

Memorandum
City of Lawrence
Planning and Development Services

TO: David L. Corliss, Scott McCullough
FROM: Planning Staff, Paul Patterson
CC: John Miller, Brian Jimenez
Date: May 22, 2008
RE: June 3, 2008 Agenda Item
Applicant's request for removal of site plan condition.

Please include the following item on the City Commission consent agenda for consideration at the June 3, 2008 meeting: Removal of site plan condition for Louise's West, 1307 W. 7th Street, restricting patrons from bringing out alcoholic drinks to the outdoor smoking area (fenced patio).

Project History/ Details:

On September 28, 2004, the Lawrence City Commission approved a site plan [SP-08-53-04] for a fenced outdoor smoking area for Louise's West located at 1307 W. 7th Street. The conditions of approval (see attached) included that *"The property owner shall be responsible for insuring the containment of alcoholic beverages on the premises. The applicant has stated that alcohol will not be permitted in the outdoor smoking area."*

Louise's West has sent a letter (see attached) to the City requesting the removal of the restriction on alcohol not being permitted in the fenced outdoor smoking area. Their request is to eliminate this sentence of the conditions, so those patrons who wish to smoke and carry their beverages out to the existing fenced outdoor smoking area may do so. They are not requesting permission to sell or serve alcohol in this area. The applicant is not proposing any physical change or addition to the existing structure or fenced outdoor smoking area than what currently exists.

Action Request. Authorize the removal of a condition (second sentence of condition 3c) restricting patrons from bringing out their drinks with them when they go out to smoke within the existing fenced outdoor patio area at Louise's West.

Site Plan Conditions [SP-08-53-04]

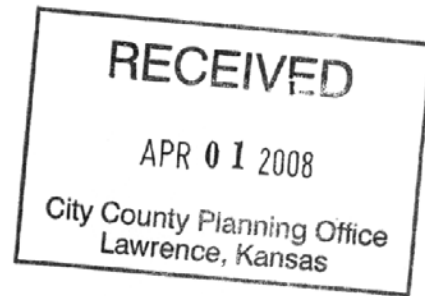
1. Executing of a site plan performance agreement per Section 20-1453.
2. Issuance of a building permit provides for no addition to the building footprint and an eight foot fence.
3. Provide the following notes on the site plan:
 - a. Live or recorded music shall not be played to create a nuisance for the neighborhood.
 - b. The property owner shall be responsible for policing the area to keep it clean from litter and trash generated by this use.
 - c. The property owner shall be responsible for insuring the containment of alcoholic beverages on the premises. ~~The applicant has stated that alcohol will not be permitted in the outdoor smoking area;~~

- d. The applicant agrees to remove the fencing and outdoor patio area if there are legitimate complaints from neighbors pertaining to trash, litter or noise problems; complaints to be reviewed by the City Commission;
- e. Any outside lighting to be shielded so as not to glare offsite; and
- f. No increase to the existing maximum occupancy level will result from the fenced outdoor smoking area.

Attachments: Letter from Applicant
2004 Site Plan Conditions
2004 staff report



Louise's West, Ltd
1307 W. 7th Street
Lawrence, KS 66044



To: City of Lawrence Planning Department
Attn: Sheila Stogsdill

Louise's West, Ltd. would like to request a slight revision to the current site plan on file with the City of Lawrence Planning Department. This request has been prompted by the recent discovery of inadvertent language regarding a condition the city placed on a revision to the site plan in September of 2004.

Our request is to eliminate one sentence, so those patrons who wish to smoke and carry their beverages to the smoking area may do so. We are not requesting permission to sell or serve alcohol in this area.

Background:

In the summer of 2004 the City enacted a smoking ban which prompted a request by Louise's West to erect a fence to contain smokers on the property. Since the fence was to be over 6' in height, a building permit was needed. At that time, a revision to the drawing of the site plan was submitted along with a letter explaining our desire to build an 8' fence. In September of 2004, the City Planning Department submitted a recommendation to the City Commission to approve the revision, subject to 3 conditions. The City Commission Since the newly enacted smoking ban required all businesses to create outdoor smoking areas for patrons, and since no business had been required to deal with those kinds of restrictions prior to that time, it became a learning experience for many businesses and for Louise's West, as well. For example, while summer and fall weather were comfortable for most outdoor activities, winter cold and spring rains prompted the need for heat and shelter. And while many other establishments were able to offer outdoor service, sales, and comfortable seating, Louise's West had no plans at the time of our request for such improvements.

It was not known at the time of the request for the fence building permit that there would be a need for "amenities" in order to remain competitive with like businesses. It was not known at the time of that request that patrons would be strongly opposed, and in fact, refuse to leave their beverage unattended or be forced to smoke between drinks.

Since the enactment of the smoking ban, we have tried to accommodate our patrons' needs, and thereby retain their business, by providing a small canopy,

seating and outdoor heaters in the winter. We have not tried to willfully violate conditions set forth by the city regarding our outdoor smoking area. We do not have live or recorded music played in this area. We do not have lighting that glares offsite. We did not increase, nor request an increase to, our maximum occupancy level. We do not sell or provide service of any alcoholic beverages in this area.

Patrons initiated the practice of keeping beverages in hand while smoking. Other businesses, allowing their patrons that measure of personal safety, apparently have no restrictions that prohibit patrons from this common practice. Since this is a common practice, we have been unable to prevent patrons from keeping beverages with them while using the smoking area. We ask that this portion of the condition be removed to allow our patrons to carry beverages into the smoking area.

Louise's West has been at this location for 35 years. We work continuously to be aware of the concerns of our neighbors. We do not believe that this minor revision would create a nuisance for the neighborhood.

It is with this in mind that we respectfully ask that the Lawrence Planning Department allow this revision to our site plan.

Respectfully,

A handwritten signature in black ink, appearing to read 'Paula Mather', with a long horizontal flourish extending to the right.

Paula Mather
Manager, Louise's West

785-841-1021



September 29, 2004

Paula Mather
2100 Camelback Drive
Lawrence, Kansas 66044

RE: SP-08-53-04, Site Plan for Louise's West, fenced outdoor smoking area.

Dear Paula Mather:

On Tuesday, September 28, 2004, the Lawrence City Commission approved the above referenced site plan located at 1307 W. 7th Street, subject to the following conditions:

1. Execution of a site plan performance agreement per Section 20-1433.
2. Issuance of a building permit provides for no addition to the building footprint and an eight foot fence.
3. Provide the following notes on the site plan:
 - a. Live or recorded music shall not be played to create a nuisance for the neighborhood;
 - b. The property owner shall be responsible for policing the area to keep it clean from litter and trash generated by this use;
 - c. The property owner shall be responsible for insuring the containment of alcoholic beverages on the premises. The applicant has stated that alcohol will not be permitted in the outdoor smoking area;
 - d. The applicant agrees to remove the fencing and outdoor patio area if there are legitimate complaints from neighbors pertaining to trash, litter or noise problems; complaints to be reviewed by the City Commission;
 - e. Any outside lighting to be shielded so as not to glare offsite; and
 - f. No increase to the existing maximum occupancy level will result from the fenced outdoor smoking area.

Please submit 4 clean copies of the site plan to be stamped and signed by planning. Three copies will be transmitted over to Neighborhood Resources to go with the Building Permit and one copy will be placed in the planning file.

A site plan is valid for a period of one year from the date of the site plan approval by the City Commission, during which time a building permit for the 8' high fence will need to be issued. Please call me at (785)832-3153 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Paul Patterson".

Paul Patterson
City/County Planner

C: Rael Corporation, 1307 W. 7th Street, Lawrence, Kansas 66044
Barry Walthall, Codes Enforcement Manager, Neighborhood Resources

SITE PLAN REVIEW
September 28, 2004

A. SUMMARY

SP-08-53-04: A revised site plan to add a fenced outdoor patio area at Louise's West, 1307 W. 7th Street. Submitted by Paula Mather for Larry Hogan and Don McClure, property owners of record. This property is within the building permit moratorium area. City Commission approval is conditioned upon the requirement that issuance of a building permit provides for no addition to the building footprint and an eight foot fence.

B. GENERAL INFORMATION

Current Zoning and Land Use:	C-5 (Limited Commercial) District; Existing licensed premises and separate single-family house.
Surrounding Zoning and Land Use:	North: RM-2 (Residential Multiple-family) District; Apartment Complex. East and South: C-5 (Limited Commercial) District; Single-family homes. West: C-5 (Limited Commercial) District; Office Building.

Site Summary:

Lot Area:	6,350 Square Feet
Existing Occupancy:	73 persons
Proposed Occupancy:	Same as existing, 73 persons
Existing fenced outdoor smoking area:	None
Proposed fenced outdoor smoking area:	25' x 26' area, enclosed with 8' high fence
Required Off-Street Parking	21 parking spaces
Off-Street Parking Provided:	4 parking spaces

Staff Recommendation: Planning staff recommend approval of the site plan subject to the following conditions:

1. Execution of a site plan performance agreement per Section 20-1433.
2. Issuance of a building permit provides for no addition to the building footprint and an eight foot fence.
3. Provide the following notes on the site plan:
 - a. Live or recorded music shall not be played to create a nuisance for the neighborhood;
 - b. The property owner shall be responsible for policing the area to keep it clean from litter and trash generated by this use;
 - c. The property owner shall be responsible for insuring the containment of alcoholic beverages on the premises. The applicant has stated that alcohol will not be permitted in the

outdoor smoking area;

d. The applicant agrees to remove the fencing and outdoor patio area if there are legitimate complaints from neighbors pertaining to trash, litter or noise problems; complaints to be reviewed by the City Commission;

e. Any outside lighting to be shielded so as not to glare offsite; and

f. No increase to the existing maximum occupancy level will result from the fenced outdoor smoking area.

C. STAFF REVIEW

Louise's West is an existing licensed premises located at 1307 W. 7th Street, within a C-5 Limited Commercial zoning district. The applicant is proposing to construct a fenced 25' x 26' outdoor smoking area to be used by their customers. The request stems from the recent ban on smoking within places of employment. A letter from the applicant detailing their request is attached.

The existing maximum occupancy of the licensed premises is 73 persons. No change to the maximum occupancy is permitted by the approval of the outside smoking area.

The property owner of the licensed premises is also the owner of the residence located on the east side of the lot.

ISSUES INVOLVED WITH THE REQUEST:

Potential for additional noise near residential area:

This C-5 Limited Commercial property is surrounded by single and multiple-family residences. The creation of an outdoor smoking area for use by the customers of the bar has the potential for generating additional noise for the nearby residential area. Closing time for the bar can be as late as 2 A.M. Conditions should be required that "Live or recorded music shall not be played to create a nuisance for the neighborhood"; and "The applicant agrees to remove the fencing and outdoor patio area if there are legitimate complaints from neighbors pertaining to trash, litter or noise problems; complaints to be reviewed by the City Commission".

Potential for additional light glare:

There is existing residential property behind the site and a two story apartment complex across the street. There will need to be exterior lighting for the enclosed outdoor smoking area. A condition should be required for any outside lighting to be shielded so as not to glare offsite.

Temporary Moratorium Area

The City Commission has enacted a Temporary Building Permit Moratorium for property bounded by 7th Street on the south, California on the west, 5th Street on the north, and Alabama Street on the east, including contiguous properties within one hundred (100) feet of such street boundaries. This site is located on the south side of 7th Street and is included within the 100' contiguous properties area.

The moratorium states that otherwise valid building permits may be issued for any and all

The project is to fence in part of the sideyard for an outdoor smoking area. As the revised site plan will not increase the size or footprint of the existing building and the existing maximum occupancy of 73 persons for the licensed premises will not change, the Temporary Building Permit Moratorium would not be triggered.

PRIOR ACTION

- SP-10-59-92: Revised site plan for 8' high wooden fence along the south property line. Application withdrawn by applicant.
- SP-10-54-91: Approved site plan for cooler and trash area relocation.



1307 W. 7th Street, Aerial - March 2003

D. Findings

Per Section 20-1432 staff shall first find that the following conditions have been met:

- (a) That the proposed use is a permitted use in the district in which the property is located;

The property is within a C-5 (Limited Commercial) District, a district which permits a licensed premises.

- (b) That the proposed arrangement of buildings, off-street parking, access, lighting, landscaping and drainage is compatible with adjacent land uses;**

Parking: 1 parking space is required per 100 square feet of floor area. 2,035 square feet/100 = minimum of 21 off-street parking spaces are required. 4 standard parking spaces on right-of-way are provided. The property is currently non-complying with respect to the parking requirements. The proposed patio, because it does not increase occupancy, is not considered a significant alteration to existing development (20-1428). Since this is considered a minor alteration to existing development (20-1429d), the zoning ordinance does not require compliance with current development standards. The applicant is not proposing to increase the occupancy of the licensed premises.

- (c) That the vehicular ingress and egress to and from the site and circulation within the site provides for safe, efficient and convenient movement of traffic not only within the site but on adjacent roadways as well;**

The project does not increase the maximum occupancy of the licensed premises. There is no proposed change to the ingress and egress to and from the site. The outdoor smoking area will have an emergency exit gate.

- (d) That the site plan provides for the safe movement of pedestrians within the site;**

There are no changes proposed to the existing sidewalk on the property.

- (e) That there is a sufficient mixture of grass, trees, and shrubs within the interior and perimeter (including public right-of-way) of site so that the proposed development will be in harmony with adjacent land uses and will provide a pleasing appearance to the public. Any part of the site plan area not used for buildings, structures, parking, or accessways shall be landscaped with a mixture of grass, trees and shrubs;**

The project is not proposing any additional landscaping. The site plan area not used for building, structures, or parking is landscaped with a mixture of grass, trees, and shrubs.

- (f) That all outdoor trash storage areas are screened and are in accordance with standards as prepared by the department of public works;**

The trash storage area is to the south side of the building within a 6' high fence.

- (g) That the site plan takes into consideration existing improvements or physical alterations that have been made to prepare the site for development.**

The plan takes into account the existing licensed premises and residential dwelling on the property.