

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky April 18, 2023

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on April 18, 2023 at 5:00 p.m. Present were Vice Mayor Wu in the chair presiding, in the absence of Mayor Gorton, and the following members of the Council: F. Brown, J. Brown, Ellinger, Elliott Baxter, Gray, LeGris, Lynch, Plomin, Sevigny, Sheehan, and Worley. Absent were Council Members Fogle, Monarrez, and Reynolds.

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At 5:11 p.m., Vice Mayor Wu opened the hearing.

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An Ordinance modifying a conditional zoning restriction in the Neighborhood Business (B-1) zone, for 0.92 net (1.15 gross) acres, for property located at 2400 Versailles Rd. (Caller Properties, LLC; Council District 10) received second reading.

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Vice Mayor Wu swore in the witnesses, and reviewed the procedures and order of proceedings for the meeting.

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Traci Wade, Div. of Planning, gave a presentation on the recommendation of the Planning Commission and filed the following exhibits: (1) Legal Notice of Public Hearing; (2) Affidavit of Notices Mailed; (3) Copy of Planning Commission Final Report and Recommendation; (4) Copy of the 2018 Comprehensive Plan; (5) Copies of the Zoning Ordinance and Land Subdivision Regulations; (7) October 28, 2022 Traffic Impact Study; (8) Copy of Staff Presentation; and (9) Documents relating to 2016 Property Zone Change.

Ms. Wade described the subject property and surrounding property, and the various uses that have been applied to it in the past. She displayed photographs and maps of the subject property and described its physical characteristics. Ms. Wade also discussed the proposed development and the reasons for the Planning Staff's and the Planning Commission's recommendations.

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Branden Gross appeared as counsel for the Petitioner (Caller Properties) and filed the following exhibits: (1) Affidavit of Posting Signs; (2) February 17, 2023 Traffic Impact Study; (3) October 31, 2021 Justification Letter; and (4) Copy of Presentation Packet.

Mr. Gross introduced various representatives for the Petitioners; he talked about the requested zone change, displayed photographs of the subject property, and discussed the location and proposed uses, as well as historical uses that have applied.

Clay Johnson, Project Manager for Prime AE, reviewed the Traffic Study.

Tony Barrett, Landscape Architect for Barrett Partners, reviewed the development plan.

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The following persons spoke in opposition: (1) Dottie Bean, Council District 8; (2) Paula Singer, Council District 11, who filed Opposition Exhibit 1 – a Letter; (3) Austin Wilkerson, Council District 11; and, (4) Zachary Skubitz, Council District 8.

Amy Clarke, Council District 3, did not speak but filed Opposition Exhibit 2 – Packet.

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The following persons spoke in support: (1) Francisco Castro, Council District 10; and, (2) Bryan Mullins, Council District 5.

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Ms. Wade offered rebuttal comments.

Mr. Gross made rebuttal comments and summation on behalf of the Petitioner.

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Vice Mayor Wu opened the floor for questions from the Council Members.

Ms. Plomin asked general questions about the coffee shop company and the traffic impact study. Mr. Gross responded.

Vice Mayor Wu requested clarification on the information being considered during the public hearing, specifically the development plan. Attorney Traci Wade, Dept. of Law, responded.

Ms. Elliott Baxter inquired about the property history and vacancy. Mr. Gross responded. She asked about why the conditional zoning restrictions were placed on the

property, and the definition of “major” as related to the Planning Commission’s disapproval of the application. Ms. Wade responded.

Mr. J. Brown inquired about the original zone change and differences between B-1 and B-3 zones. Ms. Wade responded. He asked about the approval of the Traffic Impact Study by both the Metropolitan Planning Organization and the Div. of Traffic Engineering, and the process by which limitations on stacking lanes may potentially be imposed. Ms. Wade responded. Ms. Jones responded.

Mr. Worley asked a question of Ms. Wade. He asked Mr. Gross about the Traffic Impact Study, the amount of stacking spaces and peak hour traffic. Mr. Gross responded. He asked how the changes to buffering requirements in the 2018 Comprehensive Plan impacted the applicant’s proposal. Mr. Gross responded. He noted the proximity of a Starbucks drive-through to the applicant’s property.

Ms. LeGris clarified which specifics of the application were in consideration. She asked why this property was not included in the 2015 Small Area Plan. Ms. Wade responded. She asked about the commonality of two-lane (stacked) drive-throughs as well as the design of the nearby Starbucks drive-through. Ms. Wade responded. Ms. LeGris inquired if two-lane (stacked) drive-throughs were congruent with the 2018 Comprehensive Plan for greenhouse gases, and about the impact of drive-throughs on pedestrians and bicyclists, particularly around the ingress and egress. Ms. Wade responded.

Mr. Seigny asked about prohibiting left-hand turns from the subject property, and exhibits entered into the record during the hearing. Ms. Wade responded.

Vice Mayor Wu asked about left-hand turns when exiting the nearby Starbucks, and U-turn opportunities nearby to the subject property. Ms. Wade responded. Ms. Jones responded. He inquired if there would be a dedicated right turn lane to the property and inquired as to any changes on the property as a result of the 2016 zone change. Ms. Wade responded. Vice Mayor Wu asked questions about the Planning Commission hearings, specifically noting the Planning Commission’s disapproval of the application after the Planning Commission subcommittees had approved the request. Ms. Wade responded. He asked if the proposed development was inside seating only, and how often

a Planning Commission subcommittee vote differs from than Planning Commission vote.

Mr. Gross responded.

Mr. Sevigny requested to review the exhibits that had been submitted into the record.

Vice Mayor Wu queried if it would be permissible for Councilmembers to review filed exhibits during a recess. Ms. Jones responded.

At 7:11 p.m. Vice Mayor Wu closed the hearing.

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At 7:12 p.m., the meeting stood at recess.

At 7:22 p.m., the meeting reconvened with the same persons present.

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Mr. Worley spoke about the traffic study, as well as the impact of economic changes in the area since the subject property's 2016 zone change, noting the neighboring Starbucks drive-thru.

Mr. J. Brown concurred, recalling a prior zone change request for a drive-through on Third St. which had similar issues.

Upon motion by Mr. Sevigny, seconded by Ms. Gray, the Council approved the Findings of Fact, as follows, by the following vote:

Aye: F. Brown, J. Brown, Ellinger, Elliott Baxter, -----12
Gray, LeGris, Lynch, Plomin, Sevigny,
Sheehan, Worley, Wu

Nay: -----0

1. Evidence related to the impact of traffic along Versailles Road shows that the proposed use will not negatively impact the health, safety, or welfare of those utilizing the roadway.
2. The proposed ingress and egress point is designed to limit dangerous left turn movements out of the subject property.
3. The inclusion of large buffers and new technologies reduces the impact that drive-through facilities have on the adjacent residential land uses.
4. The adoption of the 2018 Comprehensive Plan provides for greater guidance for development to appropriately transition from more intense land uses to less intense land uses.

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Vice Mayor Wu provided an overview of the final processes in the public hearing.

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Upon motion by Mr. Sevigny, seconded by Mr. Ellinger, the Council adopted conditional use restrictions, as follows, by the following vote:

Aye: F. Brown, J. Brown, Ellinger, Elliott Baxter, -----12
Gray, LeGris, Lynch, Plomin, Sevigny,
Sheehan, Worley, Wu

Nay: -----0

a. Prohibited Uses:

1. The sale or provision of wine, beer or alcoholic beverages, other than by the drink.
2. Live entertainment and/or dancing.
3. Cocktail lounges, brew-pubs and nightclubs.
4. Automobile service stations.
5. Arcades, including pinball and electronic games.
6. Car washing establishments.
7. Pool tables within an establishment, even as an accessory use.
8. Automobile and vehicle refueling stations.

Other Use Restrictions:

1. A landscape buffer of at least twenty-five (25) feet in width shall be provided along the southern property boundary, with plantings as specified by Article 18-3(a)(1)2 of the Zoning Ordinance, including the retention of any tree that is at least 4" in diameter at breast height (DBH) in size. Any tree 4" DBH or larger may only be removed if diseased or dying, and only with the written permission of the Urban Forester.
2. Outdoor lighting shall be shielded and directed away from any adjacent residential zone. Lighting attached to a pole or any structure shall be a maximum of twenty (20) feet in height.
3. Any free-standing sign erected shall be a maximum of ten (10) feet in height.

These use and buffering restrictions are appropriate and necessary to ensure greater compliance with the 2018 Comprehensive Plan, and to provide protection to the adjacent residential land uses.

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Mr. Sevigny confirmed with the Dept. of Law the proper voting procedures for approval of the ordinance. Ms. Jones responded.

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Upon motion by Ms. Gray, and seconded by Ms. Plomin, the ordinance was approved by the following vote:

Aye: F. Brown, J. Brown, Ellinger, Elliott Baxter, -----12
Gray, LeGris, Lynch, Plomin, Sevigny,
Sheehan, Worley, Wu

Nay: -----0

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Vice Mayor Wu thanked the participants for their involvement.

Upon motion by Ms. Plomin, seconded by Mr. Sevigny, and approved by unanimous vote, the meeting adjourned at 7:35 p.m.

Deputy Clerk of the Urban County Council

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