

Lexington-Fayette Urban County Government Special Council Meeting

Lexington, Kentucky May 18, 2023

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on May 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: Gray, LeGris, Lynch, Monarrez, Reynolds, Seigny, Sheehan, J. Brown, Ellinger, and Fogle. Absent were Council Members Plomin, Worley, F. Brown, and Elliott Baxter.

* * *

At 5:00 p.m., Vice Mayor Wu opened the hearing.

* * *

An Ordinance changing the zone from Planned Neighborhood (R-3) zone to a Neighborhood Business (B-1) zone, for 0.2916 net (0.3516 gross) acres, for property located at 507 S. Limestone (a portion of). (Dutch Bros, LLC; Council District 3) received second reading.

* * *

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

* * *

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 – Imagine Lexington; (5) Comprehensive Plan – Imagine Nicholasville Road; (6) Copy of the Zoning Ordinance; (7) Copy of the Land Subdivision Regulations; (8) Copy of Staff Presentation; and, (9) Exhibits submitted at the February 23, 2023 Planning Commission Public Hearing.

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

*

*

*

Bruce Simpson appeared as counsel for the Petitioner and filed the following exhibit: (1) Presentation Booklet – Applicant’s Exhibits. Mr. Simpson 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.

*

*

*

The following persons spoke in opposition: (1) Dottie Bean, Council District 8; and, (2) Amy Clark, Council District 3 - who filed Opposition Exhibits (1) Presentation: Colfax/Limestone Drive –Through Introduces Conflict and Hazard); (2) Letter from Betty Boyd of the Pralltown Neighborhood Association; and, (3) Printed Exhibits from Thumbdrive.

*

*

*

The following persons spoke in support: (1) Branden Schan, Council District 1; (2) James Schrader, Council District 3; (3) Branden Gross, Council District 10 - who filed Support Exhibit (1) Letter from Scott Kepner of Christy Pad Partners; and (4) Brad Boaz, Council District 10.

*

*

*

Mr. Crum offered rebuttal comments.

Mr. Simpson made rebuttal comments on behalf of the Petitioner and filed the following exhibit: (2) Affidavit of Posting Signs.

Ms. Clark offered clarification that Opposition Exhibit (2) was submitted on behalf of Betty Boyd, President of the Pralltown Neighborhood Association.

Ms. Wade offered additional rebuttal comments.

Mr. Schan offered summation for the Petitioner.

*

*

*

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

Ms. Gray asked if a traffic study was conducted and inquired about the potential traffic impact comparatively between the former tenants at the location (Arby’s restaurant) versus the proposed coffee shop. Mr. Crum responded. She asked about other applicants interested in the property. Mr. Crum responded.

Ms. Lynch queried why the current zone was not appropriate for the planned use and inquired about outreach activities to community stakeholders. Mr. Simpson responded. She asked about the reasons behind the stacked drive-through lane design. Mr. Schan responded. Ms. Lynch asked how it was concluded that the majority of traffic activity would be after 11:00 a.m. Mr. Schan responded.

Ms. LeGris requested clarification on the community outreach process and how it applied to this request. Mr. Crum responded. She inquired about pedestrian traffic and current signals, before asking if there were plans for future signal installation. Ms. Wade responded.

Mr. Sevigny asked for other examples of mixed-use zones on a lot of similar size and density. Mr. Crum responded.

Ms. Fogle inquired about the potential impact on the Fire Station accessibility on Scott St. and pedestrian student traffic in the area. Ms. Wade responded.

Mr. Ellinger asked if a left-turn was permitted at the exit. Mr. Crum responded. He inquired about walk-up service. Mr. Simpson responded.

Ms. LeGris requested clarification on the total lot size and portion being requested to be rezoned. Mr. Crum responded. She asked if there was signage posted on the lot to notify the community. Mr. Simpson responded.

Mr. J. Brown queried about Place Builder and its role in the application process, as well as well as the Corridor Study and associated implementation tasks. Mr. Crum responded. Ms. Wade responded. Mr. J. Brown inquired about the criteria triggering a requirement for a traffic impact study. Ms. Wade responded

Vice Mayor Wu asked about the issues that related to the Planning Commission's disapproval and how the Planning Staff recommends approval/disapproval of an application. Mr. Crum responded. He inquired if a Petitioner may voluntarily conduct a traffic study by their own accord and what criteria may trigger their decision. Mr. Simpson responded.

Ms. Lynch inquired about the traffic usage on Seller's Alley. Mr. Crum responded.

Vice Mayor Wu asked about the extent of community engagement with renters of the surrounding properties. Mr. Simpson responded. Mr. Schan responded.

*

*

*

Ms. Bean voiced concerns at the lack of an opportunity for the general public to offer rebuttal comments.

*

*

*

At 6:54 p.m., Vice Mayor Wu closed the hearing.

*

*

*

Mr. J. Brown stated his reasons he would be supporting the application, acknowledging concerns about Nicholasville Rd. traffic, and noting historical vacancy of the property.

Ms. Gray concurred with Mr. J. Brown's remarks.

Ms. Fogle spoke about the need for more affordable housing and expressed concerns about the community engagement during the application process.

Ms. LeGris acknowledged the complexities of utilizing the subject property as it stands, and thanked the Petitioner for their interest. She emphasized her focus on pedestrian safety and transportation options, and shared her concerns regarding the intensification of the use.

Vice Mayor Wu shared his concerns about the proposed use of the subject property with consideration to its location, noting heavy traffic in the area.

Mr. Seigny spoke in support of approval, stating the proposed use did not differ significantly from the current use of the subject property. He also noted the site plan still required approval before the development could proceed.

Mr. J. Brown asked if the Planning Commission was allowed to take the development plan into consideration during the zone change application approval process. Ms. Wade responded. Mr. J. Brown spoke about density and the importance of creating opportunity in Lexington.

Ms. Gray queried about the notification requirements for a zone change application. Ms. Wade responded.

*

*

*

Vice Mayor Wu paused the meeting to consult the Dept. of Law in regards to quorum and all Council Members remaining in the room during the proceedings. Ms. Brittany Smith, Dept. of Law, responded and the meeting resumed.

*

*

*

Ms. LeGris motioned to adopt the Findings of Fact, as follows. Ms. Sheehan seconded and the motion failed by the following vote:

Aye: LeGris, Lynch, Sheehan, Wu, Fogle -----5

Nay: Gray, Monarrez, Reynolds, Sevigny, J. Brown, Ellinger -----6

Having considered the above matter on February 23, 2023, at a Public Hearing, and having voted 8-1 that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend DISAPPROVAL of this matter for the following reasons:

1. The requested rezoning to Neighborhood Business (B-1) is not in agreement with the 2018 Comprehensive Plan for the following reasons:
 - a. The requested rezoning is not in agreement with the Goals, Objectives, and Policies of the 2018 Comprehensive Plan.
 1. The proposed development does not seek to construct at a density or intensity that might be reflective of a major corridor in Lexington, and is out of context with the surrounding area (Theme A, Goal #2.b).
 2. The low density and single-user vehicle focus detract from the effectiveness of mass transit in this area (Theme D, Goal #1.c).
 3. The design of the site may reduce the effectiveness of the overall transportation system by introducing additional vehicular conflicts on Colfax Street and South Limestone (Theme D, Goal #1).
 4. The application encourages the use of single-occupancy vehicles and will increase greenhouse gas emissions at this location (Theme B, Goal #2.d).
 - b. The proposed development is not in agreement with 2021 Imagine Nicholasville Road plan.
 1. The proposal does not increase the intensity of land uses along the corridor (Goal #1).
 2. The scale of the proposed development does not in accordance with the height design requirements for the Urban Center Typology.
 - c. The proposed development does not meet the intent of the Medium Density Non-Residential Mixed Use Development Type as established on page 272 of the Comprehensive Plan.
 - d. The requested rezoning is not in agreement with the Development Criteria of the 2018 Comprehensive Plan. The following Development Criteria are not being met with the proposed rezoning.
 1. A-DS4-2: New construction should be at an appropriate scale to respect the context of neighboring structures; however, along major corridors, it should set the future context in accordance with other Imagine Lexington corridor policies and Placebuilder priorities.
 2. A-DS7-3: Development should create context-sensitive transitions between intense corridor development and existing neighborhoods.
 3. C-LI 7-1: Developments should create mixed-use neighborhoods with safe access to community

- facilities, greenspace, employment, businesses, shopping, and entertainment.
4. DPL7-1: Stakeholders should be consulted to discuss site opportunities and constraints prior to submitting an application.
5. C-LI6-1: Developments should incorporate multi-family housing and walkable commercial uses into development along arterials/corridors.
6. A-EQ3-2: Development on corridors should be transit-oriented (dense & intense, internally walkable, connected to adjacent neighborhoods, providing transit infrastructure & facilities)
7. D-CO2-1: Safe facilities for all users and modes of transportation should be provided.
8. D-CO2-2: Development should create and/or expand a safe, connected multi-modal transportation network that satisfies all users' needs, including those with disabilities.
9. B-SUI 1-1: Green infrastructure should be implemented in new development.
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 applicant has not provided evidence as to why the current zoning is inappropriate and the proposed zoning is appropriate for this location.

Mr. Ellinger requested clarification on the proper voting procedures for approval or disapproval of the item. Ms. Smith responded.

Mr. Sevigny reiterated the process for clarification. Ms. Smith responded.

* * *

At 7:15 p.m., the meeting stood at recess.

At 7:24 p.m., the meeting reconvened with the same persons present.

* * *

Mr. Sevigny motioned to adopt the Findings of Fact, as follows. Mr. Ellinger seconded, and the motion failed by the following vote:

Aye: Gray, Monarrez, Reynolds, Sevigny, J. Brown, -----6
Ellinger

Nay: LeGris, Lynch, Sheehan, Wu, Fogle -----5

The requested zone change to Neighborhood Business (B-1) zone is in agreement with the 2018 Comprehensive Plan for the following reasons:

1. The requested zone change will allow for redevelopment of a now vacant property by continuing a similar commercial use that existed on the property since 1997. This continuation will help eliminate the adverse impact of the vacant space and ensure the character of the neighborhood will not change. This supports Theme A, Goal 2 to support infill and redevelopment throughout the urban service area as a strategic component of growth; and Theme A, Goal 3 to provide well-designed neighborhoods and communities.

- 2. The zone change will allow connectivity and pedestrian safety because the nature of the land use will attract less vehicular use per day than the previous commercial use that existed on the property. This supports Theme A, Goal 3, Objective B to strive for positive and safe social interaction including connections for pedestrians and various modes of transportation.
- 3. The proposed commercial area will activate underutilized parcel on a major corridor which supports Growth Policy Number 9 (E-GR9-4). The development will accommodate pedestrian traffic and is walkable from the adjoining neighborhood as well as the University of Kentucky which supports Growth Policy Number 10 (E-GR10-2). The development will orient the building along the S. Limestone Rd. frontage and proposed pedestrian pass will allow for safe and direct pedestrian and multi-model connections which supports Connectivity Policies Number 1 and Number 2 (DCO-1 and DCO-2).

Mr. Sevigny requested clarification on the votes needed, and the subsequent results in the event the amount of votes needed is not met. Ms. Smith responded.

Vice Mayor Wu asked how the failure of the adoption of Findings of Fact would impact a vote on the ordinance. Ms. Smith responded.

Mr. Ellinger asked for further clarification on proper voting procedures. Ms. Smith responded.

* * *

Vice Mayor Wu thanked the participants for their involvement.

Upon motion by Mr. Sevigny, seconded by Mr. Ellinger, and approved by unanimous vote, the meeting adjourned at 7:30 p.m.

Deputy Clerk of the Urban County Council