

# Board of Zoning Adjustment Staff Report

August 29, 2016



<b>Case No:</b>	16CUP1032
<b>Project Name:</b>	Martin's BBQ
<b>Location:</b>	3408 Indian Lake Drive
<b>Owner:</b>	Indian Springs Green Space, LLC
<b>Representative:</b>	Blomquist Design Group, LLC – Marv Blomquist
<b>Project Area/Size:</b>	3 acres
<b>Existing Zoning District:</b>	C-1, Commercial
<b>Existing Form District:</b>	N, Neighborhood
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	17– Glen Stuckel
<b>Case Manager:</b>	Joel P. Dock, Planner I

## REQUEST

- **Modified Conditional Use Permit** of Land Development Code (LDC), section 4.2.41 for Outdoor Alcohol Sales and Consumption/Indoor Entertainment Activity for a Restaurant in the C-1 Zoning District

## CASE SUMMARY

The applicant proposes to add a 1,000 SF patio and 5 employee parking spaces to the approved conditional use permit and detailed district development plan. The existing 6,800 SF building and 2,800 SF outdoor patio were previously used for a golf course clubhouse and was rezoned to C-1 with a conditional use permit for outdoor alcohol sales under case 15ZONE1016. The proposed patio is within the limits of the conditional use permit area, but the expanded improvements require the modification of the approved plans.

A revised detailed district development plan with a landscape waiver to waive the tree and screening requirement within the 35' LBA will be heard by the Development Review Committee Wednesday, August 31, 2016.

## LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b>Subject Property</b>			
Existing	Restaurant	C-1	N
Proposed	Restaurant	C-1	N
<b>Surrounding Properties</b>			
North	Retail	C-1	N
South	Green Space	R-4	N
East	Multi-Family Residential, Green Space	R-7, OTF	N
West	Green Space	R-4	N

## PREVIOUS CASES ON SITE

<u>9-74-92/10-42-92:</u>	Re-Zoning from R-4 and R-7 to R-4, R-6, & R-7, General District Development Plan, and Preliminary Major Subdivision to create the Indian Springs Golf Community
<u>PB 39, PG 93:</u>	Record Plat for Indian Springs Golf Community
<u>14627:</u>	Re-Zoning from R-4 to C-1, Variances, Revised General/Preliminary Major Subdivision, and Detailed District Development Plan to allow a grocery store and retail development
<u>13DEVPLAN1064:</u>	Revised Detailed District Development Plan to revise the entrance on Indian Lake Drive to correspond with the proposed hotel entrance across the street
<u>15ZONE1016:</u>	Change-in-zoning from R-4 to C-1 with a conditional use permit for outdoor alcohol sales
<u>16DEVPLAN1155:</u>	RDDDP with landscape waiver (DRC 8/31/16)

## INTERESTED PARTY COMMENTS

Staff has not received any inquiries on this proposal.

## APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code (July 2016)

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMITS

1.) Are the proposals consistent with the applicable policies of the Comprehensive Plan?

STAFF: The proposal is consistent with applicable policies of the Comprehensive Plan as Guideline 3, Policies 1 and 3 encourage compatibility of redevelopment with the scale and site design of nearby development and with the pattern of development, as well as discouraging non-residential expansion into residential areas. The expanded improvements are to the rear of the existing restaurant, opposite the residential development, and do not increase the area of the conditional use permit, but rather improve the amenities of the serviceable area.

2.) Are the proposals 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 proposal is compatible with surrounding land uses and the general character of the area as the site is adjacent to commercial uses to its immediate North and a larger commercial developments North along Westport Road. The proposed patio provides an additional amenity to the restaurant to expand services to outdoor diners.

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 uses?

STAFF: The Metropolitan Sewer District has approved the preliminary 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.

4.) Do the proposals comply with the following specific standards required to obtain the conditional use permit requested?

STAFF: The proposal complies with the specific standards required to obtain the conditional use permit, with the exception of item “D” which relief is being sought based on the use of the adjacent property as open space maintained by the Indian Springs Community, LLC. The intent of landscaping as prescribed by Chapter 10 of the Land Development Code is to buffer and screen residential uses from potentially nuisance/higher intensity uses. In this case, the adjacent lot is not used residentially or is intended to be used residentially in the foreseeable future.

**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.
- 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.

**TECHNICAL REVIEW**

The applicant has requested relief from Item “D” of the conditional use permit to omit this requirement for the reasons stated in the staff analysis of the previous section.

## STAFF CONCLUSIONS

The Modification to the Conditional Use Permit appears to be adequately justified and meet the standard of review based on staff analysis in the staff report. The proposal is consistent with the applicable goals, objectives, guidelines, and policies of the Comprehensive Plan and meets or exceeds the requirements of the Land Development Code.

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 the Conditional Use Permit modifications as established in the LDC.

## REQUIRED ACTIONS

- **APPROVE** or **DENY** the Modified Conditional Use Permit of Land Development Code (LDC), section 4.2.41 for Outdoor Alcohol Sales and Consumption/Indoor Entertainment Activity for a Restaurant in the C-1 Zoning District

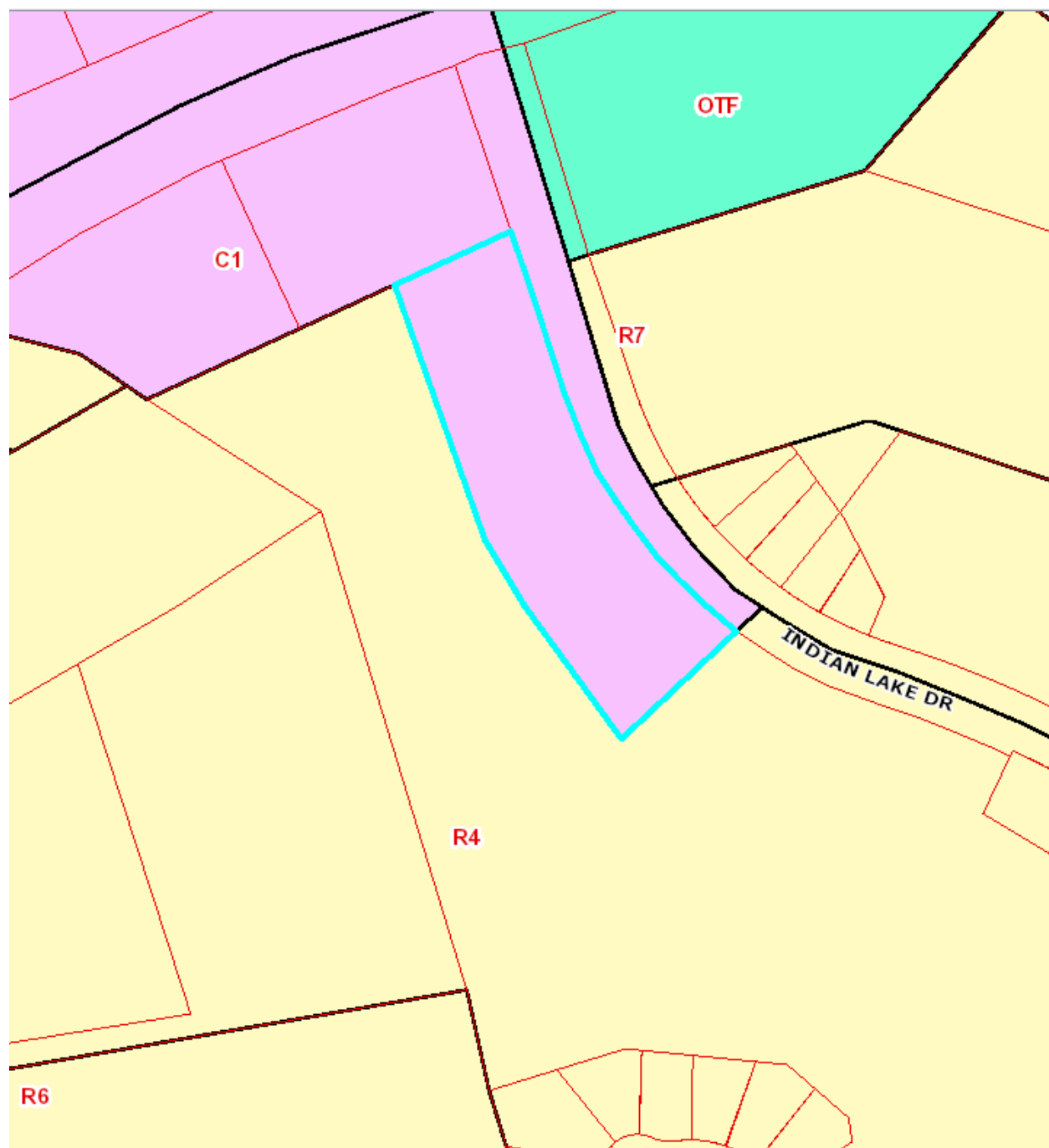
## NOTIFICATION

Date	Purpose of Notice	Recipients
8/12/16	BOZA	Adjoining property owners, applicant, owner, and registered users of Council District 17.

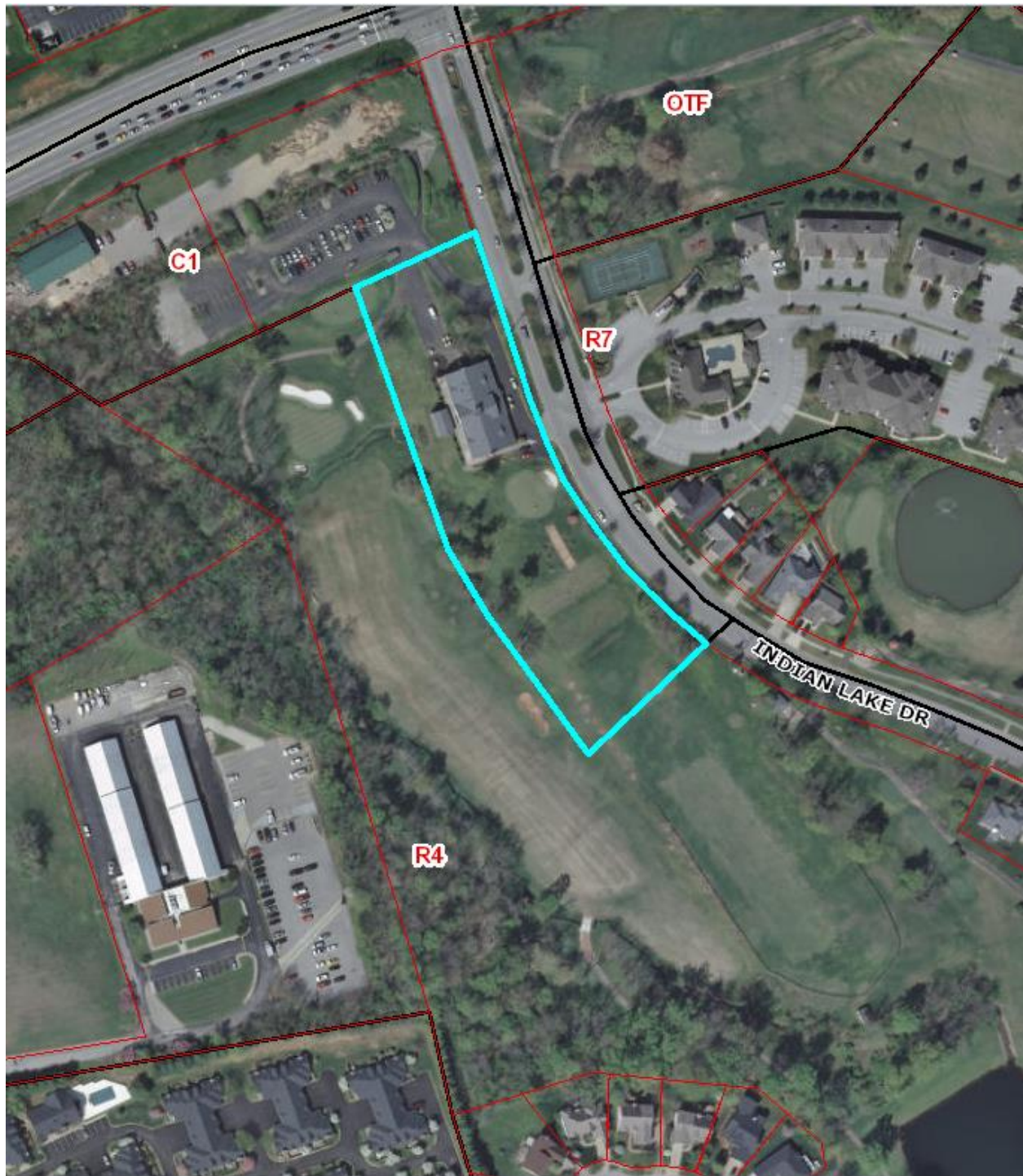
## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Binding Elements
4. Conditions of Approval

## 1. Zoning Map



## 2. Aerial



### **3. 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 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.

**4. 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)