



City of Seattle

Gregory J. 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:** 3006724  
**Applicant Name:** Jon Davis  
**Address of Proposal:** 2809 Thorndyke Ave W

**SUMMARY OF PROPOSED ACTION**

Land Use Application to allow a change of use from retail (450 sq. ft.) to restaurant.

The following approval is required:

**Administrative Conditional Use** - To allow the conversion of a nonconforming use to another use not otherwise permitted in a Multifamily Zone (SMC 23.42.110).

**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 3,300 square foot property is located at the acute intersection of 21<sup>st</sup> Avenue West and Thorndyke Avenue West in Seattle's Magnolia neighborhood. It contains a single story 3,200 sq. ft. building divided into two tenant spaces, the smaller of which is the subject of this application. The site slopes down to the east, so that only a partial story is visible from 21<sup>st</sup>.

The existing building was constructed in 1934 and this space appears to have originally been a dwelling unit, subsequently converted to a retail space (meat market). A permit for a video store was issued in 1996 and the space was subsequently occupied by a variety of retail businesses including a drum store and laundry. The last tenant to obtain a business license was Super Sandwich and Salad, though that business did not seek approval for the change of use from retail. The remainder of the building is a general retail space occupied by the Corner Grocery Store.



The adjacent street is a fully improved 100 foot wide minor arterial, with intermittent sidewalks, curbs, gutters, and paving. There is no parking on site and no alley adjacent to the site though on-street parking is available on Thorndyke.

The subject property is located in a block of multi-family Lowrise zone (L-3) zoning that continues to the south. To the west across 21<sup>st</sup> Avenue W is an area of Single Family (SF 5000) zoning and to the east across Thorndyke Avenue W is Industrial Buffer (IB U/45). The block is characterized by single and multi-family uses with office and warehouse uses across Thorndyke. The closest residential uses are the single family houses approximately 85 feet west of the site across 21<sup>st</sup> Avenue.

### Proposal Description

The proposal is to change the use of the southern portion of an existing commercial building from one nonconforming commercial use to another. Under the current L3 zoning commercial uses are not permitted, however SMC Chapter 23.42.110 allows nonconforming uses to change subject to certain criteria. The most recent (unpermitted) use in the space, a deli serving take-out food, is proposed to change to a take out only restaurant, Fightin' Cock Roaster. The only exterior changes are to install a modular block retaining wall around the Thorndyke/21<sup>st</sup> corner to create a small level seating area, add a fence around the rear service/storage area, paint the exterior and repair the awning.



### Public Comment

Notice of the proposed project was published June 5, 2008. One comment expressing support for the change was received during the required public comment period that ended on June 18, 2008.

### ANALYSIS - ADMINISTRATIVE CONDITIONAL USE

The Seattle Land Use Code allows nonconforming uses to change subject to criteria used to evaluate and/or condition the proposal. The applicable criteria are discussed below.

#### **SMC 23.42.110 Change from one nonconforming use to another nonconforming use.**

*A nonconforming use may be converted by an administrative conditional use authorization to another use not otherwise permitted in the zone subject to the following limitations and conditions.*

*A. In single-family, residential small lot, and Lowrise Duplex/Triplex zones, a nonconforming multifamily use or structure may not be converted to any nonresidential use not otherwise permitted in the zone.*

The site is located in a Lowrise zone, and the prior use of the site was not residential but retail so this criterion does not apply.

*B. The proposed new use must be no more detrimental to properties in the zone and vicinity than the existing use. This determination shall be based on consideration of the following factors:*

- 1. The zones in which both the existing use and the proposed new use are allowed;*

The existing and proposed uses, general retail sales and restaurant, are first allowed as ground floor permitted uses in the Midrise and Highrise zones. They are permitted uses in the commercial zones, subject to some size limitations.

2. *The number of employees and clients associated or expected with the proposed use;*

The applicant has stated that three employees are expected to work in the space. The former businesses would also have had employees and retail customer traffic.

3. *The relative parking, traffic, light, glare, noise, odor and similar impacts of the two uses and how these impacts could be mitigated.*

The former and proposed businesses would be relatively similar in size and scale of operation. Both depend on transit or street parking for employee and customer trips. The restaurant is proposed to be staffed from 9:00 AM to 9:00 PM daily, though the first few hours would be preparation time. It would open to customers at 11:00 AM for lunch. The prior unpermitted restaurant business operated from 10:30 AM to 9:00 PM daily. The hours of the last retail business on site are unknown. The adjacent Corner Grocery Store is open from 7:00 AM to 11:00 PM.

While the past business must also have had deliveries it is not known when they occurred, though presumably they were during business hours. No external lights are proposed to be added to the building.

The most significant change to the site is the installation of roof-mounted ventilation fans serving the exhaust hood over the stovetop and roasting area. Due to the grade change these fans could have noise impacts to the uphill residences across 21<sup>st</sup> Avenue West. The applicant has proposed to erect a sound baffle/reflector to be placed on the west side of the intake and exhaust fans (between the fans and the residences). They are to be constructed of a set of 1/4 inch steel L brackets to hold a frame of treated 3/4" plywood with a porously finished sound absorbing coating on the sound source side, with a dead air space in between another piece of treated plywood framed in treated 2"x6", extending 24" past and above fan, aimed and angled 20 degrees upward as not to reflect off of opposite wall back towards residences. The applicant has placed a 300 cfm exhaust fan on the roof and run it without a noise shield during business hours to test the future noise impacts and has not received any comment from the neighbors.

*C. (Not Applicable)*

*D. Parking requirements for the proposed use shall be determined by the Director.*

According to Chart A the required parking would be:

Restaurant 450 sq. ft. at 1/250 = 1.8 spaces.

Total required = 2 spaces.

Additional parking requirements are set out in SMC Chapter 23.54.015:

***SMC 23.54.015 Required parking.***

*B. Exceptions to Required Parking.*

*5. No parking is required for business establishments permitted in multifamily zones.*

This provision would waive the parking requirement for the proposed use since it is located in a multifamily zone.

*E. If the new use is permitted, the Director may require mitigation measures, including but not limited to landscaping, sound barriers or fences, mounding or berming, adjustments to yards or parking standards, design modification, or limiting hours of operation.*

The proposed use would be open during similar hours to the previous restaurant use. Though located in an area directly adjacent to residential uses the mid-day opening time would be unlikely to cause conflicts. Customer visits would likely be clustered during the lunch and dinner hours similar to the previous business. Noise impacts would be mitigated by limiting the business operations to 9:00 AM to 9:00 PM daily and constructing a noise barrier between the ventilation fans and the closest residences.

**CONCLUSIONS - ADMINISTRATIVE CONDITIONAL USE**

The Land Use Code allows this type of change from one nonconforming use to another so long as the unmitigated impacts to the surrounding properties are not greater than the existing condition. Because this site has been in commercial use for decades and the prior use had similar operating hours no significant impacts are expected due to parking, traffic, light, glare or odor. The most significant change proposed is the installation of exhaust and ventilation fans. Without mitigation limiting the hours of operation and deflecting the exhaust fan noise the noise impacts of this proposal could constitute a material detriment to property and residents in the vicinity.

**DECISION - ADMINISTRATIVE CONDITIONAL USE**

The proposed Administrative Conditional Use to allow the change from one nonconforming use to another is **CONDITIONALLY GRANTED.**

**CONDITIONS**

The change of use may be approved with the following condition:

*For the Life of the Project:*

1. The proposed restaurant may operate from 9:00 AM to 9:00 PM daily. The business may not open to start cooking, receive deliveries or make retail sales before or after these hours and use of the exhaust fan is limited to those hours.

