

Board of Zoning Adjustment
Staff Report
January 22, 2018



Case No.	17CUP1098
Project Name	Restaurant Patio
Location	8607 Smyrna Parkway
Owner	Smyrna Road Plaza II LLC
Applicant	Smyrna Road Plaza II LLC
Jurisdiction	Louisville Metro
Council District	23 – James Peden
Case Manager	Beth Jones, AICP, Planner II

REQUEST

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

CASE SUMMARY/BACKGROUND

The applicant has converted a portion of an existing parking lot into a 928 sq ft patio for use as an outdoor dining area for an existing restaurant within a multi-tenant commercial building. Since the tenant will serve alcohol to customers within this patio area, a CUP is required.

The site is located on the north side of Manslick Road between Smyrna Parkway and Colonel Cummins Road. Although it has a Smyrna Parkway address, the nearest street access to the building is off of Manslick Road. It is zoned C-1 in a Neighborhood form district. Adjoining parcels to the north are zoned R-4 and in single-family residential use. Along with adjoining parcels to the west, the subject parcel is part of a four-tract commercial development zoned C-1. Parcels to the east and south are also zoned C-1 and in use as single-family residential. The nearest residential properties are approximately 175 ft to the north and 100 ft to the east.

The restaurant occupies 2,800 sq ft at the northern end of the 11,600 sq ft building on the subject 1.60 acre parcel.

STAFF FINDING

The proposal meets all CUP requirements and is compatible with surrounding land uses.

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

There are no outstanding technical review items to be addressed.

INTERESTED PARTY COMMENTS

A neighborhood meeting was held on November 28, 2017, which was attended by two neighbors. Documentation of the meeting is included in the Legistar file for this case. Staff has received no additional comments.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT

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

STAFF: The proposal is consistent with Comprehensive Plan policies regarding location within a center, shared entrances and parking, is appropriately buffered from adjoining less intense uses and will not require improvements to public infrastructure or utilities.

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 proposal is compatible with the site on which it is located and with adjoining uses.

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: No alterations or improvements to public facilities are required.

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 area where alcohol will be served is surrounded by a 4 ft high decorative iron fence.

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: Transportation Planning has provided preliminary approval of the proposal.

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 proposed patio is not adjacent to a 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 LDC 10.4 Implementation Standards.

STAFF: The proposed patio is more than 50 feet from the nearest residential property.

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., and has stated that no indoor entertainment is proposed.

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

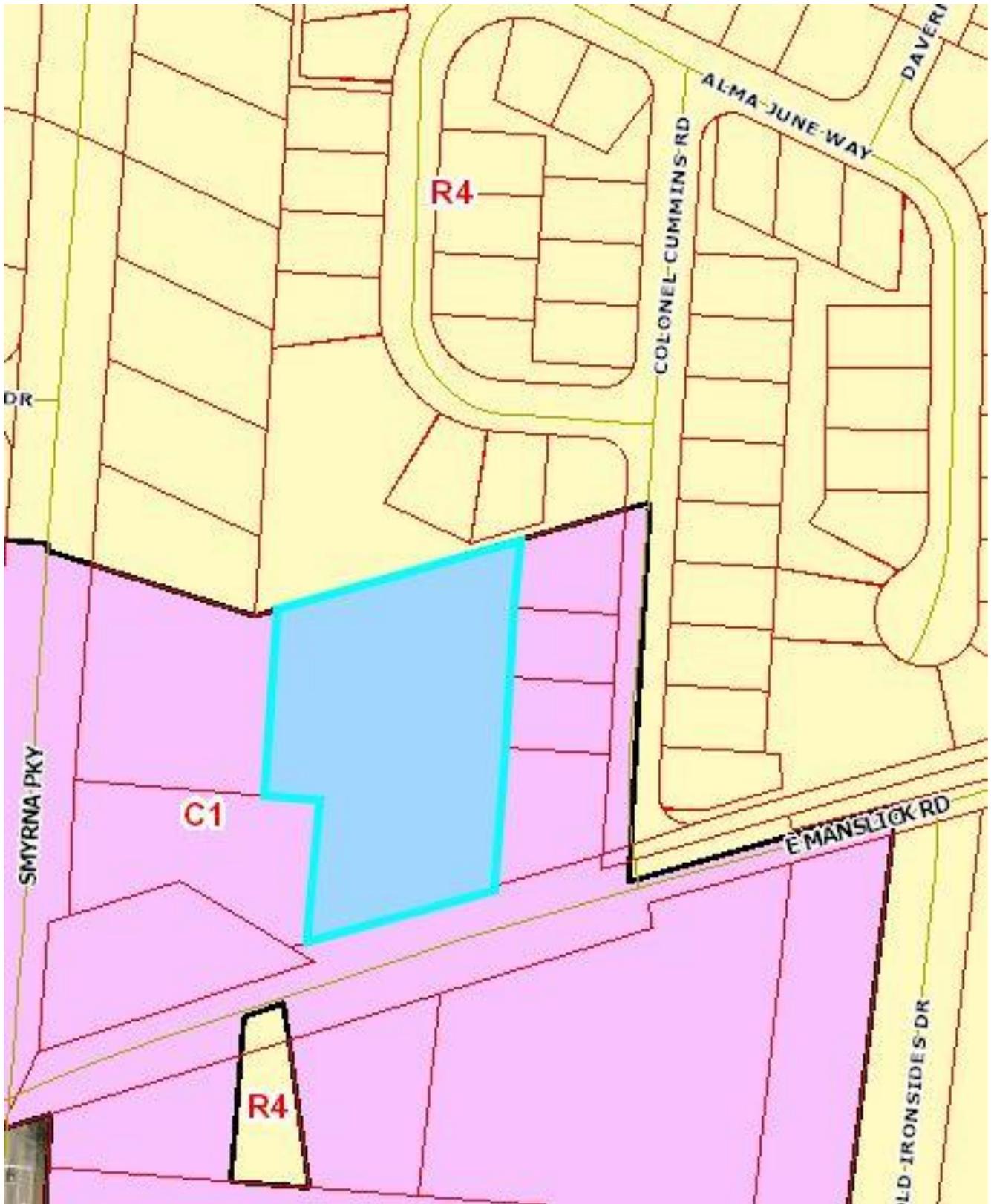
Date	Purpose of Notice	Recipients
11/13/2017	Notice of Intent to Apply	1st and 2nd tier adjoining property owners
11/28/2017	Neighborhood Meeting	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 23
1/8/2018	Notice of BOZA Hearing	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 23
	Notice of BOZA Hearing	Sign Posting

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

3. Cornerstone 2020 Checklist
4. Conditions of Approval

1. Zoning Map



2. Aerial Photograph



3. Cornerstone 2020 Checklist

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

NEIGHBORHOOD: NON-RESIDENTIAL

#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
Community Form/Land Use Guideline 1: Community Form			
1	B.3: The proposal is a neighborhood center with a mixture of uses such as offices, retail shops, restaurants and services at a scale that is appropriate for nearby neighborhoods.	✓	Proposal is located within an existing neighborhood center.
2	B.3: If the proposal is high intensity, it is located on a major or minor arterial or an area with limited impact on low to moderate intensity residential uses.	NA	
Community Form/Land Use Guideline 2: Centers			
3	A.1/7: The proposal, which will create a new center, is located in the Neighborhood Form District, and includes new construction or the reuse of existing buildings to provide commercial, office and/or residential use.	NA	Proposal will not create a new center.
4	A.3: The proposed retail commercial development is located in an area that has a sufficient population to support it.	✓	Proposal is located within an existing commercial development.
5	A.4: The proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment.	NA	
6	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	
7	A.6: The proposal incorporates residential and office uses above retail and/or includes other mixed-use, multi-story retail buildings.	NA	
8	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	
9	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.	NA	Site shares entrance and parking facilities with other commercial development on site.
10	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	

#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
11	A.16: The proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities.	NA	
Community Form/Land Use Guideline 3: Compatibility			
12	A.2: The proposed building materials increase the new development's compatibility.	NA	
13	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.	✓	
14	A.5: The proposal mitigates any potential odor or emissions associated with the development.	✓	The outdoor serving area has been in operation for several months; according to the applicant, no complaints have been received.
15	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	✓	The outdoor serving area has been in operation for several months; according to the applicant, no complaints have been received.
16	A.8: The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky.	✓	The outdoor serving area has been in operation for several months; according to the applicant, no complaints have been received.
17	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.		
18	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 parcel on which the proposed CUP use will occur is buffered from adjoining residential properties.
19	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 parcel on which the proposed CUP use will occur is buffered from adjoining residential properties.
20	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.	NA	
21	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.	NA	
22	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.	NA	

#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
23	A.25: Parking garages are integrated into their surroundings and provide an active, inviting street-level appearance.	NA	
24	A.28: Signs are compatible with the form district pattern and contribute to the visual quality of their surroundings.	NA	
Community Form/Land Use Guideline 4: Open Space			
25	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 requirements associated with this request.
26	A.4: Open space design is consistent with the pattern of development in the Neighborhood Form District.	NA	
27	A.5: The proposal integrates natural features into the pattern of development.	NA	
Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources			
28	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	The proposal does not affect any natural areas or scenic corridors.
29	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	The proposal does not affect any natural areas or scenic corridors.
30	A.6: Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion.	NA	The proposal does not affect any natural areas or scenic corridors.
Marketplace Guideline 6: Economic Growth and Sustainability			
31	A.3: Encourage redevelopment, reinvestment and rehabilitation in the downtown where it is consistent with the form district pattern.	NA	
32	A.4: Encourage industries to locate in industrial subdivisions or adjacent to existing industry to take advantage of special infrastructure needs.	NA	Proposal is not industrial in nature.
33	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.	✓	Proposal is located within an existing activity center.
34	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	Proposal is not industrial in nature.
Mobility/Transportation Guideline 7: Circulation			

#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
35	A.1/2: The proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means.	NA	Proposal will not require improvements to public utilities or other facilities.
36	A.3/4: The proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation.	✓	No changes to existing transportation systems or amenities are proposed.
37	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.	✓	No changes to existing transportation systems or amenities are proposed.
38	A.9: The proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development.	✓	No changes to existing transportation systems or amenities are proposed.
39	A.10: The proposal includes adequate parking spaces to support the use.	✓	No changes to existing transportation systems or amenities are proposed.
40	A.13/16: The proposal provides for joint and cross access through the development and to connect to adjacent development sites.	✓	No changes to existing transportation systems or amenities are proposed.
Mobility/Transportation Guideline 8: Transportation Facility Design			
41	A.8: Adequate stub streets are provided for future roadway connections that support and contribute to appropriate development of adjacent land.	NA	
42	A.9: Avoid access to development through areas of significantly lower intensity or density if such access would create a significant nuisance.	✓	No changes to existing transportation systems or amenities are proposed.
43	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	
Mobility/Transportation Guideline 9: Bicycle, Pedestrian and Transit			
44	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.	✓	No changes to existing transportation systems or amenities are proposed.
Livability/Environment Guideline 10: Flooding and Stormwater			
45	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.	✓	No changes to existing drainage are proposed and no significant increase in negative impacts is anticipated.
Livability/Environment Guideline 12: Air Quality			

#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
46	The proposal has been reviewed by APCD and found to not have a negative impact on air quality.	✓	No significant increase in negative impacts is anticipated.
Livability/Environment Guideline 13: Landscape Character			
47	A.3: The proposal includes additions and connections to a system of natural corridors that can provide habitat areas and allow for migration.	NA	The proposal does not affect any natural areas or scenic corridors.
Community Facilities Guideline 14: Infrastructure			
48	A.2: The proposal is located in an area served by existing utilities or planned for utilities.	✓	No changes to existing infrastructure are required.
49	A.3: The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.	✓	No changes to existing infrastructure are required.
50	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.	✓	No changes to existing infrastructure are required.

3. 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 for a restaurant in the C-1 zoning district without further review and approval by BOZA.