

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 1<sup>st</sup> 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 1<sup>st</sup> floor and basement.

Applicant is the sole owner of the entirety of the 1<sup>st</sup> 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.<sup>1</sup> The principal uses include (i) Dwelling Units, (ii) uses permitted in the P-1 zone, and (iii) uses permitted in the B-1 zone.<sup>2</sup> 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.<sup>3</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> See Ordinance at §28-4(b).

<sup>3</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> floor and basement.