

**Planning Commission Minutes
June 2, 2016**

Public Hearing

Case No. 16ZONE1004

This case was heard out of order. It was heard 8th on the agenda.

Request: Change in zoning from R-6 to C-2 on approximately 0.3 acres with a Variance, Waivers, and Detailed District Development Plan with Binding Elements

Project Name: Butcher Block

Location: 115 N. Wenzel Street; 1004, 1006 & 1006R
East Washington Street

Owner/Applicant: Butcher Block Properties, LLC
Andy Bleiden
1201 Story Avenue Suite 100
Louisville, KY 40206

Representative: Greg Ehrhard
Stites & Harbison
400 West Market Street Suite 1800
Louisville, KY 40202

Kelli Jones
Sabak, Wilson & Lingo
608 South Third Street
Louisville, KY 40202

Jurisdiction: Louisville Metro

Council District: 4 David Tandy

Case Manager: Julia Williams, RLA, AICP, Planner II

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.)

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An audio/visual recording of the Land Development and Transportation 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:

03:51:18 Julia Williams presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in favor of the proposal:

Greg Ehrhard, Stites & Harbison, 400 West Market Street Suite 1800, Louisville, KY 40202

Kelli Jones, Sabak, Wilson & Lingo, 608 South Third Street, Louisville, KY 40202

Andy Bleiden, 1201 Story Avenue Suite 100, Louisville, KY 40206

Summary of testimony of those in favor of the proposal:

04:01:09 Kelli Jones, of Sabak, Wilson & Lingo, spoke on behalf of the applicant (see recording for detailed presentation.) She specifically addressed the issue of noise, which had been raised at LD&T.

04:08:15 Andy Bleiden, the applicant, spoke for and answered some questions about the project.

04:11:13 In response to a question from Commissioner Jarboe, Ms. Jones said she had spoken with an adjoining property owner regarding the alley access. Ms. Jones pointed out both public and private alleys. In response to a question from Commissioner Smith, Ms. Jones explained how many housing units and other uses would be in the development.

The following spoke in opposition to the proposal:

John Valentine, 129 East Burnett Avenue, Louisville, KY 40208

Robin Russo, 933 East Washington Street, Louisville, KY 40206

Summary of testimony of those in opposition to the proposal:

04:14:04 Robin Russo was called but was not present to speak.

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04:14:08 John Valentine said he opposes the zoning change and conversion of the three properties from residential to commercial. He said he believes the rezoning prevents potential buyers from purchasing the property to use as residential, and said the staff report is in error because the Washington Street corridor is all residential in the whole 900 block.

04:22:20 Commissioner Jarboe said that photos of the properties showed those properties; also, if Mr. Valentine did not think that commercial uses would

ver, there are people renovating houses in Butchertown. He said he would rather see rental property, rather than commercial. He said the area is not lacking in commercial uses.

No one spoke.

Rebuttal:

04:28:08 Greg Ehrhard argued that the commercial zoning and the proposed uses are compatible.

04:30:30 Mr. Bleiden spoke in rebuttal.

Deliberation:

04:34:25

Zoning

04:40:04 On a motion by Commissioner Jarboe, seconded by Commissioner Peterson, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the subject properties are located within the Traditional Neighborhood Form District, which is characterized by predominantly residential uses, and by a grid pattern of streets with sidewalks and often including alleys. Residential lots are predominantly narrow and often deep, but the neighborhood may contain sections of larger estate lots, and also sections of lots on which appropriately integrated higher density residential uses may be located. The higher density uses are encouraged

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to be located in centers or near parks and open spaces having sufficient carrying capacity. There is usually a significant range of housing opportunities, including multi-family dwellings; and

WHEREAS, the Commission further finds that traditional neighborhoods often have, and are encouraged to have, a significant proportion of public open space such as parks or greenways, and may contain civic uses as well as appropriately located and integrated neighborhood centers with a mixture of mostly neighborhood-serving land uses such as offices, shops, restaurants and services. Although many existing traditional neighborhoods are fifty to one hundred twenty years old, it is hoped that the Traditional Neighborhood Form will be revitalized under the new Comprehensive Plan. Revitalization and reinforcement of the Traditional Neighborhood Form will require particular emphasis on (a) preservation and renovation of existing buildings in stable neighborhoods (if the building design is consistent with the predominant building design in those neighborhoods), (b) the preservation of the existing grid pattern of streets and alleys, (c) preservation of public open spaces; and

WHEREAS, the Commission further finds that the proposal is consistent with Guideline 1.8.2 of the Cornerstone 2020 Plan because it does not affect the existing street pattern. Sidewalks and alleys are provided and improved within all rights-of-way. The proposal is for a zoning district that permits neighborhood-serving uses, such as offices, shops, restaurants and services (in addition to a residential component). The proposal preserves public open spaces and the public realm of the right-of-way, while also creating new private open spaces. The proposal is for the preservation and renovation of existing buildings for commercial, office or residential purposes, which will assist in the revitalization of the area. The existing structures are historic and are representative of the past development of the neighborhood; thus, the proposal will be compatible with the scale, rhythm, form and function of the existing neighborhood because no significant changes are proposed. The proposal will not create a new center, but is considered a repurposing of an existing center. The proposal is located in a higher density residential neighborhood. The proposal is compact and results in an efficient and effective land use pattern. Infrastructure in the area is already set up to serve the proposed uses, which is cost effective. The proposal is for mixed uses, which will reduce trips and will support alternative transportation with sidewalks around the site. Transit is located nearby along Main Street, which will serve the site well; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 2 Centers**. The proposal is part of an existing activity center located at the intersection of East Washington Street and North Wenzel Street, and very

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near to East Main Street. The proposal will help to repurpose and rehabilitate the activity center in this block and surrounding blocks. (Guideline 2.A.1, .7). The proposal will allow the location of retail commercial establishments in this activity center. (Guideline 2.A.3). It is a compact development, resulting in efficient land use, with no need for infrastructure investment. (Guideline 2.A.4). There will be a mixture of compatible land uses here (residential/commercial/office), thus allowing for a reduction in traffic congestion and encouraging alternate modes of transportation, and increasing the vitality and sense of place in this neighborhood. (Guideline 2.A.S, .6). By maintaining the existing alley entrance and adding a small area of surface parking, the proposal includes shared parking and entrances and reduces potential curb cuts, all with a quality design that balances safety, traffic, transit, pedestrian, environmental and aesthetic concerns (Guideline 2.A.13, .15); and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 3 Compatibility**. The neighborhood is a mixed-use area, and the applicant proposes a compatible mix of uses (residential/commercial/office) that will not constitute a non-residential expansion into a residential area. (Guideline 3.A.4). Site lighting will meet all standards of the LDC, and any possible adverse impacts will be mitigated. (Guideline 3.A.8). The site is near an existing activity center and near transit routes along East Main Street. (Guideline 3.A.11); and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 4 Open Space**. The proposal enhances quality of life with the provision of a common courtyard open space area, which will be privately and continuously maintained, all in a manner that is consistent with the pattern of development in the neighborhood. (Guideline 4.A.3, .4, .7); and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 5- Natural Areas and Scenic and Historic Resources**. The proposal is located in the Butchertown Historic Preservation District. The proposal includes the preservation, rehabilitation and adaptive reuse of existing contributing historic structures in a manner that is compatible with the height, bulk, scale, architecture and placement of other structures in the district and immediate neighborhood. (Guideline 5.A.2, .4). The proposal raises no concerns about impacts on the natural environment; and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 6- Economic Growth and Sustainability**. This proposal constitutes an investment in the rehabilitation and revitalization of the Butchertown neighborhood, in a manner that is consistent with, and sensitive to, form patterns in the district. (Guideline 6.A.3). It complements and enhances the existing

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activity center by providing a mixture of uses near a major arterial corridor. (Guideline 6.A.6); and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 7- Circulation**. The proposal will not put a strain on existing transportation networks and facilities. (Guideline 7.A.1). The proposal is well-situated to take full advantage of mass transit opportunities, particularly along East Main Street, and of existing roadway and pedestrian infrastructure. (Guideline 7.A.3,.4). Parking and access will be coordinated as between the subject properties and neighboring properties. (Guideline 7.A.16); and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 8- Transportation Facility Design**. Access to the properties is through existing public rights-of-way and an existing alley, thus no nuisance will be created for new access through other incompatible areas. (Guideline 8.A.9); and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 9- Bicycle, Pedestrian and Transit**. The proposal relies upon, and protects, the existing pedestrian sidewalk infrastructure that surrounds the properties, and which provides easy access to mass transit options, particularly along East Main Street. (Guideline 9.A.1, .2). On-site bicycle parking will be provided. (Guideline 9.A.4); and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 10- Flooding and Stormwater**. MSD has approved the drainage plans of this proposal. Any potential negative impacts to the floodplain have been mitigated, and impervious areas have been minimized. (Guideline 10.A.2,.3); and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 11- Water Quality**. It is not anticipated that this relatively small mixed-use development will degrade the water quality due to water pollution or erosion; regional water resources are protected. (Guideline 11.A.1); and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 12- Air Quality**. APCD has confirmed that this mixed-use development will have no negative impact on air quality. (Guideline 12.A.9); and

WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 13- Landscape Character**. The landscape area of this developed urban neighborhood will not be affected; and

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WHEREAS, the Commission further finds that the proposal meets the intents of **Guideline 14 Infrastructure**. The proposal is located in an area that is served by adequate existing utilities. (Guideline 14.A.2, .3, .4); and

WHEREAS, the Commission further finds that, based on the evidence and the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested change in zoning from R-6 to C-2 on property described in the attached legal description, be **APPROVED**.

The vote was as follows:

YES: Commissioners Lewis, Turner, Kirchdorfer, Jarboe, Peterson, Howard, and Blake.

NO: No one.

NOT PRESENT: Commissioners Brown and Tomes.

ABSTAINING: Commissioner Smith.

Variance from Chapter 5.2.2C the Land Development Code to allow proposed parking to encroach into the required yard on lots 3, 4, 8, 9, and 10
Waiver #1 from Chapter 10.2.4 to eliminate the LBAs and planting requirements on lots 1, 2, and 10.

Waiver #2 from Chapter 10.2.10 to eliminate the required VUA LBA and plantings along the alley for Lots 3, 4, 9 & 10

Detailed District Development plans, General Plan, and Binding Elements

04:41:08 On a motion by Commissioner Jarboe, seconded by Commissioner Howard, the following resolution was adopted:

Variance

WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect the public health, safety or welfare since the encroachment is adjacent to a non-residential use and since the encroachment is adjacent to an alley; and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity since the encroachment is adjacent to uses

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with a parking lot in the rear that is accessed from the alley and since the encroachment is adjacent to an alley; and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public since the encroachment is adjacent to a non-residential use and since the encroachment is adjacent to uses with a parking lot in the rear that is accessed from the alley and since the encroachment is adjacent to an alley; and

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the encroachment is adjacent to uses with a parking lot in the rear that is accessed from the alley and since the encroachment is adjacent to an alley; and

WHEREAS, the 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. The encroachment is adjacent to uses with parking in the rear that is accessed from the alley and since the encroachment is adjacent to an alley the situation is similar to other properties in the area; and

WHEREAS, the Commission further finds that the strict application of the provision would deprive the applicant of reasonable use of the land since off street parking in traditional areas is normally found off an alley not allowing it to occur in this circumstance would be a hardship; and

WHEREAS, the Commission further finds that the circumstances are the result of action of the applicant taken subsequent to the adoption of the zoning regulations from which relief is sought; and

Waiver #1

WHEREAS, the Commission further finds that the requested waiver will not adversely affect adjacent property owners since the buildings are existing; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to

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residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants.

the comprehensive plan because the building is existing only the use of the building is changing; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the buildings are existing and will remain; and

WHEREAS, the 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 would create an unnecessary hardship on the applicant since the buildings are existing and will remain; and

Waiver #2

WHEREAS, the Commission further finds that the requested waiver will not adversely affect adjacent property owners since parking is normally found in an alley within the traditional form districts. Parking will be parallel instead of perpendicular to the alley; and

WHEREAS, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020. The waiver will not violate guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for parking areas adjacent to streets to be screened and buffered. The waiver will not violate guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way. Parking is normally found in an alley within the traditional form districts; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since parking is normally found in an alley within the traditional form districts. Parking will be parallel instead of perpendicular to the alley; and

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WHEREAS, the 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 would create an unnecessary hardship on the applicant since parking is normally found in an alley within the traditional form districts. Parking will be parallel instead of perpendicular to the alley; and

GDDP and DDDP

WHEREAS, the Commission further finds that there does not appear to be any environmental constraints and historic resources on the subject site will be preserved; and

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

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

WHEREAS, the 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 Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots meet all required setbacks; and

WHEREAS, the Commission further finds that, based on the evidence and testimony findings of fact, and the staff report that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Variance from Chapter 5.2.2C the Land Development Code to allow proposed parking to encroach into the required yard on lots 3, 4, 8, 9, and 10; the requested Waiver #1 from Chapter 10.2.4 to eliminate the LBAs and planting requirements on lots 1, 2, and 10; the requested Waiver #2 from Chapter 10.2.10 to eliminate the required VUA LBA and plantings along the alley for Lots 3, 4, 9 & 10; the requested General Development Plan and Detailed District Development Plans, **SUBJECT** to the following binding elements:

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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 changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 1,920 square feet of gross floor area on Lot 1. The development shall not exceed 2,132 square feet of gross floor area on Lot 2. The development shall not exceed 1,128 square feet of gross floor area on Lot 3.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Construction fencing shall be erected when off-site trees or tree canopy g 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.
5. 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 Develop Louisville, 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. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the

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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.

7. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
8. 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.
9. A legal instrument providing for the long-term use of the (off-site parking spaces or joint-use parking spaces), as shown on the approved general district development plan and in accordance with (Section 9.1.5 Off-Site Parking or Section 9.1.6 Joint Use Parking), shall be submitted and approved by the Planning Commission legal counsel and recorded in the t shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

The vote was as follows:

YES: Commissioners Lewis, Turner, Kirchdorfer, Jarboe, Peterson, Howard, and Blake.

NO: No one.

NOT PRESENT: Commissioners Brown and Tomes.

ABSTAINING: Commissioner Smith.