

**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.

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\* - 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.