

## MEMORANDUM

**SUBJECT:** The Concert Venues Building Proposed by Live Nation/Frank Productions Requires the City to Ignore the Carefully Constructed Zoning Commitments, Requirements and Goals for the Deer District

**DATE:** October 12, 2022

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This Memorandum focuses on the very serious deficiencies under the City of Milwaukee's zoning and land use plan of the proposed Live Nation/Frank Productions music venues proposal. There are many other important issues – safety; the harm to the convention center; the disaster this creates for Milwaukee's many vibrant music venues; the harm to the employees of those venues; and the harm to the neighborhoods and businesses that surround those venues. Any one of those issues should disqualify this application. Taken together, it should be easy to vote no.

### **I. INTRODUCTION.**

When Milwaukee has been disciplined and stuck to its carefully crafted plans, the City has enabled vibrant and sustainable urban neighborhoods like the Third Ward, the Brewery District and the East Side. When it has given in to political pressure or the temptation of quick tax revenues, it has harmed neighborhoods for decades or generations and lost out on the higher tax revenues it expected.

For example, when the convention center was being planned, there was a sea of asphalt along Kilbourn that did not fit the neighborhood plan. The developers asked the City to exclude that parking lot from their immediate plans. Promising it would develop it within five years. The City gave in. As a result, the City was left with a no-man's desert for about 25 years.

The developer of the proposed concert venues is asking the City to repeat that mistake. If this plan is approved, North Vel R. Phillips Avenue will be forever adversely affected. It will not be the activated, walkable, human-scale, multi-use area required by the City's plan.

Additionally, if the application is approved, North 5<sup>th</sup> Street will never be the pedestrian friendly street or area envisioned when the Deer District plan was formed. Instead, it will forever be no more than an ugly alley.

Just six years ago, the Bucks proposed, and the City approved, the Milwaukee Bucks General Planned Development (GPD). Rather than following the GPD, the developer is asking you to fundamentally ignore the plan.

The City gave this land to the Deer District for FREE and created TID financing. The City expected perpetual tax revenue from a well-done, vertically built, mixed-use, urban development. Instead, with these venues, the City will receive even less than the minimum standards set forth in the GPD.

It is common for developers to ask for relief from zoning ordinances. However, the requests by the developer are exceedingly unusual. Applicants seek **more**: more density, more massing; more height; more lot coverage, more and different uses than those are allowed under the code.

In contrast, this developer is seeking **less**: less density, less height, less lot coverage, less fenestration/far fewer windows. Instead of a tall, mixed-use, street enhancing project, the developer asks the City to approve a single-use building that provides no street activation. The developer also asks the City to allow a future building to be half as tall as current zoning allows.

Rather than developing a new, vibrant, mixed-use urban neighborhood like The Brewery District or the Third Ward, the developer wants the City to accept a suburban-like, single-use building with a potential, but unlikely, adjacent substandard building. And it creates the small adjacent parcel to avoid many requirements.

The City is seeking density and tax revenues. The Mayor has a goal of a million residents. To achieve these goals, the City should be insisting on more, not accepting less.

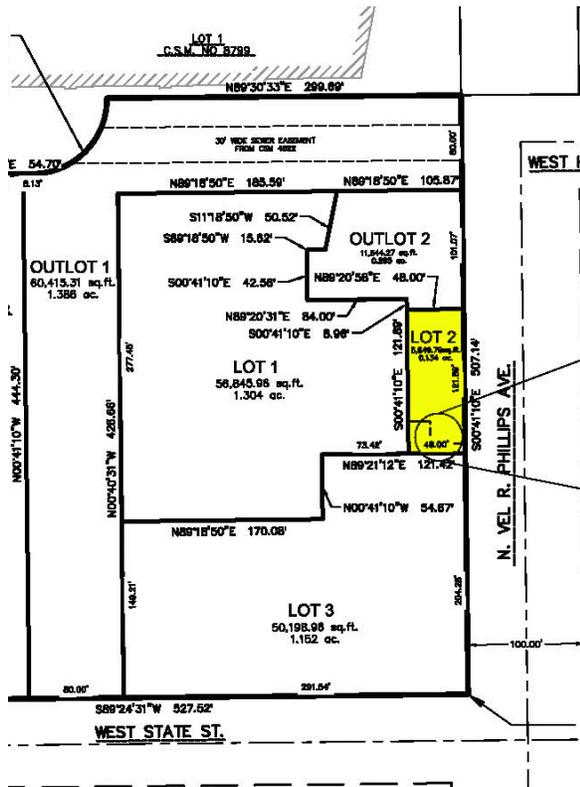
Rather than designing a project that fits the General Planned Development (GPD) standards, the developer has taken the building it planned for Summerfest, turned it slightly and plopped it on this site.

**If this block were to be developed as the developer agreed in the GPD, with a large mixed-use facility of, say 10 or 12 stories, that covers most of the Block, the tax impact would be multiples of what will result from this proposal.** Once this is built, it will be too late.

## **II. LOT 2 – GENERALLY**

To avoid several requirements of the GPD (described below), the developer moved the building back 48 feet from North Vel R. Phillips (4<sup>th</sup>) Street, creating Lot 2, suggesting that a two-story building will be built there in the future.

The developer's Certified Survey Map is on the following page. Lot 2 is in yellow.



There is no good explanation for Lot 2 (shown in yellow) other than the developer wants to short-circuit the requirements of the GPD. Some of the problems are described below.

### III. THIS PROPOSAL FAILS TO FULFILL THE CITY’S AND THE DEVELOPER’S COMMITMENT TO TURNER HALL

Before addressing the bigger picture zoning issues involved in this application, it is important to focus on a very specific promise made when the Deer District was proposed.

Both the GPD and the Design Standards for Block 3 provide:

“Turner Hall, a historic Milwaukee landmark is located on the east side of North Street. The design of any development on Block 3 shall be sympathetic to Turner Hall.”<sup>1</sup>

<sup>1</sup> Highlighted provisions are direct quotes from the General Planned Development (GPD) standards.

This is what Turner Hall will look at for many years and, as explained below, possibly forever:



The developer suggests that, someday, a building will be built between the venues and Turner Hall, and then there will be some design feature that will be good for Turner Hall.

Why not now? What commitment can the City rely on that something will ever be built?

Is a **large blank wall** (approximately 170 feet), or the use of the property to compete with Turner Hall, sympathetic to Turner Hall?

**The developer should be required to fulfill its commitment to Turner Hall now.** In just eight years, the developer has changed and diminished its plans for this property. You can bet it will again change its tune when (if ever) it proposes something for Lot 2. You can hear them now: “The economics do not allow for the construction of anything interesting on Lot 2 or to cover the 50 feet of blank wall south of Lot 2 in the southeast corner of the venues building.”

#### **IV. THERE WILL NOT BE A BUILDING ON LOT 2 FOR MANY, MANY YEARS, IF EVER.**

The proposed two-story building on Lot 2 will never happen or will not happen for many years. The developer knows that. That is why it plans to plant trees on the property.

- Similar promises were made for exceptions for the convention center. It took well over two decades for the promises to be fulfilled.
- The building would be between 9,000 and 10,000 square feet. Construction costs would be somewhere around \$2.5 million to \$3 million. No small user is going to pay that.

- The listing broker has made it clear that the current owners require that the property not be sold to a food or beverage user (the most likely small building users in this area). Here is what one broker was told by the listing broker:

**“No further food or liquor. ... The developer, the Bucks ownership, doesn’t want anything to compete with what they have going on so far.”**

That does not leave many real uses for this small building. Certainly not much that could afford the cost of standalone construction (and the special design to be “sympathetic” to Turner Hall).

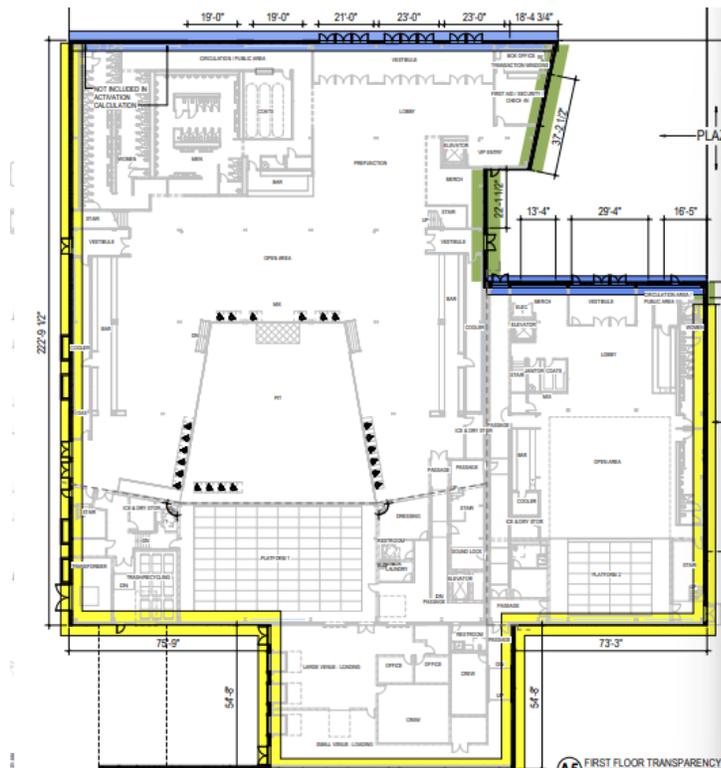
**If the developer is certain that there will be a building on Lot 2, it could build it now.**

**V. THE DEVELOPER COULD BUILD THE PROJECT UP TO NORTH VEL R. PHILLIPS STREET; HOWEVER, THE DEVELOPER DOES NOT WANT TO DO THE REDESIGN OR INCUR THE COST REQUIRED.**

There is nothing unique to this proposal to require the orphan Lot 2. There are concert venues in many locations, including in Madison (owned by the same developer), that are designed with windows and architectural detail facing multiple streets.

Fewer windows and less architectural detail are cheaper. Milwaukee is getting a C- project, while other cities that persist in maintaining design standards get better projects.

The following is a portion of the design plan for the project:



The areas highlighted in yellow are considered “low activation” areas. That means that the building will not have any real quantity of glass facing those directions. The only glazing areas face Fiserv Forum. That is not what the GPD anticipates.

Instead of a beautiful building designed with four-sided architecture, this building will have one attractive face for the benefit of the Bucks’ facility and the other directions are totally neglected.

**VI. INSTEAD OF FULFILLING ITS PROMISES IN THE GPD, THE DEVELOPER WANTS THE CITY TO CHANGE OR IGNORE THE GPD IN SUBSTANTIAL WAYS.**

A. Generally. The proposed two-story building on Lot 2, and the music venues building that is designed to only face the Fiserv Form, are totally inconsistent with the carefully considered GPD.

“The ... Design Principles and Definitions ... have been established by the City of Milwaukee for the development of the Park East Redevelopment Plan McKinley Avenue District. These Principles will be utilized in the development of all blocks of the Milwaukee Bucks Arena development.”

Yet, this proposal violates the language and spirit of the Park East Redevelopment Plan McKinley Avenue District, as incorporated in the GPD.

The 48-foot setback, the lack of buildings fronting on Vel R. Phillips (4<sup>th</sup>) Street and 5<sup>th</sup> Street, and the flat, windowless walls facing east and west are precisely what the City does not want. This proposal fails to meet the following goals and values of the GPD:

- **Windows and Glazing (see above)**
- **Mixed-Use**
- **4 to 20 Story Buildings**
- **Street Activation**
- **Enrichment of the pedestrian realm**
- **Human scale qualities**
- **Few or No Flat Facades**
- **Horizontal and vertical modulation**
- **Articulation**

B. Large, Mixed-Use Building That Covers the Majority of the Site.

According to the GPD, the proposed venues building is not the type of building that should be built here:

“Block 3 of the development will be the location of a new mixed use building that includes potential uses as described in the GPD Design Standards. The mixed use building will cover the majority of the site.”

Yet, this proposal does not cover the majority of the site and is not a mixed-use building. The standards allow for up to three buildings; however, it is clear that the majority of the Block should be covered by one large building, not two mid-sized buildings and one tiny building that likely will never be built. Also, only one of the three buildings might be mixed-use. That was not the agreement when the GPD was enacted.<sup>2</sup>

C. The Height Should be Four to Twenty Stories, Not Four and Two Stories.

From the GPD Design Standards for Block 3:

“The buildings will be a minimum of 4 stories in height and up to a maximum of 20 stories.”

The City envisioned and the developer agreed to a vibrant, mixed-use area of taller buildings with major tax impact. Instead, the developer offers less than the minimum. The City is would not get even the minimum four-story building. Instead, the developer proposes a building that is nominally four-stories and tells the City that maybe (later) it will get a two-story building along the street.

D. The Proposal Does Not “Enhance the Street Experience” or “Ensure Continuity of the Social Street Front.”

According to the GPD, buildings built on this Block are supposed to:

“[E]nhance the street experience”

And

“New major entertainment venues . . . must fit within the prescribed pattern of lots and blocks and most importantly, ensure continuity of the social street front.”

Rather than enhancing “the street experience” and ensuring “the social street front,” this proposal ignores the street experience on Vel R. Phillips (4<sup>th</sup> Street) and turns 5<sup>th</sup> Street into a perpetual, ugly alleyway.<sup>3</sup>

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<sup>2</sup> Even the Buck’s Term Sheet dated as of September 22, 2015, that it submitted to the City envisioned a 300-key hotel plus retail for Block 3.

<sup>3</sup> The Bucks’ Term Sheet dated September 22, 2015, envisioned a pedestrian area on 5<sup>th</sup> Street and even contemplated the following: “Rebuild 5th Street from . . . State to Highland if needed in coordination with the development of Blocks 2 and 3.” The Term Sheet also envisioned a 300-key hotel and retail for Block 3.

If an appropriate building were to be built on this Lot, Vel R. Phillips would have somewhere between 204-feet to 260-feet of attractive street frontage of windows and architectural detail. Instead, there will be none.

If approved, there will be a 101-foot plaza, a 93' x 48' area for an implausible future building, and a 55-foot area that will be part of Lot 3 but that makes little sense for development of Lot 3. There will be little or nothing activating or ensuring the street experience.

Moreover, a concert venue does not enhance the "street experience." A hotel, as envisioned when the TID was enacted (see Bucks' Term Sheet dated September 22, 2015), would ensure pedestrians coming and going 24/7, 365 days per year. These concert venues are projected to be used about one-third of those days.

E. Lot 2 is a Work-Around of Many Other Requirements of the GPD.

By moving the building back 48 feet, the developer is attempting to totally avoid the following requirements of the GPD. In the process, the nature of the neighborhood will be totally different than the urban, street activated plan of the city.

Section 4.1. **Street Activation** Requirements

"Visual interaction with all stories of the building is encouraged, visual interaction by means of clear, non-tinted windows (glazing) is required along the street frontage of a building.

Where required glazing is provided along the ground floor, the area behind the glazing must be Street Activating Uses for a minimum of 12 feet in depth."

Section 4.1.2 Street Activation Uses

"For Entertainment/Accommodation Uses, the following **Street Activating** Uses are permitted ... For hotels, Large Venue Buildings and other places of accommodation, lobbies, customer service areas, restaurants and bar areas, coffee shops, gift shops, and often used gathering and meeting breakout areas are appropriate."

4.1.4. Materials

"**Enrichment of the pedestrian realm** requires building base materials to be of high quality, such as stone, brick, metal panel systems, and other durable materials."

#### 4.1.5. Detailing Enrichments

“Detailing of the base of buildings should be used to enhance the **human scale qualities** of the building. On all types of buildings, the building base should be distinctly noticeable from the middle portion of the building. Cornices, friezes, hoods, canopies or other expressive elements should demark the separation of these portions of the buildings.”

#### 4.2.1 Building Articulation

“**‘Flat’ facades should be avoided.** When dissimilar materials of the exterior cladding meet, a distinct variation in surface plane must be present.”

#### 4.2.2 Low Activation /Ground Level Walls

“Where there is a “Low Activation No Glazing Requirement”, as noted on the individual block standard diagrams, the following standards will be required to mitigate the potential negative effects of a non activated wall:

High quality materials must be used. ... Materials ... which do not offer an appropriate finish or scale [must not be used]. Simulated stucco and metals siding products do not provide the durability and must be avoided. ...

**Horizontal modulation** is needed to break down a long, blank wall. ...

**Vertical modulation** is needed to give a sense of human scale to the wall. A distinct base level is needed at approximately 2’ to 4’ above the grade. In this ground level, an upper differentiation approximately 7’ to 9’ above the grade is needed to give a sense of **human scale**, normally found with typical door and window heights.

**Pedestrian-scaled** elements are needed to increase interest and decrease monotony, especially in the case of a long non-active wall. A number of techniques could be employed. These include display cases, engaged planters, green-screen wall systems, backlit windows with opaque glass, and decorative lighting elements. The need for these elements will be building and site specific, but must occur in at least every other bay of horizontal modulation. These elements must help to create ‘layered’ quality to the façade wall.

In some cases, uses which may not programmatically allow windows, consider frosted or fritted windows to obscure vision but allow light to spill out from the interior.”

#### 4.2.4 Large Format Uses Façade Design

“These standards are for facades, specifically area above the ground level, where the use includes large format interior spaces that often have programmatic difficulty

with significant clear glazed windows at the façade wall. This includes uses such as gymnasiums, theaters, assembly spaces, large format retail stores and similar scaled and programmed uses.

The building's larger design solution should contemplate not locating the larger interior spaces along street edges and those spaces being placed more interior to the site. Also, a liner of uses such as lobby spaces, lounges, offices, etc. should be considered to allow activation and glazing along the street frontage. Where this placement approach or liner uses is not possible, various techniques should be utilized to allow the large format uses to be appropriately designed for placement along the street facades. Following are standards to achieve this:

Breaking down the resulting large façade is key to mitigating design challenges posed by large format uses. Incorporating any clerestory windows or narrow, regularly spaced opaque windows is a method that is encouraged.”

#### 4.2.6. Detailing and Enrichments

“For Large Venue Buildings, wall areas above the building base should be **articulated**. Flat, windowless walls should be avoided.”

## VII. CONCLUSION.

The City envisioned, and the developer promised, a vertically built, mixed-use, urban development that enhances an activated, walkable, human-scale neighborhood. Instead, the developer proposes a development that misses the mark on many requirements. The music venues building is a single-use building that meets only the district's minimum height requirement and shows giant ugly blank walls to streets to the east and west. It fails to fulfill the City's commitment to Turner Hall. Moreover, to try to get it done, the developer leaves an orphan 48-foot lot for a another single-use building which might someday reach the street with a small building that, in the off chance it is constructed, will be less than half the height generally required.

If the developer were to build the development promised in the GPD, a great new neighborhood would be born. Instead, this will not be the activated, walkable, human-scale neighborhood that the City envisioned and the developer promised.

As importantly, the tax impact of the promised development described in the GPD would be multiples of what this will generate.

The developer argues that the City includes a Detailed Planned Development (DPD) requirement because things might change after the enactment of the General Planned Development. That is true, to an extent. On its website, the Department of Community Development states that, in approving the DPD, the Council approves “the project specifics including building design and site plan.” **The DPD is not, however, intended to be a do-over, ignoring the fundamental goals and requirements of the GPD.**

Some would argue that this is a “bait and switch.” That might be harsh, but the developer of the Deer District received free land and made promises to get that land, its TID financing and the GPD. Now, rather than exceeding or at least meeting its promises, the developer wants approval of less than it promised when it obtained those very valuable incentives.

The Common Council should require the developer to fulfill its promises. The City should expect the best possible development, not a watered-down version that requires standards to be reduced from those the developer promised.