



City of Seattle
Greg Nickels, Mayor

Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3006609
Applicant Name: Waid Sainvil
Address of Proposal: 1212 East Jefferson Street

SUMMARY OF PROPOSED ACTION

Land Use Application to change the use of a 3,991 square foot restaurant to include a drinking establishment (Waid's Haitian Cuisine). Project includes establishing a covered outdoor seating area encompassing 300.25 sq. ft. for the proposed eating and drinking establishment. Parking for two vehicles to be provided on-site, with an additional two stalls located off-site, at 427 12th Avenue.

The following approvals are required:

Administrative Conditional Use - To allow a drinking establishment in an NC2-40[the foot mark is used inconsistently in the report] zone. (Seattle Municipal Code Chapter 23.47A.006)

SEPA DETERMINATION: Exempt DNS MDNS EIS
 DNS with conditions
 DNS involving non-exempt grading or demolition or involving another agency with jurisdiction

BACKGROUND DATA

Site and Vicinity Description

The subject property is an interior lot located on the north side of East Jefferson, between 12th Avenue to the west and 13th Avenue to the east in the Squire Park neighborhood. The 5,125 square foot lot is nearly square in shape and is zoned Major Institutional Overlay (MIO), with a 50 foot height limit and Neighborhood Commercial Two, with a height limit of 40 feet (MIO-50 /NC2-40). The MIO designation references development of Seattle University owned properties. Additionally, the site is located within the 12th Avenue Urban Center Village Overlay District.

Department of Planning and Development (DPD) permitted use at the subject site consists of a restaurant use located within an existing one-story restaurant building with accessory parking. The structure abuts the rear property line and extends approximately 26 feet from the front property line. Set between the front façade and East Jefferson right-of-way, at the site's southeast corner is a covered deck with ramp and landing. Vehicular access is taken from a 20-foot wide curb cut accessed off East Jefferson Street, centered between the east and west property line. There is an existing concrete wall and metal entry gate that runs along the south property line fronting East Jefferson limiting access to the subject site. East Jefferson is a fully developed street with asphalt roadway with curbs, sidewalks and gutters.



The subject lot abuts an unimproved 10-foot wide alley located adjacent to the rear of the lot. An emergency access door located along the structure's rear wall opens onto the alley. Recently, an exterior wall was erected along the rear of the structure, a covered deck was constructed adjacent to the front side of the structure, and other exterior and interior enhancements were made during the past few months.

Development in the vicinity consists of mixed residential, commercial, and institutional uses. Dominating the area is Seattle University (SU) which owns significant tracts of land in the 1100 and 1300 blocks of East Jefferson; as well as other tracts further east, west and north of the subject block. SU has consolidated their properties under a Major Institution Overlay designation which allows for a coordinated development scheme. East Jefferson represents SU's southern edge of the MIO District. Abutting the subject property to the west is a vacant corner lot, with street frontage along 12th Avenue. Abutting the site to the east is a three-story brick building, with commercial uses (including restaurants) at street-level with apartments above. To the south across East Jefferson is a mix of commercial and residential uses within Neighborhood Commercial Two and Three zones with a height limit of 40 feet (NC2-40 & NC3P40). The "P" designation references pedestrian designated zones along certain identified streets. Across the alley from the subject property to the north the zoning changes to MIO-37 / Residential Multi Family, Lowrise Two (L-2) with a density limit of one unit per 1200 square feet. Principal structures in this zone are smaller-scale apartments and single family uses. The residential structures across the alley are setback from the alley and oriented towards the East Barclay Court Street frontage. Topography in the area is nearly flat.

Proposal Description

The applicant proposes to convert an existing 3,991 square foot structure previously used as a restaurant to eating and drinking establishment (Waid's Haitian Cuisine), to allow nightlife activity in the evening hours. Two parking stalls were previously removed to accommodate a 300.25 square foot outdoor seating area within a patio deck in the front. The covered patio area creates additional seating area, increasing the restaurant use to a maximum 4,291.25 gross floor area.¹ A drinking establishment is not permitted outright in the NC2 zone. Therefore, the owner is seeking an administrative conditional use to allow this change of use.

¹ Though on face value the project appears to exceed State Environmental Policy Act (SEPA) thresholds, the outdoor seating area is exempt from square footage use, per Director's Rule 23-2000, footnote #6 to Table A. Areas of use shall include outdoor seating areas for restaurants only if the outdoor area exceeds 750 square feet.

The change of use and creation of the outdoor seating area will require the loss of two on-site parking stalls. The Land Use Code does not require any parking at the development site. (Pursuant to Seattle Municipal Code (SMC) Section 23.54.015.B.2) the owner chose to retain two parking stalls on the subject lot and locate two parking stalls at 427 12th Avenue. Therefore, the proposal includes an off-site parking covenant that would allow the restaurant patrons to utilize two parking stalls at the accessory surface parking area within one block of the subject lot.

Public Comment

Date of Notice of Application:	February 8, 2007
Date End of Comment Period:	March 7, 2007 ²
Number of Letters:	39 (approximate)

A number of letters and e-mails were received, up to the time of final analysis, which informed DPD's decision. A number of phone calls were placed to the assigned planner, who encouraged the callers to submit their comments in writing. Several letters contained copies of legal court documents, published articles, and police reports attesting to activities associated with the operation of several businesses at the development site going back several years. Approximately fourteen citizens expressed opposition to the proposal. The neighbors' objections regarding this proposal focused on the following issues:

- Concerns regarding increased noise volumes and associated vibration impacts due to music emanating from the establishment;
- Concerns regarding the future impact to on-street parking demand;
- Concerns pertaining to pedestrian loitering, smoking, offensive language, and questionable activities that create an atmosphere of fear on surrounding streets;
- Concerns related to noise from vehicles playing loud music and aggressive driving;
- Concerns pertaining to excessive amount of trash and vandalism on abutting streets and properties;
- Concerns about health impacts on residents exposed to loud noise and activities outside the club;
- Concerns about criminal activity and its impact on livability and safety in the neighborhood; and
- Concerns about the proposed outdoor seating area which may increase noise levels, impacting adjacent residential uses.

Approximately 25 citizens expressed support of the proposal. Their comments express a belief that the establishment would be a positive addition to the neighborhood, and by extension, to the greater Seattle community. Their comments also emphasized that Waid's would enhance cultural diversity in the neighborhood, with an authentic Haitian restaurant providing hospitality and cuisine unique to Seattle. Several letters provided testimonials of neighbors stating nominal impacts related to noise levels and patrons associated with the operation of the evening business. An online petition, (www.petitiononline.com/waids001/petition.html) supporting Waid's was submitted to DPD on February 22, 2007. The petition entitled, 'Save the Community Save Waids,' contained a total of 152 signatures asking DPD to support the applicant's request to establish Waids Haitian Cuisine as an eating and drinking establishment. By May 18, 2007 the total signature count had reached 289.

² The public comment period for this project originally ended on February 21, 2007, but was extended an additional two weeks per public request.

Additional Information

Waid's Haitian Cuisine has been operating as an eating and drinking establishment for a number of months without permit authority. DPD issued three Notices of Violation (Case numbers 1008517, 1009785, & 1010432) in response to associated noise emanating from the establishment and construction of the additions and alterations without a construction permit. Due to the un-permitted activity occurring at the subject lot, the owner must obtain an Administrative Conditional Use prior to acquiring a construction permit to finalize renovations pertaining to the proposed Eating and Drinking Establishment use. Additionally, DPD has a building application on file to authorize the previously constructed covered outdoor seating area accessory to the eating and drinking establishment. This permit application will not be approved until after issuance of the MUP permit (#3006609). The applicant sought and a permit was issued to make alterations to the exterior insulation wall on June 13, 2007 (Permit #6142918).

The owner has also performed unauthorized work at the development site, including outdoor patio deck, and sound wall. As a condition of this application, the owner will be required to obtain appropriate permitting from DPD and associated Departments.

The fact that a considerable amount of construction has occurred on the subject site does not weigh into the analysis and decision of this administrative conditional use application.

ANALYSIS - ADMINISTRATIVE CONDITIONAL USE (SMC 23.47A.006)

B. The following uses, identified as administrative conditional uses on Chart A of Section 23.47A.004, may be permitted by the Director when the provisions of this subsection and subsections A are met:

- 1. Drinking establishments in NCI and NC2 zones may be permitted as conditional use subject to the following conditions or criteria:*
 - a. The size of the drinking establishment, design of the structure, signing and illumination must be compatible with the character of the commercial area and other structures in the vicinity, particularly in areas where a distinct and definite pattern or style has been established.*

The proposal represents a change of use from a restaurant use to eating and drinking establishment within a one-story building approximately 26 feet from the front property line, abutting East Jefferson. The existing block has remained relatively unchanged over a number of years, in terms of the number and siting of structures along Jefferson St. In recent years the block has transformed into an ethnically diverse area providing services and products catering to Afro-Caribbean and African communities.

The proposed use would be consistent with the character of the commercial area due to its moderate size of 3,991 square feet (one-story with mezzanine level), and street orientation. The fact that the building envelope of the drinking establishment will not be significantly altered by the proposed use is a factor in the compatibility analysis. A portion of the existing surface parking lot (20.5 feet by 15.5 feet) has been altered to create a covered outdoor seating area. Two parking stalls were displaced to a location within one block of the subject site.

It is anticipated that the outdoor seating area will fill the space between the building and the street adding human activity along Jefferson Street. Recent alterations to the building include the following: construction of a wall along the alley facing façade; interior sound buffering installation of rear exit door; exterior firewall for outside seating area; installation of a new roof; and interior alterations. As previously stated, a concrete wall with metal gate is positioned along the south property line abutting East Jefferson. No changes are proposed to either the wall or gate, nor are there any plans to change signage. Existing signage includes a non-illuminated metal sign that is positioned above the gate. An internally illuminated sign, approximately 3 by 4 foot, mounted to a pole, sits approximately seven feet above and is orientated perpendicular to the street. A temporary banner sign has been affixed to the west exterior wall facing 12th Avenue. Similar styles of signage are found in the immediate vicinity. No additional exterior lighting is proposed. Interior illumination will be subtle and barely visible from outside the proposed eating and drinking establishment.

b. The location, access and design of parking shall be compatible with adjacent residential zones.

No parking for motorized vehicles is required for uses in commercial zones in Urban Centers and in Station Area Overlays, except that parking for fleet vehicles is required per SMC 23.54.015B.2. The subject lot is located in First Hill/Capitol Hill Urban Center. Currently two parking spaces are being provided for the restaurant use. Two additional parking spaces were previously removed to accommodate the outdoor seating area. The applicant proposes two replacement stalls within one block, at 427 12th Avenue (Arco Gas Station). The applicant proposes the additional off-street parking spaces to help minimize the impact to on-street parking from spill-over parking demand.

Access, layout, and design of the on-site surface parking lot located between the building and front property line is anticipated to solely impact uses in the NC zone. The location of the existing building occupying the rear portion of the subject lot, abutting the alley, provides a substantial buffer from the adjacent residential zone, across the alley's centerline. On-site commercial parking activity will be separated from residential zones and thus, no incompatibilities or conflicts are expected. Therefore, the required parking location, parking access and parking orientation are compatible with the adjacent residential zone.

c. Special consideration shall be given to the location and design of the doors and windows of drinking establishments to ensure that noise standards will not be exceeded. The Director may require additional setbacks and/or restrict openings where the drinking establishment is located on a lot that abut or is across from a residential zone.

This proposal represents a change of use that will not change the existing structure's siting or location of exterior doors and window openings. The structure's only opening adjacent to a residential zone is a door located along the rear wall that provides egress to meet Fire Code. The applicant has modified the existing structure to reduce noise emanating from the proposed eating and drinking establishment use. Other rear openings have been insulated and closed off to limit interior noise from radiating beyond the exterior walls. As previously stated, the entrance is approximately 26 feet from the front property line. Openings along the front façade have been designed to have minimal impacts on neighboring properties in the commercial zone. In order to determine actual noise impacts with the proposed use, the applicant was instructed to consult with a professional engineer to evaluate noise impacts associated with Seattle's Noise Ordinance. The consulting engineer, Jerry G. Lilly, President of JGL Acoustics, Inc., visited the site several times to evaluate compliance with Seattle's Noise Ordinance.

In a report dated March, 29, 2007, Mr. Lilly's preliminary findings concluded that some type of electronic sound level limiter may be needed to automatically control sound volumes at a specific level within the restaurant. Seattle's Noise Ordinance establishes maximum permissible dB(A) sound level at property lines³. The maximum allowable noise level at the property line is 57dB(A) during the day (see SMC Section 25.08.410), and 47 dB(A) at night (10 PM to 7 AM) (see SMC Section 25.08.420). In order to determine whether the music emanating from the building would exceed permitted levels at the property line as established in the Noise Ordinance, sound levels must be set inside the building with the music running at maximum levels and then with the music turned off. During the course of the sound testing to establish threshold levels, it was determined that the exterior wall reduced the dB(A) by 31 so to meet the most restrictive level the music could not exceed 78 dB(A) any time after 10 PM, 88 dB(A) during the day) inside the building.

On May 26, 2007, Mr. Lilly visited the subject site to determine conformance to the Noise Ordinance. Mr. Lilly noted two significant modifications affecting the impact of sounds radiating from the building. First, the applicant had installed a digital signal processor (Symmetrix 322) to provide limiting features on the low frequency sound generated by the restaurant's sound system. As installed the sound system was limited to generating a time-average A-weighted sound level of 100 dB(A) as measured in the room's center. The second modification was the placement of exterior Hardi-Board panels with insulation affixed to the rear outer wall. During the sound measurement tests Mr. Lilly found that if the Symmetrix 322 was set so that the inside maximum sound level was set at 98 dB(A) and if the line limiter was not bypassed or adjusted, the applicant would be in compliance with Seattle' Noise Ordinance. After reviewing the report and conferring with other officials, additional information was needed to more accurately examine impacts associated with low-frequency levels across the alley and upon the abutting apartment use to the east.

Mr. Lilly paid another visit to the subject property on June 6, 2007, to ascertain ambient noise levels at the north and east property lines (above the subject lot's roof line)⁴. A new vestibule and second door was added since Mr. Lilly's second visit. This time, with the Symmetrix 322 system, set at the maximum level 100 dB(A) inside the restaurant, the sound level of the music at the north property line reached 44.1 dB(A), less than the maximum allowed by the noise ordinance at night. At the roof level along the east property line, the dB(A) measured 58.1, less than the Code maximum of 60 dB(A).

In addition to the Seattle's Noise Ordinance's dB(A) (or "A" scale) thresholds, dB(C)⁵ (or "C" scale) levels were established for the proposed use to address bass noise impacts. One of the concerns identified by surrounding property owners are the thumping sounds of music with high bass levels. At times the bass volume has been reportedly turned up to levels which have disturbed neighbors' sleep and repose. To address bass noise impacts, during Mr. Lilly's last visit on June 12, 2007, both A and C sound levels were set. To verify sound impacts from Waid's upon neighboring properties, two receiver locations were identified and measurements

³ dB(A), means the sound level measured in decibels, using the "A" weighting network. This scale discriminates against low frequency sounds.

⁴ The adjacent property to the east is zoned MIO-50/NC2-40 which has a dB(A) of 60 as opposed to 57 dB(A) across the alley, as required for the residentially zoned properties.

⁵ dB(C), means the sound level measured in decibels, using the "C" weighting network, higher than the "A" scale, which more accurately measures the low frequency noise.

taken. With the volume set at 100 dB(A) inside the proposed eating and drinking establishment a measurement was taken opposite the rear exit door, across the alley on the property line of the L-3 zone. The measurement read 52 dB(A), within the daytime range for maximum permissible sound levels⁶. At the first receiver residence, measurements were then taken with other people present in the house and the refrigerator running, at a house located northwest of the Waid's. One member of the group noted that the south (facing Waid's) exterior wall included a kitchen door with a weak seal, and one large and several small windows. The sound level measurement was taken in the southwest bedroom with all doors and windows closed read 36/49 dB (A)/(C). The second residence located to the northeast of the source site was similar to the first residence, with other people present and refrigerator running. The sound level meter registered 36/51 dB (A)/(C) in the bedroom.

Activities surrounding operation of the proposed use will meet the requirements of Seattle's Noise Control Ordinance, SMC Chapter 25.08. The proposal is expected to connect all forms of music, whether live, pre-recorded, etc., to a music playback system that restricts volumes to maximum threshold limits set forth in SMC 25.08. With the maximum sound level set at 100 dB(A) inside the proposed eating and drinking establishment it is expected that the music will fall below maximum sound thresholds at the property lines. Maximum A scale sound level at the property line shall be set at 57 dB (A) during daytime and 47 dB(A) at night for property in residential zones. Property lines in commercial zones shall be set at 60 dB(A) day and night pursuant to SMC 25.08.420.A. Interior levels within receivers residences shall be set at 45 dB(A) during daytime hours and 35dB(A) at night. Maximum C scale sound level during daytime shall be set at 65 dB(C), with nighttime set at 55 dB(C). The project will be conditioned to not exceed the previously mentioned noise levels measured at the property line.

However, there is a possibility that a new sound system may be installed at a future date that may increase sound levels from the site. To avoid this, the proposal will be conditioned to set sound levels at the property line.

Some neighbors have raised concerns regarding patron activities from the covered outdoor seating area. In addition to requesting a proposed change of use, the applicant's proposal includes establishing a covered outdoor seating area in the NC zone between the restaurant and the front property line. Restrictions will be placed on music of any kind and sale of alcoholic beverages in this area. It is expected that patrons will use this area as an outdoor gathering space. Restricting allowable activities on the outdoor seating area will allow passive use of this area and reduce potential noise impacts on adjacent properties. In order to mitigate possible noise impacts due to amplified and live music in this area and people talking above the music volumes, a condition will be added to restrict amplified and live music after 10:00 PM on weekdays (Sunday through Thursday) and 11:00 PM on Friday and Saturday). Additionally, customer use of the outdoor seating area will be required to cease at 10:00 PM on weekdays (Sunday through Thursday) and 11:00 PM on Friday and Saturday). Notwithstanding these conditions, the eating and drinking establishment is required to comply with the Noise Ordinance as well.

⁶ When adjusted for daytime ambient noise, the sound level of the music at the north property line is 44.1 dB(A), which is 3 dB(A) less than the maximum allowed by the noise ordinance.

d. Drinking establishment must not generate traffic that creates traffic congestion or further worsens spillover parking on residential streets.

According to Trip Generation, “7th Edition,” ITE (Institute of Transportation Engineers), the peak PM hour trip generation for a “Drinking Place” is 15.49 trips per 1000 square feet of gross floor area. During peak hours for the “drinking establishment” 66 trips are anticipated during the peak hour. It is worth noting that peak hours for drinking establishments do not coincide with peak hours of traffic. In relation, for one hour between 4 and 6 pm, when rush hour normally occurs, Trip Generation has an average of 11.34 trips per 1000 square feet for this land use. As the proposed “Drinking establishment” use is for 4,291.25 square feet, 48 vehicle trips per hour are anticipated between 4 and 6 pm.

The ITE Trip Generation samples cited above were taken in more suburban settings where traffic patterns may not reflect more dense urban centers, such as Seattle. Within the City, vehicle trips are generally substantially lower due in part to: proximity of residential uses to employment work centers and retail uses; availability and location of public transit; and other modes of travel which make it likely there will be fewer vehicle trips than from developments in outlying areas on which the ITE generation equation is based. It is DPD’s experience and that of the assigned planner, that these above reference figures do not fully capture available modes of travel options for individuals living in the vicinity.

Neighborhood Commercial zones are typically pedestrian oriented and offer a variety of commercial uses and services within easy walking distance of nearby residents. It is anticipated that patrons living nearby will not be solely dependent on automobile use. Of note, the subject lot is located on a Metro bus route along East Jefferson Street. Taken altogether, traffic impacts will most likely be less than noted by ITE data. The proposal will not generate traffic which creates traffic congestion.

Although not directly related to the proposal, it should be noted that any change of use or new use (even a use permitted outright) may cause spillover parking onto the streets. For example, the existing restaurant use is permitted outright, and may generate as much or more parking demand than the proposed use. As a basis of comparison, the previously-mentioned ITE trip generation numbers for the proposed drinking establishment estimated that 15.49 trips/1,000 square feet of gross floor area would occur during the busiest PM peak hour, and 11.34 trips/1,000 sf of gfa would occur during the busiest hour from 4 to 6 PM. A typical restaurant would generate 18.8 trips/1,000 sf of gfa during the PM peak hour, and 10.92 trips during the busiest hour from 4 to 6 PM. All these rates likely are high, as noted previously, because of the urban context of this site; nevertheless, they show that restaurants are likely to generate as much or more traffic than drinking establishments of the same size.

Taking into consideration the context of the neighborhood, the proposed use, and the proposed establishment layout, it is not anticipated that the proposal will further worsen traffic and parking on neighboring streets in the adjacent residential zones. Traffic is expected to flow to and from the subject site along primary arterials within commercial zones with spillover parking accommodated along the commercial streets and to a lesser extent in residential zones.

To demonstrate that the proposed use will not further aggravate spillover parking on residential streets, DPD requested a parking analysis which was received by the Department on April 13, 2007. By direction from DPD, the applicant performed the study within 400 feet of the subject site. The applicant was instructed to document on-street parking utilization over the course of several days in order to capture at least two weekend evenings and one weeknight. Parking was tabulated in the early evening and late evening. Additionally, the applicant was instructed to survey the patrons, at the time of the parking inventory to determine mode of travel to the establishment. The applicant submitted a study that covered a two-week period, initiated on Monday, March 26, 2007 and concluded on Sunday, April 8, 2007. The counts were conducted in the evenings between 7:00 PM and 12:00 AM. (A slight inconsistency was noted with how the tabulations were identified after the 12:00 AM hour; either being attributed to a Saturday or Sunday). Prior to commencing the study, DPD and the applicant agreed these hours would most accurately reflect evening activity of night use.

The parking utilization study substantiated the experiences of DPD in our urban centers. Reliance on single occupancy vehicles is becoming less of a factor. Carpooling on weekend evenings significantly reduced on-street parking demand. Taxi, public transport, and walking contributed to an approximate average reduction of one-third vehicle use. During the study, the highest number of patrons reached 80 individuals late Saturday evening (12:00 AM, Sunday morning). On the residential street, Barclay Court, four parking stall were available as opposed to no parking availability within one block of East Jefferson. Twenty-three (23) individuals drove to the establishment, 30 others reported they shared rides. Twenty-four (24) others walked, took public transit or secured a taxi. On Sunday evening (April 1, 2007) around 8:00 PM, only 3 patrons were in Waid's which represented the fewest patrons during the study. Seven parking stalls were available along Barclay Court. All three patrons drove their vehicles to the establishment.

During the two week study period on-street parking was available in the commercial zones. On-street parking on residential streets appears to be impacted by the operation of the establishment but not substantially. The nearest residential street is Barclay Court which measures approximately 250 feet in length between 12th and 13th Avenues. When making adjustments for separation from corners and driveways the street can accommodate approximately 22 vehicles (based on the medium parallel stall length of 20 feet). During the parking study, when the establishment was operating at its peak, Barclay Court had reached a parking utilization capacity of 82 percent. Based on this utilization study, there would be sufficient unused on-street parking capacity within 400 feet of Waid's to accommodate parking demand without adversely impacting existing parking on residential streets.

Since the parking study was conducted, parking enforcement of restricted spaces in the vicinity of the site may be shifting parking demand to some extent. In particular, evening parking that has occurred in restricted spaces on 13th Avenue may now occur elsewhere. This could result in greater occupancy of unrestricted on-street spaces in this neighborhood. However, the parking study examined available spaces within only 400' of Waid's. Displaced parking likely would occur over a larger area, 800' or more from the vicinity of the site. As the area of the parking survey represents only a relatively small fraction of the total area within which displaced parkers are likely to look for spaces, the number of displaced parkers that are expected to utilize available spaces on residential streets close to Waid's also is likely to be small.

In summary, it is not expected that a drinking establishment per se has worse impacts than a use permitted outright, such as a restaurant. The potential exists for some minor spillover parking by some patrons; however, this would not worsen the impact to residential streets. The Department concludes that the proposed eating and drinking establishment will not aggravate spillover parking based on the submitted parking report, size of the proposed use, the location along an arterial street, and variety of modes of travel to the establishment utilized by patrons.

ANALYSIS – ADMINISTRATIVE CONDITIONAL GENERAL PROVISIONS (SMC 23.47.006)

A. *All conditional uses shall be subject to the procedures described in Chapter 23.76, and shall meet the following criteria:*

1. *The use shall not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.*

As described above in the noise standards section, the 4,291 square foot proposed use as conditioned should not be a detriment to the public welfare or injurious to property in the area. The proposed use will be located in an existing retrofitted structure that is located across the alley from a residential zone, and fronts other commercially zone lots along East Jefferson Street. To protect the neighboring residential properties, it is important that music levels emanating from the proposed use not adversely impact sleep and repose in late evening and early morning hours, in the high and low frequency bands. Overwhelmingly, public comment against the proposal cited noise as being the most significant problem attributed to the operation of the proposed use. To address noise impacts on adjoining residentially zoned uses, the permit is conditioned using accepted levels in A and C scale network. As conditioned, the music from the proposed use shall not be materially detrimental to public welfare.

Other public comments previously cited include: the proposal contributes noise from vehicles playing loud music and aggressive driving in the neighborhood; pedestrians loiter, smoke, use of offensive language, and create an atmosphere of fear on surrounding streets; contribute to increased amount of trash and vandalism on abutting streets and properties; the proposal may lead to future criminal activity that directly impacts livability and safety in the neighborhood. Although public comments presented existing neighborhood problems, no direct evidence has been presented to suggest this drinking establishment or its patrons perpetuate the problems mentioned above. The applicant's proposal includes efforts to mitigate some of the neighbors concerns, for example, informing patrons through signage and verbally to be respectful of neighbors when leaving the establishment.

Therefore, the proposed use would not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

2. *In authorizing a conditional use, adverse impacts may be mitigated by imposing any conditions needed to protect other properties in the zone or vicinity and to protect the public interest. The Director shall deny or recommend denial of a conditional use if it is determined that adverse impacts cannot be mitigated satisfactorily.*

Mitigation of possible noise impacts shall be required as discussed above will be conditioned as presented below.

DECISION - ADMINISTRATIVE CONDITIONAL USE

The conditional use application is **APPROVED WITH CONDITIONS** as indicated below.

CONDITIONS - ADMINISTRATIVE CONDITIONAL USE

The owner(s) and/or responsible party(s) shall:

Prior to issuance of Building Permit

Prior to issuance of Certificate of Occupancy

1. Obtain all appropriate permitting from DPD and associated Departments.

For Life of the Project

2. Live entertainment in any form (amplified, non-amplified, prerecorded, etc.) shall be connected to a sound system that limits the maximum sound level inside the eating and drinking establishment to 100 dB (A).
3. Exterior sound level at residentially zoned property lines shall not exceed 57dB (A) (daytime) or 47dB (A) (night).
4. Exterior sound level at residentially zoned property lines shall not exceed 67dB (C) (daytime) or 57dB(C) (night).
5. Exterior sound level at commercially zoned property lines shall not exceed 60dB (A) (daytime or night).
6. Interior sound level in receiver's home in the residential zone shall not exceed 45dB(A) (daytime) or 35dB(A) (night), when all doors and windows are closed and all kitchen appliances and household equipment are turned off.
7. Interior sound level in receiver's home in the residential zone shall not exceed 65dB(C) (daytime) or 55dB(C) (night), when all doors and windows are closed and all kitchen appliances and household equipment are turned off.
8. Amplified and live music and food/beverage service in the outdoor seating area shall terminate at 10:00 PM on weekdays (Sunday through Thursday) and 11:00 PM on Weekends (Friday and Saturday).
9. Customer use of the outdoor seating area shall cease at 10:00 PM on weekdays (Sunday through Thursday) and 11:00 PM on Friday and Saturday.

