

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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