

## CAMPBELL COUNTY & MUNICIPAL PLANNING & ZONING COMMISSION

### MINUTES OF THE JUNE 8, 2021 MEETING

#### MEMBERS PRESENT:

Mr. Larry Barrow, Vice Chair  
Mr. Michael Williams  
Ms. Sharon Haynes  
Mr. Dennis Bass  
Mr. Justin Verst, TPO

#### MEMBERS ABSENT:

Mr. Roger Mason  
Mr. CJ Peters, Chair  
Mr. Mark Turner

#### STAFF PRESENT:

Mr. Kirk Hunter, Principal Planner  
Mr. Matt Smith, Legal Counsel

Mr. Barrow called the meeting to order at 6 pm. Following the pledge of allegiance, the clerk called the roll. Mr. Barrow, Mr. Williams, Mr. Bass and Mr. Verst were all present. Ms. Haynes was also present through teleconference as noted by Mr. Smith, she was able to hear and see all members of the Commission and audience.

Mr. Barrow then moved on to the second item on the agenda, the approval of the previous meetings minutes. There being no corrections, Mr. Williams made a motion to approve the minutes as submitted. Seconded by Ms. Haynes, a roll call vote found all in favor, none opposed. The minutes were approved as submitted.

Mr. Barrow then turned the floor to Mr. Hunter who presented the staff report for the evening's new business as follows:

File Number: 241-21-ZMA-01  
Applicant: Tom Barrett, Barrett's Pour House  
Location: 9406 Alexandria Pike, Unincorporated Campbell County  
Request: A proposed Zone Change from RRE (Rural Residential Estate) to RC (Rural Commercial) and Conditional Use Permit to allow for outdoor seating

#### Overview:

The area under review consists approximately one half (1/2) acre near Alexandria in unincorporated Campbell County on Alexandria Pike (US 27) at the intersection of US27 and Midway Drive.

The proposed zone map amendment is adjacent to a Rural Commercial (RC) zone to the west and south. There are Residential Rural Estate (R-RE) zones to the north and west. Historic aerial imagery and public records confirm that



the use at the site has been in existence longer than ten (10) years. The use at the site is currently *legal nonconforming*.

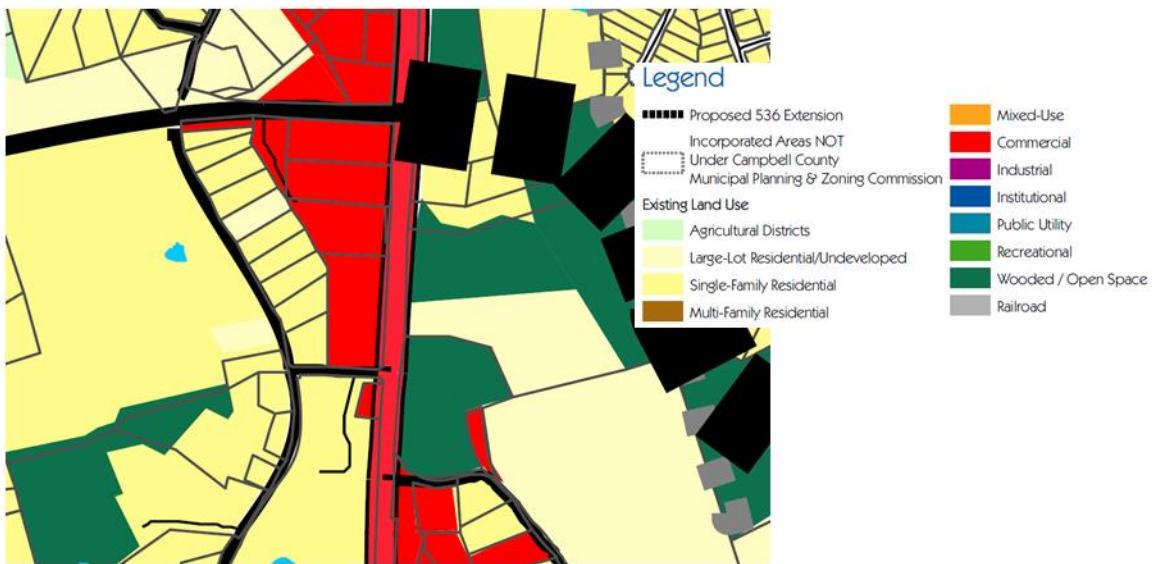
Due to capacity restrictions during the COVID-19 pandemic, Barrett's, like many other establishments set up temporary outdoor seating arrangements to encourage social distancing among patrons. As these capacity restrictions go back to normal, outdoor seating restrictions will begin to be enforced again. Barrett's currently has picnic tables set up but intends to build a covered seating area.

The intention of the zone map amendment is to bring the current use in to conformance and enable the property owner to expand the business to include outdoor seating.

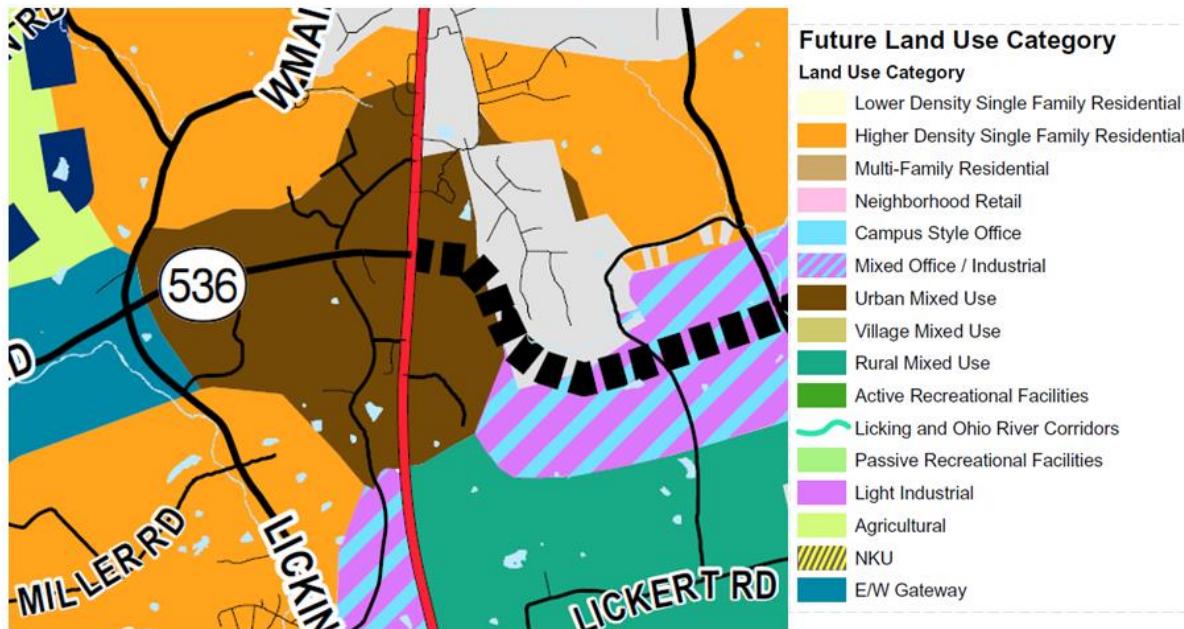


### **Considerations of Zone Map Amendment**

1. The area under consideration consists of approximately one half (1/2) acre.
2. The site is currently zoned Residential Rural Estate (R-RE) as defined in the Campbell County Zoning Ordinance, Article X, Section 10.2.
3. Adjacent zoning is Rural Commercial (RC) and R-RE in the area.
4. Adjacent land uses are predominantly commercial.
5. The 2008 Campbell County Comprehensive Plan specifies the current land use as Commercial.



6. The future land use category for the site is identified as Urban Mixed Use in the 2008 Campbell County Comprehensive Plan.



7. Planning and zoning records for this property show no cases before the Campbell County & Municipal Planning Commission or Board of Adjustments.
8. The Campbell County Zoning Ordinance defines the following permitted and conditional uses for the R-RE (section 10.2) and RC Rural Commercial zones (section 10.22) respectively.

## Permitted Uses

**R-RE**

1. Single family dwellings, detached.
2. Horse related uses, including riding and boarding stables for personal use with minimum lot area of 4 acres.
3. Greenhouse, nurseries or gazebo for personal use with minimum lot area of 4 acres.

**Conditional Uses****R-RE**

1. Cemeteries.
2. Churches and other accessory buildings for the purpose of recognized religious worship providing they are located adjacent to an arterial or collector or local street.
3. Institutions for higher education providing they are located adjacent an arterial street.
4. Nursery schools.
5. Public and parochial schools.
6. Publicly owner and/or operated parks, playgrounds, golf courses, community recreational centers, including public swimming pools and libraries.
7. Recreational uses, other than those publicly owned and/or operated as follows:
  - a. golf courses
  - b. country clubs
  - c. semi-public swimming pools
  - d. tennis courts/clubs
  - e. fishing lakes and clubs
  - f. gun clubs and ranges
  - g. riding stables and saddle clubs
8. Institutions for human medical care-hospitals, clinic sanitariums, convalescent homes, nursing homes, and homes for the aged providing they are located on arterial streets.
9. Police and fire stations provided they are located adjacent to an arterial street.
10. Essential services and public utility stations.
11. Noncommercial structure without a detached single-family dwelling provided that the location for a detached single-family has been sited meeting all applicable area and height regulations for all structures.

**Permitted Uses****RC**

1. Auto repair shops
2. Bakery
3. Bank

4. Barber and beauty shops
5. Drug store
6. Restaurants and taverns excluding drive-ins
7. Farm Equipment- sales and service
8. Food stores
9. Grain, Feed and Seed stores, including sales of fertilizers, garden supplies, etc.
10. Hardware store
11. Lumber companies
12. Offices
13. Paint and wallpaper store
14. Plumber's office and sales of fixtures
15. Police and fire station
16. Post office
17. Tobacco warehouses
18. Contractor's offices and storage areas
19. Service stations
20. Veterinarian offices including small and large animal clinics.
21. Flea market.
22. Single- and two-family residential uses, provided that such uses occupy the second or third floor or attached to the rear of a commercial use
23. Automotive repair and sale of new parts.
24. Mini Warehousing.

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**Conditional Uses****RC**

1. Automobile Sales, New and Used.
2. Self Service Car Wash.
3. Churches for the purpose of recognized religious worship.
4. Childcare center.
5. Public, parochial or private schools.
6. Publicly owned or operated parks or recreational facilities.
7. Private recreational facilities including indoor and outdoor uses.

Further, no such conditional use shall be permitted until and unless the following performance criteria are fully met:

1. Any lot containing such conditional use shall contain a minimum of one (1) acre of land.
2. Each such conditional use shall be separated from any residential zone by a landscaped side yard in accordance with Section 10.22 of this ordinance.
3. In addition to the front yard requirements established by Section (C) of this ordinance, each such conditional use shall have a landscaped area extending from the minimum set-back line of the property a minimum of fifty (50) feet to the start of the paved area intended or used for display of vehicles for sale.

4. No flashing lights, streamers, or lights strung on overhead wires or lines shall be permitted. All signs shall be in conformance with the requirements of Article XIV of this ordinance.
5. Vehicles offered for sale in or upon such conditional use shall be limited to standard passenger automobiles and light trucks having a gross vehicle weight rating (G.V.W.R.) of one (1) ton or less. Sale of motorcycles, either new or used, shall not be permitted.
9. The Campbell County Zoning Ordinance defines the zone requirements for the R-RE zone (section 10.2):

<b><u>Zone Requirements</u></b>	<b><u>R-RE</u></b>
Minimum Lot Area	One (1) Acre
Minimum Lot Width	One Hundred (100) feet
Minimum Front Yard Depth	Fifty (50) feet
Minimum Side Yard Depth	Total - Twenty-five (25) feet One Side – Ten (10) feet
Minimum Rear Yard Depth	Twenty-five (25) feet
Maximum Building Height	Thirty-five (35) feet

10. The Campbell County Zoning Ordinance defines the zone requirements for the Rural Commercial (RC) zone (section 10.22):

<b><u>Zone Requirements</u></b>	<b><u>RC</u></b>
Minimum Lot Area	One (1) acre
Minimum Lot Width	One Hundred (100) feet
Minimum Front Yard Depth	Fifty (50) feet
Minimum Side Yard Depth	Restrictions when adjacent to a street or other right-of-way when the required width shall be the same as required for a minimum front yard depth in this zone.  When buildings abut each other, firewall construction, as required by the County's Building Code, shall be required.  A side yard is never to be less than fifteen (15) feet.
Minimum Rear Yard Depth	Forty (40) feet
Maximum Building Height	Forty (40) feet

11. The existing structure does not meet the setback requirements for either the R-RE or the RC zone.

12. Article 17 of the Campbell County Zoning Ordinance also states that the zoning map or maps shall not be amended, changed, or modified in such manner as to create a freestanding zone of less than five (5) acres.
  - Staff notes that the site of the proposed zone map amendment will not create a freestanding zone of less than five (5) acres. It is adjacent to an RC zone of approximately five (5) acres.
13. Article XVII, Section 17.0 Amendment of Maps and Zones:

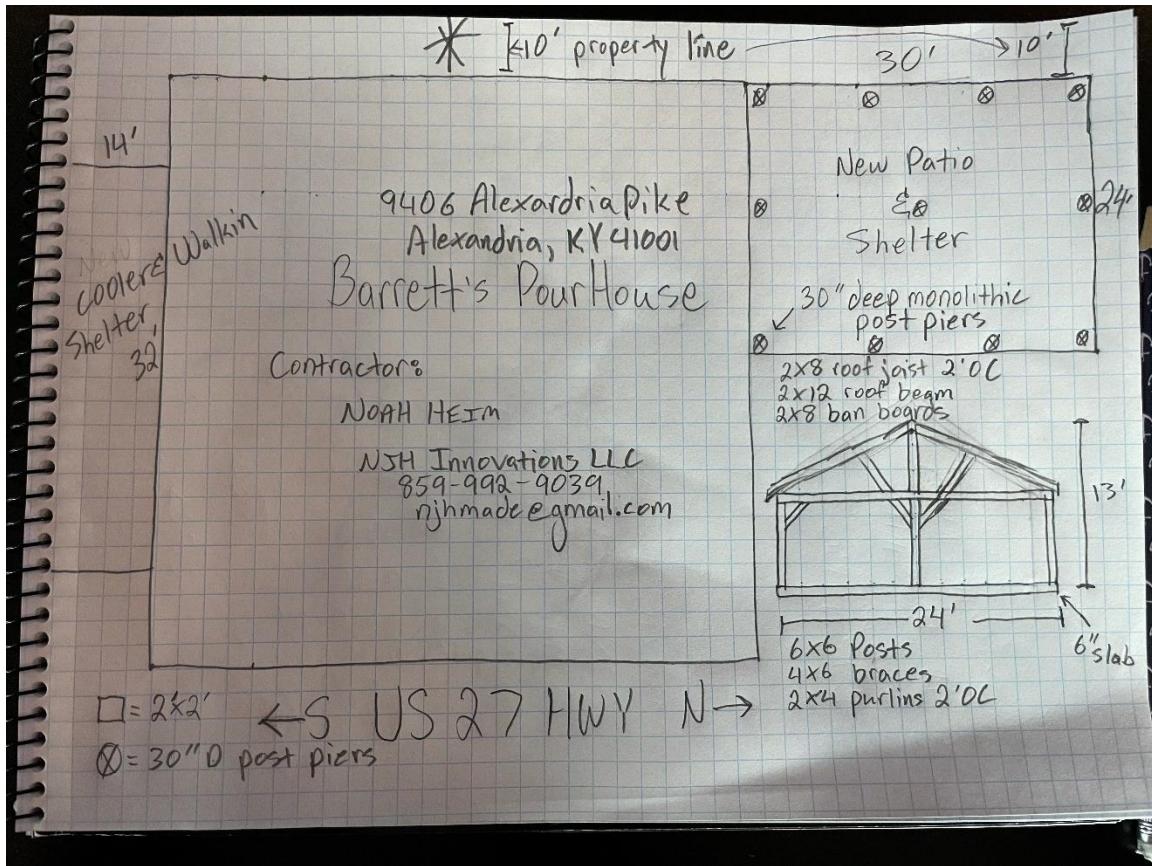
**FINDINGS NECESSARY FOR MAP AMENDMENT:** Before any map amendment is granted, the Planning and Zoning Commission, or legislative body, must find that the amendment is in agreement with the adopted comprehensive plan by the Planning and Zoning Commission for the County or in the absence of such a finding, that one or more of the following apply, including the making of a written report, setting forth explicitly, the reasons and substantiation as to how each would apply, and such finding and report shall be recorded in the minutes and records of the Planning and Zoning Commission or legislative body.

1. That the original zoning classification given to the property was inappropriate or improper; and
2. That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the comprehensive plan and which have substantially altered the basic character of such area.

**Staff Comments:**

1. The current use is consistent with the existing and future land uses as identified in the Comprehensive Plan.
2. The location of a nonconforming use within the zone prevents the property owners from expanding the use at this location.
3. The current (R-RE) zoning classification is not appropriate for an eating and drinking establishment.

**Considerations of Site Plan**



The applicant proposes a covered patio addition to the existing building.

Outdoor seating is currently not listed as a conditional use in any zone in Unincorporated Campbell County. The prohibition of outdoor seating comes from 10.22, E, 6:

*"All business activities permitted within this zone shall be conducted within a completely enclosed building with the exception of off-street parking, loading, or unloading areas."*

This development control is in all commercial zones except Highway Commercial (HC).

As a conditional use permit is not available for this zoning designation, staff recommends the request be changed to a Stage I Site Development Plan with a waiver of development controls to allow outdoor seating at the site.

## Considerations

1. The site is comprised of a total area of approximately one third (1/3) acre. This site is currently located in the Residential Rural Estate (R-RE) zone. The applicant is requesting a zone map amendment to Rural Commercial (RC). The proposed zone map amendment will bring the current land into compliance as well as bring the zoning of this property in line with the neighboring parcels.

2. The Recommended Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site and surrounding areas as "Urban Mixed Use".

#### **Staff Comments:**

The requested waiver does arise from special circumstances, which exist and do not generally apply to land in the general vicinity or in the same zone. Outdoor seating is an important asset to an eating and drinking establishment. The recent COVID-19 pandemic has shown the need for establishments to be able to maintain social distancing among patrons. The relaxation of outdoor dining restrictions has been a lifeline for struggling businesses.

The application of the provisions of this Ordinance would create unnecessary hardship on the applicant. (KRS 100.243)

The applicant is requesting this waiver subsequent to the approval of these regulations. (KRS 100.243)

The essential character of the neighborhood is commercial and this action is compatible with those uses.

This waiver would not be granting the applicant a special privilege.

This waiver does not permit a use of any land, building, or structure not permitted by the zoning regulation in the zone in question, and does not alter density requirements in the zone in question. (KRS 100.247)

#### **Summary of Applicants Request:**

- The applicant is requesting a Zone Map Amendment from Residential Rural Estate (R-RE) to Rural Commercial (RC) and;
- The applicant is requesting waiver of the requirements of **Article X, Section 10.22 Paragraph E: Other Development Controls** to construct a covered outdoor seating area.

#### **Staff Recommendation - Zone Map Amendment**

To approve the request for a zone map amendment from Residential Rural Estate (R-RE) to Rural Commercial (RC) and forward the recommendation to the Campbell County Fiscal Court for adoption.

#### **Bases for Recommendation:**

1. Notice has been given regarding the Zone Map Amendment consistent with Article 17 of the Campbell County Zoning Ordinance.

2. As defined in Article 17, the Planning Commission has the authority to review such Zone map Amendments and provide recommendations to the legislative body.
3. The proposed Zone Map Amendment has been reviewed for consistency with the recommendations of the 2008 Campbell County Comprehensive Plan Update, the Campbell County Subdivision Regulations and Campbell County Zoning Ordinance.

### **Staff Recommendation – Outdoor Seating Area**

To grant a waiver of development controls and approve the applicant's request for an outdoor seating area with the following conditions:

1. Such area shall be designed to clearly identify the limits of the outdoor dining area.
2. Such area shall not exceed forty (40) percent of the maximum seating capacity of the entire premises, including indoor and outdoor seating indoor dining area.
3. Accessory structures associated with the use shall not be permitted to locate within any minimum required front, side, or rear yards, except where a variance has been approved by the Board of Adjustment.
4. That the applicant complies with all Campbell County ordinances, regulations and building codes.
5. That the applicant apply for applicable building and permits.

### **Basis for Recommendation**

1. The submitted request is appropriate for this site since it is in compliance with the Comprehensive Plan, Subdivision Regulations and Zoning Ordinance.
2. In accordance with Section 18.2 of the Campbell county Zoning Ordinance, notice of public hearing was given.

Following his presentation, Mr. Hunter returned the floor to the commission for questions of staff. Mr. Verst asked to view the zone map again, and clarified which zones were neighboring and that those zones were all developed as commercial. Sharon confirmed that notice was given to neighboring properties, and requested any public comment. Mr. Hunter read into record a comment from a neighbor that expressed concerns about noise.

Mr. Barrow then offered the floor to the applicant. The applicant did not wish to comment.

Mr. Williams inquired of the applicant if they had music and if they had received any complaints. The applicant noted that they do have music, and had not had complaints. They clarified for Ms. Haynes that the music was not live bands, but speakers.

Mr. Verst added a statement that he agreed with staff that the current R-RE zone is inappropriate, and that the requested zone map amendment is consistent with the future land use. He then made a motion to recommend the requested zone change to the fiscal court. The motion was seconded by Mr. Williams, a roll call vote found all in favor, none opposed. The motion passed.

With regard to the waiver, Mr. Smith expressed that he did not feel that it would be a legally proper course of action to issue a waiver to essentially permit a conditional use. He suggested that the more appropriate path would be to amend the zoning text to include this type of use as a conditional use within this zone.

After discussing the best path forward, Mr. Verst made a motion to table the conditional use permit request for four months. Seconded by Mr. Williams, a roll call vote found all in favor, none opposed. The motion passed.

He then made a second motion to request that staff research outdoor dining and consider incorporation into appropriate zones or as conditional use permits, and present that at the earliest available meeting. The motion was seconded by Mr. Bass, a roll call vote found all in favor, none opposed. The motion passed.

Mr. Verst also made an informal request that staff and code enforcement consider a moratorium on enforcement regarding any existing outdoor dining while there is an active case regarding this text.

There was some discussion amongst board and staff about the possibility of the applicant beginning construction on the outdoor covering. It was determined that construction could not begin as it's intended purpose was for outdoor dining which has not yet been approved.

There being additional discussion, no old business, and nothing to present for the administrator's report, Mr. Barrow opened the floor for a motion to adjourn. Mr. Verst made the motion, seconded by Mr. Williams., an oral vote found all in favor and the meeting was adjourned at 6:54 pm.

Respectfully Submitted,

Approved:

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Cindy Minter  
Director

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