

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

August 26, 2021

- I. **CALL TO ORDER** - The meeting was called to order at 1:30 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

ATTENDANCE – Members present were: Chair Larry Forester, Ivy Barksdale, Headley Bell, Zach Davis, Anthony de Movellan, Robin Michler, Bruce Nicol, Frank Penn and Graham Pohl (Janice Meyer absent). Planning staff members present were: Jim Duncan, Director; Traci Wade, Tom Martin, Hal Baillie, Samantha Castro, and Debbie Woods. Other staff members present were: Vaughn Adkins, Division of Engineering; Stephen Parker, Division of Traffic Engineering; Firefighter Embry Beatty, Division of Fire and Emergency Services; and Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Pohl, seconded by Mr. Davis, and carried 9-0 (Meyer absent) to approve the minutes of the July 22, 2021.

- III. **POSTPONEMENTS AND WITHDRAWALS** - Requests for postponement and withdrawal will be considered at this time.

1. LATA, LLC (AMD) ZONING MAP AMENDMENT & BRYAN PROPERTY, LOT 2 (AMD) ZONING DEVELOPMENT PLAN

- a. PLN-MAR-18-00023: LATA, LLC (AMD) (8/22/21)* - a petition for a zone map amendment from a restricted Highway Service Business (B-3) zone to a Planned Neighborhood Residential (R-3) zone, for 4.98 net and gross acres, for property located at 1800 Bryant 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 Plan's 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. In addition, the Plan encourages a mix of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; and provision of land for a diverse workforce.

The petitioner proposes rezoning a portion of the parcel to the Planned Residential Neighborhood (R-3) zone to allow for the development of a 100-unit apartment complex with 172 bedrooms, a club house, pool, and associated off-street parking.

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

The Staff Recommends: **Disapproval**, for the following reasons:

1. The requested rezoning to a Planned Residential Neighborhood (R-3) zone is not in agreement with the 2013 Comprehensive Plan, for the following reasons:
 - a. The proposed R-3 zone does not provide for or create a well-designed neighborhood or community, but rather creates an "islanding effect," that isolates residents rather than incorporates them into the broader community.
 - b. The proposed apartment complex will be physically separated from the surrounding neighborhoods, and situated within an area that is heavily focused on commercial activities.
 2. The proposed Planned Neighborhood Residential (R-3) zone is not appropriate for the subject property, for the following reasons:
 - a. The LFUCG Land Subdivision Regulations Article 6-8(q)(3)(a), Land Use Access for Residential Development states that "apartment complexes, condominium developments, as well as all other developments that are accessed through a common private drive or street system, shall be treated as high density residential developments regardless of the actual overall density of the development" and that "high density private driveways should not intersect local streets."
 - b. The high flow of traffic at the intersection of Bryant Road and Pleasant Ridge Drive, and the carrying capacity of Bryant Road creates a safety risk to potential residents.
 3. There have been no unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in 2013 that would justify a shift from the B-3 zone for the subject property.
- b. PLN-MJDP-18-00088: BRYAN PROPERTY, LOT 2 (AMD) (8/22/21)* - located at 1800 BRYANT ROAD, LEXINGTON, KY
Project Contact: Vision Engineering

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

1. Provided the Urban County Council rezones the property R-3; 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.

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

4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Remove Lot 1 information from site statistics.
8. Dimension parking lot drive aisles and parking spaces.
9. Dimension pool.
10. Discuss retention of conditional zoning restriction for buffering.
11. Discuss Bryant Road improvements.

Applicant Representation: Matt Carter, representing the petitioner, said that they would like a postponement of this zone change to the September 23, 2021 meeting. He said that they are continuing to work with the staff and would like additional time. He added that they have mailed letter to the neighbors regarding this postponement.

Action: A motion was made by Mr. Pohl, seconded by Mr. de Movellan, and carried 9-0 (Meyer absent) to postpone PLN-MAR-18-00023: LATA, LLC (AMD) and PLN-MJDP-18-00088: BRYAN PROPERTY, LOT 2 (AMD) to the September 23, 2021, meeting.

2. CERVANTES & ASSOCIATES, LLC ZONING MAP AMENDMENT & WM. SHELY SUBDIVISION, UNIT 2 & HOLLOW CREEK SUBDIVISION UNIT 1 ZONING DEVELOPMENT PLAN

- a. PLN-MAR-21-00008: CERVANTES & ASSOCIATES, LLC (9/28/21)*- a petition for a zone map amendment from a Highway Service Business (B-3) zone to a Neighborhood Business (B-1) zone, for 1.5 net (1.66 gross) acre, for properties located at 505 and 519 W. New Circle.

COMPREHENSIVE PLAN AND PROPOSED USE

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

The applicant is seeking to rezone the subject property from the Highway Service Business (B-3) zone to the Neighborhood Business (B-1) zone in an effort to convert a currently vacant retail establishment to a banquet facility.

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

The Staff Recommends: **Disapproval**, for the following reasons:

1. The requested rezoning to Neighborhood Business (B-1) zone is not in agreement with the 2018 Comprehensive Plan for the following reasons:
 - a. The requested zoning is not a recommended zone within the Comprehensive Plan and the applicant has not provided sufficient information as to how the zone fits in the context of the area,
 - b. The requested rezoning is not in agreement with the Goals, Objectives, and Policies of the 2018 Comprehensive Plan,
 - c. The requested rezoning does is not in agreement with the Development Criteria of the 2018 Comprehensive Plan.
2. There have been no major unanticipated changes of an economic, social or physical nature in the area of the subject property since the adoption of the 2018 Comprehensive Plan.
3. The existing Highway Service Business (B-3) zone remains appropriate for the following reasons:
 - a. The location of the subject properties along West New Circle Road is more conducive to access from the traveling public and the subject properties are oriented to those facilities.
 - b. The existing zoning are compatible with adjacent land uses.
 - c. New uses that allow for the intensity and density intended for the properties context can be met within the current building.
- b. PLN-MJDP-21-00035: WM. SHELY SUBDIVISION, UNIT 2 & HOLLOW CREEK SUBDIVISION UNIT 1 (9/28/21)* - located at 505 & 519 WEST NEW CIRCLE ROAD, LEXINGTON, KY
Project Contact: Vision Engineering

The Subdivision Committee Recommended: **Postponement**. There are questions regarding the required parking location and tree canopy.

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, and storm and sanitary sewers.

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3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree inventory map.
5. Greenspace Planner's approval of the treatment of greenways and greenspace.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote: No building permits shall be issued unless and until a final development plan is approved.
8. United States Postal Service Office's approval of kiosk locations or easement.
9. Denote property is located in the Royal Springs Aquifer Recharge Area.
10. Denote review by the Royal Springs Aquifer Committee.
11. Denote B-1 zone setback per Article 8-16 of the Zoning Ordinance.
12. Denote FEMA floodplain map source.
13. Remove "easement" from 25' setback notation.
14. Denote vegetative buffer per the Engineering Manuals.
15. Dimension drive aisle parallel to existing building.
16. Clarify area of existing tree canopy.
17. Denote FAR, lot coverage, and height of building per Article 21 of the Zoning Ordinance.
18. Discuss zone-to-zone screening.
19. Discuss dumpster location in the floodplain.
20. Discuss off-site parking proposed and possible variance.
21. Discuss substantial improvements per Article 19 relative to proposed change in use.
22. Discuss Placebuilder criteria.

Applicant Representation: Matt Carter, representing the petitioner, said that they would like a postponement of this zone change to the September 23, 2021 meeting. He said that they need to meet with the neighborhood prior to the zone change hearing and would like to request more time to do so.

Commission Question – Mr. Penn asked if the applicant feels confident that a recommendation for approval could be obtained by allowing additional time to meet with the staff and the neighborhood. Mr. Carter said he is hopeful.

Action: A motion was made by Mr. Bell, seconded by Mr. de Movellan, and carried 9-0 (Meyer absent) to postpone PLN-MAR-18-00023: LATA, LLC (AMD) and PLN-MJDP-18-00088: BRYAN PROPERTY, LOT 2 (AMD) to the September 23, 2021, meeting.

- IV. LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, August 5, 2021, at 8:30 a.m. The meeting was attended by Commission members Ivy Barksdale, Headley Bell, Anthony de Movellan, Janice Meyer, and Frank Penn. Committee members in attendance were: Vaughan Adkins, Division of Engineering; and Stephen Parker, Division of Traffic Engineering. Staff members in attendance were: Jim Duncan; Tom Martin; Hal Baillie; Cheryl Gallt; Lauren Hedge; Samantha Castro; and Stephanie Cunningham; Captain Greg Lengal, Division of Fire and Emergency Services; and Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission:

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- A. NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

Criteria: (1) the Subdivision Committee recommendation is for approval, as listed on this agenda, and
 (2) the Petitioner agrees with the Subdivision Committee recommendation and conditions listed on the agenda, and
 (3) no discussion of the item is desired by the Commission, and
 (4) no person present at this meeting objects to the Commission acting on the matter without discussion, and
 (5) the matter does not involve a waiver of the Land Subdivision Regulations.

- B. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)

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- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Commission discusses and/or votes on the plan.

V. **ZONING ITEMS** - The Zoning Committee met on Thursday, August 5, 2021, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members: Janice Meyer, Robin Michler, and Graham Pohl. Staff members in attendance were: Hal Baillie, Tom Martin, Sam Castro, and Debbie Woods; and Keith Horn, Department of Law. The Committee members reviewed applications and made recommendations as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS** - Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) Proponents (10 minute maximum OR 3 minutes each)
 - (b) Objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) Petitioner's comments (5 minute maximum)
 - (b) Citizen objectors (5 minute maximum)
 - (c) Staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s).

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **BLUEGRASS CUSTARD, LLC ZONING MAP AMENDMENT & OLDHAM ADDITION (LOTS 1-3, 10-13 & 21-24) (ANDY'S FROZEN CUSTARD) ZONING DEVELOPMENT PLAN**

- a. PLN-MAR-21-00009: BLUEGRASS CUSTARD, LLC (9/28/21)*- a petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone, for 0.53 net (0.62 gross) acre, for property located at 355 American Avenue.

COMPREHENSIVE PLAN AND PROPOSED USE

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

The applicant is seeking to rezone the subject property from a Single Family Residential (R-1D) zone to the Neighborhood Business (B-1) zone in an effort to modify a non-conforming parking lot and allow for a drive-through facility.

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

The Staff Recommends: **Postponement**, for the following reasons:

1. The zone change application for the subject property necessitates greater review regarding the agreement with the following Design Policy #7 of the Comprehensive Plan regarding parking areas.

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2. The zone change application for the subject property, as proposed, does not completely address the development criteria for a zone change within the Corridor Place Type, and the Medium-Density Non- Residential / Mixed Use Development Type. The following criteria require further discussion by the applicant to address compliance with the Comprehensive Plan:
 - a. A-DS7-2 Any non-residential or multi-family parking not buffered by a building should be screened from the streetscape view and adjacent properties.
 - b. B-SU11-1 Green infrastructure should be implemented in new development. (E-GR3)
 - c. B-PR7-2 Trees should be incorporated into development plans, prioritize grouping of trees to increase survivability.
 - d. B-PR7-3 Developments should improve the tree canopy.
- b. VARIANCE REQUEST – One dimensional variance to reduce required property perimeter requirements from 15 feet to 0 feet for the portion of the property that surrounds the Columbia Gas property and eliminate the landscaping requirements. A second variance to reduce the required vehicular use area buffer from 3 feet to 0 feet and remove the required vehicular use area landscaping for the portion of the property that abuts 1214 South Broadway.

The Zoning Committee recommended: **Postponement** for the reasons provided by staff.

- c. PLN-MJDP-21-00038: OLDHAM ADDITION (LOTS 1-3, 10-13 & 21-24) (ANDY'S FROZEN CUSTARD) (9/2821)* - located at 1200 SOUTH BROADWAY & 355 AMERICAN AVENUE, LEXINGTON, KY
Project Contact: CEDC

The Subdivision Committee Recommended: **Postponement**. There are questions regarding plan status and required Article 26 information.

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, and storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree inventory map.
5. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
6. United States Postal Service Office's approval of kiosk locations or easement.
7. Delete all extraneous construction information.
8. Delete all title exception information.
9. Addition of purpose of amendment note (to rezone R-1D zone property to B-1 zone).
10. Correct setback references on 355 American Avenue to Article 15-2(a)(4) of the Zoning Ordinance.
11. Clarify required parking generator.
12. Revise Note #16 to state "Signage shall comply with Article 17 of the Zoning Ordinance."
13. Delete R-1D zone setbacks from Note #13.
14. Combine Notes #1, 2, 4 & 8 to one note to state "Sanitary sewers and stormwater management shall meet the requirements of the LFUCG Engineering Manuals."
15. Revise Note #9 to state that access is to the approval of the Division of Traffic Engineering.
16. Revise all references to the City of Lexington to L.F.U.C.G.
17. Correct plan title to match staff report.
18. Denote Board of Adjustment approval date and case number for drive-through facility.
19. Discuss tree inventory plan.
20. Discuss plan status.

Staff Zoning Presentation – Mr. Baillie presented the revised staff report and recommendations for the zone change application. He displayed photographs of the subject property and aerial photographs of the general area. He said the applicant is seeking to modify a non-conforming parking lot and allow a drive-through facility. He said that the applicant had previously presented to the Board of Adjustment (BOA) to allow for the redevelopment along the South Broadway corridor (1200 S. Broadway). The BOA did approve the establishment of a drive-through facility on the front portion of the site, but the drive-through could not be expanded on to the rear property, due to the non-conforming status of the parking lot. The property is surrounded by the Highway Service Business (B-3) zone and Neighborhood Business (B-1) zone along S. Broadway, and Professional Office (P-1) zone and Single Family Residential (R-1D) zone along Burley Avenue and American Avenue.

Mr. Baillie said that the proposed redevelopment will demolish the building located on the corner of American Avenue and S. Broadway, which has been approved through a BOA site plan. Currently there are no pedestrian facilities located at this site. He said that the applicant submitted their application under the Corridor Place-Type, which is located along the major arterial roadways and identified within the Comprehensive Plan. He added that the applicant is fronting on a corridor and providing activation via the restaurant. The applicant is also seeking a Medium-Density Non-Residential / Mixed Use Development Type, which is based on the scale of the structure, the density of the site, and the intensity of the land use. He said that the proposed

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land use is associated with a fast / casual style restaurant that includes a drive-through facility. He said that the applicant is not requesting one of the recommended zones from the Comprehensive Plan, because it is not an urban style design with greater amount of density. He said that in the applicant's letter of justification they described some of the surrounding zones, the major pedestrian improvements, and the orientation of their development. The staff did agree that the proposed zone could be appropriate.

Mr. Baillie said that at the August 5, 2021, Subdivision and Zoning Committees, the staff had concerns regarding the pedestrian facilities and the appropriate landscaping, particularly the canopy coverage and the buffering of the property. He displayed the landscape plan and said that the applicant has increased the amount of canopy coverage. The staff still had some concerns with the rear parking area and the viability of the buffered trees at that location and recommended permeable pavers be included so that the trees will be viable long term. He said that Mr. Martin will also discuss the integration of green infrastructure with permeable pavers throughout the parking area in the rear of the property.

Mr. Baillie said that the staff also had concern with the impact of this development on the surrounding properties. He said that the staff is recommending the following conditional zoning restrictions to reduce the impact to the neighboring properties and the overall area:

- a. There shall be no exterior lighting greater than 12 feet in height and all lighting be shielded and directed downward.
- b. The following uses shall be prohibited:
 - i. Automobile Service Stations.
 - ii. Car Washes.

Mr. Baillie said that the staff is recommending approval for the following reasons:

1. The requested Neighborhood Business (B-1) zone is in agreement with the 2018 Comprehensive Plan's Goals and Objectives, for the following reasons:
 - a. The proposed rezoning addresses the goal of growing successful neighborhoods by supporting infill and redevelopment throughout the Urban Service Area (Theme A, Goal #2), while also addressing community facilities at a neighborhood scale (Theme A, Goal #4). The increase of modernized pedestrian facilities and the reduction of potential conflict points between pedestrian activity and vehicular movement is imperative to the development of a safer and more walkable community.
 - b. The proposed project will improve a desirable community that is focused on a people first design that provide accessible amenities to meet the quality of life needs of Lexington residents and visitors (Theme D, Goal #1). The proposed project includes a new restaurant facility that provides an activated street frontage and delineated pedestrian facilities, while also improving a portion of the property that auto oriented and removing conflict points between pedestrian and vehicular movement.
 - c. The proposed development will allow for the improvement of a parking lot and will modernize the layout of the parking area with landscaping to improve the visual impact on the neighborhood (Design Policy #7).
 - d. The proposed development will increase the available tree canopy coverage to off-set the impacts of the heat island effect caused by Lexington's paved areas (Restoration Pillar III, Protection Policy #7).
2. The justification and corollary development plan are in agreement with the policies and development criteria of the 2018 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Site Design, Building Form and Location as the site creates a safer development that supports pedestrian mobility, while also including a buffer between the higher intensity drive-through facilities and the existing single-family residential land use along the southeastern portion of the property.
 - b. The proposed rezoning includes safe facilities for the potential users, through the incorporation of enhanced pedestrian facilities along the property's frontages and leading to the development frontage along South Broadway. Additionally, the proposed development delineates the access and egress into the site, while also increasing the buffering between the vehicular uses and the surrounding properties. These improvements address the Transportation and Pedestrian Connectivity development criteria of the 2018 Comprehensive Plan.
 - c. The proposed rezoning meets the criteria for Greenspace and Environmental Health as it will increase tree canopy coverage and establish green infrastructure that will help alleviate the impact on the surrounding development and the stormwater system.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following buffering restriction is recommended via conditional zoning:
 - a. There shall be no exterior lighting greater than 12 feet in height and all lighting be shielded and directed downward.
 - b. The following uses shall be prohibited:
 - i. Automobile Service Stations.
 - ii. Car Washes.

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These restrictions are appropriate and necessary to reduce the potential impact of the allowable uses on the neighboring lower intensity uses, while also restricting the highest nuisances producing uses in the zone.

4. This recommendation is made subject to approval and certification of PLN-MJDP-21-00038: Oldham Property (Lots 1-3, 10-13, & 21-24)(Andy's Frozen Custard), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

Commission Questions – Mr. Michler asked if the applicant has completed a tree inventory of the trees on the rear of the property and if there is any difference to the dimensions of the parking lot from the applicant's presentation to the Zoning Committee on August 5, 2021. Mr. Baillie said that there were not any changes along the rear of the parking lot. He said that the applicant is working with the Urban Forester, to make sure that the trees are viable, which significant trees will be required to remain on the property, and, if problematic, trees can be removed. He added that Mr. Martin will present more information about the species of the trees and the dimensions of the parking lot. He said the only difference from the first review of this application to now is a letter from the applicant's landscape architect stating that the trees would be viable in the rear of the property and the proposed permeable pavers.

Development Plan Presentation – Mr. Martin presented a revised rendering of the final development plan associated with this zone change. He said that there are revised conditions were distributed to the Planning Commission, as follows:

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, and storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Urban Forester's approval of tree preservation plan.
5. ~~Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.~~ Provided the Planning Commission grants the requested variances.
6. United States Postal Service Office's approval of kiosk locations or easement.
7. ~~Delete all extraneous construction information.~~ Addition of street cross-sections.
8. ~~Delete all title exception information.~~
9. ~~Addition of purpose of amendment note (to rezone R 1D zone property to B 1 zone).~~
8. ~~40.~~ Correct setback references on 355 American Avenue to Article 15-2(a)(4) of the Zoning Ordinance.
41. ~~Clarify required parking generator.~~
12. ~~Revise Note #16 to state "Signage shall comply with Article 17 of the Zoning Ordinance."~~
13. ~~Delete R 1D zone setbacks from Note #13.~~
14. ~~Combine Notes #1, 2, 4 & 8 to one note to state "Sanitary sewers and stormwater management shall meet the requirements of the LFUCG Engineering Manuals."~~
15. ~~Revise Note #9 to state that access is to the approval of the Division of Traffic Engineering.~~
16. ~~Revise all references to the City of Lexington to L.F.U.C.G.~~
9. ~~47.~~ Correct plan title to match staff report.
48. ~~Denote Board of Adjustment approval date and case number for drive-through facility.~~
19. ~~Discuss tree inventory plan.~~
20. ~~Discuss plan status.~~
10. Correct plan scale to ensure all information prints of the plan sheet.

Mr. Martin displayed a color rendering and said that this is a redesign of a parking lot. He said that the applicant is proposing a 1,500 square foot building, with no indoor seating. There will be an area to order at the front of the structure fronting on S. Broadway, as well as the drive-through on the rear. The required parking for this property is only 8 spaces, and they are proposing 33 parking spaces, which is a reduction of 50% from the current parking lot. The parking area will allow for two-way through movement of vehicles. He pointed to the frontage along S. Broadway, Burley Avenue, and American Avenue and said that the applicant is maintaining the existing access points. He said that there is a traffic signal located at American Avenue.

Mr. Martin then displayed a rendering of the development and said that the applicant has proposed permeable pavers along the rear of the property along the residential land uses. He also pointed out the location of a decorative fence that will separate pedestrians from the drive-through. He said that there will be an open patio area and benches along the right-of-way. The applicant is proposing to construct the building at the 10-foot setback, which is permitted in the B-1 zone. He said in regards to Mr. Michler's question that the trees will remain in the rear of the property.

Mr. Martin said that there are a few items that need to be corrected on the development plan, such as the plan title and the scale of the plan. He said that that the applicant needs to add the street cross-sections, and correct the setback references on 355 American Avenue to Article 15-2(a)(4) of the Zoning Ordinance. He also stated that there is a variance request and pointed to that area. He said that is a Columbia Gas regulating structure, which is deeded to Columbia Gas. This area is still residentially zoned and necessitates variances to the landscaping buffers. There was another variance request regarding the vehicular use

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areas, however, the applicant has reached an agreement with the adjoining property owner to meet that landscaping requirement.

Variance Presentation – Mr. Baillie presented the variance request associated with this application. He said that initially the applicant was seeking two dimensional variances. The first variance was for the vehicular use area for screening or buffering, which he pointed to on the development plan. He said that there was concern regarding the ability to meet the required tree spacing and the vegetative area. He said that the Zoning Ordinance allows the applicant to share a landscape buffer and they will be planting 2 trees, which will meet the required tree spacing for that area. He said that the vegetative area, which is approximately 18 feet wide, exceeds the 3 feet requirement. He added that the applicant is also providing a fence or railing along the drive-through facility at that location, for pedestrian safety. He said that these 3 elements removed the need for the variance in the vehicular use area.

Mr. Baillie said the second variance request is to reduce the required property perimeter requirements from 15 feet to 0 feet for the portion of the property that surrounds the Columbia Gas facility and eliminate all landscape material requirements. He displayed a photograph and said that it is a 12-foot by 12-foot area that was purchased by Columbia Gas to allow for the establishment of a service facility. He said that the zoning stays with that parcel of land and will remain a Single Family Residential (R-1D) zone. There are no single family residence currently on this site, nor could one be constructed on this site. The facility is still utilized by Columbia Gas as there is a gas line that runs across the subject property to Burley Avenue. He said that the applicant opines that there is no health, safety, or welfare impact caused by the requested relief. The applicant also indicates that this is a unique circumstance and that the removal of the landscaping in this area would deprive them of the reasonable use of the land and would create an unnecessary hardship. He said that the staff agrees with the applicant for this variance request and recommends approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity, as the proposed project will impact the small lot that is occupied by a public utility service facility and not a single family residence.
2. The need for the variances arises from the special circumstances of the adjacency to a non-conforming lot, which is owned and operated by a public utility.
3. The strict application of the property perimeter screening requirements would create an unnecessary hardship on the proposed development requiring the placement of the drive-through facilities to be closer to the residential land uses and impacting the use of the proposed parking lot.
4. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process for this project and has requested the variances prior to commencing construction.

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

- a. Provided the Planning Commission and Urban County Council approves the requested zone change to the B-1 zone, otherwise the requested variances shall be null and void.
- b. The development shall be constructed in accordance with the approved Final Development Plan, or as amended by the Planning Commission.
- c. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
- d. Action of the Planning Commission shall be noted on the Development Plan for the subject property.

Applicant Presentation – Mr. Nick Nicholson, attorney representing the petitioner, said that he is filling in for Bruce Simpson and he has reviewed this case. He said that this is the second public hearing for Bluegrass Custard. He said that they have already been heard by the Board of Adjustment (BOA) and has been approved for the drive-through facility on the B-1 zoned portion of this site. He said that at the time of the BOA meeting for approval, a condition to allow the Planning Commission to amend the site plan that was incorporated, to allow the space for the drive-through aisle should the Planning Commission recommend approval of the zone change for 355 American Avenue. Regardless of the outcome from today's hearing, this site is approved for a drive-through facility, which can be constructed. He said that Mr. Baillie indicated that this property has been a parking lot and drive aisle for more than 50 years and this request is to modify where those parking spaces are and how the drive aisle will function and continue for that exact use as it has been.

Mr. Nicholson said that they had worked with various departments within the LFUCG to make sure that this plan doesn't have any significant discussion items. He said that the initial submittal to the BOA had the drive aisle parallel with S. Broadway in front of the structure. They then oriented the building next to S. Broadway to contain the vehicles to the rear of the site and S. Broadway was activated for greater pedestrian use. They also added significant internal and external pedestrian infrastructure. He said that currently on Burley Avenue frontage there are no curb, gutter or pedestrian facilities and that the applicant will be constructing all of those, as well as clear pedestrian facilities throughout the site. He said that they are also adding the green infrastructure, as Mr. Martin had mentioned, not encroaching any further into the tree area at the rear of the site. He said that the pavement will be approximately in the exact same place, but they will be removing the asphalt and replacing it with a pervious surface along with an irrigation system to upgrade this parking lot. He said that currently there are four access points, and the applicant will be eliminating the one closest to S. Broadway along Burley Avenue to promote more pedestrian use along S.

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Broadway. They are adding substantial landscaping on the site and along the boundary of the adjoining site, which is the Papi's restaurant. He added that they are in agreement with the staff's conditional zoning restrictions and he is available for any questions.

Citizen Comments – Virginia Daley, 136 Burley Avenue, said that she is opposed to this development. She is concerned with the traffic because of the configuration of American Avenue and Burley Avenue. The stacked traffic blocks the entrances to Papi's and this proposed development. She said that the neighborhood has one-way roads and the parking lot currently serves as a cut-through street, which she believes will continue to be used as such for the neighborhood. She doesn't believe that a frozen custard business will be successful at this location, because there are others nearby, and she said she doesn't want this to become another vacant lot in the near future. She said that sitting next to the drive-through on S. Broadway doesn't seem very inviting. She also said that the proposed zone doesn't comply with the *Imagine Lexington* long range growth and development of our city, because it doesn't promote walkable neighborhoods or high density living along major corridors.

Applicant Rebuttal – Mr. Nicholson said that they believe they are improving the traffic situation by rezoning this site to a very low intensity zone and by eliminating existing access points. He said that there will be no other food served at this site other than custard. In regards to the one-way connections on Burley Avenue and American Avenue, he said that by eliminating an access point they have focused on the connectivity between these two roads, which is encouraged by the 2018 Comprehensive Plan. He added that the Planning Commission doesn't judge market success, they allow property owners to determine what they would like to do with their properties. He added that this is a successful business, with stores in 11 different states and they have chosen this site for some of the reasons of Ms. Daley's concerns. He said that they believe that this it will be successful, because it is a walkable neighborhood and because they are adding pedestrian infrastructure. The pedestrian seating and the walk-up window is located on the opposite side of the building of the drive-through aisle, away from the vehicles. He believes that they are adding amenities to this corridor as called for in the 2018 Comprehensive Plan. He added that today's discussion is not about tearing down a building. It is about the parking lot and that the drive-through facility has already been approved by the BOA. Today's hearing is to make sure that the best plan is put into the best location to serve this neighborhood, and to encourage a walkable community. He said that they are in agreement with the staff's recommendation and available for questions.

Citizen Rebuttal – Ms. Daley said that adding pavers will not make this site more walkable and pedestrian friendly. She doesn't believe that this site will be used in that way.

Staff Rebuttal – Mr. Baillie clarified that the 2018 Comprehensive Plan is an adopted plan from the community's vision and wants for the future of Lexington. It was created by the Long Range Planning section, as well as other sections within the Planning Division, and adopted by the Planning Commission. He added that in reality it is not Long Range Planning's vision, but the community's vision for future development.

Commission Questions – Mr. Nicol asked if this property is grand-fathered in, does it have the by-right to be a parking lot. Mr. Baillie said that the property has a legal non-conforming land use. He said that if the parking lot changes its configuration, it would be allowed to continue to remain as a parking lot. The issue here is the inclusion of the drive-through facility, which would increase the intensity of the non-conformity. He said that initially the applicant went through the conditional use process to allow for a drive-through on the rear property without having to rezone it. At the time of the review of their development plan, the staff informed the applicant that if they wanted to utilize the site with that increased intensity, which was not allowable to go forward under the BOA review, they would be required to change the zone of the property. He said that this application will allow the parking to remain and to allow the inclusion of a drive-through. He said that during a zone change application, an applicant can seek a variance to that property or to the development, in association with the zone change. He added that the Planning Commission has the ability to review any variances or conditional uses. He said that with this zone change, the applicant couldn't seek any intensification of this site and keep the R-1D zone, since they wanted to utilize a portion of the site for their drive-through facility, which they worked heavily with the Division of Traffic Engineering on the orientation of the area. Mr. Nicol said that today's discussion is not in regards to the drive-through or the business use, we are discussing the intensification of the site. Mr. Baillie said that the applicant needed the zone change to allow for the drive-through use to occur. The purpose of this zone change is being reviewed in terms of the site plan, but it isn't impacting the front property that fronts onto S. Broadway.

Mr. Michler said that the 2018 Comprehensive Plan's Place-Types are seeking more intensity along major corridors and this request is to add a drive-through to parking lot. Mr. Baillie said that the applicant has applied all of the development criteria that are associated with the Place-Type and the Development Type to the best of their ability. In this case, there is an intensification of the use of the site. He added that this is also a more pedestrian-oriented development, while it is auto-centric in nature. He said that the applicant is adding pedestrian facilities along the sides of the properties, delineating locations for vehicular movement and reducing conflicts with pedestrians, which are elements that are called for within the Corridor Place-Type and Medium-Density Non-Residential / Mixed Use Development Type. He said that this application meets the Goals, Objectives, Policies & development Criteria of the 2018 Comprehensive Plan.

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Ms. Wade said that the Planning Commission has a sister-body, the Board of Adjustment (BOA), who has the authority over conditional uses and variances on an everyday and month basis, and they granted approval to this site plan with a drive-through. She added that the same staff members work with the BOA to make sure that the same ideas are put forward, but they are not held to evaluate that site plan based on the Comprehensive Plan. She said that the BOA members have asked the staff for a presentation to learn more about the Comprehensive Plan, and that will be held in October.

Mr. Nicol asked for clarification of the term "by-right." Ms. Wade said that the Zoning Ordinance establishes uses for every zone. The first group of uses are called "principal uses", which means as a property owner you are allowed to develop your property with that particular use. The Planning Commission is tasked to determine how they can do that. She said that a use of a restaurant is permitted in every B-1 zone, but how an applicant orients the building, the parking, access and sidewalks is what the Planning Commission reviews. She added that sometimes the Planning Commission asks for conditions that an applicant agrees with and some that are not willing to agree to.

Mr. Penn said that the Planning Commission has reviewed this plan and what Ms. Daley outlined with the traffic situation presents itself as a tough situation, but he believes that this is the best plan for this tough situation. He said that as Mr. Nicol stated, this lot still has the right to be developed or redeveloped.

Zoning Action – A motion was made by Mr. Penn, seconded by Mr. de Movellan, and carried 8-0 (Michler abstained; Meyer absent) to approve PLN-MAR-21-00009: BLUEGRASS CUSTARD, LLC, for the reasons provided by the staff.

Development Plan Action – A motion was made by Mr. Penn, seconded by Mr. de Movellan, and carried 8-0 (Michler abstained; Meyer absent) to approve PLN-MJDP-21-00038: OLDHAM ADDITION (LOTS 1-3, 10-13 & 21-24) (ANDY'S FROZEN CUSTARD), as presented by the staff.

Variance Request Action – A motion was made by Mr. Penn, seconded by Mr. de Movellan, and carried 9-0 (Meyer absent) to approve the associated variance, for the reasons provided by the staff.

Note: Ms. Barksdale left the meeting at 2:45 p.m.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENTS

1. **PLN-ZOTA-21-00005: AMENDMENT TO ARTICLE 6 AND ARTICLE 7: NOTIFICATION FOR PUBLIC HEARINGS** – petition for a Zoning Ordinance text amendment to Article 6 and Article 7 of the Zoning Ordinance to include the notification of both owners and occupants of properties within the designated notification area for public hearings.

INITIATED BY: URBAN COUNTY PLANNING COMMISSION

PROPOSED TEXT: Copies are available from the staff.

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

The Staff Recommends: Approval of the Staff Text, for the following reason:

1. The proposed text amendment was developed in response to a policy calling for a continued modernization of the Zoning Ordinance to proactively plan for the Lexington-Fayette County's future growth (Theme E, Accountability Policy #2) of the 2018 Comprehensive Plan.
2. The Public Engagement Toolkit, as an implementation item from the 2018 Comprehensive Plan: Imagine Lexington, calls on the Division of Planning to broaden notification to include all owners and occupants within the notification radius, thereby seeking to inform and include a larger portion of the Lexington community in the planning process (Theme F, Goal #1).

Staff Text Amendment Presentation – Ms. Samantha Castro, Senior Planner for Long Range Planning, presented and summarized the staff report and recommendations for the text amendment. She said that this text amendment was initiated by the Public Engagement Toolkit. This was first presented to the Zoning Committee on July 1, 2021, and there were concerns with the definition of "occupant of an address" as it relates to public notification requirements. She said that the revised proposed text was presented to the Zoning Committee on August 5, 2021, and was recommended for approval to the full Commission.

Ms. Castro said that part of the Public Engagement Toolkit (PET) project focused not only on engagement between developers and the community, but also on how the Division of Planning could improve upon their process for engagement. She said that the Division of Planning could engage the community through a widening of their notification requirements. Currently KRS 100 requires notification in the form of a letter be sent to property owners of every parcel adjoining the subject property. LFUCG expanded that requirement to include all property owners within 500 feet of the subject property for a zone change or a conditional use and 200 feet of the subject property for a variance request, as well as supplemental

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notification for properties within an agricultural zone. She said that it was established during the PET process that the Division of Planning needs to acknowledge that there are all manners of stakeholders that have a vested interest in the growth and development of our city, and those people are not necessarily always property owners. She said that renters and business owners who lease their space should be included in addition to the property owners.

Ms. Castro said that the proposed notification for a zone change would be for the owners, and the property addresses, if the property is not the owner's primary mailing address, within a 500-foot radius. She displayed maps indicating who else could be reached through this amendment, which would be the renters or business owners. The proposed notification for a variance request would be the same text, but within a 200-foot radius; and also for a conditional use permit, but with a 500-foot radius. She said that there is change on the directions to create the list of addresses and who needs to receive it, including particulars on notifying each owner of a condominium or cooperative, as well as the president or chairperson of that group. She said that the staff has recommended approval of this text amendment. She added that the text could go into effect on January 1, 2022, if approved. The staff is currently working with the Property Valuation Administrator (PVA) to simplify this process.

Commission Question – Mr. Nicol said that at the July 1, 2021 Zoning Committee meeting, Mr. Murphy had expressed some concern regarding the legality of this issue. He then asked if those concerns have been addressed with the revised proposed text. Ms. Castro said that those concerns have been addressed. She said that at the time of the Zoning Committee the text stated "owners and occupants", which wasn't specific enough. She said that staff believes they have resolved that concern by changing that term to "owners, and the property addresses, if the property is not the owner's primary mailing address." She added that Mr. Murphy has reviewed this text and is supportive.

Mr. de Movellan asked if the Lexington data hub would be utilized for the property information. Ms. Castro said that the PVA will continue to be utilized, because they collect the specific information that is needed.

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

Motion – A motion was made by Mr. Pohl, seconded by Mr. Davis, and carried 8-0 (Barksdale and Meyer absent) to approve PLN-ZOTA-21-00005: AMENDMENT TO ARTICLE 6 AND ARTICLE 7: NOTIFICATION FOR PUBLIC HEARINGS, for the reason provided by the staff.

Note: Mr. Forester left the meeting at 2:57 p.m.

VI. COMMISSION ITEMS - The Chair will announce that any item a Commission member would like to present will be heard at this time.

VII. STAFF ITEMS - Mr. Duncan reminded the Planning Commission of the Subdivision and Zoning Committees next Thursday, September 2, 2021, in the Phoenix Building. Prior to the pandemic, those meetings were held in the 7th floor conference. We are currently seeking an alternative location for those meetings, and will share that information as it becomes available.

Mr. Davis asked if there is any update of the progress of public comments being accepted via telephone or Zoom during public hearings. Mr. Duncan said that the staff is continuing to work on this matter, with the Department of Law, Government Communication, and the Administration.

VIII. AUDIENCE ITEMS – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will NOT be heard are those requiring the Commission's formal action, such as zoning items for early rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

IX. MEETING DATES FOR SEPTEMBER 2021

Subdivision Committee, Thursday, 8:30 a.m., via teleconference	September 2, 2021
Zoning Committee, Thursday, 1:30 p.m., via teleconference	September 2, 2021
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers, Government Center	September 9, 2021
Work Session, Thursday, 1:30 p.m., 3 rd Floor Conference Room, Phoenix Building	September 16, 2021
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers, Government Center	September 23, 2021
Technical Committee, Wednesday, 8:30 a.m., via teleconference	September 29, 2021
Work Session, Thursday, 1:30 p.m., 3 rd Floor Conference Room, Phoenix Building	September 30, 2021

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- X. **ADJOURNMENT** - There being no further business, Vice-Chairman Penn declared the meeting adjourned at 3:00 p.m.

Larry Forester, Chair

Janice Meyer, Secretary

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