



City of Seattle

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:** 3011072  
**Applicant Name:** Stuart McFeely for James Wright Trust  
**Address of Proposal:** 7902 35<sup>th</sup> Avenue Southwest

**SUMMARY OF PROPOSED ACTION**

Land Use Application to change the use of an 840 square foot customer service office (tanning salon) to drinking establishment (Local) to include a new 388 square foot outdoor patio.

The following approvals are required:

**Administrative Conditional Use** - To allow a drinking establishment in an NC1-30 zone. (Seattle Municipal Code Chapter 23.47A.006)

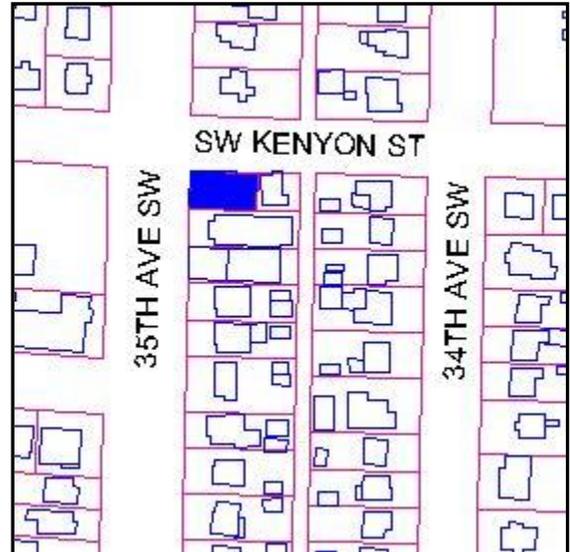
**SEPA DETERMINATION:**  Exempt  DNS  MDNS  EIS  
 DNS with conditions  
 DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

**BACKGROUND DATA**

Site and Vicinity Description

The subject property is a corner lot located at the intersection of SW Kenyon Street to the north and 35<sup>th</sup> Avenue SW (an arterial street) to the west in West Seattle. The 3,133 square foot lot is rectangular in shape and is zoned Neighborhood Commercial One, with a 30 foot height limit.

The existing structure occupies the west 50 feet of the development site, the remaining 25 feet is devoted to a two-vehicle surface parking pad and outdoor accessory space. Two business establishments currently occupy the existing one-story commercial structure. A florist occupies the north half, the subject location of this proposal is located in the south storefront. Vehicular access is taken from a 20-foot wide curb cut accessed off SW Kenyon Street. Vehicles parked perpendicular to SW Kenyon and back out into the right-of-way. The two street frontages are fully developed streets with asphalt roadway, curbs, sidewalks and gutters.



Zoning in the area includes NC1-30 surrounded by residential Single Family 5000 & 7200 (SF 5000 & SF 7200). The NC1-30 zone represents a small area, extending 270 feet southward and half a block east/west of the SW Kenyon and 35<sup>th</sup> Avenue intersection. Abutting the subject lot to the south is Seattle Artists/Kenyon Hall, a 501(C) (3) non-profit organization, that presents live musical and theatrical performance and early childhood musical education. To the east the site abuts a residential use in a commercial zone.

Development in the vicinity consists of a mixed of residential, commercial, and institutional uses. Across 35<sup>th</sup> Avenue SW to the west is a one-story commercial building surrounded by a moderate sized surface parking lot set between the structure and both street frontages. This corner lot property is visually prominent of the commercially zoned properties. A block and a half away to the northeast is a private school, Westside School, which is leasing the former Seattle Public Schools Hughes Elementary School site. Principal structures in the surrounding area are smaller-scale apartments and single family uses.

### Proposal Description

The applicant proposes to convert an existing 840 square foot structure previously used as a customer service office (tanning salon) to a drinking establishment (Local). Local's target audience is for mature beer and wine connoisseurs looking to enjoy a glass of wine or microbrew beer in a cozy environment. The project includes a 388 square foot outdoor patio located in the rear. Accessory parking for two vehicles will be maintained in the rear adjacent to the outdoor patio. A six foot fence and perimeter landscaping will be installed to provide visual a buffer for patrons. The patio area creates additional seating area, increasing the restaurant use to a maximum 1,228 gross floor area. A drinking establishment is not permitted outright in the NC1 zone. Therefore, the owner is seeking an administrative conditional use to allow this change of use.

The operating hours will be Monday through Sunday, 12:00 PM to 12:00AM. Weather permitting; the outdoor seating area will be open from 12:00 PM to 10 PM.

Public Comment

Date of Notice of Application:	March 11, 2010
Date End of Comment Period:	March 24, 2010
Number of Letters:	8

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. The neighbors' objections regarding this proposal focused on the following issues:

- Concerns regarding hours of operation especially after 10:00 PM and its impact on a quiet residential neighborhood;
- 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 about impacts related to proximity of Kenyon Hall, Children's Music School, and other commercial businesses located nearby;
- Concerns about the proposed outdoor seating area which may increase noise levels, impacting adjacent residential uses.

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

A. *The following uses, identified as administrative conditional uses on Table A of Section 23.47A.004, or other uses identified in this Section 23.47A.006, may be permitted by the Director when the provisions both Section 23.42.042 and this subsection 23.47A.006.A are met:*

1. *Drinking establishments in NC1 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 tanning salon to drinking establishment within an existing one-story building, abutting 35<sup>th</sup> Avenue South. The existing block has remained relatively unchanged over a number of years, in terms of the number and siting of structures along 35<sup>th</sup> Avenue South. This neighborhood appears not to have been impacted by the rush of new development over the past 10 years. The host building was constructed in the early 1920's and has undergone minor changes over the preceding years. Exterior modifications includes adding a window on the rear wall and on the structure's south wall near the sidewalk to visually open up the interior to the outside, and changing the configuration of the rear door to provide ease of access to the patio. From all external appearances little will have change to the building's exterior.

The proposed use would be consistent with the character of the commercial area due to its moderate size of 840 square feet (one-story), 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 (20.25 feet by 26 feet) has been altered to create an outdoor seating area. It is anticipated that the outdoor seating area set within an enclosed space (six-foot tall fence separating the parking stalls and abutting properties) will create human activity in the rear. Two existing parking stalls will be shifted to accommodate relocated garbage bins and pedestrian access.

Existing signage includes an externally illuminated metal sign that is positioned above the entry and a wall sign flush mounted to the south facade. The existing sign above the entry is approximately 6 by 5 foot, mounted to the building, sits approximately nine feet above sidewalk grade and is orientated perpendicular to the street. The only change proposed to the sign above the entry other than the name of the new business will be converting the externally illuminated sign to an electric sign to minimize spill lighting. The wall sign affixed to the south exterior wall facing south towards northbound traffic along 35<sup>th</sup> Ave SW, will be repainted to identify the new business. Similar styles of signage are found in the immediate vicinity. An existing exterior light above the rear door will remain, no other exterior lighting is proposed. Interior illumination will be subtle and barely visible from outside the proposed drinking establishment.

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

Pursuant to SMC Section 23.54.015.D no parking is required for the existing and proposed uses. Currently two parking spaces are being provided for the subject site. The applicant proposes to define the location of the two parking stalls to accommodate establishment of an outdoor seating area for patrons use. The impact of on-site parking shall remain unchanged.

Access, layout, and design of the on-site surface parking lot located between the building and rear property line is anticipated to impact uses in the Single Family zone across the centerline of SW Kenyon Street. The volume of traffic associated with two on-site parking stalls is anticipated to be minor with little intrusion on the adjacent residential zone. No car headlights are expected to shine into the residential zone. 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 abutting or across from a residential zone. The structure's only opening adjacent to a residential use (within a commercial zone) is a door located along the rear wall that provides egress to meet Fire Code and a window. The applicant proposes to modify the existing door to accommodate a lower floor grade. The new exterior door will be insulated to reduce noise emanating from the proposed drinking establishment use. The proposed window will be insulated to muffle interior noise.

Seattle's Noise Ordinance establishes maximum permissible dB (A) sound level at property lines<sup>1</sup>. 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. Prior to building final approval for occupancy the applicant will be required to submit an Acoustical Report to DPD to verify conformance to the Noise Ordinance.

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. However, there is a possibility that a new business may take over and/or 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.

Though the proposal calls for limiting activities and hours of operation, DPD is compelled to provide future safeguards. Some neighbors have raised concerns regarding patron activities from the outdoor seating area. In addition to requesting a proposed change of use, the applicant's proposal includes establishing an outdoor seating area in the NC zone between the restaurant and the rear property line. Restrictions will be placed on music of any kind. 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 drinking establishment is required to comply with the Noise Ordinance as well.

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

According to Trip Generation, "7<sup>th</sup> 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" 13 trips are anticipated during the peak hour (19 vehicle trips when patio area is included). It is worth noting that peak hours for drinking establishments do not coincide with peak hours of general 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 1,000 square feet for this land use. As the proposed "Drinking establishment" use is for 840 square feet, 10 vehicle trips per hour are anticipated between 4 and 6 pm (14 vehicle trips when patio area is included).

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<sup>1</sup> dB (A), means the sound level measured in decibels, using the "A" weighting network. This scale discriminates against low frequency sounds.

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 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 35<sup>th</sup> Avenue Southwest. 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, a proposed restaurant use permitted outright, and may generate as much parking demand as the proposed use. In this case, parking demand is expected to increase from the previous retail 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 retail would generate 5.02 trips/1,000 sf of gfa during the PM peak hour, and 2.71 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 more traffic will be generated with the establishment of the 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 May 14, 2010. 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. The applicant submitted a study that covered a one-week period, initiated on Thursday, May 6, 2010 and concluded on Sunday, May 10, 2010. 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 may contribute to an average reduction of vehicle use. The parking study area included 35<sup>th</sup> Avenue SW from SW Holden Street to SW Elmgrove Street, and one block east and west of the subject lot along SW Kenyon Street. After taken into consideration lateral clearances from fire hydrants, bus stops, driveways, curb cuts, etc. a total number of 66 on-street parking spaces were identified. During the study, the highest number of occupied available parking spaces reached 33 late Saturday evening (9:26 PM, Saturday evening) which left 33 available spaces. The parking survey did not take into account parking on residential streets exclusively. In a follow up call, it was noted on the residential street along SW Kenyon parking spaces were available as opposed to no parking availability. On two occasions (Friday, May 7<sup>th</sup> & Saturday, May 8<sup>th</sup>) Kenyon Hall was hosting evening events 24 and 33 parking spaces were available.

The proposed drinking establishment will seat approximately 35 patrons inside and 8 - 10 outside for a maximum total of 45 seats. The anticipated customer base is local residents in the neighborhood who would most likely walk to the establishment. It is anticipated on-street parking on residential streets will be impacted by the operation of the establishment but not substantially. Based on this utilization study, there would be sufficient unused on-street parking capacity within 400 feet of subject site to accommodate parking demand without adversely impacting existing parking on residential streets.

In summary, it is expected that the proposed drinking establishment will increase impacts but will not create traffic congestion or further worsens spillover parking on residential streets. The potential exists for some spillover parking by some patrons; however, this would not worsen the impact to residential streets. The Department concludes that the proposed 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 23.42.042)**

- A. *In authorizing a conditional use, the Director or City Council may impose condition to mitigate adverse impacts on the public interest and other properties in the zone or vicinity.*

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

- B. *The Director may deny or recommend denial of a conditional use if the Director determines that adverse impacts cannot be mitigated satisfactory, or that the proposed use is 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 840 square foot (1,228 gross floor area) 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 SW Kenyon Street from a residential zone, and fronts other commercially zone lots along 35<sup>th</sup> Avenue SW. 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. 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 adjacent residentially zoned uses, the permit is conditioned using accepted levels in A and C scale network as established in the Noise Ordinance. As conditioned, music from the proposed use shall not be materially detrimental to public welfare.

Other public comments previously cited include: the proposal may contribute to increase noise level from establishment of an outdoor patio and music from inside; pedestrians loiter, smoke, use of offensive language, and create an atmosphere of fear on surrounding streets; concerns regarding the future impact to on-street parking demand; and concerns about impacts related to proximity of Kenyon Hall, Children's Music School, and other commercial businesses located nearby. Although public comments anticipated potential future neighborhood problems, no direct evidence has been presented to suggest this drinking establishment or its patrons will 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.

### **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 Certificate of Occupancy**

1. Submit Acoustic Report to DPD for approval documenting that the exterior noise levels fall within the thresholds established in the Noise Ordinance.

#### **For Life of the Project**

2. Exterior sound level at residentially zoned property lines shall not exceed 57dB (A) (daytime) or 47dB (A) (night).
3. Exterior sound level at residentially zoned property lines shall not exceed 67dB (C) (daytime) or 57dB(C) (night).

