

**PLANNING COMMISSION MINUTES**  
**February 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1052**

Request: Change in zoning from OR-2 and M-2 to C-2 with building height and setback variances  
Project Name: Gray and Clay  
Location: 709/715 East Gray Street, 710, 712 and 716 East Chestnut Street and 616-634 South Shelby Street  
Owner: TKW, LLC and Roman Catholic Bishop of Louisville  
Applicant: LDG Multi-Family  
Representative: Sabak Wilson and Lingo Inc.; Dinsmore and Shohl LLP  
Jurisdiction: Louisville Metro  
Council District: 4- Barbara Sexton Smith  
**Case Manager: Julia Williams, AICP, Planning Supervisor**

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:**

00:58:15 Ms. Williams discussed the case summary, standard of review and staff analysis from the staff report.

**The following spoke in favor of this request:**

Cliff Ashburner, Dinsmore and Shohl, LLP, 101 South 5<sup>th</sup> Street, Suite 2500, Louisville, Ky. 40202  
Kelli Jones, Sabak, Wilson and Lingo Inc., 608 South 3<sup>rd</sup> Street, Louisville, Ky. 40202

**Summary of testimony of those in favor:**

01:05:33 Mr. Ashburner gave a power point presentation. The area is transitional.

01:11:10 Ms. Jones stated there will be street trees and a lot of area for residents to be outside safe. There are overhead power lines, but the street tree canopy requirements will be met. Regarding the site distance, there will be a proposed wing wall and walkable grates.

**PLANNING COMMISSION MINUTES**  
**February 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1052**

01:15:44 Mr. Ashburner stated that the Phoenix Hill Historic District has a National Register nomination. The building is in very poor condition. There have been no neighbors to come forward wanting to preserve the building.

**Deliberation**

01:23:09 Planning Commission deliberation. Commissioner Brown stated he can't support the variance for a 0 foot setback. Commissioner Daniels stated she has walked that area for a number of years and it is a dangerous spot. Commissioner Tomes said the sidewalk could be a little wider. Also, if the doors swing out into the public sidewalk, it could be problematic. Acting Chair Carlson stated the applicant may want to come back with a different design.

01:30:30 Mr. Ashburner proposed a variance approval conditioned upon submitting a revised plan to pull the building out of the site triangle. Commissioner Brown requests a 5 feet and 5 feet triangle. Mr. Ashburner agrees.

**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.**

**Zoning Change from OR-2 and M-2 to C-2**

On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution based on the Cornerstone 2020 Staff Analysis and testimony heard today was adopted.

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the proposal does not affect the existing street pattern. Sidewalks are provided within all rights of way. The proposal is for a zoning district that permits neighborhood serving uses and downzones a site from industrial to commercial. The proposal preserves public open spaces and the public realm of the right of way; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal will not create a new center but will include new construction where a mix of uses are permitted. The proposal is located in a mixed density/intensity neighborhood. The proposal is compact and results in an effective land use pattern. The areas infrastructure is already set up to serve an industrial which indicates it will be able to serve commercial as well, which is cost effective. The proposal is for commercial zoning which could reduce trips and support alternate

**PLANNING COMMISSION MINUTES**  
**February 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1052**

transportation with sidewalks around the site. Transit is located nearby along Broadway and Chestnut Streets which will serve the site as well. The proposal is for commercial zoning which permits mixed uses. The proposal is a large development for the area that permits a mix of uses. The proposal provides a required entrance off an existing alley to access the interior parking garage. Utilities for the site are existing. The site provides easy access for all forms of transportation; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because building materials are compatible to the existing architecture to the area. The proposal is not a non-residential expansion into a residential area because the site is historically non-residential and is currently an M-3 zone. The proposal commercial zoning brings the site more into compliance with the surrounding commercial. APCD has no issues with the proposal. Transportation Planning has not indicated any adverse impacts to traffic. Lighting will meet LDC requirements. The proposal is for high intensity commercial located a clock away from transit and in the vicinity of an activity center and other commercial zoning. The setbacks are generally in compliance with the setbacks of the form where buildings are located at or near the right of way and property lines. There are no residential land uses facing the site. Parking is located interior to the site. A parking garage is integrated into the surroundings with access off the existing Springer Alley and is not visible from the other public streets. Signs will meet LDC requirements; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Open Space guideline because an interior courtyard provides open space for the multi-family community. The site is deficient on natural features; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Natural Areas and Scenic Historic Resources guideline because soils are not an issue for the site; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Economic Growth and Sustainability guideline because the proposal is in an area that is zoned for both a population center and employment center. The proposal is for commercial zoning located in an existing activity center located along a minor arterial. C-2 zoning will have more appropriate land uses than the M-3 which does not coincide with the neighborhood plan recommendations; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because roadway improvements are not required. All types of transportation are promoted on the site. A stub street is not necessary because the site is not creating new roadways. ROW dedication is not necessary. Adequate parking is provided. Joint and cross access is not necessary because the site is constrained by roadways and existing single family residential; and

**PLANNING COMMISSION MINUTES**  
**February 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1052**

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Transportation Facility Design guideline because a stub street is not necessary because the site is not creating new roadways. Access to the development is through public rights of way. The existing roadways provide the appropriate linkages to other development; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Bicycle, Pedestrian and Transit guideline because all types of transportation are promoted on the site; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Flooding and Stormwater guideline because MSD has preliminarily approved the proposal; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Air Quality guideline because APCD has no issues with the proposal; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Landscape Character guideline because natural corridors are not evident in or around the proposal; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because existing utilities serve the site. Water is available to the site. The Health Department has no issues with the proposal.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from OR-2, Office Residential and M-2, Industrial to C-2, Commercial on property described in the attached legal description be **APPROVED**.

**The vote was as follows:**

**YES: Commissioners Brown, Daniels, Howard, Peterson, Smith and Carlson**  
**NOT PRESENT AND NOT VOTING: Commissioners Robinson, Smith, Lewis and Jarboe**

**Abandonment of CUP for a hydrogen storage facility (B-267-98)**

**Abandonment of CUP for off street parking in OR-2 (B-39-88)**

**PLANNING COMMISSION MINUTES**  
**February 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1052**

On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution based on the staff report and development plan showing a change in land use and those 2 uses will not be the same was adopted.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **ABANDON** the Conditional Use Permit for a hydrogen storage facility (B-267-98) and a Conditional Use Permit for off street parking in OR-2 (B-39-88).

The vote was as follows:

**YES: Commissioners Brown, Daniels, Howard, Peterson, Smith and Carlson**  
**NOT PRESENT AND NOT VOTING: Commissioners Robinson, Smith, Lewis and Jarboe**

**Variances:**

1. **Variance from 5.2.2.C.2 to permit a building height of 61' instead of the required 45' (16' variance)**

On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution based on the Standard of Review and Staff Analysis, presentation and testimony heard today was adopted.

**WHEREAS**, the requested variance will not adversely affect public health safety or welfare because the building height does not affect the public; and

**WHEREAS**, the requested variance will not alter the essential character of the general vicinity since there are other multi-story buildings in the vicinity. West of the site is the Downtown Form where high rise structures are permitted. Mainly parking lots and vacant lots surround the site; and

**WHEREAS**, the requested variance will not cause a hazard or nuisance to the public because the building height does not affect the public; and

**WHEREAS**, the requested variance will not allow an unreasonable circumvention of the zoning regulations since the variance requested is to allow 1 additional story (16') in area where there are mainly parking lots and vacant lots; and

**WHEREAS**, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land,

**PLANNING COMMISSION MINUTES**  
**February 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1052**

as it would not be possible to fit the number of units allowable by the zone while also meeting the parking requirements and applicable height maximums; and

**WHEREAS**, the Louisville Metro Planning Commission further finds 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.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** A variance from 5.2.2.C.2 to permit a building height of 61 feet instead of the required 45 feet (16 foot variance).

**The vote was as follows:**

**YES: Commissioners Brown, Daniels, Howard, Peterson, Smith and Carlson**  
**NOT PRESENT AND NOT VOTING: Commissioners Robinson, Smith, Lewis and Jarboe**

**2. Variance from 5.2.2.C.2 to permit a 0' setback along all property lines as shown on the development plan.**

On a motion by Commissioner Brown, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

**WHEREAS**, the variance will not adversely affect the public health, safety or welfare because the building is setback at the same distance as required as if the proposal was for a mixed use building rather than only multi-family residential; and

**WHEREAS**, the requested variance will not alter the essential character of the general vicinity because the building is setback at the same distance as required as if the proposal was for a mixed use building rather than only multi-family residential; and

**WHEREAS**, the requested variance will not cause a hazard or nuisance to the public because the building is setback at the same distance as required as if the proposal was for a mixed use building rather than only multi-family residential; and

**WHEREAS**, the requested variance will not allow an unreasonable circumvention of the zoning regulations because the building is setback at the same distance as required as if the proposal was for a mixed use building rather than only multi-family residential; and

**WHEREAS**, the requested variance arises from special circumstances because the building is setback at the same distance as required as if the proposal was for a mixed use building rather than only multi-family residential; and

**PLANNING COMMISSION MINUTES**  
**February 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1052**

**WHEREAS**, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the building is setback at the same distance as required as if the proposal was for a mixed use building rather than only multi-family residential; and

**WHEREAS**, the Louisville Metro Planning Commission further finds 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.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** a variance from 5.2.2.C.2 to permit a 0 foot setback along all property lines as shown on the development plan **ON CONDITION** that the development plan is updated to provide a 5 foot by 5 foot triangle area at the building where the corners intersect the alleys at Clay and Shelby Streets.

**The vote was as follows:**

**YES: Commissioners Brown, Daniels, Howard, Peterson, Smith and Carlson**  
**NOT PRESENT AND NOT VOTING: Commissioners Robinson, Smith, Lewis and Jarboe**

**District Development Plan with Binding Elements and removal of existing binding elements from 9-79-94**

On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution based on the Standard of Review and Staff Analysis was adopted.

**WHEREAS**, there do not appear to be any environmental constraints on the subject site. A historic resource has been identified and is proposed to be demolished. Tree canopy requirements of the Land Development Code will be provided on the subject site; and

**WHEREAS**, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan; and

**WHEREAS**, open space is provided in the form of an interior courtyard; and

**WHEREAS**, the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in

**PLANNING COMMISSION MINUTES**  
**February 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1052**

order to prevent drainage problems from occurring on the subject site or within the community; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the overall site design and land uses are compatible with the existing and future development of the area. The building generally meets required setbacks; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the District Development Plan **ON CONDITION** that the applicant submit a revised development plan with removal of existing binding elements from 9-79-94 and **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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. 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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.



**PLANNING COMMISSION MINUTES**  
**February 7, 2019**

**PUBLIC HEARING**  
**CASE NO. 18ZONE1052**

- c. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
  - d. A road closure approval for the unnamed alley between Springer Alley and E. Gray Street shall be approved prior to requesting a building permit.
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. 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 February 7, 2019 Planning Commission meeting.

**The vote was as follows:**

**YES: Commissioners Brown, Daniels, Howard, Peterson, Smith and Carlson**  
**NOT PRESENT AND NOT VOTING: Commissioners Robinson, Smith, Lewis and Jarboe**