

**Board of Zoning Adjustment
Staff Report
December 2, 2019**



Case No:	19-CUP-0175
Project Name:	Oxmoor Center East
Location:	7900 Shelbyville Road
Owner(s):	WMB 2, LLC & TWB Oxmoor 2, LLC
Applicant:	Brookfield Properties Retail, Inc.
Representative(s):	Frost Brown Todd, LLC
Jurisdiction:	Louisville Metro
Council District:	18 – Marilyn Parker
Case Manager:	Joel P. Dock, AICP, Planner II

REQUEST(S)

- **Conditional Use Permit** for outdoor alcohol sales and consumption for restaurant in the C-1 zoning district (LDC 4.2.41)

CASE SUMMARY

A conditional use permit for outdoor alcohol sales and consumption is requested in association with a roughly 11,000 SF restaurant at Oxmoor Center, a regional shopping center. The subject site is located in the northeast corner of Oxmoor Center at the intersection of Christian Way and Shelbyville Road. Access to Interstate-264 is within immediate proximity and public transit service is readily available for the development site. Alcohol service will occur in the designated “patio” as shown on the development plan. Public sidewalks and pedestrian connectivity will be provided in the area of development. Landscape islands will also be provided in the area of development.

STAFF FINDING

The conditional use permit appears to be adequately justified based on the standard of review contained in staff’s analysis. The site is in the Regional Center form district. The regional center serves as an area for the concentration of regional shopping, office, services, entertainment facilities and medium to high-density residential uses. The development site is not adjacent to residential zones or uses. It will not create any significant nuisances upon adjoining property.

TECHNICAL REVIEW

- The Development Review Committee will consider a revised detailed district development plan with waivers on December 4, 2019 (19-DDP-0051).

The site is located in the Regional Center Form District

Regional Center is a development form that typically contains a mixture of high intensity uses including regional shopping, office, services, entertainment facilities and medium to high-density residential uses. Such Regional Centers may include a variety of stores under one roof, or may consist of freestanding structures. The amount of floor space in regional centers usually exceeds 400,000 square feet, reflecting a market area designed to serve a population of at least 100,000. Redevelopment and infill development are encouraged.

Integration of civic uses such as branch libraries, community centers or government offices is encouraged, and can strengthen the identity and success of the center. Regional Centers are most appropriately located on or near major arterials, state or interstate highways. Development in Regional Centers should be compact and provide for site accessibility through all means of transportation. A high level of transit access is desirable and regional centers should serve as focal points for transit from homes and workplaces. Connectivity and the capacity to handle traffic should be addressed through unified access and circulation. The site plan should encourage pedestrian activity within the Regional Center with human-scale design and by providing pedestrian amenities and pedestrian connectivity among buildings.

Landscaping, building design and unified signs in the Regional Center give character to the development, defines and reinforces identity and provides a human scale. A center may include several internal focal points. Several uses sharing a building may have separate entrances and the design of the building facades may mimic a traditional marketplace corridor or “main street.” Parking in Regional Centers is provided on a shared basis to avoid excessive impervious areas, and the center is designed to encourage customers to visit several establishments without moving their vehicles.

Regional Center site design should provide screening of the parking lot and outbuildings as the site is viewed from the arterial roadway. The rear or loading area of buildings should be well screened from arterials, freeways and adjacent residential areas. Human safety or “crime prevention through environmental design” should be a factor in the design of regional centers.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT

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

STAFF: The proposal complies with land Use and Development Goals 1 & 2: Community Form as the development site does not share boundaries with residential uses and is compatible with the scale and intensity of uses within the center. No significant negative impacts on the environment or from traffic will be created. The proposal further concentrates mixed-uses within a current activity center, which encourages a more compact pattern of development and efficient land use pattern. The proposal complies with Land Use and Development Goal 3: Mobility as the site is accessible via safe pedestrian walkways from public ways and necessary pedestrian improvements (sidewalks) within the public right-of-way have been provided. The development promotes public transit and pedestrian use.

2. Is the proposal compatible with surrounding land uses and the general character of the area including factors such as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting and appearance?

STAFF: The proposal is compatible with surrounding land uses as the proposed outdoor consumption is consistent with abutting C-2 districts and the general area within the Regional Center form district. The regional center serves as an area for the concentration of regional shopping, office, services, entertainment facilities and medium to high-density residential uses.

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

STAFF: Off-site and on-site improvements will be made as shown on the proposed development plan.

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

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.

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.

The proposal complies with each of the above listed items. The proposal is being requested for a restaurant on an out-lot of a regional shopping center within the C-1 zoning district. Outdoor consumption will occur in the outdoor dining/patio area which is oriented away from public roadways. The development site is not adjacent to residential zones or uses and will not create significant nuisances.

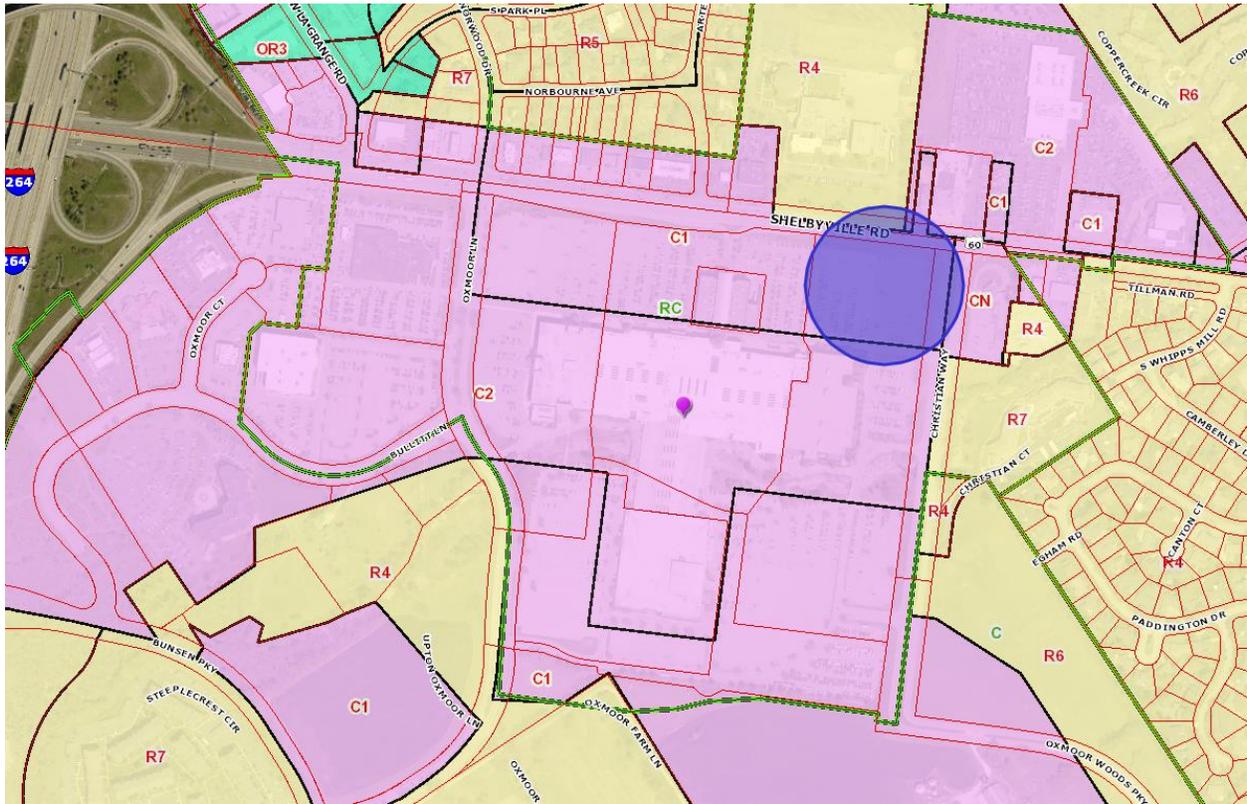
NOTIFICATION

Date	Purpose of Notice	Recipients
11/18/19	Hearing before BOZA	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 18
11/22/19	Hearing before BOZA	Sign Posting on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Proposed Conditions of Approval
4. Associated Cases

1. **Zoning Map**



3. 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 off-street parking without further review and approval by the Board.

4. Development Case History

- **9-320-65 (Pre-Plan Certain):** 'A Master Plan for the Development of the William Marshall Bullitt Trust Property' change in zoning from R-4 to R-7, R-8, R-10, C-5 (office), C-1 & C-2. Planning Commission recommends denial on June 30, 1966. Fiscal Court approves in-part and denied the requested C-2 district. Majority of present C-1 zoning district at Oxmoor Center is established.
- **9-162-68 (Pre-Plan Certain):** Change in zoning from R-4 to C-2, R-4 & C-1 to C-2, and R-4 to C-1. Planning Commission recommends denial of C-2 on the west side of Oxmoor Lane on August 8, 1968. Fiscal Court approves all requested districts. Central C-2 zoning district at Oxmoor Center is established.
- **B-69-69:** A parking variance to reduce parking from 3,301 to 2,939 spaces.
- **B-20-76:** Conditional use permit for off-street parking (note: area currently zoned C-1).
- **9-50-80:** Change in zoning from R-4 to C-1 & C-2 and C-1 to C-2 for rear additions, including Sears department store is approved November 11, 1980. Expanded the C-2 zoning district established under docket 9-162-68 and created the current extent of the C-1 zoning district making up the rear of the Oxmoor Center.
- **9-49-83:** Change in zoning from C-1 to C-2 to expand the perimeter of the previously approved C-2 zoning by 2.9 acres is approved August 18, 1983. Binding elements carried forward from 9-50-80.
- **B-7-92:** attached signage variance.
- **B-197-98:** attached signage variance.
- **B-149-00:** Conditional use permit for off-street parking. This request was approved in an area to the immediate southeast of the current development site. The site of the request is now associated with docket 9-15-02 (Oxmoor farms) and is zoned C-1, Commercial. It was approved on condition that it would not be used unless an associated parking waiver (PW-10-00) was denied. B-149-00 expired 1-year later.
- **PW-10-00/9-50-80/9-49-83:** A parking waiver & revised detailed district development plan to reduce the required parking from 6,035 to 4,407 spaces at the Oxmoor Center is approved on September 7, 2000.
- **9-15-02:** Change in zoning on adjacent land containing 415 acres known as Oxmoor Farms from R-4 to R-6, OR-3 and C-1 is approved on July 23, 2002.
- **PW-10-00/9-50-80/9-49-83:** A parking waiver & revised detailed district development plan to reduce the required parking from 4,605 to 4,330 at the Oxmoor Center is approved on July 21, 2005.