

ORDINANCE NO. 171 -2016

AN ORDINANCE MODIFYING THE CONDITIONAL ZONING RESTRICTIONS IN A MIXED USE 2: NEIGHBORHOOD CORRIDOR (MU-2) ZONE FOR 0.94 NET (1.10 GROSS) ACRES, FOR PROPERTY LOCATED AT 275 SOUTH LIMESTONE. (CITY VIEW INVEST MENTS, LLC; COUNCIL DISTRICT 3).

WHEREAS, at a Public Hearing held on August 25, 2016 a petition for a zoning ordinance modifying the conditional zoning restrictions in a Mixed Use 2: Neighborhood Corridor (MU-2) zone for property located at 275 South Limestone for 0.94 net (1.10 gross) acres, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change by a vote of 10-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a modification of conditional zoning restrictions in a Mixed Use 2: Neighborhood Corridor (MU-2) zone for property located at 275 South Limestone for 0.94 net (1.10 gross) acres, being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - That the granting of this zone change is made subject to the following use restrictions as conditions of granting the zone change:

Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property's MU-2 zone shall now be restricted in the following manner, via conditional zoning:


- a. The density shall not exceed 25 dwelling units in the MU-2 zone on South Limestone Street, and five units in the MU-2 zone on South Upper Street.

Section 3 - That the Lexington-Fayette Urban County Planning Commission is directed to show the amendment on the official zone map atlas and to make reference to the number of this Ordinance.

Section 4 - That this Ordinance shall become effective on the date of its

passage.

PASSED URBAN COUNTY COUNCIL: October 13, 2016



MAYOR

ATTEST:


CLERK OF URBAN COUNTY COUNCIL

Published: October 20, 2016-1t
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LEGAL DESCRIPTION

275 SOUTH LIMESTONE, UNITS 10, 110, 120, 130, 140 AND 150

Being identified as 275 South Limestone, Units 10, 110, 120, 130, 140 and 150, each being a Condominium Unit of the Kimball House Square Condominium Horizontal Property Regime, together with the limited common elements thereto, as set out in a Master Deed of Declaration for the Kimball House Square Condominium, dated June 29, 2007, of record in Deed Book 2739, Page 686, and Condominium Deed Book 69, Page 533, and as shown by the plat thereof of record in Plat Cabinet G, Slides 850 through 859, in the Fayette County Clerk's Office, being known and designated as 275 South Limestone, Units 10, 110, 120, 130, 140 and 150; and

Being part of the same property conveyed to City View Investments, LLC, an Ohio limited liability company, by deed dated August 3, 2007 of record in Deed Book 70, Page 484, in the Fayette County Clerk's Office.

Rec'd by _____

Date: _____


RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: **MAR 2016-19: CITY VIEW INVESTMENTS, LLC** – petition for a zone map amendment to modify conditional zoning restrictions in a Mixed Use 2: Neighborhood Corridor (MU- 2), for 0.94 net (1.10 gross) acres, for property located at 275 S. Limestone. (Council District 3)

Having considered the above matter on **August 25, 2016**, at a Public Hearing, and having voted **10-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **CONDITIONAL APPROVAL** of this matter for the following reasons:

1. In accordance with Article 6-7(c) of the Zoning Ordinance, there have been unanticipated changes of an economic, physical, and social nature in the immediate area, since the time the current conditional zoning restrictions were imposed in 2007, which have substantially changed the basic character of the subject property. In particular:
 - a. There has been stronger demand for residential housing over the past decade in the South Hill residential district, as evidenced by the fact that mixed-use projects in the area such as The Lex and CentreCourt (in addition to the Kimball House) have experienced very little vacancy for residential spaces but more notable vacancy for non-residential spaces over this period.
 - b. Kimball House Square has 100% occupancy of the existing 22 on-site dwelling units. This is in spite of the fact that several financial institutions foreclosed on multiple units in the development less than five years ago, which is a testament to the strong demand for residential use and less demand for non-residential space.
 - c. The demand for office and retail uses over the past decade has been stronger in the core of downtown and in other locations throughout the community, judging by new and approved developments, than in the South Hill and South Limestone areas.
2. This recommendation is made subject to approval and certification of DP 2016-71: Kimball House Square (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.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property's MU-2 zone shall now be restricted in the following manner, via conditional zoning:
 - a. The density shall not exceed 25 dwelling units in the MU-2 zone on South Limestone Street, and five units in the MU-2 zone on South Upper Street.

ATTEST: This 14th day of September, 2016.


Secretary, Jim Duncan

WILLIAM WILSON
CHAIR

Note: The corollary development plan, ZDP 2016-71: KIMBALL HOUSE SQUARE (AMD) was approved by the Planning Commission on August 25, 2016 and certified on September 8, 2016.

K.R.S. 100.211(7) requires that the Council take action on this request by November 23, 2016.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Nathan Billings, attorney.**

OBJECTORS

- None

OBJECTIONS

- None

VOTES WERE AS FOLLOWS:

AYES: (10) Berkley, Brewer, Cravens, Mundy, Owens, Penn, Plumlee, Richardson, Smith
Wilson

NAYS: (0)

ABSENT: (1) Drake

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for CONDITIONAL APPROVAL of MAR 2016-19 carried.

Enclosures: Application
Plat
Supplemental Staff Report
Staff Report
Applicable excerpts of minutes of above meeting

7. **JUSTIFICATION TO MODIFY CONDITIONAL ZONING RESTRICTION AND FOR VARIANCE ON 275 South Limestone, Units 10, 110, 120, 130, 140 and 150.**

A. OVERVIEW

The Owner/Applicant, City View Investments, LLC, seeks

1. to modify the conditional zoning restriction on the MU-2 Zone in the Kimball House Square, to increase residential density from 22 Units to 30 Units in the (5 Units at 380 S. Upper St., and 25 Units on the remainder of the MU-2 Zone (specifically being 275 South Limestone, Lexington, Kentucky, 40508 (the "Property")); and
2. a variance from Zoning Article 28-4(h)(1) [and to amend the Development Plan that requires the 1st floor to accommodate 10,000 sq. ft. of office/retail] to reduce the minimum square footage of office and retail in the MU-2 Zone from 15% to a minimum of 4,500 sq. ft. office and retail on the 1st floor and basement.

Applicant is the sole owner of the entirety of the 1st floor and basement (being Units 10, 110, 120, 130, 140 and 150, and consisting of approximately 17,000 sq. ft.).

B. HISTORY OF PROPERTY AND CURRENT ZONING & USE

The Kimball House Square Condominium development (the "Condominium") is comprised of multiple, non-contiguous buildings having addresses of 275 South Limestone Street (formerly the Kimball House hotel), 261 South Limestone Street, 372 South Upper Street, 376 South Upper Street and 380 South Upper Street, together with certain General Common Elements such as parking lots, sidewalks and landscaped areas (collectively, the "Property").

Currently, a portion of the Property comprised of 261 South Limestone Street, 372 South Upper Street, and 376 South Upper Street is in the R-4 zone. The remainder, consisting of 275 South Limestone and 380 South Upper is in the MU-2 zone.

The MU-2 zone, also known as the Neighborhood Corridor zone, is a mixed-use zone.¹ The principal uses include (i) Dwelling Units, (ii) uses permitted in the P-1 zone, and (iii) uses permitted in the B-1 zone.² As a mixed use zone, the MU-2 zone requires certain minimum and maximum proportions of residential and non-residential uses in the structures that comprise the zone. In particular, the MU-2 zone requires that non-residential uses comprise the lesser of (i) 15% of the total square footage of all the principal structures in the zone or (ii) 10,000 square feet.³

The LFUCG Planning Commission's (the "Commission") approval of the rezoning of the

¹ A copy of Article 28 of the LFUCG Zoning Ordinance (the "Ordinance") is attached hereto as **Exhibit A**. The specifications of the MU-2 Zone are set forth in Section 28-4.

² See Ordinance at §28-4(b).

³ See Ordinance, §28-4(h)(1).

Property to the MU-2 Zone in 2005 was conditioned on two additional requirements.

First, it imposed a Conditional Zoning Restriction limiting the total number of Dwelling Units in 380 South Upper and 275 South Limestone, being the two principal structures in the MU-2 zone, to twenty-two units. Of those, five Dwelling Units were allocated to 380 South Upper and the remaining seventeen units were allocated to 275 South Limestone. Specifically, the Restriction provides:

“2. Residential Density shall not exceed 6 Units at 372 and 376 S. Upper St.; 8 Units on the remainder of R-4 Zone; or 22 Units in the MU-2 Zone (5 Units at 380 S. Upper & 17 Units on the remainder of the MU-2 Zone).”

The “remainder of the MU-2 Zone” referenced in that restriction is entirety of what is now 275 South Limestone (the 5 original Kimball House Hotel structures and the additions thereto on the backside of same).

Second, and although not a Conditional Zoning Restriction, the approved development plan stated that the 10,000 square feet of required commercial space be located on the first floor of 275 South Limestone. Zoning Article 28-4(h)(1) requires that in the MU-2 zone, there be a minimum 15% office-retail for the project, up to a maximum of 85% office-retail. It is this “mixed” residential to office-retail that make it “mixed use. The MU-2 Zone here consists of 34,400 square feet. Thus, under the Zoning Article 28-4(h)(1) [in the absence of the note of 10,000 square feet of office-retail], the MU-2 zoning area would have only required 5,160 square feet of office-retail.

Finally, the Commission required a minimum of 45 parking spaces for the MU-2 portion of the development based on the anticipated uses and number of Dwelling Units, and a total of 66 spaces.

C. APPLICANT’S UNITS

City View Investments, LLC (“City View”) owns six units, being numbers 10, 110, 120, 130, 140, and 150, of twenty-22 total units in 275 South Limestone. Five of the six units are on the first floor of the building, with the last unit being located in the basement of the far-left Unit (and being the only basement with outside access).

Units 110, 120, 130, and the rear approximately ½ of Unit 140 are unfinished. The front of Unit 140 and the entirety of Unit 150 are finished and currently used as office space and storage by the Owner/Applicant.

The approved Development Plan indicates that the 1st floor and basements comprise approximately 17,000 sq. ft.

The second and third floors of 275 South Limestone contain seventeen Dwelling Units, which is the maximum number of Dwelling Units permitted by the Conditional Zoning

Restriction.

Since purchasing the Units in 2007 as unfinished space, the Applicant "fitted up" the front of Unit 140 and the entirety of Unit 150. Since 2007, the Applicant has tried to rent and/or sell the remainder of the Units space as office/retail. Except for a brief period when Unit 110 was rented as a barber shop, they have been unable to rent or sell same.

During this period, on several occasions, the Owner had extensive discussions with the University of Kentucky regarding a potential lease of the 1st floor and basements. But, as UK has decided to build a plethora of its own buildings now, that has no longer been an option since about 2012 or 2013.

Currently, applicant uses Unit 140 as one of its office locations, and Unit 150 is vacant office space and office storage. Together, these Units 140 and 150 comprise a total of 4,525 square feet of office space.

D. GOALS AND OBJECTIVES OF 2013 COMPREHENSIVE PLAN.

The 2013 Comprehensive Plan is replete with goals and objectives that favor this Application.

The Preamble to the 2013 Comprehensive Plan provides:

To ensure that the urban growth boundary policies and other long range planning issues address the expected needs for new urban development and contribute to the prosperity of Lexington Fayette County, these goals and objectives have been drafted based upon the determined community needs of today with confidence that they will continue to be reviewed and revised as necessary.

Goal 1, of Theme A, Expanding Housing Choices, states in part:

b. Plan for housing that addresses the market needs for all of Lexington-Fayette County's residents, including, but not limited to, mixed-use and housing near employment and commercial areas.

c. Plan for safe, affordable, and accessible housing to meet the needs of older and/or disadvantaged residents

Goal 2, of Theme A, Growing Successful Neighborhoods, states:

Support infill and redevelopment throughout the Urban Service Area as a strategic component of growth.

To achieve this Goal 2, Objective 2(a) states:

- a. Identify areas of opportunity for infill, redevelopment and adaptive reuse that respect the area's context and design features whenever possible.

Goal 3 of Theme A, Provide well designed neighborhoods and communities, has the following objectives:

- a. Enable existing and new neighborhoods to flourish through improved regulation, expanded opportunities for neighborhood character preservation, and public commitment to expanded options for mixed-use and mixed-type housing throughout Lexington-Fayette County.

Theme D, Improving a Desirable Community, has as one of some of its goals and objectives:

Goal 1: Work to achieve an effective and comprehensive transportation system.

- b. Develop a viable network of accessible transportation alternatives for residents and commuters, which may include the use of mass transit, bicycles, walkways, ridesharing, greenways, and other strategies.

Goal 3: Protect and enhance the natural and cultural landscapes that give Lexington-Fayette County its unique identity and image.

Objectives:

- a. Protect historic resources and archeological sites.
- b. Incentivize the renovation, restoration, development, and maintenance of historic residential and commercial structures.
- c. Develop incentives

Goal 1 of Theme E, Maintaining a Balance between Planning for Urban Uses and Safeguarding Rural Land, emphasizes the continued importance of development inside of the Urban Service Area (USA). Its objectives are to:

- a. Continue to monitor the absorption of vacant and underutilized land within the Urban Service Area.
- b. Encourage compact, contiguous, and/or mixed-use sustainable development within the Urban Service Area, as guided by market demand, to accommodate future growth needs.

Identified strategies include allowing for “increased density and affordable housing in appropriate locations;” and “mixed use or higher density to achieve critical mass of residential to attract business for daily needs.” *See* 2013 Comprehensive Plan, p. 100-101 “Strategies.”

Further, to promote infill, the 2013 Comprehensive Plan recommends “Improv[ing] regulations to enhance infill opportunities.” *See* 2013 Comprehensive Plan, p. 103 “Recommendations.”

This Application seeks to further these goals and objectives by focusing residential density near Downtown AND the University of Kentucky, fostering walkability, livability, live where you work.

E. AMENDMENT OF CONDITIONAL ZONE RESTRICTION

1. The Property is already zoned MU-2.

Although this Application is filed as Map Amendment Request, Owner does not actually seek a zone change. The zoning, MU-2 would stay the same.

Rather, Applicant seeks to modify one of the Conditional Zoning Restrictions to permit a slight increase in the number of residential units and bedrooms. Conversely, the square footage of the office-retail area would be decreased by a variance from the current 15% minimum the MU-2, but only slightly below the required 5,160. The proposal for 4,500 sq. ft minimum office-retail is 13% of the gross square footage of the MU-2 Zone.

2. Amendment Justification.

The 1st floor and basements are currently underutilized. By granting this application, it allows the owner to fit up the remainder of Units 10, 110, 120, 130 and the back of 140 to Residential, thereby increasing residential density, which accomplishes multiple of the Themes from the 2013 Comprehensive Plan.

All other residential Units in the property have sold and the development (except for the Property at issue) has 100% occupancy, consisting of both owner-occupants and renter-occupants. Residents include young professionals, graduate students, other professionals, and people who use these units as second homes when they visit/return to Lexington.

F. VARIANCE REQUEST

1. MU-2 requirement.

The MU-2 Zone current requires that:

No less than 15%, nor more than 85%, of the floor area of any structure shall be required to be residential uses.

There is 36,100 square feet in the MU-2. Under the ratios above, the MU-2 would require no less than 5,415 square feet.

Currently, the space at 275, Units 140 (Front) and 150 (front and rear) have been fitted up to be office and/or retail space. The Owner of the Units currently uses these units for office space for their businesses. These comprise approximately 4,500 square feet.

Because of the issues discussed above, the Applicant has tried to rent and to sell the other (non-fitted up) units (being 10, 110, 120, 130 and the rear of 140). The variance is sought to keep the current use of the property in place, and to only slightly reduce the minimum residential percentage to 12.5%.

Thus, Applicants seeks a variance from Zoning Article 28-4(h)(1) and to amend the Development Plan that requires the 1st floor to accommodate 10,000 sq. ft. of office/retail to reduce the minimum square footage of office and retail in an MU-2 Zone from 15% to a minimum of 4,500 sq. ft. office and retail on the 1st floor and basement.

2. Variance Justification.

1. Why will the granting of this variance not negatively affect the public health, safety or welfare, not alter the character of the general vicinity, and not cause a hazard or public nuisance.

This Application, the proposed Amended Final Development Plan and this Variance in particular are all sought based upon the existing site conditions and existing development parameters (parking, etc.). The current approved Amended Final Development Plan Note requires a minimum of 10,000 square feet of office and retail on the 1st floor (which was put into place at the time of the conditional zoning restriction), although the Zoning Article 28-4(h)(1), only requires a minimum of 5,415 square feet of office and retail. The requested variance basically seeks to reduce the required minimum office/retail by less than 1,000 square feet. The change in this requirement does not introduce or permit a use that is inconsistent with the MU-2 zone, the Property overall, or the surrounding neighborhood and business district. Thus, the granting of this variance will not negatively affect the public health, safety or welfare, not alter the character of the general vicinity, and not cause a hazard or public nuisance.

2. How will granting this variance not allow an unreasonable circumvention of the requirements of the Zoning Ordinance?

The MU-2 Zone is specifically designed to be a mixed use project, consisting of residential and office/retail uses between a range of 15% to 85% residential. The variance sought does not seek to undo or circumvent the Zoning Article 28-4(h)(1); rather, it seeks to slightly reduce the percentage minimum for office/retail in order to accommodate market conditions that have precluded the full development and use of these Units. Thus, granting the variance will allow an unreasonable circumvention of the requirements of the Zoning Ordinance.

3. *What are the special circumstances which apply to this property and which do not generally apply to land in the general vicinity in the same zone?*

First, this is an MU-2 zone. The overwhelming majority of adjacent and nearby parcels are residential zones, although there are commercial uses to the south (towards UK). Thus, the zoning along makes it special circumstances. Second, if this was a residential zone, there would be no minimum requirements for office/retail, as 100% of the Units in this application could be residential, and in that case, no variance would be required. Third, the Owner has owned these Units for nearly a decade without success in renting and/or selling the Units. The only part of the Units that is currently used as office space (the front of Unit 140, and the entirety of Unit 150) was fitted up by the Owner for their own office. They closed down another location and relocated their offices to these Units in the hopes that it would facilitate other tenants and/or sale of the other Units. Fourth, the MU-2 Zone is relatively new in Fayette County (historically speaking), and this is the first Application (to Applicant's knowledge) that seeks to make minor (from 15% to 12.5% minimum square footage of office/retail) adjustments to accommodate market forces and the ultimate development of a MU property. Accordingly, Applicant believes there are special circumstances which apply to this property and which do not generally apply to land in the general vicinity in the same zone.

4. *How would strict application of the Zoning Ordinance deprive you (the Applicant) of a reasonable use of your land or create an unnecessary hardship upon you?*

As discussed above, the Applicant has tried to rent and to sell the other (non-fitted up) units (being 10, 110, 120, 130 and the rear of 140). The variance is sought to keep the current use of the property in place, and to only slightly reduce the minimum residential percentage to 12.5%. Strict application of the Zoning Ordinance would effectively deprive the Owner of converting approximately 1,000 square feet from office/retail to residential. Because of the layout of the interior, this might effectively reduce the residential units by one and lead to one office/retail space that continues to be underutilized (not-developed).

5. *How are the circumstances of this requested variance not the result of your own actions since the adoption of the zoning regulation (from which you now seek relief)?*

The circumstances surrounding the requested variance have arisen as a result of the market forces in this area precluding the sale or leasing the Units in question as office or retail. The variance request is sought in order to accommodate current market trends, and to promote better utilization of this condominium space.

G. CONCLUSION

Accordingly, Applicant respectfully requests that the Planning Commission

1. modify the conditional zoning restriction on the MU-2 Zone in the Kimball House Square, to increase residential density from 22 Units to 30 Units in the (5 Units at 380 S. Upper St., and 25 Units on the remainder of the MU-2 Zone (specifically being 275 South Limestone, Lexington, Kentucky, 40508 (the "Property"))); and

2. grant a variance from Zoning Article 28-4(h)(1) [and to amend the Development Plan that requires the 1st floor to accommodate 10,000 sq. ft. of office/retail] to reduce the minimum square footage of office and retail in an MU-2 Zone from 15% to a minimum of 4,500 sq. ft. office and retail on the 1st floor and basement.

LEGAL DESCRIPTION

275 SOUTH LIMESTONE, UNITS 10, 110, 120, 130, 140 AND 150

Being identified as 275 South Limestone, Units 10, 110, 120, 130, 140 and 150, each being a Condominium Unit of the Kimball House Square Condominium Horizontal Property Regime, together with the limited common elements thereto, as set out in a Master Deed of Declaration for the Kimball House Square Condominium, dated June 29, 2007, of record in Deed Book 2739, Page 686, and Condominium Deed Book 69, Page 533, and as shown by the plat thereof of record in Plat Cabinet G, Slides 850 through 859, in the Fayette County Clerk's Office, being known and designated as 275 South Limestone, Units 10, 110, 120, 130, 140 and 150; and

Being part of the same property conveyed to City View Investments, LLC, an Ohio limited liability company, by deed dated August 3, 2007 of record in Deed Book 70, Page 484, in the Fayette County Clerk's Office.

STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT

MARV 2016-19: CITY VIEW INVESTMENTS, LLC

DESCRIPTION

Zone Change: From a Mixed Use 2: Neighborhood Corridor (MU-2) with Conditional Zoning Restrictions
To a Mixed Use 2: Neighborhood Corridor (MU-2) zone with Modified Conditional Zoning Restrictions

Acreage: 0.94 Net (1.10 Gross) Acre

Location: 275 S. Limestone

EXISTING ZONING & LAND USE

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Property	MU-2	Mixed Use (Residential & Office)
To North	R-2	Residential
To East	B-1	Professional Office
To South	B-1 & P-1	Professional Office & Retail
To West	B-1	Restaurants & Commercial

URBAN SERVICES REPORT

Roads – The subject property is bordered by South Limestone, which is a major thoroughfare into downtown from the southwest. South Limestone is a two-lane, one-way street, which is paired with South Upper. Together, they allow major north-south traffic to flow through downtown, and both serve the University of Kentucky campus, just to the south of this location. West Maxwell Street, another two-lane, one-way street, is located about 70 feet to the south of the subject property. No modifications to area streets are anticipated by the requested change to the conditional zoning restrictions.

Curb/Gutter/Sidewalks – Along the subject property’s frontage, South Limestone was improved within the last decade to include wider sidewalks, underground utilities, re-constructed curbs and gutters, and on-street parking areas. No modifications are anticipated by the requested change to the conditional zoning restrictions.

Storm Sewers – The subject property is located within the Town Branch watershed and no FEMA Special Flood Hazard Area exists within this immediate area. The existing storm sewer system will continue to be utilized to serve the development. The proposed land use change from commercial to residential will not impact the physical development of the site.

Sanitary Sewers – This area is served by sanitary sewer lines to the Town Branch Wastewater Treatment Facility, located well to the northwest of the subject property on Lisle Industrial Avenue. The existing sanitary sewer capacity will need to be reviewed by the Division of Water Quality, prior to any permitted change in land use of the building.

Refuse – The Urban County Government serves the downtown area daily, but nearby neighborhoods receive collection once per week, in this case, on Mondays. Some mixed-use projects also contract for additional private collections, as necessary.

Police – The nearest police station is located at the Main Street Headquarters, approximately ¼ mile to the east of the subject property.

Fire/Ambulance – Fire Station #6 is about ½ mile from the subject property, at the corner of Scott Street and South Limestone, near the main entrance to the University of Kentucky campus.

Utilities – Electric, gas, cable television, water, and phone service, as well as street lights, all exist to serve the property at this time.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide 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." The mission statement notes that 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. In addition, the Plan encourages a mixture of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; and provision of land for a diverse workforce.

The petitioner proposes to modify the existing conditional zoning restrictions for property within the Kimball House Square mixed-use project in order to fit out the remaining first floor and basement space, which they own, as residential rather than commercial or office space. The petitioner proposes amending the maximum dwelling unit restriction for the MU-2 zone from 22 residential units to 30 residential units. A dimensional variance has also been requested to reduce the minimum percentage of non-residential square footage for the MU-2 zone.

CASE REVIEW

City View Investments, LLC, owner of six condominium units within the Kimball House Square mixed-use project, requests an amendment to the existing conditional zoning restrictions for their property located at 275 South Limestone. The petitioner proposes to increase the maximum number of residential dwelling units from 22 to 30 units, thereby allowing the vacant first floor and basement spaces to be finished for residential dwelling units rather than commercial or office space.

South Limestone is a mixed-use corridor that provides a direct connection between the University of Kentucky and downtown. In this vicinity, South Limestone is home to a number of bars and restaurants, retail establishments, professional offices, and the UK Good Samaritan Hospital, as well new UK dormitories and multi-family dwelling units (typically located above commercial establishments located on the first floor). The corridor is primarily zoned for neighborhood business (B-1) uses south of the downtown core.

The Kimball House Square mixed-use project was originally rezoned to a combination of the High Density Apartment (R-4) zone and the MU-2 zone, a little over a decade ago. At that time, conditional zoning restrictions were established by the Urban County Council, following a lengthy public hearing. The restrictions, in part, limit the allowable residential density of the property. For the MU-2 zone, a total of 22 dwelling units were permitted (the same number proposed by the applicant at that time). An additional 14 dwelling units were permitted in the R-4 zoned area of the development. The development has been successful to a degree - all of the residential condominium units have been sold and are occupied. However, the petitioner contends that the non-residential element of the mixed-use development has floundered, even in a very successful mixed-use corridor. Article 28 of the Zoning Ordinance requires that a MU-2 development maintain a minimum level of non-residential to residential split (85/15) or 10,000 square feet of non-residential space, whichever is less.

The applicant contends that the proposed conditional zoning restriction change is in agreement with the 2013 Comprehensive Plan and its Goals and Objectives; however, when requesting that the Planning Commission and Urban County Council consider a modification to conditional zoning restrictions, the Comprehensive Plan is not nearly as relevant as in most zone change requests. KRS 100 and Article 6-7 of the LFUCG Zoning Ordinance state that the Planning Commission and/or Council may grant an amendment only if found that there has been a major change of a physical, social or economic nature on the subject property or within the immediate area which was not anticipated at the time the restriction was imposed, and which has substantially altered the basic character of the area making the restriction inappropriate or improper. The petitioner has not fully addressed this required finding for Planning

Commission action with their justification for the amendment. Instead, they have claimed that higher densities are supported by several of the Goals and Objectives of the 2013 Comprehensive Plan.

Two additional technical issues have not been resolved associated with the requested zone change application since it was filed in early June, 2016. The petitioner has not provided written permission from the property owner of 275 South Limestone, which is the condominium association that technically owns the physical land on which the buildings (and condo units) stand. Both the Division of Planning and the Department of Law have notified the petitioner that written permission of the property owner is required in order for the Commission to consider a zone change. In this case, the condominium association must provide such permission as soon as possible in order for the application to be considered by the Planning Commission.

The petitioner has also not submitted an accurate legal description of the area being re-zoned or amended in terms of a parcel of land. The petitioner has provided a description of their six condominium units that would be affected, but the staff does not believe it is possible to rezone or amend zoning restrictions for a portion of a building. As there has been no subdivision of the land, the entire parcel is subject to the original zone change restrictions or their amendment, not simply the six units owned by the petitioner, and the legal description should reflect this. Associated with this is an incorrect gross acreage listed on the application summary.

For these reasons, the staff recommends postponement until the technical issues and an appropriate justification have been submitted for the request.

The Staff Recommends: **Postponement**, for the following reasons:

1. The petitioner has not provided written permission of the property owner in order to file a zone change or an amendment to this conditional zoning restriction request. This is required by KRS 100.211(1) and Article 6-1 of the LFUCG Zoning Ordinance.
2. The petitioner has not provided the required legal description of the subject property, as required by Article 6-5 of the LFUCG Zoning Ordinance.
3. The justification for the requested conditional zoning restriction amendment does not address the required findings, as set forth in Article 6-7(c) of the LFUCG Zoning Ordinance.

TLW/WLS

7/7/16

Planning Services/Staff Reports/MAR/2016/MARV 2016-19.doc

1. **CITY VIEW INVESTMENTS, LLC, ZONING MAP AMENDMENT & KIMBALL HOUSE SQUARE (AMD.) ZONING DEVELOPMENT PLAN**

- a. **MAR 2016-19: CITY VIEW INVESTMENTS, LLC** - petition to modify conditional zoning restrictions in a Mixed Use 2: Neighborhood Corridor (MU- 2), for 0.94 net (1.10 gross) acres, for property located at 275 S. Limestone.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide 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." The mission statement notes that 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. In addition, the Plan encourages a mixture of uses, housing types and/or residential densities; development in a compatible, compact and contiguous manner; and provision of land for a diverse workforce.

The petitioner proposes to modify the existing conditional zoning restrictions for property within the Kimball House Square mixed-use project in order to fit out the remaining first floor and basement space, which they own, as residential rather than commercial or office space. The petitioner proposes amending the maximum dwelling unit restriction for the MU-2 zone from 22 residential units to 30 residential units. A dimensional variance has also been requested to reduce the minimum percentage of non-residential square footage for the MU-2 zone.

The Zoning Committee Recommended: Approval.

The Staff Recommends: Approval, for the following reasons:

1. In accordance with Article 6-7(c) of the Zoning Ordinance, there have been unanticipated changes of an economic, physical, and social nature in the immediate area, since the time the current conditional zoning restrictions were imposed in 2007, which have substantially changed the basic character of the subject property. In particular:
 - a. There has been stronger demand for residential housing over the past decade in the South Hill residential district, as evidenced by the fact that mixed-use projects in the area such as The Lex and CentreCourt (in addition to the Kimball House) have experienced very little vacancy for residential spaces but more notable vacancy for non-residential spaces over this period.
 - b. Kimball House Square has 100% occupancy of the existing 22 on-site dwelling units. This is in spite of the fact that several financial institutions foreclosed on multiple units in the development less than five years ago, which is a testament to the strong demand for residential use and less demand for non-residential space.
 - c. The demand for office and retail uses over the past decade has been stronger in the core of downtown and in other locations throughout the community, judging by new and approved developments, than in the South Hill and South Limestone areas.
2. This recommendation is made subject to approval and certification of DP 2016-71: Kimball House Square (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.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property's MU-2 zone shall now be restricted in the following manner, via conditional zoning:
 - a. The density shall not exceed 25 dwelling units in the MU-2 zone on South Limestone Street, and five units in the MU-2 zone on South Upper Street.

These restrictions are necessary and appropriate for the subject property in that the residential use of the subject property remains compatible with the density and uses in the surrounding neighborhood.

- b. **ZDP 2016-71: KIMBALL HOUSE SQUARE (AMD) (9/4/16)*** - located at 275 South Limestone.
(Planning Contact: T. Martin) **(Carman & Associates)**

Note: The purpose of this amendment is to revise the conditional zoning restrictions and revise the parking.

The Subdivision Committee and Staff Recommended: Postponement. The owner of the parking lot has not consented (in writing) to these changes.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property, altering the conditional zoning restrictions; 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. Building Inspection's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree preservation plan.

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7. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
8. Correct note #8 to include required Chapter 16 reference.
9. Provided the Planning Commission grants the required variance.
10. Provided the Planning Commission makes a finding that the plan complies with Article 28-6 requirements.

Staff Zoning Presentation – Ms. Wade presented the staff report on this zone change for 275 S. Limestone and stated that this application is for a modification of conditional zoning restrictions within a Mixed Use 2: Neighborhood Corridor (MU-2) zone. She said that one letter in opposition has been submitted to the staff. She also had a copy of the Condo Association consent letter, which was distributed to the Planning Commission for review. She said that there was originally a variance associated with this zone change request, which has been withdrawn by the applicant. There was also an issue related to the legal description that has been resolved. The staff had originally recommended postponement in July, but the applicant had modified their application and the staff made a different recommendation at the August Zoning Committee meeting.

Ms. Wade oriented the Planning Commission with the subject property which is located on S. Limestone; just a short distance to the northeast of the intersection of W. Maxwell and S. Limestone and does stretch over to S. Upper Street. The subject property is also located within a local historic district, the South Hill Historic District. The current conditional zoning restrictions on the property limit the density of the development. The S. Limestone area is mostly zoned as Neighborhood Business (B-1) between the University of Kentucky and downtown. The downtown area is mostly located within the Downtown Business (B-2) zone. The area accommodates a number of mixed use, retail, and restaurants, single and multi-family zones. The subject property is actually a re-use of several historic structures; it was rezoned in 2005 to modify the development from a hotel to a mixed-use project with the intent to have both R-4 and MU-2 zoning, with the MU-2 fronting on S. Limestone. The intent was to use the first floor as commercial space and the upper level floors and the properties to the rear would be residential. As the applicant has found over the last ten years, this property has not been able to lease commercial any units. The applicant contends that it is an economic change in the subject property. The requirements KRS 100 and of the Zoning Ordinance is that the Planning Commission or the Council can amend the conditional zoning restrictions only if they find that there has been a major change of a social, physical, or economic nature to the subject property or within the immediate area that was not anticipated at the time the restriction was put in place and also that it has altered the basic character of the area, making the restriction improper or inappropriate.

Ms. Wade said the applicant originally wanted to modify the amount of residential to commercial to fall below what the Zoning Ordinance requires in terms of the 85/15 percent split. However, they have adjusted their development plan and have agreed to meet the 15 percent requirement of the Zoning Ordinance, which will still leave a good amount of square footage available on the basement and the first floor that they want to use for residential purposes rather than commercial purposes. The conditional zoning restrictions specifically limit the density of the property to 22 dwelling units in the main building and in the rear building. Their proposal is to leave the S. Upper Street property, which is complete and occupied with 5 dwelling units and to allow 25 dwelling units in this building, rather than 17, making a total of 30 dwelling units available to them in terms of density.

Ms. Wade said that there is a heavy demand for residential uses in the S. Limestone corridor. The current mixed use properties in the area have been primarily residential and much less commercial even though the Zoning Ordinance could allow a much greater mix. The applicant cited nearby Center Court and The Lex development that have also had the same issue of commercial units not being occupied. She said that the South Hill area is a popular residential area for students, professionals, and retirees because of its location.

Ms. Wade said that the staff does agree with the applicant's justification that there has been a change for this property and the area that was not anticipated when the original restrictions were put in place and is recommending approval of this request as did the Zoning Committee three weeks ago. The staff recommends that the density shall not exceed 25 dwelling units in the MU-2 zone on S. Limestone, which encompasses 5 buildings on the development plan, and 5 dwelling units on the MU-2 zone on S. Upper Street. The restrictions remain necessary to limit the density in order for it to remain compatible with the surrounding neighborhood. The zone change is also contingent on the Development Plan being certified.

Development Plan Presentation - Mr. Martin presented the staff report on this final development plan. On a rendering of the plan, he pointed out the subject property, noting the building orientation and the parking spaces all located to the interior of the development. He said that this development will not be making any physical changes to the building, the parking, or to the site. The applicant did locate three additional parking spaces that were not originally on the plan.

Mr. Martin also mentioned that the staff had originally recommended postponement and is now recommending approval, as things have moved through and clarified with the zoning and with the submittal of this revised plan. The staff is recommending approval and is recommending that the Planning Commission strike condition number 9 as it refers to the variance, which is no longer being requested.

Mr. Martin had distributed to the Planning Committee a finding that is required under Article 28-6 of the Zoning Ordinance for mixed-use documents. He said that every mixed-use proposal is subject to this finding, which addresses the site and building

criteria under Article 28-6(b-g). He said this criteria addresses parking, parking locations, building articulation, lighting, and other issues that are relevant to the design of a mixed-use project.

Mr. Martin said that the property was rezoned in 2005 and a final development plan was submitted certified in 2006. He said that it complied with the mixed-use zone requirements at that time and this plan does as well.

Commission Comments – Mr. Owens said that there was letter circulating to the Planning Commission that stated there were problems with proposed parking. He asked what the recommended number of parking spaces is. Mr. Martin replied that there are 74 parking spaces provided according to the development plan and seven of those are off site. They were granted a reduction in their overall parking, but they are meeting the requirement for parking. He said that there could be issues with movement on any site with interior parking. Mr. Owens said that three parking spaces had been found. Mr. Martin said that there were three parking spaces that were not originally on the development plan. Mr. Owens said that there is usually a recommendation of the number of spaces needed. Mr. Martin said that the staff evaluates what is required and what is provided and the staff has pointed out on some development plans in the past, that they are under parked, which was not the situation when this plan was originally approved.

Petitioner Presentation – Nathan Billings, attorney, was present representing the petitioner. He replied to Mr. Owens question regarding parking on site. He said that during the process of the application, he discovered something that he has never seen before. This development plan, which includes two zones, MU-2 and R-4, is part of a condominium association. This condominium association was created by a document called a Master Deed, where parcels of land are submitted into a common property regime. He said that there is an additional parcel of land, next to the subject property, that isn't on the development plan and that belongs to this association. This Master Deed includes seven additional parking spaces on that parcel. He said that in the past, the Planning Commission has approved off-site leased spaces to comply with parking. This is better than leased spaces because these spaces will never be taken away from the owners. A copy of the parking drawing was submitted to the staff during the proposal and the development plan has also been updated with a note to show additional off-site parking spaces. He said that currently under the Zoning Ordinance that 69 parking spaces are required and they have 74 total parking spaces.

Mr. Billings said that this is an unusual proposal, and it's technically called a zone change; but it doesn't really change the designation for the overall property. It will not change anything on the exterior of the units, which is from the unfinished drywall in, except that they can now use more of those units for residential and less for office/commercial use. He said that they will still need to comply with 15 percent of the square footage to meet office or retail or related uses that are allowed by the Zoning Ordinance and the Master Deed. The Master Deed is actually more restrictive on the use of these units than the Zoning Ordinance.

Mr. Billings said that in 2012, his clients approached him about owning their five units on the first floor and unit 10 of the basement. His clients purchased these units in 2010 and haven't been able to use them and decided that they needed to find a solution. He consulted with an architect who had developed some residential plans and considered an application for a conditional zone change and after meeting with the staff for the pre-application meeting, they decided to wait for the recession to pass. He said that technically this is a legal issue, and that there isn't anything outside of their unit that is going to be changed by this plan. He said that Mr. Martin had mentioned the certification under Article 28-6(b-g), nothing outside of his client's dry-wall will be affected. There are some issues that will need to be worked out with the condominium association in this process regarding the paying of dues and assessments but that doesn't affect anything outside of their units.

Mr. Billings said that the original plan was filed with a variance, which has been withdrawn. He said that they have resolved, with the staff, the parking and the detail of the calculations of the square foot analysis. He said that he is seeking the approval for the modification of the existing conditional zoning restrictions to allow his clients to increase the number of residential units and to approve the associated development plan and to continue to maintain a modified conditional zoning restriction on the property.

Mr. Billings distributed to the Planning Commission proposed findings for the zone change.

Chairman's Comments – Mr. Owens questioned if our legal department agreed with the findings that were provided by staff or by Mr. Billings. Ms. Jones said that the findings provided by staff have already been reviewed, and that she hasn't seen the findings from Mr. Billings. Chairman, Mr. Wilson stated that the Planning Commission will rely on the findings from the staff for the official document. Mr. Billings stated that the two documents are the same, just on a single page.

Zoning Action – A motion was made by Mr. Owens, seconded by Ms. Richardson, and carried 10-0 (Drake absent) to approve MAR 2016-19: CITY VIEW INVESTMENTS, LLC, for the reasons provided by the staff.

Development Plan Action – A motion was made by Mr. Owens, seconded by Ms. Mundy, carried 10-0 (Drake absent) to approve ZDP 2016-71: KIMBALL HOUSE SQUARE (AMD), for the reasons provided by the staff with the revised staff recommendations for 9 total conditions, deleting number 9 and noting the findings for compliance with Article 28-6(b-g).

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