

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

**500 WEST JEFFERSON STREET, SUITE 2100
LOUISVILLE, KENTUCKY 40202
(502) 589-4215
Fax (502) 589-4994
E-Mail doncox@lynchcox.com**

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

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

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 A

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

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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.

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

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)

MEMORANDUM OF LEASE

This Memorandum of Lease is made by and between **Door No. 1 LLC**, a Kentucky limited liability company ("Lessor") whose address is 1452 Cherokee Road, Louisville, KY 40204 and **Mountain & River City LLC**, with a mailing address of 123 North Court, Fayetteville, WV 25840, a Delaware limited liability company ("Lessee"), who hereby declare that Lessor has leased to Lessee, and Lessee has accepted such lease from Lessor, the Spaces on the Property (later defined) under that certain Parking Lease Agreement dated February 9, 2021 (the "Lease"), upon the following terms:

Description of Property: 221 S. Shelby Street, Louisville, Jefferson County, Kentucky, more particularly described in the attached Exhibit A (the "Property").

Lease of Spaces: Lessor leases to Lessee, and Lessee leases from Lessor the maximum number of vehicular parking spaces ("Spaces") approved by Louisville Metro on the Property for use by Lessee, which is 39 Spaces as of the date of this Memorandum of Lease, as such Spaces on the Property may be created, established, removed and modified from time to time, and in compliance with all applicable health, fire, traffic, and planning regulations.

Effective Date of Lease: This Agreement is effective as of February 9, 2021, with the term to commence upon the date when a certificate of occupancy is issued for Lessee's hotel project at 730 East Market Street, Louisville, Kentucky (the "Project"). If the Project is not approved by the appropriate regulatory agencies or completed on or before December 31, 2024, Lessor may terminate the Lease upon thirty (30) days written notice.

Term: Twenty (20) years from Rent Commencement Date.

Renewal Option(s): Lessee may renew the Lease for an additional Term of twenty (20) years upon written notice at least two (2) years before the expiration of the current Term.

Right of First Refusal: If Lessor receives a bona fide offer for the purchase and sale of the Property, Lessor must present the offer first to Lessee, who may agree to accept the offer under the same terms and purchase the Property.

Notice to Louisville Metro: If Lessor or Lessee desires to terminate the Lease for any reason, Lessor shall deliver written notice to the Louisville Metro Planning Commission at least 30 days before the termination stating that the Spaces will no longer be available for Lessee's use and that Lessee will submit a revised parking waiver application.

Lessee has the right to mortgage, hypothecate, grant a Mortgage on, assign or otherwise encumber its interests in the Lease (each a "Leasehold Mortgage") without obtaining the consent of Lessor upon the condition that all rights acquired under each such Leasehold Mortgage shall be subject to each and all of the terms, covenants, conditions and restrictions set forth in the Lease.

[SIGNATURES ON FOLLOWING PAGE]

Executed by Lessor on the 14th day of July, 2021.

LESSOR:

Door No. 1 LLC,
a Kentucky limited liability company

By: *Kaveh Zamanian*
Kaveh Zamanian, Manager

COMMONWEALTH OF KENTUCKY §
 §
COUNTY OF JEFFERSON §

BEFORE ME, the undersigned authority, on this 14th day of July, 2021, did personally appear Kaveh Zamanian, in his capacity as Manager of DOOR NO. 1 LLC, a Kentucky limited liability company, who acknowledged this instrument and stated that he executed same on behalf of DOOR NO. 1, LLC

My Commission Expires: Aug. 14, 2021

Amanda Davenport
Notary Public, Commonwealth of Kentucky
State-at-Large

AMANDA DAVENPORT
Notary Public - State at Large
State of Kentucky
Notary ID # 585083
My Commission Expires Aug. 14, 2021

Executed by Lessee on the 13 day of July, 2021.

LESSEE:

MOUNTAIN & RIVER CITY LLC,
a Delaware limited liability company

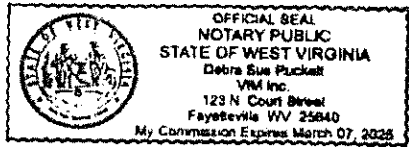
By: C. Wendell
Stephen Wendell, Manager

STATE OF WEST VIRGINIA §
 §
COUNTY OF FAYETTE §

BEFORE ME, the undersigned authority, on this 13 day of July, 2021, did personally appear Stephen Wendell, in his capacity as Manager of MOUNTAIN & RIVER CITY, LLC a Delaware limited liability company, who acknowledged this instrument and stated that he executed same on behalf of DOOR NO. 1, LLC

My Commission Expires: March 7, 2025

Debra Sue Puckett
Notary Public, State of West Virginia



PREPARED BY:

Earl F. Hamm, Jr.
Earl F. Hamm, Jr.
KAPLAN JOHNSON ABATE & BIRD, LLP
710 West Main Street, 4th Floor
Louisville, KY 40202
(502) 416-1630

Exhibit A
to
Memorandum of Lease

LEGAL DESCRIPTION OF THE PROPERTY

BEGINNING at a point at the northeast corner of Jefferson and Shelby Streets; thence with the easterly line of Shelby Street, North 7 degrees 50 minutes 00 seconds East, 203.92 feet to a point in the southerly line of a 12-foot alley; thence with same, South 82 degrees 5 minutes 00 seconds East, 125.00 feet to a pipe; thence South 7 degrees 50 minutes 00 seconds West, 203.92 feet to a point in the north line of Jefferson Street; thence with the north line of Jefferson Street, North 82 degrees 05 minutes 00 seconds West, 125 feet to the point of beginning.

Being the same property acquired by Door No. 1, LLC, a Kentucky limited liability company, by that certain Deed, dated March 16, 2021, of record in Deed Book 11959, Page 59, in the Office of the Clerk of Jefferson County, Kentucky.

Tax Data for Informational Purposes Only:

221 S. Shelby Street
Parcel # 04-017E-0008-0000

EXHIBIT B

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION
August 19, 2021**

A meeting of the Louisville Metro Planning Commission was held at 1:00 p.m. on Thursday, August 19, 2021 via Webex.

Commission members present:

Marilyn Lewis, Chair
Lula Howard
Jeff Brown
Rich Carlson
Ruth Daniels
Jim Mims
Patricia Seitz
Patricia Clare

Commission members absent:

Rob Peterson
Te'Andre Sistrunk

Staff Members present:

Emily Liu, Director, Planning & Design Services
Joe Reverman, Assistant Director, Planning & Design Services
Brian Davis, Planning & Design Manager
Joe Haberman, Planning & Design Manager
Julia Williams, Planning Supervisor
Dante St. Germain, Planner II
Joel Dock, Planner II
Jay Lockett, Planner I
Zach Schweiger, Planner I
Laura Ferguson, Legal Counsel
Beth Stuber, Transportation Planning
Pamela M. Brashear, Management Assistant

The following matters were considered:

PLANNING COMMISSION MINUTES
August 19, 2021

APPROVAL OF MINUTES

AUGUST 5, 2021 PLANNING COMMISSION REGULAR MEETING MINUTES

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution was adopted.

RESOLVED, that the Planning Commission does hereby **APPROVE** the minutes of its meeting conducted on August 5, 2021.

The vote was as follows:

YES: Commissioners Carlson, Mims and Lewis

NOT PRESENT FOR THIS CASE: Commissioners Daniels, Peterson and Sistrunk

ABSTAINING: Commissioners Brown, Clare, Howard and Seitz

PLANNING COMMISSION MINUTES
August 19, 2021

BUSINESS SESSION

6405 CHISM ROAD BE FINAL ORDER

Project Name: Binding Element Final Order
Address: 6405 Chism Road
Municipality: Louisville Metro
Council District: 14 – Cindi Fowler
Case Manager: Laura Ferguson, Assistant County Attorney

Discussion

00:06:30 Laura Ferguson stated this case is a binding element citation issued February 10, 2021 and was not appealed. As a result, this final order is being heard today as a ministerial action.

Laura Ferguson discussed the binding element #1 citation and answered questions from the commissioners (see recording for detailed presentation).

Councilwoman Cindi Fowler, 1426 Pollystaff Road, Louisville, Ky. 40272

Cindi Fowler explained that the property has been a problematic site for years (becoming junk yard). It's the same tenant with a different owner (see recording for detailed presentation).

An audio/visual recording of the Planning Commission hearing 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.

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on legal counsel's information provided today was adopted.

WHEREAS, on February 10, 2021, Louisville Metro Code Enforcement Officer Steven Bodner issued a Binding Element Violation Citation ("Citation") to DNJ, LLC, the property owner (the "Owner"), for violation of Binding Element No. 1 under Docket Number 17149 ("applicable binding element"), on the property located at 6405 Chism Road and being in Louisville, Kentucky (hereafter "Subject Property") because: 1. The development will 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 for review and approval; any changes/additions/alterations not so referred shall not be valid. However, the Subject Property is not in accordance with the approved detailed district development plan because the Subject Property was approved for an auto repair shop, but currently the tenants are hauling in wrecked vehicles and the Subject Property is becoming a junk

PLANNING COMMISSION MINUTES
August 19, 2021

BUSINESS SESSION

6405 CHISM ROAD BE FINAL ORDER

yard, while the landscape buffer between the Subject Property and the residential property on the east side was never installed.

WHEREAS, the Owner failed to contest the Citation and did not request an appeal before the Louisville Metro Planning Commission (the "Commission"); and

WHEREAS, the Commission finds, based on the evidence submitted into the record under Docket Number Binding Element Final Order 6405 Chism Road, that the Owner committed violations for Binding Element 1 on the Subject Property because the Owner failed to comply with the applicable binding element on the Subject Property as put forth herein above. It is hereby **ORDERED** by the Commission that the Citation issued on February 10, 2021, to the Owner is **UPHELD**, and that the Owner shall bring the Subject Property into full compliance with the most recently approved development plan for the Subject Property within thirty (30) calendar days from when the Commission entered this Final Order, as specified by the dated signatures below. It is hereby further **ORDERED** by the Commission, after considering the Owner's lack of achieving compliance with the applicable binding elements on the Subject Property, the Commission hereby fines the Owner \$1,000.00 and that the Owner shall pay said fine by certified check made payable to the Louisville Metro Finance, within thirty (30) calendar days from when the Commission entered this Final Order, as specified by the dated signatures below.

RESOLVED, that the Louisville Metro Planning Commission does hereby **UPHOLD** the citation issued February 10, 2021 and **APPROVE** the final order.

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Daniels, Howard, Mims, Seltz and Lewis

NOT PRESENT AND NOT VOTING: Commissioners Peterson and Sistrunk

PLANNING COMMISSION MINUTES
August 19, 2021

PUBLIC HEARING

21-PARKWAIVER-0003

Project Name: Bunkhouse Hotel
Location: 730 E. Market Street
Owner(s): Green Building, LLC
Applicant: Charles Stephen Wendell – Mountain & River City, LLC
Jurisdiction: Louisville Metro
Council District: 4 – Jecorey Arthur
Case Manager: Zach Schweiger, Planner I

Notice of this public hearing appeared in The Courier Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

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

Agency Testimony:

00:21:53 Zach Schweiger discussed the case summary, standard of review and staff analysis from the staff report.

Zach Schweiger answered questions from the commissioners (see recording for detailed presentation).

Joe Reverman stated this type of parking waiver triggers the requirement for a parking study but Planning and Design Services did not require it because it's close enough to downtown, where it's not required (see recording for detailed presentation).

The following spoke in favor of this request:

Chip Hamm, 710 West Market Street, Louisville, Ky. 40202

Summary of testimony of those in favor:

Chip Hamm said he represents the applicant. He answered questions from the commissioners (see recording for detailed presentation).

The following spoke neither for nor against the request:

Jessie Errington, 220 South Clay Street, Louisville, Ky. 40202
Creighton Mershon, 220 South Clay Street, Louisville, Ky. 40202

PLANNING COMMISSION MINUTES
August 19, 2021

PUBLIC HEARING

21-PARKWAIVER-0003

Summary of testimony of those neither for nor against:

Jessie Errington stated she owns 2 historical buildings on S. Clay St. and relies on street parking for the tenants and residents. Parking will be an issue (see recording for detailed presentation).

Creighton Mershon added, the hotel needs to offer plans and incentives to have parking spaces for employees or use the valet services (see recording for detailed presentation).

Rebuttal

Chip Hamm said the downtown directive of urban infill development is to fill in unimproved vacant lots like this one.

Deliberation

Commissioner Clare said she thinks there should be a parking study but not paid for by this applicant because it's a district-wide issue.

Commissioner Brown agreed stating, residents shouldn't have to suffer consequences for employee parking that should be provided by retail or commercial establishments.

Commissioner Howard mentioned ubers, lyfts and shuttles being alternate transportation modes as well as the area being urban and walkable.

Commissioner Daniels said the local people do drive and need the parking.

Commissioner Seitz wants to know if the commission can request a parking study since it's not in the Downtown District.

Commissioner Howard asks who will be paying for the parking study.

Commissioner Brown stated, the Land Development Code requires a parking study for this type of application but staff opted to waive it.

Commissioner Carlson suggests a form district change application.

Commissioner Howard added, you are expecting one person to do something that has been caused by every developer in the area and it's not fair to ask for a parking study when 25 parking spaces are being provided.

PLANNING COMMISSION MINUTES
August 19, 2021

PUBLIC HEARING

21-PARKWAIVER-0003

Commissioner Mims agrees with Commissioners Howard and staff.

Chair Lewis said a parking study would be reasonable so as not to compound parking issues for the residents.

Joe Reverman discussed possible options for the commissioners to think about for this case (see recording for detailed presentation). Staff encouraged the applicant to request more of a waiver because they were proposing to use all the parking on the adjacent lot on the corner of Shelby and Jefferson.

An audio/visual recording of the Planning Commission hearing 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.

Parking Waiver from Land Development Code table 9.1.3B to reduce the minimum number of parking spaces from 47 to 28, a 40.4% waiver, for a proposed 72,614 sq. ft. hotel at 730 E. Market Street with a joint parking agreement at 221 S. Shelby Street

On a motion by Commissioner Carlson, seconded by Commissioner Brown, the following resolution was adopted.

RESOLVED, that the Louisville Metro Planning Commission does hereby **CONTINUE** this case to the October 21, 2021 Planning Commission meeting to allow staff to gather additional information, as discussed today, and present it to the Planning Commission.

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Daniels, Mims and Lewis

NO: Commissioners Howard and Seitz

NOT PRESENT AND NOT VOTING: Commissioners Peterson and Sistrunk