

5. RML CONSTRUCTION, LLP, ZONING MAP AMENDMENT & CADENTOWN SUBDIVISION, LOT 10 (BRIGHTON 3050) ZONING DEVELOPMENT PLAN

- a. MARV 2014-22: RML CONSTRUCTION, LLP (1/4/15)* – petition for a zone map amendment from a Single Family Residential (R-1D) zone to a High Density Apartment (R-4) zone, for 0.33 net (0.50 gross) acre; and from a Single Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone, for 0.02 net (0.23 gross) acre, for property located at 2985 Liberty Road (a portion of). Variances are also requested with this zone change.

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 petitioner proposes rezoning the portion of the property that was recently purchased and consolidated in September 2014. The petitioner proposes a High Density Apartment (R-4) zone for a majority of the subject property (0.33 acres) to allow for construction of a 12-unit apartment building, which is planned to be incorporated into the nearby "Brighton 3050" (formerly "The Summit") apartment complex. The petitioner also proposes a Neighborhood Business (B-1) zone for the remainder of the property (0.02 acres) to allow for the parking lot for an approved mixed-use building to continue. Overall, the site is planned to now have 52 dwelling units with the addition of the small triangle-shaped parcel of land.

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

The Staff Recommends: Approval, for the following reasons:

1. The requested High Density Apartment (R-4) zone and Neighborhood Business (B-1) zone are appropriate and the existing Single Family Residential (R-1D) zone is inappropriate, for the following reasons:
 - a. Single family residential development is possible at this location, although the surrounding uses suggest that a more intense use of the property is more appropriate. The more appropriate and efficient use of the property is to incorporate it into the adjacent mixed-use development.
 - b. The proposed rezoning of the subject property will allow uses in keeping with the existing character of the area. The subject property fronts on Liberty Road and adjoins both planned and built higher density residential development to the north and east. The property is also adjacent to the commercial development to the south and west. This portion of the Urban Service Area has developed with a combination of neighborhood business and office uses fronting along Man o' War Boulevard, with residential uses located to the rear of the business uses or along Liberty Road.
 - c. The petitioner's proposed rezoning is generally in keeping with the established development pattern of the immediate area, because the planned neighborhood business zoning will extend to generally the same boundary as that for the CVS Pharmacy located directly across Liberty Road.
2. This recommendation is made subject to the approval and certification of ZDP 2014-95: Cadentown Subdivision, Lot 10 (Brighton 3050) (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. REQUESTED VARIANCES

1. Eliminate the B-1 to R-4 zone-to-zone screening and vehicular use area screening requirements internal to the site on property located at 2985 Liberty Road.
2. Reduce the front yard setback in the R-4 zone from 20 feet to 5 feet along Liberty Road in order to construct parking in the otherwise required front yard.

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

The Staff Recommends: Approval of the requested variances, for the following reasons:

- a. Granting the requested landscape and setback variances will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. The variances are requested because providing the required landscaping between the B-1 and R-4 zones, which would result in a disjointed parking lot design, would be contrary to the applicant's intent to integrate the mixture of commercial and residential uses.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance because zone-to-zone screening is designed to "require buffering between incompatible land uses," and the proposed mix of land uses will be compatible (rather than incompatible) with each other. Landscaping will be provided by the developer throughout the property that will accomplish the purpose of the general provisions of Article 18 without impairing the mixed-use development concept associated with this proposal.

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

- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is the intent to develop a small mixed-use development that will be integrated into the existing apartment complex and will complement the existing Brighton Place shopping center.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship because the internal screening of the uses would be contrary to the concept of a useable open space for this development.
- e. Although the circumstances surrounding the requested variances are because of the proposed zone change, the variances are requested in an effort to accomplish a more efficient design, and the placement of the landscaping in more appropriate locations on the subject property.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property R-4 & B-1; otherwise, any Commission action of approval of these variances is null and void.
 2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan; as amended by a future Development Plan approved by the Commission; or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
 3. 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].
 4. Prior to obtaining an Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.
- c. ZDP 2014-95: CADENTOWN SUBDIVISION, LOT 10 (BRIGHTON 3050) (AMD) (1/4/15)* - located at 2985 Liberty Road (a portion of).
(EA Partners)

Note: The purpose of this amendment is to rezone the property that has been consolidated and revise the layout.

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

1. Provided the Urban County Council rezones the property R-4 & 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. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Dimension driveway off access drive.
7. Addition of building height in site statistics.
8. Addition of floor area and square footage in site statistics.
9. Provided the Planning Commission approves a landscape variance and a variance to Art. 16-4(c) to the proposed parking in the required front yard.
10. Discuss need for sidewalk connection on northeast side of property.
11. Discuss need for tree protection on the northwest side of property.

Zoning Presentation: Ms. Wade presented the staff report for this requested zone change, briefly orienting the Commission to the location of the subject property on Liberty Road. She stated that the petitioner is requesting the R-4 zone for the bulk of the property, with a B-1 zone proposed for a very small portion to the south. The property is located north of Old Todds Road, and adjacent to Liberty Road and the entrance to the existing Brighton Place Shoppes development.

Ms. Wade noted that, earlier this year, the petitioner had requested a zone change to R-4 and B-1 for the other (eastern) portion of the subject parcel, which was approved. The petitioner was able to purchase this (western) portion of the property in September 2014, and is now proposing to expand their existing development to include a small apartment building for 12 residential units. The B-1 portion of this request was proposed in order to "square up" the B-1 area, with parking depicted on the corollary development plan in that area.

Ms. Wade stated that the subject property is surrounded primarily by residential development, with townhouses to the north and the Brighton 3050 apartment complex, also owned by the petitioner, to the northeast. Some business zoning is located to the south of the subject property at Old Todds Road and Liberty Road, where there are restaurants, a pharmacy, and automobile-related uses. Ms. Wade displayed an aerial photograph of the property, noting the portion of the subject parcel that was previously rezoned.

Ms. Wade explained that the subject property was also previously part of a parcel that is now located across Liberty Road, fronting on Cadentown Lane. With the construction of Liberty Road, the property was severed into two parcels. Following the purchase of the subject property, the petitioner consolidated it with a plat into their existing development. The petitioner is requesting the R-4 zone in order to further expand the apartment development. The petitioner contends that the existing R-1D zone is no longer appropriate at this location, but the proposed R-4 and B-1 zones are appropriate, because

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they would be compatible with the adjacent development. Ms. Wade stated that the staff and the Zoning Committee recommended approval of this request, for the reasons more fully listed in the staff report and on the agenda.

Development Plan Presentation: Ms. Gallt presented the zoning development plan, and relying upon a rendered version, noted the location of the additional apartment building proposed for the property. She said that the Subdivision Committee recommended approval of this plan, subject to 11 conditions as listed on the agenda. Condition #10 could now be changed to read "resolve," since the petitioner agreed at the Subdivision Committee meeting to connect the sidewalk for the proposed new building to the existing development on the northeast side of the property. Condition #11 refers to the need for a Tree Protection Area (TPA) on the property.

Ms. Gallt said that the staff had distributed copies of an email from Tim Queary, Urban Forester, noting that a TPA would not be necessary on the northwest side of the property, since no significant trees were found there. She added that condition #11 could now be deleted.

Variance Presentation: Mr. Emmons presented the staff report on the requested variances, noting that the petitioner was requesting to vary the landscape requirements and shift the location of the parking area.

Mr. Emmons stated that the petitioner is requesting a landscape variance to the zone-to-zone screening requirement between the B-1 and R-4 zones on the subject property, for a length of less than 20 feet. The Landscape Review Committee reviewed this request, and recommended approval of the requested variance, which is an extension of the zone-to-zone screening variance granted by the Planning Commission along with the recent zone change on the subject property, earlier this year.

Mr. Emmons said that the petitioner is also requesting a front yard variance from 20 feet to 5 feet along Liberty Road, in order to construct parking in the otherwise required front yard. There are approximately 15 parking spaces proposed in that area, as depicted on the development plan. The petitioner will provide landscaping for that area according to the vehicular use area screening requirements, just as it is provided in the existing adjacent B-1 parking area. Mr. Emmons stated that, as the staff was reviewing this request, they found a large common greenspace between the two new apartment buildings. Should the variance not be granted, the petitioner could redesign the property in order to provide that required parking between the buildings and move the greenspace closer to Liberty Road. The staff does not believe, however, that that option would provide the best open space design for the project.

Mr. Emmons stated that the general purpose of the zone-to-zone screening requirements are to separate land uses, but the primary intent of this rezoning request is to integrate residential and business uses into the same development. He said that the staff is recommending approval of both of the requested variances, for the reasons as listed in the staff report and on the agenda, subject to the four conditions as listed. Those four conditions mimic those that were recommended as part of the approval of the variance that was granted for the adjacent zone change earlier in 2014.

Commission Question: Ms. Plumlee asked if the existing bush honeysuckle on the property would need to be preserved. Mr. Emmons answered that it would not need to be maintained. Ms. Plumlee asked, with regard to Mr. Queary's email, if the honeysuckle would need to be replaced with another planting. Mr. Emmons answered that the typical vehicular use area screening of a 3' hedge and trees every 40' would be required in that area. Mr. Sallee added that there is not a requirement for screening between the R-3 and R-4 zones along this property line.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner. She stated that the petitioner is in agreement with all of the staff's recommendations, including the modifications to the development plan and the conditions as recommended by Ms. Gallt.

Citizen Comment: There were no citizens present to comment on this request.

Zoning Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 9-0 (Brewer and Wilson absent) to approve MARV 2014-22, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 9-0 (Brewer and Wilson absent) to approve the requested variances, for the reasons provided by staff, subject to the four conditions as listed.

Development Plan Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 9-0 (Brewer and Wilson absent) to approve ZDP 2014-95, subject to the first nine conditions; changing #10 to read: "Resolve need for sidewalk connection on northeast side of property;" and deleting condition #11.

