

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


IN RE: **PLN-MAR-21-00005: FOUNTAINS AT PALOMAR** - a petition for a zone map amendment from a restricted Highway Service Business (B-3) zone to a restricted Highway Service Business (B-3) zone with modified conditional zoning, for 16.4 net (20.68 gross) acres, for property located at 3801, 3901 and 3955 Harrodsburg Road. (Council District 10)

Having considered the above matter on **June 24, 2021**, at a Public Hearing, and having voted **10-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **CONDITIONAL APPROVAL** of this matter for the following reasons:

1. The applicant has shown that there has been both a major change of an economic and physical nature in the athletic club market, which is focused on a small site, experience driven approach, and in the general area, caused by the shift in the retail market. The modification of the conditional zoning restrictions will allow the applicant to avoid inundation of the area with the big-box stores and provide an amenity to both the traveling public and the neighborhood. The inclusion of these facilities will allow for the growth of the site and provide an amenity to the area.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, following modified use and buffering restrictions are recommended via conditional zoning:
 - a. The following uses are prohibited:
 1. Pawn Shops.
 2. Athletic club facilities greater than 6,000 square feet.
 3. Mining of nonmetallic minerals.
 4. Gasoline pumps available to the public with or without an attendant on site.
 5. Adult arcades, massage parlors, adult bookstores and adult video stores.
 6. Nightclubs.
 7. Establishments and lots for the display, rental, sale, service, repair, minor repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes or supplies for such items, except that there may be permitted an electric car dealership.
 8. Billiard or pool halls; dancing halls, skating rinks; miniature golf or putting courses and bowling alleys.
 9. Tattoo parlors.
 10. Carnivals, special events, festivals and concerts.
 11. Commercial farm markets and market gardens.
 12. Self-service laundry.
 - b. The existing 10-foot tall fence behind the Harrods Village shops shall remain and the screening and buffering provisions for the rest of this subject property shall be as described and depicted on the preliminary development plan.
 - c. Free-standing signage shall be in accordance with Article 17 of the Zoning Ordinance and shall be limited to the signage shown on and approved by the Planning Commission on the final development plan.
 - d. Existing trees bordering the subject property shall be preserved except for deceased or dying trees and those trees which an adjoining owner agrees to be removed.
 - e. Building height on the site shall be restricted to one story, except for the hotel.

3. This recommendation is made subject to approval and certification of PLN-MJDP-21-00020: Hoover and Philpot Evangelistic Association Property (The Fountains at Palomar)(AMD), 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 30th day of July, 2021.


Secretary, Jim Duncan

LARRY FORESTER
CHAIR

Note: The corollary development plan, PLN-MJDP-21-00020: HOOVER & FORD PHILPOT EVANGELISTIC ASSOCIATION PROPERTY (FOUNTAINS AT PALOMAR) was approved by the Planning Commission on June 24, 2021 and certified on July 8, 2021.

K.R.S. 100.211(7) requires that the Council take action on this request by September 22, 2021.

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

OBJECTORS

- None

OBJECTIONS

- None

VOTES WERE AS FOLLOWS:

AYES: (9) Bell, Davis, de Movellan, Forester, Meyer, Nicol, Penn, Pohl, and Wilson
NAYS: (0)
ABSENT: (1) Barksdale
ABSTAINED: (1) Plumlee
DISQUALIFIED: (0)

Motion for **APPROVAL** of **PLN-MAR-21-00005** carried.

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

MAP AMENDMENT REQUEST (MAR) APPLICATION

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

Applicant: FOUNTAINS AT PALOMAR LLC, 250 W MAIN ST STE 3000, LEXINGTON, KY 40507
Owner(s): FOUNTAINS AT PALOMAR LLC, 250 W MAIN ST STE 3000, LEXINGTON, KY 40507
Attorney: BRUCE SIMPSON, 300 W VINE STREET, STE 2100, LEXINGTON, KY 40507

2. ADDRESS OF APPLICANT'S PROPERTY

3801 HARRODSBURG RD LEXINGTON KY 40513
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3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
B-3 w/ CZ	RETAIL	B-3 w/ Modified CZ	RETAIL	16.40	20.68

4. COMPREHENSIVE PLAN

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

5. EXISTING CONDITIONS

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

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

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





T. BRUCE SIMPSON, JR.
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DIRECT FAX: (859) 259-3521
bruce.simpson@skofirm.com

300 WEST VINE STREET
SUITE 2100
LEXINGTON, KY 40507-1801
MAIN: (859) 231-3000
FAX: (859) 253-1093

April 5, 2021

Via HAND-DELIVERY

Mr. Larry Forester, Chairperson
Lexington Fayette Urban County Planning Commission
c/o Division of Planning
101 East Vine Street
Lexington, Kentucky 40507

Re: Request to Modify Conditional Zoning Provision (Indoor Athletic Clubs and Recreational Facilities) for the Fountains at Palomar (corrected letter)

Dear Chairperson Forester,

I represent The Fountains of Palomar, LLC in this application for a modification of one of the conditional zoning provisions, which was attached to the approved zone change for the subject property in 2018. The proposed modification is to the condition which precludes "indoor athletic clubs and recreational facilities". At the time the B-3 zone change was filed, it was the applicant who offered up a number of conditional zoning provisions which prohibited a number of uses permitted in the B-3 zone. This was done in order to have a retail site that was more like a B-1 neighborhood business zone. At that time, the typical indoor athletic club and recreational facility was 20,000 to 25,000 square feet or more (i. Planet Fitness, LA Fitness, Lexington Athletic Club). The size of such an athletic club would be too large for the non-grocery store uses that are found in the typical neighborhood shopping center. At the time, the applicants were unaware of the boutique athletic clubs which only need 6,000 square feet or less. These are small athletic clubs which feature workouts generally made by appointment.

We have shared our proposed modification to the conditional zoning provision with the Palomar Hills Community Association, Inc and they do not object to our request to allow Indoor Athletic Clubs and Recreational Facilities, not to exceed 6,000 square feet in size. Please see the attached letter. Additionally, at the time the within zone change and its conditions were approved, the Covid pandemic had not started nor was it even remotely a consideration. Since

April 5, 2021

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Covid, the applicant has found that a number of commercial tenants who would typically be interested in locating on the subject property have reconsidered and reoriented their future business locations, with more tenants opting for more in-home work by their employees. This is a substantial change which was not anticipated at the time the subject property was rezoned and as such constitutes a major change of an economic, physical or social nature which has substantially altered the subject property or in the area in which the subject property is located thereby making the restriction inappropriate or improper.

Accordingly, we believe the proposed modification meets the legal test for its approval as modified. We look forward to presenting this request to the full Commission.

Thank you.

Very truly yours,

A handwritten signature in black ink that reads "T. Bruce Simpson, Jr." in a cursive style.

T. Bruce Simpson, Jr.

Enclosure

117835.148367/8512226.1



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May 25, 2021

Via HAND-DELIVERY AND EMAIL

Mr. Larry Forester, Chairperson
Lexington Fayette Urban County Planning Commission
c/o Mr. Hal Baillie, Division of Planning
101 East Vine Street
Lexington, Kentucky 40507

RE: Supplemental justification to modify conditional zoning
provision for the Fountains at Palomar

Dear Chairperson Forester,

As you know, I represent The Fountains at Palomar, LLC. Please consider this a supplemental justification to amend the existing conditional zoning restriction attached to the subject property prohibiting Indoor Athletic Clubs and Recreational Facilities by allowing such facilities provided they do not exceed 6,000 square feet. As reflected in our initial justification for the zone map amendment request, the applicant proposed all of the conditional zoning restrictions for the subject property in an attempt to create a neighborhood business type shopping center by eliminating a number of the permitted uses in the B-3 (Highway Service Business) zone. At that time, small, boutique athletic clubs of the kind which would be allowed with the approval of this modification were in their infancy in Lexington market. They had yet to demonstrate significant economic success. At the time, the subject property was rezoned, it was the large, 25,000-40,000 square foot or larger athletic clubs which had demonstrated success in the Lexington market but there was already one of these large athletic clubs (LA Fitness) across Man O' War Boulevard from the subject property near Palomar Hills shopping center. Since the zone change for the subject property was approved, the demand for these small, boutique athletic clubs has increased dramatically in Lexington. It had begun to increase in other markets outside of Lexington. (See attached articles from the New York Times, Insiderfit.com and Exercise.com)

May 25, 2021

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These boutique athletic facilities such as "Orange Theory", which seeks to locate on the subject property, are distinguishably different from the typical large athletic clubs. All of the workouts are in groups on a set schedule. There is no opportunity for people to come in and work out on their own as is the case for most larger athletic clubs. The focus of these athletic clubs is on classes oriented towards healthy exercise via heart rate monitoring and participating in a variety of physical activities. These boutique clubs do market to higher income levels of the population with monthly fees ranging from \$59 to \$159 per month. Orange Theory had just opened a location at the "Summit" in February 2018, a few months before the subject property was rezoned but it had not yet demonstrated economic success. Since then, Orange Theory has experienced rapid growth to the point where another location in Lexington is needed. As the attached articles document, over the past several years, these boutique athletic clubs have rapidly increased in popularity and utilization by the consuming public all across the nation.

Additionally, since 2018, there has been an ever-increasing movement away from commercial tenants in neighborhood shopping centers selling retail goods. More consumers are using the Internet to purchase retail goods that they used to purchase at stores. Some ascribe this to the "Amazon Effect" where the consumer can often purchase retail goods cheaper online and have the goods delivered to their front door. Instead, neighborhood shopping center tenants have become increasingly more oriented towards providing services rather than selling retail goods. The proposed amendment to the conditional zoning provision would allow boutique athletic clubs which fits this profile of the type of retail business which has been significantly increasing in neighborhood shopping centers since 2018.

Finally, the Palomar Neighborhood Association Board of Director has stated it has no objection to this proposed amendment to the conditional zoning provision pertaining to Indoor Athletic Clubs and Recreational Facilities. It will be a complimentary neighborhood business type use.

I look forward to expanding upon this request and responding to any questions you may have during the Planning Commission meeting this Thursday.

Very truly yours,



T. Bruce Simpson, Jr.

Enclosures

117835.148367/8555249.1



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PALOMARHILLS.COM

March 23rd, 2021

Division of Planning
Lexington Fayette Urban County Government
Phoenix Building – 7th Floor
101 E. Vine Street
Lexington, KY

Dear Division of Planning:

The Palomar Hills Community Association Board of Directors has recently been informed by the Fountains at Palomar developer's representatives from White Oak Commercial Real Estate of a potential zoning change. This is for the development located at the intersection of Harrodsburg Rd. and Man o' War Blvd. Our understanding is that this zoning change would allow for gym usage under 6,000 SF. As a board, we have no objection to this zoning request.

Sincerely,

A handwritten signature in black ink, appearing to read "B. H. Kerkhoff". The signature is fluid and cursive.

Bradley H. Kerkhoff
President, Palomar Hills Community Association
Phone: 859-227-0900
bradkerkhoff@gmail.com

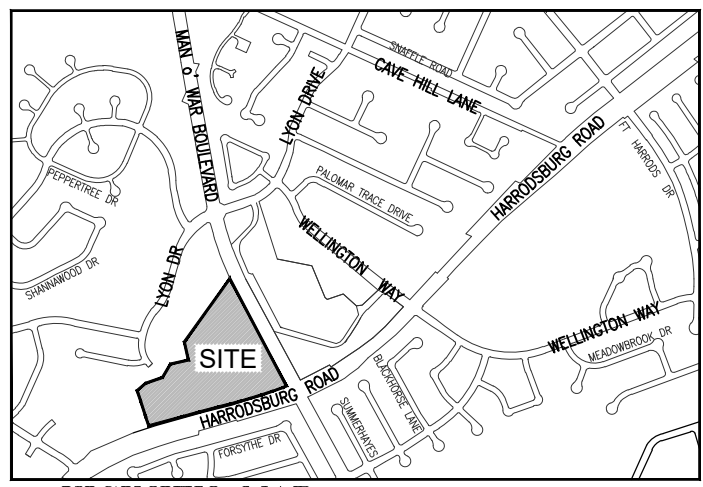
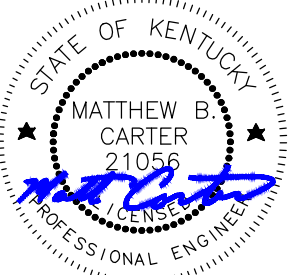
Legal Description
WEK Jr. Investments, LLC Property (applicant)
Zone Change From R-1T to R-4
Located at 850 De Roode Street
Lexington, Fayette County, Kentucky

ALL THAT TRACT OR PARCEL OF LAND SITUATED AT THE SOUTHWEST CORNER OF VALLEY AVENUE AND DE ROODE STREET IN LEXINGTON, FAYETTE COUNTY, KENTUCKY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning at the intersection of the centerline of De Roode Street with the centerline of Valley Avenue; thence with the centerline of De Roode Street south 05 degrees 16 minutes 24 seconds east 205.09 feet to the centerline of the West High Street Viaduct; thence along said centerline south 84 degrees 27 minutes 36 seconds west 239.42 feet to the centerline of the Southern Railroad; thence along said centerline north 15 degrees 46 minutes 46 seconds west 247.65 feet to the intersection of the centerline of the Southern Railroad with the centerline of Valley Avenue extended; thence with the centerline of Valley Avenue south 87 degrees 48 minutes 26 seconds east 287.01 feet to the point of beginning and containing 1.34 gross acres and 0.46 net acres.

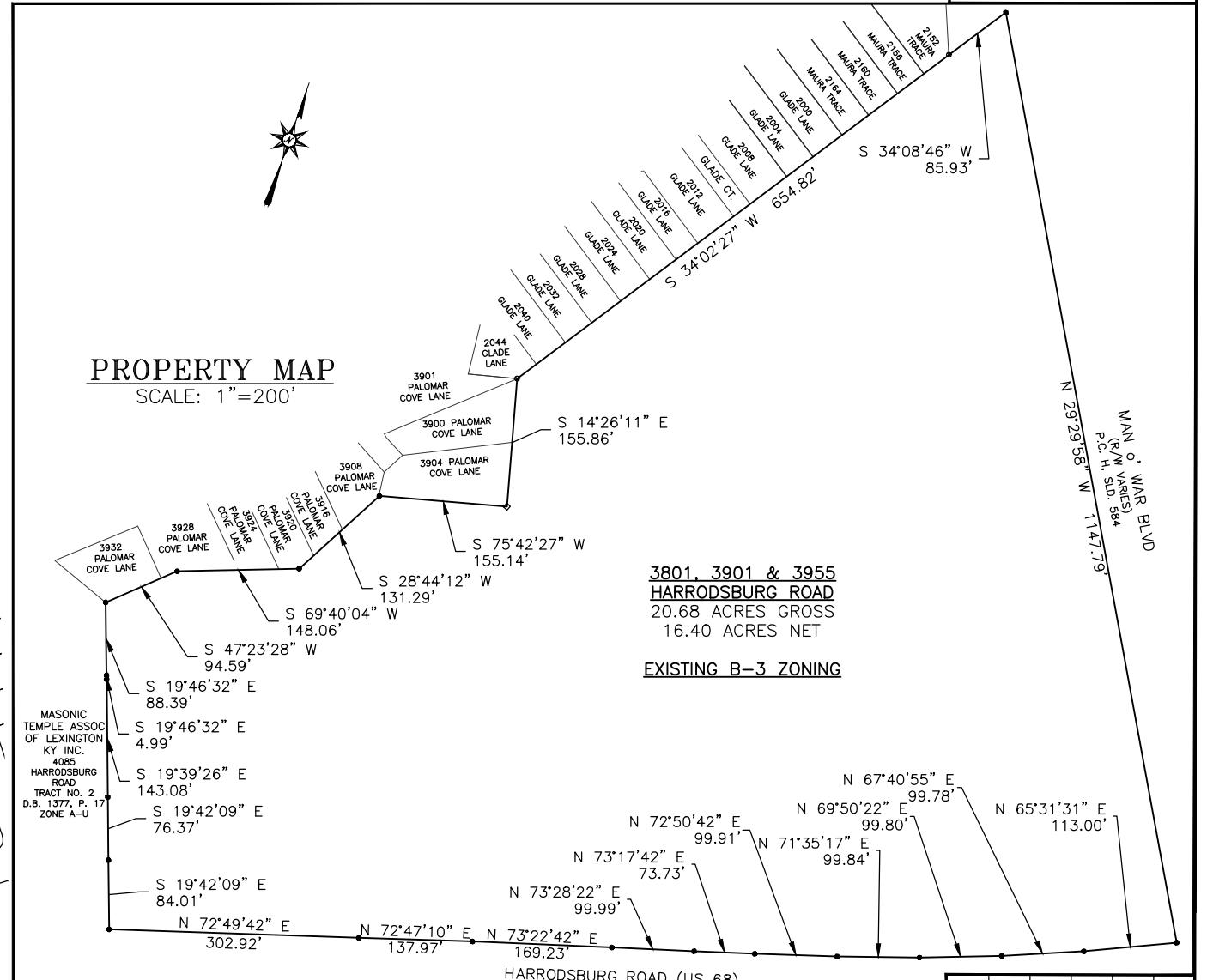


NOTIFICATION MAP
SCALE: 1"=300'



VICINITY MAP NOT TO SCALE

- LOOP STREETS**
1. GLADE LANE
 2. MAURA TRACE



PROPERTY MAP
SCALE: 1"=200'

HOOVER AND FORD PHILPOT
EVANGELISTIC ASSOCIATION PROPERTY
3801, 3901 & 3955 HARRODSBURG ROAD
FAYETTE, LEXINGTON, KENTUCKY
NOTIFICATION MAP

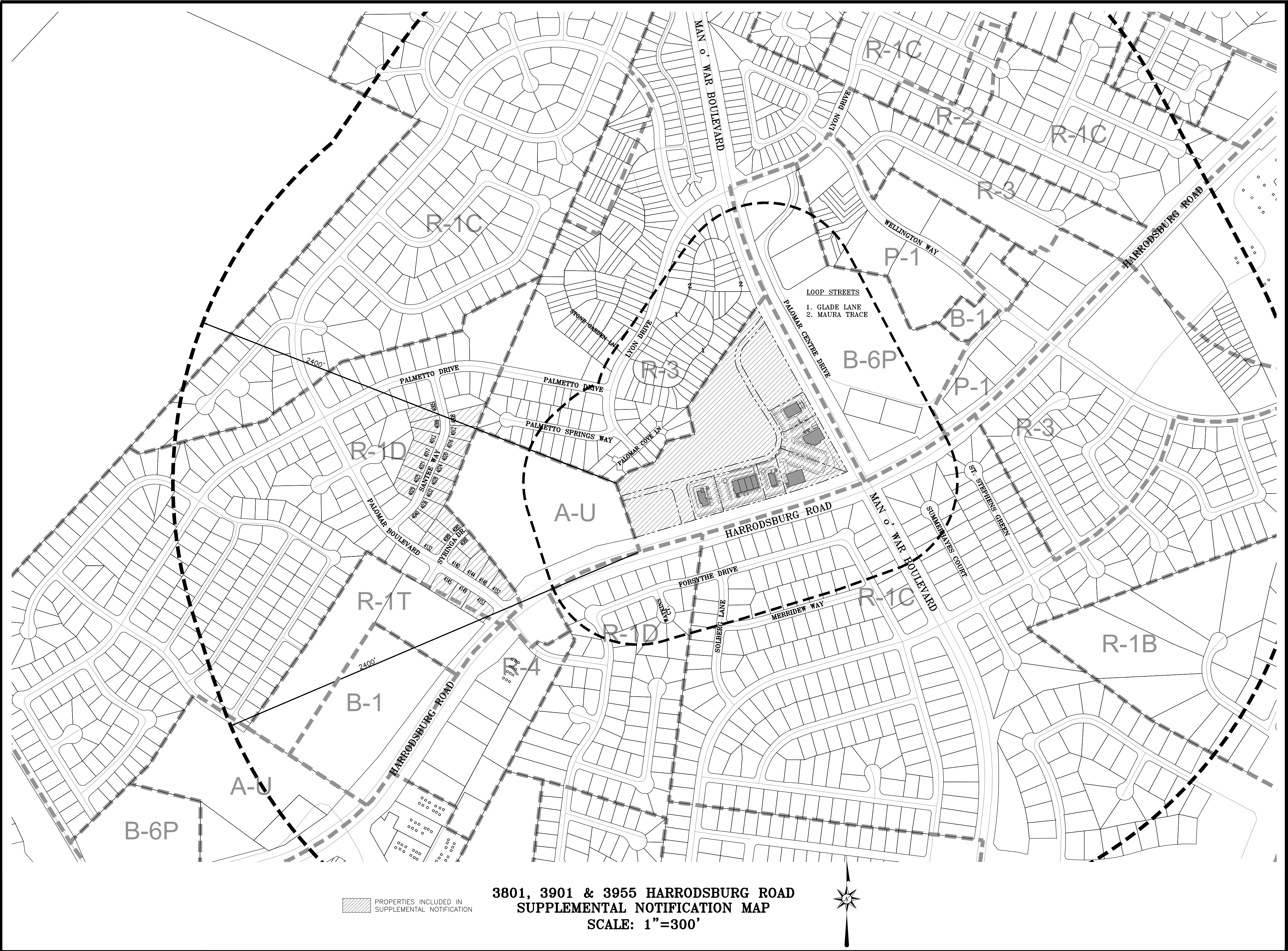
APPLICANT:
THE FOUNTAINS AT PALOMAR, LLC
250 W. MAIN STREET, SUITE 2100
LEXINGTON, KY 40507

MAR-21-00005

DATE: 4/05/2021
REV: 4/15/2021



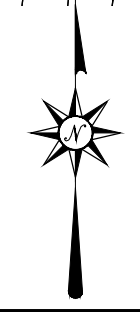
Water Resources, Civil Engineering, Geotechnical, Land Surveying,
Materials Testing, and Construction Inspection Consultants
128 E. Reynolds Road Suite 150, Lexington, KY 40517
Ph: (859) 559-0516 - www.visionengr.com



LOOP STREETS
 1. GLADE LANE
 2. MAURA TRACE

 PROPERTIES INCLUDED IN SUPPLEMENTAL NOTIFICATION

**3801, 3901 & 3955 HARRODSBURG ROAD
 SUPPLEMENTAL NOTIFICATION MAP
 SCALE: 1"=300'**



STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-21-00005: FOUNTAINS AT PALOMAR, LLC

DESCRIPTION OF ZONE CHANGE

Zone Change:	From a Restricted Highway Service Business (B-3) zone To a Restricted Highway Service Business (B-3) zone with Modified Restrictions
Acreage:	16.40 net (20.68 gross) acres
Location:	3801, 3901, and 3955 Harrodsburg Road



EXISTING ZONING & LAND USE

PROPERTIES	ZONING	EXISTING LAND USE
Subject Property	B-3 (CZ)	Commercial
To North	R-3	Single Family Residential
To East	B-6P	Commercial
To South	R-1C / R-1D	Single Family Residential
To West	A-U	Masonic Lodge

URBAN SERVICE REPORT

Roads - The subject properties are bordered to the south by Harrodsburg Road (US 68) and to the east by Man O' War Boulevard. Harrodsburg Road is a major five-lane, divided arterial roadway at this location, and is one of two major commuter routes connecting Jessamine and Fayette Counties. It continues northward into downtown and becomes South Broadway. When Harrodsburg Road was widened in 2005, the Kentucky Transportation Cabinet purchased the access rights along the Harrodsburg Road frontage. Two access points along Harrodsburg Road are planned for the Fountains at Palomar development: a right-in/right-out along Man O' War Boulevard and a full signalized intersection on Harrodsburg Road approximately 1,000 feet south of its intersection with Man O' War Boulevard. Man O' War Boulevard is a four-lane, boulevard that connects the arterial roadways (spoke system) on the southern side of the community, outside of New Circle Road (KY 4). Glade Court, a local street within the Palomar subdivision, stubs into the site from the north, and will provide a pedestrian connection into the site.

Curb/Gutter/Sidewalks - Harrodsburg Road and Man O' War Boulevard have curb, gutter, and sidewalks at this location. The internal street and pedestrian system are currently under construction.

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

Storm Sewers - The subject property is located within the South Elkhorn watershed, and there are no known flooding issues in the immediate area. Storm sewers have been constructed along Harrodsburg Road and Man O' War Boulevard. Underground stormwater detention basins are planned in multiple locations across the site.

Sanitary Sewers - The subject property is located within the South Elkhorn sewershed and is served by the West Hickman Wastewater Treatment Plant, located in northern Jessamine County. Sanitary sewer capacity will be verified by the Capacity Assurance Program (CAP) prior to certification of any final development plan.

Refuse - The Urban County Government serves this area with refuse collection on Thursdays. However, supplemental service by private refuse haulers is commonly utilized for commercial development due to the needed frequency of pick-up.

Police - The nearest police station is the West Sector Roll Call Center, located approximately four and a half miles to the northeast of the subject property on Old Frankfort Pike, near New Circle Road.

Fire/Ambulance - The nearest fire station (#20) is located near the corner of Harrodsburg Road and Arrowhead Drive, in the Indian Hills Subdivision, about ¾ mile to the northeast of the subject property.

Transit - LexTran transit route service is available along Wellington Way, approximately ½ mile north of the subject properties, via the South Broadway Route (#13) and the Night Versailles Route (#58). There are no current plans to extend transit service south of Man O' Ware Boulevard.

Parks - There are no public parks within close proximity of the development.

SUMMARY OF REQUEST

The applicant is seeking to modify the conditional zoning restrictions for a Restricted Highway Service Business (B-3) zone, which were applied to the property by the owner during the 2018 zone change. The applicant is seeking to remove the restriction that prohibits the establishment of an athletic facility at the properties located at 3801, 3901, and 3955 Harrodsburg Road.

PLACE-TYPE

CORRIDOR

The Corridor Place-Type is Lexington’s major roadways focused on commerce and transportation. The overriding emphasis of Imagine Lexington is significantly overhauling the intensity of the major corridors. The future of Lexington’s corridors lies in accommodating the shifting retail economic model by incorporating high density residential and offering substantial flexibility to available land uses. Adding a mix of land uses to support the existing retail will provide a built-in customer base, create a more desirable retail experience, and allow a greater return on investment for landholders. Additional focus is on increasing the viability of enhanced mass transit, thereby reducing the reliance on single-occupancy vehicles and improving Lexington’s overall transportation efficiency.

DEVELOPMENT TYPE

MEDIUM DENSITY NON-RESIDENTIAL / MIXED-USE

Primary Land Use, Building Form, & Design

Primarily community-serving commercial uses, services, places of employment, and/ or a mix of uses within mid-rise structures with a higher Floor Area Ratio.

Mixed-use structures typically include more multi-family residential units and places of employment, and retail and commercial options generally draw from a larger geographic area. An activated and pedestrian-scale ground level should be provided.

These developments may include more employment space for professional office and can include some larger entertainment spaces.

Transit Infrastructure & Connectivity

Though they draw more external users, they should still include multi-modal connections allowing for easy neighborhood access. Mass transit infrastructure is to be provided on par with that of other modes, and the higher-density housing types should be located in close proximity.

Quality of Life Components

The buildings should be oriented to the street, and developments should avoid over-parking, with provided parking located internally.

PROPOSED ZONING



This zone is intended to provide for retail and other uses, which are necessary to the economic vitality of the community but may be inappropriate in other zones. The Comprehensive Plan should be used to determine the locations for this zone. Special consideration should be given to the relationship of the uses in the zone to the surrounding land uses and to the adequacy of the street system to serve the traffic needs.

PROPOSED USE



This petitioner is proposing to modify the conditional zoning restrictions limiting the Highway Service Business (B-3) zone to include an athletic facility use to be developed on the subject properties. This use was restricted by the applicant during the 2018 zone change.

APPLICANT & COMMUNITY ENGAGEMENT



Included in the applicant’s application submission is a letter from the Palomar Hills Community Association Board of Directors indicating that they met with the applicants representatives from White Oak Commercial Real Estate to discuss the modification of the conditional zoning restrictions. This letter indicates that the Palomar Hills Community Association Board of Directors have no objection regarding the modification. The applicant has not provided any other information regarding their outreach to surrounding neighbors or interested community members.

PROPERTY & ZONING HISTORY



The subject properties have been the subject of several land use changes over the course of the last two and a half decades. The parcel located at the eastern edge of the subject properties, closest to the corner of Harrodsburg Road and Man O' War Boulevard, was previously utilized by Christ United Methodist Church for over 35 years. The Hoover Property, which was comprised of the two parcels that have frontage along Harrodsburg Road, had been converted from residential to commercial to allow for neighborhood commercial development. In 1998, the Hoover Property was requested for a rezoning to B-1 to allow the farmhouse to be preserved and converted to a sit-down restaurant, which was approved by the Urban County Planning Commission and Urban County Council with numerous conditional zoning restrictions to protect the integrity and character of the site.

In 2006, the remaining Hoover Property requested a rezoning to allow for greater commercial development to compliment the restaurant. In order to accomplish the developer's vision, the conditional zoning restrictions needed to be significantly altered. At that time, the staff recommend not expanding the commercial use of the Hoover Property, as the applicant had not met the statutory requirement of the Zoning Ordinance to modify conditional zoning restrictions and their request was contrary to the intent of the original conditional zoning restrictions. The Urban County Planning Commission and the Urban County Council approved the request. Despite relaxing of the conditional zoning restrictions, the owners of the property still indicated problems regarding the economic viability of the subject properties.

In 2018, the current owners of the subject properties requested a rezoning of both the church's property and the Hoover Property from an Agricultural Urban (A-U) zone and Neighborhood Business (B-1) zone to a Restricted Highway Service Business (B-3) zone to allow for the construction of a commercial shopping center. At the time, the petitioner proposed establishing an un-named organic grocery store (as an potential anchor store), a hotel, a pharmacy/retail store, small scale retail spaces, and six restaurants, for a total of about 214,200 square feet of space in a typical suburban shopping center layout. The two tallest buildings (anchor store at 45 feet and hotel at 75 feet) were sited adjacent to the single-family residences along Palomar Cove Lane and Glade Lane. Glade Court, a stub street located on the north side of the property, was not proposed to be extended, and no new commercial uses were proposed to directly access Harrodsburg Road or Man O' War Boulevard.

During the rezoning, the petitioner proposed several restrictions for the property. Use restrictions included the prohibiting of pawn shops; athletic club facilities; mining of nonmetallic minerals; gasoline pumps available to the public with or without an attendant on site; adult arcades, massage parlors, adult bookstores and adult video stores; nightclubs; establishments and lots for the display, rental, sale, service, repair, minor repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes or supplies for such items, except that there may be permitted an electric car dealership; billiard or pool halls; dancing halls; skating rinks, miniature golf or putting courses, and bowling alleys; tattoo parlors; carnivals, special events, festivals and concerts; commercial farm markets and market gardens; and self-service laundry. In addition to the use restrictions the applicant required the existing 10-foot tall fence behind the Harrods Village shops to remain and the screening and buffering provisions for the rest of this subject property shall be as described and depicted on the preliminary development plan. Free-standing signage was also required to be in accordance with Article 17 of the Zoning Ordinance and limited to the signage shown on and approved by the Planning Commission on the final development plan. Existing trees bordering the subject property were required to be preserved except for deceased or dying trees and those trees which an adjoining owner agrees to be removed. Finally, the building height on the site was to be restricted to one story, except for the hotel.

The findings of fact or the rationale for the establishment of the conditional zoning restrictions for the subject properties were not provided by the applicant in their submitted materials. Within their presentation, at the public hearing the representative for the applicant indicated that the restrictions were recommended to fit the neighborhood character.

While the staff did not find that the proposed rezoning was in agreement with the 2013 Comprehensive Plan, the Planning Commission and Urban County Council agreed with the applicant and approved the zone change for the subject properties.

MODIFICATION OF CONDITIONAL ZONING RESTRICTIONS



In order to modify or remove conditional zoning restrictions, the applicant must prove that the request meets the requirements of Article 6-7(c) of the Zoning Ordinance. This section of the Ordinance states that the request may be granted only if it is found that there has been a major change in economic, physical, or social nature on the subject property or within the area containing the subject property. Additionally, the applicant must prove that the basic character of the area has been substantially altered since the time the conditional zoning restrictions were imposed that make the restrictions inappropriate. The burden is on the applicant to prove that such changes have occurred.

The specific rationale for the establishment of conditional zoning restrictions is typically part of the findings associated with the rezoning of a property. In this case, the petitioner who was the one who recommended the establishment of the restrictions stated that the purpose of limiting the use of the site was to allow for the best fit with the existing neighborhood character. Within their letter of justification the applicant indicates their desire to modify the conditional zoning restriction prohibiting athletic club facilities on the subject properties. Within their letter of justification, the applicant indicates that the restrictions were established to create a retail site that was more like a Neighborhood Business (B-1) zone and that a typical indoor athletic club and recreational facility was too large for the proposed vision. The applicant would now like to establish an athletic club, with a 6,000 square feet or less. They refer to this use as a “boutique” athletic facility; however, the Zoning Ordinance does not list this specialized use separately.

Within their letter of justification the applicant makes two arguments as to why the restriction is no longer appropriate for the subject properties. First, the petitioner states that they were unaware of athletic clubs of this size three years ago. The medium sized gym concept has been an established aspect of the industry for an extended period of time. In the United States the boutiques and high value/low price gyms have comprised a large percentage of the industry since 2010. In Lexington, there are numerous gyms that are 6,000 square feet or less. Additionally, at home personal training has also been an established use in Lexington for some time, operating as a home-based business. While the applicant may be unknowing of such establishments, it is their responsibility to understand the restrictions that they apply to their properties.

Secondly, the petitioner cites the impact of COVID-19 as to the number of commercial tenants who would be typically interested in locating on the subject property, citing a shift to working at home. Staff cannot find merit with the applicant’s justification on several different levels. First, the work from home perspective has impacted retail far less than the professional office market. While there is evidence that the office landscape will be changed in the coming years, no part of the subject properties was planned to be used for professional office space. Next, athletic club facilities have been one of the more heavily regulated uses regarding exposure to COVID-19. The suggestion that retail is inappropriate, but the opening of such facilities under the perspective of COVID-19 is problematic. Finally, making long-term land use decisions based on the impact of COVID-19 necessitates greater information as to how it is impacting the development. The applicant has provided insufficient information with their letter of justification to support the request.

The applicant should provide greater information as to why the conditional zoning restrictions were established, the neighborhood character and the need to conform to a Neighborhood Business (B-1) zone type development, and how the proposed use fits into that perspective.

STAFF RECOMMENDS: **POSTPONEMENT**, FOR THE FOLLOWING REASONS:



1. The applicant has not provided the necessary information regarding the establishment of the conditional zoning restrictions and how those restrictions are no longer necessary or were incorrectly applied at the time of the rezoning.

SUPPLEMENTAL STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-21-00005: FOUNTAINS AT PALOMAR, LLC



STAFF REVIEW

As outlined in the initial staff report and discussed during the May Subdivision and Zoning Subcommittee meetings, there was a concern regarding the necessary information regarding the establishment of the conditional zoning restrictions and how those restrictions are no longer necessary or were incorrectly applied at the time of the rezoning. Following continued discussion with staff, the applicant has submitted new materials to address those areas of concern and provide evidence regarding the shift in the athletic club facility use.

Within their updated information, the applicant delves deeper into why the conditional zoning restrictions were established in 2018, what has changed both socially and economic in Lexington, Kentucky, and the United States regarding athletic club facilities and the retail market, and how the proposed use is both supported by the neighborhood and can be supportive of the neighborhood. The applicant reiterates that at the time of the initial rezoning, they sought the Highway Service Business (B-3) zone to allow for the construction of a commercial center that was meant to blend services for the traveling public, who would access the site from two major arterial roadways, Harrodsburg Road and Man O' War Boulevard, and services for the surrounding neighborhood, who could access the site either from the arterial roadways or the pedestrian walkway extending from Glade Court. In an effort to blend services for the traveling public and the neighborhood, the applicant proposed to restrict the amount or type of large "big-box" type establishments. One such type of use that the applicant was concerned with was the large athletic club facility.

In Lexington, there are numerous athletic club facilities, which are 25,000 square feet or larger, including the LA Fitness (Wellington Way), Planet Fitness (E. Lowery Lane, Bryan Station Road), or the Lexington Athletic Club (Mall Road). During the initial rezoning of the subject properties, the overarching concern for the neighborhood and the developers was that this type of use would overwhelm the site, detracting from some of the other potential commercial operations and leading to a domination of the property by a limited amount of users. It is important to note that the applicant stressed the inclusion of a large grocery store of a big box nature, which would support the demand in the area.

In the period since the approval of the zone change and the establishment of the conditional zoning restrictions, the applicant has seen a shift in some of the forms of retail and commercial landscape in Lexington. This change was described in the later adopted 2018 Comprehensive Plan. The shift in retail and commercial has lead to some difficulty of the owner to find tenants for the development, which is why the 2018 Comprehensive Plan stressed the need for the inclusion of residential into commercial development. This difficulty is coupled by the form of zoning that was established on site and some of the restrictions placed by the applicant during the zone change process. Since 2018, the applicant has seen the growth of athletic club facilities that are smaller in size and more tailored to costumer experience. These boutique athletic club facilities generally range in size from 800 - 3500 square feet. In Lexington, companies like OrangeTheory (Richmond Road, Finn Way), PureBarre (E. High Street), or CycleYou (Midland Avenue) have emerged to provide more specified training experiences. These facilities typically have a lower attendance and a higher level of attentiveness by trainers. The applicant supplied multiple articles showing the growth of the boutique athletic club facility use and the difference in the client and the use of the site.

In order to modify or remove conditional zoning restrictions, the applicant must prove that the request meets the requirements of Article 6-7(c) of the Zoning Ordinance. This section of the Ordinance states that the request may be granted only if it is found that there has been a major change in economic, physical, or social nature on the subject property or within the area containing the subject property. Additionally, the applicant must prove that the basic character of the area has been substantially altered since the time the conditional zoning restrictions were imposed that make the restrictions inappropriate. The burden is on the applicant to prove that such changes have occurred.



With the added information and data provided by the applicant, they have shown that there has been both a major change of an economic and physical nature in the athletic club market, which is focused on a small site, experience driven approach, and in the general area, caused by the shift in the retail market. The modification of the conditional zoning restrictions will allow the applicant to avoid the inundation of the area with the big-box stores and provide an amenity to both the traveling public and the neighborhood. The inclusion of these facilities will allow for the growth of the site and provide an amenity to the area, which was not considered during the initial rezoning and the establishment of the conditional zoning restrictions.

STAFF RECOMMENDS: APPROVAL, FOR THE FOLLOWING REASONS:



1. The applicant has shown that there has been both a major change of an economic and physical nature in the athletic club market, which is focused on a small site, experience driven approach, and in the general area, caused by the shift in the retail market. The modification of the conditional zoning restrictions will allow the applicant to avoid inundation of the area with the big-box stores and provide an amenity to both the traveling public and the neighborhood. The inclusion of these facilities will allow for the growth of the site and provide an amenity to the area.
2. Under the provisions of Article 6-7 of the Zoning Ordinance, the following modified use and buffering restrictions are recommended via conditional zoning:
 - a. The following uses are prohibited:
 1. Pawn Shops.
 2. Athletic club facilities greater than 6,000 square feet.
 3. Mining of nonmetallic minerals.
 4. Gasoline pumps available to the public with or without an attendant on site.
 5. Adult arcades, massage parlors, adult bookstores and adult video stores.
 6. Nightclubs.
 7. Establishments and lots for the display, rental, sale, service, repair, minor repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes or supplies for such items, except that there may be permitted an electric car dealership.
 8. Billiard or pool halls; dancing halls, skating rinks; miniature golf or putting courses and bowling alleys.
 9. Tattoo parlors.
 10. Carnivals, special events, festivals and concerts.
 11. Commercial farm markets and market gardens.
 12. Self-service laundry.
 - b. The existing 10-foot tall fence behind the Harrods Village shops shall remain and the screening and buffering provisions for the rest of this subject property shall be as described and depicted on the preliminary development plan.
 - c. Free-standing signage shall be in accordance with Article 17 of the Zoning Ordinance and shall be limited to the signage shown on and approved by the Planning Commission on the final development plan.
 - d. Existing trees bordering the subject property shall be preserved except for deceased or dying trees and those trees which an adjoining owner agrees to be removed.
 - e. Building height on the site shall be restricted to one story, except for the hotel.
3. This recommendation is made subject to approval and certification of PLN-MJDP-21-00020: Hoover and Philpot Evangelistic Association Property (The Fountains at Palomar)(AMD), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

1. **FOUNTAINS AT PALOMAR ZONING MAP AMENDMENT & HOOVER & FORD PHILPOT EVANGELISTIC ASSOCIATION PROPERTY (FOUNTAINS AT PALOMAR)(AMD) ZONING DEVELOPMENT PLAN**

- a. **PLN-MAR-21-00005: FOUNTAINS AT PALOMAR (7/4/21)***- a petition for a zone map amendment from a restricted Highway Service Business (B-3) zone to a restricted Highway Service Business (B-3) zone with modified conditional zoning, for 16.4 net (20.68 gross) acres, for property located at 3801, 3901 and 3955 Harrodsburg Road.

COMPREHENSIVE PLAN AND PROPOSED USE

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

The applicant is seeking to modify the conditional zoning restrictions for a Restricted Highway Service Business (B-3) zone, which were applied to the property by the owner during the 2018 zone change. The applicant is seeking to remove the restriction that prohibits the establishment of an athletic facility at the properties located at 3801, 3901, and 3955 Harrodsburg Road.

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

The Staff Recommends: Approval, for the following reasons:

1. The applicant has shown that there has been both a major change of an economic and physical nature in the athletic club market, which is focused on a small site, experience driven approach, and in the general area, caused by the shift in the retail market. The modification of the conditional zoning restrictions will allow the applicant to avoid inundation of the area with the big-box stores and provide an amenity to both the traveling public and the neighborhood. The inclusion of these facilities will allow for the growth of the site and provide an amenity to the area.
2. **Under the provisions of Article 6-7 of the Zoning Ordinance, the following modified use and buffering restrictions are recommended via conditional zoning:**
 - a. The following uses are prohibited:
 - i. Pawn Shops.
 - ii. Athletic club facilities greater than 6,000 square feet.
 - iii. Mining of nonmetallic minerals.
 - iv. Gasoline pumps available to the public with or without an attendant on site.
 - v. Adult arcades, massage parlors, adult bookstores and adult video stores.
 - vi. Nightclubs.
 - vii. Establishments and lots for the display, rental, sale, service, repair, minor repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes or supplies for such items, except that there may be permitted an electric car dealership.
 - viii. Billiard or pool halls; dancing halls, skating rinks; miniature golf or putting courses and bowling alleys.
 - ix. Tattoo parlors.
 - x. Carnivals, special events, festivals and concerts.
 - xi. Commercial farm markets and market gardens.
 - xii. Self-service laundry.
 - b. The existing 10-foot tall fence behind the Harrods Village shops shall remain and the screening and buffering provisions for the rest of this subject property shall be as described and depicted on the preliminary development plan.
 - c. Free-standing signage shall be in accordance with Article 17 of the Zoning Ordinance and shall be limited to the signage shown on and approved by the Planning Commission on the final development plan.
 - d. Existing trees bordering the subject property shall be preserved except for deceased or dying trees and those trees which an adjoining owner agrees to be removed.
 - e. Building height on the site shall be restricted to one story, except for the hotel.
3. This recommendation is made subject to approval and certification of **PLN-MJDP-21-00020: Hoover and Philpot Evangelistic Association Property (The Fountains at Palomar)(AMD)**, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. **PLN-MJDP-21-00020: HOOVER & FORD PHILPOT EVANGELISTIC ASSOCIATION PROPERTY (FOUNTAINS AT PALOMAR) - (7/4/21)*** – located at 3801, 3901 AND 3955 HARRODSBURG RD., LEXINGTON, KY.
Project Contact: Vision Engineering

Note: The purpose of this amendment is to revise the conditional zoning restrictions on the property.

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

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

1. Provided the Urban County Council rezones the property to the B-3 zone; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, and storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Update conditional zoning restriction note and re-number list.

Staff Zoning Presentation – Mr. Baillie presented the staff report and recommendations for the zone change application. He displayed photographs of the subject property and aerial photographs of the general area and stated that construction had begun with the associated certified development plan. He said the applicant is seeking to modify the conditional zoning restrictions for a Restricted Highway Service Business (B-3) zone, in an effort to modify the restriction that prohibits an athletic club facility use on these properties. The property is surrounded by various types of zoning, including Planned Neighborhood Residential (R-3), Agricultural Urban (A-U), Single Family Residential (R-1C & R-1D) and Commercial Center (B-6P) zoning.

Mr. Baillie said that the Article 6-7(c) of the Zoning Ordinance describes the process whereby the restrictions and /or conditions designated by the Urban County Council can be modified or removed. He said that this restriction can only be changed by the Urban County Council, because they are the final deliberative body for zone changes. He added that the findings provided by the applicant must state a clear preponderance of evidence of what has changed, a major economic, physical, or social change; or how it was improperly applied previously. He said that the establishment of athletic club facilities were initially restricted on the site by the applicant, because in 2018 they focused on restricting potential uses that would be considered as large-scale facilities or big box stores. In their communication with the neighborhood prior to the 2018 zone change, they indicated their intention to blend the Neighborhood Business (B-1) zone uses and Highway Service Business (B-3) zone uses.

Mr. Baillie said that the applicant has proposed including small "boutique style" athletic club facilities, which typically serves a higher income bracket range and varies from 3,000 to 6,000 square feet in size. The applicant has provided information that there has been both a major change of an economic and physical nature in the athletic club market, which is focused on a small site, experience driven approach, and in the general area, as a result of the shift in the retail market. The modification of the conditional zoning restrictions will allow the applicant to avoid an inundation in the area with the big-box stores and provide an amenity to both the traveling public and the neighborhood. The inclusion of these facilities will allow for the growth of the site and provide an amenity to the area. The staff is recommending approval for the following conditional zoning restrictions:

- a. The following uses are prohibited:
 1. Pawn Shops.
 2. Athletic club facilities greater than 6,000 square feet.
 3. Mining of nonmetallic minerals.
 4. Gasoline pumps available to the public with or without an attendant on site.
 5. Adult arcades, massage parlors, adult bookstores and adult video stores.
 6. Nightclubs.
 7. Establishments and lots for the display, rental, sale, service, repair, minor repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes or supplies for such items, except that there may be permitted an electric car dealership.
 8. Billiard or pool halls; dancing halls, skating rinks; miniature golf or putting courses and bowling alleys.
 9. Tattoo parlors.
 10. Carnivals, special events, festivals and concerts.
 11. Commercial farm markets and market gardens.
 12. Self-service laundry.

Development Plan Presentation – Mr. Martin presented a rendering of the final development plan associated with this zone change and said that there are not any physical changes being proposed at this time. He identified the access point for the property and said that the full access point will be signalized. He said that the site is currently under development and that there may be some amendments to this plan in the future, most likely with the proposed structures and their sizes. He added that the Subdivision Committee recommended approval of this plan.

Commission Questions – Mr. Penn asked if this plan is the Final Development Plan. Mr. Martin replied affirmatively. Mr. Penn then asked if the hotel is located on the plan. Mr. Martin said that it is still identified on the plan. The applicant will need to amend the Final Development Plan if they do not intend to build the hotel. He added that the change in the economy may be the reason for the hotel to not be constructed.

Note: Ms. Plumlee arrived at the meeting at 1:55 p.m.

Applicant Presentation – Mr. Bruce Simpson, attorney representing the petitioner, said that they are in agreement with the staff's recommendations and he is available for any questions.

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Citizen Comment – There were no citizens present to speak to this application.

Zoning Action – A motion was made by Mr. Bell, seconded by Mr. Pohl, and carried 9-0 (Barksdale absent; Plumlee abstained) to approve PLN-MAR-21-00005: FOUNTAINS AT PALOMAR, for the reasons provided by the staff.

Note: Ms. Barksdale arrived at the meeting at 1:56 p.m.

Development Plan Action – A motion was made by Mr. Bell, seconded by Mr. Pohl, and carried 9-0 (Barksdale and Plumlee abstained) to approve PLN-MJDP-21-00020: HOOVER & FORD PHILPOT EVANGELISTIC ASSOCIATION PROPERTY (FOUNTAINS AT PALOMAR), for the reasons provided by the staff.