



March 26, 2020

Mr. David Sturkey, Esq.
Zoning Hearing Examiner
City of Cincinnati, Law Department
Via email to ZHE@cincinnati-oh.gov
Re: Application ZH20210018 and ZHUV21003

Dear Mr. Sturkey:

The Mt. Lookout Community Council has read in detail the Application for Zoning Relief for 1009 – 1015 Delta & 3152 Linwood, submitted by L&D Real Estate Holdings, LLC; L&D Real Estate Properties, LLC; Linwood Real Estate Holdings, LLC; and R2 Partnership (collectively, the Applicants).

Having given the Application due consideration, we hereby are opposed to it on several grounds:

RES JUDICATA

The Applicants currently have an appeal pending in the Hamilton County Court of Commons Pleas regarding its 2020 development proposal for the same properties. This appeal challenges both decisions of the Zoning Hearing Examiner, July 7, 2020 and the Zoning Board of Appeals, December 7, 2020 to deny relief from the Urban Design Overlay District development standards. The letter from our legal counsel, Sean S. Suder, dated February 21, 2021, which has been entered in the case record, more fully explains our objection in this regard.

ILLEGAL APPLICATION OF THE USE VARIANCE

The letter from our legal counsel, Sean S. Suder, dated March 22, 2021, more fully explains our objection in this regard.

LACK OF COMMITMENT TO DETAIL REGARDING THE PROPOSED DEVELOPMENT

Following a thorough review of the 2021 application, we find that there are many questions that have yet to be answered. The drawings included in the proposal of the complex's design are rough sketches and we have been told by a representative of the applicant group that these drawings are not final. In an Urban Design (UD) Overlay District, design matters. Building materials matter. The structure's integration into the existing community matters. With this application, the Applicants have provided very broad-brush strokes of the development concept, but the details – and a commitment to them – are missing. We cannot provide useful feedback

nor support for a concept that is missing key information about the final appearance of the development.

MINIMAL TIME ALLOWED FOR PUBLIC INPUT

We feel strongly that public input should be an integral part of this process. MLCC members do our best to represent the will of our community. To do that, it is important to check in with the community and listen to their feedback. While we were aware that the Applicants were discussing a new concept for the proposed complex (even though they had filed the appeal on their preceding proposal with the Hamilton County Court of Commons Pleas), we were unaware of how far along they were in the development of that concept until we received notification that their Application for Zoning Relief was filed on February 22, 2021. This surprise notification provided us with very little time to gain a complete understanding of the new development plan and to gather adequate feedback from community members. We are currently in the midst of sharing this information with our community and obtaining feedback now.

Had we been able to collect it in a timely manner, community feedback could have been used to inform various aspects of the Applicants' proposal that are currently in conflict with some of the community's goals, and potentially bring it more into alignment with a development that would be accepted by the community. Please note, we asked the Applicants to request a delay of the March 31 hearing to provide more time for this process to take place; however, they told us that they have the information they needed and that the hearing would proceed as scheduled.

Aside from the concerns listed above, we proceeded with reviewing the content of the application and evaluated it based on its own merit. Having completed that assessment, **our position is that the Applicants' proposed development is not compatible with the Mt. Lookout Urban Design Overlay District and their request for relief from UD development standards should be denied. Further, the Applicant's request for a use variance should also be denied.** Approval of a use variance would allow the Applicants to bypass the development standards that were intentionally applied by our community and by the City of Cincinnati to protect our business district from development that is discordant with the district's existing buildings and would forever alter our community's character. Further discussion of the rationale for our position is provided below and in the letters submitted in the record from our legal counsel, Sean S. Suder.

As you consider our position, we want to make clear that the Mt. Lookout Community Council is not opposed to redevelopment within our business district. In fact, we welcome the interest and investment in our neighborhood. Our goal, however, is to ensure that development projects respect the vision that our community worked with the City of Cincinnati to develop for our business district and outlined in the [Mt. Lookout Urban Design Plan \(MLUDP\)](http://mtlookout.org/wp-content/uploads/2021/03/Mt.-Lookout-Urban-Design-Plan.pdf).^{*} A key aspect of this vision includes maintaining the existing, unique small-town character of the district that continues to draw residential and business interest and investment in our neighborhood.

^{*} <http://mtlookout.org/wp-content/uploads/2021/03/Mt.-Lookout-Urban-Design-Plan.pdf>

Building Dimensions

As specified in Cincinnati Zoning Code (CZC) §1437-09, the “Architectural style, bulk, shape, massing, scale and form of new buildings and the space between and around buildings shall be consistent with the area and should be in harmony with neighboring buildings.”

The scale, bulk and massing of the proposed complex, however, is vastly larger than any of the buildings in Mt. Lookout Square. The proposed height of the complex is 57 'on its south end and 50.6 'on its north end. Using the drawings provided in the application as reference, the length of the building is estimated to be 165 'and its depth is approximately 90'. Based on these dimensions, the proposed complex is 102% taller (as measured by occupied floors), 214% wider and 31% deeper than an estimated average of all the buildings in the UD district.

The application states that the size and scale of the complex has been significantly reduced from the Applicants' 2020 proposal. However, an evaluation of the two proposals show that the reduction is just 8 ft shorter on the north side of the building and 7 ft shorter on the south side. As a result, the new dimensions are still far above what could be considered consistent or in harmony with the existing buildings in the UD district (see Building Height and Width Comparison figures on page 4). While the MLCC agrees that compatibility does not necessarily equate with “an exact match” of size and scale and has never stated as such, we do assert that compatibility means size and scale should be within a similar and reasonable range. As proposed, the complex fails on that account and it would overshadow and overwhelm the existing buildings in Mt. Lookout Square. Its proposed scale and height is a primary objection of the Mt. Lookout community.

Further, the Applicants' repeated assertion that “the size and scale of development is supported in part through specific mentions of developments near intersections” is non-sensical.⁸ The clause they reference as their rationale for this statement is the last sentence of standard #3 in the Location, Orientation, Size and Shape of Buildings section of the MLUDP: “At street intersections, a building should emphasize its corner location with enhanced size, scale, height and massing.”⁹

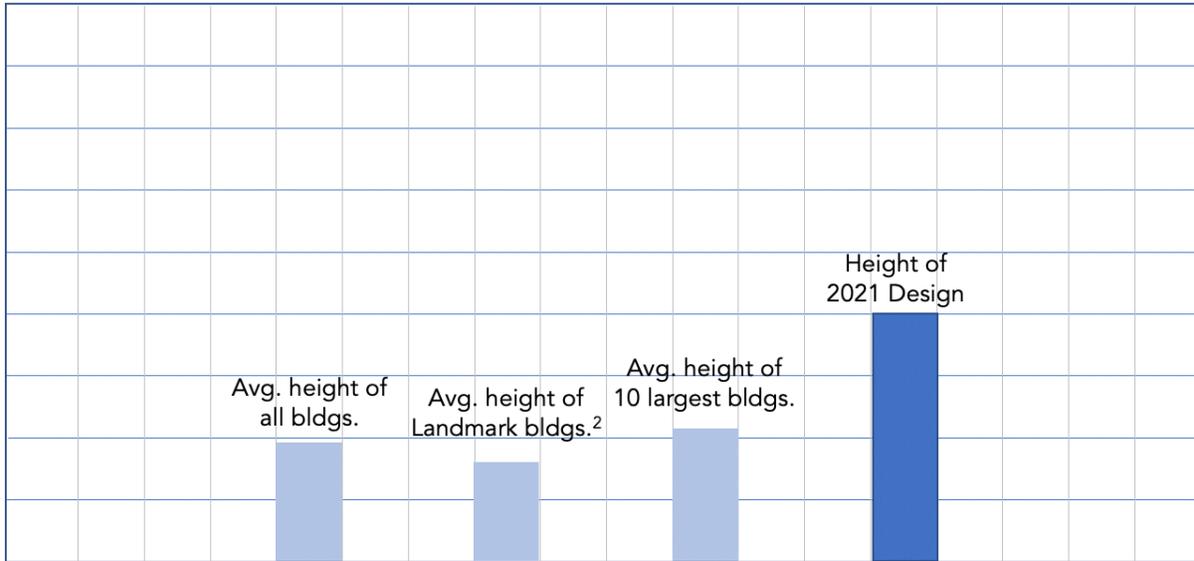
This clause does not apply to the proposed development because though it would be located near an intersection, it would not be located at the intersection. The building located at the intersection is a one-story United Dairy Farmers (UDF) building. If the UDF property were ever to be redeveloped, it too would be subject to the development standards of the MLUDP and UD Overlay District, and the architectural style, bulk, shape, massing and scale of any new development on that property would also need to be consistent with the form of the area and in harmony with neighboring buildings.

⁸ 1009-1015 Delta & 3152 Linwood Application for Zoning Relief, Feb. 22, 2012, pg 12

⁹ Mt. Lookout Urban Design Plan: Location, Orientation, Size, and Shape of Buildings, pg. 37

Comparison of Building Heights¹ Within the Mt. Lookout Business District

 One box = 1 floor

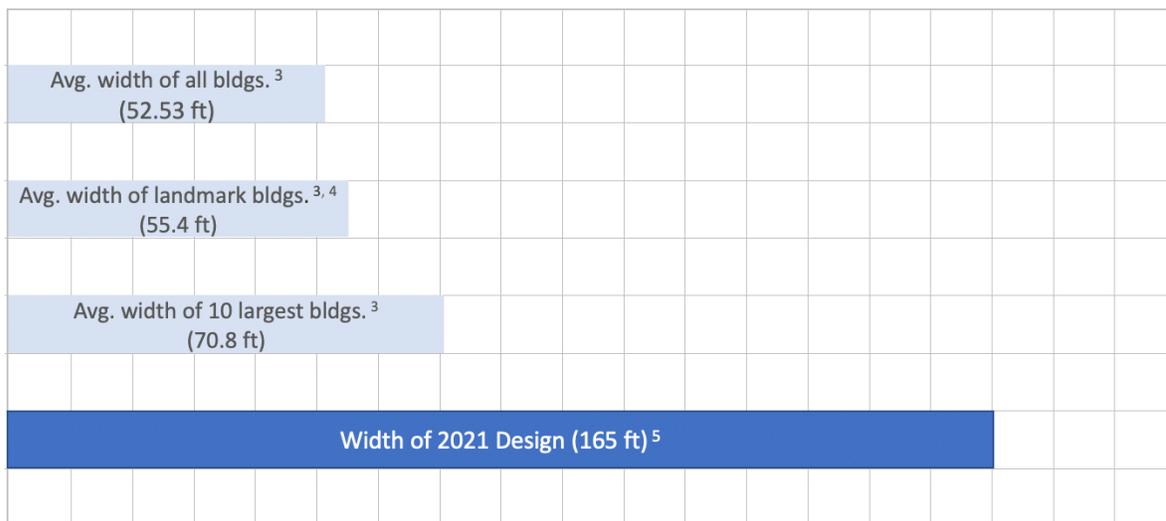


¹ Average height is measured in terms of occupied floors.

² Landmark buildings include the Redmoor, Bracke building (Mt. Lookout TV), Million’s Café, the Sago/Cibo Vino building and the Keepsake Photography/Vin Acco building

Comparison of Building Widths Within the Mt. Lookout Business District

 One box = 10 ft



³ Approx. dimensions of existing buildings were obtained from Google Earth; measurements were taken from the widest parts of the buildings

⁴ Landmark buildings include the Redmoor, Bracke building (Mt. Lookout TV), Million’s Café, the Sago/Cibo Vino building and the Keepsake Photography/Vin Acco building

⁵ Width is estimated based on renderings included in the developer’s Feb. 2021 Application for Zoning Relief; specific measurements were not included in the application.

The MLCC's concern is that if the Applicants' complex were permitted to be built at the height currently proposed (57' on its south corner), it would set precedent for the height at which a future structure on the UDF site could be built. Considering that the UDF is downhill from the subject properties, this would allow a new four to five story structure to be built where a one-story building stands now, and in a district where the average building height is two stories. **This is exactly the situation that our MLUDP and UD Overlay District designation were developed to prevent:**

CZC §1437-09: "The form of the building and space around it should be consistent with the form and spacing of the area and should be in harmony with neighboring buildings."

MLUDP: "The square architecture reflects 1920's era...giving it a cozy, village type atmosphere. Buildings are primarily two stories. Lots tend to be shallow in depth adding to the village like atmosphere."¹⁰

MLUDP: "Vision: Image and Identity – Maintain the unique, small-town character of the district."¹¹

MLUDP: "Development controls will enable the community to positively direct changes in the built environment and maintain the desirable features of individual buildings, their location on the site and the general patterns of development for the district."¹²

Use Variance

Because the requirements for demolition under UD standards have not been met, the Applicants are pursuing a use variance to bypass UD requirements that would allow demolition of the dwellings that currently exist on the subject properties. While we believe this relief is unlawful and improper for the reasons more fully set forth in our legal counsel, Sean S. Suder's March 22, 2021 letter, which is part of the record, assuming *arguendo* that a use variance will be considered, we have the following arguments in opposition.

The Applicants state that the properties are not economically viable and the existing dwellings must be removed. Yet, on page 28 of their application, they confirm that the subject properties were purchased **with knowledge of the zoning restrictions applied to these properties**. The Applicants then proceeded to design a complex that is far outside the UD development restrictions which the City and Mt. Lookout proactively applied to these properties and subsequently claim that the restrictions create a hardship that merits a usage change. Retrospective economic hardship should not be allowed to be utilized as justification to bypass these restrictions. We find this tactic towards our community to be manipulative and disingenuous.

MLCC further objects to the use variance due to the fact that several of the standards established for approval are not met:

¹⁰ Mt. Lookout Urban Design Plan – Study Area, pg. 3

¹¹ Mt. Lookout Urban Design Plan – Executive Summary, Vision

¹² Mt. Lookout Urban Design Plan – Executive Summary

CZC § 1445-16. - Use Variance Standards¹³:

No variance shall be granted to allow a use not permissible under the terms of the Zoning Code or the Land Development Code in the zoning district in which the property is located, unless the Zoning Hearing Examiner finds that the Applicant for the use variance has demonstrated that the Applicant will suffer unnecessary hardship if strict compliance with the terms of the Code or the Land Development Code is required and such hardship must be demonstrated by clear and convincing evidence as to the following criteria:

- b. The variance requested stems from a condition that is unique to the property at issue and not ordinarily found in the same zone or district; The hardship condition is not created by actions of the Applicant;*

Per their own testimony, the Applicants' were aware of the development restrictions that applied to these properties. Yet, they proceeded with purchasing them anyway. This is a clear example of a hardship condition created by the actions of the Applicants and therefore does not warrant approval of a variance.

- d. The granting of the variance will not adversely affect the community character, public health, safety or general welfare;*

The use variance has the potential of bypassing the development standards applied to the subject properties by the community, multiple City departments and Cincinnati City Council, as demonstrated by the Urban Design Overlay District designation and approval of the Mt. Lookout Urban Design Plan. This would allow the Applicants to proceed with constructing their proposed complex, which as this letter attests, would adversely affect community character.

- e. The variance will be consistent with the general spirit and intent of the Zoning Code or the Land Development Code, as applicable;*

The use variance has the potential of bypassing the development standards applied to the subject properties by the community, multiple City departments and Cincinnati City Council, as demonstrated by the Urban Design Overlay District designation and approval of the Mt. Lookout Urban Design Plan. This would allow the Applicants to proceed with constructing their proposed complex, which as this letter attests, is not consistent with the general spirit and intent of the zoning restrictions applied to the subject properties.

¹³ Ordained by Ord. No. 360-2010, § 1, eff. Nov. 13, 2010; Emer. Ord. No. 244-2015, § 7, eff. July 1, 2015

As noted, we are deeply concerned that approving a use variance to allow the Applicants to bypass the UD development standards for demolition would also have the consequence of allowing the Applicants to bypass other UD standards as well. Thus, by approving the variance, they would be able to proceed with their development as proposed. While the Mt. Lookout Community Council is willing to discuss compromises that could facilitate the demolition of the existing houses on the site, we do not want restrictions governing the type of development that can take place on the site to be lifted.

South Facade

The MLCC recognizes the effort that the Applicants have taken to include elements that reflect some of the unique architectural detail of landmark buildings in the Square in the front façade of the building. While these efforts are moving in the right direction, we feel that this same level of architectural effort needs to be applied to the south side of the building as well, since it will dominate the view from Mt. Lookout Square. As it appears in the drawings included in the application, that side of the building is largely a series of long, unrelieved expanses of wall which do not reflect the same level of design that has been applied to the front of the complex. We would like to see design for this side of the structure modified to receive the same level of architectural styling that has been applied to the front the building, which includes bay windows, angled rooflines, cast stone and glazed brick accents, and board and batten application of composite siding.

Parking

Preliminary feedback from our community includes continued concerns regarding the complex's impact on the limited parking available in and around Mt. Lookout Square. We appreciate that the development will contain 38 parking spaces, which is roughly one parking space per bed (assuming two occupants per two-bedroom apartment and townhouse). However, at full occupancy, this number of spaces does not accommodate guests of complex residents. Instead, guests will be obligated to compete with local business customers for public parking spaces. The development group's application implies that by providing on-site parking for their residents, they are improving the parking problems on Mt. Lookout Square; however, because parking will be restricted to residents only, they will most likely contribute further to the problem as guests of residents will compete for existing on-street parking.

429 Delta

The Applicants conclude their application with a comment that the City ZHE approved variances that allowed for a 76-unit apartment complex located at 427 Delta Avenue to be built in a combined Hillside Overlay District and Urban Design Overlay District.³ We felt it important to note that this development, Delta Flats, is a completely different situation than ours and should not be referenced as a like-comparison. Delta Flats is located in Columbia-Tusculum, not in Mt. Lookout, and the goals of the two communities for their business districts are different. It is also located at the corner of Delta Avenue and Columbia Parkway which is a very different environment from Mt. Lookout Square. Delta Flats is also one of the first developments we shared with the representatives of the Applicant team as an example of the type of development that we do not want in Mt. Lookout.

Establishing Precedent

The importance of getting the redevelopment of this site right cannot be overstated. Development that occurs at this location will set the standard for what occurs elsewhere on Mt. Lookout Square. If the standards set forth by our community, multiple City departments and Cincinnati City Council, to thoughtfully guide development in our business district and maintain its unique village-like character are set aside for this proposed project, then precedent will be set for all development that follows. This will have a detrimental impact on our community square and render the Mt. Lookout Urban Design Plan useless. It will also have a damaging impact on all other communities in the City of Cincinnati that have Urban Design Overlay District designations as it would establish a new precedent for what aspects of UD development standards are enforced and which are not.

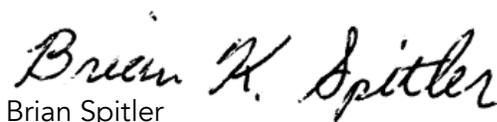
We have witnessed much development over recent years that have transformed the character of nearby communities such as Oakley and Madisonville. While some of these communities invited these transformative projects of magnitude, Mt. Lookout has not. We recognize that there is opportunity to redevelop portions of our business district and the subject properties are one such location. Recent public input has shown that while new development in that location that respects the general “feel” of our community in terms of architectural style, scale, and bulk would be accepted, a structure that overshadows and irrevocably alters the overarching character and construct of our business district is not wanted. Unfortunately, as it is currently proposed, the Applicants’ development falls into this latter category.

Until these concerns are addressed, our position remains in opposition to the proposed structure. As such, we respectfully ask that the Applicants’ requested relief from the Urban Design Overlay District development standards and their request for a use variance be denied.

Sincerely,



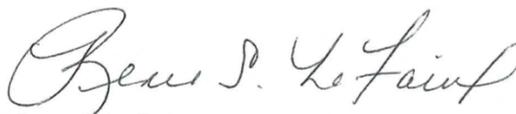
Dan Prevost
President, Mt. Lookout Community Council
MLCC Planning & Zoning Committee Member



Brian Spittler
Mt. Lookout Community Council Member
MLCC Planning & Zoning Committee Chair



Laura Whitman
Vice President, Mt. Lookout Community Council
MLCC Planning & Zoning Committee Member



Renee LaFaive
Mt. Lookout Community Council Member
Planning & Zoning Committee Member

cc: Sean S. Suder, Esq.