

AN ORDINANCE CHANGING THE ZONE FROM A LIGHT INDUSTRIAL (I-1) ZONE TO A HIGH RISE APARTMENT (R-5) ZONE, FOR 1.49 NET (1.78 GROSS) ACRES, AND FROM A NEIGHBORHOOD BUSINESS (B-1) ZONE TO A HIGH RISE APARTMENT (R-5) ZONE, FOR 0.24 NET (0.27 GROSS) ACRES, FOR PROPERTIES LOCATED AT 339, 341, 345 AND 349 BLACKBURN AVENUE AND ADJACENT FORMER RAILROAD RIGHT-OF-WAY. (COWGILL PARTNERS, LP; COUNCIL DISTRICT 2.)

WHEREAS, at a Public Hearing held on December 15, 2016, a petition for a zoning ordinance map amendment for property located at 339, 341, 345 and 349 Blackburn Avenue and former railroad right-of-way from a Light Industrial (I-1) zone to a High Rise Apartment (R-5) zone, for 1.49 net (1.78 gross) acres, and from a Neighborhood Business (B-1) zone to a High Rise Apartment (R-5) zone, for 0.24 net (0.27 gross) acres, was presented to the Urban County Planning Commission; said Commission recommending approval of the zone change by a vote of 8-0; 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 339, 341, 345 and 349 Blackburn Avenue and former railroad right-of-way from a Light Industrial (I-1) zone to a High Rise Apartment (R-5) zone, for 1.49 net (1.78 gross) acres, and from a Neighborhood Business (B-1) zone to a High Rise Apartment (R-5) zone, for 0.24 net (0.27 gross) acres; 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: March 7, 2017

MAYOR 

ATTEST:


CLERK OF URBAN COUNTY COUNCIL

Published: March 14, 2017-1t
0088-17:TWJ:X:\Cases\PLANNING\17-LE0001\LEG\00562735.DOCX

Legal Description of the
Cowgill Partners, LP Property
Zone Change From B-1 to R-5
A portion of 349 Blackburn Avenue
Lexington, Fayette County, Kentucky

ALL THAT TRACT OR PARCEL OF LAND SITUATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST FOURTH STREET AND BLACKBURN AVENUE IN LEXINGTON, FAYETTE COUNTY, KENTUCKY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning at point in the centerline of Blackburn Avenue, said point being 227.50 feet southwest of the intersection of the centerline of West Fourth Street and the centerline of Blackburn Avenue; thence with the centerline of Blackburn Avenue south 48 degrees 47 minutes 09 seconds west 65.50 feet to a point; thence leaving Blackburn Avenue north 41 degrees 07 minutes 40 seconds west 178.84 feet to a point; thence north 48 degrees 33 minutes 14 seconds east 65.50 feet to a point; thence south 41 degrees 07 minutes 40 seconds east 179.10 feet to the point of beginning and containing 0.27 gross acres and 0.24 net acres.

Legal Description of the
Cowgill Partners, LP Property
Zone Change From I-1 to R-5
339, 341, 345, and a portion of 349
Blackburn Avenue
Lexington, Fayette County, Kentucky

ALL THAT TRACT OR PARCEL OF LAND SITUATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST FOURTH STREET AND BLACKBURN AVENUE IN LEXINGTON, FAYETTE COUNTY, KENTUCKY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning at the intersection of the centerline of West Fourth Street and the centerline of Blackburn Avenue; thence with the centerline of Blackburn Avenue south 48 degrees 47 minutes 09 seconds west 227.50 feet to a point; thence leaving Blackburn Avenue north 41 degrees 07 minutes 40 seconds west 179.10 feet to a point; thence south 48 degrees 33 minutes 14 seconds west 65.50 feet to a point; thence south 41 degrees 07 minutes 40 seconds east 178.84 feet to a point in the centerline of Blackburn Avenue; thence with the centerline of Blackburn Avenue south 48 degrees 47 minutes 09 seconds west 95.87 feet to a point; thence leaving Blackburn Avenue north 41 degrees 14 minutes 04 seconds west 228.44 feet to a point; thence north 48 degrees 33 minutes 14 seconds east 389.30 feet to a point in the centerline of West Fourth Street; thence with the centerline of West Fourth Street south 41 degrees 07 minutes 40 seconds east 230.02 feet to the point of beginning and containing 1.78 gross acres and 1.49 net acres.

Rec'd by Bm
Date: 1-13-17

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

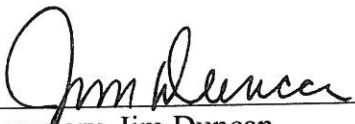
IN RE: **PLN-MAR-16-00019: COWGILL PARTNERS, LP** – a petition for a zone map amendment from Light Industrial (I-1) zone to a High Rise Apartment (R-5) zone, for 1.49 net (1.78 gross) acres, and from a Neighborhood Business (B-1) zone to a High Rise Apartment (R-5) zone, for 0.24 net (0.27 gross) acres, for properties located at 339, 341, 345, and 349 Blackburn Avenue and adjacent former railroad right-of-way. (Council District 2)

Having considered the above matter on **December 15, 2016**, at a Public Hearing, and having voted **8-0** 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 proposed High Rise Apartment (R-5) zone is in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. A “Growing Successful Neighborhoods” recommends expanding housing choices, with emphasis on mixed-use and higher density development in certain situations to address a variety of community needs (Goals #1b. and #1d.). It also recommends supporting infill and redevelopment as a strategic component of growth, with focus on context sensitive design (Goal #2a.), and providing well-designed neighborhoods through mixed use and multi-type housing, and multi-modal transportation connections (Goals #3a. and #3b.).
 - b. The petitioners proposed zone change will enable redevelopment of an industrial site in the near downtown Northside neighborhood, very close the West Fourth Street corridor between Newtown Pike and Jefferson Street. The petitioner’s proposed project will provide additional housing options for the area Newtown Pike corridor in a context-sensitive manner, while offering multi-modal transportation connections (vehicular, bicycle, pedestrian and transit) to the urban core as well as Transylvania University and the BCTC Campus.
 - c. Theme C “Creating Jobs and Prosperity” encourages locating jobs where people live (Goal #, and vice versa, making it easier for citizens to get to employment centers and reduce congestion in the process. The petitioner’s proposed project is situated between the BCTC Campus, Transylvania University and downtown, thus an opportunity exists to provide high density housing near existing jobs and higher education.
 - d. Theme E “Maintaining a Balance between Planning for Urban Uses and Safeguarding Rural Land” also encourages the utilization of underutilized land to uphold the Urban Service Area concept (Goal #1a.) and building in a compact, contiguous, and/or sustainable manner (Goal #1b). The petitioner is redeveloping an underutilized industrial site along West Fourth Street, which has been identified as a focus area for redevelopment in several supporting plans, thus fulfilling the intent of the Comprehensive Plan.
2. The subject properties are located within the boundary of the Central Sector Small Area Plan, adopted by the Planning Commission in 2009. The SAP identifies the Fourth Street corridor west of Jefferson Street as a focus area to better connect the new BCTC campus to Transylvania University.
3. The Downtown Lexington Masterplan recommends maximizing residential density of vacant sites (Recommendation #6), and this proposal furthers that recommendation.

4. The Fourth Street Zoning Study identifies the subject properties as part of a focus area, where an urban mixed-use zone should be created, which is a recommendation that is consistent with the Central Sector Small Area Plan. The Study also described an "opportunity district" for mid-density residential or mid-low density mixed-use development which could create a transition from more intense uses to single-family residences. The proposed R-5 zone will create a higher density and intensity along the West Fourth Street corridor to create a more urban environment, and which will act as a step down in land use (transition) between the more intense uses to the west and north and the single-family residences and church along Blackburn Avenue.
5. This recommendation is made subject to the approval and certification of PLN-MJDP-16-00045: Yellman's Subdivision (Blackburn Avenue), 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 13th day of January, 2017.


 Secretary, Jim Duncan

WILLIAM WILSON
 CHAIR

Note: The corollary development plan, PLN-MJDP-16-00045: YELLMAN'S SUBDIVISION (BLACKBURN AVENUE) was approved by the Planning Commission on December 15, 2016 and certified on December 28, 2016.

Note: Dimensional variances were approved for maximum height requirements, and reductions of front yard, side yard and open space requirements for this request, by the Planning Commission at this hearing.

K.R.S. 100.211(7) requires that the Council take action on this request by March 15, 2017.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Jacob Walbourn, Attorney.**

OBJECTORS

- Faith Harders, 539 West Third St
- Marlee Bauman, 550 West Third St
- Barbara Grossman, 321 Blackburn Ave.
- Mark Klar, 321 Blackburn Ave.

OBJECTIONS

- Increased traffic and parking on narrow street.
- Environmental protection
- Increased traffic and event parking.
- Zone change is inappropriate for this area.

VOTES WERE AS FOLLOWS:

AYES: (8) Berkley, Cravens, Mundy, Owens, Penn, Plumlee, Smith, and Wilson
 NAYS: (0)
 ABSENT: (3) Brewer, Drake, and Richardson
 ABSTAINED: (0)
 DISQUALIFIED: (0)

Motion for **APPROVAL** of **PLN-MAR 16-00019** carried.

Enclosures: Application
 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.)

Applicant: COWGILL PARTNERS LP, 1999 RICHMOND RD STE 2A, LEXINGTON, KY 40502
Owner(s): COWGILL PARTNERS LP, 1999 RICHMOND RD STE 2A, LEXINGTON, KY 40502 TRANSYLVANIA UNIVERSITY, 300 NORTH BROADWAY, LEXINGTON, KY 40508
Attorney: Jacob Walbourn, 201 East Main St, Lexington, KY 40507

2. ADDRESS OF APPLICANT'S PROPERTY

339 BLACKBURN AVE LEXINGTON KY 341 BLACKBURN AVE LEXINGTON KY 345 BLACKBURN AVE LEXINGTON KY 349 BLACKBURN AVE LEXINGTON KY Adjacent former railroad right-of-way

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

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
I-1	Industrial	R-5	Residential apartment	1.49	1.78
B-1	Industrial	R-5	Residential apartment	0.24	0.27
				1.73	2.05

4. 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

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

Roads:	LFUCG
Storm Sewers:	LFUCG
Sanity Sewers:	LFUCG
fuse Collection:	LFUCG
ilities:	<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 31, 2016

Mr. William Wilson, Chairman
Lexington-Fayette Urban County Planning Commission
200 East Main Street
Lexington, Kentucky 40507

RE: Zone Change Application from I-1/B-1 to R-5
339, 341, 345, and 347 Blackburn Avenue and
Former CSX Right-of-Way

Dear Chairman Wilson:

Please be advised that we represent Cowgill Partners LP (“Cowgill”), which is the owner of 339, 341, 345 and 347 Blackburn Avenue in downtown Lexington. We have also been given permission to rezone a portion of the former CSX right-of-way that is owned by Transylvania University. My client desires to rezone the above-mentioned parcels from their current industrial and neighborhood business zoning categories to the High Rise Apartment Zone (R-5). We believe these parcels can be redeveloped to more effectively serve the surrounding neighborhood in accord with the goals and objectives of the 2013 Comprehensive Plan, and that the proposed zoning is appropriate and the present zoning is inappropriate.

As the Commission is surely aware, the western edge of downtown has taken on new life as the Jefferson Street corridor has transformed in recent years. What once consisted of aging housing stock and underutilized land is now a vibrant area where restaurants and bars are flourishing. Too, Transylvania University has expanded the reach of its campus, recently completing an athletics complex directly across the street from the subject site. Bluegrass Community and Technical College has recently taken over the former site of Eastern State Hospital for their Newtown Campus. While some industrial uses persist in the area, there is also a mix of abandoned and underutilized industrial and warehouse property that is crying out for new life.

The zoning pattern in the Fourth Street/Jefferson Street area is a curious mix, with numerous nonconforming uses. The area is predominantly a mix of I-1, R-2 and R-4 zoning. However, the area consists of a handful of industrial uses, several single family houses, and relatively few higher density housing options. There is, however, demand for higher density housing in this area. Apartment living may be popular with those wishing to relocate to a blossoming area of Lexington, but without the responsibilities of caring for a single family home (particularly, an aging single family home). Additionally, due to the close proximity to the University and BCTC, students may also find this to be a popular location.

While there are areas that would permit higher density housing developments, few non-Transylvania owned options have been constructed in the area. In short, we believe higher density housing is both needed, and would be successful in this area.

Further, the suitability of this area for industrial use has decreased in recent years with the changes in the area. While some industrial uses do persist, many of the parcels presently zoned I-1 are small and would not, standing alone, support industrial redevelopment. Also, because of the close proximity to the urban core, these parcels tend to be more expensive, on average, than some of the other industrially zoned areas in our community. Additionally, the Newtown Pike corridor is a significant and important gateway to downtown Lexington, and redevelopment of this area from an industrial character to a more vibrant residential and commercial area will result in beautification of this gateway.

In sum, we believe this is an exciting and needed project for this area. We believe this development, coupled with other completed and planned projects in the area, will continue the transformation of the Jefferson Street corridor to a vibrant area of downtown. Additionally, this project will allow higher density residential uses in a popular area without displacing any existing residents or demolishing any existing residences.

Our conclusions that this rezoning request is in agreement with the 2013 Comprehensive Plan (hereinafter "Comp Plan") and that the present zoning is inappropriate and the proposed zoning is appropriate are based on the following:

Comprehensive Plan

Growing Successful Neighborhoods

Theme A of the Comp Plan embraces several goals regarding residential life in Fayette County. We believe this redevelopment proposal embraces all three Goals articulated in Theme A of the Comp Plan.

Expand housing choices. The objectives of this goal call for housing near employment and commercial areas. This proposal seeks to add needed higher density housing stock in a flourishing area of our community. It provides the opportunity to reside near the urban core, and potentially to "live where you work," as clearly the urban core is a center of Lexington's economy. The site is also near two institutions of higher education (where one may seek employment or further educational opportunity) and a burgeoning commercial area. Finally, it provides for a variety of housing choices. This area's residential selection is, primarily, aging single family houses. This project will provide the additional choice of apartment living in a desirable area.

Support infill and redevelopment throughout the Urban Service Area as a strategic component of growth. This goal is accomplished by identifying areas of opportunity for infill, redevelopment and adaptive reuse that respect the area's context and design features

whenever possible. This project would increase housing density without displacing any current residents. As you are no doubt aware, 95% of Fayette County's population resides within the Urban Services Area ("USA"), and this number is expected to rise by nearly 35,000 people by 2020 (Comp Plan, p. 13). It is anticipated that the USA will reach its capacity within the next 12 to 17 years. Thus, redevelopment is needed to provide housing and services to the ever increasing population within the USA. The Comp Plan calls for quality connections with parks, schools, and stores, and pedestrian friendly streets and amenities (Comp Plan, p. 39). The project is proposed in a highly walkable area, and is adjacent to the Transylvania University Athletics complex and Coolavin Park.

Provide well designed neighborhoods and communities. The Comp Plan calls not only for well-designed new developments, but to provide enhancements to existing neighborhoods to increase their desirability (Comp Plan, p. 38). Our proposed development will add needed residential space that is conveniently located to downtown, BCTC and Transylvania, and the Jefferson Street corridor. Because of the site's proximity to Transylvania and BCTC, it provides a walkable option for students. Additionally, this site is served by LexTran Routes #2 and 4, which will allow residents access to public transportation.

Protecting the Environment

Theme B of the Comp Plan embraces goals related to protecting the environment in Fayette County. We believe this proposal embraces elements of Theme B of the Comp Plan.

Reduce Lexington-Fayette County's carbon footprint. The Comp Plan (p. 50) notes that exhaust from motor vehicles contributes about one-third of our air pollutants. Because of this site's location, reliance on automobile transportation may be reduced. The site is within walking distance or a short bike ride of Transylvania, BCTC, and the Urban Core. Likewise, the site is directly served by Lextran Route #4, which provides service to the Lexmark campus. Because of its prime location, this project will allow residents to use their cars less, which will in turn reduce Lexington's carbon footprint.

Creating Jobs and Prosperity

Theme C of the Comp Plan embraces goals related to continued economic prosperity in Fayette County. We believe this redevelopment proposal embraces elements of Theme C of the Comp Plan.

Support and showcase local assets to further the creation of a variety of jobs. The Comp Plan notes that a variety of employment is necessary to lead to prosperity for all Lexington residents. Further, the Comp Plan emphasizes the importance of living near your workplace (Comp Plan, p. 74). This proposal will allow new employment opportunities for residents that will enable them to walk or ride to work or school. In fact, the Comp Plan includes the following passage:

“Adaptive reuse, infill, and redevelopment are not only about preserving farms and important buildings and making better use of existing infrastructure. They are also about putting jobs where people live. Many of Lexington’s businesses – large and small – can thrive as neighbors in and near neighborhoods. Land use regulations should enable opportunities to live where you work” (Comp Plan, p. 74).

As exhaustively discussed above, the prime location of this site will allow greater residential density in an area with numerous employment opportunities.

Attract the world’s finest jobs, encourage entrepreneurial spirit, and enhance our ability to recruit and retain a talented, creative workforce by establishing opportunities that embrace diversity with inclusion in our community. One way to attract new jobs and young professionals to Lexington is by providing entertainment and other quality of life opportunities that will bring a workforce of all ages and talents to the city. The proposed development will allow members of the working community to patronize businesses downtown and in the Jefferson Street corridor, making Lexington a more desirable place to live. This site is immediately adjacent to the Transylvania University athletics complex and Coolavin Park. It is also near the downtown segment of the Legacy Trail. Higher density residential options near the urban core, recreational opportunities, and a burgeoning commercial corridor will be attractive, particularly to young professionals desiring a more urban living environment, but with convenient access to needed services and recreational opportunities.

Maintaining a Balance Between Planning for Urban Uses and Safeguarding Rural Land

Theme E of the Comp Plan embraces goals related to preserving rural land while encouraging growth. We believe this redevelopment proposal embraces elements of Theme E of the Comp Plan.

Uphold the Urban Services Area concept. This goal requires close monitoring of the absorption of vacant or under-utilized land in the Urban Service Area as well as encouraging the compact, contiguous, and/or mixed-use sustainable development within the Urban Service Area to accommodate future growth needs. This project will allow more support of an existing neighborhood, including the provision of additional housing stock, making it more desirable, and thus reducing the demand for new housing and an expansion of the USA.

The Comp Plan also encourages maintenance of this balance by encouraging infill, redevelopment, and adaptive reuse. The project discussed here would involve both infill and redevelopment concepts. Frankly put, higher density residential development is appropriate near the urban core, and directly responds to changes in the area including the relocation of

BCTC and the revitalization of the Jefferson Street corridor. It utilizes underutilized land and accommodates future growth needs, while not displacing existing residents.

Current Zoning Inappropriate

We also submit that the current I-1 zoning on the site is inappropriate and the proposed R-5 zoning is appropriate. The Jefferson Street revitalization, coupled with the decline of (and inefficiency of) industrial and warehouse uses near the urban core makes I-1 zoning inappropriate. Additionally, because many of the parcels in the immediate area have been subdivided over the years, stand-alone parcels are not appropriate for I-1 redevelopment. Further, the costs of obtaining and assembling the parcels for industrial redevelopment would be high, and potentially, cost prohibitive. In short, while in the past industrial zoning on the “fringes” of downtown may have been more acceptable and appropriate, the development pattern in the area generally has shifted away from industrial development uses. This is particularly evidenced by the presence of numerous residential uses in areas zoned as I-1 in this area.

Higher density residential development is a more appropriate use near Lexington’s urban core. Residential uses can more effectively be deployed given the present lotting pattern in the area, and will serve to further encourage residential and commercial development along this blossoming corridor. Further, the new BCTC and Transylvania improvements to the area have continued to transition this area away from industrial/manufacturing uses. It is a far more appropriate use to allow students, faculty and staff, as well as other downtown workers, to live near their workplace or school. High density downtown development is appropriate, and is indeed, more appropriate than industrial zoning in this area of Lexington.

Variances Requested

As is common with most significant projects near the urban core, a few variances will be required to create a commercially viable, attractive development that functions internally and with the neighborhood. The following variances are requested:

Height Variance – from 4:1 height to yard ratio to 50’ maximum. Because of the constrained nature of the site in an urban environment, maximizing the available building area is a must for an economically viable development. As a practical matter, the 25’ abandoned CSX right-of-way now under the control of Transylvania University can functionally serve as additional yard area, as there are no immediate plans for this site to develop. If considered a part of the yard, this would permit the building to rise to a height of 120’, which is clearly out of character with the general area. By granting the variance, it recognizes the unique circumstance of the abandoned right-of-way, while setting a height that is not out of character with the general area (particularly when compared to the nearby Blue Grass Grain building, the recently approved 10 story Thistle Station development, and

its close proximity to the primary urban core), and allowing an economically viable number of units. There will be no health, safety, or welfare impacts from this variance.

Front Yard Variance and Side Yard Variance – from 20 feet (front yard) and 10 feet (side yard) to 5 feet. As mentioned above, the unique circumstance that applies to this property is the abandoned CSX right-of-way, which buffers the project site from Fourth Street. This provides a larger open space near the site, but is not considered part of the project's yard because it is under separate ownership and not proposed for development at this time. Urban environments typically have smaller building setbacks, and as above, assists with economic viability by maximizing the density and buildable area. There will be no health, safety, or welfare impacts from this variance.

Open Space Variance – from 20% to 15%. This variance is appropriate because of the urban nature of the site. As above, there is a large area of open space in the form of the abandoned right-of-way that cannot be counted towards requirements. Furthermore, there are nearby areas of abundant open space accessible to the public (and thus, residents of this development) in Coolavin Park and the new BCTC campus. There are no health, safety, or welfare impacts to the grant of this variance, and reducing the open space allows for a greater utilization of the site, which increases density and improves economic viability.

Conclusion

As is evidenced by the foregoing, this plan is both in agreement with the 2013 Comprehensive Plan and the proposed zoning is more appropriate than the current industrial and commercial zoning. Allowing a development of this variety provides additional housing density in a transitioning area of Lexington while not displacing current residents. There is a need for additional housing in the area, particularly with the opening of the BCTC campus. Finally, the variances requested are reasonable requests in an urban environment, and should have little impact on the neighborhood.

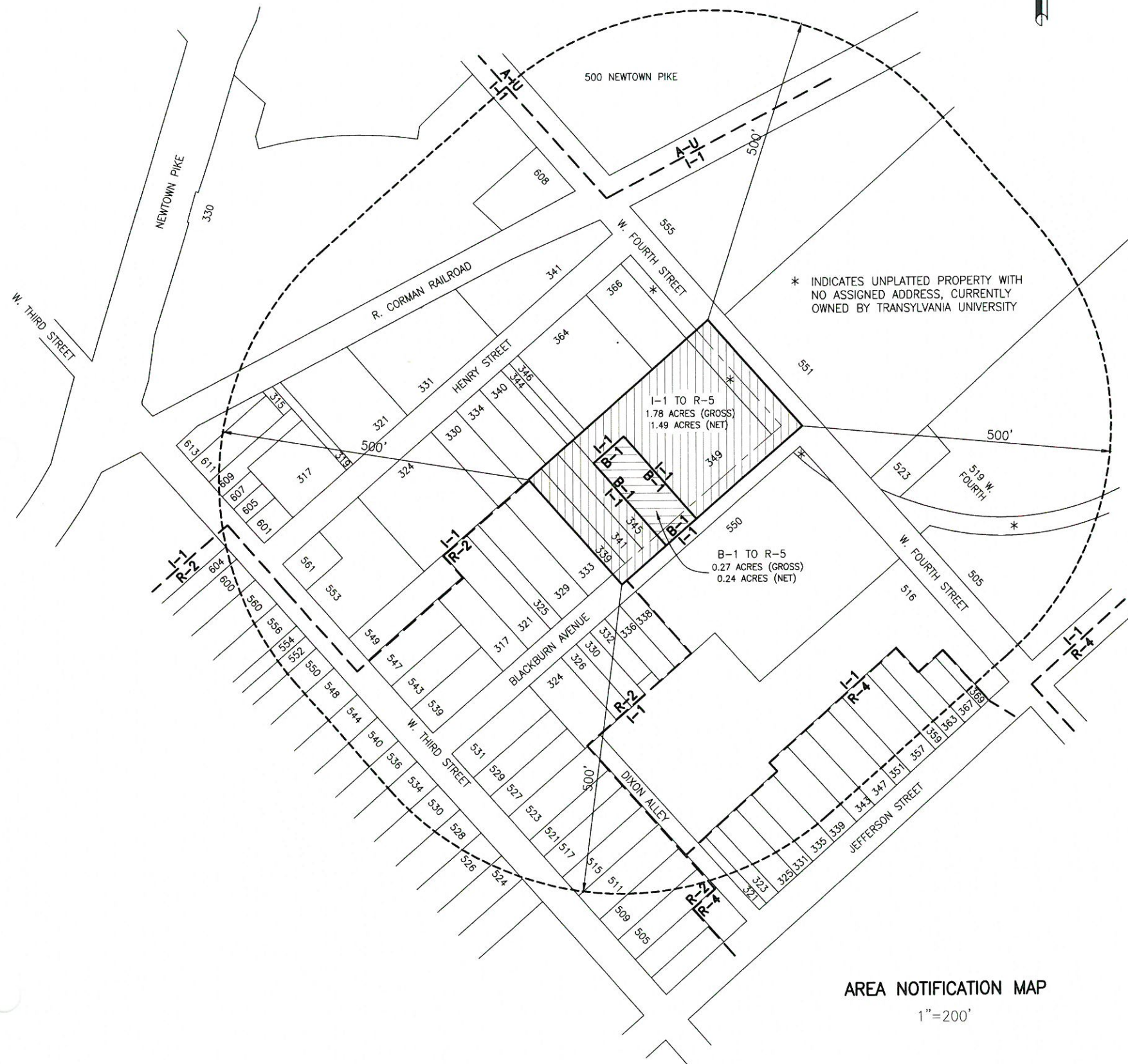
Based on the foregoing, we respectfully request approval of our application as submitted. We look forward to presenting this application to you and discussing it with you. Thank you for your consideration of this request.

Sincerely,

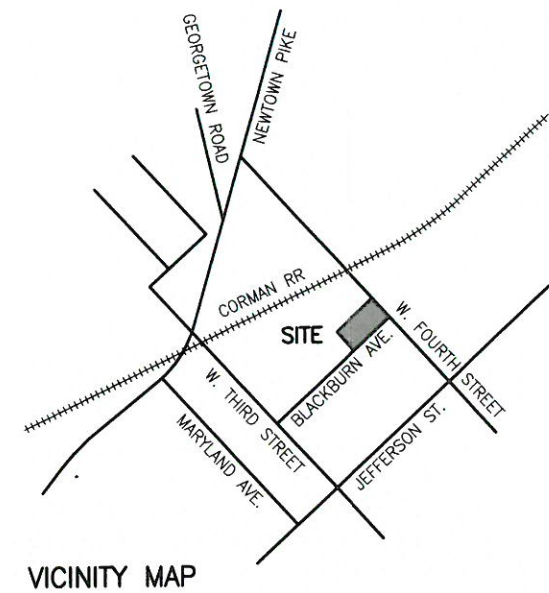


Jacob C. Walbourn
Counsel for Cowgill Partners LP

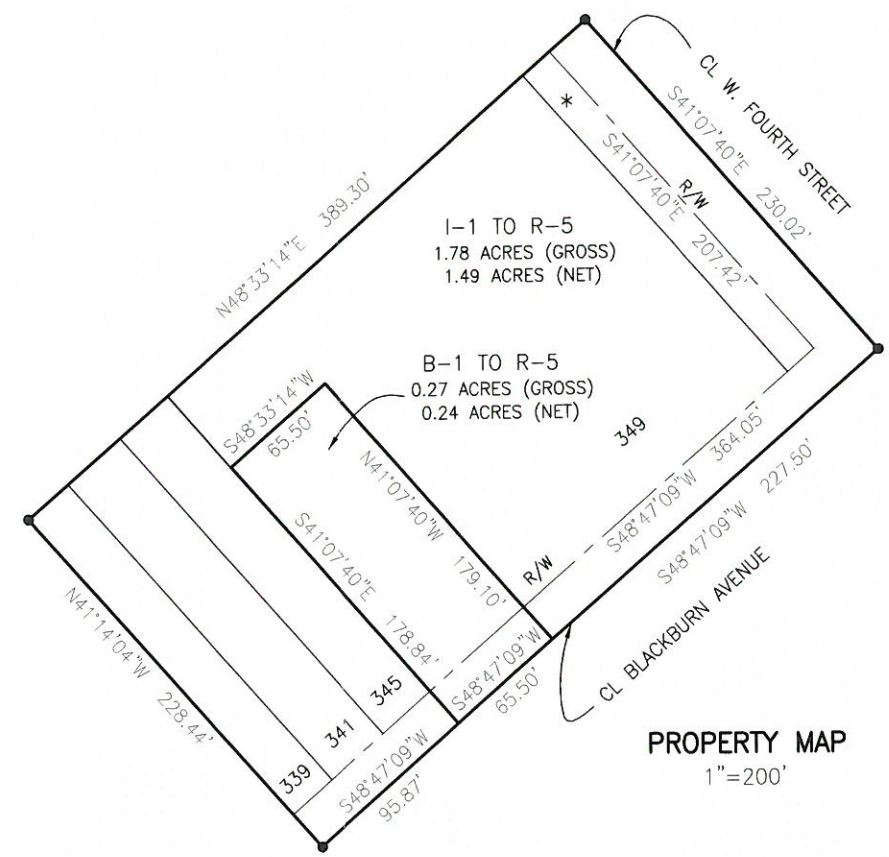
JCW/klm
Enclosures
4833-5510-9179, v. 1



AREA NOTIFICATION MAP
1"=200'



VICINITY MAP



PROPERTY MAP
1"=200'

STATE OF KENTUCKY
WESLEY B. WITT
2187
LICENSED PROFESSIONAL LAND SURVEYOR
Wesley B Witt

ZOMAR: BLACKBURN		FROM	TO	GROSS	NET
PROPERTY ADDRESS: 339, 341, 345, & 349 BLACKBURN AVE.		B-1	R-5	0.27 AC	0.24 AC
APPLICANT: COWGILL PROPERTIES, LP 1999 RICHMOND ROAD, SUITE 2A LEXINGTON, KY 40502		I-1	R-5	1.78 AC	1.49 AC
PREPARED BY: WESLEY B. WITT, INC.					
DATE PREPARED: OCTOBER 31, 2016		TOTAL		2.05 AC	1.73 AC

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

PLN-MAR-16-00019: COWGILL PARTNERS, LP

DESCRIPTION

Zone Change:	Request		Acreages	
	<u>From</u>	<u>To</u>	<u>Net</u>	<u>Gross</u>
	B-1	R-5	0.24	0.27
	I-1	R-5	<u>1.49</u>	<u>1.78</u>
	TOTAL		1.73	2.05

Location: 339, 341, 345 and 349 Blackburn Avenue, and adjacent railroad right-of-way

EXISTING ZONING & LAND USE

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Properties	B-1 & I-1	Warehouse & Parking lot
To North	I-1	Industrial
To East	I-1	Transylvania University athletic Facilities
To South	I-1	Industrial
To West	R-2	Vacant and Single-Family Residential

URBAN SERVICES REPORT

Roads – The subject properties are located on the west side of Blackburn Avenue, a local street (42 feet of right-of-way) that connects West Third and West Fourth Street just to the northeast of downtown. Both West Third and West Fourth Street intersect with Newtown Pike (US 25 & KY 922) to the west of the subject properties. Newtown Pike is an urban major arterial roadway, which extends from downtown to Scott County. Although it appears that West Fourth Street borders the site to the north, a piece of railroad right-of-way, which was recently transferred to Transylvania University, is located along the West Fourth Street right-of-way. Recent improvements and changes along West Fourth Street include modification from one-way travel to two-way travel, and significant sidewalk upgrades from Newtown Pike to Jefferson Street. The petitioner plans to utilize access to Blackburn Avenue about 300 feet from its intersection with West Fourth Street.

Curb/Gutter/Sidewalks – Blackburn Avenue and West Fourth Street both have adequate curbs, gutters, and sidewalks. The Legacy Trail and Town Branch Trail are both planned within the immediate vicinity.

Storm Sewers – This site is located in the Town Branch watershed. No known flooding problems exist within the immediate vicinity of the subject site. Multiple storm sewer lines exist on the subject property and will need to be relocated in order for the development to occur as planned. Stormwater detention may not be required for this redevelopment site; however, water quality will need to be addressed by the developer in accordance with the Engineering Stormwater Manuals.

Sanitary Sewers – The property is located within the Town Branch sewershed, and is served by the Town Branch Wastewater Treatment Facility on Lisle Industrial Avenue. The subject properties are already served by a sanitary sewer line that runs along Blackburn Avenue. However, improvements to the line along West Fourth Street may need to be upgraded to properly serve this proposed high density residential development. The Capacity Assurance Program currently indicates a positive balance in the sewer bank associated with this portion of the Urban Service Area.

Refuse – The local government currently serves this portion of the Urban Service Area with collection on Thursdays. The petitioner may also choose to consider supplemental service from a private refuse hauler for high density apartments.

Police – The nearest police station is the Main Headquarters located on East Main Street, about ¼ mile to the southwest of the subject properties.

Fire/Ambulance – The nearest fire station (#4) is only about two blocks to the southeast of the subject properties, located on Jefferson Street between West Second and West Third Streets.

Utilities – All utilities, including phone, water, gas, electric, and cable television currently serve the subject properties. All should be able to accommodate the proposed change in land use.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan’s mission statement is to “provide flexible planning guidance to ensure that development of our community’s resources and infrastructure preserves our quality of life, and fosters regional planning and economic development.” The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

In addition to the Comprehensive Plan mission statement, the Goals and Objectives of the Plan also encourage growing successful neighborhoods (Theme A), creating jobs and prosperity (Theme C) and maintaining a balance between planning for urban uses and safeguarding rural land (Theme E).

The subject properties are located within the boundary of the *Central Sector Small Area Plan*, the *Downtown Lexington Masterplan* and the *Fourth Street Zoning Study*. Each document suggests further intensification of the near downtown neighborhoods through infill development, where possible; increasing residential density; and encouraging the redevelopment of underutilized properties.

The petitioner proposes to rezone the properties to the R-5 zone in order to construct a multi-family residential building with 72 dwelling units, a density of 41.62 dwelling units per acre, and associated off-street parking. Dimensional variances are also requested in association with the zone change.

CASE REVIEW

The petitioner has requested a zone change from a Neighborhood Business (B-1) zone and a Light Industrial (I-1) zone to a High Rise Apartment (R-5) zone for a total of 1.73 acres of property, located on the west side of Blackburn Avenue, between West Third and West Fourth Streets.

The site is comprised of four parcels and an abandoned railroad right-of-way that are located near the edge of the downtown area, within the Northside neighborhood and National Register Historic District. The site currently has a warehouse/industrial structure, and a open pavement area along the street. This area has historically been characterized by residential and light industrial land uses. However, the land exchange from Eastern State Hospital to Bluegrass Community and Technical College (BCTC) and the subsequent formation of the new BCTC campus have resulted in new redevelopment interest in this portion of the Urban Service Area. In addition, Transylvania University has located its soccer and track & field athletic facilities to the West Fourth Street corridor.

The subject properties are primarily surrounded by Light Industrial (I-1) zoning, with the exception of the properties to the southwest, which are vacant but zoned Two Family Residential (R-2). The site, among several others in the area, was previously served by a railroad spur along the West Fourth Street corridor. The railroad spur has been abandoned, and was recently acquired by Transylvania University.

The petitioner wishes to remove the existing structures and proposes to construct a four-story building for multi-family residential. The building is proposed to have 72 dwelling units, with associated off-street parking to the rear of the property. Several dimensional variances are also requested in association with the zone change to facilitate the redevelopment project.

The 2013 Comprehensive Plan has several goals and objectives that are relevant to the proposed request for rezoning and the proposed redevelopment from Theme A “Growing Successful Neighborhoods,” Theme C “Creating Jobs and Prosperity” and Theme E “Maintaining a Balance between Planning for Urban Uses and Safeguarding Rural Land.” The Plan recommends expanding housing choices, with emphasis on mixed-use and higher density development in certain situations to address a variety of community needs (Goals #1b. and #1d.). It also recommends supporting infill and redevelopment as a strategic component of growth, with focus on context sensitive design (Goal #2a.), and providing well-designed neighborhoods through mixed use and multi-type housing, multi-modal transportation connections (Goals #3a. and #3b.). The Plan also encourages living in close proximity to where one works (Theme C, Goal #1d.), supports the utilization of underutilized land to uphold the Urban Service Area concept (Theme E, Goal #1a.) and building in a compact, contiguous, and/or sustainable manner (Theme E, Goal #1b). The petitioner opines that the zone map amendment request is in compliance with the Comprehensive Plan; in particular, the goals and objective statements cited above.

The subject properties are located within the boundary of the *Central Sector Small Area Plan*, the *Downtown Lexington Masterplan* and the *Fourth Street Zoning Study*. Each document suggests further intensification of the near downtown neighborhoods through infill development, where possible; increasing residential density; and encouraging the redevelopment of underutilized properties.

The *Central Sector Small Area Plan*, an adopted element of the Comprehensive Plan, identifies the subject properties within Subarea C. Within the text of the Plan for Subarea C, Fourth Street was identified as a focus area due to its proximity to the BCTC Campus and the presence of underutilized land. The SAP recommended developing a new zoning category for mixed-use development that includes development and design standards that are appropriately scaled, which could be utilized within the area. Although not located within the focus area, which has now been redeveloped by Transylvania University for athletic fields, staff believes the recommendation should at least be considered along the east side of West Fourth Street as well.

Although the recommendations are not binding, the *Downtown Lexington Masterplan* and the *Fourth Street Zoning Study* can further inform the Planning Commission’s consideration of the petitioner’s request for rezoning. The *Downtown Lexington Masterplan*, which identifies the property within the Northside neighborhood on the northeast edge of downtown, also notes that “there are very few infill opportunities within this area” (page 54). The *Masterplan* more generally recommends maximizing residential density of vacant sites (Recommendation #6). The *Fourth Street Zoning Study* is a recently completed study for the area in close proximity to the new BCTC campus on Newtown Pike, the area along Jefferson Street, and the West Fourth Street corridor connecting the two areas. The subject property is identified as part of a focus area where an urban mixed-use zone should be created, which is a recommendation that is consistent with the *Central Sector Small Area Plan*. The east side of Fourth Street, where a conflict exists between industrial land use and residential land use, the *Study* also described an “opportunity district” for mid-density residential or mid-low density mixed-use development which could create a transition from more intense uses to the north and west to the existing single-family residences and church along Blackburn Avenue.

Collectively, the plans support residential infill and redevelopment and elimination of the existing industrial land uses along the West Fourth Street corridor. The petitioner’s applicant is consistent with these recommendations, albeit possibly more dense than envisioned by the Plans. The petitioner has situated the proposed building very near the street and placed parking to the rear of the building to support the urban environment and improve the urban streetscape.

The petitioner contends that the proposed High Rise Apartment (R-5) zone is in agreement with the 2013 Comprehensive Plan since it supports several of the Goals and Objectives states. The staff agrees, and also finds that it is consistent with the *Central Sector Small Area Plan* which calls for redevelopment in this area, and much of the more recent *Fourth Street Zoning Study performed for this area*.

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

1. The proposed High Rise Apartment (R-5) zone is in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. Theme A “Growing Successful Neighborhoods” recommends expanding housing choices, with emphasis on mixed-use and higher density development in certain situations to address a variety of community needs (Goals #1b. and #1d.). It also recommends supporting infill and redevelopment as a strategic component of growth, with focus on context sensitive design (Goal #2a.), and providing well-designed neighborhoods through mixed use and multi-type housing, and multi-modal transportation connections (Goals #3a. and #3b.).
 - b. The petitioners proposed zone change will enable redevelopment of an industrial site in the near downtown Northside neighborhood, very close the West Fourth Street corridor between Newtown Pike and Jefferson Street. The petitioner’s proposed project will provide additional housing options for the area Newtown Pike corridor in a context-sensitive manner, while offering multi-modal transportation connections (vehicular, bicycle, pedestrian and transit) to the urban core as well as Transylvania University and the BCTC Campus.
 - c. Theme C “Creating Jobs and Prosperity” encourages locating jobs where people live (Goal #, and vice versa, making it easier for citizens to get to employment centers and reduce congestion in the process. The petitioner’s proposed project is situated between the BCTC Campus, Transylvania University and downtown, thus an opportunity exists to provide high density housing near existing jobs and higher education.
 - d. Theme E “Maintaining a Balance between Planning for Urban Uses and Safeguarding Rural Land” also encourages the utilization of underutilized land to uphold the Urban Service Area concept (Goal #1a.) and building in a compact, contiguous, and/or sustainable manner (Goal #1b). The petitioner is redeveloping an underutilized industrial site along West Fourth Street, which has been identified as a focus area for redevelopment in several supporting plans, thus fulfilling the intent of the Comprehensive Plan.
2. The subject properties are located within the boundary of the Central Sector Small Area Plan, adopted by the Planning Commission in 2009. The SAP identifies the Fourth Street corridor west of Jefferson Street as a focus area to better connect the new BCTC campus to Transylvania University.
3. The *Downtown Lexington Masterplan* recommends maximizing residential density of vacant sites (Recommendation #6), and this proposal furthers that recommendation.
4. The *Fourth Street Zoning Study* identifies the subject properties as part of a focus area, where an urban mixed-use zone should be created, which is a recommendation that is consistent with the *Central Sector Small Area Plan*. The *Study* also described an “opportunity district” for mid-density residential or mid-low density mixed-use development which could create a transition from more intense uses to single-family residences. The proposed R-5 zone will create a higher density and intensity along the West Fourth Street corridor to create a more urban environment, and which will act as a step down in land use (transition) between the more intense uses to the west and north and the single-family residences and church along Blackburn Avenue.
5. This recommendation is made subject to approval and certification of PLN-MJDP-16-00045: Yellman’s Subdivision (Blackburn Avenue), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

TLW/WLS
12/1/2016

Planning Services/Staff Reports/2016/MAR/PLN-MAR-16-00019.doc

6. COWGILL PARTNERS, LP ZONING MAP AMENDMENT & YELLMAN'S SUBDIVISION

- a. PLN-MAR-16-00019: COWGILL PARTNERS, LP (1/29/17)* – petition for a zone map amendment from Light Industrial (I-1) zone to a High Rise Apartment (R-5) zone, for 1.49 net (1.78 gross) acres, and from a Neighborhood Business (B-1) zone to a High Rise Apartment (R-5) zone, for 0.24 net (0.27 gross) acres, for properties located at 339, 341, 345, and 349 Blackburn Avenue and adjacent former railroad right-of-way.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

In addition to the Comprehensive Plan mission statement, the Goals and Objectives of the Plan also encourage growing successful neighborhoods (Theme A), creating jobs and prosperity (Theme C) and maintaining a balance between planning for urban uses and safeguarding rural land (Theme E).

The subject properties are located within the boundary of the *Central Sector Small Area Plan*, the *Downtown Lexington Masterplan* and the *Fourth Street Zoning Study*. Each document suggests further intensification of the near downtown neighborhoods through infill development, where possible; increasing residential density; and encouraging the redevelopment of underutilized properties.

The petitioner proposes to rezone the properties to the R-5 zone in order to construct a multi-family residential building with 72 dwelling units, a density of 41.62 dwelling units per acre, and associated off-street parking. Dimensional variances are also requested in association with the zone change.

The Zoning Committee Recommended: Approval.

The Staff Recommends: Approval, for the following reasons:

1. The proposed High Rise Apartment (R-5) zone is in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. Theme A "Growing Successful Neighborhoods" recommends expanding housing choices, with emphasis on mixed-use and higher density development in certain situations to address a variety of community needs (Goals #1b. and #1d.). It also recommends supporting infill and redevelopment as a strategic component of growth, with focus on context sensitive design (Goal #2a.), and providing well-designed neighborhoods through mixed use and multi-type housing, and multi-modal transportation connections (Goals #3a. and #3b.).
 - b. The petitioners proposed zone change will enable redevelopment of an industrial site in the near downtown Northside neighborhood, very close the West Fourth Street corridor between Newtown Pike and Jefferson Street. The petitioner's proposed project will provide additional housing options for the area Newtown Pike corridor in a context-sensitive manner, while offering multi-modal transportation connections (vehicular, bicycle, pedestrian and transit) to the urban core as well as Transylvania University and the BCTC Campus.
 - c. Theme C "Creating Jobs and Prosperity" encourages locating jobs where people live (Goal #, and vice versa, making it easier for citizens to get to employment centers and reduce congestion in the process. The petitioner's proposed project is situated between the BCTC Campus, Transylvania University and downtown, thus an opportunity exists to provide high density housing near existing jobs and higher education.
 - d. Theme E "Maintaining a Balance between Planning for Urban Uses and Safeguarding Rural Land" also encourages the utilization of underutilized land to uphold the Urban Service Area concept (Goal #1a.) and building in a compact, contiguous, and/or sustainable manner (Goal #1b). The petitioner is redeveloping an underutilized industrial site along West Fourth Street, which has been identified as a focus area for redevelopment in several supporting plans, thus fulfilling the intent of the Comprehensive Plan.
2. The subject properties are located within the boundary of the Central Sector Small Area Plan, adopted by the Planning Commission in 2009. The SAP identifies the Fourth Street corridor west of Jefferson Street as a focus area to better connect the new BCTC campus to Transylvania University.
3. The *Downtown Lexington Masterplan* recommends maximizing residential density of vacant sites (Recommendation #6), and this proposal furthers that recommendation.
4. The *Fourth Street Zoning Study* identifies the subject properties as part of a focus area, where an urban mixed-use zone should be created, which is a recommendation that is consistent with the *Central Sector Small Area Plan*. The *Study* also described an "opportunity district" for mid-density residential or mid-low density mixed-use development which could create a transition from more intense uses to single-family residences. The proposed R-5 zone will create a higher density and intensity along the West Fourth Street corridor to create a more urban environment, and

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

which will act as a step down in land use (transition) between the more intense uses to the west and north and the single-family residences and church along Blackburn Avenue.

5. This recommendation is made subject to approval and certification of PLN-MJDP-16-00045: Yellman's Subdivision (Blackburn Avenue), 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. REQUESTED VARIANCES

1. Increase the maximum height from a 4:1 height-to-yard ratio to 50'
2. Reduce the minimum front yard from 20' to 5' along Blackburn Avenue
3. Reduce the minimum side yard from 10' to 5'
4. Reduce the minimum open space from 20% to 15%

The Staff Recommends: Postponement of the requested front yard variance from 20' to 5', and for a reduction of required open space from 20% to 15%, for the following reasons:

- a. The open space areas proposed are not defined as to their purpose or usability, which is needed prior to a substantive recommendation on the granting of a variance to this minimum requirement of the R-5 zone.
- b. The proposed building near the corner of West Fourth Street and Blackburn Avenue might be able to provide some balconies or a small rooftop area, which could permit the development to meet the minimum 20% requirement for useable open space. Required open space also provides room for the 30% required tree canopy for the site.
- c. The new Building, as proposed, can be redesigned on the site to meet a 10' front yard along Blackburn Avenue.

The Staff Recommends: Approval of a height variance to 50', and approval of the requested side yard variance from 10' to 5', for the following reasons:

- a. There will be no adverse health, safety or welfare impact to the adjoining neighborhood from these variances. The height variance is reasonable, given the applicant's hope to maximize the provision of off-street parking for their 72-unit development.
- b. The unusual circumstance surrounding the proposed R-5 property is that it is bordered by an open space parcel, formerly a railroad spur, now controlled by Transylvania University. That open space lot requires no meaningful separation from the proposed residential building on the subject site.
- c. Strict application of the Zoning Ordinance would deprive the applicant from a reasonable use of this formerly industrial site, since the former railroad spur separating this location from West Fourth Street results in a much greater setback from the street. The applicant believes that this project is infeasible without the granting of these variances.
- d. Approval of these variances would not result in an unreasonable circumvention of the Zoning Ordinance, as the height and orientation of this building will not be unlike the Blue Grass Grain building located one block to the west of this location on Henry Street.
- e. The variances have been requested prior to construction and development of the property, and thus, there is no willful violation of any existing zoning regulation by the applicant.

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

1. Provided the Urban County Council rezones the property R-5; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
4. The parking lot shall be screened and landscaped as required by Article 18 of the Zoning Ordinance.
- c. PLN-MJDP-16-00045: YELLMAN'S SUBDIVISION (BLACKBURN AVENUE) (1/29/17)* - 341 Blackburn Avenue.
(Carman & Associates)

The Subdivision Committee Recommended: Postponement. There were some questions regarding the required building setbacks, compliance with the minimum open space and Article 18 landscaping requirements.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property R-5; 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. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Addition of total square footage of the proposed building.
7. Denote number of stories and proposed height of building in feet.
8. Delete note #12.
9. Provided the Planning Commission grants the requested variances.

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

10. Document how the proposed open space is being provided on site.
11. Discuss conceptual storm water detention and water quality measures.
12. Discuss compliance with Article 18 requirements.
13. Discuss proposed floor area ratio.
14. Discuss compliance with Fourth Street Study recommendations.

Staff Zoning Presentation – Ms. Wade presented and summarized the staff report on this zone change. She displayed aerial photographs of the subject property.

Commission Comments – There was a question regarding the justification to do away with the Light Industrial (I-1) land. Ms. Wade replied that the I-1 zone is not as desirable near a single family residential neighborhood. She said that near the downtown area, a mixture of commercial, office, and residential is encouraged. There was a comment that the railroad access to this community is no longer available to benefit the industrial land.

Development Plan Presentation – Mr. Martin presented a rendering and the updated staff report on this development plan, which was displayed and handed out to the Commission with these conditions, as follows:

The Staff Recommends: **Approval**, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property R-5; 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. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Delete note #12.
7. Provided the Planning Commission grants the requested variances, or revise the plan accordingly.
8. Document how the proposed open space is being provided on site, prior to certification.
9. Denote that planned storm water detention and water quality measures shall be determined at the time of the Final Development Plan.
10. Demonstrate compliance with Article 18 requirements prior to certification.
11. Denote floor area ratio in the site statistics.
12. Denote that compliance with Fourth Street Study recommendations shall be determined at the time of the Final Development Plan.

He said that there are four variance associated with the property that have a significant impact; a height, front yard, side yard, and an open space. He said that one condition needs to be documented of how the applicant plans to meet the open space requirement.

Dimensional Variance – Mr. Sallee presented the staff report on the requested variances for this development, which was handed out to the Commission with the staff's revised recommendation, as follows:

The Staff Recommends: **Postponement Disapproval of the requested front yard variance from 20' to 5', and for a reduction of required open space from 20% to 15%**, for the following reasons:

- a. The open space areas proposed are not defined as to their purpose or usability, which is needed prior to a substantive recommendation on the granting of a variance to this minimum requirement of the R-5 zone.
- b. The proposed building near the corner of West Fourth Street and Blackburn Avenue might be able to provide some balconies or a small rooftop area, which could permit the development to meet the minimum 20% requirement for useable open space. Required open space also provides room for the 30% required tree canopy for the site.
- c. The new Building, as proposed, can be redesigned on the site to meet a 10' front yard along Blackburn Avenue.

The Staff Recommends: **Approval of a height variance to 50', approval of a front yard variance from 20' to 10', and approval of the requested side yard variance from 10' to 5'**, for the following reasons:

- a. There will be no adverse health, safety or welfare impact to the adjoining neighborhood from these variances. The height variance is reasonable, given the applicant's hope to maximize the provision of off-street parking for their 72-unit development.
- b. The unusual circumstance surrounding the proposed R-5 property is that it is bordered by an open space parcel, formerly a railroad spur, now controlled by Transylvania University. That open space lot requires no meaningful separation from the proposed residential building on the subject site.
- c. Strict application of the Zoning Ordinance would deprive the applicant from a reasonable use of this formerly industrial site, since the former railroad spur separating this location from West Fourth Street results in a much greater setback from the street. The applicant believes that this project is infeasible without the granting of these variances.

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

- d. Approval of these variances would not result in an unreasonable circumvention of the Zoning Ordinance, as the height and orientation of this building will not be unlike the Blue Grass Grain building located one block to the west of this location on Henry Street.
- e. The variances have been requested prior to construction and development of the property, and thus, there is no willful violation of any existing zoning regulation by the applicant.

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

1. Provided the Urban County Council rezones the property R-5; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
4. The parking lot shall be screened and landscaped as required by Article 18 of the Zoning Ordinance.

Mr. Sallee said that the required open space area could also provide room for the minimum tree canopy coverage for the development.

Commission Comments – There were comments regarding the open space and the amount required to obtain approval from the staff.

Petitioner Presentation – Jacob Walbourn, attorney, was present representing the petitioner. He said that the applicant is in agreement with the staff's recommendations. He believes that the open space is not vitally necessary because of the provided tangible amenities; pool, outdoor grill space, etc. Their site is located a block and half away from Coolavin Park, which contains three bicycle polo courts. He also said that the Legacy Trail is set to come down West Fourth Street in the future.

Commission Comments – There were comments regarding open space and the tree canopy requirement may not be reached. There was a question regarding the Legacy Trail and its location. Mr. Walbourn said that currently there are two proposed areas that the trail could be built on; one of them is on Third St. and the other is on Fourth St. There was also a question of who maintains the strip of land near Transylvania University and if the opportunity to purchase it has ever been discussed. Mr. Walbourn said that the University does maintain it and that it has been discussed to purchase, which is highly unlikely.

The following citizens were present in opposition to this application:

Faith Harders, 539 West Third St., commented on the Fourth Street Study that was completed in 2014, is appropriate and the Central Small Sector Area Plan. She displayed photos and said that Blackburn Avenue currently acts like a one lane two way street, there is parking on both sides of the street. She believes that this is too high density for this area.

Marlee Bauman, 550 West Third St., she has concerns regarding how protecting the environment would be incorporated into this plan. She also asked when the subject was last up for sale.

Barbara Grossman, 321 Blackburn Ave., she said that this property is currently used for parking for Transylvania events. She also stated that this is a one lane, two way road. She has concerns has parking on the street and of this property being turned over to BCTC as student housing. She also asked if the property at 333 Blackburn Avenue has already been purchased by the Cowgill's.

Mark Klar, 321 Blackburn Ave., distributed a handout of a map and displayed photos. He said that he believes this zone change is inappropriate for this neighborhood. He also agreed that the Fourth Street Study is appropriate and that the mixed-use and low to medium density housing will be more suitable. He submitted petitions to the Planning Commission.

Petitioner Rebuttal – Mr. Walbourn said that Mr. Cowgill is intending to purchase the two vacant adjacent to the subject property, but they are not included in this zone change. He said that there are no current plans for this to become student housing. He said that the Technical Committee had discussed making Blackburn Avenue a "No Parking" on the side of the applicant's. He commented on protecting the environment that not every element of the Comprehensive Plan is met on every development. He said that there are guideline and requirements that need to be met. He said that this property was purchased in 2013 as I-1. He clarified that open space is not open community oriented space; it's designed to serve the residents of the particular development.

Citizen Rebuttal – Mr. Klar said the Transylvania athletic field is not open space. Ms. Harders stated that the warehouse was once a fertilizer plant/storage space and is concerned that the property may be contaminated. She also said that parking can't be limited to one side on Blackburn Ave. because many residents don't have off-street parking.

Staff Rebuttal – Ms. Wade explained that the Fourth Street Study identified the following for this district:

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

1. Adaptive re-use of industrial properties where relevant
2. Mid-Low density Mixed-Use
3. Mid-Density residential, may involve Infill & Redevelopment Guidelines

Ms. Wade said the Planning Commission has not adopted the Fourth Street Study; it is advisory to the staff.

Mr. Sallee said the staff is agreeable to permit balconies as open space on the top three levels of the building. He said that the environmental issues mentioned by the citizens will be reviewed for compliance at the time of a Final Development Plan.

Ms. Kaucher, Division of Traffic Engineering, said that the on-street parking conditions were discussed at the Technical Committee, as was the planned trail near this proposed property. She believed that the on street parking should be provided.

Commission Comments – There was a question of how to address the parking issue at this time. Ms. Kaucher replied that there could be a right-of-way dedication along the frontage of Blackburn Avenue. There was concern that if the right-of-way is dedicated would that effect the open space. Ms. Kaucher said that it would affect the open space but the parking is needed for residents and guests. There was another question of how many spaces could be provided along this frontage. Ms. Kaucher replied that it would 10-15 additional parking spaces.

Mr. Walbourn said that the applicant is not opposed to the right-of-way dedication on Blackburn but doing so will cost them to lose 20 parking spaces within the development.

Zoning Action – A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 8-0 (Brewer, Drake, and Richardson absent) to approve PLN-MAR-16-00019: COWGILL PARTNERS, LP, for the reasons provided by the staff.

Development Plan Action – A motion was made by Mr. Cravens, seconded by Mr. Penn, carried 8-0 (Brewer, Drake, and Richardson absent) to approve PLN-MJDP-16-00045: YELLMAN'S SUBDIVISION (BLACKBURN AVENUE), for the reasons provided by the staff.

Requested Variance Action – A motion was made by Mr. Cravens, seconded by Ms. Mundy, carried 7-1 (Berkley opposed; Brewer, Drake, and Richardson) to approve three of the four requested variances, for the revised reasons, and as recommended by the staff.

