

2. **DOUG CHARLES ZONING MAP AMENDMENT & PLEASANT RIDGE SUBDIVISION, LOT A, ZONING DEVELOPMENT PLAN**

- a. **MARV 2015-2: DOUG CHARLES (4/5/15\*)** - petition for a zone map amendment from a Highway Service Business (B-3) zone to a Neighborhood Business (B-1) zone, for 0.345 net (0.465 gross) acre, for property located at 2100 Liberty Road.

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

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

1. The proposed zone change to a Neighborhood Business (B-1) zone is supported by several Goals and Objectives of the 2013 Comprehensive Plan, including:
  - a. Theme A (*Growing Successful Neighborhoods*), Goal 2, Objective a., which states: "Identify areas of opportunity for infill, redevelopment and adaptive reuse that respect the area's context and design features whenever possible." The petitioner is adaptively re-using an existing building for a new use, while improving the character of the area through traffic management and landscaping improvements.
  - b. Theme C (*Creating Jobs and Prosperity*), Goal 1, Objective d., which encourages the creation of jobs near where people live. The property is located very near residential neighborhoods, and will provide a support or service use in the area that is not currently available.
2. *Chapter 7: Maintaining Balance Between Planning for Urban Uses and Safeguarding Rural Land* of the 2013 Comprehensive Plan supports the proposed reuse and renovation of an underperforming property inside the Urban Service Area, which, in turn, protects the community's rural land.
3. The requested Neighborhood Business (B-1) zone is appropriate for this location since the B-3 zone is one of the community's most intense business zones, and is generally not encouraged very near residential areas. On the other hand, the proposed adult day care center is a support or service business, the owner of which has a desire to locate near residential development, so that the use can serve the nearby residential area.
4. The Neighborhood Business (B-1) zone would provide an appropriate land use transition between the highway-oriented businesses along New Circle Road and the residential land uses further to the east of this location, promoting the Plan's emphasis on protecting existing neighborhoods.
5. This recommendation is made subject to the approval and certification of ZDP 2015-11: Pleasant Ridge Subdivision, Lot A, 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. Reduce the property perimeter landscape buffer along the southern property line from 5' to 0' without a fence where the existing building abuts the property line.
2. Reduce the property perimeter landscape requirement for trees spaced every 40 feet, to trees spaced every 80 feet, along the southern boundary.

The Staff Recommends: **Approval of the requested landscape variances along the southern property line**, for the following reasons:

- a. Granting the requested variances, along one property line, will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The proposed landscaping (although less than required) will be an improvement to the general area, which is devoid of any landscaping at present.
- b. There are special circumstances that apply to this property that do not generally apply to land in the general vicinity: 1) there is an existing non-conforming business use on an adjacent residentially zoned property, which is a more intense use than proposed by this applicant; and 2) there are existing impediments on the subject property that greatly restrict the applicant from installing the full extent of the required landscaping, including a shared access drive, a large KU utility easement, and an existing building, which is very close to the southern property line.
- c. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship for the applicant because of the limited space available on the property boundary for the required four trees. Based on the professional recommendation of the applicant's landscape architect, two medium trees will be able to survive due to the existing amount of paving on this site. The staff agrees that requiring extensive redevelopment of the site would result in a hardship to the applicant, given the existing easements and other site improvements existing on the property.
- d. The circumstances surrounding the requested variances are not the result of prior actions taken by this applicant, as no construction (or even building demolition) has yet occurred on the subject site.

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

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval of this variance is null and void.



2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
  3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
- c. ZDP 2015-11: PLEASANT RIDGE SUBDIVISION, LOT A (4/5/15)\*- located at 2100 Liberty Road  
(Council District 7) (EA Partners)

The Subdivision Committee Recommended: Postponement. There are questions regarding vehicular access, compliance with Articles 18 & 26, and a building encroachment in the existing easements.

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

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote non-conformity of building line.
7. Document compliance with interior and perimeter (adjacent to R-1B zone) landscape requirements of Article 18.
8. Document that proposed access meets the requirements of the Kentucky Transportation Cabinet.
9. Document that proposed (pavement and landscaping) improvements in the right-of-way will meet Kentucky Transportation Cabinet requirements.
10. Resolve location of solid waste dumpster.
11. Resolve existing building encroachment in utility easement.
12. Eliminate fence in right-of-way.
13. Resolve tree canopy requirements per Article 26.

Zoning Presentation: Ms. Wade presented the staff report for this zoning map amendment request, beginning by briefly orienting the Commission to the location of the subject property. It is on the south side of Liberty Road, approximately 350' east of the New Circle Road/Liberty Road intersection. She said that the subject property is bordered on its east and west boundaries by other B-3 zoning and uses, with an auto parts store to the west and a vehicular sales lot to the east. Property across Liberty Road is zoned I-1, and contains an existing utility substation. The property to the south is zoned R-1B, so that boundary would typically require zone-to-zone screening. The petitioner has requested a variance to that screening requirement. Ms. Wade noted that, although that property to the south is zoned residential, it has been occupied by a non-conforming commercial use for some time.

Referring to an aerial photograph of the subject property, Ms. Wade noted that it is completely developed, and there will be very little open space. She displayed the following additional photographs of the property: 1) a closer view of the property, noting that, due to its previous use as a vehicle repossession lot, it is surrounded by an 8' chain link fence; 2) a view of the existing structure on the property; 3) the 8' chain link fence; 4) a view from Liberty Road, looking toward the rear of the property; 5) the west side of the property, where an access easement is located and connects to Wilderness Road; 6) a view from Liberty Road, noting the adjacent automobile sales lot; 7) the area at the rear of the lot proposed for a landscaping variance; 8) a view of the subject property from the rear corner.

Ms. Wade stated that the petitioner is proposing to rezone the subject property to B-1 in order to occupy the existing structure for an adult day care facility, which is a relatively new use in the Zoning Ordinance. In 2013, the Planning Commission and Urban County Council considered a text amendment to define "adult day care center," and to identify the zones in which that use would be permitted. The existing B-3 zone was not identified as one of the zones to allow adult day care centers as a principal use, but the B-1 zone was. Ms. Wade said that the petitioner indicated an intent to serve up to 24 persons at the adult day care facility, which goes along with the proposal of eight parking spaces on the corollary zoning development plan.

Ms. Wade stated, with regard to the 2013 Comprehensive Plan, that the petitioner identified three Goals & Objectives that they believe will be met with this application: growing successful neighborhoods; creating jobs and prosperity; and utilizing underperforming property. The petitioner contends that the proposed rezoning can help to grow successful neighborhoods by identifying an area of opportunity for infill & redevelopment and adaptive reuse. They also contend that utilizing the subject property for an adult day care center will create jobs and prosperity by providing new jobs near the existing residential subdivisions in the immediate vicinity of the property. They also contend that using an underutilized property can help to protect the Rural Service Area. Ms. Wade said that the staff believes that the proposed B-1 zone is more appropriate at this location, and the existing B-3 zone is less appropriate. Liberty Road is a minor arterial roadway, and B-3 zoning is typically located on major arterial corridors. B-1 zones are also typically located nearer to existing residential areas. The adult day care will provide a service that can be used by the residents of the adjacent residential area, as well as serving as a transition between the residential area and the

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\* - Denotes date by which Commission must either approve or disapprove request.



businesses on New Circle Road. The staff and the Zoning Committee recommended approval of this rezoning request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, noting that it was filed as a final development plan. It has been revised since the time of the Subdivision Committee, so a revised recommendation was distributed to the Commission members prior to the start of the hearing.

Mr. Martin referred to a rendered development plan, noting the location of the existing structure on the subject property, as well as an existing metal storage building, access easement, and utility easement on the property. The plan proposes eight parking spaces, with a slight encroachment into Liberty Road, which is state right-of-way. Mr. Martin noted that the plan does not depict improvements to the Liberty Road access point, based on conversations with the Kentucky Transportation Cabinet (KYTC) District 7 staff, indicating that that section of Liberty Road is proposed for improvement in the near future.

Mr. Martin said that the staff's initial recommendation of postponement was based on two concerns: the need for a variance to Article 18, and the need for a waiver to Article 26-5, which regulates the minimum tree canopy requirement. He explained that, in this instance, the site is fully developed; it has existing buildings and pavement, and very little green space. In conversations with the petitioner's landscape architect, it was determined that the petitioner could plant some trees on the property, but not enough to meet the full canopy requirement of Article 26.

Mr. Martin stated that the staff had distributed copies of their report on the petitioner's request for a waiver to Article 26-5 of the Zoning Ordinance, from a 3,000 square-foot canopy to a 900 square-foot canopy. The petitioner proposes to accomplish that by planting small and medium-sized trees that will require less area over time. The staff believes that some additional canopy on the property would be beneficial, so they are recommending approval of the requested waiver.

Mr. Martin stated that the following revised conditions had been distributed to the Commission prior to the start of the hearing:

1. Provided the Urban County Council rezones the property B-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
- ~~6. Denote non-conformity of building line.~~
- ~~6.7. Document compliance with interior and perimeter (adjacent to R-1B zone) landscape requirements of Provided the Planning Commission approves a variance to Article 18 of the Zoning Ordinance.~~
- ~~7.8. Document that proposed access meets the requirements of the Kentucky Transportation Cabinet.~~
- ~~8.9. Document Denote that proposed (pavement and landscaping) improvements in the right-of-way will need to meet Kentucky Transportation Cabinet requirements, prior to issuance of any Zoning Compliance Permit.~~
- ~~9.40. Resolve location of solid waste dumpster.~~
- ~~10.44. Resolve existing building Denote: Documentation of an encroachment in utility easement agreement will be provided to the Division(s) of Building Inspection and Planning prior to issuance of a Zoning Compliance Permit.~~
- ~~12. Eliminate fence in right of way.~~
- ~~11.43. Resolve Provided the Planning Commission approves a waiver to Article 26-5 of the Zoning Ordinance for minimum tree canopy requirements per.~~

Mr. Martin said that condition #8 refers to the staff's recommendation requiring the approval of the KYTC District 7 staff prior to the issuance of a zoning compliance permit. Condition #10 refers to the need to document encroachment agreements in the existing utility easement. Mr. Martin stated that the staff is recommending approval of this plan, subject to the listed conditions.

Commission Question: Ms. Plumlee asked, with regard to condition #9, where the dumpster would be located on the subject property. Mr. Martin answered that it was likely that the petitioner would not need a dumpster, which would require documentation to the staff indicating that no dumpster would be required.

Variance Report: Mr. Emmons presented the staff report on the requested variance to the landscape buffer requirement along the southern property line. Referring to a photograph of the subject property, he explained that the petitioner is requesting a variance to reduce the minimum landscaping required along that property line, which borders a single-family residential zone. However, that adjoining property, although zoned for residential use, has been the site of a non-conforming used car lot for some time. In addition, the boundary is approximately 120' in length, but about half of the length is encumbered by either an access easement; an existing building on the subject property; or the



overhead utility easement. Mr. Emmons said that those special circumstances provide a justification for granting the requested variance.

Mr. Emmons explained that the Zoning Ordinance would require four trees to be planted along the property boundary; the petitioner is requesting to vary that requirement in order to plant two medium-sized trees. The petitioner contends that the amount of existing pavement on the property could make it inhospitable to new tree plantings, with which the staff agrees. Mr. Emmons said that the staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda, subject to the four conditions as listed.

**Petitioner Representation:** Rory Kahly, EA Partners, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations.

Mr. Kahly noted, with regard to Ms. Plumlee's question about condition #9, that a dumpster will not be required on the subject property. The petitioner has contracted with a private contractor to provide solid waste removal, and is prepared to provide documentation to that effect to the staff.

**Citizen Comment:** There were no citizens present to comment on this request.

**Zoning Action:** A motion was made by Mr. Berkley, seconded by Ms. Richardson, and carried 9-0 (Brewer and Penn absent) to approve MARV 2015-2, for the reasons provided by staff.

**Variance Action:** A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 9-0 (Brewer and Penn absent) to approve the requested variances, for the reasons provided by staff, subject to the four conditions as recommended by staff.

**Development Plan Action:** A motion was made by Mr. Berkley, seconded by Mr. Cravens, and carried 9-0 (Brewer and Penn absent) to approve ZDP 2015-11, subject to the revised conditions as listed, including the requested waiver to the tree canopy requirements.