

ZOTA 2014 - 6

Date Received: 8/4/14

Filing Fee: \$ 450<sup>00</sup>

### GENERAL INFORMATION - Zoning Ordinance Text Amendment Application

**1. APPLICANT INFORMATION:**  
 Name: RBHV Lexington, LLC; RBHV Lexington Retail, LLC  
 Address: 4100 Regent Street, Suite G  
 City, State, Zip Code: Columbus, Ohio 43219  
 Phone Number: (614) 246-2675

**2. ATTORNEY (Or Other Representative) INFORMATION:**  
 Name: Christine N. Westover and Jon A. Woodall  
 Address: 201 E. Main Street, Suite 900, Lexington, KY 40507  
 City, State, Zip Code: Lexington, Kentucky 40507  
 Phone Number: (859) 231-8780

**3. DESCRIBE YOUR REQUESTED TEXT CHANGE:** Date of Pre-application Conference: \_\_\_\_\_  
 Zoning Ordinance Article # 21-7(a)(5) Specific text change proposed:  
See attached letter  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**4. DESCRIBE THE JUSTIFICATION FOR MAKING THIS CHANGE: (Use attachment if necessary.)**  
See attached letter  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**5. SIGN THIS APPLICATION:**  
 I do hereby certify that, to the best of my knowledge and belief, all application materials are herewith submitted, and the information they contain is true and accurate.  
 APPLICANT: RBHV Lexington LLC and RBHV Lexington Retail LLC  
 ATTORNEY (or other representative): Christine Westover, attorney for applicants  
 LFUCG EMPLOYEE/OFFICER, if applicable: \_\_\_\_\_

NOTE: Attorneys may submit a formal letter instead of this form; otherwise, fill in all box information requested above.



# ( M C B R A Y E R )

McBrayer, McGinnis, Leslie & Kirkland, PLLC

ATTORNEYS AT LAW

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July 11, 2014

Mr. Mike Owens, Chair  
Lexington-Fayette Urban County Planning Commission  
101 E. Vine Street, 7th Floor  
Lexington, Kentucky 40507

RE: ZOTA Section 21-7(a) (5)  
Revision to Allow Minor Plan Amendment to Reduce Excess Parking

Dear Chairman Owens,

I represent RBHV Lexington, LLC and RBHV Lexington Retail, LLC, the owners of the retail complex at 2573 Richmond Road and Double Tree Suites Hotel behind it at 2601 Richmond Road. We are requesting a zoning ordinance text amendment to Section 21-7(a)(5) of the Zoning Ordinance to allow Planning staff to approve as a minor development plan amendment the reduction of excess parking spaces depicted on the original development plan. The proposed change to Section 21-7(a) (5) is as follows:

**21-7(a) MINOR AMENDMENTS DEFINED – Minor amendments is intended to expedite approval in those situations where amendments are of minor significance and generally relate to the shifting of previously approved spaces. Such amendments (1) shall not decrease the overall land area in yards, or other open spaces; (2) shall not increase building ground area coverage, floor area, or height, or increase the number of dwelling units; (3) shall not increase the number or size of signs; (4) shall not change the location or cross-section of any street and shall not increase the number, or change the location of street access points, except that shifts in the approved access location not exceeding twenty-five (25) feet may be approved as a minor amendment where the access point is not located on an arterial street and the Divisions of Traffic Engineering and Planning concur that such relocation will not have a negative effect on traffic safety and movement; (5) may include a reduction in parking spaces only when an associated reduction in floor area or number of dwelling units would permit a lesser number of**



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**minimum required off-street parking spaces than required for the original development plan. To qualify as a minor amendment, this reduction may be equal to but not exceed the difference in minimum required parking spaces between the original plan and the proposed minor amended plan. ~~For any case where parking in excess of the minimum requirement was provided on the original development plan, that same number of spaces shall be provided in excess of the minimum requirement for the proposed minor amendment plan.~~ (6) the number of parking spaces in excess of the minimum number of required spaces depicted on the original final development plan or on a subsequent amended final development plan, as applicable, may be reduced by the approval of a minor amended development plan, provided that such amendment does not reduce the number of parking spaces below the required minimum depicted on the development plan that is being amended.**

The above revision would apply to minor amendments to commercial and residential properties governed by a development plan. The purpose for the text amendment is to expedite the review and approval process, and to reduce the cost of amending development plans. The proposed language adequately addresses the government's interest in ensuring that minimum parking continues to be provided while allowing property owners a faster and less expensive means to lease space to new tenants as uses change over time. It would also facilitate minor site alterations such as adding a dumpster without the necessity of going through the major development plan amendment process. Authorizing Planning staff to approve minor amendments that reduce excess parking spaces will afford the necessary government review that will ensure that minimum required parking will continue to be provided. Planning staff have the power to bring problematic plans to the Commission for additional discussion and approval, which already provides a procedure to review plans that may necessitate additional review in unusual situations.

The benefit of the text amendment to my client and others who own and lease commercial property is tremendous. Under the current system if a development plan shows any excess parking, the property owner must file a major development plan amendment, which adds to the cost of the plan. In addition to the higher fees charged for engineering and legal services for the added services necessary to prepare major development plan amendments and shepherd them through the approval process, the filing fees are more expensive than for minor development plan amendments. The fee to file major plans and major plan amendments is \$400, plus \$15 per acre or portion, but minor development plan amendments cost only \$175 with no per acre or portion fee. The filing fees are slightly less for residential and mixed-use zones, but there is still a disproportionate impact between all the associated costs of major and minor development plan expenses.

More importantly, the process for reviewing minor amendments is much faster. Typically it takes only several days after submission before minor plans are approved and



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certified. In contrast, major development plan amendments are filed early in one month for Planning Commission action at a hearing in the middle of the following month, roughly a six week process. For commercial landlords with space to lease and prospective tenants seeking to lease space, the cost and delay can be fatal to the deal. A tenant may decide to find a site that can be open for business in a shorter time. This is particularly true considering that tenants typically must retrofit the leased space, which cannot begin until after the plan amendment is certified, thus adding to the delay.

While we do not own residential or mixed use property, such uses can also benefit from the proposed text amendment. For example, under the current law, apartment complexes that have excess parking depicted on their development plans must go through major development plan amendment process even if all they want to do is add a dumpster, and thereby eliminate a couple of excess parking spaces. In such cases the requirement to file a major amendment is excessive when comparing the cost and inconvenience to the property owner in relation to the government's interest in reviewing all of these plans as major amendments. The LFUCG and would be adequately protected by the minor amendment review and approval process.

In conclusion, final development plans that depict excess parking have become a trap for the unwary. Attempts to change the tenant mix or make other small scale improvements to the property that would remove excess parking require the longer and more costly major plan process. The proposed language would allow proper review more quickly and inexpensively. We respectfully request approval as submitted. Thank you for your assistance in this matter.

Sincerely,



Christine N. Westover

CNW/klm