

ORDINANCE NO. 037 - 2023

AN ORDINANCE MODIFYING A CONDITIONAL ZONING RESTRICTION IN THE NEIGHBORHOOD BUSINESS (B-1) ZONE, FOR 0.92 NET (1.15 GROSS) ACRES, FOR PROPERTY LOCATED AT 2400 VERSAILLES ROAD (CALLER PROPERTIES, LLC; COUNCIL DISTRICT 10).

WHEREAS, at a Public Hearing held on January 26, 2023, a petition for a zoning ordinance map amendment for property located at 2400 Versailles Road to modify the conditional zoning restriction in the Neighborhood Business (B-1) zone, for 0.92 net (1.15 gross) acres, was presented to the Urban County Planning Commission, said Commission recommending disapproval of the zone change by a vote of 5-3; and

WHEREAS, this Council disagrees 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 modification in the conditional zoning restrictions for property located at 2400 Versailles Road in a Neighborhood Business (B-1) zone, for 0.92 net (1.15 gross) acres, 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 to modify the conditional zoning restrictions is made subject to the following:

1. The conditional zoning restriction on the subject property which prohibits “drive-through facilities” shall be removed in order to permit a drive-through coffee shop as a principal use on the subject property, and all other conditional zoning restrictions shall remain on the property.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions shall apply to the subject property via conditional zoning:
 - a. Prohibited Uses:
 - i. The sale or provision of wine, beer or alcoholic beverages, other than by the drink.
 - ii. Live entertainment and/or dancing.
 - iii. Cocktail lounges, brew-pubs and nightclubs.
 - iv. Automobile service stations.
 - v. Arcades, including pinball and electronic games.
 - vi. Car washing establishments.
 - vii. Pool tables within an establishment, even as an accessory use.
 - viii. Automobile and vehicle refueling stations.

- b. A landscape buffer of at least twenty-five (25) feet in width shall be provided along the southern property boundary, with plantings as specific by Article 18-3(a)(1)(2) of the Zoning Ordinance including the retention of any tree that is at least 4" in diameter at breast height (DBH) in size. Any tree 4" DBH or larger may only be removed if diseased or dying, and only with the written permission of the Urban Forester.
- c. Outdoor lighting shall be shielded and directed away from any adjacent residential zone. Lighting attached to a pole or any structure shall be a maximum of twenty (20) feet in height.
- d. Any free-standing sign erected shall be a maximum of ten (10) feet in height.

These use and buffering restrictions are appropriate and necessary to ensure greater compliance with the 2018 Comprehensive Plan, and to provide protection to the adjacent residential land uses.

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: April 18, 2023



MAYOR

ATTEST:



CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: April 25, 2023 -1t

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Rec'd by _____

Date: _____

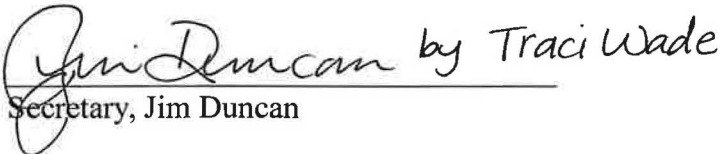
RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: **PLN-MAR-22-00022: CALLER PROPERTIES, LLC (AMD)** - a petition for a zone map amendment from a Neighborhood Business (B-1) zone with conditional zoning restrictions, to a Neighborhood Business (B-1) zone with modified conditional zoning restrictions, for 0.92 net (1.15 gross) acres, for property located at 2400 Versailles Road. (Council District 10)

Having considered the above matter on **January 26, 2023**, at a Public Hearing, and having voted **5-3** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **DISAPPROVAL** of this matter for the following reasons:

1. There has been no major change of an economic, physical, or social nature on the property that was in existence at the time of conditional zoning restriction prohibiting a drive-through.

ATTEST: This 24th day of February, 2023.


Secretary, Jim Duncan

LARRY FORESTER
CHAIR

The associated development plan, PLN-MJDP-00072: Fox Property, was indefinitely postponed by the Planning Commission on January 26, 2023

K.R.S. 100.211(7) requires that the Council take action on this request by April 26, 2023.

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

OBJECTORS

- Paula Singer, 110 Hamilton Park the character.
- Austin Wilkerson, 2484 Versailles Road site
- Amy Clark, 628 Kastle Road

OBJECTIONS

- The proposal to allow a drive-through facility on site is not in line with the neighborhood
- Concerned with the amount of traffic from the and how it will impact Versailles Road.
- The proposal is out of character with Versailles Road corridor improvements and is too intense.

VOTES WERE AS FOLLOWS:

AYES: (5) Davis, Meyer, Michler, Penn, and Worth

NAYS: (3) Barksdale, de Movellan, Forester
ABSENT: (3) Meyer, Nicol, and Pohl
ABSTAINED: (0)
DISQUALIFIED: (0)

Motion for **DISAPPROVAL** of **PLN-MAR-22-00022** carried.

Enclosures: Application
Justification
Legal Description
Plat
Development Snapshot
Staff Report
Applicable excerpts of minutes of above meeting

MAP AMENDMENT REQUEST (MAR) APPLICATION

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

Applicant: CALLER PROPERTIES, LLC, 840 EAST HIGH STREET, LEXINGTON, KY 40502
Owner(s): TLD LLC, 299 E CAMBRIDGE LN, NICHOLASVILLE, KY 40356
Attorney: BRANDEN GROSS, 300 WEST VINE STREET, STE 1200, LEXINGTON, KY 40507

2. ADDRESS OF APPLICANT'S PROPERTY

2400 VERSAILLES RD, LEXINGTON, KY 40504

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

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
B-1 w/ CZ	VACANT	B-1 w/ Modified CZ	RESTAURANT	0.92	1.15

4. COMPREHENSIVE PLAN

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

5. EXISTING CONDITIONS

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

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

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



December 28, 2022

Urban County Planning Commission
Division of Planning – Planning Services Section
101 E Vine Street, Floor 7
Lexington, KY 40507

Re: Revised Justification Letter – Caller Properties, LLC
2400 Versailles Road / PIDN 22206700
From: Neighborhood Business (B-1) Zone (with conditional zoning)
To: Neighborhood Business (B-1) Zone with the right to have Drive-thru Facilities
AND
Variance Request: Increase the maximum front yard from 20' to 40' in a Neighborhood
Business (B-1) Zone

Dear Members of the Planning Commission:

We submit this revised justification letter for Caller Properties, LLC's ("Applicant") application for a zone map amendment request for 2400 Versailles Road, along with a variance from Zoning Ordinance Section 8-16(h)b. to increase the maximum front yard from 20' to 40' in a Neighborhood Business (B-1) Zone. In the alternative to Applicant's original application for a zone map amendment request, this request is for a more limited application for a modification to the existing B-1 Zone (with conditional zoning) to permit drive-thru facilities. Applicant is not requesting relief from any of the other conditional zoning restrictions related to subject property. Applicant's request is based on new evidence, primarily in the form of a traffic impact study, that was not considered by the Planning Commission at the time the conditional zoning restrictions were placed on the subject property and new circumstances of an economic and social nature that were not anticipated in 2016.

The 2016 zone change permitted the construction of a 6,000 SF retail strip center to serve 2 to 4 small businesses (such as professional and medical offices, retail, restaurants, hair stylists, etc.). The then-applicant does not appear to have either proposed drive-thru facilities or studied the traffic impact that such facilities may have had on the area. The record for the application contains no information that would demonstrate that the prohibition on drive-thru facilities was based on the benefit of data-driven analysis for the site or proposed uses.

Applicant continues to propose to develop a quick service coffee business (Scooter's Coffee). The property is vacant and underutilized and this project would allow the property to be developed to serve the needs of the community within the Urban Service Boundary (Theme A, Goal 2a.; Theme E, Goal 4b. and Pillar II Stewardship). As further analyzed below and in the

Placebuilder section, this portion of the Versailles Road corridor consists exclusively of low to medium density uses, and this development and buffering is sensitive to that context (Theme A, Goal 2b.).

The project will continue to provide enhanced buffering between this use and the adjoining residential properties (Theme A, Goal 2b.). The nearest residence to the immediate west of the subject property is several hundred feet from this project, and there is a substantial area of creek and floodplain related to the Gardenside Tributary of Wolf Run Creek that further serves to separate the residential nature of The Colony neighborhood from the subject property. The southern boundary of the subject property is directly adjacent to the back yard of a single-family residence at 1527 Parkers Mill Road. The project will have a significant 35-foot wide, heavily landscaped, buffer adjacent to this southern boundary (this is 10' more buffering than required by the conditional zoning). The typical Scooter's Coffee closes by 8 p.m., and any lighting in parking areas will be arranged so as to reflect away from the adjoining residential properties. No free-standing lighting will be taller than twelve (12) feet in height. The menu board's speaker will have a system that reduces outbound volume on the system when the ambient noise levels naturally decrease early in the morning and night. To further buffer the southern property, Applicant is proposing new trees along its development. Even with the drive-thru facilities, the residential land uses will continue to be protected from the commercial use.

While not required for this project under the Zoning Ordinance, Applicant has had a Traffic Impact Study ("TIS") completed for its development. The TIS demonstrates that the immediate intersections along the corridor will continue to operate within acceptable levels of service after completion of this project. Further, the TIS determined that no traffic improvements were warranted for this development.

Applicant's proposed development is designed to increase functionality and safety of the drive-thru facilities and to mitigate the potential adverse impact on pedestrians and traffic along the corridor (Theme D, Goal 1.b). Applicant is proposing to adopt the cross-section proposed in the Versailles Road Corridor Study (February 2015), which will include a bicycle lane with traffic separator, landscape and utility strip to separate pedestrians from the road, and a 6' wide sidewalk. Applicant's access is designed to allow right in, right out and left in traffic movements. It will not allow left turns to exit the property onto Versailles Road. Applicant has proposed two drive through lanes, which will allow 20 cars (including car at window, two cars at order station, and 17 cars in stacking) to be stacked and stored on its site (significantly reducing the risk of vehicles blocking Versailles Road). While Applicant's proposed user will have one-half the sales of a Starbucks, the subject property will have double the stacking and storage of the immediate Starbucks. Applicant's revised right-of-way improvements will also enhance the multi-modal functionality on Versailles Road. Applicant's design will enhance the streetscape and multi-modal facilities and mitigate the potential negative impacts on the roadway.

Versailles Road Corridor Study was a study of existing conditions and recommendations to enhance pedestrian and bicycle facilities, increase safety and provide for beautification along the corridor. The study area consisted of the corridor from Parkers Mill Road to Oliver Lewis Way. The subject property was not included within the study area, but the project will adopt many of its

recommendations. Applicant is proposing to adopt the cross-section proposed in the study, which will include a bicycle lane with traffic separator, landscape and utility strip to separate pedestrians from the road, and a 6' wide sidewalk (Theme D, Goal 1.b). The project will enhance the streetscape with new street trees and proposed public art (Theme D, Goal 4). The project will include facilities for bicyclists and pedestrians to be served near the proposed patio. This project will further the goals of the study and the Comprehensive Plan by providing for an inviting and walkable corridor.

The world has dramatically changed since the original zone change in 2016. Historically, drive-thrus capitalized on convenience and quick ordering, but the COVID-19 pandemic caused a significant, and unforeseen change, of social norms and business landscapes. COVID-19 shifted consumer habits and preferences with their interactions with restaurants. As it relates to COVID-19, a drive-thru allows limited physical contact between employees and customers. Furthermore, Centers for Disease Control and Prevention identified restaurants with drive-thrus as essential retailers during the lock-down. The average American relies on drive-thrus to assist with its fast-paced and busy life, spending over \$1,200 on drive-thru food annually. Drive-thrus now provide the public with convenience, quick ordering and essential retail with limited physical contact.

For the foregoing reasons, removing the prohibition on drive-thru facilities will not reduce compliance with the Comprehensive Plan or reduce the protections to the adjacent residential land uses.

DEVELOPMENT CRITERIA / PLACEBUILDER

We continue to provide that the subject property be classified as Medium Density Non-Residential / Mixed Use Density for the sole purpose of demonstrating compliance with Placebuilder. Keeping the B-1 Zone, would allow Applicant the possibility of increasing the density of the site, in the future, with the possible addition of residential units above the proposed retail. At this time, Applicant is not proposing such residential units. Applicant is relying upon its original analysis of the Placebuilder given the majority of the redesign is related to the improvements along the Versailles Road corridor, and the below is supplemental information based upon discussions at the Zoning Sub-Committee.

Standards That Are Applicable

SITE DESIGN, BUILDING FORM, & LOCATION

A-DS4-2 The proposed development clearly represents the context of the surrounding area and provides adequate transition from the residential area, and the buffering and isolation of the property will allow for a transition and step-down between the commercial and residential areas. The surrounding commercial and residential areas are predominantly low density, and the proposed development provides adequate transition and buffering from the residential areas. The majority of the commercial uses between Gardenside Tributary of Wolf Run Creek and Alexandria Drive are to serve the traveling public and have floor area ratios of 0.10 or less. The residence to the immediate west sits on a 9.75 acres lot, and the residence to the immediate south sits on a large

lot and has a floor area ratio of 0.05. Further, the western property is separated from the proposed development by 250' of floodplain (and related vegetation and setbacks), and there is almost 1/10 of a mile separating the parking area from that residence. The southern residence will have 35' floodplain and vegetative buffer. There is no direct access between the subject property and residential area. The subject property has natural limitations to its medium scale development (other than as a strip retail center or office). It has the smallest true developable area of the commercial properties in the area due to the floodplain and various setbacks. Applicant is limited to constructing the proposed structure within an area that is approximately 1/3 acres. All of the immediate structures in the vicinity are less than 2 stories. This is the only vacant commercial land in the vicinity, and its adoption of some of the recommendations of the Versailles Road Corridor Study, will promote the desired context of this corridor.

A-DS5-3 Applicant is proposing to adopt the cross-section proposed in the Versailles Road Corridor Study, which will include a bicycle lane with traffic separator, landscape and utility strip to separate pedestrians from the road, and a 6' wide sidewalk. The project will include a walk-up window to allow bicyclist and pedestrians to be served at the site from the parking area and Versailles Road. There is no direct access between the subject property and residential or commercial properties. Applicant is proposing a note to provide for a potential future access to the commercial property to the immediate east of this site. Given the narrow width of the 1/3 of an acre on which the proposed building must sit, the building is oriented toward the side.

A-DS5-4 The project will include a pedestrian crossing to a walk-up window to allow bicyclist and pedestrians to be served at the site from the parking area and Versailles Road. There is also proposed bicycle parking along the corridor.

A-DN3-2 Applicant is not proposing any residential units, but remaining a B-1 Zone would allow the construction of residential units above the retail space in the future. However, all of the immediate structures in the vicinity are less than 2 stories, and a multi-story building may be out of context for the vicinity.

A-EQ3-1 The proposed development clearly represents the context of the surrounding area and provides adequate transition from the residential area, and the buffering and isolation of the property will allow for a transition and step-down between the commercial and residential areas. The surrounding commercial and residential areas are predominantly low density, and the proposed development provides adequate transition and buffering from the residential areas. The majority of the commercial uses between Gardenside Tributary of Wolf Run Creek and Alexandria Drive are to serve the traveling public and have floor area ratios of 0.10 or less. The residence to the immediate west sits on a 9.75 acres lot, and the residence to the immediate south site on a large lot and has a floor area ratio of 0.05. Further, the western property is separated from the proposed development by 250' of floodplain (and related vegetation and setbacks), and there is almost 1/10 of a mile separating the parking area from that residence. The southern residence has 35' floodplain and vegetative buffer. There is no direct access between the subject property and residential area. The subject property has natural limitations to its medium scale development (other than as a strip retail center or office). It has the smallest true developable area of the commercial properties in the area due to the floodplain and various setbacks. Applicant is limited to constructing the proposed

structure within an area that is approximately 1/3 acres. All of the immediate structures in the vicinity are less than 2 stories. This is the only vacant commercial land in the vicinity, and its adoption of some of the recommendations of the Versailles Road Corridor Study, will promote the desired context of this corridor.

C-LI6-1 It is anticipated that the project will enhance pedestrian access and streetscape along Versailles Road corridor. The project will include a pedestrian crossing to a walk-up window to allow bicyclist and pedestrians to be served at the site from the parking area and Versailles Road. Applicant is proposing to adopt the cross-section proposed in the Versailles Road Corridor Study, which will include a bicycle lane with traffic separator, landscape and utility strip to separate pedestrians from the road, and a 6' wide sidewalk. Applicant is not proposing any residential units, but remaining a B-1 Zone would allow the construction of residential units above the retail space in the future. However, all of the immediate structures in the vicinity are less than 2 stories, and a multi-story building may be out of context for the vicinity.

D-PL7-1 We have spoken with leadership of the Holiday Hills & Valley Heights Neighborhood Association, The Colony Neighborhood Association and Friends of Wolf Run, Inc. None of those leaders had objections to the proposed plan, and we offered to meet with those groups should their membership desire. At this time, all of the owners within the 500' radius should have received the written notices of this zone map amendment request.

E-GR10-2 Applicant is proposing to adopt the cross-section proposed in the Versailles Road Corridor Study, which will include a bicycle lane with traffic separator, landscape and utility strip to separate pedestrians from the road, and a 6' wide sidewalk. The project will include a walk-up window to allow bicyclist and pedestrians to be served at the site from the parking area and Versailles Road. There is no direct access between the subject property and residential or commercial properties; provided, Applicant is proposing a note to provide for a potential future access to the commercial property to the immediate east of this site. Given the narrow width of the 1/3 of an acre on which the proposed building must sit, the building is oriented toward the side.

TRANSPORTATION & PEDESTRIAN CONNECTIVITY

A-EQ3-2 The subject property is a compromised site, with limited 1/3 acres on which to construct a building. Applicant is proposing improvements to offset some of the inherent limitations in relation to its quick service restaurant with drive-thru facilities. Applicant is using the cross-section proposed in the Versailles Road Corridor Study, which will include a bicycle lane with traffic separator, landscape and utility strip to separate pedestrians from the road, and a 6' wide sidewalk. The project will include a walk-up window to allow bicyclist and pedestrians to be served at the site from the parking area and Versailles Road. There is no direct access between the subject property and residential or commercial properties; provided, Applicant is proposing a note to provide for a potential future access to the commercial property to the immediate east of this site. While on a bus transit route, currently, there is not the ridership to justify a bus transit stop at the subject property. There is a bus transit stop at Alexandria Drive.

D-CO2-1 Applicant is proposing improvements to offset some of the safety concerns in relation to its quick service restaurant with drive-thru facilities. Applicant is using the cross-section proposed in the Versailles Road Corridor Study, which will include a bicycle lane with traffic separator, landscape and utility strip to separate pedestrians from the road, and a 6' wide sidewalk. Applicant's access is designed to allow right in, right out and left in traffic movements. It will not allow left turns to exit the property onto Versailles Road. The project will include a walk-up window to allow bicyclist and pedestrians to be served. Internal pedestrian access will be oriented closer to Versailles Road and clearly marked. ADA compliant ramps will be provided in relation to transitions between pedestrian access points.

D-CO2-2 The development will expand and improve multi-modal facilities along Versailles Road. Applicant is using the cross-section proposed in the Versailles Road Corridor Study, which will include a bicycle lane with traffic separator, landscape and utility strip to separate pedestrians from the road, and a 6' wide sidewalk. The new street trees will enhance streetscape with future shade. The project will include a walk-up window to allow bicyclist and pedestrians to be served at the site from the parking area and Versailles Road. Internal pedestrian access will be oriented closer to Versailles Road and clearly marked. ADA compliant ramps will be provided in relation to transitions between pedestrian access points.

GREENSPACE & ENVIRONMENTAL HEALTH

B-PR2-3 The floodplain area was not proposed to be an activated space or incorporated into the design of the 2016 development due to the limitations at this site. The placement of the building to allow proper setback from the floodplain created a large separation between the spaces. The floodplain was surrounded by privately owned residential property, and permitting activities in the floodplain would have counteracted the purpose of the enhanced buffering to separate the subject users with the adjacent residential uses. Based upon conversations with Friend of Wolf Run, Inc., that organization desires to continue to limit activity in the floodplain area. There has been no change to these circumstances, and the floodplain area continues to be benefitted as a separated space that is naturally designed as a preservation/habitat area for wildlife.

B-PR7-3 Applicant does not own or control the subject property at this time. Applicant only has a purchase agreement on the subject property. The trees referenced in planning staff report were proposed for removal in both of the prior development plans, due to the limited area in which a building may be placed on the subject property. The Applicant will provide additional street trees along Versailles Road. Applicant is proposing new trees, which includes the replacement of some trees that were previously removed. The development will exceed the 20% tree canopy requirement under the Zoning Ordinance.

VARIANCE REQUEST

Pursuant to Zoning Ordinance Sections 6-4(c) and 7-6(b), Applicant is requesting a variance from Zoning Ordinance Section 8-16(h)b. to increase the maximum front yard from 20' to 40' in a Neighborhood Business (B-1) Zone to develop a quick service coffee business

(Scooter's Coffee). Applicant is proposing to locate its drive-thru / bypass lanes and patio within the proposed 40' set back. The subject property is approximately 1.15 acres (net 0.92 acres); provided, however, structures are limited to an area that is approximately 1/3 of an acre. Due to the floodplain and various other setbacks, Applicant is limited to an area of approximately 1/3 acres in which it can place its building. Both the residential properties to the west and commercial properties to the east of the subject property have front yards that exceed 40' maximum, and very few properties in this area have a 20' front yard. Many of those subdivisions occurred prior to the existing Zoning Ordinance, and consequently, numerous properties in the vicinity are legally non-conforming with respect to front building setbacks. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it was needed, and prior to beginning construction. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity.

Sincerely,



P. Branden Gross

cc: Caller Properties, LLC

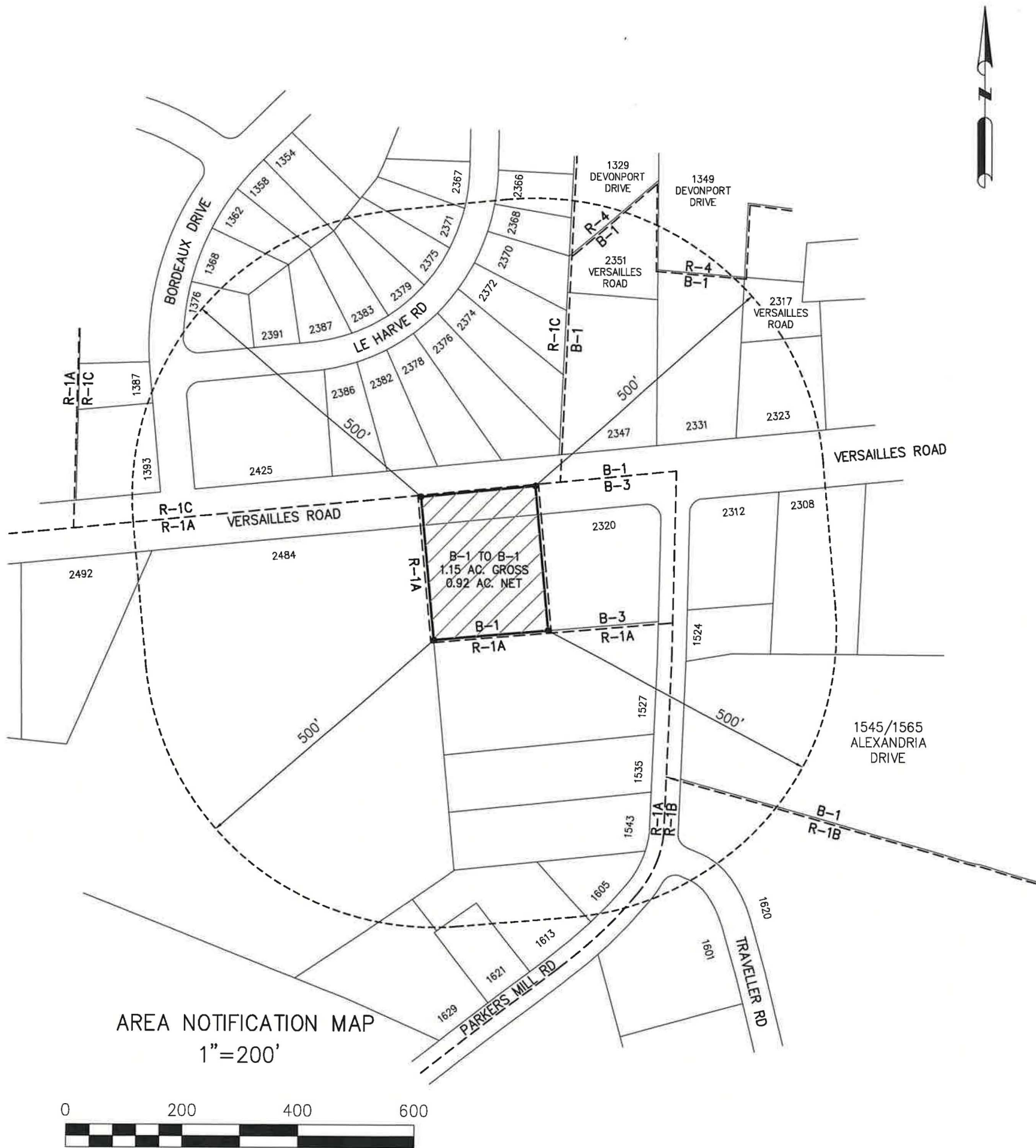
Legal Description
Caller Properties, LLC (applicant)
Zone Change From B-1 to B-1
2400 Versailles Road
Lexington, Fayette County, Kentucky

ALL THAT TRACT OR PARCEL OF LAND SITUATED ON THE SOUTH SIDE OF VERSAILLES ROAD BETWEEN BORDEAUX DRIVE AND PARKERS MILL ROAD AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

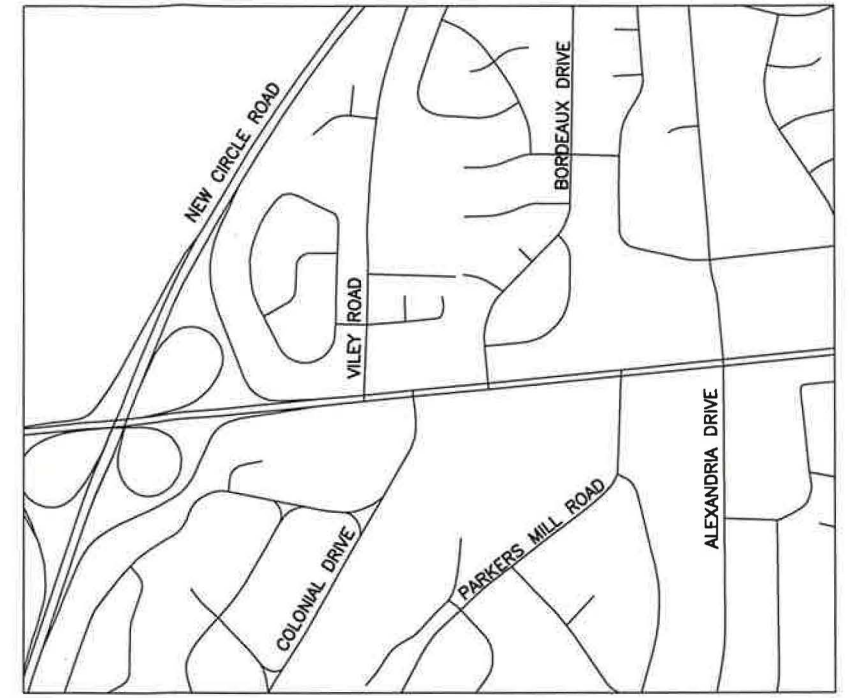
Beginning at a point in the centerline of Versailles Road, said point being located approximately 230 feet west of the intersection of Versailles Road and Parkers Mill Road, thence leaving Versailles Road south 05 degrees 00 minutes 58 seconds east 252.90 feet to a point; thence south 85 degrees 09 minutes 15 seconds west 199.20 feet to a point; thence north 05 degrees 14 minutes 48 seconds west 250.35 feet to a point in the centerline of Versailles Road; thence with said centerline line north 84 degrees 25 minutes 25 seconds east 200.20 feet to the point of beginning and containing 1.15 gross acres and 0.92 net acres.



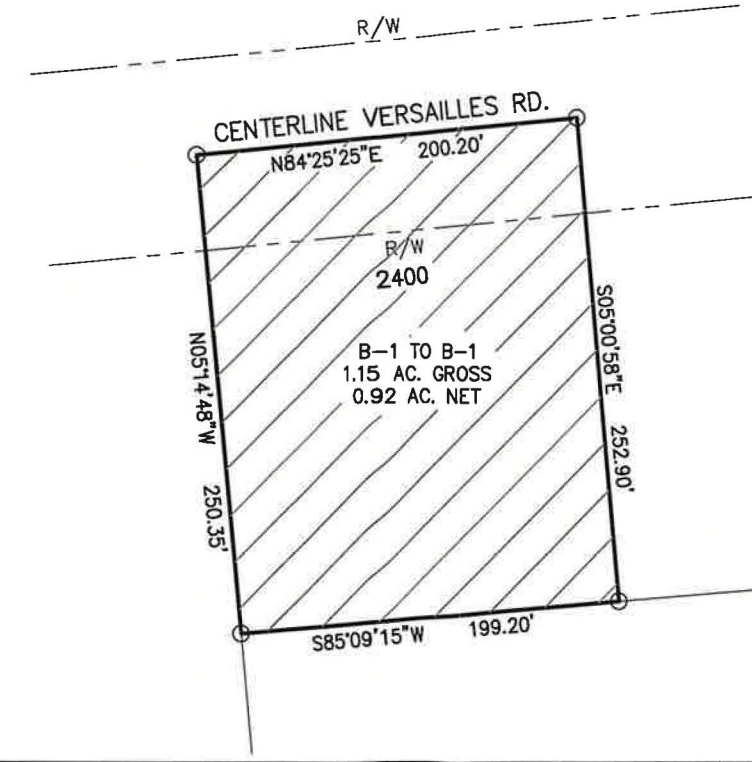
Wesley B. Witt



AREA NOTIFICATION MAP
1"=200'



VICINITY MAP



PROPERTY MAP
1"=100'

ZOMAR						
TITLE: PLN-MAR-22-00022			FROM	TO	GROSS	NET
PROPERTY ADDRESS: 2400 VERSAILLES ROAD			B-1	B-1	1.15 AC.	0.92 AC.
OWNER:	TLD, LLC 229 EAST CAMBRIDGE LANE NICHOLASVILLE, KY 40356		<div style="border: 1px solid black; padding: 5px; text-align: center;"> STATE OF KENTUCKY WESLEY B. WITT 2187 LICENSED PROFESSIONAL LAND SURVEYOR </div>			
APPLICANT:	CALLER PROPERTIES, LLC 840 EAST HIGH STREET LEXINGTON, KY 40502					
PREPARED BY:	WESLEY B WITT, INC.					
DATE PREPARED: OCTOBER 31, 2022, REV JANUARY 23, 2023						

CALLER PROPERTIES, LLC (PLN-MAR-22-00022)

2400 VERSAILLES ROAD

Amend conditional zoning restrictions to establish a coffee shop use with drive-through facilities.

Applicant

CALLER PROPERTIES, LLC
840 E HIGH STREET
LEXINGTON, KY 40508
branden.gross@dentons.com (Attorney)

Owner

TLD, LLC
299 E CAMBRIDGE LANE,
NICHOLASVILLE, KY 40356

Application Details

Acreage:

0.92 (1.15 gross) acres

Proposed Change:

Modify conditional zoning restrictions for a restricted Neighborhood Business (B-1) zone for a drive-through facility.

Place-type / Development Type:

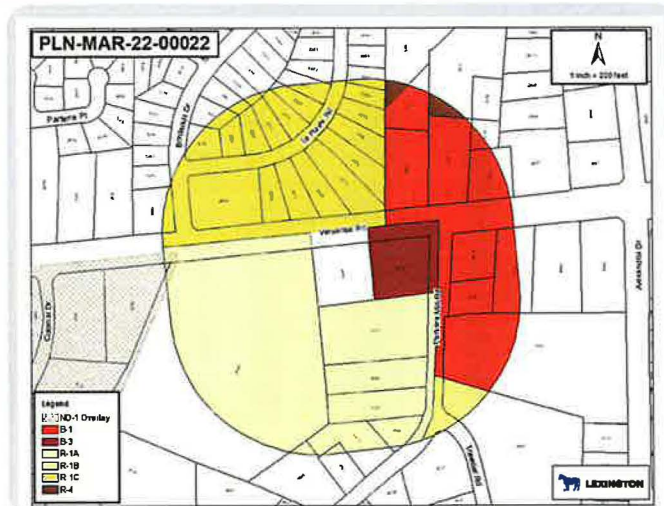
Corridor

Medium Density Non-Residential/ Mixed Use

For more information about the Corridor Place-Type see Imagine Lexington page 265. For information about the Medium Density Non-Residential/ Mixed-Use Development Type, see Imagine Lexington, page 272.

Description:

The applicant is seeking to construct a 2,000 square-foot coffee shop use with an accompanying double drive-through.



Public Engagement

- The applicant has met with representatives for the Holiday Hills and Valley Heights Neighborhood Associations, as well as the Friends of Wolf Run group to discuss the project. The applicant has also indicated that they have reached out the The Colony Neighborhood Association, but have not yet made contact.

Status

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

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

Development Plan

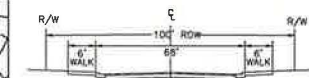


VICINITY MAP

TREE CANOPY STATISTICS:
 TOTAL AREA 0.918 AC (39,886 SF)
 REQUIRED CANOPY COVERAGE (20%) 7,988 SF
 EXISTING CANOPY TO REMAIN (42.2%) 16,863 SF
 ADDITIONAL CANOPY REQUIRED 0%



EXISTING TREE INVENTORY LIST
 A FIELD INSPECTION WAS PERFORMED WHERE THE SIZE AND TREE SPECIES WERE RECORDED AND INCLUDED ON THE PLAN. THE LIMITS OF THE EXISTING TREE CANOPY WAS DETERMINED FROM AERIAL IMAGERY.
 (PER PLN - MUDP - 19 - 00032)



SECTION A-A: VERSAILLES ROAD

SITE STATISTICS	
EXISTING ZONE	B-1
PROPOSED ZONE	B-3
SITE AREA	1.15 AC GROSS 0.92 AC NET
USE	RETAIL WITH DRIVE THRU
BUILDING AREA	2,000 SF
LOT COVERAGE ALLOWED	
LOT COVERAGE PROPOSED	
FLOOR AREA RATIO ALLOWED	
FLOOR AREA RATIO PROPOSED	20' 1 STORY
BUILDING HEIGHT	
OPEN SPACE REQUIRED	
OPEN SPACE PROPOSED	
STREET FRONTAGE	200 FT
PARKING FLOOR AREA (PFA)	1,700 SF
PARKING REQUIRED*	5 SPACES
PARKING PROVIDED	7 SPACES
INTERIOR LANDSCAPE REQUIREMENT	
VEHICULAR USE AREA	15,393 SF
INTERIOR LANDSCAPE AREA	
REQUIRED	1,539 SF 10%
PROVIDED	1,807 SF 10.4%

*1 PARKING SPACE PER 400 SF PFA.

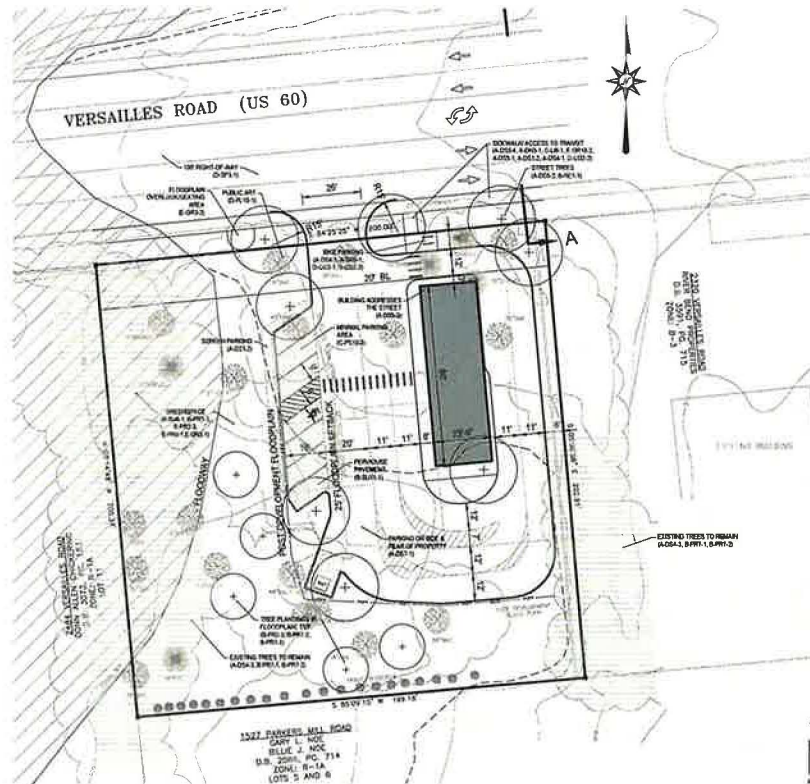
OWNERS CERTIFICATION:
 I (WE) DO HEREBY CERTIFY THAT I AM (WE ARE) THE OWNERS OF THE PROPERTY SHOWN HEREON, DO FULLY AGREE TO ALL GRAPHIC AND TEXTUAL REPRESENTATIONS SHOWN HEREON, AND DO ADOPT THIS AS MY (OUR) DEVELOPMENT PLAN FOR THE PROPERTY.

OWNER: _____ DATE: _____

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

PLANNING COMMISSION SECRETARY: _____ DATE: _____

- NOTES:**
- THIS THIS DEVELOPMENT PLAN MAY BE AMENDED WITH THE APPROVAL OF THE PLANNING COMMISSION AS SET FORTH IN THE ZONING ORDINANCE.
 - ACCESS SHALL BE LIMITED AS SHOWN ON THIS PLAN, VERSAILLES ROAD (US 60) ACCESS SUBJECT TO KYTC PERMIT APPROVAL.
 - LOCATION OF ANY FIRE HYDRANTS, FIRE DEPARTMENT CONNECTIONS, FIRE SERVICE FEATURES, IF REQUIRED, SHALL BE APPROVED BY THE DIVISION OF FIRE-WATER CONTROL OFFICE.
 - STORMWATER MANAGEMENT, SANITARY SEWERS, AND PUBLIC STREET IMPROVEMENTS SHALL BE DESIGNED AND CONSTRUCTED IN ACCORDANCE WITH THE LFUDS ENGINEERING MANUALS.
 - THIS FINAL DEVELOPMENT PLAN MAY NOT BE USED AS A BASIS FOR SALE OF THIS PROPERTY, ANY SALE OF LAND SHALL BE BASED UPON A RECORDED SUBDIVISION PLAN.
 - SIGNAGE SHALL COMPLY WITH ARTICLE 17 OF THE LEXINGTON FAYETTE COUNTY ZONING ORDINANCE.
 - NO GRADINGS, STRIPPING, EXCAVATION, FILLING OR OTHER DISTURBANCE OF THE NATURAL GROUND COVER SHALL TAKE PLACE PRIOR TO APPROVAL OF AN EROSION CONTROL PLAN. SUCH PLAN MUST BE SUBMITTED IN ACCORDANCE WITH CHAPTER 16 OF THE CODE OF ORDINANCES.
 - SOIL REMEDIATION AND LANDSCAPING SHALL BE AS REQUIRED BY ARTICLE 18 OF THE ZONING ORDINANCE.
 - ALL AREAS DISTURBED BY GRADING SHALL HAVE A TEMPORARY VEGETATIVE COVER PROVIDED. SUCH COVER WILL CONSIST OF ANNUAL GRASSES, OR SMALL GRAINS. SLOPES EXCEEDING 4:1 WILL HAVE ADDITIONAL PROTECTION OF MULCHING OR SODDING IN ORDER TO PREVENT EROSION.
 - BASED ON FEMA FLOOD INSURANCE RATE MAP NO. 210087D1168E, EFFECTIVE DATE OF MARCH 3, 2014, A PORTION OF THIS PROPERTY IS LOCATED WITHIN THE "A" FLOOD ZONE.
 - IF ANY PART OF THIS PLAN SHALL BE JUDGED INVALID, SUCH JUDGEMENT SHALL NOT INVALIDATE THE REMAINDER OF THE PLAN.
 - FEMA APPROVED A CONDITIONAL LETTER OF MAP REVISION BASED ON FILL (CLOMR-F) CASE# NO. 18-04-6971C ON NOVEMBER 1, 2018. 1% ANNUAL CHANCE FLOOD ELEVATION IS 904.5 FEET.
 - IN ACCORDANCE WITH ARTICLE 18 OF THE ZONING ORDINANCE A SPECIAL PERMIT WILL BE REQUIRED PRIOR TO INITIATION OF THE PROPOSED WORK WITHIN THE REGULATORY FLOODPLAIN. DEVELOPMENT SHALL COMPLY WITH ARTICLE 19.
 - FINAL DESIGN AND STORMWATER MANAGEMENT ANALYSIS WILL BE DETERMINED AT THE TIME OF THE IMPROVEMENT PLANS. PROPOSED LOCATION FOR STORMWATER MANAGEMENT FOR QUALITY IS OFFSITE.
 - THIS PROPERTY IS OF RECORD PER DEED BOOK 3892, PAGE 261.



PURPOSE OF AMENDMENT:
 TO REVISE DEVELOPMENT OF THE PROPERTY.

OWNER:
 TLD, LLC
 229 EAST CAMBRIDGE LANE
 NICHOLASVILLE, KY 40396

APPLICANT:
 CALLER PROPERTIES, LLC
 840 EAST HIGH STREET
 LEXINGTON, KY 40502

SCALE 1" = 30'-0"



Date: October 31, 2022



FOX PROPERTY, LOT 4
 2400 Versailles Road
 Lexington, Kentucky

AMENDED FINAL DEVELOPMENT PLAN
 Revised:

DP
 PLN-MUDP-22-00072

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-22-00022: CALLER PROPERTIES, LLC (AMD)

DESCRIPTION OF ZONE CHANGE

Zone Change: Modification of Conditional Zoning Restrictions in a Neighborhood Business (B-1) zone
Acreage: 0.92 net (1.15 gross) acres
Location: 2400 Versailles Road



EXISTING ZONING & LAND USE

PROPERTIES	ZONING	EXISTING LAND USE
Subject Property	B-1	Vacant
To North	R-1C	Single Family Residential
To East	B-3	Retail / Restaurant
To South	R-1A	Single Family Residential
To West	R-1A	Single Family Residential

URBAN SERVICE REPORT

Roads - The subject property is bounded to the north by Versailles Road (US 60), which is a four-lane major arterial highway in this vicinity with an additional center turn lane between the east and westbound lanes. Versailles Road is heavily traveled in this location (at least 30,000 vehicle trips) on a daily basis. The Versailles Road/Parkers Mill Road (KY 1968) intersection is a little over 200 feet to the east of the subject property.

Curb/Gutter/Sidewalks - Portions of Versailles Road are without curbs, gutters and sidewalks, although road improvements, including a sidewalk, have been made along the frontage of the property, as well as along the adjoining property to the west. The sidewalk is only a few feet from the curbline.

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

Storm Sewers - The subject property is located within the Wolf Run watershed. There is a significant amount of FEMA flood hazard area on the property, associated with the Wolf Run Creek, which encompasses at least two-thirds of the subject site. Post-development floodplain is shown to be significantly reduced via use of a retaining wall and the provision of fill on the property, which will require further work with the Division of Water Quality, as well as FEMA (LOMR/CLOMR). Any new storm sewers will be constructed by the developer in compliance with the Division of Engineering Stormwater Manual. Any detention area on the site will also be required to comply with the Engineering Stormwater Manual.

Sanitary Sewers - The subject property is in the Wolf Run sewershed, and is served by the Town Branch Wastewater Treatment Plant on Lisle Industrial Avenue. Sanitary sewers do not currently serve the subject property, and service will need to be extended to the property at the time development occurs. Both a gravity and a force main are located in the immediate vicinity, which will facilitate connection and service to the property.

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

Police - The site is located in West Sector Roll Call Center located on Old Frankfort Pike near New Circle Road, approximately two miles from the subject property to the northeast.

Fire/Ambulance - Fire Station #14 is the nearest station to this site and is located approximately one-third (1/3) of a mile to the southeast of the subject property at the intersection of Alexandria Drive and Roanoke Road.

Transit - While the Versailles Route (#8) passes by the subject property, there are no stops within proximity of the site.

Parks - Cross Keys Park is located along Cross Keys Road approximately one-half (1/2) of a mile walking distance south of the subject property. Wolf Run Park is also located approximately one-half (1/2) of a mile walking distance to the southeast.

SUMMARY OF REQUEST

The applicant is seeking to remove conditional zoning restrictions that were applied to the property during the 2016 zone change that established the Neighborhood Business (B-1) zone, but prohibited drive-through facilities, among other use restrictions.

PROPOSED ZONING



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

PROPOSED USE



The petitioner proposes to modify the conditional zoning restrictions to allow for the construction of a coffee shop that is purely focused on the traveling public. The applicant is proposing a small structure with a double drive-through facility and a bypass lane.

APPLICANT & COMMUNITY ENGAGEMENT



The applicant indicated that they have spoken with representatives of the Holiday Hills and Valley Heights Neighborhood Associations, the Friends of Wolf Creek, and some of the surrounding land owners. The applicant indicated that those representatives had no objections to the proposed development. The applicant has indicated that they did not receive contact back from some owners and no meetings were requested. They have indicated that the contacted parties were not interested in having a meeting.

PROPERTY & ZONING HISTORY



The subject property was initially zoned Agricultural District (A-1) until 1969 when it was reclassified to the Single Family Residential (R-1A) zone during the comprehensive rezoning of the city and county. The property contained a residence until 2018, when the structure was demolished. In 2016, Flying Dutchman Properties, LLC rezoned the property from the R-1A zone to the Neighborhood Business (B-1) zone. The applicant at the time was interested in constructing a small commercial building of approximately 6,000 square feet in size, and associated off-street parking.

During the zone change to the B-1 zone there was considerable concern with the impact of the proposed development on the surrounding neighborhood and the environmentally sensitive area, while also ensuring greater compliance with the 2013 Comprehensive Plan. For this reason, the Planning Commission recommended, and the Urban County Council approved, numerous conditional zoning restrictions for the property. These restrictions included prohibited uses (drive-through facilities; the sale or provision of wine, beer or alcoholic beverages, other than by the drink; live entertainment and/or dancing; cocktail lounges, brew-pubs and nightclubs; automobile service stations; arcades, including pinball and electronic games; sale of firearms other than by federally licensed manufacturers, importers or dealers; car washing establishments; pool tables within an establishment, even as an accessory use; and automobile and vehicle refueling stations), a required buffer area, lighting restrictions, and free standing signage restrictions.

CONDITIONAL ZONING RESTRICTION PROCESS



Article 6-7(c) Amendment. Modification, removal or amendment of conditions or restrictions shall be as follows:

1. Restrictions or Conditions Designated by the Urban County Council. The Urban County Council shall have final authority to consider and act upon requests for modification, removal or other amendment of a duly imposed binding restriction or condition so designated by the Council at the time of their adoption.
 - a. Findings Required. The request may be granted by the Council only if it is found that there has been a major change of an economic, physical or social nature on the subject property or within the area in which the subject property is located, which was not anticipated at the time the binding restriction or condition was imposed, and which has substantially altered the basic character of such area making



- the restriction or condition inappropriate or improper. The burden shall be on the applicant to establish said finding by a clear preponderance of the evidence.
- b. Procedure. The procedure for review, notice and action on requests to modify, remove or amend an imposed restriction or condition shall be the same as for a zone map amendment, except that a full public hearing by the Urban County Council shall be required in all cases. The Council's decision to modify, remove or amend a duly imposed binding restriction or condition shall be final action; and any person or entity claiming to be injured or aggrieved by that action may appeal to Fayette Circuit Court within thirty (30) days after such final action pursuant to KRS 100.347.

ZONING ORDINANCE COMPLIANCE



The conditional zoning restrictions applied during the 2016 zone change (Ord. 96-2016; MAR 2016-13) were found to be appropriate and necessary to ensure greater compliance with the 2013 Comprehensive Plan, and to provide protection to the adjacent residential land uses. The protection of the residential land uses were discussed during the meeting to include safety along Versailles Road and buffering against light, air, and sound impacts caused by a drive-through facility.

Within the applicant's amended application, they have requested relief from the conditional zoning restriction applied to the subject property in 2016 prohibiting drive-through facilities. The applicant's request is based on new evidence, primarily in the form of a traffic impact study (TIS), that was not considered by the Planning Commission and Urban County Council at the time that the conditional zoning restrictions were imposed on the subject property. Furthermore, the applicant indicates that new circumstances of an economic and social nature have occurred since 2016, which were not anticipated.

The applicant has submitted a data driven review of the potential impact of traffic generated by the proposed use at this location. The submitted TIS indicates that the inclusion of the proposed Scooter's Coffee, a quick service coffee business, would not negatively impact the public right-of-way nor would it create a health, safety, or welfare impact. In review by the Division of Planning and the Division of Traffic Engineering, the staff agrees with the applicant's submitted documentation. This is further supported by the ingress and egress design that the applicant has proposed for the subject property. The applicant is proposing a right-in/left-in/right-out access point on Versailles Road. This restricts the ability for those exiting the proposed restaurant from turning left onto Versailles Road, which is the most dangerous turning movement at this location. Furthermore, should there be a warrant, the Urban County Government and the State could install median control restricting the left-in movement in the future.

Additionally, the applicant posits that the project will provide enhanced buffering between the proposed use and the adjoining residential properties. They state that the nearest residence to the immediate west of the subject property is several hundred feet from this project, and there is a substantial area of creek and floodplain related to the Gardenside Tributary of Wolf Run Creek that serves to separate the residential nature of The Colony neighborhood from the subject property. The southern boundary of the subject property is also directly adjacent to the back yard of a single-family residence at 1527 Parkers Mill Road. The proposed development will include a 35-foot landscaped buffer adjacent to this southern boundary, which is 10 feet greater than the buffering required by the conditional zoning. The applicant indicates that the typical operating hours of a Scooter's Coffee closes by 8 p.m. Any lighting in parking areas will also be arranged so as to reflect away from the adjoining residential properties and no free-standing lighting will be taller than twelve (12) feet in height. The applicant indicates that the menu board's speaker will have a system that reduces outbound volume on the system when the ambient noise levels naturally decrease early in the morning and night. To further buffer the southern property, the applicant is proposing new trees along its development. The applicant indicates that the proposed development adequately buffers against the potential nuisance impacts caused by a drive-through facility.

The applicant also indicates that the more recently adopted 2018 Comprehensive Plan and the associated Development Criteria allow for proper transitioning from the residential land uses along the south and west boundaries and create a safer vehicular and pedestrian experience.

Staff agrees with the applicant's justification for the removal of the conditional zoning restriction prohibiting the drive-through facilities on the property.

STAFF RECOMMENDS: APPROVAL, OF THE REMOVAL OF CONDITIONAL ZONING RESTRICTIONS PROHIBITING DRIVE-THROUGH FACILITIES FOR THE FOLLOWING REASONS:



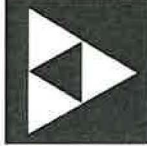
1. Evidence related to the impact of traffic along Versailles Road shows that the proposed use will not negatively impact the health, safety, or welfare of those utilizing the roadway.
2. The proposed ingress and egress point is designed to limit dangerous left turn movements out of the subject property.
3. The inclusion of large buffers and new technologies reduces the impact that drive-through facilities have on the adjacent residential land uses.
4. The adoption of the 2018 Comprehensive Plan provides for greater guidance for development to appropriately transition from more intense land uses to less intense land uses.
5. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions shall apply to the subject property:
 - a. Prohibited Uses:
 1. The sale or provision of wine, beer or alcoholic beverages, other than by the drink.
 2. Live entertainment and/or dancing.
 3. Cocktail lounges, brew-pubs and nightclubs.
 4. Automobile service stations.
 5. Arcades, including pinball and electronic games.
 6. Sale of firearms other than by federally licensed manufacturers, importers or dealers.
 7. Car washing establishments.
 8. Pool tables within an establishment, even as an accessory use.
 9. Automobile and vehicle refueling stations.
 - b. Other Use Restrictions:
 1. A landscape buffer of at least twenty-five (25) feet in width shall be provided along the southern property boundary, with plantings as specified by Article 18-3(a)(1)2 of the Zoning Ordinance, including the retention of any tree that is at least 4" in diameter at breast height (DBH) in size. Any tree 4" DBH or larger may only be removed if diseased or dying, and only with the written permission of the Urban Forester.
 2. Outdoor lighting shall be shielded and directed away from any adjacent residential zone. Lighting attached to a pole or any structure shall be a maximum of twenty (20) feet in height.
 3. Any free-standing sign erected shall be a maximum of ten (10) feet in height.

These use and buffering restrictions are appropriate and necessary to ensure greater compliance with the 2013 Comprehensive Plan, and to provide protection to the adjacent residential land uses.
6. This recommendation is made subject to approval and certification of PLN-MJDP-22-00072: Fox Property, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

HBB/TW
01/04/2023

Planning Services/Staff Reports/MAR/2022/PLN-MAR-22-00022 CALLER PROPERTIES, LLC (AMD).pdf

STAFF REPORT ON VARIANCE REQUEST



As part of their application, the petitioner is also requesting an increase of the maximum building line within a Neighborhood Business (B-1) zone from twenty (20) feet to forty (40) feet.

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

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

ZONING ORDINANCE

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

Article 8-16(h)a states that the maximum front yard within the Neighborhood Business (B-1) zone is twenty (20) feet.

CASE REVIEW

The applicant is requesting a variance of the required front yard setback of the property to allow for the structure to be situated forty (40) feet from the front property line. The applicant indicates that due to the floodplain and various other setbacks, limiting the developable area to approximately $\frac{1}{3}$ of an acre in size. Staff finds that the location of the floodplain would push the building closer to Versailles Road rather than further from the roadway.

The applicant also states that both the residential properties to the west and commercial properties to the east of the subject property have front yards that exceed forty foot maximum, and very few properties in this area have a twenty-foot front yard. Many of those subdivisions occurred prior to the existing Zoning Ordinance, and consequently, numerous properties in the vicinity are legally non-conforming with respect to front building setbacks. While the proposed variance would move the buildings in closer alignment, the proposed location of the building would still not meet the character of the area.

The applicant indicates that by granting this variance there will not be an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the necessary variance as soon as it was determined that it was needed, and prior to beginning construction. Additionally, they indicate that granting the variance would not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity.

The staff acknowledges that the proposed site is difficult due to the surrounding environmentally sensitive areas. Staff recommends postponement of the application, to discuss a lesser variance for the site and operational concerns.

STAFF RECOMMENDS: POSTPONEMENT OF THE REQUESTED VARIANCE FOR THE FOLLOWING REASON:



1. To work with the applicant on a potential lesser variance and gain insight into operational concerns.

AMENDED STAFF REPORT ON VARIANCE REQUEST



As part of their application, the petitioner is also requesting an increase of the maximum building line within a Neighborhood Business (B-1) zone from twenty (20) feet to twenty-six (26) feet.

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

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

ZONING ORDINANCE

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

Article 8-16(h)a states that the maximum front yard within the Neighborhood Business (B-1) zone is twenty (20) feet.

CASE REVIEW

Since the January Zoning Committee meeting, the applicant met with the Planning staff to discuss the requested variance and clarify the site layout. The applicant indicated that the patio area, located in front of the proposed building would include a canopy. The canopy, which is part of the structure itself, reduces the variance request from a twenty (20) foot increase to a six (6) foot increase to the maximum building setback in the Neighborhood Business (B-1) zone.

Additionally, the applicant provided greater information regarding the operation of the site and the need for a drive lane in front of the proposed structure. The applicant indicates that due to the floodplain and the restricted area for use, the need for directed vehicular movement that circulates the entirety of the property is necessary for the safest development. By circulating vehicular movement around the structure, potential conflicts that may arise from vehicles entering the site and those exiting the site are reduced. Additionally, a sixteen (16) foot drive lane is necessary in front of the building to allow for commercial vehicles (e.g. waste management and delivery trucks) to circulate safely through the site. Staff finds the need to allow waste management vehicles circulation through the site of particular importance, as the truck's movement on such a small site is limited.

The applicant also states that a six (6) foot variance reasonably balances the requirements of the B-1 zone and the existing legal non-conforming commercial properties located east of the subject property and the residential properties located to the west. The newly adopted vehicular use area (VUA) requirements will also provide adequate buffer between the pedestrian facilities along Versailles Road. Additionally, street trees and pedestrian facilities proposed by the applicant are in keeping with the character of recent improvements, which have been completed by the Urban County Government west of the property along Versailles Road.

The applicant indicates that by granting this variance there will not be an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the necessary variance as soon as it was determined that it was needed, and prior to beginning construction. Additionally, they indicate that granting the variance would not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity.

STAFF RECOMMENDS: APPROVAL OF THE LESSER REQUESTED VARIANCE FOR THE FOLLOWING REASONS:



1. Approval of the variance should not adversely affect the public health, safety, or welfare, nor should it create a hazard or nuisance to the public. The variance will allow for safe circulation throughout the small site by both passenger and commercial vehicles.
2. The restricted area for use caused by the floodplain creates limitations to safe vehicular ingress and egress into the proposed site.
3. The circumstances of this variance are not a result of actions taken by the applicant subsequent to the adoption of the Zoning Ordinance.

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

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

B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS - Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) Proponents (10 minute maximum OR 3 minutes each)
 - (b) Objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) Petitioner's comments (5 minute maximum)
 - (b) Citizen objectors (5 minute maximum)
 - (c) Staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s).

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. CALLER PROPERTIES, LLC ZONING MAP AMENDMENT & FOX PROPERTY, LOT 4 ZONING DEVELOPMENT PLAN

- a. **PLN-MAR-22-00022: CALLER PROPERTIES, LLC (AMD) (1/29/2023)*** – a petition for a zone map amendment from a Neighborhood Business (B-1) zone with conditional zoning restrictions, to a Neighborhood Business (B-1) zone with modified conditional zoning restrictions, for 0.92 net (1.15 gross) acres, for property located at 2400 Versailles Road. A variance to increase the front yard setback from twenty feet (20') to forty (40') is also requested in association with the application.

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 petitioner proposes to modify the conditional zoning restrictions to allow for the construction of a coffee shop that is purely focused on the traveling public. The applicant is proposing a small structure with a double drive-through facility and a bypass lane.

The Zoning Committee Recommended: Approval.

The Staff Recommends: Approval, for the following reasons:

1. Evidence related to the impact of traffic along Versailles Road shows that the proposed use will not negatively impact the health, safety, or welfare of those utilizing the roadway.
2. The proposed ingress and egress point is designed to limit dangerous left turn movements out of the subject property.
3. The inclusion of large buffers and new technologies reduces the impact that drive-through facilities have on the adjacent residential land uses.
4. The adoption of the 2018 Comprehensive Plan provides for greater guidance for development to appropriately transition from more intense land uses to less intense land uses.
5. **Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions shall apply to the subject property:**
 - a. Prohibited Uses:
 1. The sale or provision of wine, beer or alcoholic beverages, other than by the drink.
 2. Live entertainment and/or dancing.
 3. Cocktail lounges, brew-pubs and nightclubs.
 4. Automobile service stations.
 5. Arcades, including pinball and electronic games.
 6. Sale of firearms other than by federally licensed manufacturers, importers or dealers.
 7. Car washing establishments.

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

8. Pool tables within an establishment, even as an accessory use.
9. Automobile and vehicle refueling stations.
- b. Other Use Restrictions:
 1. A landscape buffer of at least twenty-five (25) feet in width shall be provided along the southern property boundary, with plantings as specified by Article 18-3(a)(1)2 of the Zoning Ordinance, including the retention of any tree that is at least 4" in diameter at breast height (DBH) in size. Any tree 4" DBH or larger may only be removed if diseased or dying, and only with the written permission of the Urban Forester.
 2. Outdoor lighting shall be shielded and directed away from any adjacent residential zone. Lighting attached to a pole or any structure shall be a maximum of twenty (20) feet in height.
 3. Any free-standing sign erected shall be a maximum of ten (10) feet in height.

These use and buffering restrictions are appropriate and necessary to ensure greater compliance with the 2013 Comprehensive Plan, and to provide protection to the adjacent residential land uses.

6. This recommendation is made subject to approval and certification of PLN-MJDP-22-00072: Fox Property, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

- b. **VARIANCE** – a variance of the required front yard setback from twenty feet (20') to forty feet (40').

The Zoning Committee Recommended: Postponement.

The Staff Recommends: Postponement of the requested variance for the following reason:

1. To work with the applicant on a potential lesser variance and gain insight into operational concerns.

- c. **PLN-MJDP-22-00072: FOX PROPERTY** (1/29/2023)* - located at 2400 VERSAILLES ROAD, LEXINGTON, KY

Council District: 11

Project Contact: Barrett Partners Inc.

Note: The purpose of this plan is to depict redevelopment of the property and remove a conditional zoning restriction in the Neighborhood Business (B-1) zone.

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

1. Provided the Urban County Council approves the removal of conditional zoning restriction(s) in the **B-1** zone, otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree preservation plan.
5. Greenspace planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval if environmentally sensitive areas.
7. United States Postal Service Office's approval of kiosk locations or easement.
8. Provided the Planning Commission grants the requested front yard setback variance.
9. Resolve improvements to Versailles Road.
10. Denote: Kentucky Department of Transportation's approval of access on Versailles Road
11. Remove digital reference on menu board.
12. Discuss Placebuilder criteria.

Staff Presentation – Mr. Hal Baillie presented the staff report and recommendations for the zone change application. He displayed photographs of the subject property and the general area. He stated that the applicant was seeking a zone map amendment from a Neighborhood Business (B-1) zone with conditional zoning restrictions, to a Neighborhood Business (B-1) zone with modified conditional zoning restrictions, for 0.92 net (1.15 gross) acres, for property located at 2400 Versailles Road. Mr. Baillie also indicated that a variance to increase the front yard setback from twenty feet (20') to forty (40') is requested in association with the application.

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Mr. Baillie stated that the applicant is proposing to modify the conditional zoning restrictions to allow for the construction of a coffee shop that is purely focused on the traveling public and has a double drive-through facility and a bypass lane.

Mr. Baillie went through the conditional zoning restriction process and how it differs from a traditional zone change process. Mr. Baillie indicated that the findings must show that a major economic, physical or social change that has occurred on the property, which was not anticipated in the initial zone change. The burden is on the applicant to demonstrate that a restriction is inappropriate.

Mr. Baillie highlighted the applicant's amended justification and development plan that provided a wider buffer zone from the adjacent residential properties, and additional trees. The applicant has added a new type of entry point that allows right hand turns in and out of the property, and left hand turns into the property, but does not permit left hand turns out. Additionally, Mr. Baillie stated that the applicant submitted a Traffic Impact Study that showed the proposed impact on Versailles Road was not a safety issue. These findings were reviewed by both the Division of Planning and Traffic Engineering. Both found the findings correct.

Mr. Baillie concluded his presentation by stating that Staff was recommending approval of the request to modify the conditional zoning restrictions for the reasons as stated on the agenda and in the staff report.

Commission Questions – Mr. Penn asked about the process if the Planning Commission decided to allow the drive-through here. He asked if the Planning Commission's decision be forwarded to Urban County Council for approval. Mr. Baillie indicated that a request to amend conditional zoning restrictions follows the same process as a zone change where the Planning Commission makes a recommendation and then the Council will make the final decision.

Staff Development Plan Presentation – Mr. Martin oriented the Planning Commission to the location of the subject property and highlighted the revised conditions. Mr. Martin noted the property's proximity to and the impact of the floodplain. Additionally, Mr. Martin stated that applicant had done a significant amount of up front work with Engineering on this site, and highlighted the development that will go on the site, as well as the proposed ingress and egress for the property.

Mr. Martin discussed the initial concerns of access onto Versailles Road, and the modified design presented to the Planning Commission was reviewed and approved by the Staff, Traffic Engineering, and Transportation Planning. He also states that the proposed design alleviates the concerns of left hand turns out of the property onto Versailles Road. Mr. Martin concluded that with these revisions, Staff is recommending approval.

Commission Questions – Mr. Penn asked that if the coffee shop fails, would this property still have the ability to have a drive-through facility. Mr. Martin indicated that they would.

Staff Variance Presentations – Mr. Baillie oriented the Planning Commission to the variance request, stating that the applicant has amended their request to seek a lesser variance, but still are requesting to increase the maximum front yard setback from 20 feet to 26 feet. Mr. Baillie discussed the initial area of concern, where the applicant wanted to have a patio area, as well as a point of service. The applicant proposes to cover the front patio with a canopy, which reduces the variance request.

Mr. Baillie indicated that due to the applicant's justification, proximity to the floodplain, as well as the traffic circulation solutions the variance allows, staff is recommending approval of this variance.

Commission Questions – Mr. Michler stated that the development plan looks like a very typical drive-through circulation and was not sure why that has anything to do with the floodplain. Mr. Michler continued, stating that it seems like this is an automobile-centric development, when we are looking to add more pedestrian connections in the B-1 zone and asked Mr. Baillie to address that apparent conflict.

Mr. Baillie stated that due to the floodplain, having access into the property, as well as a full activation of the front wall plane to the streetscape the site is difficult to work with. Mr. Baillie cited very similar examples at the Wendy's and Andy's Frozen Custard on South Broadway.

Applicant Presentation – Branden Gross, attorney for the applicant, stated that a lot of work between many people has led to numerous modifications to bring the development to where it is today. Mr. Gross indicated that he is in agreement with Staff and can answer any questions from the Planning Commission.

Commission Questions – Mr. de Movellan asked about the parking spaces on the site and if those who park will have to circle through the drive-through before they can exit. Mr. Gross indicated that they would not and that due to traffic flow concerns they added a stub in the rear of the property that could connect to the adjoining property and would provide a future connection to Parker's Mill if it were to become available.

Public Comment – Paula Singer, 110 Hamilton Park, gave a short presentation on development in the immediate vicinity. She stated that she objects to this development because the neighborhood has changed and no longer need establishments that are focused on the traveling public.

Austin Wilkerson, 2484 Versailles Road, stated that he was concerned with the "traffic nightmare" that this would cause to an already dangerous roadway. He stated he has seen seven accidents outside his house.

Amy Clark, 628 Kastle Road, stated she was against this development and stated that this looks like a B-3 zone to her. She also said she supported the statement provided by Ms. Singer.

Applicant Rebuttal – Mr. Gross indicated that he had seen the information that Ms. Singer presented and a significant amount of the modifications they have made are in line with the streetscape information that she presented. Regarding Mr. Wilkerson's comments about traffic, Mr. Gross pointed to the Traffic Impact Study and said that there will be no major new traffic from this development. Mr. Gross ended his comments by stating that the building that they have proposed is not large enough for a high volume drive-through facility like a McDonalds to come in if this development were to fail.

Commission Questions – Mr. Michler asked about the variance request, stating that earlier Mr. Gross had stated that the request could be met with hardscaping and other aspects. Mr. Gross stated that he did not mean it in that way, he was stating that the applicant could use hardscaping to comply with the maximum build to line, and meet the linear discussions in the Comprehensive Plan.

Ms. Worth stated that she thought the applicant had done all that they can for that property, and asked Staff if this development is appropriate for the context of the Versailles Road/ Cardinal Valley Small Area Plan. Mr. Baillie indicated that this property is outside of that plan, but the site has taken into account some of the recommendations from the plan.

Public Rebuttal – Ms. Amy Clark stated that a Traffic Impact Study is based on a presumed use and it would be foolhardy to change a zone based on a presumed use that may or may not continue.

Ms. Paula Singer stated that while this development is not in the Small Area Plan boundaries, it is at the entrance of the neighborhood and corridor, and sets the tone of the neighborhood. She remains against the development.

Commission Comment – Mr. Michler stated that half of this lot is in the natural area that is in a floodplain and he is sorry to see that the applicant is not engaging that space. Mr. Michler added that as we try to redevelop and bring new businesses in that trying to fit a drive-through facility where they do not fit does not justify moving our building lines on the variance request. He ended his comments saying he did not think the development plan was in keeping with our regulations.

Mr. Penn stated that his concern was that the applicant does not have the backdoor out of the property the way that the Starbucks next to the site has. Mr. Penn ended his comments by saying this application was "seven pounds of flour in a five pound sack."

Ms. Barksdale asked what the plan was for the adjacent property to the immediate west of the site, toward New Circle Road. Mr. Baillie indicated that the property was zoned R-1A and a significant amount of the site is located within the FEMA floodplain, which is a hindrance to any future development.

Ms. Meyer stated that she appreciates what the applicant has tried to do and how they have worked hard to make it work, but she really questions this location. She has concerns about the drive-through staying if the coffee shop does not come to fruition, and she wonders if the building could be made bigger in the future.

Action – A motion was made by Ms. Worth, seconded by Mr. de Movellan and failed 3-5 (Bell, Nicol, and Pohl absent) to approve PLN-MAR-22-00022: Caller Properties, LLC for reasons provided by Staff.

*A five minute recess was requested by Chairman Forester.

Action – A motion was made by Ms. Worth, seconded by Ms. Meyer and carried 5-3 (Bell, Nicol, and Pohl absent) to disapprove PLN-MAR-22-00022: Caller Properties, LLC because there has been no major change of an economic, physical, or social nature on the property that was in existence at the time of conditional zoning restriction prohibiting a drive-through.

Action – A motion was made by Ms. Worth and seconded by Ms. Meyer and carried 6-2 (Bell, Nicol, and Pohl absent) to indefinitely postpone PLN-MJDP-22-00072: FOX PROPERTY.

Action – A motion was made by Ms. Worth and seconded by Ms. Meyer and carried 8-0 (Bell, Nicol, and Pohl absent) to disapprove the variance request for PLN-MAR-22-00022: Caller Properties, LLC because the conditional zoning restriction has been recommended for disapproval and the conditional zoning restrictions prohibit drive-through facilities.

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