

Board of Zoning Adjustment

Staff Report

April 1, 2019



Case No.	19CUP1021
Project Name	1031 Goss Avenue
Location	1031 Goss Avenue
Owner	BCCN Real Estate Holdings LLC
Applicant	Goss Avenue Restaurant LLC
Representative	Bardenwerper Talbott & Roberts PLLC
Jurisdiction	Louisville Metro
Council District	10 – Pat Mulvihill
Case Manager	Beth Jones, AICP, Planner II

REQUESTS

Modification of a Conditional Use Permit for outdoor alcohol sales and consumption for a restaurant in a C-1 zoning district (LDC 4.2.41)

CASE SUMMARY/BACKGROUND

The applicant has been granted a Conditional Use Permit (18CUP1089) for outdoor alcohol sales and consumption for a restaurant in a C-1 zoning district (LDC 4.2.41). This request included a waiver a several variances. The associated Category 2B development plan was granted Staff approval.

The applicant is proposing changes to the previously approved development plan to accommodate an existing utility pole along the Goss Avenue property frontage. The proposed restaurant is also to be enlarged from 5,000 sq ft to 5,700 sq ft.

- The parking previously shown along the north side of the proposed restaurant on Tract 2 is to be placed along the south side of the existing structure on Tract 1. As the parking spaces will span the property line between Tracts 1 and 2, crossover access and shared parking agreements will be required.
- The expansion of the proposed restaurant will change the parking configuration immediately to the rear of the structure.

The balance of the development plan is to remain as previously approved.

STAFF FINDING

The proposal meets the requirements of the CUP.

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards for granting a Conditional Use Permit as established by the Land Development Code.

TECHNICAL REVIEW

The modified development plan has been reviewed by the appropriate agencies, including Transportation Planning and MSD, and has received preliminary approval.

INTERESTED PARTY COMMENTS

No comments have been received.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT

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

STAFF: The proposed modification is consistent with the Comprehensive Plan.

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

STAFF: The proposed modification is compatible with surrounding uses and with the general character of the area.

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: The proposed development is consistent with expectations for the property and does not substantially increase demands on public infrastructure and facilities. The proposed modification has received preliminary approval from MSD and Transportation Planning.

4. Does the proposal comply with the specific standards required to obtain the requested Conditional Use Permit?

4.2.41 Outdoor Alcohol Sales and Consumption/Indoor Entertainment Activity for a Restaurant in the C-1 Zoning District

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.

STAFF: The site plan shows defined boundaries for both outdoor dining areas.

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.

STAFF: The development plan has received preliminary approval from Transportation Planning.

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.

STAFF: The applicant has been informed of this requirement.

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 LDC 10.4 Implementation Standards.

STAFF: A C-1 property in residential use adjoins the site on its northwest boundary. The proposed modification includes a 6 ft high wood privacy fence from the front property line to the front of the residential structure on the adjoining property. In addition, the proposed modification meets side yard and the landscape buffer area requirements.

E. This conditional use permit shall be limited to restaurant uses in 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

STAFF: The applicant has been informed of this requirement.

F. The use of outdoor dining areas for the sale and consumption of alcohol shall cease by 1:00 A.M.

STAFF: The applicant has been informed of this requirement.

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

STAFF: The applicant has been informed of this requirement.

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

STAFF: The Applicant has been informed of this condition.

NOTIFICATION

Date	Purpose of Notice	Recipients
--	Neighborhood Meeting	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 9
9/14/2018	Notice of BOZA Hearing	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 9 Sign Posting

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Approved DDDP
4. Proposed RDDDP
5. Cornerstone 2020 Checklist
6. Conditions of Approval

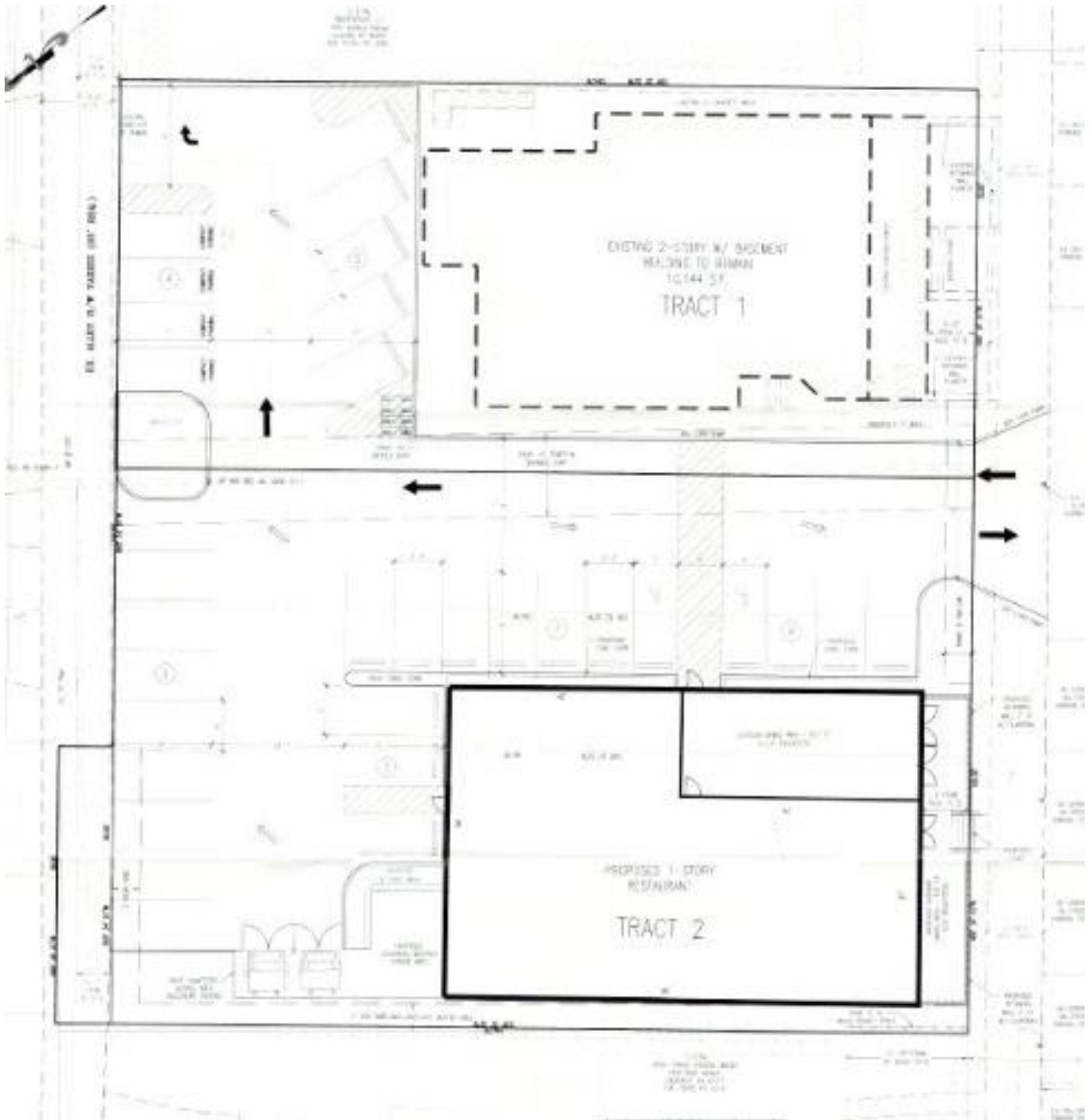
1. Zoning Map



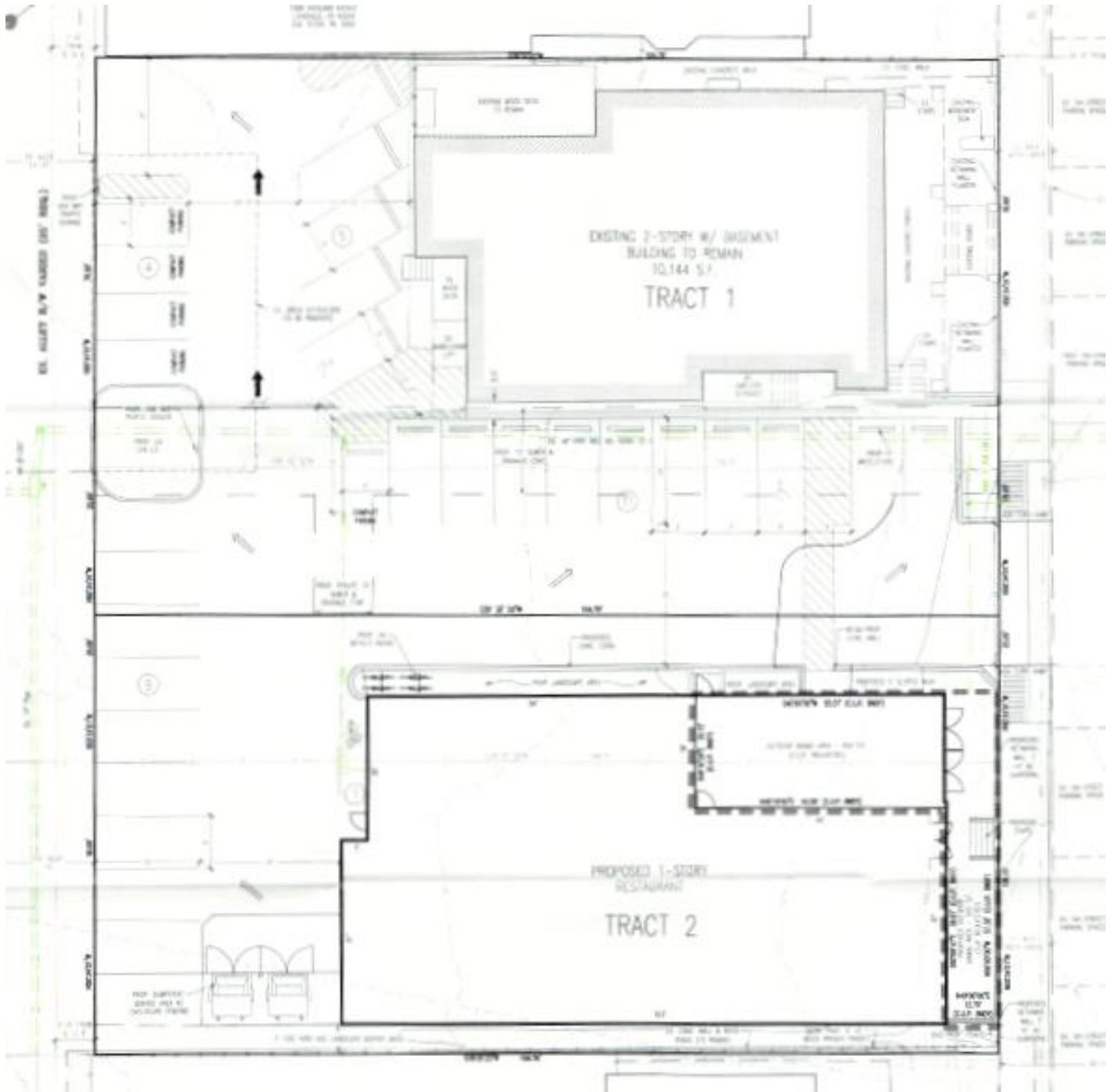
2. Aerial Photograph



3. Approved DDDP



4. Proposed RDDDP



5. Cornerstone 2020 Checklist

- + Exceeds Guideline
- ✓ Meets Guideline
- Does Not Meet Guideline
- +/- More Information Needed
- NA Not Applicable

Traditional Neighborhood: Non-Residential

#	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
Community Form/Land Use Guideline 1: Community Form			
1	B.2: The proposal preserves the existing grid pattern of streets, sidewalks and alleys.	✓	The proposal preserves the existing grid pattern of streets, sidewalks and alleys.
2	B.2: The proposal introduces an appropriately-located neighborhood center including a mix of neighborhood-serving uses such as offices, shops and restaurants.	NA	The proposal is not a center.
3	B.2: The proposal preserves public open spaces, and if the proposal is a higher density use, is located in close proximity to such open space, a center or other public areas.	NA	These conditions do not apply to the site.
4	B.2: The proposal preserves and renovates existing buildings if the building design of these structures is consistent with the predominant neighborhood building design.	✓	The proposal preserves an existing structure and builds a new one. Elevations of the new structure show a design consistent with development in the vicinity.
Community Form/Land Use Guideline 2: Centers			
5	A.1/7: The proposal, which will create a new center, includes new construction or the reuse of existing buildings to provide commercial, office and/or residential use.	NA	The proposal does not create a new center.
6	A.3: The proposed retail commercial development is located in an area that has a sufficient population to support it.	NA	The proposal does not include retail development.
7	A.4: The proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment.	✓	The proposal is compact and efficient.
8	A.5: The proposed center includes a mix of compatible land uses that will reduce trips, support the use of alternative forms of transportation and encourage vitality and sense of place.	NA	The proposal does not create a new center.
9	A.6: The proposal incorporates residential and office uses above retail and/or includes other mixed-use, multi-story retail buildings.	NA	The proposal does not create a new center.
10	A.12: If the proposal is a large development in a center, it is designed to be compact and multi-purpose, and is oriented around a central feature such as a public square or plaza or landscape element.	NA	The proposal does not create a new center.

#	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
11	A.13/15: The proposal shares entrance and parking facilities with adjacent uses to reduce curb cuts and surface parking, and locates parking to balance safety, traffic, transit, pedestrian, environmental and aesthetic concerns.	✓	The proposal shares parking and access with an existing commercial use on site.
12	A.14: The proposal is designed to share utility hookups and service entrances with adjacent developments, and utility lines are placed underground in common easements.	NA	These conditions do not apply to this proposal.
13	A.16: The proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities.	✓	The site has multi-modal access.
Community Form/Land Use Guideline 3: Compatibility			
14	A.2: The proposed building materials increase the new development's compatibility.	✓	Elevations of the new structure show a design consistent with development in the vicinity.
15	A.4/5/6/7: The proposal does not constitute a non-residential expansion into an existing residential area, or demonstrates that despite such an expansion, impacts on existing residences (including traffic, parking, signs, lighting, noise, odor and stormwater) are appropriately mitigated.	✓	The proposal is not a non-residential expansion into an existing residential area.
16	A.5: The proposal mitigates any potential odor or emissions associated with the development.	✓	The proposed restaurant will be required to meet all standards regarding odor and emissions.
17	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	✓	The proposal has received preliminary approval from Transportation Planning.
18	A.8: The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky.	✓	The proposed development will be required to meet all standards lighting.
19	A.11: If the proposal is a higher density or intensity use, it is located along a transit corridor AND in or near an activity center.	✓	The proposal is accessible to transit and along a predominantly commercial corridor.
20	A.21: The proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements.	--	The applicant has requested a variance to encroach on the required rear setback and a waiver of VUA requirements along the rear property line.
21	A.22: The proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers that are of varying designs such as landscaping, vegetative berms and/or walls, and that address those aspects of the development that have the potential to adversely impact existing area developments.	--	The applicant has requested a variance to encroach on the required rear setback and a waiver of VUA requirements along the rear property line.
22	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.	✓	The proposed structure appears to meet these form district standards.
23	A.24: Parking, loading and delivery areas located adjacent to residential areas are designed to minimize adverse impacts of lighting, noise and other potential impacts, and that these areas are located to avoid negatively impacting motorists, residents and pedestrians.	--	The applicant has requested a variance to encroach on the required rear setback and a waiver of VUA requirements along the rear property line.

#	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
24	A.24: The proposal includes screening and buffering of parking and circulation areas adjacent to the street and uses design features or landscaping to fill gaps created by surface parking lots. Parking areas and garage doors are oriented to the side or back of buildings rather than to the street.	--	The applicant has requested a variance to encroach on the required front setback.
25	A.25: Parking garages are integrated into their surroundings and provide an active, inviting street-level appearance.	NA	Proposal does not include a parking garage.
26	A.28: Signs are compatible with the form district pattern and contribute to the visual quality of their surroundings.	✓	Signs will conform to LDC standards.
Community Form/Land Use Guideline 4: Open Space			
27	A.2/3/7: The proposal provides open space that helps meet the needs of the community as a component of the development and provides for the continued maintenance of that open space.	NA	There are no open space standards associated with the proposal.
28	A.4: Open space design is consistent with the pattern of development in the Traditional Neighborhood form district.	NA	There are no open space standards associated with the proposal.
29	A.5: The proposal integrates natural features into the pattern of development.	NA	These features are not present on the site.
Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources			
30	A.1: The proposal respects the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems.	NA	These features are not present on the site.
31	A.2/4: The proposal includes the preservation, use or adaptive reuse of buildings, sites, districts and landscapes that are recognized as having historical or architectural value, and, if located within the impact area of these resources, is compatible in height, bulk, scale, architecture and placement.	NA	These features are not present on the site.
32	A.6: Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion.	NA	These features are not present on the site.
Marketplace Guideline 6: Economic Growth and Sustainability			
33	A.2: Ensure adequate access between employment centers and population centers.	NA	This requirement does not apply to this site.
34	A.3: Encourage redevelopment, reinvestment and rehabilitation in downtown, older and declining areas that is consistent with the form district pattern.	✓	The proposed structure is consistent with form district patterns.
35	A.4: Encourage industries to locate in industrial subdivisions or adjacent to existing industry to take advantage of special infrastructure needs.	NA	No industrial development is associated with this proposal.
36	A.6: Locate retail commercial development in activity centers. Locate uses generating large amounts of traffic on a major arterial, at the intersection of two minor arterials or at locations with good access to a major arterial and where the proposed use will not adversely affect adjacent areas.	NA	No retail development is associated with this proposal.

#	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
37	A.8: Require industrial development with more than 100 employees to locate on or near an arterial street, preferably in close proximity to an expressway interchange. Require industrial development with less than 100 employees to locate on or near an arterial street.	NA	No industrial development is associated with this proposal.
Mobility/Transportation Guideline 7: Circulation			
39	A.3/4: The proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation.	✓	The proposal is fully accessible and multi-modal.
40	A.6: The proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands. The proposal includes at least one continuous roadway through the development, adequate street stubs, and relies on cul-de-sacs only as short side streets or where natural features limit development of "through" roads.	✓	The proposal is fully accessible and multi-modal.
41	A.9: The proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development.	✓	The proposal appears to provide these facilities.
42	A.10: The proposal includes adequate parking spaces to support the use.	✓	The proposal has received preliminary approval from Transportation Planning.
43	A.13/16: The proposal provides for joint and cross access through the development and to connect to adjacent development sites.	✓	The proposal appears to provide these facilities.
Mobility/Transportation Guideline 8: Transportation Facility Design			
44	A.8: Adequate stub streets are provided for future roadway connections that support and contribute to appropriate development of adjacent land.	NA	These conditions do not apply to the proposal.
45	A.9: Avoid access to development through areas of significantly lower intensity or density if such access would create a significant nuisance.	NA	These conditions do not apply to the proposal.
46	A.11: The development provides for an appropriate functional hierarchy of streets and appropriate linkages between activity areas in and adjacent to the development site.	NA	These conditions do not apply to the proposal.
Mobility/Transportation Guideline 9: Bicycle, Pedestrian and Transit			
47	A.1/2: The proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops, and is appropriately located for its density and intensity.	✓	The proposal is fully accessible and multi-modal.
Livability/Environment Guideline 10: Flooding and Stormwater			
48	The proposal's drainage plans have been approved by MSD, and the proposal mitigates negative impacts to the floodplain and minimizes impervious area. Solid blue line streams are protected through a vegetative buffer, and drainage designs are capable of accommodating upstream runoff assuming a fully-developed watershed. If streambank restoration or preservation is necessary, the proposal uses best management practices.	✓	The proposal has received preliminary approval from MSD.

Livability/Environment Guideline 12: Air Quality			
49	The proposal has been reviewed by APCD and found to not have a negative impact on air quality.	✓	The proposal has been reviewed by APCD.
Livability/Environment Guideline 13: Landscape Character			
50	A.3: The proposal includes additions and connections to a system of natural corridors that can provide habitat areas and allow for migration.	NA	These features are not present on the site.
Community Facilities Guideline 14: Infrastructure			
51	A.2: The proposal is located in an area served by existing utilities or planned for utilities.	✓	The proposal has been reviewed by all appropriate utility providers.
52	A.3: The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.	✓	The proposal has been reviewed by Louisville Water Co.
53	A.4: The proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams.	✓	The proposal has received preliminary approval from MSD.

6. Conditions of Approval

1. All development shall be in accordance with the approved district development plan, including all notes thereon, and with all applicable sections of the Land Development Code (LDC). No further development shall occur on the site without prior review of and approval by the Board of Zoning Adjustment (BOZA).
2. The Conditional Use Permit shall be exercised as proscribed by KRS 100.237 within two years of BOZA approval. If it is not so exercised, the site shall not be used for outdoor alcohol sales and consumption and/or indoor live entertainment for a restaurant in the C-1 zoning district without further review and approval by BOZA.
3. The applicant shall consolidate the subject parcels at 1031, 1035, 1037 and 1041 Goss Avenue prior to applying for a building permit.
4. Crossover access and shared parking agreements between Tracts 1 and 2 shall be executed prior to applying for a building permit.