



DEPARTMENT OF CODES & REGULATIONS
LOUISVILLE, KENTUCKY

JERRY E. ABRAMSON
MAYOR

WILLIAM P. SCHRECK
DIRECTOR

August 20, 2009

Mr. Cliff Ashburner
Bardenwerper, Talbott & Roberts, PLLC
8311 Shelbyville Rd.
Louisville, KY 40222

RE: Creation Gardens – zoning interpretation

Staff has reviewed the letter of explanation and proposed conceptual layout for establishing Creation Gardens on East Market Street just west of South Shelby Street. In the description of this project you state that the business would continue to operate primarily as a warehousing and distribution facility, using approximately 20,400 s.f. of the building. This use is clearly included in the list of permitted uses within the applicable M-2, Industrial zoning district.

The remaining portion of the building is proposed to contain both retail and office uses. This is the part of the operation that is not clearly included in the M-2 use listing. However, there is an expectation that principle uses will occasionally be supported on the same site and even at times within the same structure by other, related, accessory uses. The M-1 zoning district use listing contemplates this to the extent that there is specific mention of "Auxiliary commercial uses: the following commercial uses shall be permitted only when subordinate and incidental to areas of existing industrial use – branch offices and banks, savings and loans and similar financial institutions; convenience grocery stores, credit unions, restaurants as permitted in the C-1 district, vehicle service stations and repair." Further, the inclusion of the M-2 use listing for "Accessory uses or buildings: those uses allowed shall be subordinate, customary and incidental to the permitted primary uses, including retail sale, rental or repair of items manufactured or assembled on site..." demonstrates that there are clearly times when such accessory functions will be included on the same site, and perhaps within the same building as principle uses within the M-2 district.

While produce is not proposed to be "manufactured" on the subject property, the act of assembling product, storing it and distributing it to various locations and vendors is the principle use under consideration. Staff believes that

wholesale greenhouses – a listed, permitted use within the M-1 district (and therefore also permitted in the M-2 district) would allow an auxiliary use such as retail sales of plants that were propagated on-site. Likewise, an auxiliary retail grocery operation established in relation to the principle uses of “wholesale houses and distributors” and “wholesale markets” appears to be appropriate. Therefore, staff finds that the uses for Creation Gardens, as described in the attached letter, are permitted in the M-2 district.

Please feel free to contact me directly should you have questions or need additional information related to this staff interpretation.

Sincerely,



Dawn T. Warrick, AICP
Assistant Director

cc: Chris French, Planning Coordinator
Theresa Senninger, Asst. County Attorney

BARDENWERPER, TALBOTT & ROBERTS PLLC

ATTORNEYS AT LAW

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Clifford H. Ashburner
Direct dial: 426-0388, ext. 139
Email: CHA@BARDLAW.NET

July 22, 2009

Mrs. Dawn Warrick
Deputy Director
Louisville Metro Planning and Design Services
444 South 5th Street, Suite 300
Louisville, Kentucky 40202

Re: Request for letter of interpretation

Dear Mrs. Warrick:

This firm represents Creation Gardens, a local business that provides fresh produce and other gourmet items to restaurants and other wholesale purchasers and operates a small retail shop where the public can also purchase food in bulk.

Creation Gardens would like to build a new warehouse/distribution facility with a retail component on property in the M-2 zoning district. The warehouse/distribution portion of the current operation is approximately 98% of the business.

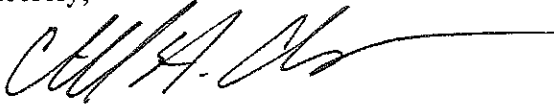
The new facility is proposed to be approximately 27,000 square feet total, of which 20,400 square feet will be devoted to warehouse/distribution. The remainder of the facility will be retail space and office. I have attached to this letter a proposed plan for the property in question. While this plan is preliminary, I believe it adequately represents the proposed use's breakdown in terms of square footage.

The M-2 zoning district allows "wholesale houses and distributors" and "wholesale markets." It also allows "Accessory uses or buildings: those uses allowed shall be subordinate, customary and incidental to the permitted primary uses, including *retail sale*, rental or repair of items manufactured or assembled on site." The M-2 zoning district also includes other "retail" uses, including flea markets, lumber yards and truck sales.

The M-2 zoning district also includes all uses permitted in the M-1 zoning district. The M-1 zoning district allows for a variety of uses that may be considered "retail" in nature in that they invite customers in for goods or services on a short-term basis. These uses include: Branch banks, convenience grocery stores, credit unions and restaurants.

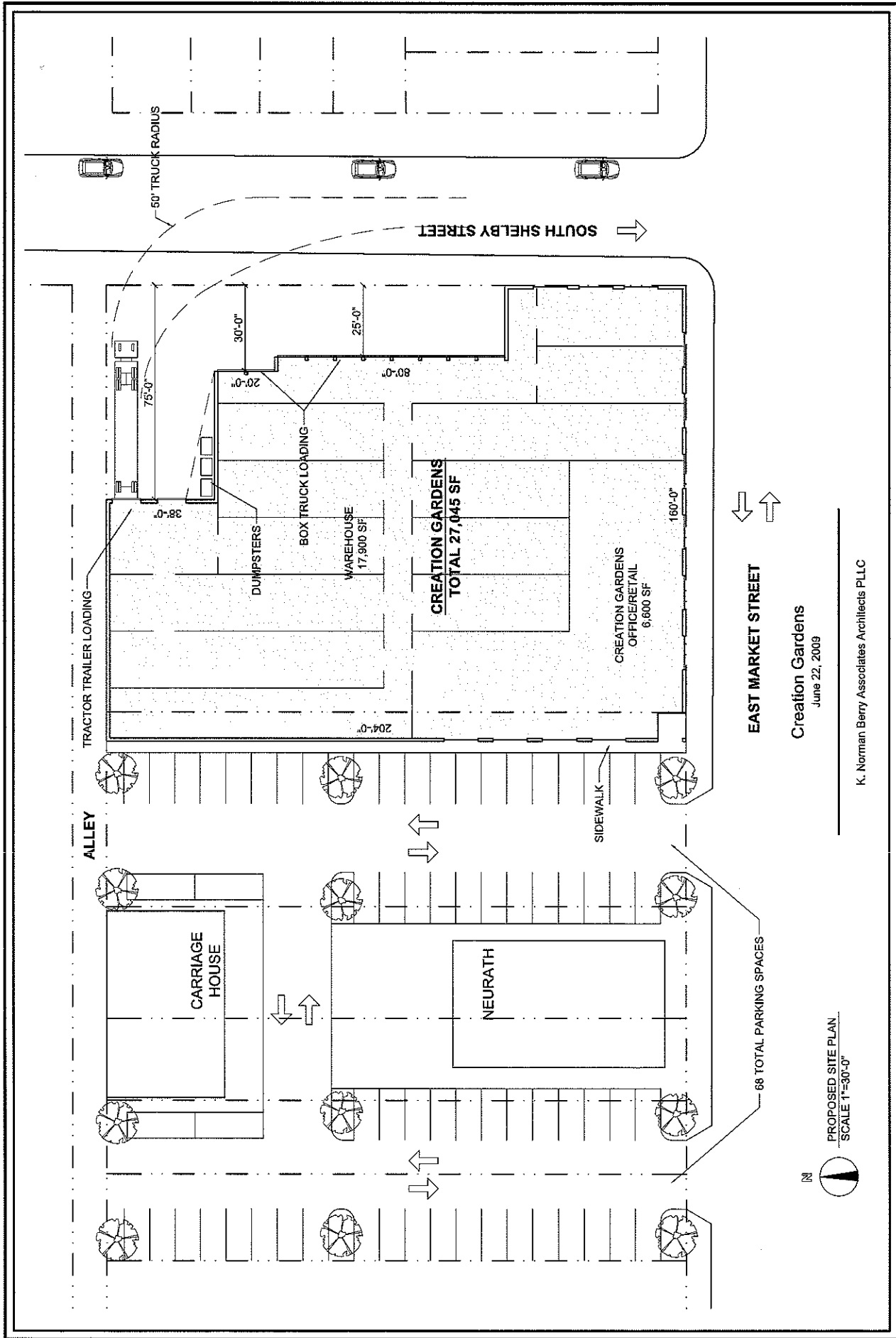
Given the variety of "retail" uses allowed in the M-2 zoning district, it seems logical that the accessory retail allowed in the M-2 zoning district should be interpreted to include a use like Creation Gardens that warehouses and distributes fresh produce and other gourmet items. It also seems logical that a use that comprises a very small percentage in terms of the percentage of business and less than 25% of the floor area of the proposed facility should be interpreted to be "accessory" to the principal permitted use.

Sincerely,

A handwritten signature in black ink, appearing to read "Clifford H. Ashburner", with a long horizontal flourish extending to the right.

Clifford H. Ashburner

CLIENT FOLDER/Creation Gardens\Interp ltr
BJF 07-22-09



EAST MARKET STREET

Creation Gardens
June 22, 2009

PROPOSED SITE PLAN
SCALE 1"=30'-0"

K. Norman Berry Associates Architects PLLC

2.5.1

M-1 Industrial District

The following provisions shall apply in the M-1 Industrial District unless otherwise provided in these regulations:

A. Permitted Uses:

Accessory uses or buildings: those uses allowed shall be subordinate, customary and incidental to the permitted primary uses, including retail sale, rental or repair of items manufactured or assembled on site. Any accessory structure must meet site and other requirements of this zone. Under no circumstances will uses appropriate only in the M-3 zone be allowed in this zone as accessory uses

Agricultural uses

Automobile parking areas, public and private

Auxiliary commercial uses: the following commercial uses shall be permitted only when subordinate and incidental to areas of existing industrial use:

Branch offices of banks, savings and loans and similar financial institutions

Convenience grocery stores

Credit unions

Restaurants as permitted in the C-1 District

Vehicle service stations or repair

Contractor's shop, including but not limited to building, electrical, HVAC, landscape, and plumbing contractors, provided all operations are confined within a building

Carting and light local deliveries

Churches, parish halls and temples

Dwellings, only in connection with bona fide agricultural operations, or as living quarters for bona fide caretakers and/or for watchmen and their families

Greenhouses, wholesale

Indoor paint ball ranges

Laboratories, research, experimental or testing, but not including combustion type motor-testing

Medical laboratories

Office buildings, as accessory uses only

Telecommunications hotels

Temporary buildings, the uses of which are incidental to construction operations being conducted on the same or adjoining lot or tract, and which shall be removed upon completion or abandonment of such construction, or upon the expiration of a period of two years from the time of erection of such temporary buildings, whichever is sooner

Warehouse, storage, including mini-warehouses

Wholesale houses and distributors, provided the operation is enclosed in a building

Uses, manufacture, processing, treatment, or storage of the following, providing all operations permitted, including storage, must be confined within a building (uses located totally within the caverns developed under a

Conditional Use Permit for Underground Space shall be considered to meet the requirement of confinement within a building)

Adhesives, excluding manufacturing of basic components
 Awnings, metal
 Beverage (non-alcoholic) manufacture
 Beverage, blending and bottling
 Blacksmith
 Bookbinding
 Broom and brush
 Button manufacture, except button blanks from shell
 Carbon paper and ink ribbons
 Carpenter, cabinet making, and pattern shops
 Chemicals (packing only)
 Clay products of handicraft nature including ceramics, pottery, tile (glazed), or similar products
 Cleaning and dyeing of garments, hats and rugs
 Clocks and watches
 Cloth products, including canvas, clothing, garments
 Computers and related equipment
 Cosmetics or toiletries
 Electronic measuring instrument and electrical control devices
 Electrical appliance and apparatus assembly (small), including fans, fixtures, hot-plates, irons, mixers, motion picture equipment (home), phonographs, radios, television sets, toasters, toys, or similar products, but not including electrical machinery
 Electrical supplies, including cable and wire assemblies, batteries (dry cell), insulation, lamps, switches, or similar supplies
 Flowers, artificial
 Food processing, including bakery products (wholesale), candy manufacture, coffee, tea, and spices (processing and packaging), creamery and dairy operations, ice cream manufacture, macaroni and noodle manufacture, oleomargarine (compounding and packaging only)
 Fur finishing and fur goods, not including tanning, dyeing
 Glass products from previously manufactured glass
 Hair, felt, or feather products
 Hat finishing and millinery from straw and other fibers
 Ink or ink ribbon, packaging
 Instruments, accessories and supplies used in medical diagnosis and treatment
 Jewelry
 Latex paints (water base)
 Leather products manufacture (no tanning operations), including shoes, machine belting, or similar products
 Luggage
 Machines, business, including accounting machines, calculators, card counting equipment, typewriters, or similar products
 Medical appliances, including braces, limbs, stretchers, supports, or similar appliances
 Motion picture production
 Musical instruments (including pianos and organs)
 Novelty products (from prepared materials)
 Optical equipment

- Paper products, including bags, boxes, bulk goods, containers (shipping), envelopes, interior packaging components, stationery, tubes, wallpaper, or similar products
- Pharmaceutical products (compounding only)
- Photographic equipment
- Plastic molding and shaping, excluding manufacturing of basic components
- Precision instruments
- Printing, publishing, engraving, including photo-engraving
- Scenery construction
- Sheet metal shops
- Signs and displays (non-metal)
- Soaps or detergents, including washing or cleaning powder or soda, packaging only
- Statuary and art goods, other than stone and concrete, including church art, figurines, mannequins, religious art, (excluding foundry operations)
- Stamp (hand), stencils, and brands
- Toys and games
- Trade and business schools
- Umbrellas and parasols
- Upholstery and furniture shops, wholesale
- Vehicles, children's, including baby carriages, bicycles, scooters, wagons, or similar vehicles
- Window shades, Venetian blinds, awnings, tarpaulins, and canvas specialties
- Wood products, including furniture, baskets, boxes, crates, or similar products, and copperage works (except copperage stockmill)

Those uses which are more similar in type and intensity to the above list of uses than to uses listed elsewhere in these regulations.

B. Conditional Uses:

Certain uses may be permitted in this district upon the granting of a Conditional Use Permit by the Board of Zoning Adjustment. Refer to Chapter 4 Part 2 for a listing of uses and requirements that apply to specific uses.

C. Property Development Regulations:

Refer to the applicable Form District regulations in Chapter 5 for lot size, setback, building heights and other restrictions.

D. Maximum Density and FAR

1. Maximum Floor Area Ratio:.....2.0
2. Maximum Density:
.....None

2.5.2 M-2 Industrial District

The following provisions shall apply in the M-2 Industrial District unless otherwise provided in these regulations.

A. Permitted Uses:

Accessory uses or buildings: those uses allowed shall be subordinate, customary and incidental to the permitted primary uses, including retail sale, rental or repair of items manufactured or assembled on site. Any accessory structure must meet site and other requirements of this zone. Under no circumstances will uses appropriate only in the M-3 zone be allowed in this zone as accessory uses.

All uses permitted in the M-1 District

Building materials (cement, lime, sand, gravel, lumber, and the like), storage and sales
 Bus garage and repair shop
 Exposition building or center
 Fairgrounds
 Flea market
 Lumber yards
 Railroad freight terminals and yards
 River terminals
 Storage yard or contractor's shop, including but not limited to building, electrical, HVAC, landscape, and plumbing contractors; outdoor storage of material and equipment permitted
 Training schools (industrial and vocational) including combustion engine schools
 Truck or transfer terminal, freight and motor freight and motor freight stations
 Truck (greater than two tons) and other heavy motor driven vehicles: sales, rental, repair and storage
 Warehouses, produce and storage
 Waterfront shipping
 Wholesale houses and distributors
 Wholesale markets (goods not contained in totally enclosed buildings)

Uses, manufacture, processing, treatment, or storage of the following:

Air conditioning, commercial
 Aircraft and aircraft parts
 Aluminum extrusion, rolling, fabrication, and forming
 Animal pound
 Apparel or other textile products from textiles or other materials, including hat bodies of fur, wool, felt, or similar products
 Assembly and repair of automobiles, bicycles, carriages, engines (new and rebuilt), motorcycles, trailers, trucks, wagons, including parts
 Athletic or sports equipment, including balls, baskets, bats, cues, racquets, rods, or similar products
 Baskets and hampers (wood, reed, rattan, and the like)
 Battery, storage (wet cell)
 Bedding (mattress, pillow, quilt), including rebuilding or renovating
 Boat manufacturing and repair
 Box and crate

Carpet, rug, mat
 Clay, stone, glass products
 Coal and coke, storage and sales
 Concrete products (except central mixing and proportioning plant)
 Culverts
 Distilleries, breweries, and non-industrial alcoholic spirits
 Firearms
 Food processing, including chewing gum, chocolate, cocoa and cocoa products; condensed and evaporated milk, processing and canning; flour, feed and grain (packaging, blending, and storage only); food products except slaughtering of meat or preparation of fish for packing; fruit and vegetable processing (including canning, preserving, drying, and freezing); gelatin products; glucose and dextrine; malt products; meat products, packing and processing (no slaughtering); yeast
 Foundry products (electrical only)
 Furniture
 Grain blending and packaging, but not milling
 Hardware, products or tools, including bolts, brads, cutlery, door knobs, drills, hinges, household items, locks, metal casting (nonferrous), nails, needles and pins, nuts, plumbing appliances, rivets, screws, spikes, staples, tools (hand), or similar products
 Heating, ventilating, cooking, and refrigerating supplies and appliances
 Hosiery mill
 Household appliances, electrical and gas, including stoves, refrigerators, washing machines, clothes dryers, and similar products
 Ice, dry or natural
 Implements, agricultural or farm
 Ink manufacture (mixing only)
 Insecticides, fungicides, disinfectants, and related industrial and household chemical compounds (blending only)
 Iron or steel (ornamental), miscellaneous, fabrication or assembly, including steel cabinets, doors, fencing, metal furniture, or similar products; cleaning, grinding, heat treatment, metal finishing, plating, polishing, rust proofing, sharpening, or similar processes
 Machine, tool, die, and gauge shops
 Machine, tools, including metal lathes, metal presses, metal-stamping machines, wood-working machines, or the like
 Millwork and planing
 Motion picture equipment, commercial
 Paint and coating, except manufacturing gun cotton nitro-cellulose lacquers and reactive resin coating
 Pencils
 Perfumes or perfumed soaps, commercial
 Plating, electrolytic process
 Plumbing supplies
 Poultry or rabbit, packing or slaughtering (wholesale)
 Pottery and porcelain products
 Pulp goods, pressed or molded (including paper-mache products)
 Rubber and synthetic-treated fabric products (excluding all rubber or synthetic processing) such as washers, gloves, footwear, bathing caps, atomizers, or similar products
 Safes and vaults

Sheet metal products from metal stamping or extrusion, including containers, costume jewelry, pins and needles, razor blades, bottle caps, buttons, kitchen utensils, or similar products
 Shipping containers (corrugated board, fiber or wire-bound)
 Silverware, plate or sterling
 Textiles and fibers into fabric goods; spinning, weaving, knitting, manufacturing, dyeing, printing and finishing of goods, yarns, knit goods, threads, and cordage
 Tire re-treading and vulcanizing shop
 Tobacco (including curing) or tobacco products

Those uses which are more similar in type and intensity to the above list of uses than to uses listed elsewhere in these regulations.

B. Conditional Uses:

Certain uses may be permitted in this district upon the granting of a Conditional Use Permit by the Board of Zoning Adjustment. Refer to Chapter 4 Part 2 for a listing of uses and requirements that apply to specific uses.

C. Property Development Regulations

Refer to the applicable Form District regulations in Chapter 5 for lot size, setback, building height and other restrictions.

D. Maximum Density and FAR

1. Maximum Floor Area Ratio:.....3.0
2. Maximum Density:None

2.5.3 M-3 Industrial District

The following provisions shall apply in the M-3 Industrial District unless otherwise provided in these regulations.

A. Permitted Uses:

Accessory uses or buildings: those uses allowed shall be subordinate, customary and incidental to the permitted primary uses, including retail sale, rental or repair of items manufactured or assembled on site. Any accessory structure must meet site and other requirements of this zone.

- All uses permitted in the M-2 Industrial District
- Adult entertainment, subject to the requirements of Chapter 4, Part 4
- Forge plants, drop hammer or pneumatic
- Foundries, ferrous or non-ferrous, brass, bronze
- Race tracks for motor-powered vehicles
- Railroad yard, roundhouse, repair and overhaul shops, railroad equipment including locomotive and railroad car building and repair
- Sports Arenas
- Storage of coal and gas, yards and pockets



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 Louisville Metro Government
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Creation Gardens



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