

PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item

PC Staff Report
7/22/15

ITEM NO. 5 SPECIAL USE PERMIT FOR 804 PENNSYLVANIA ST (MKM)

SUP-15-00261: Consider a Special Use Permit for a *Bar* located at 804 Pennsylvania St. Submitted by Flint Hills Holdings Group LLC, for Ohio Mortgage LLC, property owner of record.

STAFF RECOMMENDATION: Planning Staff recommends approval of a Special Use Permit for a *Bar* at 804 Pennsylvania Street subject to the following conditions:

1. Prior to release of the Special Use Permit for issuance of a building permit the applicant shall provide an executed site plan performance agreement to the Planning Office.
2. Any physical changes to the site which are required as a result of this Special Use Permit must be reviewed and approved by the Historic Resource Commission prior to the release of the site plan for building permits.
3. The following standards apply to this use:
 - a. Occupancy. No more than 75 persons may be within the outside dining area at any one time. The interior of the building is limited to no more than 44 persons by the Fire Code. (The site shall be signed with this occupancy limit.)
 - b. Seating. The number of tables and chairs, as shown on the approved site plan, shall be provided to patrons during all hours that the outside dining area is open, including during Temporary Special Events.
 - c. Operating Hours. The outdoor seating area shall be closed (unoccupied) at 11:00 p.m. Sunday through Thursday and 12:00 a.m. Friday and Saturday. Business hours inside the building are unrestricted.
 - d. Sound Level. Amplified live music on the outside dining area shall cease at 10:00 p.m. Sunday through Thursday, and at 11:00 p.m. Friday and Saturday. Other music (live acoustical and digital or stereo sources) shall be kept at an ambient level after those times.
 - e. Outside Seating Area. A 4 ft high railing should be installed along the 18" wall around the outdoor seating area to clearly demarcate the area and prevent patrons from spilling over into the parking area.
 - f. Food Sales:
 - i. Food shall be available for purchase at all times the establishment is open. The food may be provided within the building or by food trucks on site.
 - ii. The food shall consist of menu items more substantial in nature than the typical nuts and/or popcorn offered at bars. Items such as pastries, breakfast food, sandwiches and sides, or meals will meet the intent of this requirement.
4. Provision of a revised site plan with the following changes:
 - a. Addition of a note listing the standards applied with this SUP to the *Bar* use.
 - b. Addition of a note listing the revised restricted uses per Zoning Ordinance No. 9101.
 - c. Addition of a 4 ft high railing along the 18" high wall around the outdoor seating area.

Applicant's Reason for Request:

"This request is being made because the current restrictions stated in Ordinance 8920, Section 2, item a.i. create an unnecessary burden on the potential operator of the business at 804 Pennsylvania. We have had three separate business owners approach us and preliminarily reach an agreement about operating a Bistro business out of the space, but all three have backed out upon learning of the restrictions and reporting burden placed on them after opening. Running a small business is difficult enough without the added burden of chasing around upwards of ten to fifteen food trucks for receipts and reporting—many of which will be coming through town from out of city or out of state. Business owners need to be able to lean on their core competency in creating sustainable businesses, and relying upon the property and accurate reporting of another business owner (i.e. food trucks) puts them in a position to fail before the doors ever open. This has also deterred food trucks from signing agreements to participate because the reporting expectations placed on them would not be what is required to operate anywhere else. The coffee bar owner needs to focus on that aspect of the model, the food trucks need to focus on their part, and this has been stated by all involved to date.

The bistro site plan and architectural layout will not change even after approval of the SUP—the concept is exactly the same. In fact, we expect food sales to increase when these restrictions are lifted because more vendors will want to participate in this highly unique business model. We want this to be a place that neighbors, business owners, property owners, tenants and homeowners are proud to support. If this alienates anyone in East Lawrence, then this business will not succeed in any capacity. We want families to come down with their dogs to enjoy a sunny Sunday, business owners to grab lunch in between meetings, and neighbors to meet friends here and carry on a conversation in a quiet, quaint, controlled environment.

The ownership of this development is the same ownership group for the surrounding Poehler Lofts and Cider Gallery. If this business becomes a nuisance, no one has more to lose than the owners. This project equates to 1/60th of the investment in the neighborhood to date by this development group, and under no circumstances will 1/60th ever cannibalize the remaining 59/60th investment in the Warehouse Arts District.

At the end of the day, we need to determine what is the best environment and framework we can provide to ensure the business operators can operate a business with a chance to proceed. If this SUP provides terms that are agreeable to all, then we will be ready to move forward with construction right away. This will create 3 permanent jobs within the walls of the Bistro right away, and a multitude of others indirectly. This will help grow the food truck culture in Lawrence which will in turn create more jobs through their success, and will provide another avenue for existing businesses to grow such as Lucky Dog, Centro cigars, Kambucha, and we hope, many others."

ASSOCIATED CASES:

- Z-12-80-05: Establishment of an Urban Conservation Overlay District for the 8th and Penn Neighborhood Redevelopment Zone and development of Design Guidelines. City Commission adopted on October 24, 2006 with Ordinance No. 8053.
- Z-01-01-06: Rezoning of 5.49 acres from M-2/M-3 (General/Intensive Industrial) Districts to C-5-UC (Limited Commercial with Urban Conservation Overlay) District. Approved by City

Commission on December 19, 2006 with conditions to restrict the uses. The restricted uses were listed in Rezoning Ordinance No. 8054.

- Conversion: The C-5 (Limited Commercial) Zoning Designation converted to CS (Commercial Strip) with adoption of Land Development Code on July 1, 2006.
- Z-08-23-11: Rezoning of the subject property from CS-UC (Commercial Strip with Urban Conservation Overlay) to RM12D-UC (Multi-Dwelling Residential with Urban Conservation Overlay) to remove the nonconformity status from the duplex use. Approved by City Commission on October 18, 2011 with adoption of Rezoning Ordinance No. 8677.
- Z-13-00287: Rezoning of the subject property from RM12D-UC (Multi-Dwelling Residential with Urban Conservation Overlay) District to CS-UC (Commercial Strip with Urban Conservation Overlay) District. Approved by City Commission on November 5, 2013 with adoption of Rezoning Ordinance No. 8920. Conditions applied on the original C-5 Zoning for the District were applied with a change to allow 2 years for compliance with the 55% food sales requirement for the *Bar* use.
- SP-13-00349: Site plan for conversion of a duplex dwelling to a *Quality Restaurant/Bar* at 804 Pennsylvania Street. Site plan included 2,440 sq ft customer service area total: 1200 sq ft customer service area in the building, and 1240 sq ft outside dining. Administratively approved on November 12, 2013.
- ORD. 9026: Revision to City Code to allow permanently sited mobile food vendor units when approved with a site plan. Approved by City Commission on October 7, 2014.
- SP-14-00220: Site plan to include a space for the permanent location of Mobile Food Vendors at 804 Pennsylvania Street which would be used to meet the 55% food sales requirement. The site plan included 2,649 sq ft of customer service area total: 1084 sq ft in the building, and 1,565 outside dining. Administratively approved on July 3, 2014.
- Z-15-00022: Rezoning of subject property from CS-UC to CS-UC (Commercial Strip with Urban Conservation Overlay) District to revise the condition restricting uses to permit a *Bar* use without the 55% food sales. The City Commission approved this rezoning with adoption of Ordinance No. 9101 at their May 19, 2015 meeting with a revised condition to allow a Bar use without the 55% food sales requirement when the use is approved with a Special Use Permit. The following is the list of restricted uses as revised with Z-15-00022:
 - (i) Bar or Lounge, Nightclub, or other Licensed Premises, unless:
 - (A) 55% of gross receipts from said use are derived from the sale of food for consumption on the premises (this condition shall be applied beginning on the two-year anniversary of the commencement of the use); or
 - (B) approved as a Special Use pursuant to City of Lawrence, Kan., § 20-1306 (Jan. 1, 2015).
 - (ii) Liquor Store;
 - (iii) Ambulance Service;
 - (iv) Car or Truck Wash;
 - (v) Auto Repair;
 - (vi) External drive-through ATM or drive-through window (walk-up ATM's allowed);
 - (vii) Furriers;
 - (viii) Pawn Shop;

- (ix) Mobile Home Sales and Service;
- (x) Golf Driving Range;
- (xi) Pet Store (animal sales)
- (xii) Payday Advance and Car Title Loan Businesses; and
- (xiii) Convenience Store with Gasoline Sales.

OTHER ACTION REQUIRED

- City Commission approval of SUP application and adoption of SUP Ordinance.
- Publication of SUP Ordinance.
- Provision of a revised site plan reflecting the changes or standards applied with the Special Use Permit to the Planning Office.
- Historic Resource Commission review and approval of change of use and any changes needed to the site plan.
- Building Permits must be obtained from Development Services prior to development activity occurring on the site.

KEY POINTS

- The property contains a contributing structure to the East Lawrence Industrial Historic District, National Register of Historic Places (Figure 1); therefore, the Historic Resources Commission (HRC) must review the Special Use Permit request under the State Preservation Law (K.S.A. 75-2724, as amended). The Historic Resource Administrator administratively approved this SUP permit and the approval is scheduled for confirmation by the HRC at their July 23, 2015 meeting. Any changes to the site plan required as a result of this Special Use Permit must be reviewed by the HRC before the site plan is released.
- The subject property and the surrounding area has been master-planned through the 8th and Pennsylvania Urban Conservation Overlay District and is regulated in part by the *8th and Penn Neighborhood Redevelopment Zone Design Guidelines*.
- Shared and on-street parking is utilized throughout the *8th and Penn Neighborhood Redevelopment Zone*.
- The City Commission approved the rezoning change to allow a *Bar* use without an associated restaurant provided the impacts on nearby properties are mitigated through site specific conditions established with the review and approval of a Special Use Permit.
- The applicant is not proposing changes to the development approved with Site Plan SP-14-00220; however, changes may be required as part of the standards established with the Special Use Permit.



Figure 1. Historic structure on the property, proposed for use as a bar/bistro.

PLANS AND STUDIES REQUIRED

The studies and plans that were provided with the previously approved site plan, SP-14-00220, are adequate as no physical changes are being proposed to the site with this request.

PUBLIC COMMENT

- An area property owner called and provided a letter to express opposition to live music.

ATTACHMENTS

- A: Zoning Ordinance No. 9101
- B: Approved site plan, SP-14-00220
- C: Public Communications

GENERAL INFORMATION

Current Zoning and Land Use:

CS-UC (Commercial Strip with Urban Conservation Overlay) District with conditions; vacant building which has site plan approval for development as a Bistro/Bar with a requirement that 55% of the total retail sales must be from food sales.

Surrounding Zoning and Land Use:

To the north:

IG-UC (General Industrial with Urban Conservation Overlay) District; vacant utility yard, most recent use was *Heavy Wholesale Storage and Distribution*.

To the west:

CS-UC (Commercial Strip with Urban Conservation Overlay) District; Undeveloped land under same ownership as subject property.

To the south:

CS-UC (Commercial Strip with Urban Conservation Overlay) District; Art gallery with retail space and office uses.

To the east:

RM32-UC (Multi-Dwelling Residential with Urban Conservation Overlay) District; *Multi-Dwelling Structure* (Figure 2)



Figure 2a. Zoning of area. Subject property is outlined. Hatched area -- conditional zoning. Stippled yellow area -- UC (Urban Conservation Overlay) District.



Figure 2b. Land use in the area. Subject property is outlined.

Summary of Request

The property was rezoned in January of 2015 to revise the restrictions of use to allow a *Bar* use without the 55% food sales requirement when the *Bar* use is approved with a Special Use Permit. The Special Use review and approval process includes a public review and evaluation of a use's operating characteristics and site development features. This review is intended to ensure that proposed Special Uses will not have a significant adverse impact on surrounding uses or on the community at-large.

A site plan for the Bistro/Bar (with 55% food sales requirement) was approved in 2014 with spaces for two on-site food trucks (Figure 2). This site plan, SP-14-00220, serves as the site plan for this SUP request as no changes are being proposed to the property. The focus of this review is on the possible impacts the proposed *Bar* use could have on nearby land uses and the establishment of specific standards and conditions to ensure the development is compatible with the area.

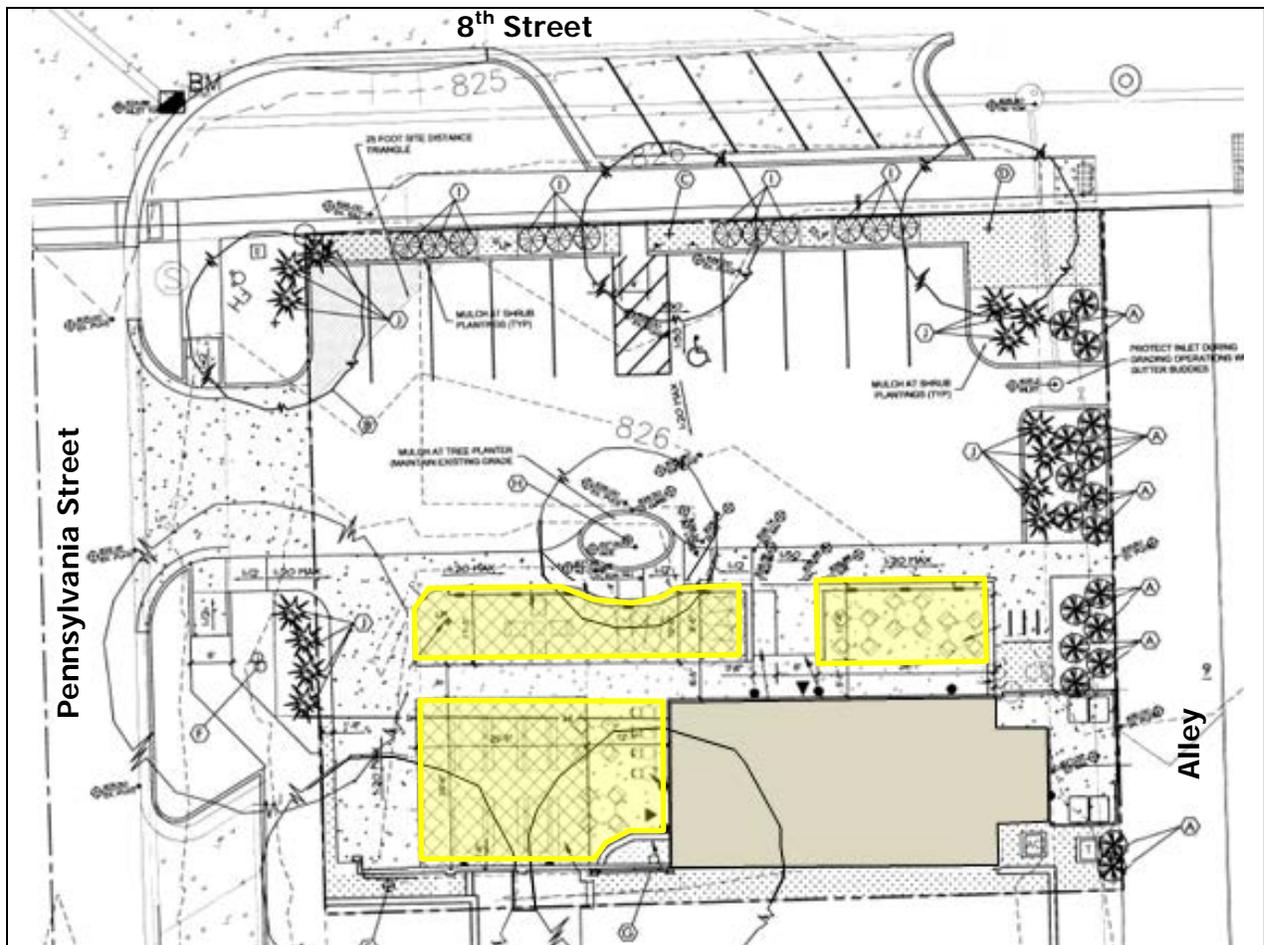


Figure 3. Approved site plan (SP-14-00220) for a Bar/Bistro at 804 Penn. Building is shown in brown and the outside seating area is highlighted in yellow.

Review and Decision-Making Criteria (Land Development Code Section 20-1306(i))

1. WHETHER THE PROPOSED USE COMPLIES WITH ALL APPLICABLE PROVISIONS OF THIS DEVELOPMENT CODE

Applicant's Response:

"Yes."

Typically, Special Use Permits include a site plan which is reviewed for compliance with the Development Code. The site plan in this case, SP-14-00220, (Figure 2) was found to be compliant with the Development Code and was approved in 2014.

Staff Finding – The site plan for this use, SP-14-00220, was found to be compliant with the Development Code and was administratively approved in 2014. The proposed use complies with the applicable provisions of the Development Code.

2. WHETHER THE PROPOSED USE IS COMPATIBLE WITH ADJACENT USES IN TERMS OF SCALE, SITE DESIGN, AND OPERATING CHARACTERISTICS, INCLUDING HOURS OF OPERATION, TRAFFIC GENERATION, LIGHTING, NOISE, ODOR, DUST AND OTHER EXTERNAL IMPACTS

Applicant's Response:

"Seeing as how the concept for the restaurant will not change if approval is given, the impact will be exactly the same as our previously approved site plan and concept. This will not become a loud, obnoxious, collegiate bar. We aim to serve those in the neighborhood and anything that is not respectful to their wishes and offering a product they will not enjoy is counterproductive to all. Food trucks will always have a place on site and be vital to the business model. Coffee, baked items, and food truck breakfast items will still be available in the mornings. A wide range of spirits, craft cocktails, craft beers, and affordable domestic beers will be offered to attract the diverse citizens that frequent the Warehouse Arts District right now. We would love for people to bring their dogs down to the patio for a weeknight beer, come with close friends for a cocktail before they head home after dinner, or provide a place where business owners down the street can bring clients to discuss their next partnership opportunity. This will be an establishment that people will have pride in and because of that will maintain an atmosphere that is suitable for all.

The outdoor seating area is the dominant use on the site with an area slightly larger than the area of the building. The building is approximately 1084 sq ft while the outdoor seating area has an area of approximately 1565 sq ft. The site plan depicts seating for 32 individual seats and 4 picnic tables in the outdoor seating area, which could accommodate between 56 and 64 customers.

The 55% Food Sales requirement allows a bar only when accessory to a restaurant use. The different nature of the *Restaurant* and *Bar* outdoor dining or seating areas can result in differing impacts to an area. Patrons visiting a restaurant's outdoor dining area typically stay on site for shorter periods of time than patrons of an outdoor area with a bar. Occupancy with a restaurant use is typically limited to the number of seats provided; however, a bar's outdoor area can have greater occupant levels as many patrons remain standing. Televisions and amplified music are more often associated with a bar's outdoor area than a restaurant's. There is usually more interaction between patrons in a bar's seating area while conversations in a restaurant's seating area are usually limited to the table. A stand-alone bar with the amount of outdoor seating that is proposed could generate noise from activities or amplified music in the outdoor seating area that could have a negative impact on nearby properties. In staff's opinion, it is the outdoor seating area that would be the source of possible negative impacts with the surrounding properties.

The proposed bar is within the interior of the *8th and Penn Neighborhood Redevelopment Zone* (Figure 2) and is separated from the residences to the west by Pennsylvania Street, and a vacant lot and industrial uses which are located along the west side of Pennsylvania Street. The closest

single-dwelling residence is approximately 200 ft from the subject property; however, the outdoor seating area is just across the alley from the new residential apartments developed in the Poehler Building to the east.

Operating restrictions that could be used to mitigate the negative impact associated with the activity in the outdoor seating area could be a time limit on amplified music, a limit on the number of people that can be in the outdoor area, or an early closing time. Staff recommends the following list of standards to minimize the impact of the activity in the outdoor area:

- g. Occupancy. No more than 75 persons may be within the outside dining area at any one time. The interior of the building is limited to no more than 44 persons by the Fire Code.
- h. Seating. The number of tables and chairs, as shown on the approved site plan, shall be provided to patrons during all hours that the outside dining area is open, including during Temporary Special Events.
- i. Operating Hours. The outdoor seating area shall be closed (unoccupied) at 11:00 p.m. Sunday through Thursday and 12:00 a.m. Friday and Saturday. Business hours inside the building are unrestricted.
- j. Sound Level. Amplified live music on the outside dining area shall cease at 10:00 p.m. Sunday through Thursday, and at 11:00 p.m. Friday and Saturday. Other music (live acoustical and digital or stereo sources) shall be kept at an ambient level after those times.
- k. Outside Seating Area. A 4 ft high railing should be installed along the 18" wall around the outdoor seating area to clearly demarcate the area and prevent patrons from spilling over into the parking area.

Most of the public communications provided for the rezoning request spoke in favor of a restaurant and bar use. The City Commission voted to revise the zoning restrictions to allow a *Bar* without a required food sales percentage but noted that food sales should remain an important component of the establishment. Staff proposes the following condition to achieve that goal:

- l. Food Sales:
 - a. Food shall be available for purchase at all times the establishment is open. The food may be provided within the building or by food trucks on site.
 - b. The food shall consist of menu items more substantial in nature than the typical nuts and/or popcorn offered at bars. Items such as pastries, breakfast food, sandwiches and sides, or meals will meet the intent of this requirement.

In staff's opinion, these standards should limit the occupancy, hours, and noise associated with the outdoor area and result in a bar that is compatible with the nearby residential uses while also insuring that use will maintain a restaurant aspect.

Staff Finding – The proposed standards on the use applied through the Special Use Permit would limit the features of the outside seating area that may be incompatible with nearby land uses. With the appropriate standards, the use should be compatible with adjacent land uses.

3. WHETHER THE PROPOSED USE WILL CAUSE SUBSTANTIAL DIMINUTION IN VALUE OF OTHER PROPERTY IN THE NEIGHBORHOOD IN WHICH IT IS TO BE LOCATED

Applicant's Response:

" No, the proposed use of a restaurant will balance out the residential and office space in the Warehouse Arts District. This development will offer a place to relax, unwind, and connect with colleagues/clients or reconnect with neighbors. It will be an asset to the area and to Lawrence when the design is implemented. Keep in mind this building is 1300 sq ft gross, compared to the 250,000 sq ft + of occupied developed property to go along with the additional 100,000 sq ft + of undeveloped property. This equates to roughly 1% of the square footage in the district that is controlled by this ownership group."

The nature of the outdoor seating area could have an impact on the value of other property in the neighborhood. If the use becomes a nuisance nearby property values could drop. On the other hand, if it becomes an amenity to the area it could have a positive effect on the value of nearby properties.

Staff Finding – The outdoor seating area has the capability of negatively impacting property values if it is managed in similar fashion to other bars. Staff recommends adoption of standards on the outdoor seating area to insure that the use has no significant negative impact on other properties in the area.

4. WHETHER PUBLIC SAFETY, TRANSPORTATION AND UTILITY FACILITIES AND SERVICES WILL BE AVAILABLE TO SERVE THE SUBJECT PROPERTY WHILE MAINTAINING SUFFICIENT LEVELS OF SERVICE FOR EXISTING DEVELOPMENT

A site plan has been approved for a bar/bistro at this location. The property has direct access to Pennsylvania Street, is adjacent to 8th Street on the north, and has an alley along the east property line. Adequate access is provided for public safety. The studies that were submitted with the previously approved site plans indicated that the streets are adequate for the anticipated traffic and the utility lines are adequate for the proposed use.

Staff Finding – Adequate public facilities and transportation access is accommodated for this development at this time.

5. WHETHER ADEQUATE ASSURANCES OF CONTINUING MAINTENANCE HAVE BEEN PROVIDED

Staff Finding – Adequate assurances of continued maintenance are inherent in the use and the Special Use Permit approval process.

6. WHETHER THE USE WILL CAUSE SIGNIFICANT ADVERSE IMPACTS ON THE NATURAL ENVIRONMENT

Applicant's Response:

"No, the proposed use will allow for the restoration and development of a building constructed in the late 1800s, which is a historic asset to the neighborhood and currently vacant. This will provide a significant improvement to the natural environment because there will be strict restrictions imposed on the operator by the ownership group related to upkeep, maintenance and cleanliness. It will be one of the most well maintained and managed properties in the City."

Staff Finding – The property is currently developed and has an approved site plan for changes for a Bar/Bistro use. The addition of a *Bar* use without the 55% food sales requirement will not impact the natural environment.

7. WHETHER IT IS APPROPRIATE TO PLACE A TIME LIMIT ON THE PERIOD OF TIME THE PROPOSED USE IS TO BE ALLOWED BY SPECIAL USE PERMIT AND, IF SO, WHAT THAT TIME PERIOD SHOULD BE

This Special Use Permit is required to accommodate a specific use in this district. Standards can be applied to insure compatible development. Given the amount of investment for this use, and its ongoing nature, Staff does not recommend a time limit on the Special Use Permit.

Staff Finding – In staff’s opinion, it would not be appropriate to limit the period of time the *Bar* use should be allowed by Special Use Permit based on the amount of investment involved and the ongoing nature of the use.

STAFF REVIEW

Typically, this section of the SUP staff report reviews the site plan for compliance with the Development Code. In this case, the site plan has been approved and the SUP is being requested so that site and use specific standards can be applied to the use to insure compatibility with nearby properties. As no changes are being proposed to the approved site plan, it will not be reviewed. The proposed standards should minimize any negative impact to nearby land uses by limiting the number of people who can be in the outdoor seating area, limiting the time the area is open, and limiting the time that amplified music can be played. A condition requiring the sale of food products is intended to maintain the joint restaurant/bar nature of the use, without a requirement for a specific portion of the sales to be from food. A condition which requires the tables and chairs to remain as shown on the site plan will maintain the character of the outdoor seating area. The 4 ft high railing along the 18” wall bordering the seating area will help demarcate the outdoor seating area and will prevent customers from spilling into the parking or grassed areas. The applicant found the proposed standards acceptable but had some concerns with the limitation on the hours of operation. Staff suggested the limited hours to reduce late night impact on nearby residences based in part on comments provided in public communications for the rezoning requests to permit a Bar use without the 55% Food Sales requirement.

CONCLUSION

A set of standards are proposed by staff to accommodate the proposed *Bar* use while minimizing negative impacts to nearby properties. In staff’s opinion these standards would result in a compatible restaurant/bar use.