

**Board of Zoning Adjustment
Staff Report**
May 19, 2014



Case No(s):	14CUP1005
Project Name:	Fiesta Time Mexican Grill
Location:	133 South English Station Road
Owner(s):	Faulkner Hinton Landis, LLC
Applicant(s):	Faulkner Real Estate Corporation
Representative(s):	William B. Bardenwerper
Project Area/Size:	1,564 square feet
Existing Zoning District:	C-1
Existing Form District:	N, Neighborhood
Jurisdiction:	Louisville Metro
Council District:	20 – Stuart Benson
Case Manager:	Jon E. Crumbie, Planner II

REQUEST

- Conditional Use Permit to allow outdoor alcohol sales and consumption in a C-1 zoning district.

CASE SUMMARY/BACKGROUND

The applicant is seeking a Conditional Use Permit to allow the sale and consumption of alcohol beverages in an existing patio area adjacent to the existing Fiesta Time Mexican Grill. The outdoor area will be 1,564 square feet and allow up to 32 patrons.

SITE CONTEXT

The site has an existing structure on it, which is to remain. The existing structure is part of the Landis Lakes Town Center that includes various retail, restaurant, general office, and medical office uses. The site has commercial uses to the north and east and residential uses to the south and west.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<i>Subject Property</i>			
Existing	Restaurant	C-1	N
Proposed	Outdoor Alcohol Sales	C-1	N
<i>Surrounding Properties</i>			
North	Various Commercial	C-1	N
South	Residential	R5-A	N
East	Various Commercial	C-1	N
West	Residential/Commercial	R5-A, C-1	N

PREVIOUS CASES ON SITE

- B-16035-11** Conditional Use Permit to allow outdoor alcohol sales and consumption in a C-1 zoning district on property located at 153 South English Station Road (Wild Eggs). This proposal was approved on March 19, 2012.
- 9-20-01** A change in zoning from R-4 Single Family Residential to C-1 Commercial on property located at 13900 Shelbyville Road, containing 9.35 acres and being in unincorporated Jefferson County. This plan was approved on May 31, 2002.

There is no current enforcement action associated with the subject property.

INTERESTED PARTY COMMENTS

Staff did not receive any interested party comments.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMITS

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

STAFF: The proposal meets all applicable policies of the Comprehensive Plan. Signage will be replaced and lighting will not be added. A landscape plan has been approved and implemented.

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, appearance, etc?

STAFF: The subject site is located in a commercial area that has a mix of business services, retail, restaurants, medical office, and is a focal point for several surrounding neighborhoods. All the commercial uses in the area have similar, scale, intensity, traffic, noise, and lighting.

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

STAFF: The proposal has been reviewed by Public Works and MSD and both have approved the plan. The Middletown Fire Protection District has reviewed and approved the proposal.

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested? There are 8 requirements and 3 items will be met which are items A., F., and G. Items B., C., and D. do not apply. Item E. will need to be obtained.

Outdoor alcohol sales and consumption 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.

TECHNICAL REVIEW

There are no outstanding technical review issues.

STAFF CONCLUSIONS

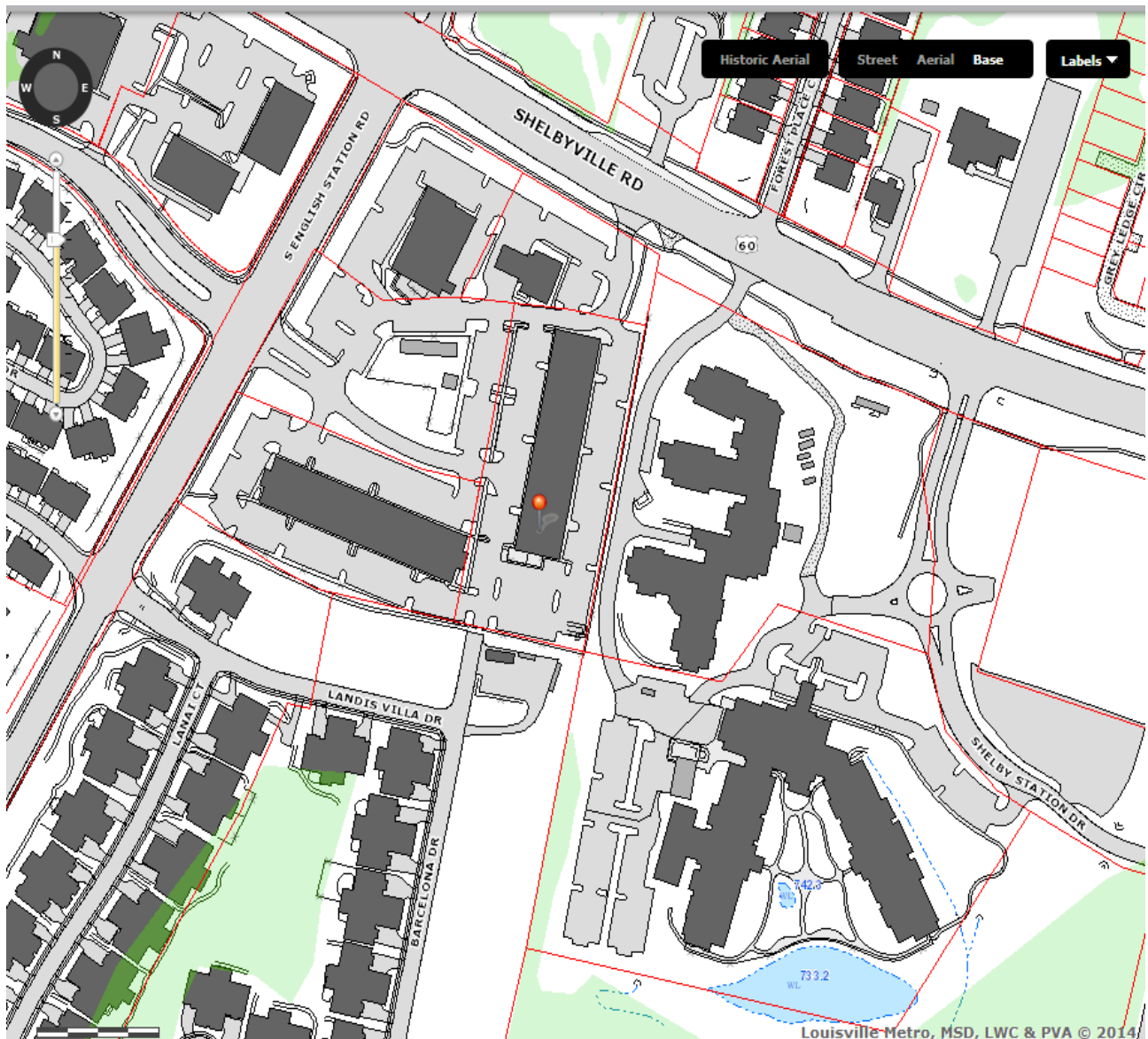
- This proposal is compatible with the surrounding commercial area which includes several restaurants with outdoor patio areas.
- The nearest residential use is to the south of the site and over 50 feet away.
- A landscape plan has been approved for the entire site.
- Based upon the information in the staff report, the testimony and evidence provided at the public hearing, BOZA must determine if the proposal meets the standards for granting the Conditional Use Permit and waivers established in the LDC

NOTIFICATION

Date	Purpose of Notice	Recipients
5/2/14	APO Notice	First tier adjoining property owners Neighborhood notification recipients
5/8/14	Sign Posting	Subject Property

ATTACHMENTS

1. Zoning Map



2. Aerial Photograph



3. Cornerstone 2020 Staff Checklist

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Pre-App Finding	Pre-App Comments	Final Finding	Final Comments
1	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 1: Community Form	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.	√	Landis Lakes Town Center has a mix of retail, restaurant, and general office.		
9	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 2: Centers	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 entrance and parking facilities with the other tenants in the existing development.		
11	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 2: Centers	A.16: The proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities.	√	Bike rack is shown on the proposal.		
14	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.5: The proposal mitigates any potential odor or emissions associated with the development.	√	APCD has reviewed and approved the proposal.		
15	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	-	Metro Public Works has reviewed the proposal and has comments.	√	Metro Public Works has approved the proposal.
16	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.8: The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky.	-	Lighting is not shown on the plan.	√	Lighting will be code compliant
21	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	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.	-	Metro Public Works has reviewed the proposal and has comments.	√	Metro Public Works has approved the proposal.
24	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.28: Signs are compatible with the form district pattern and contribute to the visual quality of their surroundings.	-	Signage is not shown on the plan.	√	Signage will be changed but will be code compliant

38	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.9: The proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development.	-	Metro Public Works has reviewed the proposal and has comments.	√	Metro Public Works has approved the proposal.
39	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.10: The proposal includes adequate parking spaces to support the use.	-	Metro Public Works has reviewed the proposal and has comments.	√	Metro Public Works has approved the proposal.
45	Livability, Goals B1, B2, B3, B4, Objectives B1.1-1.8, B2.1-2.7, B3.1-3.4, B4.1-4.3	Livability/Environment Guideline 10: Flooding and Stormwater	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.	√	MSD has reviewed and approved the proposal.		
46	Livability Goals C1, C2, C3, C4, all related Objectives	Livability/Environment Guideline 12: Air Quality	The proposal has been reviewed by APCD and found to not have a negative impact on air quality.	√	APCD has reviewed and approved the proposal.		
47	Livability, Goals F1 and F2, all related objectives	Livability/Environment Guideline 13: Landscape Character	A.3: The proposal includes additions and connections to a system of natural corridors that can provide habitat areas and allow for migration.				
48	Quality of Life Goal J1, Objectives J1.1-1.2	Community Facilities Guideline 14: Infrastructure	A.2: The proposal is located in an area served by existing utilities or planned for utilities.	√	There are existing utilities on site.		
49	Quality of Life Goal J1, Objectives J1.1-1.2	Community Facilities Guideline 14: Infrastructure	A.3: The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.	√	Water for fire-fighting is available.		
50	Livability Goal B1, Objective B1.3	Community Facilities Guideline 14: Infrastructure	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.	√	Adequate sewage treatment is provided.		

4. Applicant's Justification Statement and Proposed Findings of Fact

BARDENWERPER, TALBOTT & ROBERTS, PLLC
ATTORNEYS AT LAW

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**DETAILED STATEMENT OF COMPLIANCE WITH ALL APPLICABLE GUIDELINES
AND POLICIES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN**

Owner/Applicant: Faulkner Hinton Landis, LLC

Location: 133 S. English Station Road

Proposed Use: Outdoor patio for alcohol sales and consumption in conjunction with new restaurant tenant in place of prior one

Requests: Conditional Use Permit for outdoor patio to allow outdoor sales and consumption of alcoholic beverages in the Landis Lakes Towne Center

INTRODUCTORY STATEMENT

This shopping center, known as the Landis Lakes Towne Center, was rezoned in 2001 as part of docket number 9-20-01. The only request involved in this application is one for the outdoor seating to accommodate the sale and consumption of alcoholic beverages.

As to the LDC provision requiring a CUP for the outdoor sale and consumption of alcoholic beverages, that is now standard with virtually all restaurants in light of the smoking ordinance in Metro Louisville. Whereas some bars and restaurants previously had “alfresco” dining, many did not. As said, the smoking ban made it almost a necessity for bars and restaurants to have outdoor seating areas because patrons do not want to leave their drinks inside when they go outside to smoke. But that does not mean that these areas are exclusively for smokers, just that it becomes now more of a necessity than an option.

Nevertheless, as was determined at a neighborhood meeting held on March 24, 2014, there appears to be no opposition to this application. Actually, despite wide notice, no one showed up for that meeting. Unlike some examples of bars and restaurants with outdoor seating areas for sale and consumption of alcoholic beverages, where their adverse impacts might be felt by nearby neighbors, that would not be the case here because of the fact that this patio is in the interior of the shopping center, basically wedged between existing portions of the center with no part really exposed to any nearby neighborhoods.

GUIDELINE 1 – COMMUNITY FORM

The Community Form for this property is the Suburban Neighborhood Form District which is characterized by both residential as well as neighborhood centers with a mixture of uses, such as that found at the Landis Lakes Towne Center. This application complies with this Guideline

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because this is a neighborhood center by all accounts, with a mixture of neighborhood serving uses with accessibility, not just to customers visiting in automobiles, but also in time via transit, and presently by pedestrian walkways and bicycles.

GUIDELINE 2 – CENTERS

This application complies with the Intents of this Guideline because it is an added use in an already existing shopping center, which promotes the efficient use of land and investment in existing infrastructure, also lowering utility costs by reducing the need for extensions and by reducing commuting time and transportation related air pollution. This added outdoor seating area should also better encourage vitality within this existing shopping center and more customers who desire to use it because of this added accommodation.

This application also complies with applicable Policies 1, 2, 3, 4, 5, 7 and 11 of Guideline 2 because this is an existing activity center, not an expansion of one, with this new use proposed for an existing center, which is also compactly developed, containing a wide variety of uses, including restaurants, various retail stores, branch banks, a pharmacy and office uses. This center has been designed to ensure compatibility, given its focus towards Shelbyville Road and not to the neighborhood.

This application also complies with applicable Policies 13 and 14 of this Guideline because it utilizes existing parking.

GUIDELINE 3 – COMPATIBILITY

This application complies with the Intents of this Guideline because it involves a wider mix of land uses than previously, with the new outdoor seating, and it does not involve locating this outdoor seating in an area that would violate accepted standards for noise, lighting, odors or similar nuisances. In fact, because it is located in the interior of the Landis Lakes Towne Center, it preserves the peace and quiet of those adjoining properties.

This application also complies with applicable Policies 5, 6, 7, 8 and 9 of this Guideline because the impacts of odors, traffic, noise, lighting and visual effects are mitigated by virtue of the location of this added outdoor seating area at the front of the center basically wedged between other portions of existing buildings so that they have no impacts on nearby neighborhoods.

This application also complies with applicable Policies 21, 22 and 23 of this Guideline because it does not require any additional landscaping, screening or buffering than already exists to protect nearby neighborhoods, which are protected as described hereinabove.

GUIDELINES 4, 5 AND 13 – OPEN SPACE, NATURAL AND SCENIC AREAS, AND LANDSCAPE CHARACTER

This application complies with the Intents and applicable Policies of these Guidelines because what is applied for here is simply outdoor seating to service existing restaurant uses where alcoholic beverages may be served outdoors. The shopping center has the requisite landscaping, both perimeter and interior, as was required at the time of original approval.

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GUIDELINE 6 – ECONOMIC GROWTH AND SUSTAINABILITY

This application complies with Intents and specifically applicable Policy 6 of this Guideline because, by expanding the functionality and use of this shopping center with this added outdoor seating area, the shopping center should become more popular to users, thus reducing commuting distances to farther away shopping centers that have restaurants with outdoor seating. Because this is an existing shopping center, the redevelopment of things such as this also helps reduce public and private cost for land development. Also, this is an existing activity center which is just being modified, not being expanded, but this should help the popularity and thus resulting business activity within this center.

GUIDELINES 7 AND 8 – CIRCULATION AND TRANSPORTATION FACILITY DESIGN

This application complies with the Intents of these two Guidelines because the center was long ago approved by applicable Metro Transportation Planning agencies for the safe and proper functioning of nearby streets and measures to assure that there was not traffic congestion or resulting air quality problems associated herewith and also to assure the safe and convenient accommodation of people with special mobility requirements.

This application specifically complies with applicable Policies 1, 2, 10, 11, 12, 13, 14, 15 and 16 of Guideline 7 and with applicable Policies 9, 10 and 11 of Guideline 8 because, as stated, this center was originally designed so as to receive the stamp of approval from applicable Transportation Planning officials. This application as well will need to receive the stamp of approval from Metro Transportation Planning in advance of docketing for Board of Zoning Adjustment (BOZA) review. That stamp will once again demonstrate compliance with all Metro Transportation Planning standards governing access, internal circulation and so on.

GUIDELINE 9 – BICYCLE, PEDESTRIAN AND TRANSIT

This application complies with the Intents and applicable Policies 1, 2, 3 and 4 of this Guideline because this center is accessible by people using bicycles and those walking.

GUIDELINE 10 – FLOODING AND STORMWATER

This application complies with the Intents and applicable Policies 1, 3, 6, 7, 10 and 11 of this Guideline because, when first approved, it will again receive the preliminary stamp of approval from MSD, thus demonstrating compliance with MSD regulations regarding stormwater management. Furthermore, little if any additional impervious surface is being created as a consequence of the area set aside for outdoor seating for the sale and consumption of alcoholic beverages.

GUIDELINE 11 – WATER QUALITY

This application complies with the Intents and applicable Policy 3 of this Guideline because, to the extent that any additional construction is required, it will be required to comply with the MSD soil erosion and sedimentation control ordinance.

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GUIDELINE 12 – AIR QUALITY

This application complies with the Intents and applicable Policies, 1, 2, 3, 4, 6, 7, 8 and 9 of this Guideline because, if anything, locating an additional amenity such as this in this center (for the sale and consumption of alcoholic beverages outside a restaurant), should reduce vehicle miles traveled for people looking to visit restaurant facilities with outdoor seating.

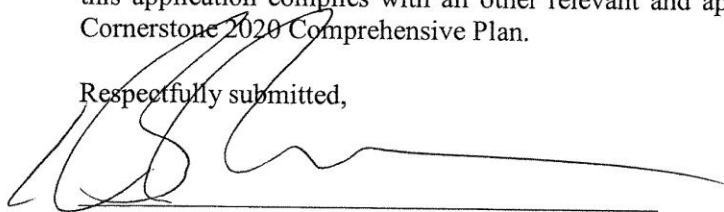
GUIDELINES 14 AND 15 – INFRASTRUCTURE AND COMMUNITY FACILITIES

This application complies with the Intents and applicable Policies of these Guidelines because infrastructure already exists, utilities are available at the site, and this facility is located near the Middletown Fire Department so that fire service is readily available.

* * *

For all of the above reasons and others identified on the Site Plan submitted with this application, this application complies with all other relevant and applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

Respectfully submitted,



William B. Bardenwerper
BARDENWERPER TALBOTT & ROBERTS, PLLC
Building Industry Association of Greater Louisville Building
1000 N. Hurstbourne Parkway, Second Floor
Louisville, KY 40223
(502) 426-6688
Counsel for Applicant/Property Owners

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FAULKNER REAL ESTATE CORP.
9625 Ormsby Station Rd
Louisville, Kentucky 40223

March 13, 2014

RE: Conditional Use Permit to allow outdoor seating for alcohol sales and consumption in conjunction with a restaurant on property located within the Landis Lakes Towne Center at 133 S. English Station Road

Dear Neighbor,

We are writing to invite you to a meeting we have scheduled to present any interested neighbors with our preliminary plan for a Conditional Use Permit to allow outdoor seating for alcohol sales and consumption in conjunction with a restaurant at the Landis Lakes Towne Center.

Following our pre-application conference with agency staff, we are holding this neighbor meeting on **Monday, March 24th at 6:00 p.m.** at the **Lakewood Baptist Church** located at **13803 Shelbyville Road**.

If you cannot attend the meeting but have questions or concerns, please call my attorney Bill Bardenwerper at 426-6688.

We look forward to seeing you then to show you our plan and discuss this with you, if you have an interest.

Sincerely,



Fred Faulkner

Cc: Hon. Stuart Benson, Metro Councilman, District 20
Jon Crumbie, case manager, Louisville Metro Planning & Design Services
Bill Bardenwerper, attorney with Bardenwerper, Talbott & Roberts, PLLC

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Developer's Neighborhood Meeting

Meeting Date and Time Mar. 24, 2014 @ 6:00 pm **Developer's Name** Faulkner Real Estate Corp.
Location of Meeting Lakewood Baptist Church, 13803 Shelbyville Road, Louisville, KY
Description of Proposal Conditional Use Permit to allow outdoor seating for alcohol sales and consumption
Subject Site Location 133 S. English Station Road, Louisville, KY

NEIGHBORS IN ATTENDANCE

NAME	ADDRESS	ZIP CODE	PHONE # (OPTIONAL)
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No one showed up.

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NEIGHBORHOOD MEETING SUMMARY

A neighborhood meeting was held on March 24, 2014 at 6:00 pm at Lakewood Baptist Church at 13803 Shelbyville Road.

Bill Bardenwerper, counsel for applicant, and Lee Hasken, Vice President of Faulkner Real Estate Corp., were present and ready to present a PowerPoint explaining the overall development site and this application. But no one appeared, despite wide notice.

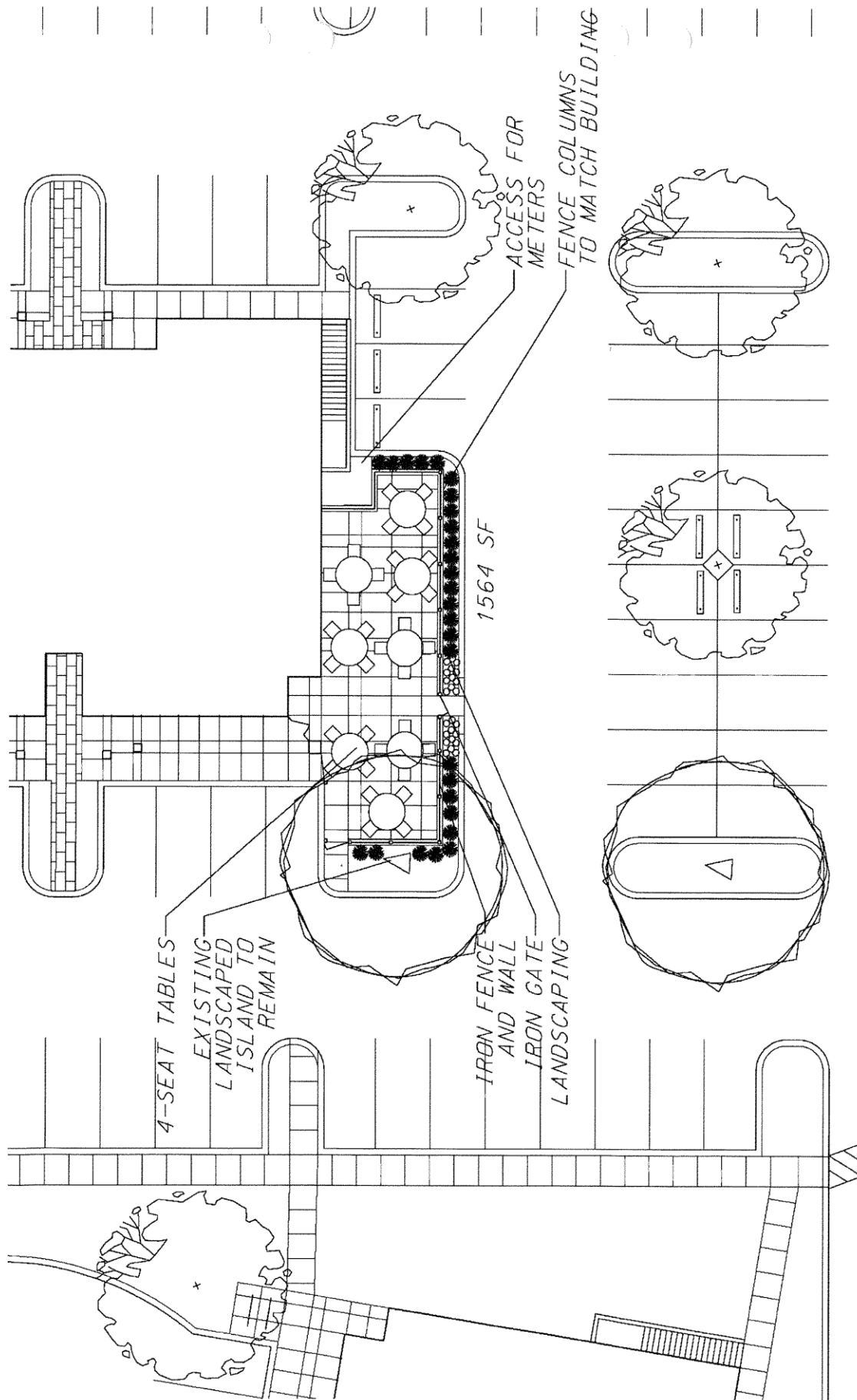
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Conditions of Approval

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 without further review and approval by the Board.