

**Board of Zoning Adjustment**  
**Staff Report**  
May 7, 2018



<b>Case No.</b>	17CUP1035
<b>Project Name</b>	Hooked on Frankfort
<b>Location</b>	3202 Frankfort Avenue
<b>Owner</b>	Sonyajean Inc.
<b>Applicant</b>	EC Design
<b>Representative</b>	EC Design
<b>Project Area</b>	0.23 acres
<b>Council District</b>	9 – Bill Hollander
<b>Case Manager</b>	Beth Jones, AICP, Planner II

**REQUEST**

- A conditional use permit for outdoor alcohol sales and consumption for a restaurant in the C-1 zoning district in accordance with LDC 4.2.41

**CASE SUMMARY/BACKGROUND**

The applicant intends to convert a portion of an existing building to a restaurant and add an outdoor deck. The CUP is necessary because the applicant wishes to serve alcohol in the new outdoor space. The applicant is not requesting a CUP for indoor live entertainment.

The 0.23 acre site is located on the south side of Frankfort Avenue at the corner of Crabbs Lane, an alley, between Crestwood and McCready Avenues. It is developed with a single building containing two commercial uses. Adjoining parcels to the east and west are zoned C-1. Parcels to the west adjoin the proposed deck area across Crabbs Lane at their rear property lines. These three parcels are in commercial, multi-family residential and single-family residential uses. The adjoining parcel to the east is in commercial use and all parcels to the north and south are single-family residences. A railroad track is located across from and parallel to Frankfort Avenue.

The applicant proposes to add a 950 sq ft outdoor deck onto the west side of the existing building. The indoor portion of the restaurant will occupy 2,580 sq ft of the existing building for a combined total of 3,528 sq ft. The remainder of the existing building is occupied by a tavern with an outdoor deck at the rear.

**STAFF FINDING**

The proposal meets the standard of review for the requested CUP.

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 by the Land Development Code.

## **TECHNICAL REVIEW**

Pursuant to LDC 9.1.16., a waiver request to reduce the required parking from 13 spaces to 10 spaces has been reviewed and approved by Staff (18WAIVER1015). No technical issues remain to be resolved.

## **INTERESTED PARTY COMMENTS**

A neighborhood meeting was held on November 22, 2017. A full summary of topics of discussion at the meeting can be found within the Legistar file.

## **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 is consistent with the Comprehensive Plan.

### 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 and appearance?

STAFF: The proposal uses an existing building that is compatible with surrounding land uses. Potential issues regarding noise, odor and lighting were discussed at the neighborhood meeting; the applicant is not requesting relief from any requirements related to these issues.

### 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: The proposed development does not substantially increase demands on public infrastructure and facilities. Pursuant to LDC 9.1.16.A., a parking waiver request for three spaces has been approved.

### 4. Does the proposal comply with the specific standards required to obtain the requested Conditional Use Permit?

#### 4.2.41 Outdoor Alcohol Sales and Consumption 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.

STAFF: The boundary will be defined by the deck structure and a privacy fence.

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.

STAFF: The proposal is not located within the public right-of-way and has received preliminary approval from Transportation Planning.

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 proposal includes a barrier that meets the requirements of 4.2.41.C. and D.

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 LDC 10.4 Implementation Standards.

STAFF: After discussions with the adjoining single-family residential property owner, the applicant will install a wood fence of the required height that matches the property owner's own wood fence across the alley.

E. This conditional use permit shall be limited to restaurant uses in 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 has been informed of this requirement.

F. The use of outdoor dining areas for the sale and consumption of alcohol shall cease by 1:00 A.M.

STAFF: The applicant has been informed of this requirement.

G. The entertainment activity shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99).

STAFF: The applicant has been informed of this requirement. The CUP request does not include live outdoor entertainment.

H. BOZA may require additional and more restrictive requirements than those listed above based on conditions at the specific location and characteristics of the specific restaurant.

STAFF: The applicant has been informed of this condition.

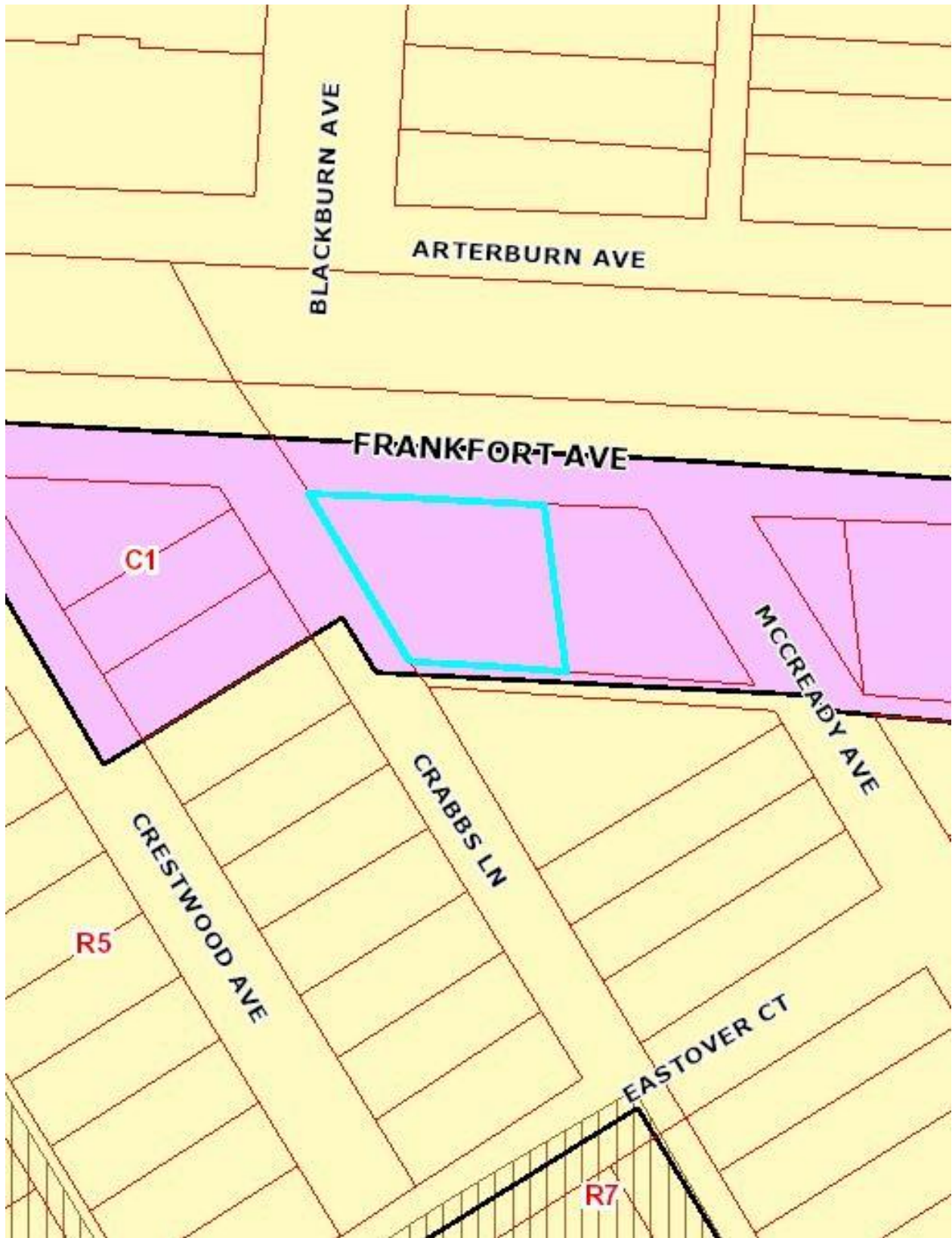
**NOTIFICATION**

Date	Purpose of Notice	Recipients
11/22/2017	Neighborhood Meeting	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 9
4/17/2018	Parking Waiver	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 9
4/13/2018	Notice of BOZA Hearing	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 9
	Notice of BOZA Hearing	Sign Posting

## **ATTACHMENTS**

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

1. Zoning Map



2. Aerial Photograph



### 3. Cornerstone 2020 Checklist

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

#### Traditional Marketplace Corridor: Non-Residential

#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
Community Form/Land Use Guideline 1: Community Form			
1	B.7: The proposal incorporates itself into the pattern of development, which includes a mixture of low to medium intensity uses such as neighborhood-serving and specialty shops, restaurants and services. Often, these uses include apartments or offices on upper floors.	✓	The proposal is a reuse of an existing structure within a mixture of low to medium intensity commercial uses.
2	B.7: The proposal includes buildings that have little or no setback, and are oriented to the street. New development respects the predominate rhythm, massing and spacing of existing buildings.	✓	The proposal reuses an existing structure oriented to the street.
3	B.7: New development maintains the existing grid pattern of streets and alleys and typical block size.	✓	The proposal uses existing streets and blocks.
4	B.7: The proposal includes on-street parking or parking in lots at the rear of the building, and includes wide sidewalks, street furniture and shade trees.	-	The proposal uses existing pull-in parking at front of existing structure.
5	B.7: The proposal's design is compatible with the scale and architectural style and building materials of existing developments in the corridor.	✓	The proposal is a reuse of an existing structure.
6	B.7: The proposal emphasizes compatibility of scale and the architectural style and building materials are compatible with nearby existing development.	✓	The proposal is a reuse of an existing structure.
Community Form/Land Use Guideline 2: Centers			
7	A.1/7: The proposal, which will create a new center, is located in the Traditional Marketplace Corridor Form District, and includes new construction or the reuse of existing buildings to provide commercial, office and/or residential use.	NA	The proposal does not create a new center.
8	A.3: The proposed retail commercial development is located in an area that has a sufficient population to support it.	NA	The proposal is not retail in nature.
9	A.4: The proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment.	✓	The proposal uses existing land use patterns and requires no new infrastructure.
10	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.	✓	Although the proposal is not a new center, it is multi-modal accessible and in keeping with adjoining development.

#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
11	A.6: The proposal incorporates residential and office uses above retail and/or includes other mixed-use, multi-story retail buildings.	NA	The proposal is a reuse of an existing building.
12	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.	NA	The proposal is not a large development in a center.
13	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.	NA	The proposal reuses existing parking facilities.
14	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.	NA	The proposal makes no changes to existing conditions.
15	A.16: The proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities.	NA	The proposal is multi-modal accessible and in keeping with adjoining development.
Community Form/Land Use Guideline 3: Compatibility			
16	A.2: The proposed building materials increase the new development's compatibility.	✓	The proposal is a reuse of an existing structure.
17	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.
18	A.5: The proposal mitigates any potential odor or emissions associated with the development.	NA	The proposal is not expected to produce potential odor or emissions.
19	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	✓	A waiver to reduce the required parking from 13 spaces to 10 spaces has been approved by Staff.
20	A.8: The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky.	✓	The proposal addresses potential lighting issues of outdoor area through a Condition of Approval.
21	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.	✓	The proposal is multi-modal accessible.
22	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.	✓	The proposal provides appropriate transitions between uses including compatible building design and materials and height restrictions.
23	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.	✓	The proposal provides appropriate transitions between uses including compatible building design and materials and height restrictions.
24	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.	✓	The proposal is a reuse of an existing structure.



#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
25	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.	NA	These conditions do not exist on the site.
26	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.	NA	These conditions do not exist on the site.
27	A.25: Parking garages are integrated into their surroundings and provide an active, inviting street-level appearance.	NA	This condition does not exist on the site.
28	A.28: Signs are compatible with the form district pattern and contribute to the visual quality of their surroundings.	✓	Signs will meet all LDC requirements.
Community Form/Land Use Guideline 4: Open Space			
29	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.	NA	These conditions do not exist on the site.
30	A.4: Open space design is consistent with the pattern of development in the Neighborhood Form District.	NA	These conditions do not exist on the site.
31	A.5: The proposal integrates natural features into the pattern of development.	NA	These conditions do not exist on the site.
Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources			
32	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.	NA	These conditions do not exist on the site.
33	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.	✓	The proposal is a reuse of an existing structure.
34	A.6: Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion.	NA	These conditions do not exist on the site.
Marketplace Guideline 6: Economic Growth and Sustainability			
35	A.3: Encourage redevelopment, reinvestment and rehabilitation in the downtown where it is consistent with the form district pattern.	✓	The proposal is not within downtown but is consistent with development patterns in the vicinity.
36	A.4: Encourage industries to locate in industrial subdivisions or adjacent to existing industry to take advantage of special infrastructure needs.	NA	The proposal does not include industrial uses.
37	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.	NA	The proposal does not include retail uses.

#	Cornerstone 2020 Plan Element or Portion of Plan Element	Staff Finding	Staff Comments
38	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.	NA	The proposal does not include industrial uses.
Mobility/Transportation Guideline 7: Circulation			
39	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.	NA	No improvements of public facilities are required.
40	A.3/4: The proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation.	✓	The proposal is multi-modal accessible.
41	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.	NA	The proposal does not include new transportation facilities.
42	A.9: The proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development.	NA	The proposal does not include new transportation facilities.
43	A.10: The proposal includes adequate parking spaces to support the use.	✓	A waiver to reduce the required parking from 13 spaces to 10 spaces has been approved by Staff.
44	A.13/16: The proposal provides for joint and cross access through the development and to connect to adjacent development sites.	NA	These requirements do not exist for the site.
Mobility/Transportation Guideline 8: Transportation Facility Design			
45	A.8: Adequate stub streets are provided for future roadway connections that support and contribute to appropriate development of adjacent land.	NA	The proposal does not include new transportation facilities.
46	A.9: Avoid access to development through areas of significantly lower intensity or density if such access would create a significant nuisance.	✓	The proposal is not accessed primarily through areas of lower intensity.
47	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.	NA	The proposal does not include new transportation facilities.
Mobility/Transportation Guideline 9: Bicycle, Pedestrian and Transit			
48	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 is multi-modal accessible and appropriately located.

Livability/Environment Guideline 10: Flooding and Stormwater			
49	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 reviewed the proposal and provided preliminary approval.
Livability/Environment Guideline 12: Air Quality			
50	The proposal has been reviewed by APCD and found to not have a negative impact on air quality.	✓	Review was waived by APCD.
Livability/Environment Guideline 13: Landscape Character			
51	A.3: The proposal includes additions and connections to a system of natural corridors that can provide habitat areas and allow for migration.	NA	These conditions do not exist on the site.
Community Facilities Guideline 14: Infrastructure			
52	A.2: The proposal is located in an area served by existing utilities or planned for utilities.	✓	No improvements to existing public facilities are required.
53	A.3: The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.	✓	No improvements to existing public facilities are required.
54	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.	✓	No improvements to existing public facilities are required.

#### 4. Conditions of Approval

1. All development shall be in accordance with the approved district development plan, including all notes thereon, and with all applicable sections of the Land Development Code (LDC). No further development shall occur on the site without prior review of and approval by the Board of Zoning Adjustment (BOZA).
2. The Conditional Use Permit shall be exercised as proscribed by KRS 100.237 within two years of BOZA approval. If it is not so exercised, the site shall not be used for outdoor alcohol sales and consumption for a restaurant in the C-1 zoning district without further review and approval by BOZA.
3. The materials and design of the proposed deck and privacy fencing shall be substantially the same as depicted in renderings as presented at the BOZA hearing on May 7, 2018.
4. No lighting for the outdoor deck area will be placed above the height of the privacy fence and all bulbs shall be shielded to direct light away from adjoining residential uses.