

**JUSTIFICATION FOR REQUESTED ZONE MAP AMENDMENT FOR PROPERTY  
OWNED BY CAPKY BLUEGRASS PROPERTIES, LLC AT  
353 WALLER AVENUE LEXINGTON, KENTUCKY 40504 AND RELATED  
VARIANCE REQUESTS**

**APPLICATION AND PROPERTY SUMMARY**

The applicant CAPKY Bluegrass Properties, LLC (“Applicant”) owns the property located at 353 Waller Avenue Lexington, Kentucky (“Property”). The Property contains about 3.05 acres and is the location of the former Kenton Healthcare Nursing Facility, which has been closed for almost 7 years. The certificate of need for this facility as a nursing home no longer exists.

The Applicant is requesting a zone change from Professional Office (P-1) to High Density Residential (R-5) to convert the existing 43,065 square foot building to a multi-family residential use with a focus on University of Kentucky students and staff as the Property is within walking distance of UK. The Applicant is making no additions to the existing building and will retro-fit the interior of the existing building to create the multi-family dwelling space. The proposal is to create 100 efficiency apartments, each containing a bathroom and a kitchenette. An existing 720 square foot garage on the east side of the Property will be removed. The existing paved parking area and some additional areas will be restriped to create 137 total parking spaces of which 34 will be compact spaces and 5 will be handicapped spaces. Bicycle racks to accommodate at least 30 bicycles will be added as well.

§8-14(n)[per §8-12(n)] of the Urban County Zoning Ordinance (“Zoning Ordinance”) provides for a minimum parking ratio in an R-5 zone of 3 spaces per two dwelling units or .9 spaces per bedroom, whichever is greater. Since this project will contain 100 dwelling units, the required parking would be 150 spaces. That requirement can be reduced by 5% for bicycle racks as provided for in §16.10 (a) of the Zoning Ordinance and another 5% for providing a non-sheltered transit stop within 300’ of the Property as provided for in §16.10(b) of the Zoning Ordinance. This makes the minimum parking ratio equal to 135 spaces which is less than the number of spaces provided for on the development plan filed with this application. The Applicant has provided for a transit stop on the Property as shown on the development plan and will apply to LexTran for location of a transit stop on the Property. The Applicant has been informed that a study for a transit stop on Waller Avenue has been made and a transit stop will be available when a space is established for it. It should be noted that practical usage of similar developments results in only about half of the residents parking cars on-site. Towne Properties, the proposed developer and manager of this Project, stated that this is their experience at the University of Cincinnati’s “USquare Apartments”. (See Exhibit A)

The existing building size is under the maximum lot coverage of 35% as required by § 8-14(12) of the Lexington-Fayette Zoning Ordinance (“Zoning Ordinance”).

Since the goal of the Applicant is to use the existing facilities and not enlarge them, the Applicant will agree to a proposed conditional zoning restriction that the existing building will remain a one-story building and any new building that might be constructed will not exceed one-story in height.

## MAP AMENDMENT REQUEST (MAR) APPLICATION

### 1. CONTACT INFORMATION (Name, Address, City/State/Zip & Phone No.)

<b>Applicant:</b> CAPKY Bluegrass Properties, LLC c/o Cory Pence, 9219 US Highway 42, Suite 204, Prospect, KY 40059
<b>Owner(s):</b> CAPKY BLUEGRASS PROPERTIES LLC 9219 US HIGHWAY 42 STE 204 PROSPECT KY 40059
<b>Attorney:</b> Richard M. Hopgood, 250 West Main Street, Suite 1600, Lexington, KY 40507

### 2. ADDRESS OF APPLICANT'S PROPERTY

353 WALLER AVE LEXINGTON KY
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### 3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY

Zoning	Existing Use	Zoning	Requested Use	Acreage	
				Net	Gross
P-1	Closed Nursing Home	R-5	Residential Units	3.05	3.29

### 4. EXISTING CONDITIONS

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
c. Are these units currently occupied by households earning under 40% of the median income? If yes, how many units? If yes, please provide a written statement outlining any efforts to be undertaken to assist those residents in obtaining alternative housing.	<input type="checkbox"/> YES <input type="checkbox"/> NO

### 5. URBAN SERVICES STATUS (Indicate whether existing, or how to be provided)

Roads:	LFUCG
Storm Sewers:	LFUCG
Sanity Sewers:	LFUCG
Refuse Collection:	LFUCG
Utilities:	<input checked="" type="checkbox"/> Electric <input checked="" type="checkbox"/> Gas <input checked="" type="checkbox"/> Water <input checked="" type="checkbox"/> Phone <input checked="" type="checkbox"/> Cable



The Property will be developed and managed for the Applicant by Towne Properties, a Cincinnati based apartment developer and management company. Towne Properties has owned and operated Merrick Place in Lexington for a number of years and has also developed and managed similar university focused housing at the University of Cincinnati (USquare at the Loop; McMillian Manor; and Piedmont Mews) and Wright State University (Cimarron Woods).

As set forth below, a zone map amendment from P-1 to R-5 is justified as being consistent with the 2013 Comprehensive Plan. Also, the zone map amendment is justified on the basis that the current zoning is inappropriate and the proposed zoning is appropriate.

## **1. PROPOSED ZONING IS CONSISTENT WITH THE GOALS AND OBJECTIVES OF THE 2013 COMPREHENSIVE PLAN.**

The mission statement of the 2013 Comprehensive Plan (“Plan”) is to:

*“[P]rovide flexible planning guidance to ensure that development of our community’s resources and infrastructure preserves 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 landscape that has made Lexington-Fayette County the Horse Capital of the World.”*

As set forth below, this project meets that overall mission and the Goals and Objectives of the Plan.

### Chapter 1 –Theme A - Goal 1 (Expand Housing Choices).

This goal seeks to grow successful neighborhoods by expanding housing choices that meet all of Lexington-Fayette County’s needs by providing for higher density and affordable housing. This project will meet that goal by providing affordable and higher density housing that is within walking distance of UK. It is anticipated that many of the tenants will attend college and/or work at UK. They will also shop at Waller Center on Waller Avenue near South Broadway and at the businesses along South Broadway. Recent publicity and quotes from David O’Neill, Fayette County Property Valuation Administrator, that over all housing demand is up to almost pre-recession levels, housing inventory is low and “the rental market is hot right now” and “we are seeing an increase in rental units and that includes apartments as well as houses being rented.” Business Lexington – August 24, Vol 12 Issue 6 (See **Exhibit B**).

### Chapter 1 – Theme A -Goal 2 (Support Infill and Redevelopment).

This goal seeks to support infill and redevelopment of existing properties. This project meets that goal by taking property that is located within the Infill and Redevelopment Area that is no longer economically viable and converting it to one that is economically viable. The conversion can occur without any changes to the footprint of the existing building. Again, recent publicized discussions by Lexington home builders point towards a need to expand the Urban Service Area

to meet current housing demand. This project would help that goal without the need to expand more of the Urban Service Boundary.

Chapter 1 – Theme C – (Creating Jobs and Prosperity).

This goal encourages infill and redevelopment that creates jobs where people live. This project furthers that goal by providing dwelling space for a number of residents, some of whom would likely work in the neighborhood and at UK. Those residents would also shop in the neighborhood and at businesses along South Broadway which would enable existing businesses to grow and produce new businesses.

Chapter 1 – Theme D – (Improving a Desirable Community).

This goal seeks to develop a viable network of effective and comprehensive transportation system for residents. No LexTran stop exists on Waller Avenue but the Applicant intends to pursue LexTran to install a bus stop on Waller Avenue near the Property due to the increased number of residents who would likely seek to utilize public transportation.

Chapter 2 (Accessibility – page 15)

The Plan also sets forth a policy of more accessibility between neighborhoods and shopping. The policy will be furthered by this project as the Applicant will install a sidewalk along the front of the Property to connect to the existing sidewalk on the east side of the Property that would provide full pedestrian connection to UK from the Property.

Chapter 6 (Improving a Desirable Community – page 97).

The Plan encourages taking advantage of an infill opportunity outside of downtown by revising and putting an unused building to good use (Page 97). This project will improve this area by revising and putting a large vacant building to good use.

**2. CURRENT ZONING IS INAPPROPRIATE AND PROPOSED ZONING IS APPROPRIATE.**

This application also meets the standard for a zone map amendment based on the current zoning being inappropriate and the proposed zoning appropriate. The current zoning for the Property is P-1. However, the Property previously was zoned R-4 until 1993 when it was rezoned to P-1 for the same use in order to comply with the greater lot coverage ratio needed as the result of an expansion that was proposed and later built. Until then, the use operated within the requirements of an R-4 zone. In essence, this zone map amendment request is to return the Property to multi-family use pursuant to the same zoning category (high density residential) as it was in 1993 since it can meet all of the lot and height requirements in an R-5 zone.

There is no viable option to reopen this facility as a nursing home given that the certificate of need to operate it no longer exists. However, the building on the Property is a valuable asset which can be reused for a multi-family purpose because the building is already divided into dwelling units which can be converted to efficiency apartments using the existing plumbing and bathrooms. Given this feature, it would not make economic sense to try to convert the building to

one of the other permitted uses in a P-1 zone (i.e. bank, school, library, funeral parlor, medical office, kindergarten, business college or beauty shop) and lose those features. Furthermore, the Applicant is not aware of any market for those uses. If the Property remains a P-1 zone, the only alternative would be to demolish the building for new construction which would result in the loss of a substantial asset and reduction in value of the Property to the Applicant. If that were the only alternative, the likely use would be for offices.

As shown on Exhibit C, at the end of 2015 there were over 1,200,000 square feet of available P-1 zoned office space for lease in Suburban Lexington-Fayette County. Also shown on Exhibit C are 3 specific properties (1218 South Broadway, 1733 Harrodsburg Road, and 2195 Harrodsburg Road) that are very close to the Property and contain over 150,000 square feet of available office space for lease. Some of these vacancies have existed for over 2 years. It would not make economic sense to diminish the value of the Property by demolishing the building only to create a vacant P-1 lot that would be competing with 1,200,000 square feet of available P-1 office space.

A multi-family residential use is appropriate in this location as there is property zoned R-4 at Royalty Avenue that adjoins the Property on the west, there is student housing along Camden Avenue that adjoins the Property to the north, and there is residential use at 342 Waller Avenue across the street from the Property.

In summary, as set forth above, the current zone classification of P-1 is inappropriate for the Property and the proposed zone classification of R-5 is appropriate.

### **3. VARIANCES.**

In addition to the zone change, the Applicant is requesting a dimensional variance of the front yard and useable open space minimum requirements set forth in the Zoning Ordinance.

#### **a) Minimum Front Yard Variance.**

§ 8-14 (h) of the Zoning Ordinance requires lots in an R-5 zone to have a minimum front yard of 20'. The Applicant is requesting a variance of the front yard minimum requirement of 20' to a depth of 8' along the front of the Property to accommodate the existing parking spaces that are located within the front yard. This variance is necessary because §16-4(c)(1) of the Zoning Ordinance does not permit parking in the front yard of an R-5 zone.

The Applicant is requesting approval of the minimum front yard variance for the following reasons:

1. Granting this variance will not adversely affect the public health, safety or welfare and will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public because there is currently no minimum front yard requirement by virtue of the Property being located in a P-1 zone and there will be no change in the location of the existing building (50' from the Waller Avenue right-of-way) as it will remain an existing condition.



2. Granting this variance will not allow an unreasonable circumvention of the requirements of the zoning ordinance because the reduction in the minimum front yard will not result in any change in existing building locations or added building area or added parking spaces in the front yard.

3. The special circumstances which apply to this property and which do not apply to land in the general vicinity or in the same area are: these parking spaces are existing and reuse of them will not result in any change in building location or additional parking spaces.

4. Strict application of the regulations of the zoning ordinance would deprive the Applicant of a reasonable use of the land or create an unnecessary hardship because there are currently required parking spaces located within the 20' front yard that could not remain without this requested reduction.

5. The circumstances surrounding the requested variance are not the result of the actions of this Applicant taken subsequent to the regulation from which relief is sought. This applicant has not started construction and is requesting the variance prior to, not after the construction of improvements and re-zoning of the Property.

**b) Minimum Useable Open Space.**

§8-14 (k) of the Zoning Ordinance requires lots in an R-5 zone to have a minimum useable open area of 20%. The Applicant is requesting a variance of the useable open space from 20% (26,150 square feet) to 15% (20,000 square feet). The 15% useable open space that exists results from the existing building's location on the Property and the Applicant's desire to reuse the existing building.

The Applicant is requesting approval of the reduction in minimum useable open space for the following reasons:

1. Granting this variance will not adversely affect the public health, safety or welfare and will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public because there will be no increased change in the footprint of the existing building as it will remain an existing condition and the requested reduction in open space is a minimal reduction request (5% of the required useable open space area or 6,200 square foot). Furthermore, UK and two public parks (Elizabeth Street and Burley Avenue) are within walking distance of the Property.

2. Granting this variance will not allow an unreasonable circumvention of the requirements of the zoning ordinance because the reduction in the useable open space requirement is minimal and there is adequate open space within walking distance of the Property.

3. The special circumstances which apply to this property and which do not apply to land in the general vicinity is the existing building can be redeveloped for a multi-family use with adequate parking by only a minimal reduction in useable open space.

4. Strict application of the regulations of the zoning ordinance would deprive the Applicant of a reasonable use of the land or create an unnecessary hardship because an increase in useable open space would require the reduction parking spaces or building footprint.

5. The circumstances surrounding the requested variance are not the result of the actions of this Applicant taken subsequent to the regulation from which relief is sought. This applicant has not started construction and is requesting the variance prior to, not after the construction of improvements and re-zoning of the Property.

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