

Planning Commission Staff Report

November 4, 2021



Case No:	21-ZONE-0082
Project Name:	Joe's Older Than Dirt
Location:	8131 New La Grange Road
Owner(s):	Lyndon Leasing, LLC
Applicant:	Cres Bride
Representative(s):	Bardenwerper, Talbott, & Roberts, PLLC
Jurisdiction:	City of Lyndon
Council District:	18 – Marilyn Parker
Case Manager:	Joel P. Dock, AICP, Planning Coordinator

REQUEST(S)

- **Change-in-Zoning** from C-1 to C-2, commercial
- **Modified Conditional Use Permit Plan**
- **Revised Detailed District Development Plan**

CASE SUMMARY

The applicant proposes to expand the area of the existing C-2 commercial zoning district to accommodate additional outdoor dining with alcohol sales and consumption. The rezoning is being pursued instead of a conditional use permit. Both options allow for the proposed use. Pedestrian connectivity to building entrances will be added to connect with the public sidewalk and rear parking areas.

The current C-2 zoning district was created in 1994, docket 9-46-94, and included a conditional use permit for the off-street parking area located in the R-4 district to the rear of the restaurant. The property fronting the public roadway was zoned C-1 prior to 1994.

STAFF FINDING

The proposed zoning change conforms to the land use and development policies of Plan 2040. The proposal is within an existing activity center served by transit and nearby populations. The modified conditional use permit and detailed plan have also been adequately justified for approval based on staff's analysis contained in the standard of review.

STANDARD OF REVIEW FOR ZONING DISTRICT CHANGES

Criteria for granting the proposed form district change/rezoning: *KRS Chapter 100.213*

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Plan 2040; **OR**
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate; **OR**
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Plan 2040 which have substantially altered the basic character of the area.

STAFF ANALYSIS FOR CHANGE IN ZONING / FORM DISTRICT

Following is staff's analysis of the proposed rezoning against the Guidelines and Policies of Plan 2040.

The site is in the Town Center Form District

The Town Center is a traditional and preferred form, larger in scale than the neighborhood center, which forms a focal point of activity. The Town Center has an identifiable core and is often located at a historic crossroads or the intersection of a major thoroughfare(s) and a collector roadway with connections to surrounding neighborhoods through walkways, local streets and residential collector streets. The amount of floor space in town centers is usually between 100,000 and 400,000 square feet reflecting a market area designed to serve a population of between 25,000 to 75,000.

The Town Center form typically has a compact mixture of moderately intense uses including shopping, restaurants, offices and residences. In its most traditional form, the Town Center ordinarily includes civic uses, such as libraries, government offices, police or fire stations and religious facilities. The presence of small-scale civic open space is a common but not essential feature. Buildings are generally close to and oriented toward the street. These characteristics strengthen the role of the Town Center as a community focal point.

The Town Center should have a high level of pedestrian, roadway, transit and bicycle access, a connected street pattern, shared parking and pedestrian amenities. More intense uses in the Town Center are located in close proximity to the major thoroughfare, and the intensity of use gradually declines toward the adjacent neighborhoods.

Town Centers are easily disrupted by new forms of development. Therefore, the harmony and compatibility of infill and redevelopment in Town Centers should receive special attention. The establishment of new Town Centers requires a high level of planning and design. The Comprehensive Plan envisions the preservation and enhancement of those town centers that already exist and encourages creation of new Town Centers that are in keeping with the goals, objectives and Policies.

The proposal is within an existing activity center served by transit and nearby populations, which reduces trips and supports alternative modes of transportation. No natural systems, historic or cultural features are impacted as a result of the proposal.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT (modified – off-street parking)

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

STAFF: The proposal remains consistent with Plan 2040 and little change is occurring in the area of the conditional use.

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 consistent with surrounding land uses and the general character of the area as the property is in an activity centers and serves commercial 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: Preliminary approvals have been received by the Metropolitan Sewer District and Transportation Planning.

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

STAFF: The proposal remains consistent with the standards contained in LDC 4.2.39. The off-street parking serves immediately abutting commercial uses and it is not proposed to be expanded.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR REVISED DETAILED DISTRICT DEVELOPMENT PLAN

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: The proposed development does not appear to impact natural resources or tree canopy.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community has been provided. Internal connections will be provided.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: The proposal does not required open space.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the activity center where it is located.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to the comprehensive plan and land development code. No waivers or variances have been requested and the site is in an activity center.

REQUIRED ACTIONS

- **RECOMMEND** to the City of Lyndon that the **Change-in-Zoning** from C-1 to C-2, commercial on property described in the attached legal description be **APPROVED** or **DENIED**
- **APPROVE** or **DENY** the **Modified Conditional Use Permit Plan** with updated Conditions of Approval
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan** with revised binding elements

NOTIFICATION

Date	Purpose of Notice	Recipients
9/30/21	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 18
10/21/21	Hearing before Planning Commission	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 18
10/19/21	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Plan 2040 Staff Analysis
4. Existing Binding Elements (9-46-94)
5. Existing Conditions of Approval (9-46-94)
6. Proposed Binding Elements
7. Proposed Conditions of Approval

2. Aerial Photograph



3. Plan 2040 Staff Analysis

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

Town Center: Non-Residential

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 1: Community Form	6. Discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and stormwater. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential.	✓	The existing zoning district is commercial, and the proposal does not result in a an expansion of non-residential uses into residential areas.
Land Use & Development Goal 1: Community Form	7. Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	The proposal is located along an arterial road served by transit and within an activity center.
Land Use & Development Goal 1: Community Form	17. Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	The proposed district will not result in an increase in traffic as it rectifies an existing outdoor dining space with alcohol sales.
Land Use & Development Goal 1: Community Form	18. Mitigate adverse impacts of noise from proposed development on existing communities.	✓	The current area of noise will not be expanded upon by the proposed district.
Land Use & Development Goal 2: Community Form	1. Locate activity centers in appropriate areas in all Form Districts. Design and density should be compatible with desired form, adjacent uses, and existing and planned infrastructure.	✓	The proposal is within an existing activity center where it is appropriate.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 2: Community Form	5. Locate retail commercial development in activity centers where it can be demonstrated that sufficient population exists or is anticipated to support it.	✓	The proposal is within an existing activity center where it is appropriate and served by nearby populations.
Land Use & Development Goal 2: Community Form	6. Encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment.	✓	The district allows the use to remain which encourages a concentration of uses in activity centers.
Land Use & Development Goal 2: Community Form	7. Encourage activity centers to include a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place.	✓	The proposal is within an existing activity center where it is appropriate and served by nearby populations which reduces trips and supports alternative modes of transportation.
Land Use & Development Goal 3: Community Form	9. Encourage development that 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.	✓	No natural systems are impacted as a result of the proposal.
Land Use & Development Goal 3: Community Form	10. Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	✓	No natural systems are impacted as a result of the proposal.
Land Use & Development Goal 3: Community Form	12. When reviewing proposed developments consider changes to flood-prone areas and other features vulnerable to natural disasters such as sinkholes and landslides. Ensure appropriate measures to protect health, safety and welfare of future users of the development.	✓	No natural systems are impacted as a result of the proposal.
Land Use & Development Goal 4: Community Form	1. Preserve buildings, sites, districts and landscapes that are recognized as having historic or architectural value and ensure that new land uses are compatible in height, massing, scale, architecture style and placement when located within the impact area of such resources.	✓	No historic or cultural features are impacted.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 4: Community Form	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	No historic or cultural features are impacted.
Land Use & Development Goal 1: Mobility	4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.	✓	The proposed increase in intensity is within an activity center where it is appropriately located and supported by transit and employment.
Land Use & Development Goal 2: Mobility	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	Access is provided from an arterial roadway onto this commercial development site.
Land Use & Development Goal 3: Mobility	2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	✓	The proposed land use is accessible by foot, bus, or care, and to people with disabilities.
Land Use & Development Goal 3: Mobility	3. Evaluate developments for their ability to promote public transit and pedestrian use. Encourage higher density mixed-use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation and housing choices.	✓	The proposed district has no impact on transit use.
Land Use & Development Goal 3: Mobility	4. Encourage development of walkable centers to connect different modes of travel. Siting of these multi-modal centers shall consider the effects of the following: 4.1. nodal connections identified by Move Louisville; 4.2. impact on freight routes; 4.3. time of operation of facilities; 4.4. safety; 4.5. appropriate linkages between neighborhoods and employment; and 4.6. the potential for reducing travel times and vehicle miles traveled.	✓	The location of the proposal is in a walkable center accessible by transit.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 3: Mobility	5. Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.	✓	The location of the proposal is in a walkable center accessible by transit. The proposed district has no impact on transit use.
Land Use & Development Goal 3: Mobility	6. Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.	✓	Any transportation improvements made necessary will be made, if any.
Land Use & Development Goal 2: Community Facilities	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	The development is served by utilities.
Land Use & Development Goal 2: Community Facilities	2. Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.	✓	The development has an adequate supply of potable water and water for fire-fighting purposes
Land Use & Development Goal 2: Community Facilities	3. Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	MSD preliminary approval has been received. The development will have an adequate means of sewage treatment and disposal to protect public health and to protect water quality
Land Use & Development Goal 1: Economic Development	3. Locate commercial uses generating high volumes of traffic on a major arterial street, at the intersection of two minor arterials, or at a location with adequate access to a major arterial and at locations where nuisances and activities of the proposed use will not adversely affect adjacent areas.	✓	No additional nuisances from traffic will be caused by the proposal as it encompasses an existing use.
Land Use & Development Goal 1: Livability	17. Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	✓	No natural systems are impacted as a result of the proposal.

Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
Land Use & Development Goal 1: Livability	21. Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.	✓	MSD preliminary approval has been received to Mitigate negative development impacts to the integrity of the regulatory floodplain.

4. Existing Binding Elements

- ~~1. The development shall be in accordance with the approved district development plan, land use and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. No further development shall occur without prior approval from the Planning Commission.~~
- ~~2. The development shall not exceed 8,850 square feet of gross floor area for restaurant (includes indoor and outdoor restaurant areas) and 6,000 square feet for retail uses.~~
- ~~3. The only permitted freestanding sign shall be located as shown on the approved district development plan. The sign shall not exceed 40 square feet in area and eight feet in height and must be approved by the City of Lyndon.~~
- ~~4. No outdoor advertising signs (billboards), small freestanding (temporary) signs, pennants or banners shall be permitted on the site.~~
- ~~5. There shall be no outdoor storage on the site.~~
- ~~6. Outdoor lighting shall be directed down and away from surrounding residential properties.~~
- ~~7. There shall be no outdoor music (live, piped, radio or amplified), outdoor entertainment or outdoor PA system permitted on the site.~~
- ~~8. The retail sale of Christmas trees shall be permitted on Tract B until the proposed building is constructed.~~
- ~~9. Before a building or alteration permit and/or a certificate of occupancy is requested:

 - ~~a) The development plan must be re-approved by the Jefferson County Department of Public Works and Transportation and the Metropolitan Sewer District.~~
 - ~~b) Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.~~
 - ~~c) The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12. Such plan shall be implemented prior to requesting a certificate of occupancy and maintained thereafter.~~~~

~~d) An access and crossover easement agreement shall be executed to permit access to the restaurant and parking lot. A copy of the recorded instrument shall be submitted to the Planning Commission counsel.~~

~~e) A legal instrument providing for the restaurant's long-term (minimum 30 years) use of the off-street parking lot (Tract C), as shown on the approved general district development plan, shall be submitted to and approved by the Planning Commission counsel and recorded in the County Clerk's office. A copy of the recorded instrument shall be submitted to the Planning Commission.~~

~~10. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.~~

~~11. A certificate of occupancy must be received from the appropriate code enforcement office prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.~~

5. Existing Conditions of Approval

~~1. The development shall be in accordance with the approved district development plan, land use, and conditions unless amended pursuant to the Zoning District Regulations. No further development shall occur without prior approval from the Planning Commission.~~

~~2. Outdoor lighting shall be directed down and away from surrounding residential properties.~~

~~3. Before a building or alteration permit and/or a certificate of occupancy is requested:~~

~~a. The development plan must be re-approved by the Jefferson County Department of Public Works and Transportation and the Metropolitan Sewer District.~~

~~b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12. Such plan shall be implemented prior to requesting a certificate of occupancy and maintained thereafter.~~

~~c. An access and crossover easement agreement shall be secured to permit access to the parking lot (Tract C). A copy of the recorded instrument shall be submitted to the Planning Commission counsel.~~

~~d. A legal instrument providing for the long-term (minimum 30 years) joint use of the off-street parking lot (Tract C) for the adjacent restaurant use (Tract A), as shown on the approved general district development plan shall be submitted to and approved by the Planning Commission counsel and recorded in the County Clerk's office. A copy of the recorded instrument shall be submitted to the Planning commission.~~

~~4. The Conditional Use Permit shall be exercised as described in KRS 100.237 within one year of the Planning Commission's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for an off-street parking lot without further review and approval by the Commission.~~

6. Proposed Binding Elements

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission’s designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet, Bureau of Highways.
 - d. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services
3. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
4. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
6. Outdoor lighting shall comply with Land Development Code, section 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 (i.e., conservation easements, greenways, parkways) on adjacent or nearby parcels, or to create glare perceptible to persons operating motor vehicles on public streets and right-of-way.

7. Proposed Conditions of Approval

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon and all applicable Binding Elements). No further development shall occur on the site without prior review and approval by the Board or the Planning Commission.
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 a hospital until further review and approval by the Board.