

# Board of Zoning Adjustment Staff Report November 7, 2022



<b>Case No:</b>	22-CUP-0215
<b>Project Name:</b>	Hauck's Corner
<b>Location:</b>	1000 -1008 Goss Avenue
<b>Owner(s):</b>	FAP properties LLC
<b>Applicant:</b>	Angelica Pizzonia
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	15 – Kevin Triplett
<b>Case Manager:</b>	Joel Dock, AICP, Planning Coordinator

## **REQUEST(S)**

- **Conditional Use Permit** for outdoor alcohol sales and consumption and indoor live entertainment for a restaurant in the C-1, Commercial zoning district (LDC 4.2.41) with relief from items 'D' and 'F'

## **CASE SUMMARY**

Outdoor alcohol sales and consumption is proposed across an improved open area that spans the rear of the properties from the restaurant's (Hauck's Corner) location at 1000 Goss Avenue to 1008 Goss Avenue. An outdoor dining area is designated for the restaurant at its rear along George Hauck Way/Hoertz Avenue. The remainder of the space will be open for gathering and dining with alcohol consumption. It is a large patio area with green space, pergolas, tables, chairs, benches, swings, and a permanent food trailer. A 10' tall wood wall provides a border along the property line shared with 1010 Goss Avenue.

Relief is needed from items 'D' and 'F' of the conditional use permit standards since the property at 1315 Hoertz Avenue is zoned or used residentially, within 50' of the area being used for outdoor alcohol sales and consumption, and a 6' screen wall is not present. Instead, an ornamental fence is present. The space is roughly 40' from the nearest residential structure and on the opposite side of the rear alley. The standards also require that outdoor dining areas conclude operations at 1 a.m. The applicant has requested to operate until 2 a.m.

The applicant has also requested permission to provide indoor live entertainment at the restaurant.

## **STAFF FINDING**

Staff noted several areas of concern in the Technical Review, including hours of operation, site lighting, and the use itself. The application does not appear to meet the standards of the conditional use permit or the Land Development Code.

## **TECHNICAL REVIEW**

A conditional use permit approved under Land Development Code (LDC), Section 4.2.41 requires that the outdoor alcohol sales and consumption be an extension of a restaurant. A restaurant is defined as follows:

- **Restaurant** - Commercial establishments, the main business of which is serving food, which may include the sale of alcoholic beverages. Provided, however, that a place wherein both food and alcoholic beverages are sold for consumption on premises and within which the total receipts from the sale of alcoholic beverages exceed the total receipts from the sale of food shall be a tavern.

A tavern is defined below:

- **Tavern\*** - A commercial establishment wherein alcoholic beverages are sold for consumption on the premises; a bar, a saloon; provided, however, that a place wherein both food and alcoholic beverages are sold for consumption on premises and within which the total receipts from the sale of food exceed the total receipts from the sale of alcoholic beverages shall be a restaurant. *\*not permitted in C-1*

Staff is concerned that the proposed outdoor alcohol sales and consumption associated with the restaurant at 1000 Goss Avenue may not accurately reflect the ongoing use of the property. The intensity of uses permitted within the district and intended by the CUP appear to be exceeded. Site inspection revealed the placement of games/entertainment in the outdoor space, including pool and ping pong tables and cornhole. The placement of games outdoors exceeds the intensity of what is permitted in C-1 and what is allowable under the CUP for outdoor alcohol sales and consumption associated with a restaurant. No outdoor entertainment is permitted in C-1.

The hours of operation proposed would allow for the outdoor space to be open until 2 a.m. 7 days a week. Staff recommends that the hours of operation be reduced Sunday through Thursday to 12 a.m. or earlier depending on when the kitchen closes for the evening as this application is associated with a restaurant.

#### Lighting Compliance (LDC 4.1.3):

Land Development Code, Section 4.1.3 requires that all lighting be aimed, directed, or focused such as to not cause direct light from the luminaire to be directed toward residential uses or protected open spaces on adjacent or nearby parcels, or to create glare perceptible to persons operating motor vehicles on public streets and right-of-way. It also requires that the light source for architectural lighting shall be completely shielded from view from all adjacent properties and streets. Lighting for canopies or pavilions is also required to be fully shielded. Upon inspection and review of site photos, lighting is mounted on the trim and around the roof lines of exterior structures visible from adjacent properties and not shielded from view. Other architectural elements and features are present which produce lighting that may produce glare upon public streets and is not fully shielded.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMITS**

#### 1. Is the proposal consistent with applicable policies of the Comprehensive Plan?

STAFF: The proposal is capable of providing consistency with applicable policies of Plan 2040. Due to outstanding concerns noted in the technical review, this project does not currently conform to Plan 2040.

2. Is the proposal compatible with surrounding land uses and the general character of the area including factors such as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting and appearance?

STAFF: The proposal is capable of being compatible with the general character of the area. The subject site is located along an arterial roadway containing a mix of uses in a walkable, well-connected neighborhood. The larger area contains corner commercial uses, such as taverns and restaurants, with outdoor spaces where food and alcohol are served. A 10' tall wood wall closes off the space from the abutting property at 1010 Goss Ave. All lighting must comply with LDC 4.1.3 - All luminaires shall be aimed, directed, or focused such as to not cause direct light from the luminaire to be directed toward residential uses or protected open spaces on adjacent or nearby parcels, or to create glare perceptible to persons operating motor vehicles on public streets and right-of-way. The built improvements on the site, specifically lighting does not currently provided compliance. Further, the use may exceed what is permitted within the district and contemplated by the CUP.

3. Are necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use?

STAFF: Necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use are available or proposed. Preliminary approval has been received from Louisville MSD and Transportation Planning.

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

Outdoor alcohol sales and consumption and/or indoor live entertainment for a restaurant may be permitted in the C-1 zoning district upon the granting of conditional use permit and compliance with the listed requirements

A. All outdoor areas for the sale and consumption of alcohol must have designated boundaries.

B. Outdoor dining areas within the public right-of-way must receive approval from the agency responsible for transportation engineering and shall be designed in accordance with agency standards.

C. Outdoor dining areas adjacent to the public right-of-way shall contain a physical barrier that is at least three feet in height. The barrier should be designed to permit existing legal access from building to the adjacent public right-of-way.

D. Outdoor dining areas that include the sale and consumption of alcohol within 50 feet of a residentially zoned or used property shall provide a six foot continuous screen as part of the designated boundary for the areas of the outdoor area within 50 feet of residentially used or zoned property. The continuous screen shall be in conformance with the Chapter 10, Part 4 (Implementation Standards).

E. This conditional use permit shall be limited to restaurant uses in the C-1 that hold the following types of ABC licenses:

1. Restaurant liquor and wine license by the drink for 100 plus seats

2. Restaurant wine license by the drink for restaurants with seating for 100 and receives at least 70 percent gross receipts from food sales

F. The use of outdoor dining areas for the sale and consumption of alcohol shall cease by 1 A.M.

G. The entertainment activity shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99).

H. The Board may require additional and more restrictive requirements than those listed above based on the conditions of the specific location and the characteristics of the specific restaurant.

STAFF: The outdoor space has clearly defined boundaries marked by an ornamental fence and a 10' tall wood wall. The ornamental fence also provides a physical barrier from the right-of-way where a public sidewalk is present. There are no outdoor spaces within the public right-of-way that are part of the current request. The appropriate ABC license must be issued, and the use is limited to a restaurant only that serves alcohol outdoors. The ABC license will need to be revised to cover all the areas shown on the development plan.

Relief from item 'D' will allow for the existing ornamental fence to remain, which also identifies the boundaries for the space. The residence at 1315 Hoertz Avenue is roughly 40' from this boundary. The space in between contains an alley, bike parking, back-out parking, and utility space. Relief from item 'F' will allow an extra hour and extend the operation of the outdoor space until 2 a.m., Monday through Sunday. Operating hours should be closely tied to the preparation of food. 12 a.m. would be a more appropriate weekday closing time.

### **REQUIRED ACTIONS**

- **APPROVE** or **DENY** the **Conditional Use Permit** for outdoor alcohol sales and consumption and indoor live entertainment for a restaurant in the C-1, Commercial zoning district (LDC 4.2.41) with relief from items 'D' and 'F'

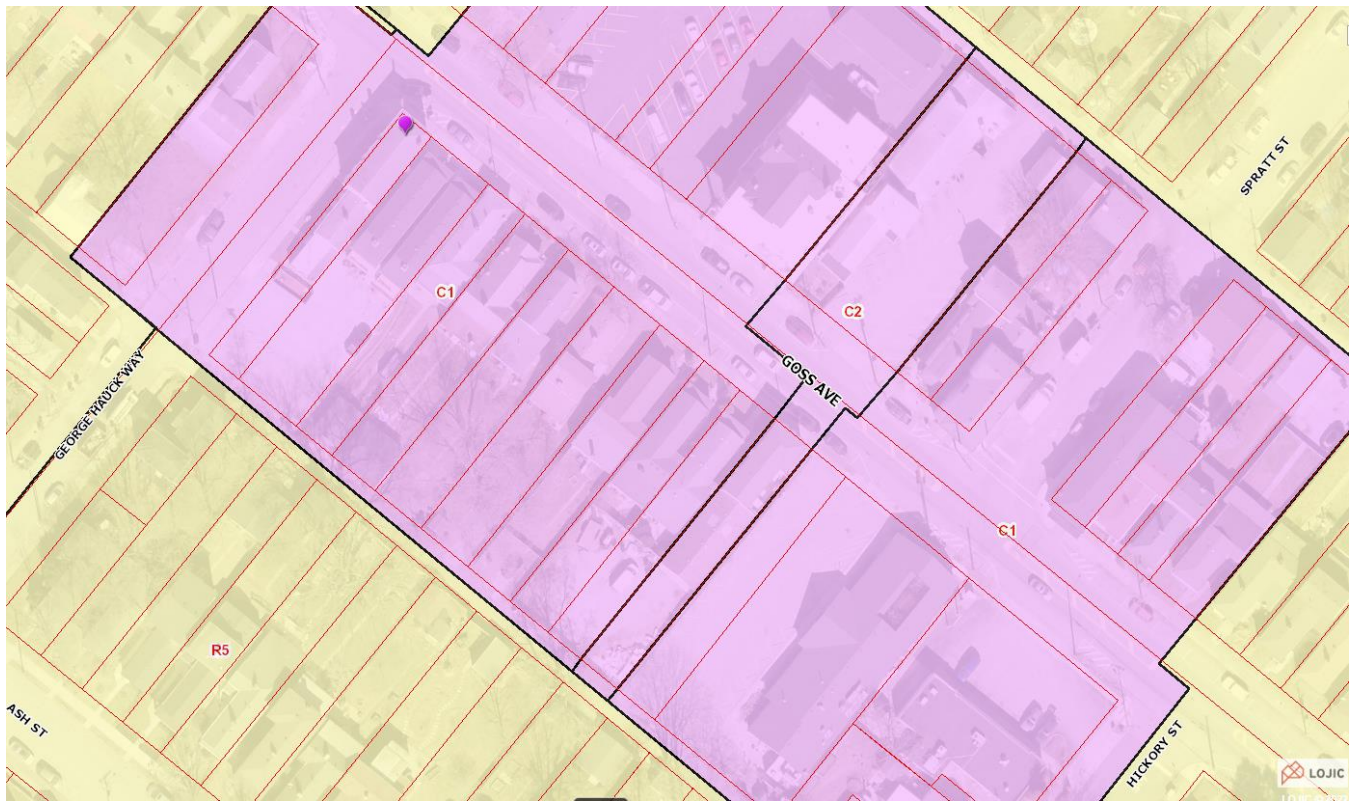
### **NOTIFICATION**

Date	Purpose of Notice	Recipients
10/19/22	Hearing before BOZA	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and residents Registered Neighborhood Groups in Council District 15 & 6

### **ATTACHMENTS**

1. Zoning Map
2. Aerial Map
3. Proposed Conditions of Approval

## 1. Zoning Map





## 2. Aerial Map



**4. Conditions of Approval**

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for outdoor alcohol sales and consumption until further review and approval by the Board.
3. All improvements proposed on the development plan for conditional use must be completed within 6 months of final approval by the Board of Zoning Adjustment, including but not limited to refuse collection and enclosures, bike parking, striped parking, no loading zones, and all required landscaping or tree canopy, unless otherwise approved by the Board.
4. Outdoor alcohol sales and consumption shall be restricted to the restaurant and food truck shown on the approved plan at 1000 Goss Avenue and 1004 Goss Avenue unless prior review and approval is received by the Board.