

PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item

PC Staff Report
3/23/15

ITEM NO. 4: CS-UC TO CS-UC; 0.27 ACRES; 804 PENNSYLVANIA ST (MKM)

Z-15-00022: Consider a request to rezone approximately 0.27 acres from CS-UC (Commercial Strip with Urban Conservation Overlay) District to CS-UC (Commercial Strip with Urban Conservation Overlay) District with modification to the zoning restriction to permit a bar use without a food sales requirement, located at 804 Pennsylvania St. Submitted by Flint Hills Holdings on behalf of Ohio Mortgage Investors LLC, property owner of record.

STAFF RECOMMENDATION: Staff provides the following options for action on the request to modify the CS zoning to remove the food-sales requirement from the *Bar* use:

- a) Denial of the rezoning request to remove the 55% food sales requirement for *Bar* uses, or
- b) Approval of the rezoning request with a condition stating that a *Bar* use without the food sales requirement is permitted only when approved with a Special Use Permit.

APPLICANT'S REASON FOR REQUEST

"This request is being made because the current restrictions stated in Ordinance 8920, Section 2, item a. i. creates an unnecessary burden on the potential operator of the business at 804 Pennsylvania. We have had three separate business owners approach us and preliminarily reach an agreement about operating a Bistro business out of the space, but all three have backed out upon learning of the restrictions and reporting burden placed on them after opening.

The bistro site plan and architectural layout will not change even after approval of the rezoning request—the concept is exactly the same. However, the requirement and logistics of reporting daily sales from the food trucks on site, in addition to their own in-house reporting, has turned off all aspiring business owners.

The building is only 1,300 gross square feet, so is a very small footprint for any type of use. However, surrounding business owners, property owners, clients and colleagues have requested a place to have lunch, carry out a meeting, or have a drink with others after work without having to get into a car and drive somewhere to achieve this.

We understand the spirit of the 45%/55% restriction when it was conceived to protect densely developed areas from becoming bar districts or to limit the number of bar establishments in a college town. However, this would be the first establishment within six blocks in any direction to serve alcohol. There is a clear need for this service. Additionally, this rezoning request would only impact this property, every other property in the neighborhood would have to go through the same process to lift this restriction should they choose to do so. Further, the ownership group of this building is the same ownership group of the Poehler Lofts and the Cider Gallery—properties that abut 804 Pennsylvania to the east and south respectively. There is no one with more to lose than this ownership group if this turns into a rowdy, disruptive bar because it will undoubtedly negatively impact those that live in the Poehler, office in the Cider Coworking Space, or wish to have an event in the neighboring courtyard

or gallery of the Cider Gallery. If there was any chance that this rezoning would cannibalize the surrounding properties, this request would never be submitted.”

KEY POINTS

- The property contains a contributing structure to the East Lawrence Industrial Historic District, National Register of Historic Places (Figure 1); therefore, the Historic Resources Commission (HRC) must review the rezoning request under the State Preservation Law (K.S.A. 75-2724, as amended). This meeting is scheduled for March 26, 2015.



Figure 1. Historic structure on the property, site plan approved for use as a bar/bistro.

- The subject property and the surrounding area has been master-planned through the 8th and Pennsylvania Urban Conservation Overlay District.
- The subject property is regulated in part by the *8th and Penn Neighborhood Redevelopment Zone Design Guidelines*. (Figure 2)
- The commercial zoning which was approved for portions of the 8th & Pennsylvania Urban Conservation Overlay District was conditioned with Ordinance 8054 in 2006 to limit the permitted uses. The conditioned zoning permits a *Bar* use only if 55% or more of the total receipts are from food sales.

The subject property was rezoned from the CS (Commercial Strip) District to the RM12D (Multi-Dwelling Residential) District in 2011 to remove the nonconformity status from use of the property; the building was used as a duplex residence at that time.

The property was then rezoned back to the CS District in 2013 with the same limited uses identified in Ordinance 8054 with a revision to the *Bar* use. The Rezoning Ordinance 8920, adopted in November 2013, included the following condition related to this use:

Bars (unless, within a calendar year, 55% of gross receipts from said use are derived from the sale of food for consumption on the premises; said restriction shall be applied beginning on the two-year anniversary of the commencement of the use);

The current rezoning request proposes the complete removal of the food sales requirement from the *Bar* use proposed at 804 Pennsylvania Street.

- In staff's opinion, a *Bar* use without an associated restaurant is not compatible with the nearby land uses unless the impacts are mitigated through site specific conditions which could be established with the approval of a Special Use Permit.

ATTACHMENTS

- A. Permitted Use Table
- B. Rezoning Ordinances

ASSOCIATED CASES

Z-12-80-05: Establishment of an Urban Conservation Overlay District for the 8th and Penn Neighborhood Redevelopment Zone and development of Design Guidelines. City Commission adopted on October 24, 2006 with Ordinance No. 8053. (Figure 2)

Z-01-01-06 Rezoning of 5.49 acres from M-2/M-3 (General/Intensive Industrial) Districts to C-5-UC (Limited Commercial with Urban Conservation Overlay) District. Approved by City Commission on December 19, 2006 with condition to restrict the uses. The restricted uses were listed in Rezoning Ordinance No. 8054.

Conversion: The C-5 (Limited Commercial) Zoning Designation converted to CS (Commercial Strip) with adoption of Land Development Code on July 1, 2006.

Z-8-23-11: Rezoning of the subject property from CS-UC (Commercial Strip with Urban Conservation Overlay) to RM12D-UC (Multi-Dwelling Residential with Urban Conservation Overlay) to remove the nonconformity status from the duplex use. Approved by City Commission on October 18, 2011 with adoption of Rezoning Ordinance No. 8677.

Z-13-00287: Rezoning of the subject property from RM12D-UC (Multi-Dwelling Residential with Urban Conservation Overlay) District to CS-UC (Commercial Strip with Urban Conservation Overlay) District. Approved by City Commission on November 5, 2013 with adoption of Rezoning Ordinance No. 8920. Conditions applied on the original C-5 Zoning for the District were applied with a change to allow 2 years for compliance with the 55% food sales requirement for the *Bar* use. The Ordinance listed the following excluded uses:

- i. Bars (unless, within a calendar year, 55% of gross receipts from said use are derived from the sale of food for consumption on the premises; said restriction shall be applied beginning on the two-year anniversary of the commencement of the use);
- ii. Liquor Store;
- iii. Ambulance Service;
- iv. Car or Truck Wash;
- v. Auto Repair;
- vi. External drive-through ATM or drive-through window (walk-up ATM's are allowed);
- vii. Furriers;
- viii. Pawn Shop;
- ix. Mobile Home Sales and Service;
- x. Golf Driving Range;
- xi. Pet Store (animal sales)
- xii. Loan Office (short-term cash advance loans); and
- xiii. Convenience store with Gasoline Sales.



Figure 2. 8th & Penn Neighborhood Redevelopment Zone outlined. Subject property marked with a star.

SP-13-00349: Site plan for conversion of a duplex dwelling to a *Quality Restaurant/Bar* at 804 Pennsylvania Street. Site plan included 2,440 sq ft customer service area total: 1200 sq ft customer service area in the building, and 1240 sq ft outside dining. Administratively approved on November 12, 2013.

ORD. 9026: Revision to City Code to allow permanently sited mobile food vendor units when approved with a site plan. Approved by City Commission on October 7, 2014.

SP-14-00220: Site plan to include a space for the permanent location of Mobile Food Vendors at 804 Pennsylvania Street which would be used to meet the 55% food sales requirement. The site plan included 2,649 sq ft of customer service area total: 1084 sq ft in the building, and 1,565 outside dining. Administratively approved on July 3, 2014.

Other Action Required:

- Historic Resources Commission approval. The rezoning has administrative approval with HRC confirmation set for March 26, 2015 HRC meeting.
- City Commission approval of rezoning request and adoption/publication of ordinance.
- Historic Resources Commission review will be required if any changes are proposed to the approved site plan, SP-14-00220.
- A building permit must be obtained prior to development.

Project Summary

The request proposes the rezoning of the property at 804 Pennsylvania from the CS-UC District to the CS-UC District to revise the condition listing the prohibited uses so that *Bar* uses would be allowed without the requirement to meet a 55% food sales requirement. The rezoning would accommodate the development of the property with a bar with accessory food sales from mobile food vendors without a 55%/45% ratio of food to alcohol sales.

A condition listed the prohibited uses, including the prohibition on bars unless the 55% food sales requirement is met, was applied with the rezoning of a portion of the 8th and Pennsylvania Urban Conservation Overlay District from industrial zoning to the C-5 (CS) District in 2006. The prohibition on uses was in response to concerns from the neighborhood regarding potential negative impacts the proposed mixed use development could have on the surrounding neighborhood.

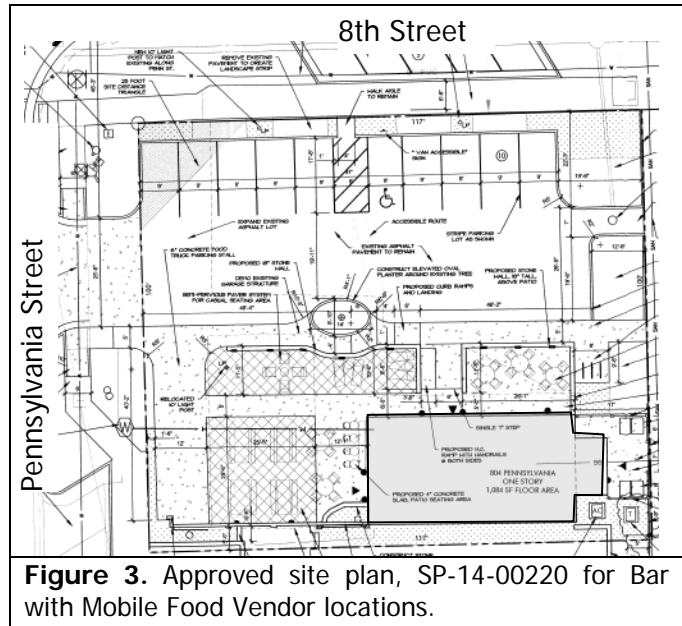
The 2013 rezoning of the subject property from the RM12D to the CS District was recommended for approval with the following options:

- 1) applying the same 55% food sale restriction as the rest of the CS-UC District,
or
- 2) applying operational standards that could minimize negative impacts of the *Bar* use on the surrounding area.

At the September 23, 2013 Planning Commission meeting, the applicant indicated a preference for the 55% food sale requirement option if a longer time-frame could be provided for compliance. The applicant indicated that in the event that he was not able to meet the food sales requirement he would take a look at doing something closer to Option 2 (operational standards) in the future. The rezoning request was approved with a revised condition allowing 2 years for the *Bar* to come into compliance with the 55% food sales requirement.

The current rezoning request proposes a revision to the list of prohibited uses so that a *Bar* would be permitted on the subject property without the need to achieve 55% of total sales receipts from food sales. There would be no changes to the conditions which apply to the other properties in the 8th and Penn CS-UC District. A complete list of uses that are currently permitted in the CS District noting those uses restricted with the 8th and Penn CS-UC Zoning is included in Attachment A.

The applicant indicated that there would be no change in the development proposed for the site, which was approved with SP-14-00220. (Figure 3) This site plan approved a bar with 1084 sq ft of interior customer service area, 1,565 sq ft of outside seating area and a location for two Mobile Food Vendors. The intent was to have the food sales from the Mobile Food Vendors make up the 55% Food Sales Requirement. The applicant indicated that they've had difficulty finding operators who felt confident they could meet the 55% food sales requirement; therefore, they are requesting the removal of that requirement.



REVIEW & DECISION-MAKING CRITERIA

1. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response:

"The CS zoning designation will remain if this request is approved, so this will have no impact on the Horizon 2020 Comprehensive Plan. It is still in concert with the city's long-range plans."

This request is governed by general policies of *Horizon 2020* and the *8th and Penn Neighborhood Redevelopment Zone Design Guidelines*, which are standards used to implement the 8th and Pennsylvania Urban Conservation Overlay District. *Horizon 2020* is the focus of this section of the report. The *8th and Penn Neighborhood Redevelopment Zone Design Guidelines* are discussed later in this report.

The CS Zoning Designation, with proposed conditional uses, was reviewed and found to be in conformance with the Comprehensive Plan with the earlier rezonings of this property to the CS District (Z-01-01-06 and Z-13-00287). The current rezoning request would not change the CS Zoning District but would remove the zoning condition which limits the *Bar* use to those in which food sales make up 55% of the total sales receipt. Therefore, this section looks at the compliance of the request to include a *Bar* as a permitted use with the recommendations in the Comprehensive Plan.

Chapter 6 of the Comprehensive Plan provides the following recommendation for a Mixed-use district:

“Mixed-use districts shall include a mix of uses designed to maintain the character of the surrounding neighborhood, achieve integration with adjacent land uses, and be no larger than 20 acres in size.” (Page 6-6, Horizon 2020)

Policy 2.2: *“Locate Less Compatible Uses Toward the Interior of Commercial Areas.” (Page 6-28, Horizon 2020)*

Policy 3.4: Criteria for Mixed-Use Districts

D. *“Mixed-Use Districts shall maintain the character of the surrounding neighborhoods by:*

- a. Achieving integration with adjacent land uses by providing transitions through alleyways, variation among development intensity, and implementation of landscape buffers;*
- b. Incorporating existing structures wherever possible;*
- c. Maintaining general structure spacing, massing, scale, and street frontage relationship when incorporating new structures.” (Page 6-31, Horizon 2020)*

The Comprehensive Plan recommends a mix of uses and recommends that the uses be designed to maintain the character of the surrounding neighborhood. The plan does not specifically prohibit or designate certain uses as being incompatible with other uses, but does recommend that less compatible uses be located toward the interior of commercial areas.

The Comprehensive Plan recommends the use of high density residential as a transition between higher intensity uses, such as commercial and lower density residential uses. (Policy 1.3, Page 5-23, *Horizon 2020*) The zoning map in Figure 4 shows the area zoned for industrial, commercial, and high density residential uses. Higher intensity commercial uses would appear to be appropriate based on the zoning of the area. However, this area has been developed with primarily single-dwelling homes on approximately 5890 sq ft lots (medium density residential). While the proposed use is a good fit with the zoning of the area, the use must be reviewed in context of the development in the area to insure compatibility.

Staff Finding –The Comprehensive Plan recommends that mixed use development be designed to maintain the character of the surrounding neighborhood and achieve integration with adjacent land uses. Compliance with the provisions of the *8th and Penn Neighborhood Redevelopment Zone Design Guidelines* will insure compatibility of the design with the physical character of the surrounding neighborhood. The proposed use is a good fit with the zoning of the area; however, the introduction of a *Bar* use into the area may have an impact on the character of the nearby single-dwelling residential neighborhood due to possible negative impacts associated with the noise and activity of outdoor seating areas. If a *Bar* use is to be permitted in this area, it should require approval through a Special Use Permit so that site specific standards and conditions can be applied to insure compatibility.

2. ZONING AND USE OF NEARBY PROPERTY, INCLUDING ANY OVERLAY ZONING

Current Zoning and Land Use: CS-UC* (Commercial Strip with Urban Conservation Overlay) District; vacant building which has site plan approval for development as a Bistro with accessory bar (55% food sales may be accomplished through Mobile Food Vendors).

Surrounding Zoning and Land Use:

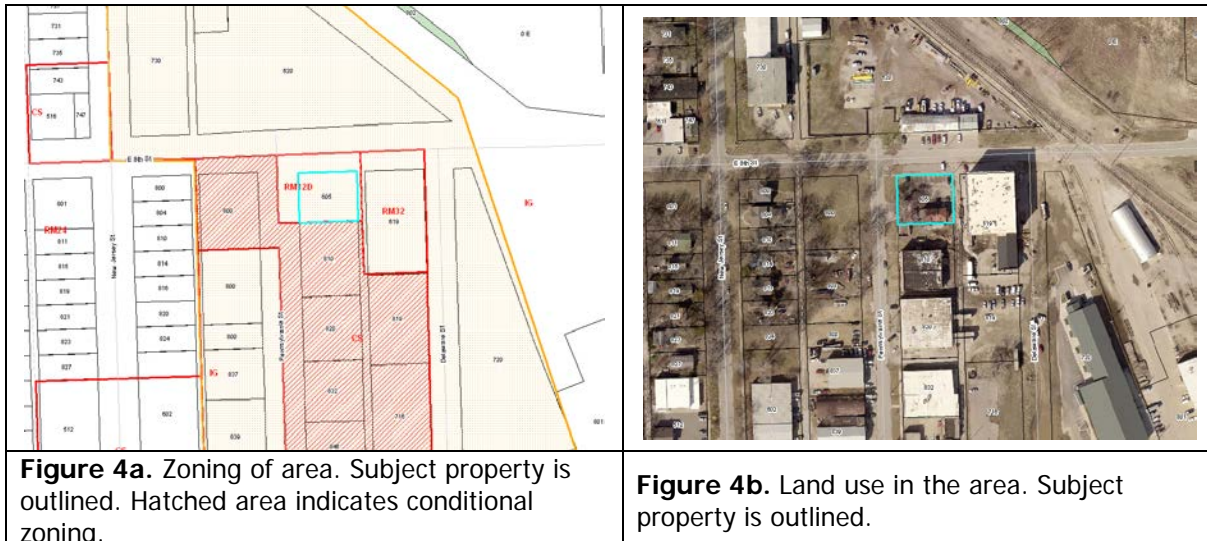
To the north:
 IG-UC (General Industrial with Urban Conservation Overlay) District; vacant utility yard, most recent use was *Heavy Wholesale Storage and Distribution*.

To the west:
 CS-UC* (Commercial Strip with Urban Conservation Overlay) District; Undeveloped land under same ownership as subject property.

To the south:
 CS-UC* (Commercial Strip with Urban Conservation Overlay) District; Art gallery with retail space and office uses.

To the east:
 RM32-UC (Multi-Dwelling Residential with Urban Conservation Overlay) District; *Multi-Dwelling Structure*

(Figure 4)



*The subject property and the adjacent properties to the south and west are not only located within an Urban Conservation Overlay zone, but the CS zoning was conditioned via the adopting ordinance (Ord 8054). Per the conditions of the zoning, the following uses are prohibited in this district:

- Bars [unless 55% of gross receipts are derived from food sales as outlined in 20-509(5)(i)] (Subject property has a slightly revised condition which allows 2 years to meet this requirement.)
- Liquor Store
- Ambulance Service
- Car or Truck Wash
- Auto Repair
- External drive-through ATM or drive-through window [walk-up ATM's are allowed]
- Furriers
- Pawn Shop
- Mobile Home Sales and Service
- Golf Driving Range
- Pet Store [animal sales]
- Loan Office [short-term cash advance loans]
- Convenience store with Gasoline Sales

Staff Finding – The surrounding properties are zoned IG, CS (with conditions as noted above), and RM32 within the Urban Conservation Overlay District and are part of the 8th and Penn Neighborhood Redevelopment District. The area contains a mix of single and multi-dwelling residential, retail, industrial, and office uses.

3. CHARACTER OF THE NEIGHBORHOOD

Applicant's Response:

"East Lawrence is one of the most vibrant neighborhoods in Lawrence. It is rich in history and culture, and has been the primary reason development growth and evolution has taken place in what is known as the Warehouse Arts District. East Lawrence is an eclectic mix from young to old, Lawrence natives and those that just recently moved to town. It is a walkable neighborhood and artists and their work are on display in every corner. This establishment is aimed to serve that clientele and to attract others looking to feed off of the creative energy found in the area. This establishment will directly support the 35 businesses within a 1-block radius and the 92 occupied 1, 2, and 3 bedroom apartment units within the same block. There is not another establishment close that can offer this service, and this establishment will fill a need that has been requested by those living and working in the area."

The area containing the subject property is served by Local Streets in a grid pattern. A network of Collector Streets (New Hampshire, Connecticut, E 7th, and E 9th Streets) are located in the western part of this area. The neighborhood contains industrial, retail, office, and residential uses and clearly reflects the mixed use nature of East Lawrence. In addition, several historic properties and historic districts are present in the area. (Figure 5)

The area to the east of the 8th & Penn Urban Conservation Overlay District is industrially zoned and has been developed with industrial land uses which include a concrete plant, a wastewater treatment plant, a recycling scrap and salvage center, a publishing company, and City fleet storage and material yards. The 8th and Penn area is intended to be a transitional area between the residential areas to the south and west and the more intense industrial uses to the north and east.

The Downtown Urban Conservation and 8th and Pennsylvania Street Urban Conservation Overlay Districts are both located in this area. The Urban Conservation Overlay Districts are intended to conserve the cultural resources, historic resources and property values within an identified neighborhood or area. The Downtown Conservation Overlay District, to the west side of the map in Figure 7, contains a mix of uses with the majority being retail, eating and drinking establishments, office, and residential uses. The 8th and Pennsylvania Street Urban Conservation Overlay District consists of a mix of residential, retail, office, warehouse, and manufacturing and production uses.

The remainder of this area, which is unmarked in Figure 6, is developed with a mix of residential, commercial, industrial, and office uses. The mix of uses in this area are illustrated in Figure 7.



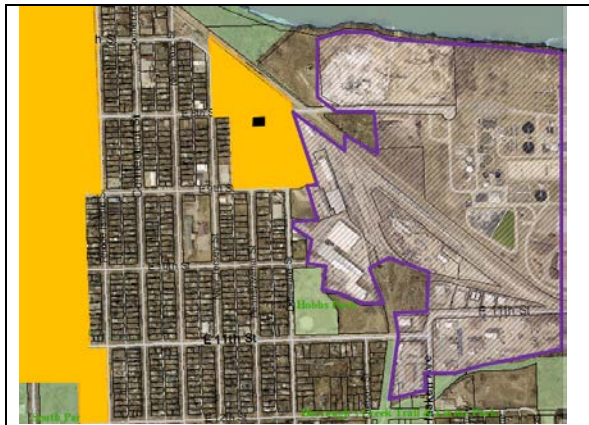


Figure 6. Conservation Overlay Districts -gold. Industrial uses -purple. Parkland -green. Subject property-black.

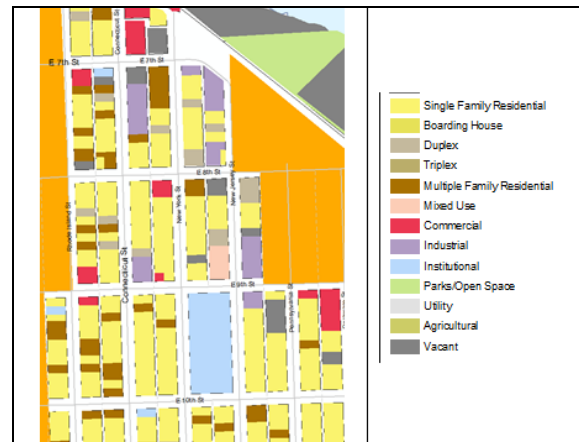


Figure 7. Land uses per Appraisers records (Excluding the Urban Conservation Overlay Districts).

Staff Finding – The neighborhood contains a mix of industrial, residential, office, and retail uses as well as numerous historic properties. The Downtown and 8th and Penn Urban Conservation Overlay Districts are both located within this area. The 8th and Penn Urban Conservation Overlay District serves as a transition between the more intense industrial uses to the north and east and the residential areas to the west and south. The proposed *Bar* use could be a good fit in the neighborhood if the outdoor activity area was limited to minimize any negative impacts to the nearby residential uses.

4. PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY

The subject property is located within the East Lawrence Neighborhood. A land use plan was adopted for the East Lawrence Neighborhood in 1979 designating the property for industrial uses. A more recent plan, the *East Lawrence Neighborhood Revitalization Plan*, was adopted in November of 2000. The Revitalization Plan is an action plan for maintaining and improving the vitality of the neighborhood rather than a land use plan. This area of East Lawrence is undergoing a revitalization with the recent reuse of the Poehler Building for affordable housing, construction of Delaware Street, rehabilitation of Pennsylvania Street to its historical brick surface, ongoing construction of additional housing at 9 Del Lofts (900 Delaware Street), the reuse of the Cider Building (810 Pennsylvania Street) as gallery and office space, and addition of art studios and gallery space in the industrial building at 720 Delaware. In addition, the 9th Street Corridor Project has received funding and a design to reconstruct and revitalize six blocks of E 9th Street from Delaware to Massachusetts Street is in the planning process.

The *8th and Penn Neighborhood Redevelopment Zone Design Guidelines*, adopted in January of 2007, was the result of a collaborative planning effort that included participation from the property owners, East Lawrence Neighborhood Association, and other stakeholders. The guidelines recommend a mix of uses in this area, with a limitation on retail to prevent it from being the predominate use.

The Guidelines designate the subject property within Zone 1 of the district and note:

“The centerpiece of the redevelopment zone is the group of masonry manufacturing buildings bounded by East 8th Street on the north, Pennsylvania Street on the west, Delaware Street on the east, and East 9th Street on the south that is eligible for listing as a historic district in the National Register of Historic Places. These industrial buildings range from one story to four stories in height and date from the 1880s through the 1920s. The buildings are ideal candidates for rehabilitation into mixed adaptive uses that will allow them to retain the necessary level of historic architectural integrity to continue to contribute to an understanding of the historic district’s associations with commerce and architecture in Lawrence.” (page 8)

The Guidelines do not regulate uses except to note that big box retail uses are not desired. The plan contains the following recommendations regarding land use:

“Namely, neither the Developer, City, nor the East Lawrence Neighborhood Association, desires this property to be developed for ‘big box’ retail uses or as an area that is principally retail in use. As such, retail uses shall be limited to a maximum of 25% of the net floor area for the UC-O District (See Appendix B) In addition, as the Poehler Mercantile Company building is to serve as the anchor and focus of the UC-O District, in no case shall a single retail shop or tenant occupy net floor area in excess of 16,000 square feet at ground level. A single retail shop or tenant may occupy in excess of 16,000 if they occupy multiple floors.” (Page 11)

The remainder of the Guidelines deals with physical design elements.

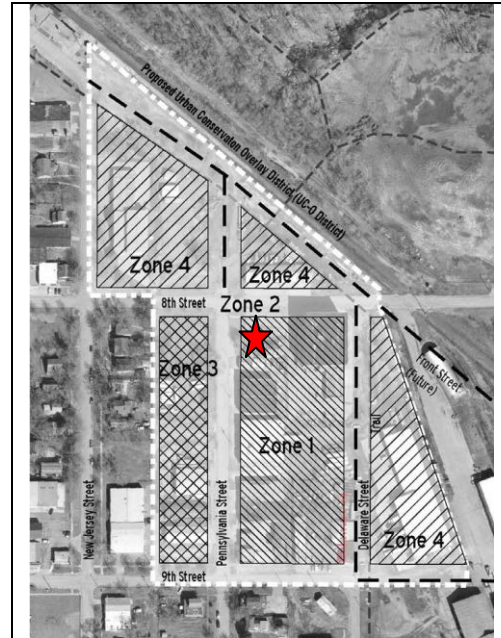


Figure 8. Overlay District Boundaries and Zones. Subject property marked with a star.

Staff Finding – The land use plan for the area encourages the retention of a mix of uses and the conservation of affordable housing stock, but does not recommend specific land uses. The proposed rezoning from CS-UC to CS-UC with revised conditions to remove the 55% food sales requirement is consistent with the recommendations of the plan for the area as the net floor area for retail uses shall remain under the 25% threshold. However, the requested rezoning is not consistent with the restricted uses for the Commercial portion of the Urban Conservation Overlay District established with the adoption of Ordinance 8054.

5. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS

Applicant’s Response:

“The only restriction hindering us from beginning construction and signing a contract with a business owner right away is the burden of the 45%-55% restriction when applying to this specific property. The concept has been consistently well received by the neighborhood, business owners, neighbors, and food and beverage experts. The property owners are not well versed in the food service industry, so they defer to those that know. However, what has not been received well is finding an owner/operator that believes the 45%/55% threshold

is achievable given the size of the building and the reporting restraints that come with it.

This building was built in the late 1880's and is an historic asset to the neighborhood, but with historic buildings come problems that new construction does not face. As preservationists, it is not an option to tear this building down and rebuild a brand new commercial kitchen with ample interior square footage. It would be a travesty to tear down a building so rich in history and distinction. However, the simple act of removing this restriction would allow for the public to get to experience this building while providing an arena for a new business owner to succeed."

The building is relatively small and it may be difficult to develop it with a restaurant and bar observing the 55%/45% food to alcohol sales ratio. A demolition permit has been obtained to remove the garage structure to the west of the principal structure. This is the area that has been designated for Mobile Food Vendors on the approved site plan. It may be possible to build a commercial kitchen in this location.

A variety of uses are permitted in the CS Zoning, including a *day care center, health care office/clinic, offices* (with the exception of short term loan offices), *general retail sales* (with the limitations on furriers, pawn shops, etc. listed in the zoning ordinance), *personal improvement* (such as yoga or fine art studio), and *personal convenience* (such as beauty shop). The property appears to be suitable for the *Bar* use (55% food sales) that is permitted with the current zoning, or a modification to allow the *Bar* use without the food sales requirement while addressing the impacts, such as requiring a Special Use Permit or setting operational conditions on the use; however, the property is suitable for many other uses permitted in the current zoning district given the expanding residential base.

Staff Finding – In staff's opinion, the property is suitable for the *Bar* use with the 55% food sales requirement, but if it is not possible to accomplish the food and alcohol sales ratio, the property is suitable for various other uses permitted in the CS District or for a *Bar* with operational conditions that address potential impacts.

6. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

Applicant's response:

"This property has remained vacant as long as it has been classified as CS zoning. We have advertised for non-service industry use as well with no success. The previous use was a residential duplex, but we believe that would not be an appropriate use of the building given the needs of the neighborhood. Residential developments have been very successful in close proximity, but there is a consensus that food and beverage establishments are needed down here for the area to take the next step in returning on the public and private investment.

The subject property was developed in the late 1800s or early 1900s. The industrial building was converted to a duplex in 1984. The property was rezoned from CS to RM12D in 2011 to remove the nonconforming status from the duplex use. The property was rezoned to the CS District in 2013 in preparation for development as a bar/bistro and was vacant at that time.

Staff Finding – The property was developed in the late 1880s or early 1900s. The building has been vacant since being rezoned to the CS District in 2013.

EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES

Applicant's response:

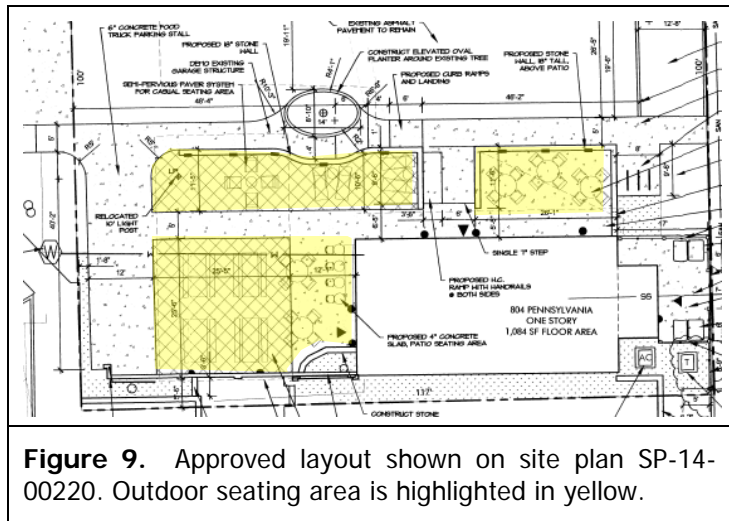
"Seeing as how the concept for the restaurant will not change if approval is given, the impact will be exactly the same as our previously approved site plan and concept. This will not become a loud, obnoxious, collegiate bar. We aim to serve those in the neighborhood and anything that is not respectful to their wishes and offering a product they will not enjoy is counterproductive to all. Food trucks will still have a place on site. Coffee and baked items will still be available in the mornings. A wide range of spirits, craft cocktails, craft beers, and affordable domestic beers will be offered to attract the diverse citizens that frequent the Warehouse Arts District right now. We would love for people to bring their dogs down to the patio for a weeknight beer, come with close friends for a cocktail before they head home after dinner, or provide a place where business owners down the street can bring clients to discuss their next partnership opportunity. This will be an establishment that people will have pride in and because of that will maintain an atmosphere that is suitable for all."

The 55% food sales requirement was placed on the *Bar* use with the original rezoning to the C-5 District in 2006 in response to concerns raised from the neighborhood regarding possible negative impacts the mixed use development could have on the existing residential uses in the area. The outdoor seating area associated with a *Bar* could be noisy in late evenings and create a nuisance to nearby residences. The *Bar* use could have been restricted in order to prevent the development of an entertainment district in this inner neighborhood area. Either of these factors could be incompatible with the existing residential land uses.

The outdoor seating area is the dominant use on the site with an area slightly larger than the area of the building. The building is approximately 1200 sq ft while the outdoor seating area has an area of approximately 1,240 sq ft. The site plan depicts 32 chairs and 4 picnic tables in the outdoor seating area. (Figure 9)

The different nature of the *Restaurant* and *Bar* outdoor dining or seating areas can result in differing impacts to an area.

Patrons visiting a restaurant's outdoor dining area typically stay on site for shorter periods of time than patrons of an outdoor area with a bar. Occupancy with a restaurant use is typically limited to the number of seats provided; however, a bar's outdoor area can have greater occupant levels as many patrons remain standing. Televisions and amplified music are more often associated with a bar's outdoor area than a restaurant's. There is usually more interaction between patrons in a bar's seating area while conversations in a restaurant's seating area are usually limited to the table. A stand-alone bar with the amount of outdoor seating that is proposed could generate noise from activities or amplified music in the outdoor seating area that could have a negative impact on nearby properties. In addition, the timing and amount of traffic generated by a bar as well as noise associated with patrons leaving at late hours, could also negatively impact the nearby properties.



The condition requiring the majority of the sales to be from food sales limits the amount of sales that can be derived from alcohol and thereby defines the character of the establishment as a restaurant with accessory sales of alcohol. Without this condition the establishment would be a stand-alone bar. In staff's opinion, the primary source of possible negative impacts with the surrounding properties would be the outdoor seating area, the timing and quantity of traffic generated by the use, and the late operating hours.

It may be appropriate to place operating restrictions on the *Bar* use, in lieu of the food sales requirement, to insure compatibility with the surrounding area. Operating restrictions that could be used to mitigate the negative impact associated with the noise, timing of traffic, and outdoor activity could be a time limit on amplified music in the outdoor area or an early closing time. These standards may be too specific for conditional zoning and development would be more appropriate through the Special Use Permit process.

Staff Finding – The proposed rezoning could negatively impact nearby properties through noise typically associated with a bar with an outdoor seating area. The negative impact could be mitigated by retaining the 55% requirement for food sales, or by requiring a Special Use Permit for a *Bar* use so that operational standards and conditions can be set.

7. THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION

Applicant's Response:

"First and foremost, a productive, occupied building is much better for the city of Lawrence, the citizens of Lawrence and the landowner above all else. We are extremely confident that if this rezoning request was granted, a business operator/owner would sign a contract and we would be a few months away from having another business in East Lawrence that all could be proud to support. If not granted, there is no doubt that we will continue to struggle to find an operator that is willing to take on the aforementioned risk of starting a business under the current restrictions. The city is heavily invested in the district (specifically on this block of Pennsylvania) to date, and this is a great opportunity to begin to see some of the return on that investment.

Finally, although difficult to quantify, this development will be another step in the right direction to add to the lifestyle people are drawn to in East Lawrence and the Warehouse Arts District. Although it has always been significant to many in town in prior decades, the WAD has attracted people to live, work and play for about three years now and they all like tapping onto the creative energy that exists down here. Jobs have been created, businesses have grown, art is given a place to be shared and created and it seems the more exposure given to the area the important a destination it has become. This rezoning needs approval to add to the mix of activities in the area and balance out the residential and office space that already is near full occupancy. This development will offer a place to relax, unwind, connect with colleagues/clients, or reconnect with neighbors. It will be an asset to the area and to Lawrence when the design is implemented."

Evaluation of these criteria includes weighing the benefits to the public versus the benefits of the owner of the subject property. Benefits are measured based on the anticipated impacts of the rezoning request on the public health, safety and welfare.

If the rezoning to remove the 55% food sales requirement was denied, the property could be used for a bar that is accessory to a restaurant or for other uses permitted within the CS-UC District, if it is not possible to meet the food sales requirement. This may benefit the community by maintaining the quiet, residential nature of the surrounding area.

If the rezoning to allow a *Bar* without the 55% food sales requirement was approved, with the establishment of operational standards; it may be possible to operate a bar at this location without negatively impacting the character of the surrounding area.

The hardship to the applicant from the denial of the rezoning request would be that the rezoning would not allow the development of the proposed *Bar* use. The property would remain viable for the other uses permitted within the district.

Staff Finding – Denial of the rezoning request to the CS District with revised conditions to remove the 55% food requirement from the *Bar* use would permit the development of a bar only when accessory to a restaurant. The intensity (activity and noise level) of the outdoor areas associated with bars could affect the character of the area. The character of the area could be maintained through the denial of the request to revise the zoning condition which requires that 55% of the total sales be from food sales or through approval of the rezoning request to allow the use when approved as a Special Use so that operational standards could be developed.

PROFESSIONAL STAFF RECOMMENDATION

This staff report reviews the proposed location for its compliance with the Comprehensive Plan, the Golden Factors, and compatibility with surrounding development. The rezoning request is compliant with recommendations for mixed use development in *Horizon 2020*.

Staff recommends retaining the 55% food sales requirement for *Bar* uses and adding a *Bar* use without the 55% food sales requirement when approved with a Special Use Permit. The Special Use Permit will allow for the development of site specific conditions and standards to minimize negative impacts associated with the use.

USES PERMITTED IN THE CS DISTRICT (Restrictions for 8 th & Penn CS-UC District noted in red)	
HOUSEHOLD LIVING	RETAIL SALES & SERVICES
Multi-Dwelling Structure	Building Maintenance
Non-Ground Floor Dwelling	Business Equipment
Work/Live Unit	Business Support
GROUP LIVING	Construction Sales and Service
Group Living-General (requires a SUP)	Food and Beverage
COMMUNITY FACILITIES	Mixed Media Store
Cemetery	Personal Convenience
College/University	Personal Improvement
Day Care Center	Repair Service, Consumer
Day Care Home, Type A and B	Retail Sales, General (liquor store prohibited.)
Lodge, Fraternal & Civic Assembly	Retail Establishment, Large (requires SUP)
Postal & Parcel Service	Retail Establishment, Medium
Public Safety (ambulance service prohibited)	Retail Establishment, Specialty
School	SEXUALLY ORIENTED BUSINESSES
Funeral and Interment	Sex Shop
Temporary Shelter (SUP or Accessory)	Sexually Oriented Theater
Social Service Agency	TRANSIENT ACCOMMODATION
Community Meal Program (SUP or Accessory)	Campground
Utilities Minor	Hotel, Motel, Extended Stay
Utilities Major (SUP)	VEHICLE SALES AND SERVICE
MEDICAL FACILITIES	Cleaning (Car Wash) Restricted
Health Care Office, Health Care Clinic	Fleet Storage
Outpatient Care Facility	Gas and Fuel Sales Prohibited
RECREATIONAL FACILITIES	Heavy Equipment Repair Prohibited
Active Recreation	Heavy Equipment Sales and Rental
Entertainment & Spectator Sports	Inoperable Vehicle Storage
Participant Sports	Light Equipment Repair Prohibited
Passive Recreation	Light Equipment Sales/Rentals
Nature Preserve	RV and Boat Storage
Private Recreation	INDUSTRIAL
RELIGIOUS ASSEMBLY	Laundry Service
Campus or Neighborhood Institution	Mfg and Production Lmtd (SUP)
ANIMAL SERVICES	Mfg and Production Technical
Kennel	Research Service
Livestock Sale (requires a SUP) Prohibited	WHOLESALE STORAGE AND DISTRIBUTION
Sales & Grooming (Sales Prohibited)	Exterior (must be accessory)
Veterinary	Heavy (requires SUP)
EATING AND DRINKING ESTABLISHMENTS	Light
Accessory Bar (must be accessory)	Mini-warehouse
Bar or Lounge (55% food sales required)	AGRICULTURAL
Brewpub	Agricultural Sales
Fast Order Food	Crop Agriculture
Fast Order Food with Drive-in	COMMUNICATIONS FACILITIES
Nightclub	Amateur & receive only antennas (accessory)
Private Dining Establishment	Communications Service Establishment
Quality Restaurant	Telecommunications antenna (accessory)
OFFICE	Telecommunications tower (SUP)
Administrative and Professional	Satellite Dish (accessory)
Financial, Insurance & Real Estate (Short-term cash advance loans, Drive up ATM or window prohibited.)	
Other	RECYCLING FACILITIES
PARKING FACILITIES	Large Collection
Accessory and Commercial	Small Collection