



City of Seattle

Department of Planning & Development

Diane Sugimura, Director

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

Application Number: 3011437
Applicant Name: Ericka Burk
Address of Proposal: 1501 – 17th Ave. E.

SUMMARY OF PROPOSED ACTION

Land Use Application to change use from one nonconforming use (general retail sales and service, multi-purpose) to another nonconforming use (restaurant).

The following approval is required:

Administrative Conditional Use – to allow a change of use from one non-conforming use to another in an SF 5000 zone. Section 23.44.108, Seattle Municipal Code.

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

BACKGROUND INFORMATION:

Site and Area Description

The proposal site is a two story wood frame structure built as retail structure on the first floor and residential on the second floor. Located at the northwest corner of 17th Ave. E. and E. Galer St., it has a traditional wood and glass storefront with a recessed entry along the sidewalk on 17th Ave. E. Along E. Galer St. the building is close to the sidewalk with a lap siding wall and no interaction with the sidewalk area. The subject building is on a 13 ft. by 113 ft. single family

zoned lot. There is a rear yard on the west side which is comparable to the other rear yards on surrounding sights. Along the west site of the site, in a location where a 16' wide alley might be expected, there is instead a 24 foot wide Auburn Pl. E. right of way. While this is defined as a street by the City of Seattle it is narrower than the typical 60 foot wide right of way in the area and functions muchlike an alley as most residences along it have a rear yard, and use it for garbage pickup and vehicle access.

The surrounding area is, for several hundred feet in every direction, a mature single family neighborhood typical of the north end of the Capitol Hill neighborhood. Nearby institutions include the Seattle Preparatory Academy approximately 500 feet to the northeast and Stevens Elementary School approximately 350 feet to the southeast.

Project Description

This application is for Administrative Conditional Use approval to change the use of the main floor of the existing structure from retail sales and services to restaurant. Neither use is a permitted use in a single family zone. Permit number 33333, issued March 4, 1905, for construction of a "two story store and residence" is the most recent permit establishing a use on the site. The current use on the main level, the Volunteer Park Café, has not been established by a DPD permit.

The subject space is the main floor of the structure and measures 1,425 sq. ft. and the basement which is proposed to be used for storage and not for dining.

The Single Family provisions of the Seattle Land Use Code provide in Section 23.44.032 that nonconforming uses which are authorized pursuant to Section 23.42.110 may be permitted as a conditional use. Section 23.42.110 provides that a nonconforming use may be converted by conditional use authorization to another use not otherwise permitted in a zone subject to stated limitations and conditions and authorizes the Director of DPD to require mitigating measures.

PUBLIC NOTICES AND MEETINGS

Notice of this application took place on September 30, 2010. While the official comment period ended on October 27, 2011, public comments have been accepted throughout the review period. Initial comments tended to be from persons residing near to the proposal site and tended to complain of noise, odor and parking impacts. Over time the character of comments received changed to ones from persons living further from the proposal site expressing appreciation of the dining and social experience offered at the Volunteer Park Café, requests that it be permitted to stay in operation and almost universally a demand for a public meeting on the matter. Well over a hundred comments were received by mail and by email with the great majority of them expressing support for approval of the change of use requested. An evening meeting was held near the proposal site to receive public comment on the application.

ANALYSIS – ADMINISTRATIVE CONDITIONAL USE

Seattle Land Use Code provisions and analysis of the application follow with code provisions in italicized type.

SMC 23.44.018 provides generally that: *“A conditional use may be approved, conditioned or denied based on a determination of whether the proposed use meets the criteria for establishing a specific conditional use and whether the use will be materially detrimental to the public welfare or injurious to the property in the zone or vicinity in which the property is located.”*

For a detriment to public welfare to be material it would need to be readily apparent in its degree. A restaurant use on a corner within a single family neighborhood is likely to have impacts of various kinds and degree some of which will be viewed as positive and some of which will be viewed as negative. Small to medium sized restaurants located on corners in historically commercial buildings are not an occurrence generally deemed materially detrimental to public welfare in Seattle. Rather, such instances are found to be a positive addition to the urban fabric and experience and are commonly found in the City.

Injury to property in the zone or vicinity, as used in this instance, would need to be of an identifiable, physical nature with a known causality. It would also need to be of an appreciable degree to be sufficient to require denial of the proposed use. Some uses would be clearly injurious to the subject neighborhood. Smoke escaping a charcoal manufacturing facility would be such a injurious use; similarly odors from a fat rendering plant.

One of the benefits of living in a dense city, and of living in Seattle particularly, is the close proximity of multiple sources of commercial service and entertainment. Among these are restaurants and coffee shops that are accessible locally. The most highly valued of these are often small enterprises which become a part of the neighborhood and are highly valued for the addition they provide. These local uses do not come entirely without negative impacts such as noise, odor, traffic and parking congestion. The density of living necessary to support these kinds of amenities in urban communities also creates an ambient level of potentially irritating impacts.

Impacts from a common use, such as a neighborhood restaurant, although in many instances negative, are not of the extreme kind or degree which would be considered inherently injurious to property in the zone or vicinity.

Potential negative impacts of the proposed use and available mitigating measures are addressed in analysis below based on the more specific criteria governing change of use from one nonconforming use to another.

SMC 23.42.110 provides specific limitations and conditions under which conditional use approval can be given to allow change from one nonconforming use to another.

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 and Residential Small Lot, a nonconforming multi-family use or structure may not be converted to any nonresidential use not otherwise permitted in the zone.*

A change away from a nonconforming multi-family use is not proposed here.

- 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:*

Because the retail sales and services use no longer exists on the site and because that use category is broader than the grocery store which existed on the site for many decades it is necessary to define the nature of the use to be used as the starting point for impact assessment and against which impacts of the proposed use are to be compared. Also, restaurant uses can be expected to vary in the degree of negative impact caused, even at a fixed size and location, depending on the specific characteristics of the operation. For each of the impacts upon which comparison will be made, an appropriate approach would be to assess the range reasonably expected from a general retail sales and service use in the space and compare it similarly to a restaurant use and then assess the impact of a restaurant use with conditions in place which might be imposed pursuant to conditional use authority. The applicants have proposed conditions to limit the impacts of the proposed use on surrounding properties and residents. They are listed below under the analysis of Section B.3.

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

This criteria is useful in determining the relative impact of these two uses because the Seattle Land Use Code incorporates a hierarchy of allowed uses in its zones. The zone most protected from uses other than that of individual residences is Single Family wherein uses such as churches and schools require administrative conditional use approval to be located. In multi-family zones institutions such as churches or schools are permitted outright when development standards are met. Commercial uses first become an allowed use in multifamily zones where they are allowed on a limited basis in Midrise and Highrise zones and in Lowrise zones with an additional designation of Residential-Commercial (RC). The fact that both general retail sale and services and restaurant uses first appear as allowed uses in the same zones is an indication that the amount of negative impacts they are expected to generate are similar.

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

In the applicant's Conditional Use Application (Revised March 14, 2010) disclosure is made of these numbers in the current condition. The "Volunteer Park Café and Marketplace" (VPC) is said to have two to seven employees present "depending on the time of day and the number of anticipated customers." It also states that the number of customers served in a given day ranges from 60 to 200 and that "during most of the business day there are fewer than 20 people (customers and staff) in the restaurant at once, and rarely is the maximum occupancy of 45 people (customers and staff combined) reached. Given that the VPC is a successful restaurant

with customers typically seated during their visit while a meal and/or beverage is consumed and that it has a known occupancy peak disclosed in the application materials it appears reasonable to adopt these numbers as the basis for comparison to the general retail sales and service use.

The potential range in numbers of employees and customers for a general retail sales and services use is broad because the particular nature of the use which could fit within the use category is broad. The use retail sales, multipurpose is defined in SMC 23.84A.36 as "...a general sales and service use in which a wide range of items frequently purchased for household use are rented or sold. Examples of multipurpose retail sales include but are not limited to grocer, hardware, drug, and variety stores, and farmers' markets." While acknowledging the potentially broad range of specific conditions which could exist under the use designation, weight should be given to the fact that the use for which the building was constructed and which existed there for nearly 100 years was a grocery store. A common, modern day form which a 1,400 sq. ft. grocery store takes is a convenience store. In the Institute of Transportation Engineers (ITE) publication "Trip Generation, 8th Edition a close approximation of this use is Use 852, Convenience Market (Open 15-16 Hours).

ITE information for trip generation is based upon a limited number of surveys for each use and is provided as a factor per 1,000 sq. ft. in the use. Usually this information is given for peak a.m. and p.m. hours and for an entire 24 hour period. For use 852 only peak hour information is given. For the p.m. peak hour of a convenience market (open 15-16 hours) the average rate of trip ends is 36.22 per 1,000 sq. ft. Based on this data the 1,400 sq. ft. store of interest here would generate 51 vehicle trip ends in the pm peak hour. Most of these trips would be expected to involve one person entering the store. A few trips might involve two or more persons entering. The convenience store envisioned in this analysis would be likely to have one or two employees present at any given time.

The length of time which customers spend during a visit at a restaurant and at a convenience store would tend to be different with a convenience store visitor typically spending just a few minutes shopping and a restaurant diner spending a period of time typically between 30 minutes and two hours. This difference is a complication when making a quantitative comparison of impacts based upon the number of persons present. For both uses the busiest time would be during the evening, with the convenience store peaking earlier than the restaurant. The restaurant would likely have morning and lunchtime peaks which are smaller than the evening dinner ones. A convenience store might also have a morning peak shoppers when shoppers purchase a beverage and a food item and a similar experience at lunch time.

What can be concluded from this analysis is that a convenience store at the subject location might experience an hourly peak in customers of 51 on a p.m. weekday with another one or two employees present and that a restaurant at the site might be expected to have a peak number of persons present of 45 with a few more sitting outside at sidewalk tables which are permitted by the Seattle Department of Transportation under a permit which makes them available to anyone and prohibits table service by the restaurant. The convenience store customers would be expected to arrive and depart in a short time frame. The restaurant customers would be expected to dine for an hour or more during the evening peak period and for somewhat shorter periods during other times of day.

It is concluded that the impacts of the two uses when based on the numbers of persons expected to be present, while not identical, are not greatly dissimilar.

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

During the period of time this application has been under review the applicants have negotiated with immediately surrounding residents and have been present at a SEPA public meeting and they have developed a series of proposed conditions to limit the potential impacts of the restaurant use. They propose that these conditions be imposed upon the restaurant use for the life of that use through conditioning of this conditional use application. Those proposed conditions are as follows:

1. On site dining and food preparation activities shall take place only within the principal structure. Portions of the site westward of the principal structure (the rear yard) may be used for raising animals or cultivation as otherwise permitted or restricted by City of Seattle codes and regulations. Adjacent right-of-ways may be used for restaurant activities as authorized in City SDOT permits. The rear yard shall be fenced, have only self closing gates, and all gates shall have signs permanently affixed stating "Private Yard, Not for Restaurant Use."
2. Exhaust from the restaurant kitchen shall be vented and released at a point above the second story roof of the principal structure on the site. Changes to the current kitchen vent shall be undertaken pursuant to an issued DPD permit and shall be accomplished within nine months of the issuance of this MUP decision.
3. The hours of restaurant customer service shall be from 7:00 am to 10:30 pm with no food orders taken after 9:00 pm. Tables and chairs in the sidewalk shall not be used by restaurant customers after 5:00 pm and measures shall be taken, as necessary, by the restaurant operators to ensure the 5:00 pm cut off is observed.
4. Garbage and recycling bins shall be kept in an area enclosed by a fence at least six feet tall with self closing gates.
5. Amplified music is permitted only within the restaurant and shall be kept to a "background" level not plainly audible within surrounding residences.
6. For the first two years following issuance of this permit the restaurant proprietors shall host a quarterly, weekday evening or weekend day meeting with all interested neighbors to discuss relations between the parties or other neighborhood business.
7. Activities conducted under the authority of the restaurant use established by this permit approval shall be limited to dining oriented restaurant and coffee shop use. Commercial uses which emphasize entertainment or liquor consumption are prohibited. Wine and beer can be served only in conjunction with food orders. Hard liquor may not be served on the premises.

Because the negative impacts from operation of a restaurant use exceeding the restrictions in this list of proposed mitigation measures could be much greater than operation within them and because the applicants proposed to operate within them and agree that they should become permanent conditions of a restaurant use on the premises, it is reasonable to assume their imposition on the restaurant use when comparing impacts between it and the existing retail sales, convenience store use. With this determination made the comparative analysis will only be valid if the above stated conditions are imposed by any conditional use approval granted. For this reason and because these conditions are reasonable measures to limit the negative impacts of the proposed use they will be imposed.

Parking and Traffic

The differences in nature of business conducted in a store as opposed to a sit down restaurant leads to differences in the expected patterns of traffic and parking.

A 1,400 sq. ft. grocery store or convenience store would, as noted above, be expected to draw approximately 51 trip ends during a peak week day hour. Visits might be expected to be fairly short in duration as customers pick out items to purchase, pay for them and leave. Customers would often be on their way home or to some other appointed destination and they would be somewhat hurried. There would likely be a desire to park close to the destination store. Customers might be tempted to park in locations which might not be large enough to fully accommodate their vehicle resulting in blocking of driveways or traffic lanes. Customers traveling alone would be fairly typical. The flow of customers would be expected to be spread out with people coming and going, rather than lingering for periods of time. Customers would be expected to live or work in locations which made it convenient to stop by the store as part of another trip. Even those living within walking distance would be expected to combine trips in this way.

Vendor deliveries to a grocery or convenience store would be expected to take place from a variety of sources. Deliveries of staples such as canned or bottled goods or other items carried by a large food service provider would be made using a truck and semi trailer combination to make stops at multiple locations. Many other vendors would deliver specific specialty products such as particular beverage brands or name brand snack products or baked goods. Each of these vendor driver/representatives would park their full sized van or small truck, enter the store, engage the proprietors in conversation, check inventory on shelves, remove out of date items, restock the shelves for their particular product, arrange special displays to promote their products, etc.

The restaurant use proposed would, as disclosed in the application materials, have as many as 45 persons present at one time during peak meal periods. Customer visits would tend to last for periods of an hour or more as meals are prepared, served and consumed. Because the visit is more likely to be a destination event in itself, customers are more likely to walk a moderate to short distance from their home or place of business. Customers might also be more willing to find a "good" parking space, where they perceive their vehicle to be safe and not to be blocking driveways or traffic and then walk a short distance to the restaurant. Customers would be expected to arrive in groups of two or more to an appreciable degree.

Vendors to a restaurant would be expected to include one main food service company with a weekly delivery more frequent produce, baked goods and dairy deliveries, and occasional wine vendors. These deliveries would tend to be in early to mid-morning hours prior to the time for restaurant opening. Vendors would not typically linger to check stock, pull product or restock shelves. Their time on location would tend to be short.

Parking impacts of the two uses would be somewhat different in ways described above. Impacts of a retail store might be more immediately proximate while those of a restaurant might spread out somewhat more. While there are differences in the parking impacts which would be created by the two uses they would not be expected to be an order of magnitude different as they would involve a similar number of vehicles. For the reasons stated above, the impacts of a retail use might be more negatively impactful in close proximity to the proposal site than that of a restaurant.

Traffic impacts of both uses would be well within the capacity of surrounding streets. An on-street parking supply and demand study provided by the applicant and found in the application file reveals there is adequate on-street parking available during periods of peak demand generated by the restaurant currently operating at the subject site. No intersections with diminished level of service are expected to be negatively affected by the proposed change of use. Any net difference in traffic generated between the two uses would be expected to be minor in amount.

Light, Glare

Without outdoor dining (this as noted above has been agreed to by the applicant as a limiting condition of the proposed conditional use) the potential light and glare impacts of the currently established general retail sales and service use and the proposed restaurant use are similar. Each would be expected to have some signage, interior lighting and limited wall lighting at entries. The Seattle Land Use Code in Section 23.55.020 regulates signage in single family zones. Both uses are treated the same in that code section, with the only exception being that an existing legally established, non-conforming use could keep non-conforming signs it might already have.

Odor

A general retail sales and services use might generate cooking odors where some form of cooked or heated food are offered for sale. These might include items such as popcorn, fried chicken, hot dogs, soup, coffee or coffee roasting. Trash and waste waiting for garbage collection has the potential to generate odors. Other forms of general retail and sales use might not generate these specific odors.

The restaurant use as proposed, with an agreed upon condition that kitchen odors will be vented to the outside at a point above the second story, would be expected to be generating some level of cooking odors from morning hours as cooking preparation takes place through the day and evening until meal service ends and the kitchen is closed. While cooking odors are commonly generated in single family areas and might not be considered a negative impact, the extent to which they might be expected to be generated on a daily basis by a restaurant is beyond the

levels normally found and could be perceived as a negative impact by nearby residents. Installation of a kitchen ventilation system to take air and odors out of the kitchen and exhaust them above the second story level would be expected to greatly reduce the perception of cooking odors at nearby residences. Odors leaving the building at this level would be expected to mix with air before reaching the level of single family residents at a diluted level. When there is a breeze or wind, odor from the proposed kitchen would be expected to pass beyond nearby residences, mixing with surrounding air as they move, before reaching the level of area residents.

Comments received from area residents (found in the application file) indicate cooking odors are perceived and objected to under the current condition. With the proposed kitchen venting solution these odor perceptions should be greatly reduced. Comparing the expected future odor level (with venting to above second story levels) with some versions of general retail sales and service use leads to the conclusion the odor impacts on neighboring residences would be expected to be closely similar. Looking at the potential for odor generation from a general, broad perspective it is concluded that negative impacts to be expected from the conditioned proposal and the currently established are so potentially similar as to be considered the same.

Noise

A general retail sales and service use at the proposal site would be expected to generate noise perceptible on surrounding properties. Customers would arrive in automobiles generating engine running, closing door and engine starting noises. Delivery trucks would generate backing alarm noise, diesel engine noise, roll up door noise and engine starting noise. Trash and recycling pick up would be accomplished by trucks generating similar noises to delivery trucks, sometimes at early hours of the day. Grocery stores and convenience stores tend to have large amounts of refrigerated display and storage space which have compressors and heat dispersion elements with associated cooling fans. Because heat and noise generated inside stores becomes problematic the compressors and heat dispersion elements with fans are often located outside of the store building and can generate considerable audible noise.

A restaurant use such as the one proposed here, limited in hours of operation, without outdoor dining on the site and with limited availability of sidewalk tables under SDOT permits, would still be expected to generate noticeable kinds and levels of noise in the immediate neighborhood. Auto noises similar in kind to those noted for a store would be expected with the additional likelihood that customers would park over a greater area on nearby streets with many traveling in numbers of two or more; often conversing as they walk. Deliveries would be expected to take place in morning hours and be made by a principle supplier and several specialty suppliers. Deliveries would be expected to be made at very regular intervals and be similar to or perhaps fewer in number than those of a general retail use. The amount of refrigeration or freezer space would likely be lower than that of a general retail, grocery or convenience store and would generate less associated compressor and cooling noise. Indoor dining would be expected to generate limited audible noise outside the building. Operable windows and doors from the dining room are on the south and east sides, both of which are street facing. One of the agreed upon conditions proposed for the restaurant is that amplified music is permitted only within the restaurant and shall be kept to a "background" level not plainly audible within surrounding residences. Persons sitting outside the restaurant at tables and chairs authorized under an SDOT

permit would be expected to generate conversation noise which would not be as likely to be found in association with a general retail use. Noise generated at these sidewalk tables and chairs would be limited somewhat by the fact that food and beverage service is not authorized at them as the area is not permitted as a Sidewalk Café but for sidewalk seating open to the general public and by the agreed to condition that the restaurant operators will take measures as necessary to discourage use of these by restaurant patrons after 5:00 p.m. It is illegal to consume alcoholic beverages in these public sidewalk seating areas.

While the specific details regarding noise which would be expected to be generated for the two uses being compared are different, they of similar in expected degree. A general retail use might generate more mechanical and delivery related noise while the proposed restaurant use might generate more conversation related noise. The conversation related noise would be expected to continue moderately late in the evening under the proposed 9:00 p.m. cut off in placing food orders. The noise generated by car doors and engines might be more intensely generated in the immediate vicinity of a general retail store than from the proposed restaurant due to the differences in expected parking patterns.

The noise which would be expected to be generated by a general retail sales and service use is of generally comparable levels to that which would be expected from the proposed restaurant use.

Parking requirements for the proposed use shall be determined by the Director. (SMC 23.42.110.D)

The opportunity to provide on-site parking in this location is limited to the existing residential open space. The number of cars which could be parked there would be limited to a very few; likely two or three. This amount of on-site parking would have little effect on the on-street parking impacts of the proposed use. Surface parking in an area adjacent to and across a narrow right of way from single family yards would have negative impacts (noise, light, odor) on neighbors. Delivery vehicles can use the three adjacent rights of way for parking and access. The limited benefits which might accrue from requiring on- site parking would be less than the negative impacts use of these spaces would engender. No on-site parking will be required.

DECISION – ADMINISTRATIVE CONDITIONAL USE

The Administrative Conditional Use Application is conditionally approved.

CONDITIONS:

The owner(s) and/or responsible parties shall comply with the following conditions of approval.

For the Life of the Project

1. On site dining and food preparation activities shall take place only within the principal structure. Portions of the site westward of the principal structure (the rear yard) may be used for raising animals or cultivation as otherwise permitted or restricted by City of Seattle codes and regulations. Adjacent right-of-ways may be used for restaurant

activities as authorized in City SDOT permits. The rear yard shall be fenced, have only self closing gates, and all gates shall have signs permanently affixed stating "Private Yard, Not for Restaurant Use."

2. Exhaust from the restaurant kitchen shall be vented and released at a point above the second story roof of the principal structure on the site. Changes to the current kitchen vent shall be undertaken pursuant to an issued DPD permit and shall be accomplished within nine months of the issuance of this MUP decision.
3. The hours of restaurant customer service shall be from 7:00 am to 10:30 pm with no food orders taken after 9:00 pm. Tables and chairs in the sidewalk shall not be used by restaurant customers after 5:00 pm and measures shall be taken, as necessary, by the restaurant operators to ensure the 5:00 pm cut off is observed.
4. Garbage and recycling bins shall be kept in an area enclosed by a fence at least six feet tall with self closing gates.
5. Amplified or live music is permitted only within the restaurant and shall be kept to a "background" level not plainly audible within surrounding residences. Plainly audible shall be defined as levels below 35 dBA measured inside surrounding properties with the windows of those surrounding buildings closed.
6. For the first two years following issuance of this permit the restaurant proprietors shall host a quarterly, weekday evening or weekend day meeting with all interested neighbors to discuss relations between the parties or other neighborhood business. The restaurant proprietors shall keep a record of the notice of meeting distributed, the method of distribution and of the names and addresses of the persons who attended each meeting.
7. Activities conducted under the authority of the restaurant use established by this permit approval shall be limited to dining oriented restaurant and coffee shop use. Commercial uses which emphasize entertainment or liquor consumption are prohibited. Wine and beer can be served only in conjunction with food orders. Hard liquor may not be served on the premises.

Signature: _____ (signature on file)
Scott Kemp, Senior Land Use Planner
Department of Planning and Development
Land Use Services

Date: September 1, 2011