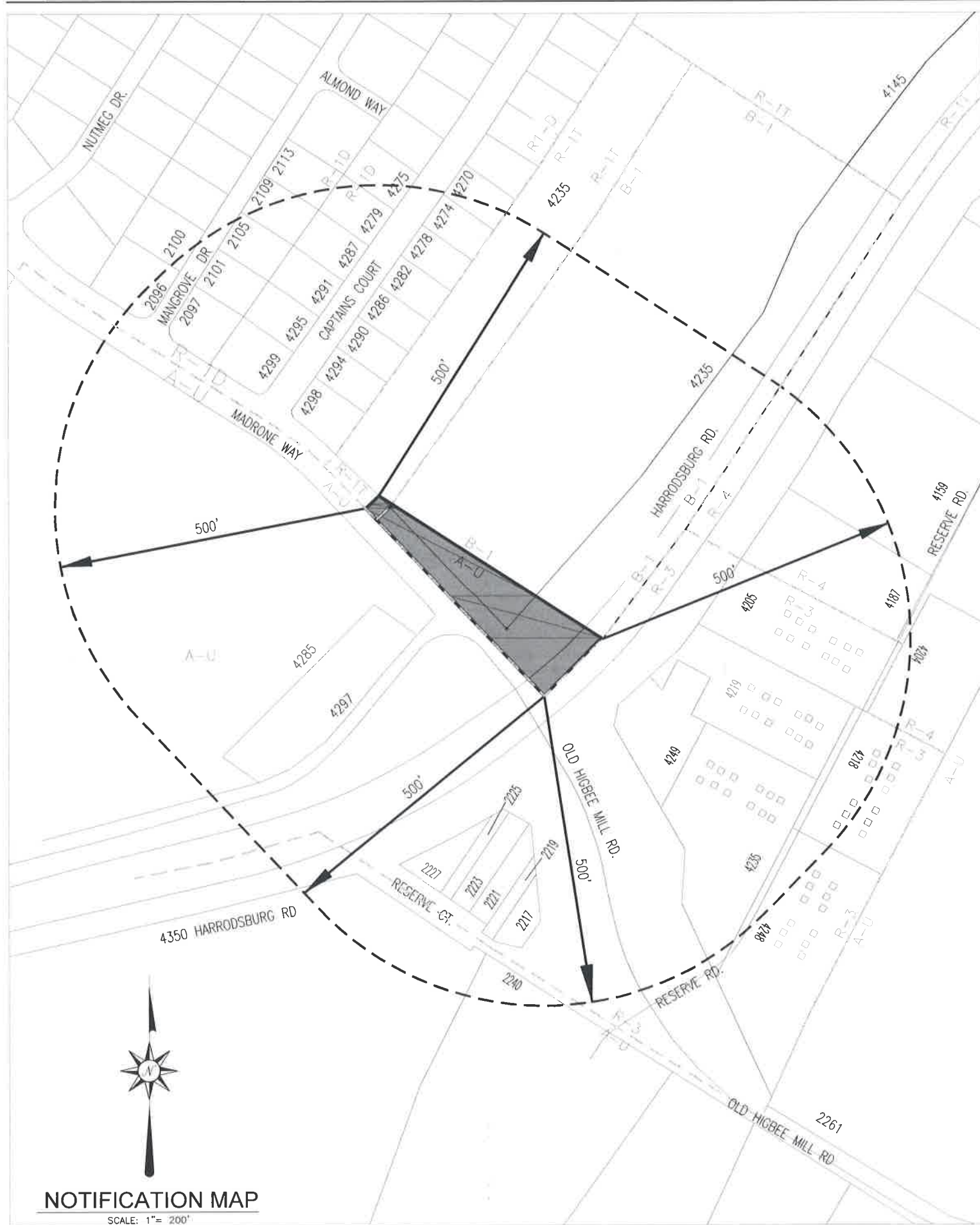
- Public Engagement
- Pre-Application Meeting
- Application Review
- Planning Staff Review
- Technical Review Committee
- Zoning/Subdivision Committee Meetings
- Planning Commission Hearing
- Urban County Council Meeting

## Public Engagement

The petitioner has not indicated that any neighborhood has been conducted, nor if any is planned for this application.

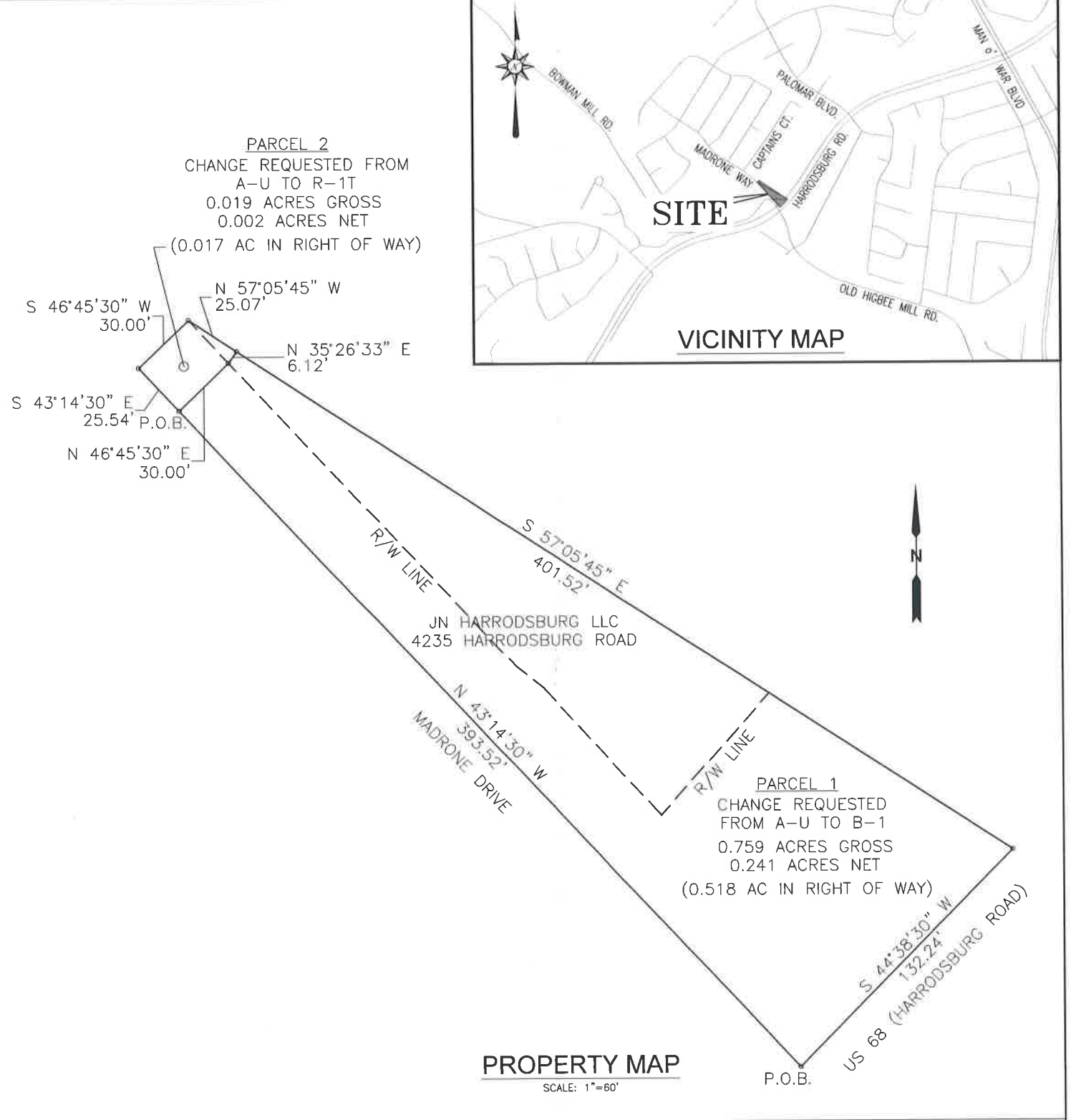
DISCLAIMER: Plans are subject to change. Visit the Accela Citizen Portal ([lexingtonky.gov/plans](http://lexingtonky.gov/plans)) or contact Planning for the latest information. You can also visit [madeupwebsitehere.com](http://madeupwebsitehere.com) for additional project information directly from the developer.





NOTIFICATION MAP

SCALE: 1" = 200'



PROPERTY MAP

SCALE: 1" = 60'



PLN-MAR-20-00013

|  |   |      |       |       |
|--|---|------|-------|-------|
| ZOMAR:                                 | TITLE: A PORTION OF 4235 HARRODSBURG ROAD |      |       |       |
| PROPERTY ADDRESS:                      | FROM                                      | TO   | GROSS | NET   |
| 4235 HARRODSBURG ROAD                  | A-U                                       | B-1  | 0.759 | 0.241 |
| OWNER / APPLICANT:                     | A-U                                       | R-1T | 0.019 | 0.002 |
| JN HARRODSBURG LLC                     |   |      |       |       |
| 1150 HUGHES LN                         |   |      |       |       |
| LEXINGTON, KENTUCKY 40511              |   |      |       |       |
| PREPARED BY: VISION ENGINEERING, LLC   |   |      |       |       |
| DATE FILED OR AMENDED: OCTOBER 5, 2020 | TOTAL                                     |      | 0.778 | 0.243 |

# STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-20-00013: JN HARRODSBURG LLC

## DESCRIPTION OF ZONE CHANGE

|           |                                      |                               |
|-----------|--------------------------------------|-------------------------------|
| Zone      | A-U to B-1:                          | 0.241 net (0.759 gross) acres |
| Change &  | A-U to R-1T:                         | 0.002 net (0.019 gross) acres |
| Acreage:  | Total:                               | 0.243 net (0.778 gross) acres |
| Location: | 4235 Harrodsburg Road (a portion of) |                               |

## EXISTING ZONING & LAND USE

| PROPERTIES       | ZONING     | EXISTING LAND USE                  |
|------------------|------------|------------------------------------|
| Subject Property | A-U        | Vacant                             |
| To North         | B-1 / R-1T | Commercial Center                  |
| To East          | R-3        | Multi-Family Residential           |
| To South         | A-U        | Church                             |
| To West          | A-U / R-1D | Church / Single Family Residential |



## URBAN SERVICE REPORT

**Roads** - The subject property is bordered to the southeast by Harrodsburg Road (US 68) and to the south by Madrone Way. Harrodsburg Road is a major five-lane, divided highway at this location, and is one of two major commuter routes connecting Jessamine and Fayette Counties. Harrodsburg Road intersects Man O War Boulevard at a signalized intersection approximately ¼ mile to the northeast of the subject properties. Madrone Way, a collector street, extends from Harrodsburg Road into the neighborhood, terminating at Mangrove Drive. The intersection of Harrodsburg Road and Madrone Way is planned to be signalized immediately south of the subject site.

**Curb/Gutter/Sidewalks** - Harrodsburg Road does not have curb, gutter or sidewalks along the frontage of this property, although these were requested by the Urban County Council years ago. All other roadways in the vicinity, including Syringa Drive, Almond Way, Madrone Way and the other residential streets in the adjacent Palomar Subdivision, do have curbs, gutters and sidewalks. These same facilities will need to be continued and constructed by the developer at the time of development of the subject property.

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

**Storm Sewers** - The subject property is located within the South Elkhorn watershed. Storm sewers and basins will be constructed by the developer, in accordance with the LFUCG Engineering Manuals to protect water quality. The corollary development plan filed in conjunction with this zone change depicts underground detention for the site. The FEMA Digital Flood Insurance Rate Maps (D-FIRMs) do not indicate that a Special Flood Hazard Area (floodplain) exists on the subject property. There are known flooding problems that occur along the South Elkhorn Creek and its tributaries in the immediate area.

**Sanitary Sewers** - This property is located in the South Elkhorn sewershed and is served by the West Hickman Wastewater Treatment Facility, in northern Jessamine County. The residential properties in the adjoining subdivisions are currently served by sanitary sewers. Extension of the sanitary sewer system will need to be built by the developer in accordance with the adopted Engineering Manuals. The South Elkhorn pump station has been improved after experiencing periodic overflow problems during peak flow times in the past.

**Refuse** - This area is served by the Urban County Government with refuse collection on Mondays. Supplemental service may be required to serve the needs of the proposed commercial land use. This can be accomplished by contracting with private refuse collectors, if desired.

**Police** - The nearest police station is the West Sector Roll Call Center, located approximately six miles to the north of the subject property on Old Frankfort Pike, near New Circle Road.

**Fire/Ambulance** - The nearest fire station (#20) is located on Arrowhead Drive at Harrodsburg Road, approximately 1½ miles northeast of the subject property.

**Transit** - There is no transit available at this location.

**Parks** - The closest park to the subject properties is Clemens Park, located less than ½ mile to the southeast.

## SUMMARY OF REQUEST

The applicant is seeking a zone change from a Agricultural Urban (A-U) zone to a Neighborhood Business (B-1) zone and Townhouse Residential (R-1T) zone for a portion of the property located at 4235 Harrodsburg Road. The proposed rezoning is seeking to incorporate the uneconomic remnant portions of land that remained following the construction of Madrone Way into the larger commercial development that fronts along Harrodsburg Road. The two zones are proposed to match the existing zoning on the property.

## PLACE-TYPE

Not Applied

## DEVELOPMENT TYPE

Not Applied

## 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.



This zone is intended to provide for attached single-family dwellings and supporting uses. This zone should be at locations and at the density (units/acre) recommended by the Comprehensive Plan and in areas of the community where necessary services and facilities will be adequate to serve the anticipated population.

## PROPOSED USE



The applicant is seeking to include a small parcel of land that is considered an uneconomic remnant associated with the construction of Madrone Way. The two zones are proposed to match the existing zoning on the site, which include a commercial development and townhome development. The land proposed for inclusion in the commercial development will be part of Lot 1. A restaurant within an accessory drive-through facility is planned for Lot 1. The parcel proposed for inclusion in the townhome development will be green space and/or a detention basin.

## APPLICANT & COMMUNITY ENGAGEMENT



The applicant has had various conversations with community stakeholders, including the Palomar Hill Community Neighborhood Association, Plantation Neighborhood Association, South Elkhorn Christian Church, South Elkhorn Village Shopping Center, and Fountain at Palomar Shopping Center. The applicant has also reached out to a representative from those streets that are not associated with neighbor associations. The details of those conversations should be described by the applicant in future meetings and hearings.

## PROPERTY & ZONING HISTORY



The portions of the subject property that are currently zoned B-1 and R-1T were initially rezoned in 2016 to construct a small neighborhood business area, bordered by townhouses and single family detached residences (PLN-MAR-16-00003: Taylormade Real Estate, LLC (AMD)). During the zone change there was specific focus on the availability of infrastructure to support the proposed development, including the construction of Madrone Way to allow for vehicular and pedestrian movement, as well as the connection of pedestrian exclusive facilities to allow for broader pedestrian movement within this area of the Urban County.

The extension of Madrone Way was important as it provided both access to the development and neighborhood, through a connection with Harrodsburg Road and Old Higbee Mill Road. The new public road divided the property owned by South Elkhorn Christian Church (4285 Harrodsburg Road), resulting in the creation of a narrow and long lot separated from the balance of the church's property. The church sold the land to the developer to construct Madrone Way. The construction left the remaining remnant to the applicant, who subsequently consolidated the lot to the property located at 4235 Harrodsburg Road, resulting in a split zoned parcel.

## COMPREHENSIVE PLAN COMPLIANCE



### GOALS & OBJECTIVES

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.

KRS 100.213 states that before any map amendment is granted, the Planning Commission must find that the map amendment is in agreement with the adopted Comprehensive Plan. In the absence of such a finding, KRS provides two potential options.

- (a) That the existing zoning classification given to the property is inappropriate and that the proposed zoning classification is appropriate; and/or
- (b) That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area.

Within their letter of justification, the applicant indicates that there are several different justifications for a map amendment and that the applicant has the discretion to determine which of the three statutory options it intends to use. More importantly, applicant states that they are not obligated to provide for alternative justifications. While the applicant is obligated to provide an appropriate justification, the staff strongly disagrees with their assumption that each of the justifications is of equal value and that the Comprehensive Plan does not need to be considered. There are three overriding factors that yield staff's rejection of the applicant's reasoning. First, KRS 100.213 states that the Planning Commission must find that the map amendment is in agreement with the adopted Comprehensive Plan. This language indicates that the primary focus of any land use change and associated land use restriction within the Urban County must take into account the community vision and the long range perspective of change including, but not limited, changes in land use, transportation, and community facilities.

Next, the statute references that only in the absence of a finding of agreement with the Comprehensive Plan that an applicant can seek to apply the other justifications for a zone change. This not only situates the Comprehensive Plan as the principle argument by which a map amended can be requested, it also indicates that a proposed application should acknowledge why the Comprehensive Plan cannot be met if they seek an alternative justification.

Finally, the composition of KRS 100.213 is outlined in such a way that an applicant must first address agreement with the Comprehensive Plan. The alternative justifications are subsections (a) and (b) to that primary outline. It is therefore incumbent on the applicant to address the Comprehensive Plan prior to addressing the other two potential options.

While the applicant has not provided any reference to the Comprehensive Plan, staff has reviewed both the information provided by the applicant, the historical, and current land use, and existing zoning for the portions of the subject property and the vicinity. As these portions of land are the uneconomic remnants associated with the construction of Madrone Way and due to the incredibly small size of the Agricultural Rural (A-U) zoned portions of land, staff cannot find that the zone change request is in agreement with the 2018 Comprehensive Plan. The Planning Commission should consider the applicant's alternative justifications.



### **APPROPRIATE VS INAPPROPRIATE**

The petitioner contends that the existing Agricultural Urban (A-U) zone is inappropriate and that the Neighborhood Business (B-1) and Townhouse Residential (R-1T) zones are appropriate at this location. Utilizing this justification for a zone change necessitates the applicant to both address the inappropriateness of the current zoning and the appropriateness of the proposed zoning.

#### Inappropriate: A-U zone

The petitioner argues that the current zoning and any type of agricultural use is inappropriate at this location, as this portion of the Urban Service Area is no longer rural in character and that there are public facilities, including utilities, sanitary services and other public services, available to serve urban uses. The intent of the A-U zone states that this zone is intended to control the development of rural land within the Urban Service Area over a period of time so as to manage the growth of the community. In order to avoid premature or improper development, land should remain in this zone until public facilities and services are or will be adequate to serve urban uses. The applicant states that the portions of the subject property consist of approximately ¼ net acres. As such, the subject portion of property is too small and oddly shaped for feasible use as agricultural land, and the new public road separates the land from the balance of land in the A-U zone. Staff would note that for the subject property to be utilized for those uses permitted in the A-U zone, the applicant would need to apply for extensive variances and waivers to allow for any use to occur on site. Staff agrees with the applicant that the current A-U zone is inappropriate for the subject property.

#### Appropriate: B-1 & R-1T zones

The applicant posits that the proposed zone change is compatible with the surrounding land uses and zoning, which supports their opinion regarding the appropriateness of the B-1 and R-1T land use and zones for the subject property. The applicant is proposing to utilize Parcel 1 (proposed B-1 zone) as portion of the land necessary for a restaurant to serve the needs of the residential users in the immediate vicinity of Parcel 1. The development, including Parcel 1, is oriented to the existing and proposed residential neighborhoods, and the applicant is proposing adequate integration of the development with the neighborhood through its roadway and sidewalk system. The staff agrees with the applicant that the B-1 zone is an appropriate zone for Parcel 1.

The applicant is also requesting to rezone Parcel 2 to the R-1T zone. This portion of the rezoning was recommended by staff during the pre-application conference. The applicant stresses that the inclusion of the very small portion of land meets the intent of the R-1T zone, which is intended to provide for attached single family dwellings and supporting uses ... in areas of the community where necessary services and facilities will be adequate to serve the anticipated population. The adjacent land is currently zoned R-1T. Due to the small size and dimensions of this parcel the inclusion is proposed for open space and a detention basin at the intersection of Madrone Way and the private access easement. A townhome is planned for this section of the development directly adjacent to Parcel 2 and the inclusion of this open space will enhance the planned development. The staff agrees with the applicant that the R-1T zone is appropriate for Parcel 2.

### **SIGNIFICANT CHANGE**

The applicant also opines that there has been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area. The applicant states that the parcels are located in an A-U zone and separated from the balance of the A-U zoned land by the new public road. The subject property is too small and oddly shaped to be feasibly used for agricultural purposes, and the Parcels (approximately 0.243 net acres) are not economically viable as a single parcel. They emphasize that the parcels are adjacent to newly proposed townhouses and neighborhood businesses that have altered the basic character of the area and that there is a need for both townhouses and neighborhood businesses in this area.

While staff agrees that the parcels are unusable with their current size, this is specifically focused on the appropriateness of the current zoning. The regulations of KRS 100.213(1)(b) focuses on major changes of an economic, physical, or social nature within the area involved, which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of the area. In this case,





the property's layout, as well as the alignment and the construction of the Madrone Way extension were determined prior to the establishment of the 2018 Comprehensive Plan. Additionally, the consolidation of the subject portions of the property did not substantially alter the basic character of the area. Staff does not agree with the applicants justification that there has been a significant economic, physical, or social nature within the area involved, which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area. Additionally, the finding is not necessary since the applicant made a reasonable justification related to the appropriateness of the existing and proposed zones.

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



1. The applicant has not provided sufficient and complete information to demonstrate agreement with the Goals, Objectives, Policies, or Development Criteria of the 2018 Comprehensive Plan. As these portions of land are the uneconomic remnants associated with the construction of Madrone Way and due to the incredibly small size of the Agricultural Rural (A-U) zoned portions of land, staff cannot find that the zone change request is in agreement with the 2018 Comprehensive Plan.
2. The existing Agricultural Urban (A-U) zoning is inappropriate for the subject property, for the following reasons:
  - a. The subject property is too small and oddly shaped for feasible agricultural use, and Madrone Way separates the property from the remaining A-U zoned land in the vicinity.
  - b. For the subject property to be utilized for those uses permitted in the A-U zone, the applicant would need to apply for variances and waivers to allow for any use to occur on site.
  - c. The subject property has available public facilities and services adequate to serve urban uses.
3. The proposed Neighborhood Business (B-1) and Townhouse Residential (R-1T) zones are appropriate for the subject property, for the following reasons:
  - a. The proposed zoning is compatible with the surrounding land uses and zoning at this location.
  - b. The proposed zoning allows for the full utilization of the neighborhood supporting commercial uses.
  - c. The subject property is located within the Urban Service Area and is currently supported by urban services, including the transportation network and sewer services.
4. This recommendation is made subject to approval and certification of [PLN-MJDP-20-00066: Ethington and Ethington Tract 1](#), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

1. JN HARRODSBURG, LLC ZONING MAP AMENDMENT & ETHINGTON & ETHINGTON, TRACT 1 ZONING DEVELOPMENT PLAN

- a. PLN-MAR-20-00013: JN HARRODSBURG, LLC (1/3/21)\*- a petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Neighborhood Business (B-1) zone, for 0.241 net (0.759 gross) acre, and from an Agricultural Urban (A-U) zone to a Townhouse Residential (R-1T) zone, for 0.002 net (0.019 gross) acre, for property located at 4235 Harrodsburg Road (a portion of).

COMPREHENSIVE PLAN AND PROPOSED USE

The 2018 Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community's resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. This will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The applicant is seeking a zone change from an Agricultural Urban (A-U) zone to a Neighborhood Business (B-1) zone and Townhouse Residential (R-1T) zone for a portion of the property located at 4235 Harrodsburg Road. The applicant proposes to rezone and incorporate the portions of land that remained following the construction of Madrone Way into the larger commercial development that fronts along Harrodsburg Road. The two zones are proposed to match the existing zoning on the property.

The Zoning Committee Recommended: **Approved** to the full Commission.

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

1. The applicant has not provided sufficient and complete information to demonstrate agreement with the Goals, Objectives, Policies, or Development Criteria of the 2018 Comprehensive Plan. As these portions of land are the uneconomic remnants associated with the construction of Madrone Way and due to the incredibly small size of the Agricultural Rural (A-U) zoned portions of land, staff cannot find that the zone change request is in agreement with the 2018 Comprehensive Plan.
  2. The existing Agricultural Urban (A-U) zoning is inappropriate for the subject property, for the following reasons:
    - a. The subject property is too small and oddly shaped for feasible agricultural use, and Madrone Way separates the property from the remaining A-U zoned land in the vicinity.
    - b. For the subject property to be utilized for those uses permitted in the A-U zone, the applicant would need to apply for variances and waivers to allow for any use to occur on site.
    - c. The subject property has available public facilities and services adequate to serve urban uses.
  3. The proposed Neighborhood Business (B-1) and Townhouse Residential (R-1T) zones are appropriate for the subject property, for the following reasons:
    - a. The proposed zoning is compatible with the surrounding land uses and zoning at this location.
    - b. The proposed zoning allows for the full utilization of the neighborhood supporting commercial uses.
    - c. The subject property is located within the Urban Service Area and is currently supported by urban services, including the transportation network and sewer services.
  4. This recommendation is made subject to approval and certification of PLN-MJDP-20-00066: Ethington and Ethington Tract 1, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. PLN-MJDP-20-00066: ETHINGTON & ETHINGTON, TRACT 1 (1/3/21)\* - 4235 HARRODSBURG RD., LEXINGTON, KY.  
Project Contact: Vision Engineering

Note: The purpose of this amendment is to revise the building sizes, lot layouts and vehicular circulation for Lots 1 – 4, and modify the number of units and layout within the R-1T zone.

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

1. Provided the Urban County Council rezones the property B-1 and R-1T; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Urban Forester's approval of tree inventory map.
5. United States Postal Service Office's approval of kiosk locations or easement.
6. Denote approved setback from BOA variance on Lots 2 - 4.
7. Denote existing and proposed zone lines.

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

Staff Zoning Presentation – Mr. Baillie presented the staff report and recommendations for the zone change application. He displayed photographs of the subject property and aerial photographs of the general area. He said this is small rezoning that has already been consolidated with the parent property, 4235 Harrodsburg Road. The consolidation left a split-zoned property, with different types of zoning located on the same lot. The applicant proposes to match the existing zoning, which includes a commercial development and a townhome development. He said that the subject property is surrounded by various zones, including Agricultural Urban (A-U), Single Family Residential (R-1D), Townhouse Residential (R-1T), Planned Neighborhood Residential (R-3), High Density Apartment (R-4), and Neighborhood Business (B-1) zones.

Mr. Baillie said that the applicant did not provide a justification related to agreement with the 2018 Comprehensive Plan, because of the small size and the layout of this lot. He said that before any zone change is granted, the Planning Commission must find that map amendment is in agreement with the adopted Comprehensive Plan, or, in the absence of such a finding, that one (1) or more of the following apply and such finding shall be recorded in the minutes and records of the Planning Commission or the legislative body or fiscal court (KRS 100):

- a. That the existing zoning classification given to the property is inappropriate and that the proposed zoning classification is appropriate; and/or
- b. That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area.

Mr. Baillie said that the realignment of Madrone Way was planned prior to the establishment of the 2018 Comprehensive Plan. Therefore, if the applicant can't meet the Comprehensive Plan, they must give a justification as to the inappropriateness of the current zoning and the appropriateness of the proposed zoning. He said that the applicant didn't provide sufficient information regarding how they could not meet the Goals, Objectives, Policies, or Development Criteria of the 2018 Comprehensive Plan. As these portions of land are the uneconomic remnants associated with the construction of Madrone Way and due to the incredibly small size of the Agricultural Rural (A-U) zoned portions of land, staff cannot find that the zone change request is in agreement with the 2018 Comprehensive Plan. He said that the staff is recommending approval because the existing Agricultural Urban (A-U) zoning is inappropriate for the subject property and that the applicant would need to apply for variances and waivers to allow for any use to occur on site. He added that when numerous waivers and variances requested there is often the possibility that the zone is inappropriate at that time. He said that the subject property has available public facilities and services adequate to serve urban uses, which is important for the A-U zone. The A-U zone is intended to be a holding zone until the proper facilities are extended to the property, at that time, it is appropriate for a new zone to be proposed.

Development Plan Presentation – Ms. Hedge presented the preliminary development plan associated with this zone change. She said that the purpose of this revised plan is for the building sizes, the lot layout and the vehicular circulation for lots 1 through 4, and the applicant also modified the number of units and layout within the R-1T zone. This zone change will allow the building on lot 1 to have a drive-through. She said that condition 2 through 5 are the standard signoffs. Condition #6 references denoting the approved setback from the BOA variance on Lots 2 – 4 on the development plan. Condition #7, which is the existing and proposed zone lines also need to be denoted on the development plan.

Mr. Baillie said that there is a correction on the staff report and on the findings listed on the agenda, there is a reference to Agricultural Rural (A-U) zone; this should state Agricultural Urban (A-U) zone. He asked the Planning Commission to make that reference in the motion.

Applicant Presentation – Mr. Branden Gross, attorney and Matt Carter, Vision Engineering, were present representing the applicant. Mr. Carter said that they have reviewed the staff's conditions and they are in agreement with those and asked the Planning Commission for their approval.

Mr. Gross said that they are in agreement with Mr. Carter and is available to answer any questions.

Citizens Comment – Ms. Beth O'Donnell, 4340 Gum Tree Lane, said that this is a diminishment of quality of life and value of home. She said that this will blight the landscape and increase traffic, and disrupt the runoff patterns. She said that the economic character of this development is opaque at this time. She said that the Comprehensive Plan has deficiencies which weights developer's ideas more heavily than the needs of the environment and the respect to our landscape. She added that the Bluegrass landscape is something that we need to cherish and not develop.

Applicant Rebuttal – Mr. Gross said that Ms. O'Donnell's concerns are global and that the Comprehensive Plan has addressed many of them with the inappropriateness / appropriateness of the initial zone change of this site. He said that this is a cleanup item to allow the completion of this development.

Staff Rebuttal – Mr. Baillie said that the current Comprehensive Plan has sought to address the concerns from Ms. O'Donnell. He added that Ms. O'Donnell should continue to speak about the Goals, Objectives, Policies, and Development Criteria that are outlined within the Comprehensive Plan.

Commission Comments – Mr. Pohl said that Ms. O'Donnell's concerns would have been more applicable to the initial zone change. He added that she should continue to participate to articulate the Comprehensive Plan.

Mr. Forester also thanked Ms. O'Donnell for her comments regarding this application.

Zoning Action – A motion was made by Mr. Penn, seconded by Mr. Pohl, and carried 10-0 (Nicol absent) to approve PLN-MAR-20-00013: JN HARRODSBURG, LLC, for the reasons provided by the staff, and revising the findings to the Agricultural Urban (A-U) zone, instead of Agricultural Rural (A-U) zone.

Development Plan Action – A motion was made by Mr. Penn, seconded by Mr. Pohl, and carried 10-0 (Nicol absent) to approve PLN-MJDP-20-00066: ETHINGTON & ETHINGTON, TRACT 1, as presented by the staff.

The following description is intended for zoning purposes only. The description represents information depicted on documents of record found in the Fayette County Clerk's office. This description does not represent a boundary survey and should not be used for real estate conveyance or transfer.

**Zone Change from A-U to B-1  
For  
4235 Harrodsburg Rd.  
Lexington, Fayette County, KY**

Beginning at a point at the centerline intersection of Madrone Way and Harrodsburg Road (U.S. 68); thence with the centerline of said Madrone Way and severing the existing A-U Zone for one (1) call:

1. North 43°14'30" West 393.52 feet; thence leaving said centerline and continuing A-U severance for two (2) calls:
2. North 46°45'30" East 30.00 feet;
3. North 35°26'33" East 6.12 feet to a point on the existing B-1 Zone delineation; thence with said B-1 delineation for one (1) call:
4. South 57°05'45" East 401.52 feet to a point on the centerline of Harrodsburg Rd. (U.S. 68); thence with said centerline for one (1) call:
5. South 44°38'30" West 132.24 feet to the Point of Beginning containing 0.759 Acre Gross and 0.241 Acre Net.

**Zone Change from A-U to R-1T  
For  
4235 Harrodsburg Rd.  
Lexington, Fayette County, KY**

Beginning at a point on the centerline of Madrone Way said point being North 43°14'30" West 393.52 feet from the centerline intersection of said Madrone Way and Harrodsburg Road (U.S. 68); thence severing the existing A-U Zone for two (2) calls:

1. North 46°45'30" East 30.00 feet;
2. North 35°26'33" East 6.12 feet to a point, said point being a corner of the existing B-1 and R-1T Zone delineations; thence with said existing R-1T delineation for one (1) call:
3. North 57°05'45" West 25.07 feet; thence severing said existing A-U Zone for one (1) call:
4. South 46°45'30" West 30.00 feet to a point on the centerline of said Madrone Way; thence with said centerline and continuing A-U severance for (1) call:
5. South 43°14'30" East 25.54 feet to the Point of Beginning containing 0.019 Acre Gross and 0.002 Acre Net.

This being a portion of the parcel conveyed to JN Harrodsburg, LLC in Deed Book 3543, Page 71 of the Fayette County Clerk's records.