

Board of Zoning Adjustment Staff Report

October 30, 2017



Case No:	17CUP1043
Project Name:	Behar Café, Inc.
Location:	282 Evangeline Ave.
Owners:	Southside, LLC
Applicant:	Ekrema Ramic
Jurisdiction:	Louisville Metro
Council District:	21 – Dan Johnson
Case Manager:	Brian Mabry, Planning Supervisor

REQUEST

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

CASE SUMMARY/BACKGROUND

The applicant operates a restaurant, Behar Café, on the subject property. The applicant would like to add an outdoor area that will allow alcohol sale and consumption. The café has an indoor capacity of approximately 100 seats. It is open from 10 AM to 4 AM, except for Sunday, when it closes at 2 AM the following Monday morning. The café closes sooner on slower nights. The applicant proposes to add an outdoor drinking area that is 33 feet wide and 16 feet deep for a total of 528 square feet. The applicant proposes four tables with four chairs each for the outdoor alcohol area. The applicant proposes a four-foot tall wood picket fence around the perimeter of the outdoor alcohol area as well as a structural covering over the area. At the time of publication of this staff report, the applicant is considering installing speakers for the outdoor alcohol area for recorded music, but the plans for this are not yet completely firm.

The subject property is part of a larger retail center that includes another restaurant to the east, a grocery store to the south, and a discount store to the west, all zoned C-1. An office is across Evangeline Avenue, to the north, and is zoned OR-1. The surroundings are all within the Traditional Neighborhood form district.

STAFF FINDING

The proposal meets the applicable policies of the Comprehensive Plan. There are eight specific standards related to the Conditional Use Permit. Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Board of Zoning Adjustment must determine if the proposal meets the standards established in the Land Development Code for a conditional use permit, variance, and landscape waiver.

TECHNICAL REVIEW

There are no outstanding technical review items.

INTERESTED PARTY COMMENTS

A neighborhood meeting was held on July 29, 2017 with one guest in attendance. Staff has received no interested party comments as of the publication of this Staff Report.

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 Plan. The grid pattern is not impacted by this request. The proposal contributes to an existing neighborhood center. The proposal shares parking facilities with two retail stores. The subject property is on a local TARC route and has a bus stop directly in front of it. The proposal does not constitute a non-residential expansion into an existing residential area. Although not required because the outdoor alcohol area is greater than 50 feet from residentially used or zoned property, the proposal contains a four-foot picket fence around the perimeter of the alcohol area. The request has received preliminary approval from the Metropolitan Sewer District, Public Works, Public Health, and the Air Pollution Control District. The proposal is served by existing utilities.

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 an area that has a mix of commercial services, restaurants, and residential. The proposed 528 square-foot outdoor alcohol area with four tables will not change the character of the subject property or its surroundings. All the commercial uses in the area have similar, scale, intensity, traffic, noise, and lighting. Additional lighting, if utilized, will be minimal and must comply with the Metro Code of Ordinances. In addition, Standard 4.2.41 of the Land Development Code requires that the outdoor serving of alcohol shall cease by 1 A.M.

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 subject property is on a local TARC route and has a bus stop directly in front of it. It has access to a minor arterial, primary collector, and local road. The request has received preliminary approval from the Metropolitan Sewer District, Public Health and Wellness, and Public Works. The Louisville Fire District did not comment on the request.

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

STAFF: There are eight requirements and four items will be met which are items A., C., F., and G. Items B. and D. do not apply. Item E. will need to be obtained. The BOZA may exercise its authority under Item H.

4.2.41 Outdoor Alcohol Sales and Consumption/Indoor Entertainment Activity for a Restaurant in the C-1 Zoning District Outdoor alcohol sales and consumption and/or indoor live entertainment 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.

STAFF: The outdoor alcohol area is not adjacent to the public right-of-way, but the applicant proposes a physical barrier that is four feet in height.

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

STAFF: The applicant does not currently have one of these licenses. Condition of Approval #3 requires the issuance of such license for the business.

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.

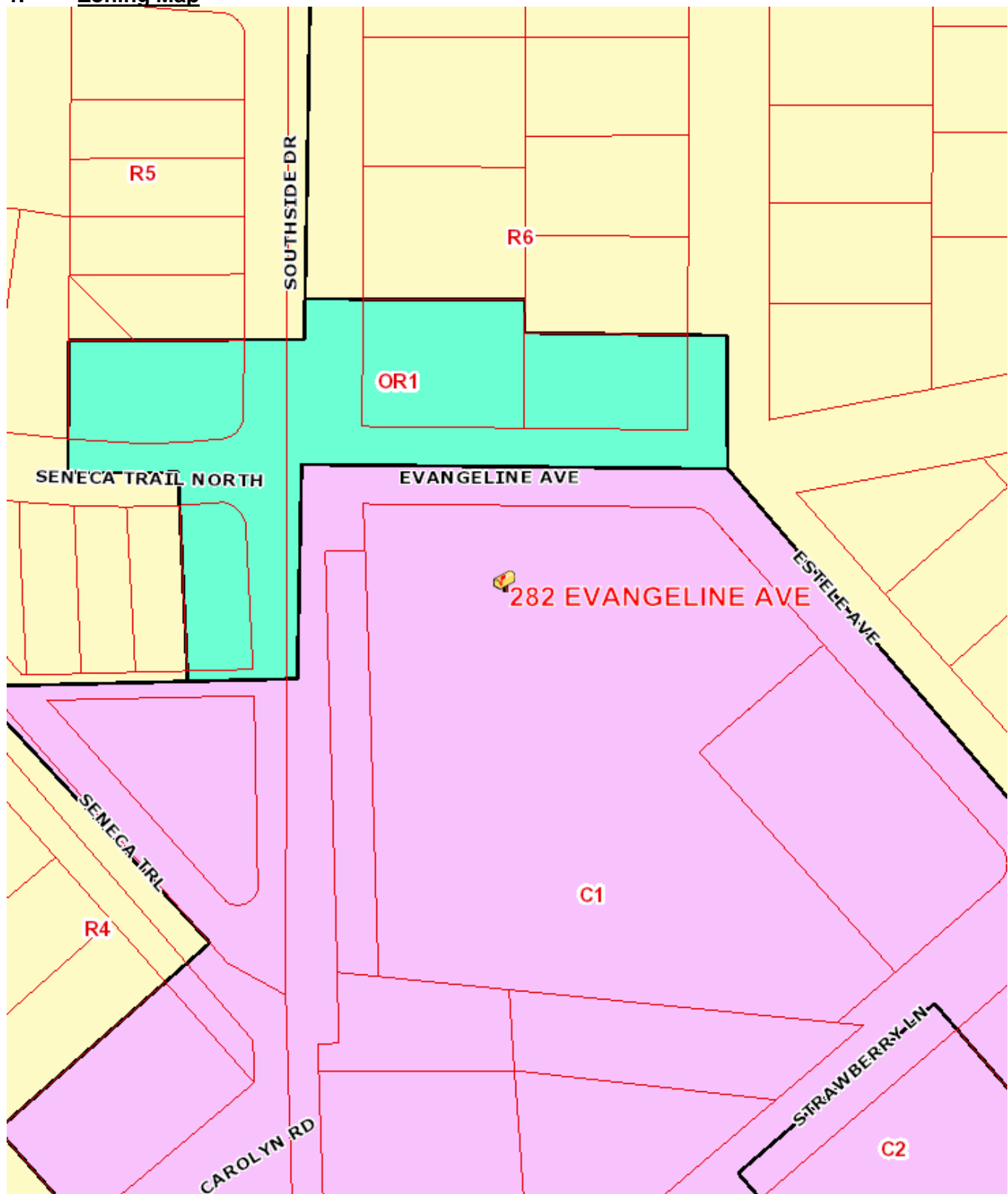
NOTIFICATION

Date	Purpose of Notice	Recipients
9/13/17	Hearing before BOZA	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 17 Notice posted on property

ATTACHMENTS

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

1. Zoning Map



2. Aerial Photograph



3. Cornerstone 2020 Checklist

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

Traditional Neighborhood: 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.2: The proposal preserves the existing grid pattern of streets, sidewalks and alleys.	✓	The grid pattern is not impacted by this request.
2	Community Form/Land Use Guideline 1: Community Form	B.2: The proposal introduces an appropriately-located neighborhood center including a mix of neighborhood-serving uses such as offices, shops and restaurants.	✓	The proposal contributes to an existing neighborhood center.
3	Community Form/Land Use Guideline 1: Community Form	B.2: The proposal preserves public open spaces, and if the proposal is a higher density use, is located in close proximity to such open space, a center or other public areas.		
4	Community Form/Land Use Guideline 1: Community Form	B.2: The proposal preserves and renovates existing buildings if the building design of these structures is consistent with the predominate neighborhood building design.		
5	Community Form/Land Use Guideline 2: Centers	A.1/7: The proposal, which will create a new center, is located in the Traditional Neighborhood Form District, and includes new construction or the reuse of existing buildings to provide commercial, office and/or residential use.		
6	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.		
7	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.		

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
8	Community Form/Land Use Guideline 2: Centers	A.5: The proposed center includes a mix of compatible land uses that will reduce trips, support the use of alternative forms of transportation and encourage vitality and sense of place.		
9	Community Form/Land Use Guideline 2: Centers	A.6: The proposal incorporates residential and office uses above retail and/or includes other mixed-use, multi-story retail buildings.	-	The proposal does not include residential and office uses above retail.
10	Community Form/Land Use Guideline 2: Centers	A.12: If the proposal is a large development in a center, it is designed to be compact and multi-purpose, and is oriented around a central feature such as a public square or plaza or landscape element.		
11	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 such facilities with 2 retail stores.
12	Community Form/Land Use Guideline 2: Centers	A.14: The proposal is designed to share utility hookups and service entrances with adjacent developments, and utility lines are placed underground in common easements.		
13	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 subject property is on a local TARC route and has a bus stop directly in front of it.
14	Community Form/Land Use Guideline 3: Compatibility	A.2: The proposed building materials increase the new development's compatibility.		
15	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 does not constitute a non-residential expansion into an existing residential area.
16	Community Form/Land Use Guideline 3: Compatibility	A.5: The proposal mitigates any potential odor or emissions associated with the development.		

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
17	Community Form/Land Use Guideline 3: Compatibility	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.		
18	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.		
19	Community Form/Land Use Guideline 3: Compatibility	A.11: If the proposal is a higher density or intensity use, it is located along a transit corridor AND in or near an activity center.		
20	Community Form/Land Use Guideline 3: Compatibility	A.21: The proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements.		
21	Community Form/Land Use Guideline 3: Compatibility	A.22: The proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers that are of varying designs such as landscaping, vegetative berms and/or walls, and that address those aspects of the development that have the potential to adversely impact existing area developments.		
22	Community Form/Land Use Guideline 3: Compatibility	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.		
23	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.		

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
24	Community Form/Land Use Guideline 3: Compatibility	A.24: The proposal includes screening and buffering of parking and circulation areas adjacent to the street, and uses design features or landscaping to fill gaps created by surface parking lots. Parking areas and garage doors are oriented to the side or back of buildings rather than to the street.	✓	Although not required because the outdoor alcohol area is greater than 50 feet from residentially used or zoned property, the proposal proposes a 4' picket fence around the perimeter of the alcohol area.
25	Community Form/Land Use Guideline 3: Compatibility	A.25: Parking garages are integrated into their surroundings and provide an active, inviting street-level appearance.		
26	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.		
27	Community Form/Land Use Guideline 4: Open Space	A.2/3/7: The proposal provides open space that helps meet the needs of the community as a component of the development and provides for the continued maintenance of that open space.		
28	Community Form/Land Use Guideline 4: Open Space	A.4: Open space design is consistent with the pattern of development in the Neighborhood Form District.		
29	Community Form/Land Use Guideline 4: Open Space	A.5: The proposal integrates natural features into the pattern of development.		
30	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.1: The proposal 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.		
31	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.2/4: The proposal includes the preservation, use or adaptive reuse of buildings, sites, districts and landscapes that are recognized as having historical or architectural value, and, if located within the impact area of these resources, is compatible in height, bulk, scale, architecture and placement.		
32	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.6: Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion.		

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
33	Marketplace Guideline 6: Economic Growth and Sustainability	A.2: Ensure adequate access between employment centers and population centers.		
34	Marketplace Guideline 6: Economic Growth and Sustainability	A.3: Encourage redevelopment, reinvestment and rehabilitation in the downtown where it is consistent with the form district pattern.		
35	Marketplace Guideline 6: Economic Growth and Sustainability	A.4: Encourage industries to locate in industrial subdivisions or adjacent to existing industry to take advantage of special infrastructure needs.		
36	Marketplace Guideline 6: Economic Growth and Sustainability	A.6: Locate retail commercial development in activity centers. Locate uses generating large amounts of traffic on a major arterial, at the intersection of two minor arterials or at locations with good access to a major arterial and where the proposed use will not adversely affect adjacent areas.		
37	Marketplace Guideline 6: Economic Growth and Sustainability	A.8: Require industrial development with more than 100 employees to locate on or near an arterial street, preferably in close proximity to an expressway interchange. Require industrial development with less than 100 employees to locate on or near an arterial street.		
38	Mobility/Transportation Guideline 7: Circulation	A.1/2: The proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means.		
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 subject property is on a local TARC route and has a bus stop directly in front of it.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
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.		
41	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.		
42	Mobility/Transportation Guideline 7: Circulation	A.10: The proposal includes adequate parking spaces to support the use.		
43	Mobility/Transportation Guideline 7: Circulation	A.13/16: The proposal provides for joint and cross access through the development and to connect to adjacent development sites.	✓	The site has access to a development to the south.
44	Mobility/Transportation Guideline 8: Transportation Facility Design	A.8: Adequate stub streets are provided for future roadway connections that support and contribute to appropriate development of adjacent land.		
45	Mobility/Transportation Guideline 8: Transportation Facility Design	A.9: Avoid access to development through areas of significantly lower intensity or density if such access would create a significant nuisance.		
46	Mobility/Transportation Guideline 8: Transportation Facility Design	A.11: The development provides for an appropriate functional hierarchy of streets and appropriate linkages between activity areas in and adjacent to the development site.		
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 subject property is on a local TARC route and has a bus stop directly in front of it.

#	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
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.	✓	The request has received preliminary approval from MSD.
49	Livability/Environment Guideline 12: Air Quality	The proposal has been reviewed by APCD and found to not have a negative impact on air quality.	✓	The request has received preliminary approval from APCD.
50	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.		
51	Community Facilities Guideline 14: Infrastructure	A.2: The proposal is located in an area served by existing utilities or planned for utilities.	✓	The proposal is served by existing utilities.
52	Community Facilities Guideline 14: Infrastructure	A.3: The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.	✓	The proposal is served by water.
53	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.	✓	The proposal is served by sewer.

4. Cornerstone 2020 Checklist

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.
3. The business must obtain an ABC license described in LDC Section 4.2.41.E within 60 days of the approval of the minutes of this case. If the business does not obtain such license within 60 days of the approval of the minutes of this case, then the Conditional Use Permit shall be deemed null and void.