

GENERAL INFORMATION - Zoning Ordinance Text Amendment Application

1. APPLICANT INFORMATION:

Name: **A & M Hamburg, LLC**
Address: **2517 SIR BARTON WAY STE 210**
City, State, Zip Code: **LEXINGTON, KY 40509**
Phone Number: **859-299-7028**

2. ATTORNEY (Or Other Representative) INFORMATION:

Name: **William M. Lear, Jr./Nick Nicholson, Stoll Keenon Ogden PLLC**
Address: **300 W. Vine St., Ste. 2100**
City, State, Zip Code: **Lexington, KY 40507**
Phone Number: **859-231-3000**

3. DESCRIBE YOUR REQUESTED TEXT CHANGE:

Zoning Ordinance Article #23-A. 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:  Attorney for A & M Hamburg, LLC

ATTORNEY (or other representative): 

LFUCG EMPLOYEE/OFFICER, if applicable: _____

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



**STOLL
KEENON
OGDEN**

PLLC

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July 7, 2014

Lexington Fayette Urban County Planning Commission
Lexington-Fayette Urban County Government
101 East Vine Street
Lexington, KY 40507

Re: Zone Map Amendment, Text Amendment, and Variance Applications –
2500 Polo Club Boulevard.

Dear Members of the Planning Commission:

The applicant, A & M Hamburg, LLC (“A & M Hamburg”), requests a zoning map amendment for the a portion of the property located at 3500 Polo Club Boulevard from Transition Area (TA/EAR-3) to Community Center (CC) for 14.82 net acres (16.49 gross), a text amendment to the Community Center zone and a variance to allow: (1) construction of a Cabela's store; (2) the shifting of residential development from an area adjacent to Interstate 75 to a wooded interior area away from the interstate; and (3) construction of small shops and civic buildings consistent with anticipated uses in both the CC and TA zones.

The proposed zone change will facilitate the opening in Fayette County of one of the country's most desired retailers. Cabela's has only two stores in Kentucky and has selected the subject property as its priority location for the only store it plans to establish in this part of the state. The proposed text amendment, a copy of which is attached hereto as Exhibit A, is necessary in order to allow a building the size of Cabela's that is not dedicated to grocery store uses to be located in this Community Center. The variance is necessary to allow construction of a mid-rise residential structure above office or retail space of sufficient height to provide an appropriate amount of residential dwelling units within the confines of this CC zone, as expanded.

The rationale for these proposed actions is as follows:

1. As currently configured, the TA zone is located between a CC zone, occupied by Costco and planned for additional small retail uses and the Economic Development (ED) zone immediately to the north. This juxtaposition resulted from moving the CC and TA zones from east of Polo Club Boulevard to the area between Polo Club Boulevard and I-75. This created the anomalous situation of a TA/EAR-3 zone between CC and ED zones, a condition not anticipated by the Comprehensive Plan and not proposed for any other location in any of the Expansion

Areas. As its name implies, the TA zone is intended as a transition area between more intense and less intense zones--in the Expansion Area it is always proposed to be located between a Community Center zone and a residential zone. In this case, that land-use relationship no longer exists.

2. Expanding the CC zone will still allow for the mix of uses anticipated in both the CC and TA zones, including retail, office, civic and residential uses.

3. Shifting of the residential uses from a location adjacent to the Interstate to a more interior location adjacent to a wooded ravine will create a more appropriate environment for residential development. In addition, allowing the construction of a mid-rise residential-over-retail development will add a higher density of residential units in an area where the added height will have no negative impact on any other nearby development.

4. The proposed zone change is consistent with and supported by the following "General Land-Use Considerations for the Urban Service Area" as adopted by the Planning Commission on April 29, 2014:

"1. The change will address a community need such as ... significant employment opportunities or housing needs. . . . 2. The proposed land use enhances, and is compatible with, adjacent land uses. . . . 7. The land use will not impair existing environmental conditions of the site. . . . 8. The existing utility and transportation networks will accommodate the new land use. . . . 10. The land use will attract or retain a skilled work force and/or further economic prosperity. . . . 11. The proposed use or development will provide for mix of housing types, residential densities and/or land uses."

5. With the development of the Costco project, this community center already has in place a grocery store, an electronics store, hardware store, a pet store, a liquor store, and other small retail shops--albeit within the confines of a single facility. That is the concept upon which the text amendment to allow the Costco in the CC zone at this location was approved. The proposed development will allow hunting, fishing, hiking, camping, and recreation shops, again under one roof in the form of Cabela's. It will also allow for residential uses, a church site, small shops and one or more restaurants in the CC zone, all of which fulfill the intent of that zone.

6. The text amendment is tailored so as to recognize that in the existing CC language, it is permissible to have both a store such as Costco and a grocery store of 50,000 square feet in size. As proposed, the text amendment would still allow only two larger stores in a CC zone which meets certain qualifications (it must contain at least 30 contiguous acres and have frontage on an interstate interchange). The proposed amendment recognizes that once a grocery component of sufficient size has been established in one building, it makes no sense to have a second large building housing a grocery store. Thus, the new text would provide for a second significant building **not** housing a grocery store in it the event that the first building contains a grocery section of at least 30,000 square feet.

7. A & M Hamburg is also requesting a variance to increase the maximum building height found in Zoning Ordinance § 23A-9(g) from 48 feet to 56 feet. The granting of the requested variance will not adversely affect the public health, safety or welfare; nor alter the essential character of the general vicinity. This variance allows for the construction of 4 stories of residential above the ground floor office or retail space, with a parking level underneath. In order to meet the required 40% of aggregated floor area devoted to residential use, a fourth story of residential units is required. The variance allows for the required residential component to be achieved while furthering the intent of the Community Center zone to emphasize a mixture of uses.

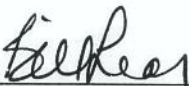
The location of the mixed-use building is in and of itself a special circumstance that does not apply to the land in the area. The building is proposed in an area of the property with a severe slope. While the slope allows for the below ground parking, it does create a need for a slightly taller building to achieve the goal of mixed use. This variance is not an unreasonable circumvention of the zoning ordinance as the building will be overlooking the stream and wooded area existing on the property. This wooded ravine provides a significant buffer so the proposed height will not impact on the adjacent Economic Development zoned land. Finally, strict application of the height requirement would preclude A & M from utilizing the steep-sloped portion of the property for a mixed-use building that adds to commingling of uses encouraged in the community center zone which creates an unnecessary hardship on the applicant.

For the foregoing reasons, the proposed zone change, text amendment, and variance are in substantial compliance with the Comprehensive Plan and in furtherance of its guiding principles. The existing TA/EAR-3 zone is also inappropriate and the expansion of the CC zone is appropriate as a transition area between the ED and CC zoned properties is not necessary as explained above.

The proposed development will provide a significant benefit to the immediate area and the entire community and will do so in a manner that complies with both the letter and the spirit of the Comprehensive Plan and Community Center zone. The applicant, therefore, respectfully submits that the land use actions described above are entirely appropriate and should be approved.

Sincerely,

Stoll Keenon Ogden PLLC

By: 

William M. Lear, Jr.
COUNSEL FOR A & M Hamburg, LLC

WML:lc
Enclosure

SECTION 1. THAT ARTICLE 23A-9(k) OF THE ZONING ORDINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT IS HEREBY AMENDED TO READ AS FOLLOWS:

ARTICLE 23A COMMUNITY CENTER (CC) ZONE

23A-9(k) SPECIAL PROVISIONS

1. At least 25% of the net developable acreage of any development within a CC zone shall be open space.
2. At least 40% of the aggregated floor area of buildings within a development in a CC zone shall be devoted to residential uses as permitted in EAR-3; schools, churches and their accessory structures; and public buildings.
3. No building shall exceed 15,000 square feet in floor area unless:
 - a. the building contains a mix of residential and non-residential uses; or
 - b. the building is designed and intended to be used for a school, church or public building; or
 - c. the building is designed and intended to be used principally as a store selling food, produce and other grocery items (not primarily general merchandise), ~~and does not exceeding~~ 50,000 square feet; and no building previously permitted and constructed pursuant to subsection d. of this section contains a food, produce and grocery component in excess of 30,000 square feet; and
 - d. ~~two one~~-additional buildings exceeding 50,000 square feet which ~~are is~~ designed and intended to be used primarily as ~~a-stores~~ selling general merchandise which may include ing-food, produce and other grocery items, shall be permitted, but only under the following conditions:
 1. the proposed buildings shall be located within a CC zone containing at least 30 net contiguous acres, and that has frontage on an interstate interchange;
 2. the buildings shall be part of an integrated development governed for all contiguously zoned CC land (excluding right-of-way) by a single development plan; ~~and~~
 3. any building exceeding 80,000 square feet in size shall also adhere to the "Design Guidelines for 'Big-Box' Establishments," excluding guideline numbers 6 and 14, which are contrary to other provisions of the CC zone. Such design guidelines shall be met unless waived by the Planning Commission through its approval of a final development plan.; and
 - ~~3-4.~~the maximum number of buildings permitted by subsections c. and d. collectively shall be two.
4. Parking areas shall be designed so as to minimize the placement of parking between the buildings and the adjoining streets.

5. Each development within a CC zone shall have access to a pedestrian accessway.
6. Each development shall provide suitable facilities for the parking of bicycles.
7. The development shall be screened from adjoining zones as for a business zone under Article 18-3(a)(1).
8. Structures shall be sited to avoid the rear of the building facing a street (other than an alley) to the greatest extent practicable.

Section 2 - That this Ordinance shall become effective on the date of its passage.

**Urban County Planning Commission
Division of Planning -- Planning Services Section
200 East Main Street
Lexington, Kentucky 40507**

July 7, 2014

Re: Requested Zoning Ordinance Text Amendment

Dear Neighborhood Association Representative:

This letter is to inform you of a request for a Zoning Ordinance text amendment. This request was proposed by **A&M Hamburg, LLC**, and is scheduled to be considered by the Planning Commission at their public hearing on **Thursday, August 28, 2014**.

The purpose of this text amendment is to amend § 23A-9(k) of the Zoning Ordinance pertaining to the Community Center (CC) zone to allow a second building exceeding 50,000 square feet which is designed and intended to be used primarily as a store selling general merchandise which may include food, produce and other grocery items, shall be permitted, provided it is in a CC zone containing at least 30 net contiguous acres, has frontage on and immediately adjoins an interstate interchange, it is part of an integrated development governed by a single development plan, and the maximum amount of buildings exceeding 50,000 square feet shall be two.

Copies of the staff report on this matter will be available approximately two weeks prior to the public hearing, which will be held at 1:30 p.m. in the Council Chamber, Urban County Government Building at 200 East Main Street.

For further information regarding this proposal and for persons with a disability who need assistance to participate in the above meeting, please contact the Planning Commission's staff at 101 East Vine Street, Suite 700, or call 258-3160.

Sincerely,

Urban County Planning Commission
c/o: LFUCG Division of Planning
Planning Services Section

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3. No building shall exceed 15,000 square feet in floor area unless:
 - a. the building contains a mix of residential and non-residential uses; or
 - b. the building is designed and intended to be used for a school, church or public building; or
 - c. the building is designed and intended to be used principally as a store selling food, produce and other grocery items (not primarily general merchandise), does not exceed 50,000 square feet and no building previously permitted and constructed pursuant to subsection d. of this section contains a food, produce and grocery component in excess of 30,000 square feet; and
 - d. two additional buildings exceeding 50,000 square feet which are designed and intended to be used primarily as stores selling general merchandise which may include food, produce and other grocery items, shall be permitted, but only under the following conditions:
 1. the proposed buildings shall be located within a CC zone containing at least 30 net contiguous acres, and that has frontage on an interstate interchange;
 2. the buildings shall be part of an integrated development governed for all contiguously zoned CC land (excluding right-of-way) by a single development plan;
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 4. the maximum number of buildings permitted by subsections c. and d. collectively shall be two.
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