

# Board of Zoning Adjustment

## Staff Report

September 25, 2023



**Case No:** 23-VARIANCE-0026, 23-WAIVER-0022 and 23-CAT3-0007  
**Project Name:** Joe Ley Hotel  
**Location:** 615 & 625 E. Market St.  
**Owner(s):** 615 East Market Street LLC  
**Applicant:** Cliff Ashburner  
**Jurisdiction:** Louisville Metro  
**Council District:** 4 – Jecorey Arthur  
**Case Manager:** Kat Groskreutz, Senior Planner

### REQUESTS

- **Variance** from Land Development Code (LDC), Section 5.2.1.C.3 to exceed the 15' maximum building setback and be setback a maximum of 66'.
- **Waivers**
  1. **Waiver** from LDC Section 5.2.1.C.2 to not maintain a street wall of at least 3-stories in height
  2. **Waiver** from LDC Section 5.5.1.B.1.a.ii to allow surface parking to be located in front of and to the side of the principal structure and to not be accessed at the rear of the property via the alley.
  3. **Waiver** from LDC Section 5.5.5.B.1 to allow 3 accessory structures to be located in front of the principal structure.
- **Category 3 Development Plan**

Location	Requirement	Request	Variance
Building Setback from R.O.W.	15 ft.	66 ft.	51 ft.

### CASE SUMMARY

The development site includes the properties at 615 E. Market, which has an existing 18,819 sq. ft. commercial structure (previously known as the Joe Ley building) and 625 E. Market, which includes an existing 24,117 sq. ft. commercial structure. The applicant proposes to demolish the 24,117 sq. ft. structure, consolidate the lots, and build a 7-story, 92,435 addition to the Joe Ley building. It is proposed to include first floor restaurant space, outdoor seating and a street side, ground level pool with two accessory pool buildings in front of the new addition.

The development site is within the C-2, Commercial zoning district and the Downtown form district. It is located on the north side of E. Market Street, east of Hancock Street. It is also in the NuLu Review Overlay District (NROD). This case is related to an overlay application under case number 23-OVERLAY-0012. It will be heard before the NROD Committee on September 20, 2023 at 10 a.m.

## **STAFF FINDING**

Staff does not find the extent of the variance request for up to a 66' setback for the new construction adequately justified based on staff's analysis contained in the standard of review. Staff also does not find the waiver request from LDC Section 5.2.1.C.2 to not maintain a street wall of at least 3-stories in height to be adequately justified for approval. Further, Staff does not find the waiver request from LDC Section 5.5.5.B.1 to allow 3 accessory structures in front of the principal structure is adequately justified. The specific accessory structures proposed (a ground level pool and two pool related structures) could be located elsewhere on the site or within the building, or removed completely, while still allowing the primary use of a hotel to fully function. Each of these requests could be remedied through alternative site design that better complies with the existing conditions, zoning regulations, and character of the area. There are no apparent site constraints, beyond the existing Joe Ley building, that necessitate these deviations from the LDC.

The waiver request from LDC Section 5.5.1.B.1.a.ii to allow surface parking to be located in front of and to the side of the principal structure and to not be accessed at the rear of the property via the alley is adequately justified for approval based on staff's analysis contained in the standard of review.

## **TECHNICAL REVIEW**

- Transportation Planning and Louisville MSD have provided preliminary approval for the associated Category 3 request. There are no outstanding technical issues associated with this review.

## **INTERESTED PARTY COMMENTS**

Staff received one comment opposed to the demolition of the structure located at 625 E. Market St. Demolition will be reviewed by the Nulu Review Overlay Committee.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare because the proposed addition does not impact the safe movement of vehicles or pedestrians.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance having a maximum setback of 66' will alter the essential character of the general vicinity as the established setback of the north side of this block is between 0' and approximately 22' and many buildings along this section of E. Market Street maintain a 0' or minimal front setback. The proposal calls for the building to be setback further from the established street wall and the existing conditions present on the site.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since the proposed addition will not impact the safe movement of vehicles or pedestrians.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance having a maximum setback of 66' would allow an unreasonable circumvention of the zoning regulations because this is a self-created condition by the applicant that could be remedied through alternative site design that better complies with the existing conditions, zoning regulations, and character of the area. There are no apparent site constraints that necessitate the building being setback 66' from the street.

**ADDITIONAL CONSIDERATIONS:**

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as there are no apparent site constraints that necessitate the building being setback 66' from the street.

2. 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.

STAFF: The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land as the site could better comply with the requirements to be located near the street and also maintain consistency with the character of the area.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: 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 as the applicant has not started construction and is requesting the variance.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #1 (5.2.1.C.2) street wall frontage**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The requested waiver will adversely affect adjacent property owners because the location of the street wall proposed diminishes the pattern of existing structures along the frontage and what would be required by the LDC of others.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 11 calls for the proposal to ensure setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet Form District guidelines.

The proposed street wall, which is not located within the setback, reduces compatibility with the scale and site design of nearby existing development and the standards of the form district.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant, because this is a self-created condition by the applicant that could be remedied through alternative site design, rather than a pre-existing condition or constraint of the site. The site could be designed in a manner to either remove the waiver requirement or better justify a lack of street frontage.

- (d) Either:  
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR  
(ii) 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.

STAFF: The proposed street wall fence and landscaping in place of the existing building at 625 E. Market Street are not design measures that exceed the minimums of the district to compensate for non-compliance. The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since most of the site is proposed new construction, this is a self-created condition by the applicant that could be remedied through alternative site design, rather than a pre-existing condition of the site.

#### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #2 (5.5.1.B.1.a.ii) parking lot**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The requested waiver will not adversely affect adjacent property owners because a parking area, accessible from the rear alley, is already existing in the proposed location.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects.

Community Form Goal 1, Policy 12 calls for the proposal to design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading, and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots.

The parking area is justified as it is for limited use, small in size for the overall site development, and is consistent with the existing Joe Ley building with limited impact to nearby residents or pedestrians.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the rear alleyway is very narrow and makes safe two-way traffic difficult. The proposed parking lot is minimal in size and will be more temporary parking/valet use only, with no long-term parking proposed.

- (d) Either:  
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR  
(ii) 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.

STAFF: 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 rear alleyway is very narrow and makes safe two-way traffic difficult.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #3 (5.5.5.B.1) accessory structures**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The requested waiver will not adversely affect adjacent property owners because the accessory structures will be located over the existing building's footprint.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 11 calls for the proposal to ensure setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet Form District guidelines.

The location of the pool and accessory structures is not a condition that exists in the surrounding or larger urban areas. A pool is an accessory use that should be located behind or within the primary structure. It is not a desired pattern of development within the Form District, and is not compatible with nearby developments or existing conditions.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant, since this is a self-created condition by the applicant that could be remedied through alternative site design, rather than a pre-existing condition or constraint of the site.

- (d) Either:  
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR  
(ii) 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.

STAFF: The proposed street wall fence and landscaping are not design measures that exceed the minimums of the district to compensate for non-compliance.

The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since most of the site is proposed new construction, this is a self-created condition by the applicant that could be remedied through alternative site design, rather than a pre-existing condition or constraint of the site.

### **REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the **Variance** from LDC Section 5.2.1.C.3 to exceed the 15' maximum building setback and be setback 66'.
- **APPROVE** or **DENY** the **Waivers from:**
  1. LDC Section 5.2.1.C.2 to not maintain a street wall lot frontage of at least 3-stories in height through the placement of the principal structure or extensions of its façade.
  2. LDC Section 5.5.1.B.1.a.ii to allow surface parking located in front of and to the side of the principal structure and to not be accessed at the rear of the property via the alley.
  3. LDC Section 5.5.5.B.1 to allow three accessory structures in front of the principal structure.
- **APPROVE** or **DENY** the **Category 3 Development Plan**

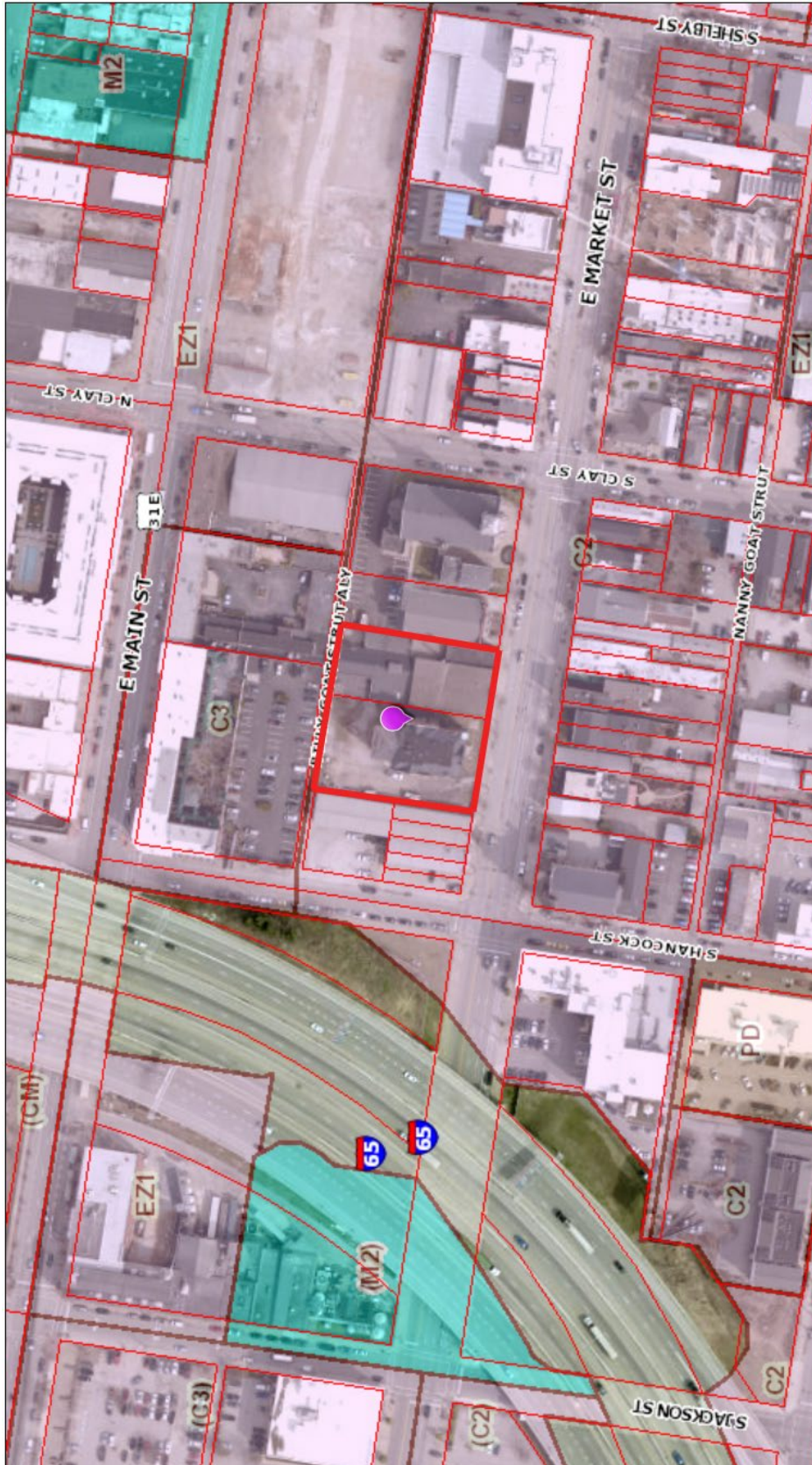
### **NOTIFICATION**

Date	Purpose of Notice	Recipients
09/08/2023	Hearing before BOZA	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 4
09/12/2023	Hearing before BOZA Hearing before BOZA	Notice posted on property Notice posted on property

### **ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph

## 1. Zoning Map



9/14/2023, 3:13:29 PM



Louisville Metro, MSD, LWC & PVA © 2023  
This map is not a legal document and should only be used  
for general reference and identification.



## 2. Aerial Photograph

