

**PLANNING COMMISSION MINUTES
September 18, 2014**

PUBLIC HEARING

CASE NO: 13ZONE1022

Project Name: The Post Restaurant and Bar

Location: 1045 Goss Avenue

Owner: TenFifty Eight, LLC
Laura Neely, Representative
1058 Highland Avenue
Louisville, KY 40204

Applicant: TenFifty Eight, LLC
Laura Neely, Representative
1058 Highland Avenue
Louisville, KY 40204

Representatives: TenFifty Eight, LLC
Laura Neely, Representative
1058 Highland Avenue
Louisville, KY 40204

Engineer/Designer: Pickett Passafiume Architects
2538 Carolina Avenue
Louisville, KY 40205

Jurisdiction: Louisville Metro

Council District: 10-Jim King

Case Manager: **Julia Williams, AICP, Planner II**

A notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Request:

Change in zoning from C-1 to C-2, Variance to encroach into the front yard setback

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Agency Testimony:

00:06:58 Julia Williams discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Laura Neely, 1058 Highland Avenue, Louisville, KY 40204
Mike Morris, 947 Goss Avenue, Louisville, KY 40217

Summary of testimony of those in favor:

00:12:24 Mike Morris, President of the Schnitzelberg Community Council stated that he and the neighborhood supports the zoning change and the variance that is being requested. He also stated that Steve Magre, President of the Germantown-Paristown Neighborhood Association is also in support of the requesting change.

00:13:32 Laura Neely handed out letters of support from the Schnitzelberg & Germantown neighborhood.
Commissioner Kirchdorfer asked about the hours of operation and Ms. Neely said that they will be open from 4pm until 2am and that is per the binding elements that are attached to the zoning, however, they will not be selling alcohol past 2am outdoors.

Commissioner White asked Ms. Neely about the construction of the development. She stated that the property has had extensive renovations and hopes to be open mid-November.

Julia Williams explained to the Commissioners that Binding Elements 9 & 10 were added by the applicant in a compromise with the neighborhood.

The following spoke in opposition to this request:

No one spoke in opposition of this case.

Deliberation

00:18:42 Planning Commission deliberation. The Commission expressed no concerns on this case.

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An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Zoning Change from C-1 to C-2

On a motion by Commissioner Brown, seconded by Commissioner Butler, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The proposal does not interfere with the current layout of streets, alleys, or sidewalks. The proposal is located in an existing commercial node that includes a mix of uses. C-2 permits other commercial uses that are currently permitted in the area. The proposal is located in an existing commercial and residential area. The proposal will not affect public open space in the area. The proposal is for the preservation/renovation of an existing structure that is generally consistent with the overall look of the adjacent neighborhood.

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 2 of Cornerstone 2020. The proposal will not create a new center. The proposal is mainly the reuse of an existing structure for commercial use. The area surrounding the site has sufficient population to support C-2 zoning and all of its permitted uses as the proposal is located in an urban neighborhood. The proposal is for a small lot within an existing commercial node. No additional infrastructure is necessary with this proposal. The proposal is in a center where commercial has existed for some time. It is adjacent to compatible high density and intensity zoning. The proposal is for one use in an existing structure. The parking is existing. There is an existing curb cut that connects Goss to the alley to the rear. The proposal is utilizing existing utilities for the development. Pedestrians have access through the public sidewalk. Bicycles access the site as any other vehicle. Bike racks are provided.

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 3 of Cornerstone 2020. No new building is proposed. Because the site is adjacent to existing C-1 zoning. The proposal is not a non-residential expansion into an existing residential area. Traffic will not be adversely impacted by the proposal. The proposal is for a high intensity commercial zoning district not located along a transit corridor but is located in an existing activity node where a commercial use has been present in the structure for some time. The surrounding properties are all commercially zoned or are a ROW. Buffer yards are not required between the similarly used sites. The building and parking are existing and will not affect the established setback in the area. The proposal shows a deck along the frontage of the site which will bring the use closer to the sidewalk. Parking is existing and will not further impact the area. The parking is existing and does not require screening and buffering. The signage will be attached to the building and meet form district requirements.

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WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 4 of Cornerstone 2020. Open space is provided in the form of the proposed deck. The open space here will both provide a space for patrons of the business to gather but also for the patrons to watch the street. The proposal is not located in an area where there are natural features evident.

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 6 of Cornerstone 2020. Access is not an issue with the proposal. The proposed C-2 zoning will be located in an existing activity node that has been present in the neighborhood for some time.

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 7 of Cornerstone 2020. Roadway improvements are not necessary for the proposal. The existing facilities around the site promote alternate transportation. No new roads are proposed. Access will be from existing streets. Dedication of ROW is not necessary with the proposal. Adequate parking is proposed. Cross access is not necessary due to the lot depths and having alley access.

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 8 of Cornerstone 2020. No new roads are proposed. Access will be from existing streets. Access to the development is by public roadways.

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 9 of Cornerstone 2020. The existing facilities around the site promote alternate transportation.

WHEREAS, the Louisville Metro Planning Commission further finds that the proposal complies with Guideline 14 of Cornerstone 2020. Existing utilities will serve the site. The proposal is located in an area with adequate water supply. The health department has approved the proposal.

WHEREAS, the Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and findings of fact, that the proposal meets all other applicable Guidelines of Cornerstone 2020; now, therefore be it;

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative body of Louisville Metro Government that the requested Change in zoning from C-1, Commercial to C-2, Commercial on property described in the attached legal description be **APPROVED**

The vote was as follows:

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YES: Commissioners Blake, Brown, Butler, White, Turner, Jarboe, Kirchdorfer, Tomes, Peterson and Proffitt.

NO: No one.

NOT PRESENT AND NOT VOTING: No one.

ABSTAINING: No one.

Variance

On a motion by Commissioner Brown, seconded by Commissioner Butler, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The deck encroachment will not adversely affect the public health, safety, or welfare as the deck brings the use closer to the street which is consistent with other commercial uses within the area.

WHEREAS, the Louisville Metro Planning Commission further finds, The deck encroachment will not alter the character of the neighborhood as the deck brings the use closer to the street which is consistent with other commercial uses within the area.

WHEREAS, the Louisville Metro Planning Commission further finds, The variance will not be a nuisance to the public because the deck is located at the front of the property where there is an existing minor arterial.

WHEREAS, the Louisville Metro Planning Commission further finds, The variance is not unreasonable as the deck will be consistent with other outdoor dining areas in the Goss Avenue corridor and within the neighborhood.

WHEREAS, the Louisville Metro Planning Commission further finds, The variance arises from the infill standards and exceptions within Chapter 5 which applies to the land in the area but not all the land because not all of the properties in the area have a standard consistent block face.

WHEREAS, the Louisville Metro Planning Commission further finds, The provisions would deprive the applicant of reasonable use of the land as this particular area of Goss Avenue has a mix of setbacks before the residential portion of the block face begins and becomes more consistent.

WHEREAS, the Louisville Metro Planning Commission further finds, Since the applicant is renovating an existing building and the only new construction will be the deck, the result of the variance has little to do with actions taken before the adoption of the zoning regulations because the building was constructed before zoning regulations. The

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applicant had no control over the building location and the front yard is the only logical place for outdoor dining given some of the residential located in the area.

WHEREAS, the Louisville Metro Planning Commission finds that, based on the evidence and testimony presented, the staff report, and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it;

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance from Chapter 5.2.2.C.1 to permit 10 foot of encroachment of a deck into the 25 foot front yard setback for a 10 foot variance.

The vote was as follows:

YES: Commissioners Blake, Brown, Butler, White, Turner, Jarboe, Kirchdorfer, Tomes, Peterson and Proffitt.

NO: No one.

NOT PRESENT AND NOT VOTING: No one.

ABSTAINING: No one.

District Development Plan and Binding Elements

On a motion by Commissioner Brown, seconded by Commissioner Butler, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The proposal renovates a historic site that is considered a contributing structure if the neighborhood were to ever seek a National Register status for which it is eligible.

WHEREAS, the Louisville Metro Planning Commission further finds, Both vehicles and pedestrians are provided for with the proposal. An existing public sidewalk exists as well as a parking lot with sufficient parking.

WHEREAS, the Louisville Metro Planning Commission further finds, The open space on the site is in the form of the deck. The front deck meets the needs of the proposal as well as providing a watch over the street within the neighborhood.

WHEREAS, the Louisville Metro Planning Commission further finds, MSD has preliminarily approved the proposal.

WHEREAS, the Louisville Metro Planning Commission further finds, With the exception of the front deck the features on the site are existing. The deck is compatible with the

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surrounding commercial uses as it pushes the proposed use closer to the road which is consistent with some of the other commercial buildings in the area.

WHEREAS, the Louisville Metro Planning Commission further finds, The proposal complies with the LDC and Comprehensive Plan.

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan, **SUBJECT** to the following binding elements:

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. The development shall not exceed 2,900 square feet of gross floor area.
3. No small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
5. 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.
6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
7. 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

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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

8. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
9. The following uses shall not be permitted on site: boarding and lodging houses, community residences, community service facility, day care centers, nurseries, kindergartens, extended stay lodging, pawn shop, residential care facilities, transitional housing, homeless shelter, and fraternities and sororities. Notice of a request to amend this binding element shall be given in accordance with the Planning Commission's policies and procedures. A committee of the Planning Commission may require a public hearing on the request to amend this binding element.
10. No outdoor consumption of alcohol on the site past 2 am.

The vote was as follows:

YES: Commissioners Blake, Brown, Butler, White, Turner, Jarboe, Kirchdorfer, Tomes, Peterson and Proffitt.

NO: No one.

NOT PRESENT AND NOT VOTING: No one.

ABSTAINING: No one.