

LYNCH, COX, GILMAN & GOODMAN P.S.C.

**500 WEST JEFFERSON STREET, SUITE 2100
LOUISVILLE, KENTUCKY 40202**

(502) 589-4215

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E-Mail doncox@lynchcox.com

DONALD L. COX

November 11, 2021

via **Electronic Transmission**

Ms. Emily Liu, Director
Louisville Metro Government, Develop Louisville
Planning and Design Services
444 S. Fifth Street, Third Floor
Louisville, KY 40202
Emily.liu@louisvilleky.gov

INDIANA OFFICE:
426 E. COURT AVENUE
JEFFERSONVILLE, INDIANA 47130
TELEPHONE
(812) 283-8282

Re: 21 Parking Waiver 0003

Dear Ms. Liu:

I have previously written on August 18 and October 21, 2021 about the subject Parking Waiver 0003. See Exhibits A and B.

It is apparent that the staff has already made a decision on this parking waiver because we were told, in conjunction with the last meeting, that the staff had already decided to grant the waiver, even though—as we pointed out previously—based on the minutes of the Commission's meeting, the Planning Commission voted to obtain additional information in order to make a final decision on the parking waiver. This process of making one decision previously, then allowing the staff to overrule the decision and, finally, not following on with the decision, is a fundamental denial of administrative due process. Fortunately, you have agreed to schedule another meeting on November 18, 2021. Although we believe that the decision has already been made, I want to bring to your attention certain additional information which I have alluded to in prior letters.

First and foremost, it is apparent from your records and from my client's recollection of the circumstances surrounding the building of the hotel referred to in Case No. 13 Zone 1028, that a requirement for the hotel included "a parking garage which should help limit any impact the new hotel and retail restaurant space may have on the neighborhood." See Exhibit C, pp 43-44. The decision to build a parking garage was certainly not arrived at voluntarily. The budget for the Louisville NuLu Hotel, included \$4.5 Million for construction of the parking garage. See Exhibit D. This should be compared to the hotel construction cost of \$18.3 Million. Id.

Thus, the net result here is that we were compelled to pay for the construction of a parking garage, while the Bunk House has not been required to do so. This is clear evidence of a denial of due process and equitable protection, which has the effect of

LYNCH, COX, GILMAN & GOODMAN P.S.C.
Louisville Metro Government,
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increasing our costs of operation in comparison with those of our competitor across the street.

Finally, as pointed out before, there is no assurance that the valet parking ostensibly obtained for the hotel will be in any sense permanent. The Partial Lease provided to the Planning Commission does not compel the Lessor to permanently lease the parking space to the Bunk House, or indeed, lease it for any particular period at all. Thus, the Bunk House is free to give up the Lease at any time it wishes and, then, come back to the Planning Commission and ask for some alternative. However, it seems clear to us that under no circumstances would the Planning Commission demand that the Bunk House Hotel be torn down. So, where we stand today is that the hotel across the street has been treated far differently than has the Bunk House. It was required to build a parking garage; the Bunk House was not. When the Bunk House obtained lease space, the Lease is for no guaranteed, ascertainable period.

Please reconsider your position.

Very truly yours
LYNCH, COX, GILMAN & GOODMAN, P.S.C.



Donald L. Cox

DLC/swf
Attachments

cc: Mr. Zach Schwager (zach.schwager@louisvilleky.gov)

EXHIBIT A

LYNCH, COX, GILMAN & GOODMAN P.S.C.

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DONALD L. COX

October 21, 2021

INDIANA OFFICE:
426 E. COURT AVENUE
JEFFERSONVILLE, INDIANA 47130
TELEPHONE
(812) 283-8282

via **Electronic Transmission**

Ms. Emily Liu, Director
Louisville Metro Government, Develop Louisville
Planning and Design Services
444 S. Fifth Street, Third Floor
Louisville, KY 40202
Emily.liu@louisvilleky.gov

Re: 21 Parking Waiver 0003

Dear Ms. Liu:

I have previously written to you concerning the hotel to be constructed at 730 E. Market Street. As initially proposed, the hotel would have off-street parking pursuant to a lease which was not permanently binding. In contrast, the hotel across the street, we understand, was required to build its own garage so that it could have adequate parking. I wrote to you on August 18, 2021, prior to the last hearing of the Planning Commission (see Exhibit A). Based upon the minutes of the last meeting, it is clear that the Planning Commission desired additional information in order to make a final decision on the parking waiver (see Exhibit B). We understood the additional parking information included an overall parking study of some sort for NuLu.

Our office carefully monitored the on-line records of the Planning Commission waiting for the materials in question to appear. Then, a couple of days before today's meeting, where the information was to be presented, we saw on the agenda that the meeting had been cancelled. We further contacted the staff and discovered that a few days after the August meeting, they simply granted the parking waiver even though the Planning Commission had deemed that it could not grant the waiver without additional information. We are now arguably without a remedy since the 30 days has run since the August action of the staff. I am asking you to reconsider what the staff has done here and follow the decision made in the August meeting, which was to obtain additional information before making a decision. If, however, the Planning Commission desires not

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Louisville Metro Government,

Develop Louisville Planning and Design Services

October 21, 2021

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to do that, please make it clear that my appeal time to Circuit Court does not begin running until the end of the meeting today.

Very truly yours

LYNCH, COX, GILMAN & GOODMAN, P.S.C.



Donald L. Cox

DLC/swf
Attachments

cc: Mr. Zach Schwager (zach.schwager@louisvilleky.gov)

EXHIBIT B

LYNCH, COX, GILMAN & GOODMAN P.S.C.

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LOUISVILLE, KENTUCKY 40202
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DONALD L. COX

August 18, 2021

INDIANA OFFICE:
426 E. COURT AVENUE
JEFFERSONVILLE, INDIANA 47130
TELEPHONE
(812) 283-8282

Ms. Emily Liu, Director
Louisville Metro Government, Develop Louisville
Planning and Design Services
444 S. Fifth Street, Third Floor
Louisville, KY 40202
emily.liu@louisvillegov

Re: 21 Parking Waiver 0003

To Whom it May Concern:

I represent a neighbor of the proposed Bunkhouse Hotel proposed for NuLu (the "Project"). My basic concern with the Project is that it will ultimately cause further parking problems in an already thinly stretched NuLu district. Moreover, from my knowledge of prior Planning Commission actions concerning hotels to be located in the NuLu district, the Commission has always scrupulously applied its rules and regulations so as not to force additional on-street parking. For example, within the last few years, the Planning Commission required a new hotel to build a separate parking garage to deal with the excess parking generated by the hotel.

From reviewing the file of the Project's application, it is readily apparent that the Planning Commission has altered its standards and treated the Project applicant far differently than it treated earlier, similarly situated applicants. Not only has it allowed for a reduction in the number of available parking spaces, but the lion's share of the parking spaces available are not truly *available* for as long as the hotel could conceivably be operated. Although the applicant has not provided a copy of his lease with Door No. 1 LLC, the Memorandum of Lease shows that the hotel has no absolute right to indefinite parking on the space in question. For example, if the parking lot is sold, then the hotel loses its parking rights. The "Memorandum of Lease" merely states that the hotel will try to work something out with the Planning Commission (see attached Memorandum of Lease, "Notice to Louisville Metro"). If in five years (or even one year from now) the hotel loses its parking because the property is sold, it is entirely doubtful that the Commission would be willing to demand that the hotel be torn down because it would not have adequate parking. Put simply, the issue of parking should be resolved now and not on some tentative future basis.

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Ms. Emily Liu, Director

August 18, 2021

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In closing, my client has asked me to add that, as a resident of NuLu, one of the problems we all face--particularly in the evenings--is the lack of parking. Without an ironclad promise of adjoining parking that will not disappear on the whim of the owners' sale of the parking lot, there is no assurance that this hotel won't contribute to already significant parking problems in the area. In other words, a real, concrete and significantly lasting solution needs to be found, keeping in mind the manner in which other commercial entities have been treated by the Planning Commission in the NuLu area.

Very truly yours,
Lynch, Cox, Gilman & Goodman, P.S.C.



Donald L. Cox

DLC:swf
Attachment

cc: Mr. Zach Schwager (zach.schwager@louisvillegov)

EXHIBIT C

**Planning Commission Minutes
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Public Hearing

CASE NO. 13ZONE1028

also showed the applicant's development plan. He then reviewed the staff analysis and conclusions from the staff report.

Commissioner Proffitt asked why "audible beyond the property line" is being stricken from the binding element regarding outdoor music. Mr. Brown explained that an outdoor restaurant on the rooftop is proposed, and they may have music. He said the noise ordinance would apply.

The following spoke in favor of this request:

Cliff Ashburner, Wyatt Tarrant & Combs, 500 W. Jefferson St, Ste 2800,
Louisville, KY 40202

Darin Lanich, Kersey & Kersey Architects, 839 E. Gray Street, Louisville, KY
40204

Rob Webber, 725 E. Market St, Louisville, KY 40202

Summary of testimony of those in favor:

Cliff Ashburner showed a PowerPoint presentation and provided a brief history of the site. He also showed photos of the subject site and surrounding areas, as well as renderings of the site and building. He reviewed the requested variances and the green development design criteria.

Darin Lanich, Kersey & Kersey Architects, addressed the building rendering and reviewed the design.

In response to Commissioner Jarboe's question about street parking, Mr. Ashburner pointed out existing street parking. He explained that the parking garage exceeds the parking requirement.

Commissioner Jarboe asked if any waiver or variance was required for the bay windows to overhang. Mr. Brown said they are allowed to project 18 to 24 inches.

The following spoke in opposition to this request:

No one.

The following spoke neither for nor against the request:

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No one.

Deliberation

Commissioner Kirchdorfer said this will be a great addition to the area and that the zoning is appropriate.

Commissioner Jarboe said he would like to see a shy distance of the alley, but all in all it should be a good finished product.

Commissioner Jarboe said this will be great for the area and the zoning request is appropriate. He said he was worried about the alley space but it has been covered.

Commissioner Peterson said this will be a great addition to the neighborhood and Louisville area.

Commissioner Tomes said he is an admirer of the pioneers and work that has gone into NuLu. He said the last piece to come is housing and a hotel is one form of new housing. He addressed the parking and explained his efforts in participating in tactical urbanism.

An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the April 17, 2014 public hearing proceedings.

Zoning

On a motion by Commissioner Jarboe, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, based on the testimony and staff report, that the application for a change in zoning complies with Guideline 1 of the Cornerstone 2020 Comprehensive Plan because the subject property lies within the Traditional Marketplace Corridor and is designed to respect the rhythm of the surrounding neighborhood, which includes single story buildings, warehouses, three and four story apartment buildings and churches; and

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WHEREAS, the Louisville Metro Planning Commission further finds that the application for a change in zoning complies with Guideline 1 of the Cornerstone 2020 Comprehensive Plan because the proposed development is designed to incorporate architectural features (storefronts, vertical window elements, cornices, etc.) that are predominant in the neighborhood; and

WHEREAS, the Louisville Metro Planning Commission further finds that the application for a change in zoning complies with Guideline 1 of the Cornerstone 2020 Comprehensive Plan because the site will make use of and preserve two existing historic buildings located at 725 E. Market Street; and

WHEREAS, the Louisville Metro Planning Commission further finds that the application for a change in zoning complies with Guideline 2 of the Cornerstone 2020 Comprehensive Plan because the subject property is located on E. Market Street, a busy corridor east of downtown and is near the center of the NuLu neighborhood. Commercial establishments line E. Market St. to the east, west and south of the subject property, and there is an industrial use to the north; and

WHEREAS, the Louisville Metro Planning Commission further finds that the application for a change in zoning complies with Guideline 2 of the Cornerstone 2020 Comprehensive Plan because the proposed development incorporates space for retail uses, a hotel and a parking garage and because the proposal also preserves two historic buildings and incorporates streetscape improvements along E. Market Street, which in turn will create an attractive pedestrian area along the property's E. Market Street frontage; and

WHEREAS, the Louisville Metro Planning Commission further finds that the application for a change in zoning complies with Guideline 3 of the Cornerstone 2020 Comprehensive Plan because the proposed hotel will act as a catalyst for the mixture of uses available in the NuLu neighborhood and provide a service not currently available; and

WHEREAS, the Louisville Metro Planning Commission further finds that the application for a change in zoning complies with Guideline 3 of the Cornerstone 2020 Comprehensive Plan because the proposed development incorporates building materials and design elements used in other buildings found within in the neighborhood and because the proposal should have little impact on odor, noise or light compared to other nearby uses, which includes certain M-2 permitted uses; and

WHEREAS, the Louisville Metro Planning Commission further finds that the application for a change in zoning complies with Guideline 3 of the Cornerstone

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2020 Comprehensive Plan because the proposed development is on a TARC route which will provide adequate daily transportation for the proposal's customers and visitors because the subject site is also within the required distance of several uses that support walkability and because the proposed development also incorporates a cool roof and provides a significant percentage of its parking under cover in a proposed parking garage; and

WHEREAS, the Louisville Metro Planning Commission finds that the application for a change in zoning complies with Guidelines 4 and 5 of the Cornerstone 2020 Comprehensive Plan because the proposed development creates an open space through a proposed rooftop venue, which will have views of downtown, the Ohio River bridges and the neighborhoods to the south; and

WHEREAS, the Louisville Metro Planning Commission further finds that the application for a change in zoning complies with Guidelines 4 and 5 of the Cornerstone 2020 Comprehensive Plan because the proposed development preserves two historic buildings while also expanding enhancing the existing courtyard between the two in order to create more open space for visitors; and

WHEREAS, the Louisville Metro Planning Commission further finds that the application for a change in zoning complies with Guidelines 4 and 5 of the Cornerstone 2020 Comprehensive Plan because the entire project is designed to include streetscape improvements along E. Market Street, which will create an inviting pedestrian area along E. Market wrapping around to Shelby Street.; and

WHEREAS, the Louisville Metro Planning Commission finds that the application for a change in zoning complies with Guideline 6 of the Cornerstone 2020 Comprehensive Plan because the proposal represents a significant investment in the older, but thriving E. Market Street corridor and because the proposal preserves historic buildings and provides parking in excess of what is required under the Land Development Code in order to benefit neighboring businesses and the NuLu neighborhood as a whole; and

WHEREAS, the Louisville Metro Planning Commission finds that the application for a change in zoning complies with Guidelines 7, 8 and 9 of the Cornerstone 2020 Comprehensive Plan because the proposal incorporates bike racks and a TARC stop along E. Market Street as well as off-street parking in the proposed garage; and

WHEREAS, the Louisville Metro Planning Commission further finds that the application for a change in zoning complies with Guidelines 7, 8 and 9 of the Cornerstone 2020 Comprehensive Plan because the proposal includes a parking

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garage, which should help limit any impact the new hotel and retail/restaurant space may have on the neighborhood; and

WHEREAS, the Louisville Metro Planning Commission finds that the application for a change in zoning complies with Guidelines 7, 8 and 9 of the Cornerstone 2020 Comprehensive Plan because while NuLu is already a walkable neighborhood, the streetscape improvements planned as part of the proposal will only serve to enhance its walkability; and

WHEREAS, the Louisville Metro Planning Commission finds that the application for a change in zoning complies with Guidelines 10 and 11 of the Cornerstone 2020 Comprehensive Plan because the proposed development is located on a site that is entirely impervious today, which means the construction of the proposed hotel and garage buildings will not adversely impact flooding, storm water management or water quality; and

WHEREAS, the Louisville Metro Planning Commission finds that the application for a change in zoning complies with Guideline 12 of the Cornerstone 2020 Comprehensive Plan because the subject property is located close to downtown and within walking distance of many shops and restaurants and because the proposal incorporates bike racks and a TARC stop upgrade within an expanded sidewalk planned as part of the E. Market Street corridor streetscape improvements; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of the Louisville Metro Planning Commission that the change in zoning from M-2 and C-2 to C-2 be **APPROVED** on property described in the legal description.

The vote was as follows:

YES: Commissioners Kirchdorfer, Brown, Jarboe, Blake, Proffitt, Tomes, and Peterson

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners White and Turner

ABSTAINING: No one.

Variance #1

- **Variance #1: Variance from Chapter 5.2.3.D.3.d.ii of the Land Development Code to allow the proposed parking structure to encroach into the required 5' setback along Billy Goat Strut Alley**

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On a motion by Commissioner Jarboe, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, based on the testimony and staff report, that the encroachment into the required front yard setback will not affect the public because it locates the parking garage within the range of other adjacent structures; and

WHEREAS, the Louisville Metro Planning Commission further finds the variance will not alter the essential character of the general vicinity because it follows the established pattern of the area to the east and west along Bill Goat Strut Alley; and

WHEREAS, the Louisville Metro Planning Commission further finds that the setback encroachment of the parking garage will not cause a hazard or nuisance to the public because it will maintain access to the site from the rear alley to the west along the rear of the property for vehicular traffic; and

WHEREAS, the Louisville Metro Planning Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since properties located along the alley have 0' setbacks to the east and west; and

WHEREAS, the Louisville Metro Planning Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the placement of the buildings and associated parking are proposed in order to preserve and reuse the existing buildings; and

WHEREAS, the Louisville Metro Planning Commission further finds that constructing the parking garage completely outside of the required setback would limit the use of the utility area and potentially affect the entrance on the site from South Shelby Street which would be a hardship on the applicant; and

WHEREAS, the Louisville Metro Planning Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought but rather the result of the existing development pattern along alleys in the area with varying setbacks; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from Chapter 5.2.3.D.3.d.ii of the Land Development

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Code to allow the proposed parking structure to encroach into the required 5' setback along Billy Goat Strut Alley on property described in the legal description.

The vote was as follows:

YES: Commissioners Kirchdorfer, Brown, Jarboe, Blake, Proffitt, Tomes, and Peterson

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners White and Turner

ABSTAINING: No one.

Variance #2

- **Variance #2: Variance from Chapter 5.2.3.D.3.e.ii of the Land Development Code to allow the proposed hotel building to exceed the 50' maximum height**

On a motion by Commissioner Jarboe, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, based on the testimony and staff report, that the building height will not adversely affect the public health, safety or welfare since the building has been designed so that the maximum height is observed at the street and the area where the building is taller is pulled back from the street; and

WHEREAS, the Louisville Metro Planning Commission further finds that the requested variance will not alter the essential character of the general vicinity since the proposed building has been designed using contextual architectural features using many elements present in the surrounding buildings. The structure is also located less than a block from the Downtown form district and serves as a transition from the lower level heights of the Traditional Marketplace to the higher intensity Central Business District; and

WHEREAS, the Louisville Metro Planning Commission further finds that the requested variance will not cause a hazard or nuisance to the public since the additional height will be pulled back from the street and it follows a pattern of taller structures to the west within the adjacent Downtown Form District. The variance will allow for a partial floor to be added above the allowable height; and

WHEREAS, the Louisville Metro Planning Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning

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regulations since the proposed structure will minimize the impact of the additional height by stepping the taller portion of the building back from the street along East Market Street and allowing a denser, compact development on the site; and

WHEREAS, the Louisville Metro Planning Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the lot is located in an area near the transition between the Traditional Marketplace Corridor and the Downtown Form District where much greater heights and densities are permitted; and

WHEREAS, the Louisville Metro Planning Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by limiting the ability to have a rooftop venue as a unique element to add to the existing commercial corridor; and

WHEREAS, the Louisville Metro Planning Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the size and shape of the lot existed prior to the current proposal and led to the additional height for a denser development; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from Chapter 5.2.3.D.3.e.ii of the Land Development Code to allow the proposed hotel building to exceed the 50' maximum height
The vote was as follows:

YES: Commissioners Kirchdorfer, Brown, Jarboe, Blake, Proffitt, Tomes, and Peterson

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners White and Turner

ABSTAINING: No one.

Revised Detailed District Development Plan

On a motion by Commissioner Jarboe, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, based on the testimony and staff report, that the site is preserving historic structures on the property; and

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WHEREAS, the Louisville Metro Planning Commission further finds that the proposal is in compliance with both the Comprehensive Plan and LDC with appropriate mitigation for the requested variances on the subject site; and

WHEREAS, the Louisville Metro Planning Commission further finds that there are no open space requirements with the current proposal; and

WHEREAS, the Louisville Metro Planning Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Louisville Metro Planning Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. The building and parking garage setbacks follow the existing pattern of development in the area; and

WHEREAS, the Louisville Metro Planning Commission further finds that the site is providing for all types of transportation throughout the site. Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community have been provided and Metro Public Works has approved the preliminary development plan; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Detailed District Development Plan on property described in the legal description **SUBJECT** to the following binding elements.

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to

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requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

3. Signs shall be in accordance with Chapter 8 of the Land Development Code.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
- ~~6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system~~
6. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the ~~December 30, 2009 Development Review Committee meeting~~ April 17, 2014 Planning Commission hearing.
8. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
9. The development shall not exceed 99,395 square feet of gross floor area for Building A, 6,420 square feet of gross floor area for Building B, 5,000 square feet of gross floor area for Building C and 78,862 square feet of gross floor area for Building D.
10. The site has the potential to contain unidentified archaeological resources associated with the Phoenix Hill National Register District. A qualified professional archaeologist shall examine the project area, determine the current status of the site, and make recommendations regarding the need for any additional investigations before the project proceeds (prior to ground disturbance) is required. A copy of the report shall be submitted to Planning and Design services prior to ground disturbance.

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The vote was as follows:

YES: Commissioners Kirchdorfer, Brown, Jarboe, Blake, Proffitt, Tomes,
and Peterson

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners White and Turner

ABSTAINING: No one.

DEVELOPMENT REVIEW COMMITTEE

August 17, 2016

NEW BUSINESS

CASE NO. 16MOD1004

Request: Eliminate Binding Element #7 from original approval of Case No. 13ZONE1028.
Project Name: Hotel Nulu Binding Element Amendment
Location: 729 East Market Street
Owner: Creation Gardens
Applicant: 725 Partners LLC
Representative: 725 Partners LLC
Jurisdiction: Louisville Metro
Council District: 4 – David Tandy

Case Manager: Brian Davis, AICP, Planning Manager

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the DRC meeting. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

An audio/visual recording of the Development Review Committee meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

02:24:53 Brian Davis presented the case and showed the site plan (see staff report and recording for detailed presentation.)

The following spoke in favor of this request:

Rob Weber, 725 Partners LLC (no address or speaker's form)

Summary of testimony of those in favor:

02:27:42 Rob Weber, the applicant's representative, said he had nothing else to add but was available for questions.

The following spoke in opposition to this request:

No one spoke.

The following spoke neither for nor against the proposal:

No one spoke.

DEVELOPMENT REVIEW COMMITTEE
August 17, 2016

NEW BUSINESS

CASE NO. 16MOD1004

Removal of Binding Element #7 from the original approval of Case Number 13ZONE1028

02:28:20 On a motion by Commissioner Brown, seconded by Commissioner Peterson, the following resolution was adopted:

WHEREAS, the Louisville Metro Development Review Committee finds that changing this particular condition of approval will have no effect on natural resources on or adjacent to the site; and

WHEREAS, the Committee further finds that changing the binding element will have no bearing on the provisions for safe and efficient vehicular transportation within the development and the community; and

WHEREAS, the Committee further finds that the proposed amendment does not affect open space; and

WHEREAS, the Committee further finds that the proposed amendment does not affect drainage on the site; and

WHEREAS, the Committee further finds that the proposed amendment does not affect the character of the area or the site; and

WHEREAS, the Committee further finds that the proposed amendment will not have any affect as to the development plan's conformance to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code; and

WHEREAS, the Committee further finds that, based the staff report, the applicant's justification, and the evidence and testimony presented today, that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Development Review Committee does hereby **APPROVE** the requested **Removal of Binding Element #7 from the original approval of Case Number 13ZONE1028**.

The vote was as follows:

YES: Commissioners Brown, Peterson, Smith, and Tomes.

NO: No one.

DEVELOPMENT REVIEW COMMITTEE
August 17, 2016

NEW BUSINESS

CASE NO. 16MOD1004

NOT PRESENT: Commissioner Kirchdorfer.

ABSTAINING: No one.

EXHIBIT D



LOUISVILLE NULU AC Hotel

Development Budget

Total Guest Rooms	155		5 story
Total Building Area	101,026	Sq.Ft.	Modular
Parking area	86633	Sq.Ft.	
10/12/2016			

Item Description	Budget	Cost / Key	Cost / Sq.Ft.
Land / Acquisition			
Land	\$5,000,000	\$32,051	\$49.49
Sub Total	\$5,000,000	\$32,051	\$49.49
Closing Costs			
Real Estate Tax Proration	\$0	\$0	\$0.00
Transfer Taxes	\$0	\$0	\$0.00
Title Insurance	\$60,000	\$385	\$0.59
Other Prorations / Costs	\$25,000	\$160	\$0.25
Sub Total	\$85,000	\$545	\$0.84
Financing Costs			
Loan 65% LTC (.75% x \$26,500,000)	\$198,750	\$1,274	\$1.97
Lenders Legal & Expenses	\$50,000	\$321	\$0.49
Lenders Inspections	\$15,000	\$96	\$0.15
Construction Interest (5% x \$25,300,000 x 11 mo x 40%)	\$485,833	\$3,114	\$4.81
Guarantee Fee (1%) x 26m	\$265,000	\$1,699	\$2.62
Sub Total	\$1,014,583	\$6,504	\$10.04
Legal / Professional			
Legal (subtract 100k if no EB5)	\$225,000	\$1,442	\$2.23
Property Survey	\$8,000	\$51	\$0.08
Appraisal	\$10,000	\$64	\$0.10
Market Study	\$5,000	\$32	\$0.05
Environmental Study	\$4,000	\$26	\$0.04
Project Assessment Engineer	\$3,000	\$19	\$0.03
Sub Total	\$255,000	\$1,635	\$2.52
Consulting Costs			
LEED Consulting & Enhanced Commissioning	\$60,000	\$385	\$0.59
Architect / Engineering	\$920,000	\$5,897	\$9.11
Architect / Engineering Expenses	\$40,000	\$256	\$0.40
Civil Engineering	\$75,000	\$481	\$0.74
Civil Engineering Expenses	\$5,000	\$32	\$0.05
Geotechnical Engineering	\$15,000	\$96	\$0.15
Geotechnical Engineering Expenses	\$0	\$0	\$0.00
Interior Design	\$160,000	\$1,026	\$1.58
Interior Design Expenses	\$10,000	\$64	\$0.10
Kitchen Design	\$8,000	\$51	\$0.08
Landscape Design	\$10,000	\$64	\$0.10
Sub Total	\$1,303,000	\$8,353	\$12.90
Development Costs			
Franchise Fee	\$0	\$0	\$0.00
Impact & Development Charges	\$0	\$0	\$0.00
Utility Connection Fees	\$1,244,401	\$7,977	\$12.32
Building Permits	\$425,000	\$2,724	\$4.21
Soil & Material Testing / Inspection	\$80,000	\$513	\$0.79
Insurance - General Liability	\$20,000	\$128	\$0.20
Insurance - Builders Risk	\$40,000	\$256	\$0.40
Real Estate Tax	\$30,000	\$192	\$0.30
Administrative Expenses	\$25,000	\$160	\$0.25
Accounting	\$30,000	\$192	\$0.30
Preopening Management	\$45,000	\$288	\$0.45
Technical Services	\$110,000	\$705	\$1.09
MIS Services	\$45,000	\$288	\$0.45
Project Manager	\$125,000	\$801	\$1.24
Travel/Meals/Lodging Expenses	\$40,000	\$256	\$0.40
Development Fee (3% w/o land)	\$1,072,231	\$6,873	\$10.61
Sub Total	\$3,331,632	\$21,357	\$32.98
Total Site & Soft Costs \$10,989,215 \$70,444 \$108.78			

Preopening Costs			
Administrative & General	\$190,000	\$1,218	\$1.88
Food & Beverage	\$103,000	\$660	\$1.02
Advertising & Sales	\$130,000	\$833	\$1.29
Rooms Dept.	\$205,000	\$1,314	\$2.03
Engineering	\$65,000	\$417	\$0.64
Training	\$62,000	\$397	\$0.81
Travel/Meals/Lodging Expenses	\$5,000	\$32	\$0.05
Other Expenses (Below)			
Liquor License	\$5,000	\$32	\$0.05
Hotel License & Permits	\$3,000	\$19	\$0.03
Utilities & Deposits	\$35,000	\$224	\$0.35
Security	\$16,000	\$103	\$0.16
Preopening Office Rent	\$6,000	\$38	\$0.06
Misc. Expenses	\$10,000	\$64	\$0.10
Owner Contingency	\$30,000	\$192	\$0.30
Sub Total	\$665,000	\$5,645	\$8.56



LOUISVILLE NULU

AC Hotel

Development Budget

Total Guest Rooms	156		5 story
Total Building Area	101,026	Sq.Ft.	Modular
Parking area	86633	Sq.Ft.	

10/12/2016

Item Description	Budget	Cost / Key	Cost / Sq.Ft.
Total Preopening Costs			
	\$865,000	\$5,545	\$8.56
Construction			
Hotel Construction	\$18,292,000	\$117,256	\$181.06
Parking garage costs	\$4,500,000	\$28,846	\$51.94
Retail (about 5100 sf)	\$612,000	\$3,923	\$120.00
Rooftop	\$0	\$0	\$0.00
Total Construction Costs			
	\$23,404,000	\$150,026	\$231.66
FF&E			
Guest Rooms	\$1,373,928	\$8,807	\$13.60
Bath Rooms (w/ illuminated mirrors, vanities)	\$202,184	\$1,296	\$2.00
Guest Corridors	\$60,552	\$388	\$0.60
Elevator Lobby	\$8,000	\$51	\$0.08
Public Areas & Artwork	\$109,000	\$699	\$1.08
Lobby	\$32,000	\$205	\$0.32
Restaurant / Lounge	\$177,000	\$1,135	\$1.75
Meeting Rooms	\$55,500	\$356	\$0.55
Board Room	\$25,000	\$160	\$0.25
Pool	\$0	\$0	\$0.00
Outside Area	\$61,000	\$391	\$0.60
Employee Break Room	\$4,000	\$26	\$0.04
Admin Offices	\$27,000	\$173	\$0.27
Kitchen / Bar / Ice / Market	\$225,000	\$1,442	\$2.23
Laundry Equipment	\$78,000	\$500	\$0.77
Exercise Equipment	\$65,000	\$417	\$0.64
Exterior Building Signs	\$65,000	\$417	\$0.64
Interior Graphics	\$18,000	\$115	\$0.18
Computer Systems (Below)			
PMS Equipment	\$40,000	\$256	\$0.40
POS & Sales Equipment	\$25,000	\$160	\$0.25
Business Center	\$10,000	\$64	\$0.10
Admin Equipment	\$18,000	\$115	\$0.18
Data Terminations	\$19,000	\$122	\$0.19
Telephone Systems (Below)			
PBX & VM Equipment (One Line)+ CELL BOOSTER	\$135,000	\$865	\$1.34
Call Accounting Equipment	\$5,000	\$32	\$0.05
Voice Terminations	\$35,000	\$224	\$0.35
Other Systems (Below)			
Music / Sound System	\$75,000	\$481	\$0.74
Motorized Screens / Projectors	\$15,000	\$96	\$0.15
Security System	\$15,000	\$96	\$0.15
MATV System (World Cinema & TV Cards)	\$33,000	\$212	\$0.33
High Speed Internet System (wireless)	\$74,000	\$474	\$0.73
Sub Total	\$3,085,164	\$19,777	\$30.54
FF&E (Continued)			
Sales Tax (7% x 80%)	\$179,000	\$1,147	\$1.77
Freight & Warehousing (12%)	\$395,000	\$2,532	\$3.91
FF&E Procurement (5%)	\$154,258	\$989	\$1.53
FF&E Installation	\$72,500	\$465	\$0.72
FF&E Installation Coordinator	\$15,000	\$96	\$0.15
Owner Contingency	\$0	\$0	\$0.00
Sub Total	\$815,758	\$5,229	\$8.07
Total FF&E Costs			
	\$3,900,922	\$25,006	\$38.61
Project Sub Total	\$39,159,138	\$251,020	\$387.61
Operating Loss & Interest Reserve			
Interest Reserve	\$0	\$0	\$0.00
Working Capital	\$150,000	\$962	\$1.48
Sub Total	\$150,000	\$962	\$1.48
Project Contingency	\$1,448,888	\$9,288	\$14.34
Project Total			
	\$40,758,026	\$261,269	\$403.44