

2. R. WALKER PROPERTIES, LLC, ZONING MAP AMENDMENT & AVON ACRES SUBDIVISION, LOT 2, ZONING DEVELOPMENT PLAN

- a. MARV 2016-11: R. WALKER PROPERTIES, LLC (6/5/16)* – petition for a zone map amendment from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone, for 0.59 net (0.67 gross) acre, for property located at 5569 Briar Hill Road.

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.

The Rural Land Management Plan, an adopted element of the 2013 Comprehensive Plan, recommends 3.2 acres of Retail Land Use (Figure 3-9) for the Avon Rural Activity Center. The subject property is in that designated Rural Activity Center, and there is currently about 2.7 acres of land in Avon located in a Neighborhood Business (B-1) zone.

The petitioner proposes a Neighborhood Business (B-1) zone for the subject property in order to remove a non-conforming use from the existing Agricultural Rural (A-R) zone. This location has been used for a convenience store and as a restaurant in the past, with its associated off-street parking.

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

The Staff Recommends: Approval, for the following reasons:

1. The requested zone change from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone is in agreement with the 1999 Rural Land Management Plan, an adopted element of the 2013 Comprehensive Plan, for these reasons:
 - b. The Rural Land Management Plan recommends 3.2 acres of Retail future land use for the Avon Rural Activity Center. B-1 zoning for the subject property, even including an unusable floodplain area on the northern ½ of the site, would result in a total of about 3.3 acres of land in a Neighborhood Business (B-1) zone in this RAC, counting other existing B-1 zoned parcels.
 - c. The proposed B-1 zone can be utilized to implement the Plan's future land use recommendation for this Rural Activity Center. It is the only zone in this vicinity that permits a retail use.
 - d. The subject property is not served by typical urban services such as sanitary sewers, storm sewers, or curb/gutter/sidewalks; but it is generally in character with other properties in this Rural Activity Center, due to its age and limited commercial use in the past.
 - e. The 1988, 1996 and 2001 Comprehensive Plans have specifically recommended Retail Trade and Personal Services land use for the subject property in the past.
2. This recommendation is made subject to approval and certification of ZDP 2016-44: Avon Acres Subdivision, Lot 2, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. 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. Drive-through facilities.
 2. The sale or provision of wine, beer or alcoholic beverages, other than by the drink.
 3. Live entertainment and/or dancing.
 4. Cocktail lounges, brew-pubs and nightclubs.
 5. Automobile service stations.
 6. Sale of firearms other than by federally licensed manufacturers, importers or dealers.
 8. Car washing establishments.
 9. Automobile and vehicle refueling stations.
 - b. Other Use Restrictions:
 1. Any outdoor lighting shall be shielded and directed away from any adjacent residential uses.
 2. Lighting attached to a pole or any structure shall be a maximum of twelve (12) feet in height.
 3. Any free-standing sign erected shall be a maximum of fifteen (15) feet in height, and shall be indirectly illuminated, if illuminated at all.

These use restrictions are appropriate and necessary for the subject property to ensure greater compliance with the 2013 Comprehensive Plan's requirements, and to prevent the possibility that uses at this location could disrupt activities on nearby residential and agricultural-rural properties in and near the Avon Rural Activity Center.

- b. ZDP 2016-44: AVON ACRES SUBDIVISION, LOT 2 (6/5/16)* - located at 5569 Briar Hill Road.

(EA Partners)

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

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

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. Urban Forester's approval of tree inventory map.
5. Denote 25' floodplain setback on plan.
6. Reference current FEMA map on plan.
7. Denote floodplain elevation on plan.
8. Denote that this plan shall comply with Article 19 of the Zoning Ordinance.
9. Addition of pavement and gravel information between front of building and Briar Hill Road.
10. Addition of street cross-section for Briar Hill Road.
11. Resolve compliance with Article 18 and possible landscape variance.
12. Resolve plan status (preliminary vs. final).

Staff Zoning Presentation – Mr. Sallee presented the staff report on this zone change request and stated that this application is for rezoning from A-R to B-1 for 2.7 acres located in the northeastern portion of the county. The subject property is located on the southern end of the Avon Rural Activity Center, which is bounded by Briar Hill Road and Houston Antioch Road, and has a major railroad line that traverses it. Haley Road is located to the south and the Blue Grass Army Depot is just to the north of the subject property. The adjacent properties on the east, south, and west of the subject property are zoned A-R. The property to the immediate west is in an I-1 zone, and the property to the north is in an I-2 zone with a sizable concrete business. The subject property has been a non-conforming business use for many years and is proposed to continue in its operation. The applicant is asking to rezone the property so that they can avoid having to go to the Board of Adjustment every time there is a change sought in the allowable businesses operating at this location.

Mr. Sallee said that the staff reviews the Comprehensive Plan whenever there is a zone change and has done so in this case. The staff focused their review on the Rural Land Management Plan because the site is located in the rural part of the county and also in one of the four Rural Activity Centers. In the Rural Land Management Plan, the Avon Rural Activity Center was recommended to have 3.2 acres of retail land use. The staff calculated that there is currently 2.7 acres of B-1 zone land in Avon. The staff finds that if this property is rezoned, the resulting land that will be available for retail trade uses in this activity center will be 3.3 acres of B-1 zoned area, which would be very similar to the land use recommendation.

Mr. Sallee said that the staff and the zoning committee have recommended approval of this rezoning request, and that the requested zone change from A-R to B-1 is in agreement with the 1999 Rural Land Management Plan, which is an adopted element of the 2013 Comprehensive Plan. The staff has outlined four reasons on the staff report and the agenda to summarize that the proposed B-1 zone can be utilized to implement the Plan's future land use recommendation for this Rural Activity Center. He also said the subject property is not out of character with the other properties in this Rural Activity Center due to its age and the limited commercial use it's had in the past. He said the 1988, 1996, and 2001 Comprehensive Plans have specifically recommended retail trade and personal services uses for the subject property.

Mr. Sallee also mentioned that there is a variance associated with the requested zone change, as well as the development plan.

Development Plan Presentation: Mr. Hunter presented the staff report on this development plan. He pointed out the development area showing one existing building that will remain and its associated parking along the side and rear of the property. He also pointed out the 100-year floodplain area on the map. This development was originally recommended for postponement due to the need for a variance for the landscaping between different zones. This is a slightly different plan than what was displayed at the Subdivision Committee meeting; the new plan shows landscaping islands in three different locations. Mr. Hunter also pointed out the two entrances into the subject property. The Subdivision Committee recommended this development for approval based on the conditions listed on the agenda, with the exception that condition #12, the status of the plan, has been changed to final.

Commission Question: Mr. Owens asked if condition #12 could be deleted. Mr. Hunter replied that condition #12 could be deleted.

Variance Report: Ms. Wade presented the variance report, stating that the petitioner is asking to eliminate the zone-to-zone landscaping requirements for the subject property. This property is bordered by three different zones and has two different requirements. Along the northern and western boundaries, where the subject property is adjacent to industrial zoning, the requirement is for a tree every forty feet plus either a double row hedge or a six-foot tall fence noting that the 15-foot buffer could be reduced to five feet. Along the eastern boundary of the subject property, where the adjacent property is zoned A-R, the requirement is a tree every forty feet, plus: a) a six-foot tall planting; b) one evergreen every fifteen feet; or c) one tree every twenty linear feet consisting of fifty percent deciduous and fifty percent evergreen and smaller flowering shrubs. The option to reduce the distance along the A-R boundary from fifteen feet to five is not available in the Zoning Ordinance.

Ms. Wade displayed an aerial photo of the subject property showing the boundaries. She said the property is a nonconforming use and is already built out along the eastern and western property lines. There is an existing privacy fence along the western property line, a creek along the northern property boundary and an existing masonry wall along the eastern boundary. In the staff's review of the variance, it was found that the existing features (the privacy fence, the wall and the creek) already provide the necessary zone-to-zone buffer to facilitate the protection between the two zones.

The staff recommended postponement to the Zoning Committee because the Landscape Review Committee had not had an opportunity to meet about this proposed variance. On May 10th, they did meet, but did not have a quorum. The applicant is providing some landscaping within the landscape islands, which could help to satisfy the requirement of increased landscaping on the subject property. The applicant felt this was a trade for the zone-to-zone screening to allow for the interior landscape islands to be done. Ms. Wade pointed out those areas on the associated development plan.

The applicant contends that the required zone-to-zone screening would reduce the amount of parking that is on the property, which could negate the zone change and their proposed reuse of the property. The Landscape Review Committee members in attendance and staff have recommended approval of this proposed variance. Ms. Wade said that there are findings and conditions for approval listed on the variance report, and that all permits would be requested as necessary by the applicant. Ms. Wade said that this variance will be null and void should the Commission or the Council choose not to re-zone the property.

Petitioner Presentation - Richard Murphy, attorney, was present representing the petitioner. He said that Mr. Randy Walker was present in the audience. Mr. Walker had grown up in this area and had worked at the store that is being proposed for the change. Also present was Rory Kahly, EA Partners, and Chas Hite, a planner with Mr. Murphy's firm. Mr. Murphy displayed photos of the subject property showing the brick wall encircling the property, which is 8.5 feet to 12 feet tall in some areas. He stated that they could only see inside the property from the aerial photos and that it isn't being used as agriculture. Mr. Murphy said that they are in agreement with the staff conditions. The Zoning Committee voted to recommend deletion of conditional zoning restriction #2 and also to delete "brew pubs" from #4 under the prohibited uses.

Discussion - Mr. Sallee said that staff is not opposed to deleting #2 and the change to #4 as requested, and he apologized for not presenting the conditional zoning portion of the report earlier. However, after speaking with the Division of Building Inspection after the Zoning Committee Meeting, they are concerned with conditional zoning recommendation #3.b.3 regarding signage. The staff had proposed to restrict the lighting and the size of the sign on the subject property. This is not a huge difference from the ordinary type of sign permitted in the B-1 zone, but their concern was that this restriction may be missed at the permitting stage. The staff has told the Division of Building Inspection staff that the removal of this condition will be suggested.

Mr. Owens asked about the restrictions on the lighting of the sign and if it will be illuminated at all. Mr. Sallee said that they are supplied with copies of the Development Plan; and if the Commission chooses to leave it in, the applicant won't be opposed and it will be on the Development Plan for the property.

Mr. Murphy said that they are in agreement with removing #3.b.3. He said that indirect lighting is where there is a spotlight shining on the sign; and with width of the right-of-way available, any signage may have to be placed in the right-of-way, which they would like to avoid. There have been times that spotlights have been a hazard to the neighbors.

Chairman's Comments - Chairman Owens stated that the hearing was now "closed," and he opened the floor for discussion.

Audience Comments - There were no comments at this time.

Zoning Action - A motion was made by Mr. Cravens, seconded by Mr. Berkley, and carried 8-0 (Brewer, Penn and Plumlee absent) to approve MARV 2016-11: R. WALKER PROPERTIES, LLC, for the reasons provided by the staff.

Action on Conditional Zoning - A motion was made by Mr. Cravens, and seconded by Ms. Richardson, and carried 8-0 (Brewer, Penn and Plumlee absent) to approve a change in the conditional zoning restrictions, deleting #2 and deleting "brew pubs" from #4 and deleting #3.b.3.

Variance Action - A motion was made by Mr. Cravens, seconded by Ms. Richardson, and carried 8-0 (Brewer, Penn and Plumlee absent) to approve the requested variances as recommended by the staff.

Development Plan Action - A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 8-0 (Brewer, Penn and Plumlee absent) to approve ZDP 2016-44: AVON ACRES SUBDIVISION, LOT 2, with the deletion of #11 and #12.

