

*Note: Vice-Chairman Cravens declared a brief recess at 3:54 p.m. The meeting reconvened at 3:59 p.m.*

**2. JEFFREY STUART MORGAN ZONING MAP AMENDMENT & THE TOWNHOMES AT JEFFERSON STREET (PRESTON SUBDIVISION)**

- a. MARV 2015-26: JEFFREY STUART MORGAN (1/31/16)\* - petition for a zone map amendment from a High Density Apartment (R-4) zone to a Neighborhood Business (B-1) zone, for 0.355 net (0.542 gross) acre, for property located at 500-506 Maryland Avenue (a portion of). Dimensional variances are also being requested.

**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 2013 Comprehensive Plan's Goals and Objectives recommend identifying opportunities for infill, redevelopment and adaptive reuse that are respectful of an area's context and design features (Theme A, Goal #2a.); providing for well-designed neighborhoods and communities (Theme A, Goal #3); providing entertainment and other quality of life opportunities that will attract young professionals and a workforce of all ages and talents to Lexington (Theme C, Goal #2d.); and encouraging mixed-use sustainable development within the Urban Service Area (Theme E, Goal #1b.). The subject property is located within the *Downtown Master Plan* boundary, a 2005 planning effort of the Lexington Downtown Development Authority (DDA).

The petitioner proposes to rezone the property to the B-1 zone in order to construct one or more restaurants at the corner, with parking to the rear of the lot. The corollary development plan depicts an associated 16-unit townhouse development in an R-4 zone, which will share access to Jefferson Street. The petitioner is also requesting dimensional variances to reduce the off-street parking requirement by 50% and to reduce the rear yard for the townhouses.

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

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

1. The requested Neighborhood Business (B-1) zone for the subject property is in agreement with the 2013 Comprehensive Plan for the following reasons:
  - a. The Goals and Objectives recommend: 1) identifying areas of opportunity for infill, redevelopment and adaptive reuse that respect the area's context and design features (Theme A., Goal #2a.); and 2) providing a well-designed neighborhood and community (Theme A, Goal #3). This redevelopment project will be in keeping with the neighborhood character and will support the pedestrian-oriented Jefferson Street corridor.
  - b. The Goals and Objectives encourage providing entertainment and other quality of life opportunities that attract young professionals and a workforce of all ages and talents to Lexington (Theme C, Goal #2d.). The applicant is proposing to further the resurgence of the Jefferson Street corridor by including a restaurant/pub in the plan for redevelopment, which is in keeping with the other establishments within the immediate area.
  - c. The Goals and Objectives encourage compact, contiguous and/or mixed use sustainable development within the Urban Service Area, as guided by market demand, to accommodate future growth needs (Theme E, Goal #1b.). The proposed mixed-use development will, in its own small way, help alleviate pressure to expand the Urban Service Area in the future.
  - d. The Goals and Objectives of the 2013 Comprehensive Plan are supported by the applicant's requested rezoning, and the requested B-1 zone is compatible with the adjacent zoning along Jefferson Street.
2. This recommendation is made subject to approval and certification of ZDP 2015-119: The Townhomes at Jefferson Street (Preston Subdivision), 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 uses shall be restricted via conditional zoning:
  - a. Banks, credit agencies, security and commodity brokers and exchanges, credit institutions, savings and loan companies, holding and investment companies.
  - b. Medical and dental offices, clinics and laboratories.
  - c. Automobile service stations, gasoline pumps, and automobile and vehicle refueling stations.
  - d. Drive-through facilities.
  - e. Uses requiring or utilizing overhead doors.
  - f. Outdoor live entertainment and/or dancing.

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

These restrictions are necessary and appropriate in order to restrict the most intense land uses on the subject property and to provide an adequate land use transition to the nearby neighborhood. Such uses could have a negative impact on the neighborhood related to noise, parking and/or traffic congestion.

b. REQUESTED VARIANCES

1. Reduce the required rear yard for eight of the interior townhouse units from 20% of the lot depth to 15%.
2. Reduce the parking in the B-1 zone to 50% of the otherwise required parking.

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

The Staff Recommends: **Approval of the requested rear yard and parking variances**, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, create a nuisance to the general public, nor will it alter the character of the general vicinity. The setback variance along the rear lot line is very minor in scope, and the parking variance is not inconsistent with other developments in this general vicinity.
- b. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance, as the proposed development has rights to utilize parking in the adjoining West Jefferson Place parking lot. The granting of these variances will allow the construction of a mixed-use redevelopment, replacing a front-facing parking lot with a context-sensitive commercial development.
- c. The special circumstance that applies to the subject property justifying the variances is its location on the pedestrian-oriented Jefferson Street corridor, in addition to the availability of parking and the juxtaposition of the adjacent 3-story office building.
- d. Strict application of the requirements of the Zoning Ordinance would likely result in a larger surface parking lot and less residential development, which would neither be in character with the surrounding area nor result in nearly as efficient a use of these properties.
- e. The circumstances surrounding this request are not the direct result of actions taken by the applicant, but are more of a result of the pre-existing built environment. This has led to a design response that is in context with the surrounding vicinity.

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 these variances is null and void.
2. 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).
3. Prior to construction and occupancy, the applicant shall obtain all applicable permits, including but not limited to zoning compliance permits and building permits, as well as Certificates of Occupancy from the Divisions of Planning and Building Inspection.

- c. ZDP 2015-119: THE TOWNHOMES AT JEFFERSON STREET (PRESTON SUBDIVISION) (1/31/16)\* - located at 500 - 506 Maryland Avenue. **(CMW, Inc.)**

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

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 that compliance with Article 15-7(a) of the Zoning Ordinance shall be determined at the time of the Final Development plan.
6. Provided the Planning Commission grants the requested variances.
7. Remove all copyright information from plan.
8. Discuss details of the required 15' landscape buffer between B-1 and R-4 properties.
9. Discuss proposed uses for 2<sup>nd</sup> and 3<sup>rd</sup> floors of commercial building(s).
10. Discuss use of compact spaces (25% limit) along 22' drive aisle.

Zoning Presentation: Ms. Wade presented the staff report for this rezoning request, noting that the staff had received one letter of objection from an adjacent property owner. She distributed the letter to the Commission for their review.

Ms. Wade stated that the subject property, which is approximately 0.5 acre in size, is located on the western corner of Maryland Avenue and Jefferson Street. The parcel is currently used as a parking lot for an R-4 property to the southwest, which was formerly occupied by an athletic club. She briefly oriented the Commission to the location of the subject property, noting that the general vicinity along Jefferson Street is occupied primarily by B-1 uses. The cross streets are characterized by mostly residential uses, including R-2, R-3, and R-4 zoning. Part of Maryland Avenue, however, has been downzoned to the R-1E zone. The B-1 zone adjacent to the subject property is known as West

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Jefferson Place, which is primarily occupied by Professional Office uses. Across Jefferson Street are several lots zoned B-4, which include an Adaptive Reuse project known as The Apiary.

Ms. Wade stated that, in recent years, there has been a resurgence in the Jefferson Street area, with several new businesses and restaurants now located there. The petitioner is proposing to rezone the subject property to B-1 in order to construct a restaurant at the corner of Maryland Avenue and Jefferson Street, with associated parking. The development plan also includes a 16-unit townhouse development on the adjacent R-4 property, which is under the same ownership. The subject property is located in close proximity to the Western Suburb and Northside Historic Districts, although it is not located within either of those districts. Ms. Wade displayed the following photographs of the subject property: 1) a view of the subject property, noting its current use as a parking lot; and 2) a view from the north, noting the nearby Ballard Towers facility. She stated that the petitioner is also requesting two variances: first, to reduce off-street parking by 50% for the proposed business use; and second, to reduce the rear yard setback for one bank of the proposed townhomes.

Ms. Wade stated that the petitioner contends that the proposed rezoning is in agreement with the recommendations of the 2013 Comprehensive Plan, citing several Goals & Objectives that could be furthered if the property was rezoned and redeveloped. The Goals & Objectives cited include: Theme A, Goal 2.A; Theme A, Goal 3; Theme C, Goal 2.D; and Theme E, Goal 1.B, which refer to providing infill, redevelopment and adaptive reuse; providing for well-designed neighborhoods; providing entertainment and quality of life opportunities to attract young professionals; and encouraging compact, contiguous and/or mixed-use, sustainable development. The staff does agree that each of these Goals & Objectives would be furthered by the petitioner's request to rezone the subject property in order to create a mixed-use development that would be consistent with the character of Jefferson Street. The Jefferson Street corridor was designated in the Downtown Development Authority's (DDA) downtown development study as a commercial mixed-use corridor, with residential uses located along side streets. Ms. Wade noted that the staff agrees with the petitioner's contention that the proposed rezoning is in agreement with the 2013 Comprehensive Plan. The staff is recommending several conditional zoning restrictions for the subject property, primarily to mitigate parking issues along with the busy pedestrian corridor. The conditional zoning restrictions would limit some of the higher-intensity traffic-generating uses, including drive-through facilities, automobile service stations, medical and dental offices, and financial institutions; as well as uses that could cause excessive noise, including overhead doors and outdoor live entertainment or dancing. Ms. Wade said that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

**Development Plan Presentation:** Mr. Martin presented a rendering of the corollary zoning development plan, explaining that the petitioner is proposing to construct two new restaurants on the subject property, in one building. One restaurant will be two stories in height, and the other will be one story, with a rooftop patio. Two accesses are proposed to Jefferson Street, with off-street parking surrounding the building.

Mr. Martin stated that the petitioner is also proposing to construct 16 townhouses, which are part of this preliminary development plan but are not included in the zone change (to B-1). Those townhouse units will have frontage on Maryland Avenue, with an access easement to serve the interior of the development. The petitioner is proposing to construct a gate between the two properties, to allow vehicular access to residents of the townhouses only. Full access to the townhouses is proposed along Maryland Avenue.

Mr. Martin said that this rendered plan is a revision to the original submission. There was considerable concern at the Subdivision Committee meeting about providing emergency access to the proposed townhouses, but the revised plan has addressed those concerns. The staff is now recommending approval of the plan, subject to the following revised conditions:

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 that compliance with Article 15-7(a) of the Zoning Ordinance shall be determined at the time of the Final Development plan.
6. Provided the Planning Commission grants the requested variances.
7. Remove all copyright information from plan.
8. Denote that details of the required 15' landscape buffer between B-1 and R-4 properties will be resolved at time of Final Development Plan.
9. ~~Discuss proposed uses for 2<sup>nd</sup> and 3<sup>rd</sup> floors of commercial building(s).~~
10. ~~Discuss use of compact spaces (25% limit) along 22' drive aisle.~~

Mr. Martin stated that condition #8 refers to the landscape requirement between the B-1 and R-4 zones. It will require that the buffer be addressed in detail at the time of a Final Development Plan for the property.

Commission Questions: Mr. Drake asked if the reciprocal parking agreement, to which the opposition letter referred, is related to the development plan. Mr. Martin answered that, if the requested parking variance is granted, a reciprocal agreement will not be necessary. Ms. Wade added that the letter refers to a reciprocal parking agreement with an adjacent property, which the petitioner's attorney would address in his presentation.

Variance Presentation: Mr. Sallee presented the staff's report on the requested variances to 1) reduce the required rear yard from a minimum of 20% to a minimum of 15% of the lot depth; and 2) to reduce the off-street parking requirement in the B-1 zone from 50% of the normally required amount. Referring to an aerial photograph of the property, he noted that the requested parking variance will refer to the parking required for the proposed restaurant. The rear yard requirement variance refers to the adjacent R-4 parcel, which is part of the development plan for this property.

Mr. Sallee displayed a rendered version of the development plan depicting the two requested variances. With regard to the rear yard variance, he said that the Infill & Redevelopment Area regulations require a stricter rear yard than other areas of the community. In the past, front and side yard setbacks were generally reduced in the Infill & Redevelopment Area, with the intent of promoting more compatible residential development in the central area of Lexington-Fayette County.

Mr. Sallee said that the second variance is to the amount of off-street parking for the proposed restaurant building. When the staff reviews a parking variance, there are usually three issues that are taken into consideration: the general walkability of the area; the parking generator of the proposed use; and the general availability of off-street parking in the vicinity. In this case, the proposed development meets both the walkability and off-street parking availability criteria. The general vicinity is very pedestrian-friendly, and there is ample parking in the same block for non-residential uses.

Mr. Sallee said that the reciprocal parking agreement Mr. Drake mentioned refers to the parking area associated with West Jefferson Place, as well as the parking on the subject property. The petitioner has indicated their ability to use a parking area to the west of the proposed townhouses, but it exceeds the 300' spacing required by the Zoning Ordinance for use by a nearby business.

With regard to the requested rear yard variance, Mr. Sallee explained that the required yard is 12.4 feet at minimum; the petitioner is requesting a 9.3' rear yard, although the development plan depicts a 10' yard will be provided. The staff believes that the difference between 10' and 12.4' would be almost imperceptible once the proposed development is constructed. The location of the rear wall of the West Jefferson Place development serves as an unusual circumstance in this case that warrants the requested variance. That wall is located in such close proximity to the rear yard of the proposed townhouses that it would have no setback at all. The staff concludes that granting the two requested variances would not have an adverse effect on the public health, safety or welfare; nor will it alter the character of the area. For that reason, the staff and the Zoning Committee recommend approval of the requested variances, for the reasons as listed in the staff report and on the agenda, and subject to the three conditions also listed.

Petitioner Presentation: Richard Murphy, attorney, was present representing the petitioner. He said that the petitioner, who formerly owned a masonry company, is the developer of the Jefferson Davis Inn (JDI) on South Broadway. The proposed development will be similar in appearance to the JDI project, with a restaurant building fronting on Jefferson Street, and 16 townhouses intended to sell for approximately \$330,000. The townhouses will be constructed first, with the existing parking lot used as a staging area; the restaurant building will be built once the residential portion is complete. The petitioner has received feedback from owners of the townhouses adjacent to JDI that they appreciate having a good dining option so nearby. He believes that the proposed restaurant will provide additional dining options for the Jefferson Street corridor, and the townhouses will help to support the restaurant. The property owner indicated that, in the past, he had received development proposals for six-story towers, but the petitioner contends that the proposed development will be much more in keeping the character of both Jefferson Street and Maryland Avenue. Mr. Murphy noted that the petitioner anticipates that the smaller restaurant facility will be occupied by a small deli or bakery.

Mr. Murphy said that the petitioner had met with the board of the Northside Neighborhood Association. The board decided not to take an official position on this request, but they are aware of the proposed development.

With regard to the reciprocal parking agreement discussed previously, Mr. Murphy said that the building that currently occupies the property was formerly the YMCA. It has been vacant for two years, and is proposed to be removed. At one time, the subject property was combined with the parcels currently occupied by West Jefferson Place and the Christian Care Communities facility. Before the owner of that single parcel sold the property, a reciprocal parking agreement was created to serve all the uses there. That property has since been subdivided into three parcels, but the reciprocal parking agreement remains, allowing parking anywhere on the property for any of those three uses.

The petitioner has spoken with the representative of the individual who submitted an objection letter, indicating his intent to modify the parking agreement in order for the proposed development to provide its own parking. In order to do that, however, the petitioner will need approval of the zone change, along with the renegotiation of the parking agreement. Mr. Murphy noted that the proposed development cannot go forward unless the parking agreement can be resolved.

Mr. Murphy stated, with regard to the requested parking variance, that the petitioner is confident that there will be sufficient parking for the residents of the proposed townhouses. He noted that the parking variance applies only to the restaurant portion of the property.

Mr. Murphy said that the petitioner would like to request, with regard to the conditional zoning restrictions, that the staff remove the proposed restriction against outdoor live entertainment. That restriction would preclude any type of performance (such as acoustic guitar) in the outdoor seating area for the proposed restaurant. He noted that any type of live entertainment requested by the petitioner would require the approval of the Board of Adjustment as a conditional use, along with notice requirements to neighborhood associations and residents within 500' of the property. Mr. Murphy explained that, if the conditional zoning restriction is approved, the petitioner would not have the ability to ask the BOA to allow such entertainment.

Mr. Murphy stated that the petitioner's development on South Broadway proves his good track record. He believes that the proposed development will similarly enhance the neighborhood surrounding the subject property. In addition, the proposed development is completely in agreement with the recommendations of the 2013 Comprehensive Plan.

Citizen Comments: Rebecca Rigney, 535 West Second Street, was present representing her mother, who owns West Jefferson Place. She stated that her family and the petitioner have not reached an agreement about reciprocal parking on the property, and her family is concerned that the petitioner is requesting a variance to reduce their parking by 50%. Ms. Rigney said that West Jefferson Place already provides after-hours parking for many nearby restaurants, including the Apiary, for their businesses.

Ms. Rigney said that her mother is also concerned that the West Jefferson Place building is attached at the rear to the structure on the R-4 property, which is proposed to be demolished. She wants to ensure that damage is kept to a minimum when the buildings are detached, and that any problems are properly repaired. In addition, the alley at the rear of West Jefferson Place currently serves as dumpster access for that facility, as well as the Christian Care Communities building. Those tenants are concerned that that area must remain open during the construction of the proposed townhomes.

Ms. Rigney noted that her family supports the proposed development, but they want to ensure that their concerns are considered as part of the rezoning process.

Citizen Support: Robert Garrison, 497 West Third Street, stated that he wholeheartedly supports the proposed development.

Ray Dickison, Christian Care Communities, stated that his organization is working with the petitioner with regard to maintaining the parking and access easement that his facility requires. He said that Christian Care Communities does support the proposed development.

Citizen Objection: Susan King, 533 Maryland Avenue, stated that she is concerned about overflow parking on her street, since many of the small houses there have no driveways. She said that events at Rupp Arena and the Opera House often overwhelm her street with parking, leaving residents with no place to park.

Ms. King said that she would not be in favor of the development of a six-story building on the subject property, but she would appreciate the Commission's consideration of the parking problems faced by area residents.

Sean McLaughlin, 535 Maryland Avenue, stated that, in addition to the many homes on his street that do not have parking, there is also a church that has no off-street parking. He said that there are 45 houses on Maryland Avenue, which share only 12 driveways.

Mr. McLaughlin said that the Maryland Avenue neighborhood has been undergoing a resurgence, which he appreciates; however, residents are concerned about absorbing additional parking and traffic from the proposed development. The increase in the number of restaurants on Jefferson Street has exacerbated the existing parking problems, since many of those businesses do not provide parking spaces for their staff. Mr. McLaughlin opined that, at some point, Maryland Avenue residents might be forced to pursue a residential parking permit program.

Evelyn Knight, 513 West Third Street, stated that she shares other residents' concerns about parking. However, her primary issue with the proposed development is that the Jefferson Street area has become a "destination," while the intent of the B-1 zoning in the area to serve the needs of the surrounding residential area. Ms. Knight does not believe that having more restaurants will add to the experience of the residents living in the area.

Ms. Knight said that she would prefer for the subject property to be developed for mixed use, with attractions for young professionals other than alcohol and food. She opined that infill is important, and the community should be focused on maximizing available land; however, she does not believe that the proposed development will be a good addition to the neighborhood.

With regard to Mr. Murphy's comments, Ms. Knight stated that she does not believe that the comparison to the petitioner's development on South Broadway is appropriate, since the West Third Street area is quiet and historic. She said that she and her neighbors are looking for a sense of community, and she is concerned that the residents of the proposed townhouses will be set apart from the rest of the neighborhood, with the rear sides of their homes facing outward.

Petitioner Rebuttal: Mr. Murphy stated that the petitioner will maintain the easement that currently serves the dumpster area for West Jefferson Place and Christian Care Communities, and will expand the area to serve the new restaurants. The construction area will be staged from the front of the property, rather than the rear.

With regard to the concerns about parking, Mr. Murphy said that the townhouse development will be constructed so that all residents will park on the interior of the development, specifically to alleviate the parking problems on Maryland Avenue. He explained that the townhomes on Maryland Avenue will have two front facades, so that rear sides will not be visible to area residents.

Mr. Murphy stated that the proposed development will be mixed use, with restaurant uses in the front and townhomes to the rear. The petitioner intends to provide design elements so that the development will have the appearance of a "modern take on the existing 19<sup>th</sup> century architecture in the area." The petitioner contends that the addition of new restaurants and residences on the subject property will contribute more to the vitality of the community than the existing parking lot does.

Staff Rebuttal: Ms. Wade stated that the staff would be agreeable to the petitioner's request to remove outdoor live entertainment from the list of proposed conditional zoning restrictions, since BOA approval would be required for any such proposal, following notification to neighbors and .

Zoning Action: A motion was made by Mr. Wilson, seconded by Ms. Mundy, and carried 8-0 (Brewer, Owens, and Richardson absent) to approve MARV 2015-26, for the reasons provided by staff, removing item "f. Outdoor live entertainment and/or dancing" from the list of proposed conditional zoning restrictions.

Variance Action: A motion was made by Mr. Wilson, seconded by Ms. Mundy, and carried 8-0 (Brewer, Owens, and Richardson absent) to approve the requested variances, for the reasons provided by staff, subject to the three conditions as recommended by staff.

Development Plan Action: A motion was made by Mr. Wilson, seconded by Ms. Mundy, and carried 8-0 (Brewer, Owens, and Richardson absent) to approve ZDP 2015-119, subject to the eight conditions as listed in the revised staff recommendation.