

PLANNING COMMISSION MINUTES

April 7, 2022

CASE NO. PUBLIC HEARING

CASE NO. 21-ZONE-0068

Request: Change in zoning from R-6 to C-1, commercial with conditional use permit for outdoor alcohol sales, revised development plan, variance, and waivers

Project Name: Ciao's Restaurant

Location: 1203 Payne Street

Owner: Alfred Pizzonia, Jr. & Angelica Webster

Applicant: Craig Priddy

Representative: Dinsmore & Shohl, LLP – Cliff Ashburner

Jurisdiction: Louisville Metro

Council District: 9 – Bill Hollander

Case Manager: Joel Dock, AICP, Planning Coordinator

Notice of this public hearing appeared in **The Courier Journal**, 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.)

Agency Testimony:

00:32:10 Joel Dock discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Cliff Ashburner, Dinsmore and Shohl, 101 South 5th Street, Louisville, Ky 40202
Lindsey Stoughton, 816 Franklin Street, Louisville, Ky. 40206

Summary of testimony of those in favor:

00:40:08 Cliff Ashburner gave a power point presentation. It's a mixed-use area and the buildings are narrow and close together in this community. The existing addition will be removed. The existing home is being reused and it will be part home and part restaurant (see recording for detailed presentation).

00:44:58 Lindsey Stoughton discussed the Code Summary – firewalls, egress pass and distances, design, noise pollution and metal roof structures (see recording for detailed presentation).

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The following spoke neither for nor against the request:

Lisa Santos, 1318 Hull Street, Louisville, Ky. 40204

Summary of testimony of those neither for nor against:

00:53:06 Lisa Santos said an agreement was made at the neighborhood meeting that the front of the property would remain residential. Will that be placed in a binding element? Joel Dock said binding element 12 ensures that the property at 1203 Payne St. maintains 1 dwelling unit (see recording for detailed presentation).

Deliberation

Planning Commission deliberation.

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 R-6 to C-1

On a motion by Commissioner Howard, seconded by Commissioner Mims, the following resolution based on the Plan 2040 Staff Analysis, the Applicant's Testimony and the Applicant's Justification was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Community Form because, the proposal results in the expansion of an adjacent commercial zone into a residential zone. However, this expansion is not the result of a new use that is not contiguous with other uses. The expansion provides additional zoning for a corner commercial use. These types of uses are featured throughout traditional neighborhoods and serve the neighborhood. The proposal will not result in displacement of residents as the zone allows for mixed-use development like that proposed and the district allows for services near customers and transit in a walkable neighborhood. Building containing residential and commercial uses near one another are common in traditional neighborhoods; the proposed use and zoning allow for the expansion of an existing restaurant near major transportation and commercial corridors where demand and adequate infrastructure are present; the site is in a walkable and well-connected neighborhood where multi-modal transportation is encouraged and supported; buildings containing residential and commercial uses near

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one another are common in traditional neighborhoods. A conditional use permit for outdoor alcohol sales is requested in conjunction with this review and has been evaluated for appropriateness of site design and the ability to mitigate noise, if any, and other factors related to the standard of review; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Form because, the proposal does not create a new activity center. It allows for the expansion of an appropriately located existing neighborhood serving zoning district at the corner. As demonstrated in the standard of review for the detailed plan associated with this case, it is compatible with the area; the subject property is in the Traditional Neighborhood form district and in a walkable and well-connected neighborhood near major transit and commercial corridors; a population is present to support a wide variety of neighborhood goods and services; the proposal will result in compact development as the proposed zoning allows for the existing restaurant to be expanded to serve the neighborhood instead of relocating to a suburban location; the site is in a walkable and well-connected neighborhood where multi-modal transportation is encouraged and supported. Generally, corner commercial uses and restaurants are staples of viable neighborhoods with a strong sense of place and reduces congestion by promoting walkable neighborhood services; the proposal will expand an existing commercial establishment in an area that supports redevelopment and will continue to provide residential uses on the expanded property; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Community Form because, the subject site does not have any recognizable natural features; the subject site does not have any recognizable wet soils, steep slopes or issues that may result in erosion; the subject site does not have any recognizable natural features such as sinkholes or landslides; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 4: Community Form because, the site does not possess significant cultural or natural features. The existing structure will be reused. Corner commercial uses corner commercial uses and restaurants are staples of viable neighborhoods with a strong sense of place; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Mobility because, the proposed zone allows for mixed-use development near major transit and commercial corridors, which is also near downtown to support transit-oriented development and an efficient public transportation system. The site is in a walkable and well-connected neighborhood; and

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WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Mobility because, access to corner lots through residential neighborhoods or mixed-use areas encourages viable neighborhoods with a strong sense of place. Access is not through areas of lower intensity which would create a nuisance; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 3: Mobility because, the proposed district encourages neighborhood serving uses within proximity to residents in a walkable and well-connected neighborhood; the site is in a walkable and well-connected neighborhood where multi-modal transportation is encouraged and supported from nearby residents; the proposal will have a limited impact on transportation network. Pedestrian access is not impacted; improvements necessitated by the proposed district will be made, including bike racks or sidewalk repair; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 2: Community Facilities because, the proposed district is in an area served by existing utilities; an adequate supply of potable water and water for fire-fighting purposes is available; preliminary approval has been received by MSD to ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Land Use & Development Goal 1: Economic Development because, the proposed intensity district expands upon an existing commercial establishment within a walkable and well-connected neighborhood near major transit and commercial corridors.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-6, Multi-family to C-1, Commercial on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Daniels, Howard, Mims, Price, Seitz and Lewis

NOT PRESENT AND NOT VOTING: Commissioner Sistrunk

Conditional Use Permit for outdoor alcohol sales and consumption (LDC 4.2.41)

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On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution based on the Standard of Review and Staff Analysis, testimony and evidence provided today was adopted.

WHEREAS, the proposal meets applicable policies of the Comprehensive Plan. Plan 2040 calls for proposals to mitigate adverse impacts of noise from proposed development on existing communities. It also calls for compatibility of uses with the area and the form, compact development, and rehabilitation. The outdoor area for alcohol consumption will be partially enclosed where it is immediately abutting the shared property line with the adjacent residential use and zone. Buildings containing commercial uses near one another or along property lines are common in traditional neighborhoods and might often share or be close to property lines. The outdoor dining space will be separated through a solid wall with roof where it shares the property line; thus, reducing adverse impacts of noise and activity upon the residential property. The applicant has also committed to through binding elements which run with the land to shut off music no later than 10 P.M. The open-air portion of the outdoor dining space will be located between the partially enclosed dining area and the existing restaurant. Materials are consistent with the existing restaurant and all structures will comply with applicable building and fire codes; and

WHEREAS, the proposed improvements are compatible with development of the area and the pattern of the form district. Materials and design are consistent with the existing restaurant and the development is compact; and

WHEREAS, the Louisville Metro Planning Commission finds, the subject property is served by existing public utilities and facilities. Transportation Planning and MSD have reviewed the proposal and provided their preliminary approval; and

WHEREAS, the Louisville Metro Planning Commission further finds 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

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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. The conditional use permit for outdoor alcohol sales will comply with each of these required standards.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Conditional Use Permit for outdoor alcohol sales and consumption (LDC 4.2.41), subject to the following 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 use until further review and approval by the Board.
3. Outdoor music shall not be audible beyond the property line and shall be turned off at 10 P.M.

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Daniels, Howard, Mims, Price, Seitz and Lewis

NOT PRESENT AND NOT VOTING: Commissioner Sistrunk

Variance of LDC, section 5.2 to encroach upon required side yard setback

On a motion by Commissioner Howard, seconded by Commissioner Mims, the following resolution based on the Standard of Review and Staff Analysis, testimony and evidence provided was adopted.

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WHEREAS, the requested variance will not adversely affect the public health, safety or welfare as the setback does not impede the safe movement of pedestrians or vehicles or the use of yards or open spaces; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as buildings near one another or along or near property lines are common in traditional neighborhoods. The encroachment is not noticeable from the public realm due to existing setback, which the proposed structure will follow; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the setback does not impede the safe movement of pedestrians or vehicles or the use of yards or open spaces; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations as the requested setback does adversely impact public health, safety, or welfare and no hazards or nuisances are created. Further, it is consistent with the character of the area; and

WHEREAS, the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as land in the general vicinity display similar setbacks to what is proposed, including the existing structure; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as relief in accordance with items 'a' through 'd' of the standard of review have been adequately justified; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Variance of LDC, section 5.2 to encroach upon required side yard setback.

YES: Commissioners Brown, Carlson, Clare, Daniels, Howard, Mims, Price, Seitz and Lewis

NOT PRESENT AND NOT VOTING: Commissioner Sistrunk

Waivers:

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On a motion by Commissioner Howard, seconded by Commissioner Seitz, the following resolution based on the Standard of Review and Staff Analysis, testimony and evidence provided today was adopted.

1. Waiver of Land Development Code (LDC), section 10.2 to encroach upon landscape buffer area (northeast property line)

WHEREAS, the waiver will not adversely affect adjacent property owners as the encroachment does not impede the safe movement of pedestrians or vehicles or the use of yards or open spaces on adjacent property. It also maintains the existing setback of the current residence; and

WHEREAS, the waiver will not violate specific guidelines of Plan 2040. Community form Goal 1, Policy seeks to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. Policy 12 calls for the parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. The encroachment allows for compact development consistent with the development of corner commercial uses in traditional neighborhoods. The LBA of the LBA on a narrow lot would create incompatibility with surrounding development and render much of the space unusable; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the development site is narrow and the LBA would render much of the space unusable. Additionally, the application of the LBA would create incompatibility with development in the area and the form district; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the proposal is designed to maintain compatibility with existing development on the site and within the area.

2. Waiver of LDC, section 10.2 to encroach upon vehicle use area landscape buffer area (alley)

WHEREAS, the waiver will not adversely affect adjacent property owners as the parking spaces are located in the alley and necessary for the proposal; and

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WHEREAS, the waiver will not violate specific guidelines of Plan 2040. Community form Goal 1, Policy seeks to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. Policy 12 calls for the parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. The VUA LBA is required along an alley which is the appropriate location for parking in traditional neighborhoods and no buffer is needed for an alley; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the parking spaces will back out into the alley and the VUA LBA is unnecessary; and

WHEREAS, the Louisville Metro Planning Commission further finds the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as parking would not be able to maneuver.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the 1. Waiver of Land Development Code (LDC), section 10.2 to encroach upon landscape buffer area (northeast property line) and 2. Waiver of LDC, section 10.2 to encroach upon vehicle use area landscape buffer area (alley).

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Daniels, Howard, Mims, Price, Seitz and Lewis

NOT PRESENT AND NOT VOTING: Commissioner Sistrunk

Revised Detailed District Development Plan

On a motion by Commissioner Howard, seconded by Commissioner Daniels, the following resolution based on the Standard of Review and Staff Analysis, testimony and evidence provided today was adopted.

WHEREAS, 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 will be provided. The site does not contain natural resources and the existing structures will be reused; and

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WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided. The site is in a walkable and well-connected neighborhood that is major transit and commercial corridors; and

WHEREAS, no open space is necessary for the development; and

WHEREAS, 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; and

WHEREAS, the Louisville Metro Planning Commission finds, the proposal is compatible with the overall character of the area and pattern of the form district. The proposed rendering demonstrates a high level of design and consideration to the character of the area, as well as the existing structure; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to the Comprehensive Plan. The site is in a walkable and well-connected neighborhood. The development is consistent with the compact nature of development in the area. The proposal allows for the expansion of a neighborhood serving use. All relief requested from the Land Development Code appears to be adequately justified.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Revised Detailed District Development Plan **SUBJECT** to the following 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, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District

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b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

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. The materials and design of proposed structures at 1201 Payne Street shall be substantially the same as depicted in the rendering as presented at the February 4th, 2016 Planning Commission public hearing. Materials and design of structures at 1203 Payne Street shall be substantially the same as presented at the April 7, 2022 Public Hearing.

6. Use of the property shall be limited to the following: Antique Shops, Art Galleries, Bakeries, Barber shop, Beauty Shop, Catering kitchen, Clothing store, Clubs, (private, non-profit or proprietary), Computer sales, Confectionery store, Dwelling units (single, two-family, multifamily), Florist shop, Hardware store, Home occupations, Interior Decorating Shops, Music Store, Office (business, professional and governmental) uses, Photocopying, Photography shops, Photography studios, Picture framing, Restaurants with outdoor dining, including alcohol sales and consumption, Shoe repair shops, Shoe Stores, Tailor, Toy and Hobby Stores, Veterinary hospital, and wearing apparel shops.

7. The Restaurant shall have service hours not to exceed the following times: Sunday through Thursday 10:00 a.m. to 10:00 p.m. and Friday and Saturday 10:00 a.m. to 12:00 a.m.

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8. No outdoor advertising signs, pennants, balloons or banners except the ones identifying the business name.
9. The operator of the site will inform all vendors in writing that the idling of trucks is not permitted on Payne and Cooper Streets.
10. All outside lighting shall be directed towards the business and away from adjacent residential properties. No exterior neon lighting is permitted.
11. The applicant will maintain a private parking agreement for employee parking and inform the Irish Hill Neighborhood Association of any changes in the status of the agreement within 30 days of those changes. A copy of the agreement will be provided to Planning and Design Services staff for the case on file.
12. The property at 1203 Payne Street shall maintain 1 dwelling unit.
13. Outdoor music shall not be audible beyond the property line and shall be turned off at 10 P.M.
14. Outdoor dining on the lot known as 1203 Payne Street, including alcohol sales and consumption shall not occur until a certificate of occupancy is received and the improvements proposed on the development plan and shown in the rendering to the Planning Commission on April 7, 2022 are made.

The vote was as follows:

YES: Commissioners Brown, Carlson, Clare, Daniels, Howard, Mims, Price, Seitz and Lewis

NOT PRESENT AND NOT VOTING: Commissioner Sistrunk