

said those were the two things that would like to see added to the process, if and when the City rewrote that code.

Dever said the Commission would take that under advisement.

Moved by Schumm, seconded by Amyx, to defer the taxicab license for Party on Wheels. Motion carried unanimously.

Moved by Amyx, seconded by Farmer, to approve all other licenses. Motion carried unanimously.

C. CITY MANAGER'S REPORT:

David Corliss, City Manager, presented the report.

D. REGULAR AGENDA ITEMS:

1. **Considered approving a request to rezone, Z-13-00287, approximately .27 acre from RM12D-UC (Multi-Dwelling Residential with Urban Conservation Overlay) District to CS-UC (Commercial Strip with Urban Conservation Overlay) District, located at 804 Pennsylvania St. Submitted by Bartlett & West, Inc., for Ohio Mortgage Investors LLC, property owner of record. Adopted on first reading, Ordinance No. 8920, rezoning (Z-13-00287) approximately .27 acre from RM12D-UC (Multi-Dwelling Residential with Urban Conservation Overlay) District to CS-UC (Commercial Strip with Urban Conservation Overlay) District, located at 804 Pennsylvania St. (PC Item 7; approved 9-1 on 9/23/13)**

Scott McCullough, Planning and Development Services Director, asked that Commissioners disclose any ex-parte discussions.

Farmer said he hadn't had any ex-parte discussions.

Schumm said he was present at the last East Lawrence Neighborhood Association meeting and spoke at length about this project in general terms. Specifically about food and liquor requirements and how the ratios were interpreted in the industry which he was a part of.

Amyx said the only ex-parte comment he had was with Leslie Soden and they only talked about the bar and the 55% rule.

Dever said he had conversation with Leslie Soden and Tony Krsnich discussing questions about the application.

Schumm said he had a conversation with Leslie Soden and Soden was at the meeting as well.

Riordan said he didn't have anything to report.

Mary Miller, Planner, presented the staff report.

Schumm said he was confused on the zoning request. He asked if 804 Pennsylvania Street was a vacant lot.

Miller said no, previously it was a duplex and before that it was a historic building.

Schumm said that was 806 Pennsylvania.

Miller said it was called 804/806 Pennsylvania because it was a duplex, but its official address was 804 Pennsylvania and was the same lot.

Schumm said it was the two garages.

Miller said correct and the stone building.

Schumm said the stone building back to the east that fronted on the alley and between the Poehler Building and the garage.

Miller said it was located on the alley between the Poehler Building and the garage.

Schumm said as well as the vacant property to the north.

Miller said it was just the north property.

Schumm said there was a parking lot on the north.

Scott McCullough, Planning and Development Services Director, said yes.

Schumm said it was the parking lot and the structure at 806 Pennsylvania.

Miller said it was a small parking area.

Schumm said this was a rezoning and the rule would run with the land in perpetuity.

Miller said correct.

Schumm said unless it was downzoned or a zoning change took place and changed it. He asked how was this different and why weren't they using a special use permit, instead of the rezoning tying a liquor law to a land use or was it one in the same thing.

Miller said it was the condition that was applied on the zoning. They could have applied a condition back when it was zoned to CS district. There could have been a condition that stated a special use permit, but instead they wanted to make the bar more of an accessory use. It would not be an actual bar. When having the 55% food sales, it meant primarily an establishment was a restaurant and the bar was an accessory. The neighborhood felt that would be better than allowing a bar even with a special use permit.

McCullough said the zoning request was CS zoning which was the predominate commercial zoning of the Poehler District and this condition was already in place. He said it was rezoned to the duplex use when the applicant felt that that was going to be the use in the future and then when Krsnich decided to make it a bar use, the logical step was to revert it back to that CS zoning with that same condition. The CS zoning district allowed bars outright without a special use permit and even without conditions. The condition of the 55 percent rule, which they were borrowing from the CD district was applied to the entire Poehler District and was being applied again back to this property.

Schumm said it was commercial and this was going back to the commercial state in which all the liquor consumption was allowed.

McCullough said it was reverting back to what it formally had with the extension of the time period by which to comply with the condition of 55% and an additional year.

Amyx said in 2006 when the Commission approved Ordinance No. 8054, he asked if there was discussion at that time about that 55 percent rule and that it was important that that came into play at that point.

McCullough said yes because that CS district again, would have had to been added as a special condition. It was a prohibited use unless that condition was maintained.

Amyx asked if the recommendation of the Planning Commission was different.

McCullough said it was different in the sense that the condition remained. He said how they practiced that condition was that an establishment was created and established on a

certain date and then they basically had the calendar year to prove they could meet the condition. He said the applicant worked with the City Clerk's Office and submitted their receipts. Staff checked those receipts and if they met the 55 percent, great, but if the applicant hadn't, staff called them in to figure out how they could meet it. He said one of the recent establishments he was familiar with downtown, for example, staff worked with them to add more service, more menu, lunch times, and those type of things to give the applicant a grace period by which to come into compliance with the condition. He said when talking to this applicant about that process, he had concerns for not being able to meet that requirement in the first year and requested to make it two years to be able to prove to the City that the applicant was able to maintain 55 percent in non-alcohol sales and was how staff arrived at this negotiated condition on the zoning.

Amyx asked if staff pulled occupancy at the end of the first year on any applicant.

McCullough said there was an issue on Massachusetts Street where staff discovered that an establishment wasn't meeting the food sales requirement. The applicant added a lunch menu. Jo Shmo's was one of the establishments that staff worked with.

Mayor Dever called for public comment.

Eric Jay said he and his wife were in the process of building a home about a half block from the proposed development. He was the co-owner of a small company called Struct/Restruct LLC, which was located a block and a half south of the proposed rezoning. He said he and his wife decided a year and a half ago that Lawrence was where they wanted to raise their family. He said they bought their lot well aware of the mixed use nature of the neighborhood. In fact, that was part of their appeal in picking this location. He said they supported the idea of neighborhood dining establishment and thought the east side community would benefit for having a place for families and friends could gather to enjoy others company and thought this would be a successful business venture. He said their concern arose from the many unknowns associated with the proposed development. Their children would be raised in

the direct line of sight of the proposed development and they wanted to make every effort to ensure it was an asset to the area and not the type of establishment that would detract from the charm and appeal of the neighborhood. He said they currently lived at 9th and Ohio, among a mix of owner occupied homes and student rentals. At night it was crossroad for college students headed downtown or to a house party. On weekends and more often than not, on a least one night a week they were guaranteed to be woken by inebriated college students. The hooting and hollering were disruptive enough, but the real impact was the disrespect and destruction of private property. They had potted plants smashed, their children's scooters taken for joy rides, vehicles keyed, mirrors smashed and the side of their house was used as a urinal. In addition to the impaired judgment displayed, the actions also arose from the people not being part of the neighborhood and were just passing through and felt no ownership or responsibility for how things were treated. He said he knew from experience that if the proposed development became a straight up bar, with hours until 2:00 am, the clientele it attracted would exhibit the same behaviors of bar goers anywhere. Of course not all bar patrons had the same purpose of getting pickled, but a drink or two could turn up anyone's volume. The current design of the property, namely the lack of a kitchen and a large outdoor patio certainly resembled an outdoor drinking oriented establishment and that could potentially create a very noisy scene. In the past month there had been several receptions at the Cider Building just south of the proposed development. He said from their house on New Jersey, they could clearly hear people standing outside the front doors of the Cider Building who were mostly speaking at a normal level. If the patio of the proposed development were at capacity, all 1300 square feet, his family and the neighborhood would be subjected to a roar of noise. He said an amplified outdoor event such as a concert or movie screening, using speakers would also be a significant disruption to the neighborhood. The noise would travel for blocks. He said from their residence on Ohio they could hear events occurring 5 blocks away on Massachusetts. In order for the proposed development to benefit to its surrounding neighbors and enjoy the

neighborhoods patronage, the hours of operation must be limited and curfews enforced for outdoor events. They recommended a closing time of midnight and outdoor events ending by 9:00 pm on weeknights and 11:00 pm on weekends. With those operating conditions in place, they were more confident that the environment created would be respectful to the neighborhood and conducive to their kids getting a good night's rest. He said he and his wife request that the City Commission defer the agenda item to a later meeting until the developer had specifics about the planned establishment. He said the developer had yet to meet with his family or anyone on New Jersey. Taking a bit more time to collaborate with the neighborhood and outline details of the plan would not only ease concerns of the surrounding residence, but could very well ensure a loyal clientele.

Tony Krsnich, applicant, said he was surprised to hear Jay's comments. He said he met with Jay at his house, a beautiful modern house and talked to Jay about their concept and the concept had not changed. He said the amount of investment that Jay was making in the neighborhood he had no doubt that Jay had rightful concerns. He said he was holding a sheet of paper that had been signed by 66 people which represented all but 6% of the people that actually lived at the Poehler Lofts and decided not to sign the petition, but 80% had. He said 100% of the property owners and adjacent property owners had signed the petition and 100% of the people that worked in the area had signed the petition as well. He said regarding noise, they shouldn't be talking about a 931 square foot bistro, but talking about the talk of the town, nationally award winning project, the Cider Gallery. The Cider Gallery was 10 times the size of this space and received one complaint at which point he worked very closely with Soden last week and both believed they remedied that complaint which was at 10:00 pm, they closed the garage door. He said he was broke because of it, but in the area he had invested in almost 2 city blocks and there was no way that they would create a problem in the area. He said they would make much more money, short-term, if they just placed a \$50,000 Band-Aid on it and rented it out as a duplex. He said it was going to be \$150,000 investment. He said regarding

the rezoning, from the beginning, he was unsure if they could meet the 55% or more test because of the transition in the area as Schumm had discussed. He said they had lots of construction going on and asked for an additional year. He believed he could have come to the Commission with this list from the business plan and gotten the votes to have a bar. He said they volunteered to do the 55% food sales. He said city planning staff recommended before the Planning Commission one of two options which was a full blown bar, close the bar at 12:00 am or 12:30 am depending on whether it was Thursday, Friday or a Saturday night or agree to the 55% or more rule. He said they decided to achieve the goal of 55% food sales, but asked for one additional year. He said he had the best interest of the neighborhood, commonly known as the warehouse arts district in place. He said he would never do anything to jeopardize the public/private partnership that they had in place and asked the City Commission for their support.

Schumm said the layout that he had seen of the proposed bistro did not have a kitchen.

Krsnich said correct. He said they had large outdoor kitchen that was going in and it was going to be very similar to the Bourgeois Pig, about three times the size with the addition of cold cuts, prepared food and that was how they intended on achieving the 55% or more test. He said they would work with local vendors to provide food.

Schumm asked if they would prepare food on site.

Krsnich said due to the size of the building, they had very minimal opportunity and that was why they were looking at premade food for resale. Additionally, year two there was a strong opportunity that the garages would be taken down and a new very modern kitchen would be built at that location, but in good faith he couldn't come before the Commission and tell them those plans were going to happen when they broke ground however, they had offers to do so and was the reason for an additional year versus having a full blown bar and closing down at midnight or 12:30 am.

Schumm said he was confused about the option of a full blown bar.

Krsnich said essentially, due to staff recommendation, they had two options, one option was the 55% or more food sale requirement, or no restaurant component, but close down at midnight or 12:30 am on the weekends. He said they wanted to close at that time and probably would and the only difference was the 55% or more. There were a lot of people living at the Poehler Lofts that worked in the service industry that get off work at 11:30 pm or midnight and they wanted to be accommodating to those people as well. He said for those reasons they opted to go with the 55% food sales or more which didn't have a time restriction.

McCullough said they presented in their staff report two options and discussed a number of things with the Planning Commission. One was a different operational characteristics between more of a restaurant/bar and a straight bar and that was where the 55% food sales came in. He said for example, if you wanted to sit and dine that was a different operation than if you were standing, the games on television and everyone was getting loud and such. He said staff presented two options for consideration, one option was the 55% rule and made sure that food sales would be part of the operation and the second would be an outright permitted bar without the food sales requirement but with the opportunity to place conditions on the use itself. The conditions staff proposed weren't specific but were up for discussion. The conditions they proposed was restricting business hours, amplified music in the outdoor seating area, and limiting the size of the outdoor seating area. At the end of the discussion and in part because of the communication they received from the East Lawrence Neighborhood Association, the Planning Commission was recommending the 55% rule condition.

Schumm said but legally, they could request to go either direction.

McCullough said the Planning Commission had that ability to recommend either option to the City Commission.

Schumm said in the zone they were in, the Planning Commission could have approved a straight bar.

McCullough said yes.

Amyx said going back to Ordinance No. 8054, where the City Commission established those restrictions, but asked what the difference with the one and two year compliance.

McCullough said that was the difference between the two zoning districts. In other words a tenant space down the 800 block of Pennsylvania could come in and site plan a bar use, would have the 55% rule applied to it and could be established without any conditional approval because the zoning existed in most of that area.

Amyx said what the Planning Commission recommended was the two year compliance.

Josh Davis, President of the East Lawrence Neighborhood Association, said he had talked to Krsnich and agreed on a lot of things. He also agreed with some of the concerns Jay brought up and concerns from the board. As a representative of the board, they had 100% agreement in support of the bar as a 55% restriction and closing at midnight. He said he understood Krsnich position as a business man and his investment with money trying to make this work. He said he believed Krsnich had the best interest of the area because of his investment and he didn't think Krsnich wanted a nuisance property or obscene noise and problems. He said one of his concerns was that this area was receiving a lot of attention and in his mind he saw this as a top of hill of sorts because it was going to be the first big change along those lines. The Cider Building was big and he was thankful for that project. He said he was concerned what the precedent might be and who might be the next developer and would they be as invested. He said he wanted to make sure that whatever was done was done thoughtfully because right now everybody was invested in the area, including the City in building brick streets. He said they didn't need a bar district, but needed to be a place where families were buying homes and restoring those homes or building new homes, but would like a place to go to have a sandwich and a beer. He said how to balance all of those things, he was not sure. He said they presented some ideas, but he wasn't a zoning expert. Ultimately, he was thinking about the end goal and they proposed some mechanisms to help reach that end goal.

Schumm asked if the board had been able to sit down with Krsnich and go over the issues their board had.

Davis said Krsnich had been to meetings.

Krsnich said he had been to two of the last 5 meetings. He said furthermore there was a little bit more criticism at the Planning Commission from one gentleman, the only vote in opposition, that he and the general management team addressed the concept with individuals in the area directly. He said they wanted one on one time, individualized time. He said he took that to heart last Monday, a week from yesterday, and posted 5 days prior in the building at the Poehler Lofts that they would have a town hall discussion. He said just like any of the other developments in the Warehouse Arts District, not only was everyone being informed, but it was a job creation tool.

Schumm asked about the points Davis was a part of, in terms of operation.

Davis said it sounded like solely the closing time and it was mentioned tonight that it might not be a late running establishment.

Schumm said the specific question was what time would they close Sunday through Thursday and Friday and Saturday; and, what time was amplified music restricted from the patio outside.

Krsnich said there was no amplified music, due to the 55% or more test just like any other restaurant. He said he didn't believe restaurants had a closing time before 2 am.

Schumm said alcohol couldn't be sold after 2 am.

Krsnich said they were taking ELNA recommendation and to be a restaurant at which point they would close down at 2:00 am. They would have no amplified music. He said they would sell 55% or more, being a restaurant, but were being asked for additional stipulations which would potentially restrict the success or profitability of the establishment. If closing time was the issue and not 55% or more, he would do either one. He said both had pluses and minuses. If they needed to close down Monday through Wednesday for example at 12:00 and

Thursday, Friday and Saturday where some of those vibrant artist types were wanting last call at 1:00 am, he said he would close it down an hour earlier, but did not want to horse trade a deal after he already bent over backwards, when he truly believed in the best interest of the district, he could have asked for a full blown bar. He said this rezoning hindrance was volunteered by the former developer but quite frankly, he wasn't sure the former developer realized that this area could potentially turn into an arts district like it had. He said this idea of the bistro occurred organically and wasn't his idea. He said he spent more time talking about this bistro than he had on the Poehler Building. He said this was the idea of the people that lived in the area. He said he was in favor of cooperating, but suggested not stopping the progress made and continue the vibrancy of the warehouse arts district.

Schumm said the only thing he would say about that was there really wasn't going to be a restaurant because there was no kitchen and without the kitchen, and without the 55% requirement being met for two years, he might have quite a bar without the food. He said when you have a bar without food there was a more boisterous or a different kind of clientele.

Krsnich said he appreciated that, but Schumm knew him well enough that if it was ever a problem, he would pull the plug long before anyone in the room would. He said he had more a vested interest than anyone. He said coffee counted for the 55% test and a repackaged cold cut counted. He said he didn't want to make commitments based upon proposals or letters of intent. He said if Schumm understood some of the caliber of people that were interested in taking this challenge it would ease a lot of concerns. He said he was in favor of the rezoning of 804 Pennsylvania, the opening of a Bistro at this location and understood that the revenue from non-alcoholic sales could be less than 55%. He said they were signing up for more than the 55%, but this was the public that was directly engaged, people that lived in the district and adjacent property owners.

Dever said the only question he was hearing was 55% food and closing time. He said ELNA wanted both although both were never simultaneously applied to any establishment.

Davis said it was also not in staff's recommendation.

Dever said what ELNA was in favor of was both restrictions.

Davis said to please note that those were tools they were thinking of to try to ultimately protect the environment for this development and future development. He said while they could say the board wanted both of those conditions which was true, but ultimately they wanted those conditions down the road and those were the tools they were seeking.

Mike Riling said he was a member of several LLC's that own property in that area on Pennsylvania Street. He said they owned 832, 826, Pennsylvania and 720 East 9th. He said he had been down for quite a while and seen a dramatic change in the property and the way it had been used. He said he knew Krsnich and knew that bars were an alarm to the community, but knew Krsnich was sincere and if it did get bad, Krsnich would shut it down because Krsnich had more to lose than anyone by having a bar next to the Poehler Building. He said they spent a lot of money developing that building and what the whole scheme was to make Pennsylvania Street and that area a destination. He said they weren't going to have a kind of rowdy bar that people were afraid of to make into a destination. He said even the East Lawrence community wanted to share in the proper atmosphere so the danger was if this could change into an improper atmosphere, but the Commission would have control over that with a two year come back. He said the City Commission could exercise some control if there wasn't a commitment being met and any type of showing of good faith toward the food sales, the City would have some options, but it wouldn't get to that point. He said the biggest investment for Krsnich and his group was the Poehler Building by far much more than this little bar. He said he had been inside that duplex a couple of times and would make a cool little place to have a beer and a sandwich. He said he was convinced that Krsnich would put together a nice place where everyone would be happy with, but they needed to let Krsnich make a little money. He said the area had changed tremendously in the last 10 years.

Leslie Soden said she knew a lot about zoning, but not everything and was wondering, when a tenant arrived for that building with perhaps a special use permit or a conditional use permit, she wasn't sure of the difference. She said she didn't know if that would be applied to the zoning or applied to the liquor license, but perhaps something that was renewed on an annual basis would be a fair compromise.

Dever asked if liquor licenses renewed annually.

Douglass said liquor licenses were renewed every two years now.

Schumm said he went to the ELNA meeting and had quite a discussion. He said there were probably 20 people present. He said what he took away from that meeting was that they were generally in favor of the bar, but were concerned about the food requirement because that dictated what type of bar it would be and were concerned about the hours of operation and noise. He said one concern he had was this condition would run with the land and if that project was sold then someone else was the new owner and as they talked in the meeting, bars were all about management. He said there were good bars and bars they had problems with. He said they had problems out south around McDonald's, problems downtown and a number of really good bars that operate well. He said someone couldn't classify all bars as being problematic and difficult, but here were operators that didn't do a good job. He said he had complete faith in Krsnich that he would operate this bar in the best way. He said what he did have a concern, based upon his career, was how Krsnich would get to 55% without a kitchen. He said it was almost impossible, in fact if they were talking about a downtown establishment and someone came up with the same proposal, the Commission would want a kitchen if selling 55% food. He said Krsnich could do this for a year or two years, but he guessed they would be back to the Commission to see if they could waive the 55% food requirement all together which then spoke to another issue which was what did someone else take away from that who wanted to operate something downtown when 55% was an absolute minimum. He said if the Commission started waiving those conditions then all of a sudden you start waiving for something else. He said 55%

food was a very liberal amount of food when talking about a bistro. He said when they started out downtown it was a 75% food requirement to have a sidewalk café because they didn't want those establishment to be overpowered with alcohol sales to where they were rowdy and noisy on Massachusetts Street and the interior was 65% food sales, then an applicant came with a new restaurant and wanted it lowered to 55% and if eventually got to 55% food sales and 45% alcohol. He didn't know if it differentiated between the sidewalk café and the interior any longer or not, but it was a very liberal amount of liquor to food if he was going to have a bistro or a dining operation.

Amyx asked if the other conditions the Planning Commission required for this district was okay as far as operation of 55% food sales and one or two years.

Schumm said he believed that was correct.

Amyx suggested reviewing the bistro, after the first year, to see how it was progressing with the 55% food sales requirement.

Dever said it was Krsnich point that it was going to take that long just to get it ramped up. He said there was probably a way to achieve that 55% requirement with today's costs with ancillary drinking products such as lattes and coffees. He said with it being a small facility, it might actually achieve that requirement. He said the bistro should go to a straight bar and close at 12:30 a.m. and be done with it, because Schumm was worried about the land issue and meeting the food requirement.

Amyx said then there was no control at all.

Farmer said Krsnich had a vested interest in the success. If this bistro was unsuccessful and it created detriment to the neighborhood and people didn't want to work in the Cider Building and live in the Poehler Building, Krsnich would be shooting himself in the foot. He said he agreed with Schumm that management of bars was key and important. One of the things he appreciated about this was that it was a very innovative business model. A lot of folks were moving toward the locally made, grown, and prepared food. He said something like this would

be pretty innovative idea to see if it would work because a lot of folks would love to eat culinary. If they could revisit this and see if the bistro was close to meeting the food sales requirement after a year or two would be good. He said he wasn't in that type of business and didn't have the same perspective as Schumm. He said it seemed that they wouldn't lose anything by giving it a shot to see if this innovative business model for this particular area was something that could work, with the caveat that it could come back to the commission for review.

Riordan said he had a concern about bringing this item back in a year because what was okay, 50%? 45%? He said it made more sense to bring it back in two years because that was what the applicant was asking. He said Schumm made a good point that this would be difficult, but it was a unique project and most of the people in that area were interested in it. He said he happened to live next to people who were up until 2:00 or 3:00 a.m., making lots of noise and knew what that was like. He said there were difficulties with it being a zoning issue, but he thought it was reasonable to try even though it might not make it.

Farmer said he was trying to compromise with Schumm. If after a year the bistro was at 12% food sales, they probably wouldn't make the 55% food sales in two years. He agreed with Riordan in giving Krsnich two years to meet the 55% food sales.

Riordan said Krsnich had shown that he was respectful of this area and had a lot to lose and he might be wrong, but someone else would have the same requirements. He said to close the bistro at 1:00 a.m. would be reasonable because that would give people that work in that area an hour after those jobs ended. He said he was leaning toward granting this zoning request.

Schumm said Krsnich had not agreed to close at 1:00 a.m., but wanted to close at 2:00 a.m.

Riordan said he heard that Krsnich wanted to close at 1:00 a.m. and asked if he had misunderstood.

Krsnich said he shared in Schumm's and Amyx's concerns. He said from the beginning, meeting the 55% test was never on his radar screen. In fact to do so in year one, he would need to have people parachuting in to drink coffee. He said he didn't think it was possible. The idea was meant for one reason and that was to appease East Lawrence Neighborhood Association request and they were going to try to do it. He said at best it would take two years. He said the two options were the 55% or more, which was a restaurant that did not have a closing time, or have a bar which there was no food requirement and wasn't a restaurant, but there was a closing time. He said he was standing before the City Commission not knowing which way to turn. He said he understood if a precedent was to be set for someone on Massachusetts Street, this was voluntarily done by the previous developer and it might make sense to scale it back and to just have an arbitrary closing time and have it be a bar. He said he was open and wanted to be transparent and not tell people what they wanted to hear and over promise and under deliver. He said he had the same concerns, but he had made a commitment to try to achieve the 55% food sales requirement. He said if the letters and conversations regarding the garages turn out, he wouldn't have a problem and would probably have no problem meeting the 55% test, but right now what he had in hand, he did not have that and it was not bankable and was the reason he was asking for two years. If it didn't need to be a restaurant he would agree to a 1:00 a.m. closing time for the bar, Thursday, Friday, and Saturday night and a midnight or before any other night of the week. Again, he said they were talking about a 900 square foot building that might be able hold 70 or 80 people. The Cider Gallery that had a full-blown liquor license, a huge outdoor space literally 5 times the amount of people could fit outdoors then the entire bistro complex indoors and outdoors was the talk of the town. He said for some reason they were really focused on a precedent, but the precedent they were setting was that future developers agreed that ELNA wishes. He said he as just asking for one additional year and if that set a precedent, he could agree to the challenge of that with Schumm. He said if that was the case, then let's call it what it very well might be which if it did

fail the 55% test, it would be a bar and scale the hours back accordingly, but it had to be bankable. He said whatever it would be, it would be respectful and an asset to the Warehouse Arts District and not a detriment.

David Corliss, City Manager, said the Commission could adopt the ordinance as recommended by the Planning Commission and then add 24 months of operation and if it wasn't meeting the 55% food sale requirement, the City Commission could go back and limit the hours of operation at that time. He said he was trying to find some way to suggest a compromise on this issue.

Dever said he remember there was similar angst when it came to the Bourgeois Pig. He said there were some issues about the outdoor area and the food sales. He said they were all worried about things that could transpire and now it was an interesting place. It felt like the same scale as what they were talking about with the bistro. He said Bourgeois Pig was different and a concept the then-Commission wasn't comfortable with and struggled with.

Corliss said the struggle was the sidewalk permit and the food sales requirement.

Dever said it was the same concept and the Bourgeois Pig turned out great.

Corliss said it looked like Bourgeois Pig was successful from a business point.

Amyx said the Planning Commission had done a good job in going through the process and making recommendations to the City Commission. He said the only question was that if they were to concur with the Planning Commission's recommendation, he asked if there would be anything else the City Commission wished to add in the condition of approval of this site.

Dever said Schumm's concern was about the viability of something like this and the fact that it was running with the land and not a use permitted to the applicant. He said that would be the only reason he thought about looking back because that might give the Commission that trigger. He said obviously this was a new type of service in a new area that they weren't familiar with.

Corliss said he did agree with the applicant's observation in that it would probably take some time to build that uniqueness for a food location. He said this was an area that didn't have that history. He said the City Commission might want to forecast to the property owner because it did run with the land and successors that at 24 months of operation that the City Commission would have that authority to look at that information, determine whether or not they met the 55% food sale requirement. If they hadn't met that requirement, then the City Commission had the authority to limit the hours.

Dever said or bring it back to the City Commission for discussion. He said he was in favor of moving forward but didn't want Schumm to feel uncomfortable with this decision.

Schumm said he appreciated everything that had been done, but he was just trying to bring up the points for discussion. He said on one hand they had an ordinance and he liked to follow the City's ordinances because if they started to not follow those ordinances, then they fall apart. He said if we waive parts of an ordinance, then suddenly there was a watered down situation where people could shoot holes in things and rightfully so. He said he had been very instrumental in trying to protect downtown in terms of its appropriateness, its character, how it presented itself to people and a lot of what he was concerned about was how the City's hospitality industry operated, how it functioned, and how it presented itself to the public. If there were 20 bars up and down the street with broken glass all over the sidewalk, there wouldn't be quite the charm it had the way it worked right now. He said he loved that district, but was having a hard time getting by the fact that there was no kitchen in this bistro. He said he could see that they were going to import some food and try to make it work along with the beverage sales that were non-alcoholic. He said he was willing to give it shot. It's a good program. The statement was made that the liquor license was reviewed every two years. Once issuing a liquor license it was awfully hard to take it back. It was like a right in the State of Kansas. He said he had been on two such task forces to try and revoke a license and they weren't easy. He said it wasn't a safety valve at all. He said where the City Commission had some leverage was

that any restrictions the City Commission wanted to place on that bistro now and in two years check it and if it was going well that was fine, but if it wasn't going well it would need to be adjusted. He said he would like to see this issue back in two years to see what was happening. He said his question was if the City Commission would have the opportunity to make adjustments at that time and place restrictions on the establishment if things weren't going well.

McCullough said staff had thought about this because as they've gone through the potential that Krsnich couldn't meet the 55% food sales requirement after two years, typically the applicant would have some avenues to pursue. One would be to in short order, come into compliance if that meant adding a kitchen or adding different services. The other would be to request that the condition be altered or removed all together. He said staff had been very careful not make too many parallels to the downtown district. He said it was a different district all together, but the standard was borrowed and was a tight negotiating package of zoning standards. The list was long about prohibited uses and this wasn't the only use. One of the avenues the applicant could pursue was to go back through the process with the Planning and City Commissions to change the condition. If he had an establishment that was going well and there weren't complaints, he might request that the condition be removed all together. There also might be an opportunity to request that the City revert to option 2, which was to place different kinds of conditions on the use that restrict hours and those types of things, but remove the food sales. Typically, downtown restaurants didn't have those options to make those requests because it was conditional zoning in this case, whereas downtown was the zoning standards by right. He said they had a built in 2 year timeframe. If after 2 years, the bistro was meeting the 55% rule, then he would keep going with it. If not, he needed to make changes and those were the avenues to pursue. He said they could of course build in a review of some sort and advise the Commission on what was happening after those two years, but after two years if the bistro was not meeting it, then changes would need to be made in any event.

Schumm said with this zoning request the City Commission would approve it with a City Commission review at the end of 2 years of operation if not meeting the 55% requirement.

McCullough said if he wasn't meeting the 55% requirement, they could build that into the ordinance. He said it would either be shut down or pursue some condition amendment of some sort.

Schumm said it was not anything other than what he already agreed to because staff was going to review it in 2 years.

McCullough said it could be reviewed monthly because those reports were submitted monthly. He said staff could track it and advise Schumm on its progress, but it wouldn't have an impact on the operation until after two years.

Schumm asked what reports were submitted monthly.

Douglass said what staff asked for with liquor license applications were copies of the liquor excise tax returns.

Krsnich said he would want to make sure the two year period started from the certificate of occupancy. He said they probably won't even begin construction until spring. He said they were going to put as much thought, if not more, into this project than they were per square foot from the Poehler or Cider. He said there wasn't a chance that they would be open until the summer of 2014.

Schumm said they could start when they received their certificate of occupancy or when they received their liquor license.

Davis said two years sounded like a fair amount of time. He said for the potential precedent that the Commission discussed regarding loosening restrictions, he wondered if they were talking about that in two years and then saying they might be generating monthly reports and on one wanted to look at monthly reports. He asked if a precursory review of one year be appropriate to make sure they weren't hovering at 8%.

Dever said they discussed that, but the Commission didn't have any authority. He said the Commission didn't want the authority because they didn't believe it was fair to create this concept in 12 months. He said reviewing the food sales in one year might be premature because it might take 12 months to ramp up and then boom the concept took off. He said they already talked about that.

Davis said he wondered if the option was that after two years then they start looking at it and then another year to sort through the issues and if it was a problem and couldn't sell enough food then they would drop down to midnight. He said what it sounded like was that they were a full-fledged bar for 3 years and then switch to midnight was what it could end up being.

Dever said that was a possibility.

Moved by Farmer to approve the request to rezone (Z-13-00287) approximately .27 acres from RM12D-UC District to CS-UC District, located at 804 Pennsylvania Street and adopt on first reading, Ordinance No. 8920.

Schumm said regarding noise that bothered neighbors on a continuous basis, if that happened, from midnight to 2:00 a.m. He said right now the weather was nice and windows were opened, he asked what they would have other than calling the police.

McCullough said the City had a noise ordinance and police response.

Dever said asked if adopting Ordinance No. 8920 was the Planning Commission's recommendation.

Amyx said if the 55% rule was not met it would automatically come back to the City Commission. He said through the process did any of the language that the City Manager brought up needed to be included. He said it would need to begin after the license had been issued or the time of occupancy permit was issued.

Corliss said the way the ordinance was written was that said restriction shall be applied beginning on the 2 year anniversary on the commencement of the use.

Dever said to be clear, Corliss indicated that upon that review the Commission could dictate those changes be made anyway so special language wasn't needed.

McCullough said correct.

Corliss said the way the ordinance was written the applicant would not be in compliance with the City's zoning code if they weren't meeting this requirement.

Schumm said regarding the motion, if the 55% rule was not met it would be brought back to the City Commission in 2 years.

Dever said no, it would be automatic.

Schumm said it was a staff review.

McCullough said after 2 years, if the food sales were not met, there would be a zoning violation and in that case either the City Commission upon report from staff could initiate a rezoning and change the condition or the applicant would have avenues to pursue to remedy the violation.

Moved by Farmer, seconded by Riordan, to approve the request to rezone (Z-13-00287) approximately .27 acres from RM12D-UC District to CS-UC District, located at 804 Pennsylvania Street and adopt on first reading, Ordinance No. 8920. Motion carried unanimously.

2. **Conduct a public hearing and consider recommendations from the Historic Resources Commission to designate the following properties as Landmarks on the Lawrence Register of Historic Places:**

- . 900 Rhode Island Street, Turnhalle**
- . 1500 Haskell Avenue, Kibbee House**
- . 1734 Kent Terrace, Joseph Savage House**

Lynne Braddock Zollner, Historic Resources Administrator, presented the staff report.

Amyx asked about the 1500 Haskell Avenue property that was connected to 1734 Kent Terrace.

Zollner said there was a correction that needed to be made in the City Commission's Agenda Packet regarding the report from the Historic Resources Commission on the Kibbee