

**Board of Zoning Adjustment  
Staff Report**  
May 18<sup>th</sup>, 2015



<b>Case No:</b>	<b>15CUP1017</b>
<b>Request:</b>	<b>Conditional Use Permit for outdoor alcohol sales and consumption</b>
<b>Project Name:</b>	<b>Middletown Commons</b>
<b>Location:</b>	<b>13301 Shelbyville Road</b>
<b>Owner:</b>	<b>Middletown Investment Partners LLC</b>
<b>Applicant:</b>	<b>Jeffrey Pape</b>
<b>Representative:</b>	<b>Bill Bardenwerper</b>
<b>Jurisdiction:</b>	<b>Middletown</b>
<b>Council District:</b>	<b>19 – Julie Denton</b>
<b>Case Manager:</b>	<b>Christopher Brown, Planner II</b>

**REQUEST**

- Conditional Use Permit to allow outdoor alcohol sales and consumption

**CASE SUMMARY/BACKGROUND/SITE CONTEXT**

The site is located in the northwestern quadrant of Shelbyville Road / I-265 Interchange with frontage on Shelbyville Rd and N. English Station Rd and has a main access from Data Vault Drive.

Zoning District: C-1, Commercial  
Form District: SMC, Suburban Marketplace Corridor  
Existing Use: Shopping Center  
Proposed Use: Shopping Center  
Plan Certain Docket #: 10723

The applicant is proposing to allow outdoor alcohol sales and consumption on four different patio areas within the Middletown Commons shopping center. The areas proposed for the conditional use permit were already outdoor dining areas approved with the revised detailed district development plan for the site. No relief from the listed requirements has been requested by the applicant. All outdoor dining areas allow sufficient spacing for passing pedestrians.

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b>Subject Property</b>			
<b>Existing</b>	Shopping Center	C-1	SMC
<b>Proposed</b>	Shopping Center	C-1	SMC
<b>Surrounding Properties</b>			
<b>North</b>	Water Storage Tower	R-4	SW
<b>South</b>	ROW/Mixed Commercial	C-1	SMC
<b>East</b>	Gene Snyder	N/A	N/A
<b>West</b>	Mixed Commercial	C-2	SMC

## PREVIOUS CASES ON SITE

- 10723: The Planning Commission and City of Middletown approved a change in zoning from R-4 and R-7, residential, to C-1, commercial, a change in form district from Suburban Workplace to Suburban Marketplace Corridor, a conditional use permit for outdoor alcohol sale and consumption for restaurants in C-1 zoning, a variance to reduce the required yard along the northern property line from 50' to 25' and approval of a detailed district development plan.
- 13DEVPLAN1051: Revised general/detailed district development plan was approved for Middletown Commons with landscape waivers granted along Shelbyville Road and Gene Snyder Freeway scenic corridors as well as encroachments and reductions of landscape buffers along the northern property perimeter. Variances were approved for pavement encroachment and building setbacks for Lot 1 of the proposed development.
- 14DEVPLAN1075: Revised general/detailed district development plan was approved for Middletown Commons with landscape waivers to allow retaining wall and sidewalk encroachments. Amendments to the binding elements were approved to accommodate the requested changes within the Development Design Guidelines and Pattern Book.

## INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

## APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
2004 Land Development Code (Middletown)

### STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT

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

STAFF: The proposal is consistent with the applicable policies of the Comprehensive Plans and meets all the applicable guidelines.

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 commercial uses and is a gateway development off the Gene Snyder Expressway. 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?

STAFF: There are 8 requirements. 4 items will be met which are items A., E., F., and G. Items B., C., and D. do not apply.

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**

- No outstanding technical review issues need to be addressed.

**STAFF CONCLUSIONS**

The standard of review for the requested conditional use permit has been met. 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 in the Land Development Code.

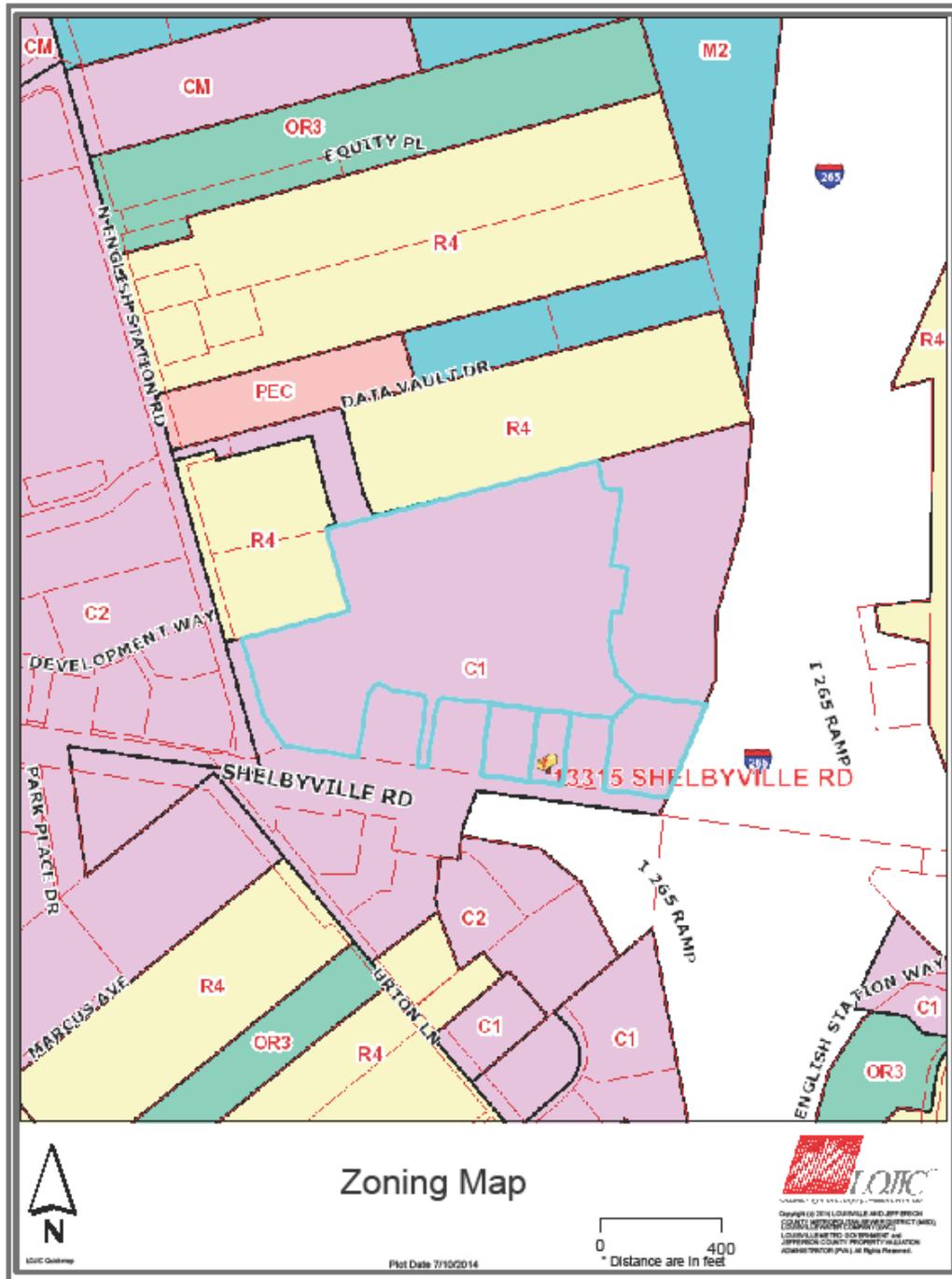
**NOTIFICATION**

Date	Purpose of Notice	Recipients
5/04/15	Hearing before BOZA	1st and 2nd tier adjoining property owners Speakers at Planning Commission public hearing Subscribers of Council District 19 Notification of Development Proposals

## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Cornerstone 2020
4. Proposed Conditions of Approval

1. **Zoning Map**





### 3. Cornerstone 2020 Checklist

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

#### Suburban Marketplace Corridor: Non-Residential

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
1	Community Form/Land Use Guideline 1: Community Form	B.8: The proposal integrates into the existing pattern of development, which includes a mixture of medium- to high-density uses.	✓	The proposal integrates into the overall shopping center.
2	Community Form/Land Use Guideline 1: Community Form	B.8: The proposal provides accommodations for transit users, pedestrians and bicyclists and provides connectivity to adjacent developments.	✓	The proposal allows sufficient spacing for multi-modal access to the affected buildings on the sites.
4	Community Form/Land Use Guideline 1: Community Form	B.8: The proposal is of a medium to high density designed to be compatible with both non-residential development in the corridor and adjacent low density residential development in other form districts.	✓	The proposal is compatible with the surrounding non-residential uses in the area.
7	Community Form/Land Use Guideline 2: Centers	A.3: The proposed retail commercial development is located in an area that has a sufficient population to support it.	✓	The proposed commercial development is located in an area that has a sufficient population to support it.
8	Community Form/Land Use Guideline 2: Centers	A.4: The proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment.	✓	The proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment.
12	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 adjacent uses.
14	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.	✓	The proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
16	Community Form/Land Use Guideline 3: Compatibility	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 in an area of existing non-residential uses and does not constitute an expansion of non-residential.
39	Mobility/Transportation Guideline 7: Circulation	A.3/4: The proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation.	✓	The proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation.
40	Mobility/Transportation Guideline 7: Circulation	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.	✓	Transportation planning has preliminarily approved the proposal.
42	Mobility/Transportation Guideline 7: Circulation	A.10: The proposal includes adequate parking spaces to support the use.	✓	The proposal includes adequate parking spaces to support the use.
47	Mobility/Transportation Guideline 9: Bicycle, Pedestrian and Transit	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 allows for sufficient spacing along the buildings to allow for the movement of pedestrians, bicyclists and transit users.
48	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 given preliminary approval.

**4. Proposed 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.