

**Planning Commission Minutes  
August 20, 2015**

**Public Hearing**

**Case No. 15ZONE1016**

**Request:** Change in zoning from R-4 Single Family Residential to C-1 Commercial, Revised Detailed District Development Plan, Binding Elements, and Conditional Use Permit for outdoor alcohol sales and consumption.

**Project Name:** Martin's BBQ

**Location:** 3408 Indian Lake Drive

**Owner/Applicant:** Indian Springs Green Space, LLC  
9462 Brownsboro Road Suite 181  
Louisville, KY 40241

**Representatives:** William Bardenwerper  
Bardenwerper, Talbott & Roberts PLLC  
1000 North Hurstbourne Parkway 2<sup>nd</sup> Floor  
Louisville, KY 40223

**Engineer/Designer:** Marv Blomquist  
Blomquist Design Group, LLC  
10529 Timberwood Circle Suite D  
Louisville, KY 40223

**Jurisdiction:** Louisville Metro

**Council District:** 17 – Glen Stuckel

**Case Manager:** **David B. Wagner, Planner II**

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:**

00:06:47 David Wagner presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

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00:12:00 Mr. Wagner explained why a full sidewalk is not being provided along the frontage of Indian Lake Drive. Since there is no construction being proposed at this time, the sidewalk threshold is not being met. Sidewalk threshold minimums were discussed.

**The following spoke in favor of the proposal:**

William Bardenwerper, Bardenwerper, Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway 2<sup>nd</sup> Floor, Louisville, KY 40223

Marv Blomquist, Blomquist Design Group, LLC, 10529 Timberwood Circle Suite D, Louisville, KY 40223

Brent Nash (representing the Owner/Applicant), 3135 Indian Lake Drive, Louisville, KY 40241

Shay Tinsley, 9810 Reynolda Road, Louisville, KY 40223

David Mindel & Kathy Linares, Mindel Scott & Associates, 5151 Jefferson Boulevard, Louisville, KY 40219

**Summary of testimony of those in favor:**

00:15:44 William Bardenwerper, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

00:23:53 Mr. Bardenwerper said that, if the proposed sign is in the public ROW, it will be moved.

00:24:36 Brent Nash, president of the Indian Springs Homeowners Association, spoke in support of the project.

00:26:06 Shay Tinsley was called but declined to speak.

00:26:18 In response to a question from Commissioner Lewis, Mr. Bardenwerper said that, if the existing sign is in the ROW, it will be moved and not used for the business. Mr. Nash said the lease with Martin's BBQ includes very limited signage.

00:27:27 In response to a question from Commissioner Peterson, Mr. Nash discussed pedestrian movement and safety issues.

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**The following spoke in opposition to the proposal:**

No one spoke.

**The following spoke neither for nor against the proposal:**

No one spoke.

**Rebuttal:**

There was no rebuttal, since no one spoke in opposition.

**Deliberation:**

00:28:40 Commissioner's deliberation.

00:29:02 Commissioner Brown raised some questions about pedestrian connectivity (sidewalks).

00:32:04 Mr. Wagner said the applicant has agreed to add the sidewalk.

**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, Conditional Use Permit, Revised Detailed District Development Plan, and Binding Elements**

00:32:39 On a motion by Commissioner Proffitt, seconded by Commissioner White, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the proposal meets the intents of **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 along this area of Westport Road. This application complies with this Guideline because there is 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

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**WHEREAS**, the Commission further finds that the proposal complies with the intents of **Guideline 2 – Centers**. This application complies with the Intents of this Guideline because Indian Springs has undergone several changes recently in order to repurpose the former golf course. This restaurant is a welcome addition to the recently approved hotel and 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 subdivision to generate additional income for the upkeep of the former golf course, now open space; and

**WHEREAS**, the Commission further finds that Policies 1, 2, 3, 4, 5, 7, 8 and 9 all pertain to the location, compact development, and mixture of uses in activity centers, especially those located in and around residential areas. The proposed restaurant for this site complies with these Policies of this Guideline because it is located near an arterial and an interstate highway, with a Regional Center across Westport Road and with other retail recently approved by the Planning Commission and Metro Council next door. This restaurant adds to an already large mix of uses in this immediate area, and this restaurant location exists within the neighborhood it serves, just as it is close to Westport Road, which serves a larger population base; and

**WHEREAS**, the Commission further finds that Policies 11 and 12 of this Guideline pertain to the design of centers and the desirability of focal points in them. This proposed restaurant at this site also complies with these Policies of this Guideline because the former Indian Springs clubhouse is a focal point for the neighborhood, now part of the large connected community green space. This application also complies with applicable Policies 13 and 14 of this Guideline because it utilizes existing parking; and

**WHEREAS**, the Commission further finds that the proposal complies with the intents of Guideline 3 – Compatibility. The proposed restaurant at this site complies with these Intents of this Guideline because it adds a new mix to the already existing land uses in the area. It does not involve any new noise, lighting or similar nuisances or negatively impact visual quality like some kinds of more intense commercial uses could, among other reasons because the former golf course clubhouse had a restaurant in it. And, as described elsewhere in this Compliance Statement, this restaurant helps to preserve the neighborhood by paying towards open space maintenance; and

**WHEREAS**, the Commission further finds that Policies 1, 2 and 4 of this Guideline all pertain to compatibility in terms of design, especially when located

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in or near an upscale residential area. The old clubhouse building will remain essentially as is, perhaps with some brick added to it; and

WHEREAS, the Commission further finds that 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 rear of the clubhouse building and near other commercial uses, away from the nearby residents, so that it will have no impacts on nearby neighborhood. 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; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **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 the proposed restaurant where alcoholic beverages may be served outdoors; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **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 purposeful reuse of the existing clubhouse building with this added outdoor seating area, the restaurant should become more popular to users, thus reducing commuting distances to farther away shopping centers with restaurants that have outdoor seating. Because this is an existing building, the redevelopment also helps reduce public and private cost for land development and creates funds to help with the upkeep of the former golf course land; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guidelines 7 and 8 – Circulation and Transportation Facility Design**. 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 building was formerly used as the golf course clubhouse and at the time the golf course was originally approved, the plan received a preliminary stamp of approval from Metro Transportation. Likewise, this application as well will need to receive the stamp of approval from Metro Transportation Planning in advance of docketing for Planning Commission review. That stamp will once again demonstrate compliance with all Metro Transportation Planning standards; and

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**WHEREAS**, the Commission further finds that the proposal meets the intents of **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 restaurant will be accessible by people using bicycles and those walking; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 10 – Flooding and Stormwater**. This application complies with the intents and applicable policies 1, 3, 6, 7, 10, and 11 of Guideline 10. Little if any additional impervious surface is being created because the applicant is proposing to reuse the former clubhouse building as it exists today; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **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; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of **Guideline 12 – Air Quality**. This application complies with the applicable Policies of this Guideline because, locating a restaurant within the Indian Springs subdivision, it can actually help contribute to improved air quality overall in the Louisville Metro community because locating this restaurant, as proposed in the neighborhood, permits Indian Springs residents to access it by walking. That helps reduce travel times, automobile usage and travel distances; and

**WHEREAS**, the Commission further finds that the proposal complies with the intents of **Guidelines 14 and 15 – Infrastructure and Community Facilities**. Infrastructure already exists, utilities are available at the site, and this facility is located near the Worthington Fire Department so that fire service is readily available; and

**WHEREAS**, the Commission further finds that the proposal meets the requirements for the granting of a 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: The proposal complies with the guidelines of the Comprehensive Plan as explained in the review for the re-zoning request; and

**WHEREAS**, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. The

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site design is compatible with existing commercial development in the area. The development will provide the required landscaping for this type of development, there will be no construction on site, and the parking spaces are located appropriately; and

**WHEREAS**, the Commission further finds that all government agencies and utilities have approved the proposal or found no lack of necessary public facilities; and

**WHEREAS**, the Commission further finds that the proposal complies with the following specific standards required to obtain the conditional use permit requested:

- 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.

And

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**WHEREAS**, the Commission further finds that there does not appear to be any environmental constraints or historic resources on the subject site. Since there is no construction on the site, tree canopy requirements of the Land Development Code are not required; and

**WHEREAS**, the Commission further finds that safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided. Sidewalks and vehicular access have been provided along Indian Lake Drive. Cross connectivity with the site to the north has been previously provided; and

**WHEREAS**, the Commission further finds that, since open space is not required for this proposal, appropriate open space has been provided for this development as required by LDC regulations; and

**WHEREAS**, the Commission further finds that 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 Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. The site design is compatible with existing commercial development in the area. The development will provide the required landscaping for this type of development, there will be no construction on site, and the parking spaces are located appropriately; and

**WHEREAS**, the Commission further finds that, based on the evidence and testimony presented, the applicant's justification and the staff report that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested Change in Zoning from R-4 (Single Family Residential) to C-1 (Commercial) be **APPROVED**; and does hereby **APPROVE** the requested Conditional Use Permit for outdoor alcohol sales and consumption, the Revised Detailed District Development Plan, and Binding Elements **ON CONDITION** that the applicant will extend the sidewalk across the front of the property; and to confirm that the sign is out of the public right-of-way; and **SUBJECT** to the following binding elements:



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**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. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
3. 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 Develop Louisville, Transportation Planning Review and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. 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.
  - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
  - e. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan.
4. 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

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implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

5. 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.
6. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the August 20, 2015 Planning Commission meeting.

**Conditions of Approval for CUP for Outdoor Alcohol Sales and Consumption**

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 without further review and approval by the Board.
3. The use of outdoor dining areas for the sale and consumption of alcohol shall cease by 11 P.M.
4. The entertainment activity shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99).

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**The vote was as follows:**

**YES: Commissioners Blake, Proffitt, Brown, Jarboe, White, Peterson, and Lewis.**

**NO: No one.**

**NOT PRESENT: Commissioners Turner and Kirchdorfer.**

**ABSTAINING: Commissioner Tomes.**



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