

**APRIL 10, 2008**

**10539 US HIGHWAY 431**

**ZONE CHANGE**

<b>From:</b>	R-1A Single-Family Residential A-U Urban Agriculture	
<b>To:</b>	<b>B-4 General Business</b>	
<b>Proposed Use:</b>	Dollar General Store	
<b>Acreage:</b>	2.44	
<b>Applicant:</b>	Robert G. & Nancy Grimsley (0804.1712)	
<b>Property Zone Existing Use</b>	<b>to North</b> A-U, R-1A Farm, Residence	
<b>to West</b> R-1A Residence	<b>Subject</b> R-1A, A-U → B-4 Vacant	<b>to East</b> A-U Farmland
	<b>to South</b> R-1A Residence	

**GENERAL LAND USE CRITERIA**

**Apply, if marked below:**

*Described in Comprehensive Plan on pages 445-448*

**Environmental** ☒

- E1** Flood Plains
- E2** Steep Slope
- E3** Historical & Archaeological Sites
- E4** Soils
- E5** Plant & Animal Life

**Urban Services** ☒

- ☒ **U1** Roadway Capacity
- ☒ **U2** Electricity Supply
- ☒ **U3** Water Supply
- U4** Stormwater Disposal
- U5** Sanitary Sewage Disposal

**Development Patterns** ❖

- D1** Land-Use Intensity, Clusters and Buffers
- D2** Land Use versus Street Function
- D3** Intersection & Driveway Spacing
- D4** Roadway Buffer Standards
- D5** Lot Sizes & Proportions
- D6** Residential Development
- ❖ **D7** Non-Residential Development
- D8** Building Quality

**Proposed Zone & Land Use Plan**

The applicant is seeking a B-4 General Business zone. The subject property is located in a Rural Community Plan Area, where general business uses are appropriate in limited locations.

**SPECIFIC LAND USE CRITERIA**

**(a) Building and lot patterns; outdoor storage areas -** Building and lot patterns should conform to the criteria for “Nonresidential Development” (D7), and outdoor storage yards with “Buffers for Outdoor Storage Yards” (D1).

**(b) Logical zoning expansion of proportional scope -** Existing General Business zones may be expanded onto contiguous land that generally abuts the same street(s). The expansion of a General Business zone should not significantly increase the extent of the zone in the vicinity of the expansion and should not overburden the capacity of roadways and other necessary urban services that are available in the affected area.

**(f) New locations in Rural Communities -** In Rural Community plan areas, new locations of General Business zones should be “major-street-oriented” (D2) and should be sited at corners of intersecting streets if located in close proximity to existing dwellings.

**Applicant's Findings**

This zoning application is comprised of a tract of land containing 2.44 acres located on US Highway 431 near Utica, Kentucky. There is a small service building located on said property.

The subject property was part of a larger tract known as the Herschel Morgan Estate property. The Morgan Estate owned about 30 acres of ground. The house to the north was sold and the Morgan Estate still owns the property one lot north of the subject property which fronts on Highway 431. During the ownership by the Morgan Estate, the subject property was rented as a commercial repair shop, such as lawnmower repair service.

Since 1997, the subject property has been owned by the applicants. It has been used as a general service repair shop; a sales lot for tractors, equipment, and automobiles; a chimney sweep operation; and a community rental sales lot to sell equipment and vehicles.

Findings:

I. The proposed rezoning is in compliance with the applicable criteria as set forth in the Comprehensive Land Use Plan.

The rezoning proposal meets the requirements of the criteria as set out under Section 11 General Business of the Land Use Plan. The subject property is located in a Rural Community plan area where commercial activities are appropriate in limited locations.

a. Building and lot patterns; outdoor storage yards - Building and lot patterns conform to the criteria for “non-residential development.”

f. New locations in rural communities - In Rural Community plan areas, new locations of General Business zones should be “major-street-oriented”. As indicated in the background section above, the subject property has a long history of commercial use and would meet the requirement of a non-conforming use except for the fact that it has not been used as a commercial activity in the last eighteen months.

1. The rezoning proposal meets the “arterial-street-oriented” requirement. Highway 431 is a major arterial highway known as US Highway 431.
2. The area south of the subject property serves as a service center for the Utica area. Three lots to the south on the east side of Highway 431 is a commercial strip area with a convenience store (known as the Utica Food Mart) which is located at the intersection of US Highway 431 and KY 140. The property is zoned B-4.
3. On the east side of the intersection of US 431 and KY 140, there is a vacant tract zoned B-4.
4. On the west side of the intersection of US 431 and KY 140, there are two vacant tracts zoned B-4.
5. All of the tracts of ground at the intersection of US Highway 431 and KY 140 at one time were owned by the Utica Food Mart owners. When these owners sold the tracts of ground, they placed restrictions on the property which would prohibit grocery sales and gasoline sales. The applicants plan to sell the property to Dollar General Company. This is the only tract near the intersection that has no restrictions and best suited for the Dollar General Store use.

## Planning Staff Review

The subject property is located in the 10501 block of US 431. Land use criteria applicable to this proposal are reviewed below.

### GENERAL LAND USE CRITERIA

#### Environment

According to a study prepared by the US Department of Agriculture Soil Conservation Service dated March 6, 1990, it appears that the subject property is not located in a wetlands area. The subject property is not located in a

special flood hazard area per FIRM Map 21059CO425 C. Based on the preliminary FIRM maps dated July 7, 2007, the subject property is not located in a special flood hazard area per map 21059CO405 D. It appears that a portion of the subject property is designated as prime agricultural land according to the “Important Farmlands” map created by the US Department of Agriculture Soil Conservation Service dated March 1980. The developer is responsible for obtaining permits as may be required by the Division of Water, The Army Corp of Engineers, FEMA or other state and federal agencies as may be applicable.

It appears that the subject property is outside the Owensboro Wellhead Protection area according to a map created by the GRADD office dated March 1999.

#### Urban Services

Electricity, water and gas are available to the subject property. Sanitary sewage disposal is accomplished by an on-site septic system.

#### Development Patterns

The subject property is located in the rural community of Utica. In the vicinity of the subject property, all surrounding properties are zoned either R-1A Single-Family Residential or A-U Urban Agriculture. There are residences to the north, south and west of the subject property. The property to the west is agricultural in nature.

A dilapidated structure is present on the subject property but it appears to have been out of use for several years. As stated by the applicant, there have been various quasi-commercial uses on the property since the applicant took ownership of the property in 1997. However, unless there have been consistent commercial related use of the property since prior to zoning regulations in the late 1970s, it's possible that the uses on the property have been illegal. Regardless, the fact that there has been an 18 month gap in the use of the property, any existing non-conforming status of the property has been lost and the rezoning application must be reviewed as such.

There are two primary criteria in the Comprehensive Plan for general business uses within a Rural Community Plan Area. The first is a logical expansion which is not applicable for the subject property since the nearest B-4 General Business zoning is located four tracts south at the corner of US 431 and KY 140. The second criteria states that new locations of general business use should be major-street oriented and be located at the corner of intersecting streets if located in close proximity to existing dwellings. With frontage on US 431, the site is major-street oriented; however, the second portion of the requirement is not met and not addressed by the applicant in their findings. There are existing dwellings on three sides of the subject property with the property to the west

being part of a large agricultural tract with frontage on KY 140 E.

### **SPECIFIC LAND USE CRITERIA**

The applicant's proposal is not in compliance with the Comprehensive Plan. The proposed use will be non-residential in nature and major-street oriented but is not located at the corner of interesting streets and is in close proximity to existing dwellings.

### **Planning Staff Recommendations**

Staff recommends denial because the proposal is not in compliance with the community's adopted Comprehensive Plan. The findings of fact that support this recommendation include the following:

#### **Findings of Fact:**

1. The subject property is located in a Rural Community Plan Area, where general business uses are appropriate in limited locations;
2. Although the subject property may have been used for quasi-commercial uses in the past, it has not been used in a similar manner over the past 18 months and therefore does not qualify as an existing, non-conforming use;
3. The subject property is not contiguous to existing B-4 zoning or use and is therefore not a logical expansion of existing B-4 General Business zoning;
4. The subject property is situated in close proximity to existing dwelling with residences located to the north, south and west of the subject property: and,
5. The subject property is not located at the corner of intersecting streets.