

**Planning Commission Minutes
April 17, 2014**

Public Hearing

CASE NO. 13ZONE1028

Project Name: Hotel Nulu
729 East Market Street

Owner: Creation Gardens Inc.
725 E. Market St.
Louisville, KY 40202

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

Representative: Cliff Ashburner
500 W. Jefferson Street, Ste 2800
Louisville, KY 40202

Jurisdiction: Louisville Metro
Council District: 4 – David Tandy

Staff Case Manager: **Christopher Brown, Planner II**

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.)

Request:

Change in Zoning from M-2, Industrial, to C-2, Commercial, Variances and Revised Detailed District Development Plan

Agency Testimony:

Christopher Brown showed a PowerPoint presentation and reviewed the requests and case summary/background form the staff report. He showed zoning and aerial maps and discussed the surrounding zoning and land uses. Mr. Brown then showed a series of photos of the site and surrounding areas. He

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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.