

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

August 24, 2023

- 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.

Planning Commission members present: Larry Forester, Ivy Barksdale, Headley Bell, Zach Davis, Robin Michler, Graham Pohl, William Wilson, Mike Owens and Judy Worth. Absent: Janice Meyer and Bruce Nicol.

Planning staff members present: Traci Wade, Autumn Goderwis, Tom Martin, Daniel Crum, and Bill Sheehy. Other staff members present were: David Filiatreau, Division of Traffic Engineering; Vaughan Adkins, Division of Engineering; Captain Greg Lengal, Division of Fire and Emergency Services; and Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – A motion was made by, seconded by for the approval of the minutes of the June 22, 2023 and July 27, 2023 public hearings, and carried 9-0

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

1. **PLN-ZOTA-23-00002: AMENDMENT TO ARTICLE 17 FOR ADDITIONAL ELECTRONIC MESSAGE DISPLAY SIGNAGE INCLUDING VIDEO IN THE LEXINGTON CENTER BUSINESS (B-2B) ZONE** - a petition for a Zoning Ordinance text amendment to allow additional electronic message display signage including video displays (dynamic content) in association with a civic center in the Lexington Center Business (B-2B) zone.

Staff Comment – Ms. Traci Wade stated that the applicant was agreeable to a postponement to the September 28th public hearing.

Action – A motion was made by Mr. Pohl, seconded by Mr. Davis and carried 9-0 (Meyer and Nicol absent) to postpone **PLN-ZOTA-23-00002: AMENDMENT TO ARTICLE 17 FOR ADDITIONAL ELECTRONIC MESSAGE DISPLAY SIGNAGE INCLUDING VIDEO IN THE LEXINGTON CENTER BUSINESS (B-2B) ZONE** until September 28, 2023.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, August 3, 2023 at 8:30 a.m. The meeting was attended by Commission members Judy Worth, Janice Meyer, Headley Bell, and Mike Owens. Other Committee members present were Vaughan Adkins, Division of Engineering; and David Filiatreau, Division of Traffic Engineering. Staff members in attendance were: Traci Wade, Tom Martin, Cheryl Gallt, Autumn Goderwis, Daniel Crum, Boyd Sewe, Paula Schumacher, Embry Beatty, Division of Fire and Emergency Services; Tracy Jones, Department of Law; Doug Burton, Division of Engineering. 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)
- 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 August 3, 2023, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members Larry Forester, Robin Michler, and Zach Davis. Staff members present were; Traci Wade, Autumn Goderwis, Tom Martin, Daniel Crum, Boyd Sewe, Bill Sheehy; as well as Brittany Smith and Tracy Jones, Department of Law.

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. CLEAR OPTIKS, LLC ZONING MAP AMENDMENT AND FIRST SECURITY NATIONAL BANK (AMD) DEVELOPMENT PLAN

- a. PLN-MAR-23-00011: CLEAR OPTIKS, LLC** – a petition for a zone map amendment from a Professional Office (P-1) zone to Neighborhood Business (B-1), for 0.6130 net (1.04 gross) acres, for property located at 1617 Clays Mill Road.

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 utilize the existing 2,322 square-foot vacant bank structure on the property as a restaurant/ coffee shop. The applicant proposes to continue to utilize the existing accessory drive-through facilities present on the site in order to serve the proposed use. The change in use will be accompanied by a minor change in the parking lot configuration to support a 16-seat outdoor dining area and a total of 18 parking spaces.

The Zoning Committee Recommended: **Approval**.

The Staff Recommends: **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.b), while also re-activating a site on one of Lexington's most significant corridors (Theme E, Goal #1.d).
 - b. The proposed project includes a neighborhood-oriented restaurant use that features extensive connections to several pedestrian networks and neighborhoods (Theme A, Goal #3.b)
 - c. By utilizing an already developed site, the proposed development minimizes the disruption of natural features of the site (Theme E, Goal #3.c)
 - d. At the proposed scale, the development provides an accessible, neighborhood level commercial area (Theme A, Design Policy #12).
 - e. The request introduces a neighborhood restaurant use into an area that lacks walkable dining options (Theme A, Density Policy #3).
 - f. The request will maintain the existing sidewalk networks and provide bicycle facilities on-site in order to promote connectivity (Theme B, Sustainability Policy #2).
 2. The justification and corollary development plan are in agreement with the development criteria of the 2018 Comprehensive Plan.
 - a. The proposed rezoning meets the criteria for Site Design, Building Form and Location as the use remains at an appropriate scale for the low density residential and commercial development in this area, provides for a neighborhood scale restaurant use that is not present in the vicinity, and utilizes outdoor dining areas to activate the frontage for pedestrians.
 - b. The proposed rezoning meets the criteria for Transportation and Pedestrian Connectivity as it maintains an extensive pedestrian network that served the previous bank use, and provides for direct and accessible linkages to transit along a major corridor.
 - c. The proposed rezoning meets the criteria for Greenspace and Environmental Health as it works with the current landscape, and limits the impacts on the surrounding environment.
 3. This recommendation is made subject to approval and certification of PLN-MJDP-23-00049: FIRST SECURITY NATIONAL BANK (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. **PLN-MJDP-23-00043: FIRST SECURITY NATIONAL BANK (AMD)** (10/3/2023)* - located at 1617 CLAYS MILL ROAD, LEXINGTON, KY

Council District: 10

Project Contact: Barrett Partners, Inc

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

Note: The purpose of this development plan is to convert a bank to a restaurant, in support of the requested zone change from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone.

Note: The applicant submitted a revised plan on July 31, 2023. Based on that submittal, staff can offer the following revised conditions.

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

The Staff Recommends: **Approval**, subject to the following revised conditions:

1. Provided the Urban County Council approves the zone change to 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. Landscape Examiner's approval of landscaping and landscaping buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree preservation plan.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water control Office's approval of the locations of fire hydrants, fire department connections, and fire service features.
10. Division of Waste Management's approval of refuse collection locations.
11. Documentation of Division of Water Quality's approval of Capacity Assurance Program requirements, prior to plan certification.
12. United States Postal Service Office's approval of kiosk locations or easement.
13. Denote area for bicycle parking.
14. Discuss Placebuilder criteria.

Staff Presentation – Mr. Daniel Crum presented the staff report and recommendation for the zone change application. He displayed photographs of the subject property and the general area. He stated that the applicant was seeking a zone map amendment from a Professional Office (P-1) zone to Neighborhood Business (B-1) zone, for 0.6130 net (1.04 gross) acres, for property located at 1617 Clays Mill Road. Mr. Crum indicated that the applicant is seeking to rezone the property to establish a restaurant/coffee shop with an accessory drive-through facility. Mr. Crum stated that the applicant had selected the Enhanced Neighborhood Place-Type and the Low Density Non-Residential/ Mixed Use Development Type. Mr. Crum noted that Staff was in agreement with those selections.

Mr. Crum identified the property's location near the intersection of Harrodsburg Road and Clays Mill Road and highlighted the history of this area. Stating that this property was zoned R-1C until the 1970's and since then has had various professional offices on the property, most notably a bank. Mr. Crum noted the location's proximity to the Picadome and Skycrest neighborhoods. Additionally, Mr. Crum presented photos of the drive-through facility as well as the recent renovations to Clays Mill Road.

Mr. Crum continued, showcasing the development plan, and noting that the applicant is in large part keeping the configuration of the site the same, including maintaining the two access points onto McCubbing Drive and Clays Mill Road. Mr. Crum also indicated that two of the three drive-through lanes would be converted into parking spaces for the site and noted the location of proposed outdoor dining.

Mr. Crum transitioned into the various Goals and Objectives of the Comprehensive Plan that this site is in agreement with. The goals include respecting the context and design features of the surrounding area, maximizing development on vacant land in the Urban Service Area, encouraging safe social interactions with the adjoining neighborhoods, and providing opportunities for neighborhood supportive uses, and pedestrian connectivity.

Mr. Crum concluded his presentation by stating that Staff is recommending approval of the request and offered to answer any questions from the Planning Commission.

Development Plan Presentation – Mr. Tom Martin oriented the Planning Commission to the location and characteristics of the subject property. Mr. Martin indicated that the applicant was maintaining the circulation of the existing structure, as well the canopy over the previous drive-through facilities. Mr. Martin also noted the large access point on Clays Mill Road, and that the applicant is looking for an easement, so that their dumpster does not encroach on the neighboring property.

Mr. Martin made a point to mention how much thought Planning Staff puts into making access better on a property, and that there was concern about the amount of access points on the property because of current traffic patterns in this area is. After various discussions with various agencies like the Division of Fire and Emergency Services and Waste Management, it became apparent that the access onto Clays Mill Road was necessary so that those agencies could enter with large trucks. Mr. Martin indicated that to increase the safety of the property, various signs will be placed on the McCubbing Drive access point directing people to

Harrodsburg Road, and that McCubbing Drive can only turn right onto Clays Mill Road. Additionally, Mr. Martin stated that the applicant would be placing warning signs on the pedestrian walkways.

Mr. Martin concluded his presentation stating that there were standard sign-offs on this development plan and that Staff was recommending approval of the development plan.

Commission Questions – Mr. Michler asked if there was discussion between Staff and the applicant about a more creative use for the canopy space. Mr. Martin indicated that Staff was curious about that space and there were discussions, but ultimately the applicant wanted to maintain the canopy and utilize the space.

Ms. Worth asked if the adjustments made by Staff will help with traffic flow at various times during the day, and Mr. Martin indicated that they would because it is a breakfast restaurant and will only be active during breakfast/lunch hours.

Applicant Presentation – Mr. Dick Murphy, attorney for the applicant, gave a brief history of the site, indicating that it was formerly a Chase Bank until 2019. Mr. Murphy indicated that the surrounding businesses are already located within a B-1 zone and presented various old Comprehensive Plan Land Use maps dating back to the 1980's that showed this site was planned for commercial use.

Mr. Murphy indicated that when the applicant bought the property, Chase Bank put deed restrictions on the property so that it could not be another bank for 10 years, and because of that it has been very difficult to find a user for the property. In fact, the property has been vacant for the past three years, with the exception of its use as a COVID testing site.

Mr. Murphy displayed photographs of the subject property and indicated that they would be using a low intensity use breakfast/lunch restaurant with a drive-through window and because of that will have no traffic in the afternoon. Mr. Murphy also asserted that they would not be changing the building significantly, which would remain consistent with the character of the neighborhood.

Mr. Murphy reviewed the development plan and reiterated that this development would not generate any afternoon traffic, and would only be slightly increasing the morning traffic compared to the bank. Mr. Murphy continued his presentation, showing the Planning Commission photographs of the vantage point from the parking lot and making the point that you can see all the traffic that is coming from both ends in a safe way. On the other end of the spectrum, Mr. Murphy showed a photograph from McCubbing Drive that showed poor visibility, and explained the need for a sign at the intersection.

Mr. Murphy stated that if the applicant wanted to maximize the property, they could redevelop with a much larger structure and tear down the existing structure, without a zone change, but the applicant does not want to do that.

Mr. Murphy concluded his presentation by stating the applicant agrees with the Staff's recommendations, and he could answer any questions from the Planning Commission.

Commission Questions – Mr. Owens asked if the access point on Clays Mill Road is a full access point which will serve as an entrance and exit and Mr. Murphy indicated that it was.

Mr. Michler asked about the discussions about the dumpster. He asked if there was a dumpster on the site currently and if the dumpster requirement is from Waste Management for restaurants. Mr. Murphy indicated that there was not currently a dumpster, that the bank used Herbies, and that a dumpster was a requirement from Waste Management. Mr. Michler also asked about the easement and if that was the original location that the applicant had in mind. Mr. Murphy identified an alternative location that was originally proposed by the applicant.

Citizen Comment – Lynne Flynn, 528 Springhill Drive, speaking on behalf of the Picadome Neighborhood Association, gave a presentation on their objections to the development. Ms. Flynn stated that they want the vacant property to be filled, but are concerned about the impact on traffic that this development would have on the already busy Clays Mill Road and McCubbing Drive.

Stephen Davis, 511 Woodbine Drive, stated his concern that this development would make the dangerous traffic even more dangerous. He stated that he had first-hand experience and his wife was struck by a car on McCubbing Drive.

Charles Thompson, 531 McCubbing Drive, stated that he had concerns about walkability, traffic safety, and that if you did want to walk safely you would have to walk a mile to find the safest crossing.

Mary Chezney Ringo, 525 McCubbing Drive, stated that this development would bring more traffic to an already heavily trafficked area and asked for various traffic calming measures if this were to go forward.

Amy Clark, 628 Kastle Drive, stated that there was no compelling need for a zone change and that the applicant could use one of the many uses already allowed in the P-1 zone.

Applicant Rebuttal – Mr. Murphy stated that the development is in an area that already has traffic issues, but when dealing with the cut-through traffic on McCubbing Drive, that is a state issue, and they could take care of it if they wished to. Mr. Murphy also reiterated that there was excellent site distance on the development and that the access on McCubbing Drive was necessary for fire and garbage trucks. Speaking on some of the stories shared during public comment, Mr. Murphy stated that they regretted previous accidents that have happened before, but the renovation of Clays Mill Road has made it much safer and with better visibility. Mr. Murphy stated that he did not think the answer for the traffic issues was to not allow this zone change and allow the property to remain vacant until a bank can go back into the property in 8.5 years.

Mr. Murphy concluded saying that the applicant was doing the best possible development here with a low intensity, commercial use and were in agreement with Staff's recommendations.

Citizen Rebuttal – Amy Clark, 628 Kastle Drive, stated that a zone change here introduces a non-conforming use and reiterated her opposition to this zone change.

Staff Comment – Mr. David Filiatreau, Division of Traffic Engineering, stated that the access on the site was something that was discussed during the Subdivision Committee and his goal was to reduce conflict points and potentially eliminating a left in access point on Clays Mill Road. Mr. Filiatreau stated there were practical issues with that, but stated that there were things outside of the Planning Commission process to mitigate the traffic issues.

Commission Questions and Comments – Mr. Michler stated that the "improvements" on Clays Mill Road were just making the road wider and did not improve accessibility for pedestrians. Mr. Michler suggested that Traffic Engineering should meet with the citizens to address the concerns with the site. Mr. Filiatreau stated that the Clays Mill Road improvements took place over a long time, and the newer "complete streets" policy will make the pedestrian accessibility more of a priority in the future.

Mr. Bell asked if you can control the time frame at the light at the intersection and if that would make a difference here. Mr. Filiatreau stated that you can control a lot from the light and could potentially make a difference after examining the data.

Ms. Barksdale asked if there are any traffic calming measures at McCubbing Drive and Clays Mill Road at this time and Mr. Filiatreau indicated that there were not currently any there.

Mr. Pohl asked if it was feasible to put a pedestrian crossing on Clays Mill Road like the one at Transylvania University and how long would it take to install. Mr. Filiatreau stated that it would have to be significant because there are various federal regulations and guidelines for what makes a crossing like that appropriate, and it would take a few years to put in place.

Mr. Bell asked Mr. Murphy if he could disclose what restaurant would be going on the sight and if they had any estimations on volume. Mr. Murphy stated that they did not know the estimates and that the restaurant was a new concept that they could not disclose yet.

Staff Comment – Captain Greg Lengal, Division of Fire and Emergency Services, stated he was familiar with this area, but since he was not at the Subdivision Committee he was not aware that the access point at Clays Mill Road was a talking point but were in agreement with that access being open.

Commission Questions and Comments – Ms. Worth stated that she agreed with the residents that this area is not a safe area and anything to make traffic safer should be done. She also stated that the drive-through is a big reason why she finds herself against this zone change, and if there were none, she would have no problem approving this.

Mr. Davis agreed with Ms. Worth and stated that it was a difficult site but the development plan was very well done. However, he believes it was zoned P-1 for a reason and he cannot support the application at this time.

Mr. Pohl wanted to reflect on this property being a P-1 zone and the current demand for office space and the difficulty in finding a tenant in this current zone. Additionally, Mr. Pohl expressed concern about the failure of having sufficient pedestrian access and transportation on Clays Mill Road. He concluded his comments by stating his support for this proposal if there was a condition that required pedestrian crossing facilities.

Mr. Forester asked if the Planning Commission could do that if it is a city road and what options the Planning Commission had. Ms. Wade indicated that an applicant can make improvements to the public right-of-way and the Planning Commission could make the applicant do the same with a public crossing. Mr. Filiatreau stated that Traffic Engineering would have to determine if a crossing at the location was appropriate and could take a considerable amount of time. Mr. Martin also indicated that an applicant can make a donation to the Traffic Calming Fund used by the city for various traffic calming measures in the area.

Applicant Comment – Mr. Murphy stated that he wished to postpone this application to explore some of the options mentioned.

Action – A motion was made by Mr. Wilson, seconded by Mr. Owens and carried 9-0 (Nicol and Meyer absent) to continue PLN-MAR-23-00011: CLEAR OPTIKS, LLC to the October 26, 2023 public meeting.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENTS

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

VII. STAFF ITEMS – The staff reported at the meeting.

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 2023

Subdivision Committee, Thursday, 8:30 a.m., in 3 rd Floor Conf Room, Phoenix Building	September 7, 2023
Zoning Committee, Thursday, 1:30 p.m., in 3 rd Floor Conf Room, Phoenix Building	September 7, 2023
Subdivision Items Public Hearing , Thursday, 1:30 p.m. in Council Chambers, 2 nd Floor, Gov't Center.....	September 14, 2023
Work Session, Thursday, 1:30 p.m., in 3 rd Floor Conf Room, Phoenix Building	September 21, 2023
Technical Committee, Wednesday, 8:30 a.m., in 3 rd Floor Conf Room, Phoenix Building	September 27, 2023
Zoning Items Public Hearing, Thursday, 1:30 p.m, in Council Chambers, 2nd Floor, Gov't Center.....	September 28, 2023

X. ADJOURNMENT

Larry Forester, Chair

Janice Meyer, Secretary

TW/DC/RS-10/12/23

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