

## PLANNING COMMISSION MINUTES

April 20, 2023

### PUBLIC HEARING

#### CASE NO. 21-ZONE-0155

Request: Change in Zoning from R-6 to C-2, with Associated Detailed District Development Plan and Binding Elements and Waivers

Project Name: Franklin Lofts

Location: 943 Franklin Street

Owner: Franklin Lofts LLC

Applicant: Franklin Lofts LLC

Representative: Dinsmore & Shohl

Jurisdiction: Louisville Metro

Council District: 4 – Jecorey Arthur

Case Manager: Dante St. Germain, AICP, Planner II

#### **NOTE: COMMISSIONERS CHEEK AND SISTRUNK LEFT AND DID NOT VOTE ON THIS CASE**

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:**

04:24:37 Dante St. Germain 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, 101 South 5<sup>th</sup> Street, Suite 2500, Louisville, Ky. 40202

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

04:32:47 Cliff Ashburner gave a power point presentation providing background information on the property.

Cliff Ashburner also discussed the following: gate will remain open at all times and agreed to a binding element; tax credits; historic uses of subject property; no new

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development on property beyond what has been approved and implemented; and showed rendering of final product (see recording for detailed presentation).

#### **The following spoke in opposition to this request:**

Andy Cobb, 933 Franklin Street, Louisville, Ky. 40206

#### **Summary of testimony of those in opposition:**

04:42:33 Andy Cobb said he's concerned about parking, noise, strangers coming in and out of the neighborhood and the diminishing quality and livability of the neighborhood (see recording for detailed presentation).

#### **Rebuttal**

04:49:37 Cliff Ashburner said the development plan shows residential units. If there are specific uses to bind out, it could be taken care of before the case goes to Metro Council for review (see recording for detailed presentation).

04:55:44 Commissioner Carlson requests a binding element that states it will be for residential use only and any other change in use shall require a hearing before the Planning Commission. Cliff Ashburner agrees as long as short-term rentals are included in the definition of residential use. Travis Fiechter stated the binding element as follows: Any change in use other than what was proposed at the April 20, 2023 Planning Commission hearing shall require a notice of public hearing before the Planning Commission. Cliff Ashburner agreed.

#### **Deliberation**

04:57:48 Planning Commission deliberation.

**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 R-6 Multi-Family Residential to C-2 Commercial**

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Plan 2040 Staff Analysis and the Applicant's testimony was adopted.

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**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the site is located relatively close to E Main Street, a major transportation and transit corridor, and activity corridor. It is also relatively close to employment centers in the neighborhood; the site has been in industrial use in the past and the proposal is less intensive than the prior industrial development. The proposed zoning district would not be substantially different in scale and intensity compared with what was previously on the site; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposal would re-use an existing structure for multi-family uses and/or short-term rental uses; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, no wet or highly permeable soils, or severe, steep or unstable slopes are evident on the site; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, no distinctive cultural features are evident on the site; the proposal would re-use an existing structure; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the site is located relatively close to E Main Street, an existing marketplace corridor; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to the site is through areas of similar intensity and density; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the site is easily accessible by bicycle, car, transit, pedestrians and people with disabilities; Transportation Planning has approved the proposal; no direct residential access to high-speed roadways is proposed; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the relevant utilities have approved the proposal; Louisville Water Company has approved the proposal; MSD has approved the proposal; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Livability because, required street trees will be

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provided. No other landscape types or native plant communities are evident on the site; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Housing because, the proposal would permit a variety of housing types and would increase the variety of housing in Louisville Metro and in the neighborhood; the proposal would support aging in place. The provision of multi-family units and short-term rental units would encourage housing close to E Main Street, a commercial and transit corridor. The proposed zoning district would also permit commercial uses in an existing neighborhood; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Housing because, the proposal would permit inter-generational mixed-income and mixed-use development. The site is connected to the neighborhood and surrounding area; the proposal would provide housing within proximity to E Main Street, a multi-modal transportation corridor, and/or commercial uses providing neighborhood goods and services near existing housing; and

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Housing because, the proposal would increase the variety of ownership options and unit costs in Louisville Metro; no existing residents will be displaced by the proposal; and the proposal would permit innovative methods of housing.

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

**The vote was as follows:**

**YES: Commissioners Carlson, Clare, Mims, Pennix and Howard**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Cheek, Fischer, Sistrunk and Lewis**

#### **Waivers #1: from 10.2.4 to allow structures to encroach into to the required property perimeter Landscape Buffer Area (23-WAIVER-0002)**

**WHEREAS**, the waiver will not adversely affect adjacent property owners as the LBAs are required due to a change in zoning and the encroachment is by a building that was previously in non-residential use with no known adverse impacts; and

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**WHEREAS**, the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 encourages appropriate buffering and transitions between uses that are significantly different in density or intensity. The proposed use of the property is similar to how it is used today and less intense than the non-residential uses of the past; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the subject site is already developed with structures, which are infeasible to be removed to make room for the required landscape buffer area; and

**WHEREAS**, the Louisville Metro Planning Commission further finds 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 because provision of the required landscape buffer area is impossible without removing the structures already on the lot.

#### **#2: from 5.5.3 to not provide a required 3' masonry wall along Franklin Street to screen parking (22-WAIVER-0225)**

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Standard of Review and Staff Analysis and Applicant's testimony was adopted.

**WHEREAS**, the waiver will not adversely affect adjacent property owners as the parking area already exists and no wall is currently in place with no known adverse impacts; and

**WHEREAS**, the waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address screening of parking except along designated parkways and scenic corridors; and

**WHEREAS**, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the subject site is already developed and there is no room on the site for a masonry wall. The location where the wall would otherwise be placed is already used for a decorative fence; and

**WHEREAS**, the Louisville Metro Planning Commission further finds 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 because provision of the required wall would require the removal of the existing fence, which is not permitted by the terms of the applicant's historic tax credits.

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**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** Waivers #1: from 10.2.4 to allow structures to encroach into to the required property perimeter Landscape Buffer Area (23-WAIVER-0002) and #2: from 5.5.3 to not provide a required 3' masonry wall along Franklin Street to screen parking (22-WAIVER-0225).

**The vote was as follows:**

**YES: Commissioners Carlson, Clare, Mims, Pennix and Howard**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Cheek, Fischer, Sistrunk and Lewis**

#### **Detailed District Development Plan and Binding Elements**

On a motion by Commissioner Carlson, seconded by Commissioner Mims, the following resolution based on the Standard of Review and Staff Analysis, Applicant's testimony and the Opposition's testimony for the additional binding element was adopted.

**WHEREAS**, no natural resources are evident on the site. The site is fully developed; 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**, the site is nonconforming with respect to open space provisions; 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 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 is in compliance with existing and planned future development in the area. No new construction is proposed. The structures on the site already exist within their current context and are compatible with the surrounding development; and

**WHEREAS**, the Louisville Metro Planning Commission further finds the development plan conforms to applicable requirements of the Land Development Code and Plan 2040 with the exception of the requested waivers. The site plan generally complies with

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the policies and guidelines of the Comprehensive Plan. The site plan would preserve an existing structure which is part of the fabric of the neighborhood.

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan, **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 certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
5. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
6. 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.

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7. 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.

8. The gate at the front of the property shall remain open at all times.

9. Any change in use from those part of the plan approved at the April 20, 2023 meeting of the Planning Commission shall require a noticed public hearing before the Planning Commission.

#### **The vote was as follows:**

**YES: Commissioners Carlson, Clare, Mims, Pennix and Howard**

**NOT PRESENT AND NOT VOTING: Commissioners Brown, Cheek, Fischer, Sistrunk and Lewis**