

# Board of Zoning Adjustment

## Staff Report

October 4, 2021



<b>Case No:</b>	21-CUP-0121
<b>Project Name:</b>	El Nopal Outdoor Alcohol Sales and Consumption Expansion
<b>Location:</b>	3935 Taylorsville Road
<b>Owner(s):</b>	McMahan Plaza
<b>Applicant:</b>	El Nopal
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	26 – Brent Ackerson
<b>Case Manager:</b>	Jon Crumbie, Planning & Design Coordinator

### **REQUEST(S)**

Conditional Use Permit to allow the construction of a patio with outdoor alcohol sales and consumption.

### **CASE SUMMARY/BACKGROUND**

The applicant is proposing to construct a new 663 square feet patio area in the existing parking lot. The outdoor area will consist of 6 tables that will seat up to 24 people.

### **STAFF FINDING / RECOMMENDATION**

There are five listed standards, and it appears all will be met. Based upon the information in the staff report and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards established in the LDC for a Conditional Use Permit.

## **RELATED CASES**

### **19-CUPPA-0135**

A pre-application for a conditional use permit to allow outdoor alcohol sales and consumption. This case did not proceed past the pre-application stage.

## **TECHNICAL REVIEW**

None

## **INTERESTED PARTY COMMENTS**

A neighborhood meeting was held on July 27, 2021, and no one attended except the applicants.

## **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 meets all applicable policies of the Comprehensive Plan.

### 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: When appropriately managed, the proposed use is compatible with surrounding development and land 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: The subject property is served by existing public utilities and facilities. Transportation Planning and MSD have reviewed the proposal.

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

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 C1 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. ***The proposed outdoor areas 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. ***The outdoor dining areas are not located within the public right-of-way.***

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. ***The outdoor dining areas are not located adjacent to the 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). ***The outdoor dining areas are not located within 50 feet of residentially zoned or used property.***

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. ***The appropriate ABC license will be obtained.***

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

G. The entertainment activity shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99). ***All activities will be compliant with the Metro Noise Ordinance.***

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.

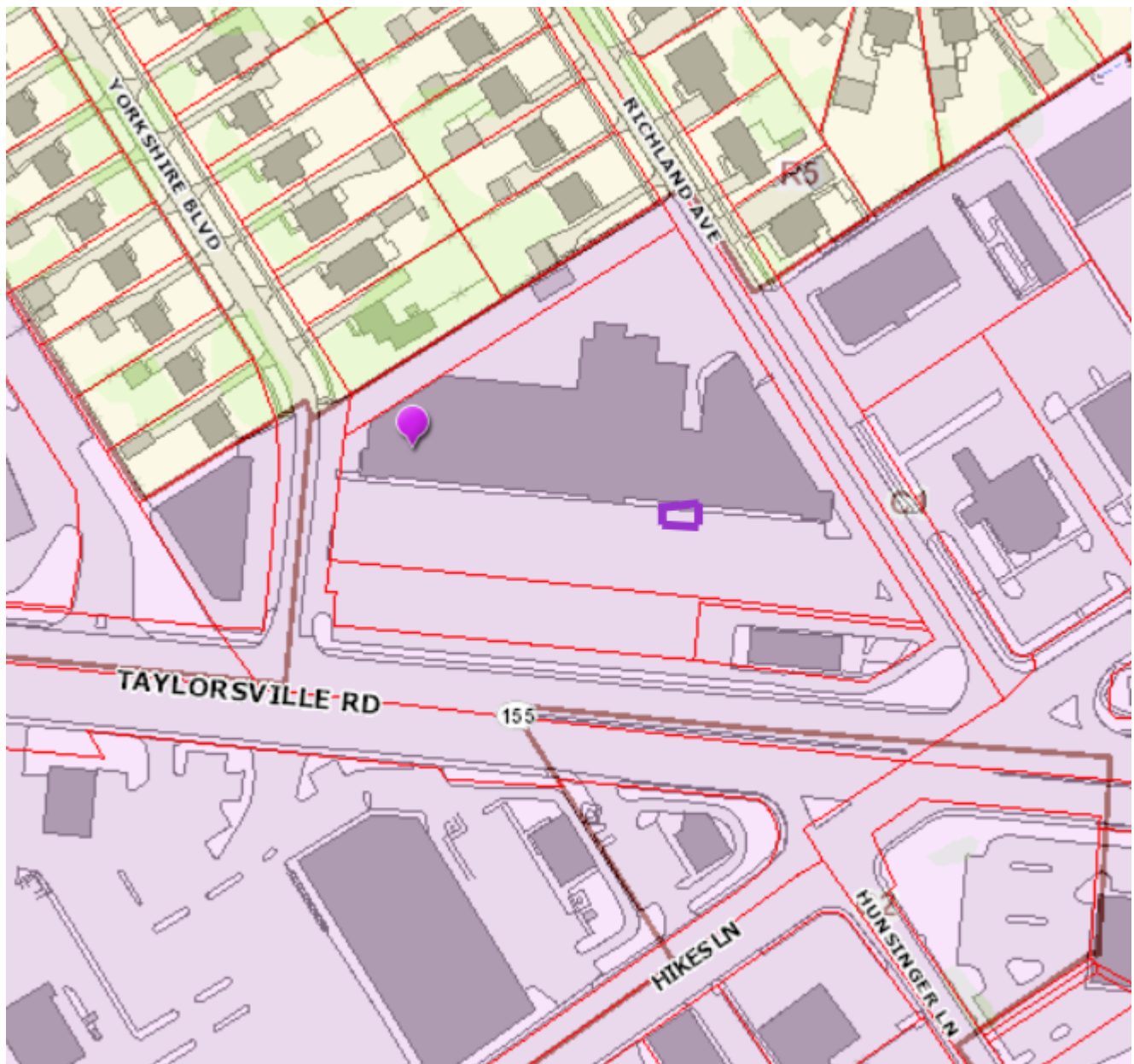
#### **NOTIFICATION**

Date	Purpose of Notice	Recipients
9/16/2021	Hearing before BOZA	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 26
9/20/2021	Hearing before BOZA	Sign Posting

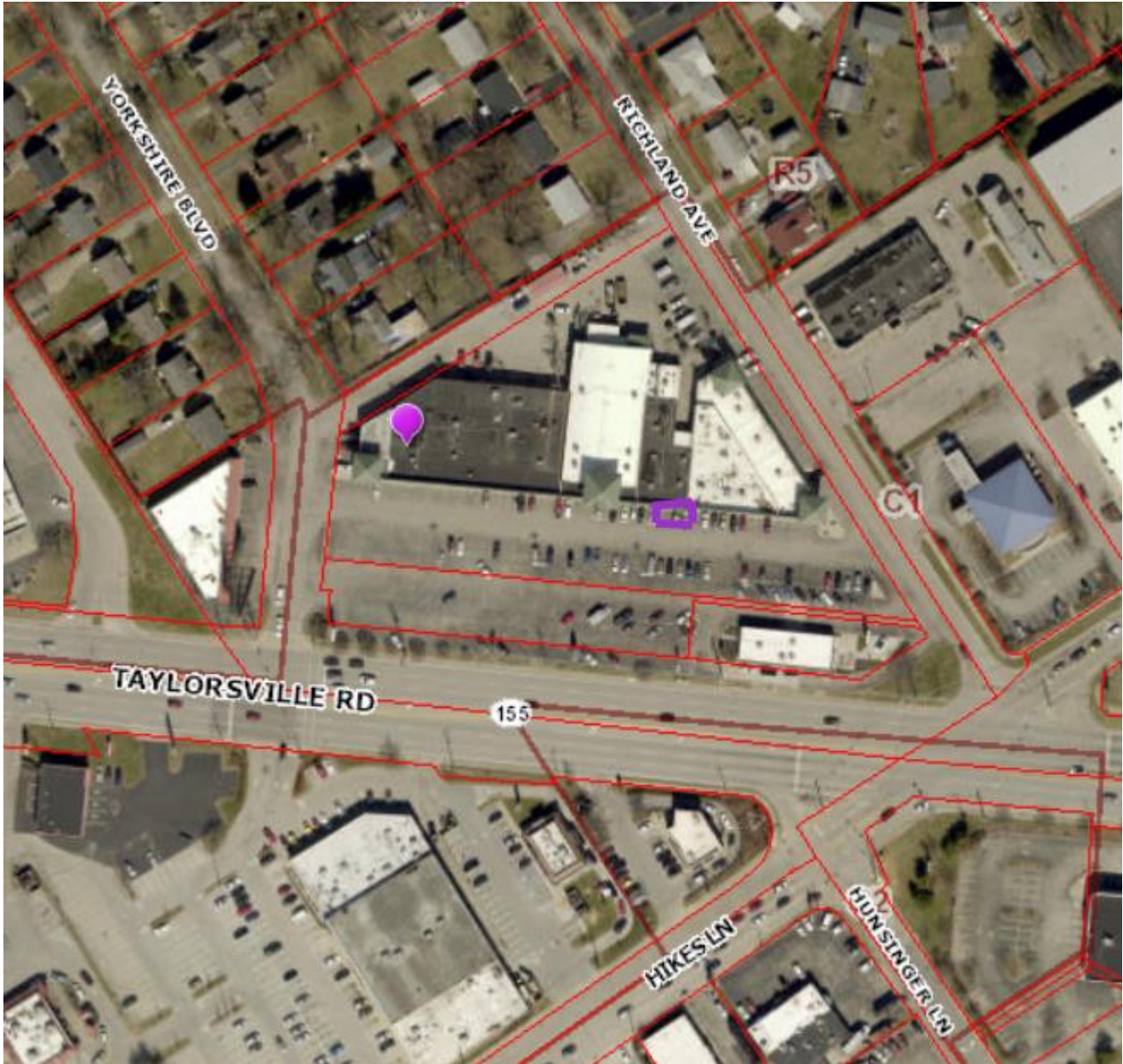
#### **ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. 2040 Checklist
4. Conditions of Approval

#### **1. Zoning Map**



## 2. Aerial Photograph



### 3. 2040 Checklist

#### Conditional Use Permit Checklist

+ Meet policy

- Does not meet policy

+/- Meets/Does not meet some portion of policy

NA – Not applicable

NIS – Information needed

Policy#	Plan Element or Portion of Plan Element	Staff Finding	Comments
Community Form – Goal 1			
4.	Ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects.	+	The proposed development will be compatible with the scale and site design of nearby developments.
11.	Ensure setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet Form District guidelines.	+	Setbacks, lot dimensions, and building heights are compatible with nearby development.
12.	Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. Encourage the placement of parking lots and garage doors behind or beside the building rather than facing the street. The use of alleys for access to parking lots is encouraged, especially in Downtown Louisville, Urban Center Neighborhoods, Traditional Neighborhoods and Traditional Marketplace Corridors. Encourage elimination or reduction of parking minimums in areas readily accessible to transit routes.	+	Transportation Planning has reviewed and approved the proposal.

Policy#	Plan Element or Portion of Plan Element	Staff Finding	Comments
14.	Ensure that signs are compatible with the Form District pattern and contribute to the visual quality of their surroundings. Promote signs of a size and height adequate for effective communication and conducive to motor vehicle safety. Encourage signs that are integrated with or attached to structures wherever feasible; limit freestanding signs to monument style signs unless such design would unreasonably compromise sign effectiveness. Give careful attention to signs in historic districts, parkways, scenic corridors, design review districts and other areas of special concern. For freestanding signs in multi-lot, the number of signs by including signage for each establishment on the same support structure and encourage consistent design (size, style, and materials).	+	Signage is not proposed for the outdoor alcohol sales and consumption area.
17.	Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	+	Transportation Planning has reviewed and approved the proposal.
18.	Mitigate adverse impacts of noise from proposed development on existing communities.	+	Noise ordinance will be followed.
19.	Mitigate adverse impacts of lighting from proposed development on nearby properties, and on the night sky.	+	Lighting will be Land Development Code compliant.
Goal 2 Community Facilities			
3.	Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	+	MSD has reviewed and approved the proposal.



**4. 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 outdoor alcohol sales and consumption until further review and approval by the Board.