

ORDINANCE NO. 128 -2016

AN ORDINANCE CHANGING THE ZONE 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, INCLUDING A DIMENSIONAL VARIANCE (R. WALKER PROPERTIES, LLC; COUNCIL DISTRICT 12).

WHEREAS, at a Public Hearing held on May 26, 2016, a petition for a zoning ordinance map amendment for property located at 5569 Briar Hill Road from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone, for 0.59 net (0.67 gross) acre, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change including a dimensional variance by a vote of 8-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a change in zone for property located at 5569 Briar Hill Road from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone, for 0.59 net (0.67 gross) acre, being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - That the granting of this zone change is made subject to the following use restrictions as conditions of granting the zone change:

Under the provisions of Article 6-7 of the Zoning Ordinance, the following use and buffering restrictions are proposed for the subject property via conditional zoning:

Prohibited Uses

1. Drive-through facilities.
2. Live entertainment and/or dancing.
3. Cocktail lounges and nightclubs.
4. Automobile service stations.
5. Sale of firearms other than by federally licensed manufacturers, importers or dealers.
6. Car washing establishments.
7. Automobile and vehicle refueling stations.


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.

Section 3 - That the Lexington-Fayette Urban County Planning Commission is directed to show the amendment on the official zone map atlas and to make reference to the number of this Ordinance.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: July 5, 2016



MAYOR

ATTEST:


CLERK OF URBAN COUNTY COUNCIL

Published: July 14, 2016- 1t
0721-16:TWJ:X:\Cases\PLANNING\16-MS0001\LEG\00538666.DOCX

R WALKER PROPERTIES, LLC PROPERTY
ZONE CHANGE FROM A-R TO B-1
5569 BRIAR HILL ROAD
LEXINGTON, FAYETTE COUNTY, KENTUCKY

A TRACT OR PARCEL OF LAND SITUATED ADJACENT TO AND NORTH OF BRIAR HILL ROAD APPROXIMATELY 700 FEET EAST OF THE HALEY ROAD INTERSECTION IN EASTERN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND BEING MORE FULLY DESCRIBED AND BOUNDED AS FOLLOWS:

BEGINNING at the point of intersection of the centerline of Briar Hill Road and the common line of 5557 and 5569 Briar Hill Road extended; Thence leaving said centerline N 09°12' W, a distance of 296.30 feet to a point; thence S 87° 51' E, a distance of 104.34 feet to a point; Thence S 09°12' E, a distance of 275.53 feet to a point in the aforementioned centerline; Thence with said centerline S 80°40' W, a distance of 102.30 feet to the **POINT OF BEGINNING** and containing 0.67 acres gross and 0.59 acres net.

Rec'd by _____

Date: _____

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

IN RE: MARV 2016-11: R. WALKER PROPERTIES, LLC – 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. (Council District 12)

Having considered the above matter on **May 26, 2016**, at a Public Hearing, and having voted **8-0** 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:

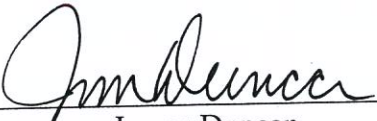
1. The requested zone change from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone is in agreement with the 1999 Rural Land Management Plan, an adopted element of the 2013 Comprehensive Plan, for these reasons:
 - a. The Rural Land Management Plan recommends 3.2 acres of Retail 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.
 - b. 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.
 - c. 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.
 - d. 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. Live entertainment and/or dancing.
 3. Cocktail lounges and nightclubs.
 4. Automobile service stations.
 5. Sale of firearms other than by federally licensed manufacturers, importers or dealers.
 6. Car washing establishments.
 7. 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.

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.

ATTEST: This 10th day of June.


Secretary, James Duncan

MIKE OWENS
CHAIR

Note: The corollary development plan, ZDP 2016-44: AVON ACRES SUBDIVISION, LOT 2, was approved by the Planning Commission on May 26, 2016, and certified on June 9, 2016.

Note: A dimensional variance to eliminate property perimeter screening was approved by the Planning Commission on May 26, 2016.

K.R.S. 100.211(7) requires that the Council take action on this request by August 24, 2016.

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

OBJECTORS
• None

OBJECTIONS
• None

VOTES WERE AS FOLLOWS:

AYES: (8) Berkley, Cravens, Drake, Mundy, Owens, Richardson, Smith, Wilson

NAYS: (0)

ABSENT: (3) Brewer, Penn, Plumlee

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for CONDITIONAL APPROVAL of MAR 2016-11 carried.

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

GENERAL INFORMATION: MAP AMENDMENT REQUEST (MAR) APPLICATION

1. ADDRESS INFORMATION (Name, Address, City/State/Zip & PHONE NO.)

APPLICANT:	R. Walker Properties, LLC	859-226-9735
	601 Lagonda Avenue, Lexington, Kentucky 40505	
OWNER:	R. Walker Properties, LLC	859-226-9735
	601 Lagonda Avenue, Lexington, Kentucky 40505	
ATTORNEY:	Richard Murphy	859-233-9811
	250 West Main Street, Suite 2510, Lexington, Kentucky 40507	

2. ADDRESS OF APPLICANT'S PROPERTY (Please attach Legal Description)

5569 Briar Hill Road

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY (Use attachment, if needed--same format.)

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
A-R	Vacant Convenience Store	B-1	Commercial	0.59	0.67

4. SURROUNDING PROPERTY, ZONING & USE

Property	Use	Zoning
North	Concrete Facility	I-2
East	Business	A-R
South	Agriculture	A-R
West	Residential	I-1

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 ____ % 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 checked="" type="checkbox"/> NO ____ Units

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

Roads	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Storm Sewers	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input type="checkbox"/> Other
Sanitary Sewers	<input type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input checked="" type="checkbox"/> Other
Curb/Gutter/Sidewalks	<input type="checkbox"/> Existing	<input type="checkbox"/> To be constructed by	<input type="checkbox"/> Developer	<input checked="" type="checkbox"/> Other
Refuse Collection	<input checked="" type="checkbox"/> LFUCG	<input type="checkbox"/> Other		
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

7. DESCRIBE YOUR JUSTIFICATION FOR REQUESTED CHANGE (Please provide attachment.)

This is in... in agreement with the Comp. Plan more appropriate than the existing zoning due to unanticipated changes.

8. APPLICANT/OWNER SIGNS THIS CERTIFICATION

I do hereby certify that to the best of my knowledge and belief, all application materials are herewith submitted, and the information they contain is true and accurate. I further certify that I am OWNER or HOLDER of an agreement to purchase this property since 2015.

APPLICANT Richard V. Murphy DATE 3/7/16

OWNER att. for applicant/owner DATE _____

LFUCG EMPLOYEE/OFFICER, if applicable _____ DATE _____

7. Justification for requested change.

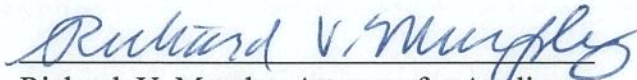
The applicant, R. Walker Properties, LLC, is requesting a zone change from the agricultural-rural (A-R) to the neighborhood business (B-1) for 0.59 net acre at 5569 Briar Hill Road.

The subject property is located in the Avon Rural Activity Center. Although the property is zoned A-R, it has been used for at least 60 years as a restaurant and/or country market with gasoline pumps. The building on the property is a commercial building which is in good condition. It most recently was used as a 64-seat restaurant.

The non-conforming status of the property often requires that changes in non-conforming use be requested from the Board of Adjustment. For example, in 2009, the Board of Adjustment approved a change from one non-conforming use (retail sales with accessory restaurant) to another non-conforming use (restaurant with accessory retail sales). There are many potential uses for the property, including restaurant, country store, antique shop, specialty store, office and many other uses. It would be very helpful to have the property properly zoned so that a hearing is not necessary before the Board of Adjustment for every new tenant of the property.

The existing A-R zone is no longer appropriate for this property. Agricultural use is not appropriate for the property due to the small size of the property, and the fact that it is the site of an existing commercial building which occupies almost the entire property. Neighborhood business (B-1) zoning would be appropriate for the property because it has been used for neighborhood business uses for over 60 years and has a commercial building on the property. Neighborhood business would be compatible with surrounding uses which include outdoor storage in the I-1 zone to the west, a manufacturing plant for reinforced concrete products to the north, outdoor storage uses to the east, and a busy two-lane road, Briar Hill Road, to the south.

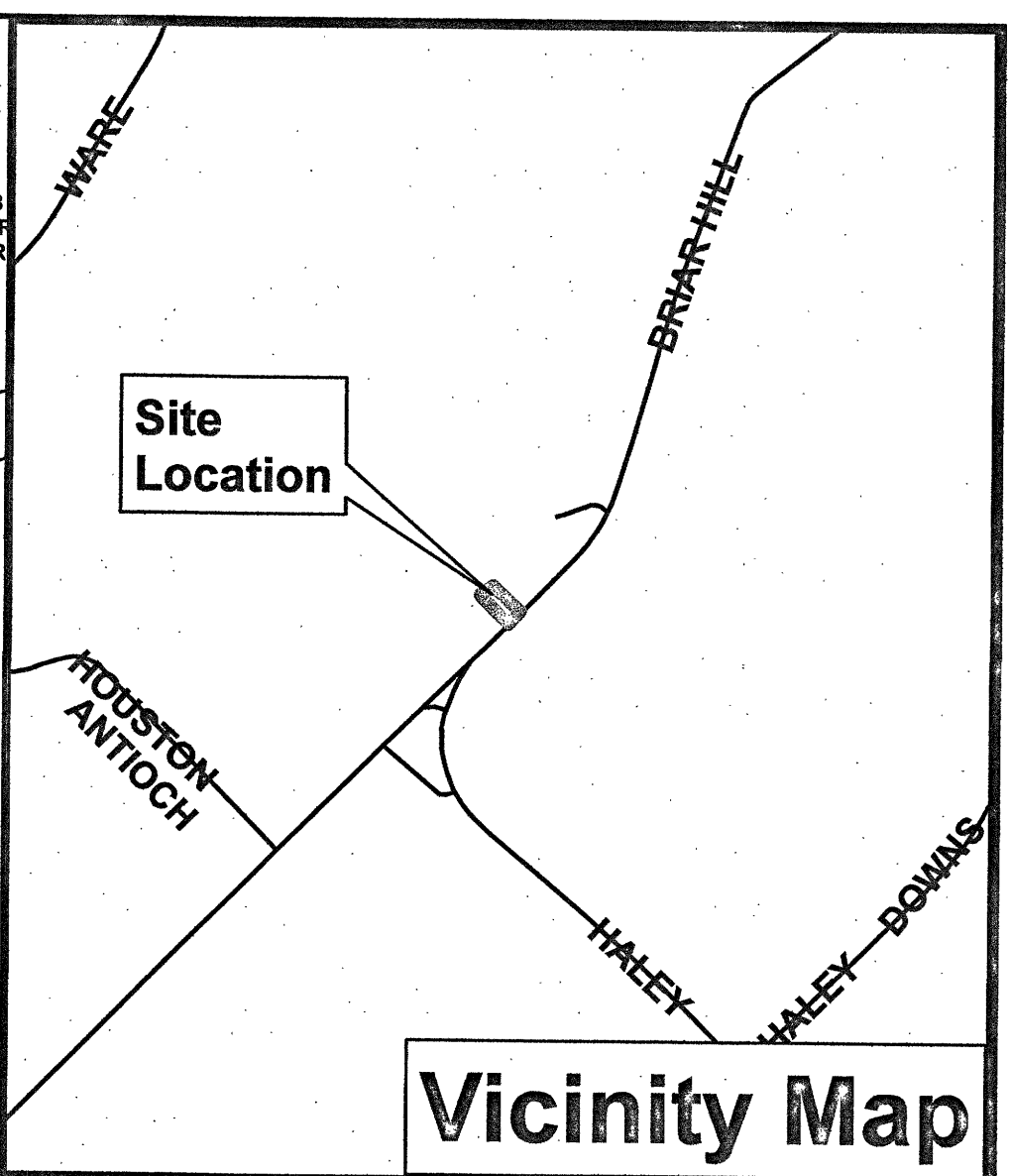
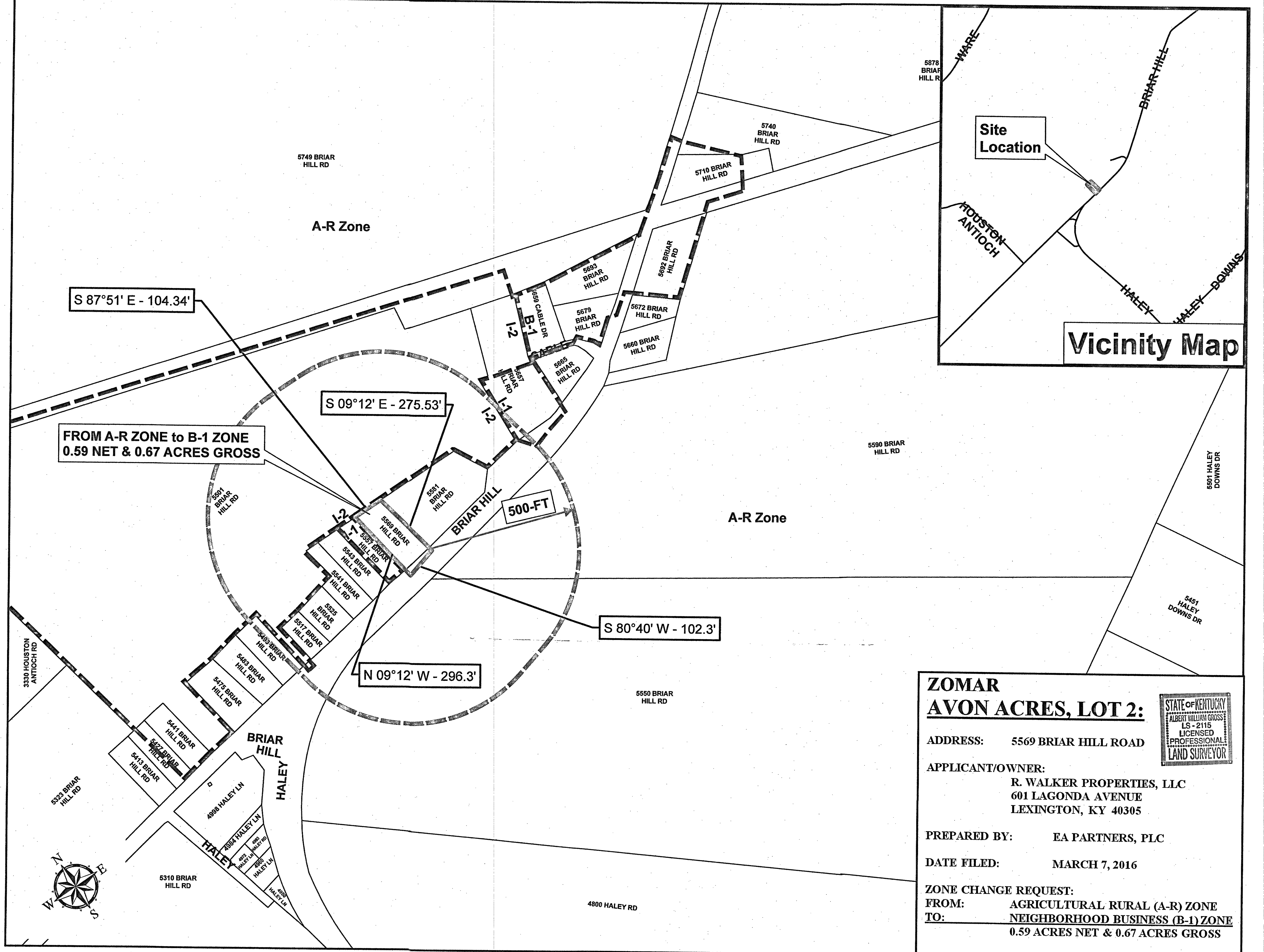
Thank you for your consideration of this zone change request.


Richard V. Murphy, Attorney for Applicant
and Owner, R. Walker Properties, LLC

R WALKER PROPERTIES, LLC PROPERTY
ZONE CHANGE FROM A-R TO B-1
5569 BRIAR HILL ROAD
LEXINGTON, FAYETTE COUNTY, KENTUCKY

A TRACT OR PARCEL OF LAND SITUATED ADJACENT TO AND NORTH OF BRIAR HILL ROAD APPROXIMATELY 700 FEET EAST OF THE HALEY ROAD INTERSECTION IN EASTERN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND BEING MORE FULLY DESCRIBED AND BOUNDED AS FOLLOWS:

BEGINNING at the point of intersection of the centerline of Briar Hill Road and the common line of 5557 and 5569 Briar Hill Road extended; Thence leaving said centerline N 09°12' W, a distance of 296.30 feet to a point; thence S 87° 51' E, a distance of 104.34 feet to a point; Thence S 09°12' E, a distance of 275.53 feet to a point in the aforementioned centerline; Thence with said centerline S 80°40' W, a distance of 102.30 feet to the **POINT OF BEGINNING** and containing 0.67 acres gross and 0.59 acres net.



S 87°51' E - 104.34'

5749 BRIAR HILL RD

A-R Zone

5740 BRIAR HILL RD

5710 BRIAR HILL RD

5878 BRIAR HILL RD

5695 BRIAR HILL RD

5672 BRIAR HILL RD

5679 BRIAR HILL RD

5660 BRIAR HILL RD

5685 BRIAR HILL RD

5590 BRIAR HILL RD

FROM A-R ZONE to B-1 ZONE
0.59 NET & 0.67 ACRES GROSS

S 09°12' E - 275.53'

L-1

500-FT

A-R Zone

S 80°40' W - 102.3'

N 09°12' W - 296.3'

5550 BRIAR HILL RD

3330 HOUSTON ANTIOCH RD

5501 BRIAR HILL RD

5581 BRIAR HILL RD

5569 BRIAR HILL RD

5557 BRIAR HILL RD

5543 BRIAR HILL RD

5541 BRIAR HILL RD

5525 BRIAR HILL RD

5517 BRIAR HILL RD

5509 BRIAR HILL RD

5483 BRIAR HILL RD

5473 BRIAR HILL RD

5310 BRIAR HILL RD

4898 HALEY LN

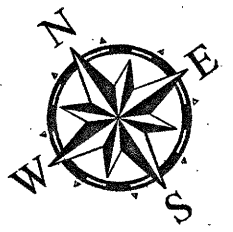
4884 HALEY LN

4872 HALEY LN

4860 HALEY LN

5801 HALEY DOWNS DR

5451 HALEY DOWNS DR



ZOMAR
AVON ACRES, LOT 2:

ADDRESS: 5569 BRIAR HILL ROAD

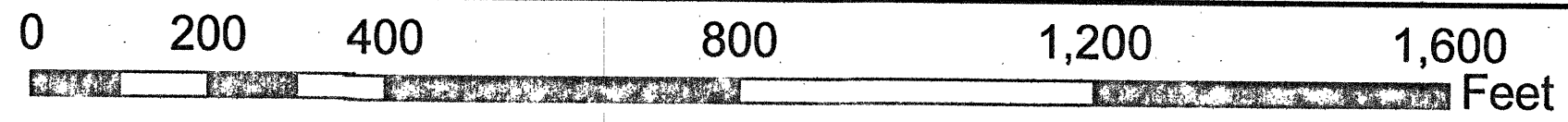
APPLICANT/OWNER:
 R. WALKER PROPERTIES, LLC
 601 LAGONDA AVENUE
 LEXINGTON, KY 40305

PREPARED BY: EA PARTNERS, PLC

DATE FILED: MARCH 7, 2016

ZONE CHANGE REQUEST:
 FROM: AGRICULTURAL RURAL (A-R) ZONE
 TO: NEIGHBORHOOD BUSINESS (B-1) ZONE
 0.59 ACRES NET & 0.67 ACRES GROSS

Notification Map



STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

MAR 2016-11: R. WALKER PROPERTIES, LLC

DESCRIPTION

Zone Change: From an Agricultural Rural (A-R) zone
To a Neighborhood Business (B-1) zone

Acreeage: 0.59 net (0.67 gross) acre

Location: 5569 Briar Hill Road

EXISTING ZONING & LAND USE

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Property	A-R	Vacant Convenience Store
To North	I-2	Concrete Facility
To East	A-R	Commercial
To South	A-R	Agricultural
To West	A-R & I-1	Single Family Residential

URBAN SERVICES REPORT

Roads – The subject property is located in the rural portion of northeastern Fayette County, across the tracks of the RJ Corman Railroad from Bluegrass Station (in the Avon Rural Activity Center). Avon is less than one mile from the Fayette/Bourbon County line. Although Briar Hill Road (KY 57) has a 70' right-of-way at this location, it is a rural unimproved road that provides a more or less east/west connection within Fayette County from Bryan Station Road to Bourbon County. Roadway improvements are not anticipated along the subject property's frontage, unless required by the Kentucky Transportation Cabinet, for any new commercial use at this location. The Division of Traffic Engineering may require some removal of pavement to more clearly define points of ingress and egress to the subject site.

Curb/Gutter/Sidewalks – Being a rural road, there are no curbs, gutters or sidewalks along Briar Hill. Road improvements may well be required at the time the property is developed.

Storm Sewers – The subject property is located within the North Elkhorn watershed. A small amount of FEMA Special Flood Hazard Area (associated with the Avon Branch of the North Elkhorn Creek) is located at the rear of the property, where there are currently no structures. According to the application, storm sewers exist to serve the property, but the staff is uncertain of their location in this vicinity. Stormwater improvements will be unnecessary with a reuse of an existing structure and off-street parking area, such as is proposed in this instance.

Sanitary Sewers – The subject property is currently serviced by a septic system, approved years ago by the Fayette County Health Department. There is a small wastewater treatment plant on the State's Bluegrass Station property just to the northeast of this location. A new sanitary sewer connection is not anticipated, but an update to the current septic system may need to meet with the approval by the Health Department, and would be required prior to any redevelopment of the subject property.

Refuse – According to this application, the Urban County Government will provide trash pickup. Because this property is outside the Urban Service Area, it is more likely that the property will be served by a private commercial waste hauler.

Police – The nearest police station is located a little over seven miles to the southwest, near Eastland Shopping Center on Winchester Road.

Fire/Ambulance – The nearest fire station to the subject property is Station #23, located less than ¼ mile to the northeast. The fire station is on the Avon/Bluegrass Station property, which is also located on Briar Hill Road.

Utilities – Natural gas, telephone service, electric, water, and cable television are all available to the area surrounding the subject property, and all can easily be extended to serve the property.

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.

CASE REVIEW

The petitioner has requested a zone change from an Agricultural-Rural (A-R) zone to a Neighborhood Business (B-1) zone for less than one acre of land, located just to the southwest of the State's Bluegrass Station facility on Briar Hill Road, in the Avon Rural Activity Center.

This Rural Activity Center currently has a mixture of land uses and zoning categories. Property to the east and south are in the same A-R zone as the subject property, where there is a residence and commercial compound of some sort, and a farm, respectively. Property to the north has been approved for decades for a concrete mixing facility in a Heavy Industrial (I-2) zone, under a conditional use permit approved decades ago by the Board of Adjustment. There is a mixture of A-R, I-1, I-2 and B-1 zoning found in the Avon Rural Activity Center, which is generally bounded by Briar Hill Road, Houston-Antioch Road, The RJ Corman Railroad and a large, existing warehouse area in Bluegrass Station.

The applicant has filed this rezoning request to remove the non-conforming use at this location, and to have its zoning match its prior, and future use. Few physical changes are proposed for the subject property, at least at the present time. Because the property is currently non-conforming due to its A-R zoning, expansion and/or alterations are not permitted to this structure. Rezoning to B-1 would allow the structure to be expanded, as it would no longer be a non-conforming use or a non-conforming structure.

The subject property, which is located on the north side of Briar Hill Road, has historically been utilized as a small commercial use. Property Valuation Administrator records show it was formerly a convenience store with gasoline pumps between the building and the right-of-way. It was most recently used as a 64-seat restaurant, but the building has been vacant for a little over nine months. The property currently contains a single commercial structure of about 3,510 square feet in size, more than two dozen accessory parking spaces on the site, and unrestricted access to Briar Hill Road.

Land to the immediate west is in a Light Industrial (I-1) zone, but may not have been converted from a single family residence that has occupied that lot for more than 30 years. It was rezoned from A-R to I-1 in 1995, in agreement with the 1988 Comprehensive Plan, for Terry Coleman (MAR 95-43) to "repair, refurbish wooden industrial pallets" at this location. Of the subject property, that Staff Report stated that it was an anomaly:

“The dominant land use recommended by the (1988) Plan in this area of the Avon RAC is for heavy industrial uses, except for the non-conforming grocery east of the subject site, which is identified for retail trade use.”

The 1996 and 2001 Comprehensive Plans also recommended a future Retail Trade and Personal Services land use for the subject property, probably recognizing its long-standing commercial use.

The 2013 Comprehensive Plan no longer contains a detailed land use element (i.e., map); but the policy statements, and the Goals and Objectives of the Plan, are utilized to help assess whether a proposed zone change can be found to be in agreement with the Plan. In this instance, the most definitive portion of the Comprehensive Plan is the 1999 Rural Land Management Plan, which is one of its adopted elements. That Plan, for the first time in our long local planning history, provided a comprehensive analysis and recommendation for all areas outside of the Urban Service Area. It also covered the four Rural Activity Centers, including the mix of land uses found in Avon.

The RLMP stated that land uses in the Avon RAC should include 247 acres of Light Industrial use, 43 acres of Heavy Industrial use, and 3.2 acres of Retail use (Figure 3-9, page III-22). Later in 1999, the year that the RLMP was adopted, 0.37 acres of B-1 land was rezoned to I-1 near Cable Drive, just to the northeast of the subject property. Thus, the staff estimates that about 2.72 acres of B-1 zoning remains in Avon. Addition of the 0.59 net acre of the subject property would result in a total of 3.3 acres of land “zoned” for retail use. The subject property could be partly rezoned (for instance, eliminating the unusable floodplain area to the rear of the parking lot and structure) to ensure exact compliance with the RLMP, but that would create additional landscaping requirements for this applicant, which wouldn’t really achieve much in terms of screening this use from the adjacent Heavy Industrial property to the north. That would create a split-zoned lot, which is typically undesirable. The proposed rezoning will also not “result in inappropriate growth pressures on farmland” (page III-20).

While the applicant believes that the existing Agricultural Rural (A-R) zone is far less appropriate than the Neighborhood Business (B-1) zone now proposed by the petitioner, the staff believes that this request can be found to be in agreement with the Rural Land Management Plan, and in turn, with the 2013 Comprehensive Plan. Conditional zoning restrictions are suggested by the staff for this location to limit the more intense commercial uses of the B-1 zone and to limit the illumination allowed on the site’s signage, since residences do exist in very close proximity to the subject site.

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:
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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.

WLS/JE/TLW/BJR

4/4/2016

Planning Services/Staff Reports/MAR/2016/MAR 2016-11.doc

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.

