



## **ADDENDUM - Report to the Plan Commission**

April 26, 2010

**Legistar I.D. #17824**  
**924 Williamson Street ("Plan B")**  
**Alterations to an Approved Conditional Use**

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Planning Division

The applicant requests approval of a new conditional use for an outdoor eating (drinking) area along with these previously proposed alterations to an approved conditional use: 1) installation of a new screening fence, 2) creation of a fenced enclosure for smoking, and 3) approval of an additional 15-stall parking reduction to accommodate an increase in capacity.

### **Previous Action**

At its March 22, 2010 meeting, the Plan Commission **referred** consideration of this matter to allow the owner of the subject property and the owner of the adjoining property to discuss a possible agreement regarding the fence.

The approved motion to refer consideration substituted an earlier motion to approve the three requests subject to the screening fence being moved 4.5 feet from the easterly property line; the nightclub studying soundproofing for the outdoor smoking area, and; a 4- to 6-foot screening fence for the smoking area as approved by staff. As part of this motion, the property owners were also encouraged to work out a resolution on the placement of the fence.

### **Update and Additional Analysis**

#### Screening Fence

The adjoining property owners (Chvala Ventures, Inc. and John Rolfsmeyer) have met along with representatives from "Plan B" to discuss an agreement regarding fence placement. An agreement was signed by both property owners on April 12, 2010. Similar to the previously submitted plan, this agreement has the fence located 6 and ½ inches from the property line. There is a small "jog" in the fence to avoid an existing manhole cover. Unlike the earlier plan, the revised proposal includes a side access gate to allow Mr. Rolfsmeyer and tenants "occasional" access to his rear yard and access to provide maintenance for his property. These were concerns previously raised by Mr. Rolfsmeyer regarding a fence placed at the property line. An exhibit showing the proposed details has been provided by the applicant.

Shortly after this agreement was signed, Mr. Rolfsmeyer contacted Planning staff stating he had objections to certain provisions of the agreement and noting the agreement was not in a form that could be recorded. His objections to the agreement are noted in the attached correspondence. Based on discussions with both parties, staff understands the placement of the fence and access gates was agreed to and no longer a point of contention, though concerns over the accuracy of the survey have since been raised by Mr. Rolfsmeyer. Staff have reviewed the approved site plan referenced in Mr. Rolfsmeyer's email and note that the back corner of the house is shown to be just under 2 feet 11 inches from the property line, which appears to be consistent with what Mr. Rolfsmeyer observed in the field. Staff do not have any evidence at this time that the site plan is not accurate.

**Staff have discussed the concerns over the agreement with the Assistant City Attorney and she has stated that the Plan Commission's fence decision should be limited to whether or not one should be approved. The agreement and its specific terms are a dispute between property owners and the Plan Commission should not become involved.**

Staff believe the options before the Plan Commission are to approve the fence, as proposed, or to not approve it and maintain the existing vegetation. During the deliberations at the previous hearing, the reason for considering an alternate fence location was to not block Mr. Rolfsmeyer's access across the Plan B property. Other reasons were not discussed at that meeting. The Assistant City Attorney noted the Plan Commission could not require the fence to be moved away from the property line simply to allow Mr. Rolfsmeyer access across the Plan B site. As noted in the previous report, a fence at the property line (as proposed) or four feet in (as previously requested by Mr. Rolfsmeyer) should similarly increase site screening and limit trespassing onto Mr. Rolfsmeyer's property.

#### Allowing Drinks in the Outdoor Smoking Enclosure

During the previous public hearing testimony, the Plan B operators indicated they would expand their request to allow drinks to be carried into the smoking enclosure. This request was not made in time to be considered at the March 22, 2010 meeting. The Zoning Administrator previously noted that in addition to getting approval of a revised liquor license, this request would require approval of a separate conditional use for an outdoor eating area. The only conditional use on the property at this time is for the parking reduction approved in March 2009. Since the last public hearing, a new application has been made and this consideration is now before the Plan Commission.

Based on the recommendation from the Alcohol License Review Committee (ALRC), the Common Council approved Plan B's revised liquor license to allow alcohol to be carried into the smoking area. The action also increased the overall club capacity to 250 persons (Monday through Wednesday) and 300 persons (Thursday through Sunday). These approvals were subject to Plan B meeting with the neighborhood regarding sound within 45 days.

In regards to the conditional use application, the applicant indicates that the outdoor patio will not have any tables or chairs. While drinks would be allowed to be carried into the enclosure, there will be no outdoor bar or waiter service. A capacity of 47 persons was shown on the previously submitted plans for the smoking area, though the previous letter of intent estimated a capacity of 30. The proposed hours of operation are the same as the bar's hours: Sunday through Thursday: 4:00 pm through 2:00 am and Friday and Saturday from 4:00 pm through 2:15 am. There will be no food service in the patio.

As noted in the previous report, outdoor noise remains a concern for staff. There are likely two primary sources of noise, that coming directly from patrons and music escaping the club as doors open and close. One intent of the smoking enclosure was to reduce noise impacts of patrons congregating in the parking lot. Allowing patrons to bring drinks into the enclosure may encourage some bar-goers to utilize the enclosure and discourage activity in the parking lot. On the other hand, allowing of drinks would likely increase the appeal of the enclosure, potentially resulting in both additional patron noise and increased frequency at which the door is opened, allowing club noise to escape.

Staff note that noise impacts could potentially be limited through careful management of the enclosure. Staff also recommend that no outdoor amplified sound or live music be allowed in the outdoor area. The previous letter of intent estimated the outdoor enclosure capacity at 30 patrons, though plans included an actual capacity of 47. The Plan Commission could choose to approve the smaller capacity should it find it necessary to meet the conditional use standards.

Noise impacts may also be controlled through the physical design of the structure and building. The varied fence heights of the enclosure are intended to direct noise away from the residential neighbors and direct it towards the office building to the rear of the site. As proposed, the enclosure would be constructed of wood but doesn't include other sound-proofing measures known to staff. The structure itself is beneficial to discourage patrons from dispersing throughout the parking area, though staff do not know the exact level of noise reduction the wooden enclosure by itself would provide. Discussions at both the neighborhood meeting and at the March 22 Plan Commission meeting included mention of providing additional sound proofing within the enclosure, but at this time, nothing has been proposed. The correspondence from the neighborhood meeting indicates that Plan B would also be taking efforts to control bass escaping from the building. Additionally, previously provided correspondence from Plan B indicated that other sound proofing efforts would be considered along the side door, though staff does not know if this has been installed or if there are additional efforts Plan B is considering.

Staff do not object to the addition of the outdoor smoking patio though it is important that allowing drinks does not run counter to the purpose of controlling outdoor noise. Staff note that the neighborhood association supports this request. To limit the time patrons spend outside the club itself, they have recommended a condition that no tables and chairs placed in the area. Their meeting minutes are again attached. At the time of report writing, staff has been contacted by two individuals expressing objections to allowing drinks in the patio. Careful consideration should be given to the submitted information, neighbor comments, and information provided at the public hearing to determine whether the conditional use standards can be met to allow drinks to be carried into the outdoor area.

#### Change to Outdoor Enclosure

Plan B has indicated they will increase the height of the rear (north-facing) wall from four (4) feet to six (6) feet to address the concern regarding rear screening provided by the adjoining property owner to the north. Staff do not object to this modification.

#### **Recommendation and Conditions of Approval**

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Subject to input at the public hearing, the Planning Division recommends that the Plan Commission find the applicable standards are met and approve the requested alterations to an approved conditional use and new conditional use for an outdoor eating area. This recommendation is subject to the revised conditions recommended by the Planning Division and the comments previously provided by reviewing agencies.

1. That the following conditions are in addition to those stated in the March 10, 2009 approval letter.
2. That the fence shall be set back from the Williamson Street sidewalk, with the setback to match the front building setback of the adjacent two-flat building. As a clarification, this setback should match the wall of the building and not the porch. Traffic Engineering shall also approve the location of the fence for compliance with applicable vision triangle standards.
3. That there is no outdoor amplified sound or live music allowed in the outdoor enclosure.
4. That no chairs or tables are placed in the outdoor enclosure. Submitted plans show a maximum capacity of 47 patrons. This capacity shall be reviewed and approved by the Fire Department, ALRC, and Common Council, but in no event shall it be greater than 47 persons.

**PLEASE NOTE, the original letter of intent included an estimated capacity of 30 persons. Based on testimony at the public hearing, the Plan Commission may wish to specify this as the capacity should it be found necessary to meet the conditional use standards.**

5. That the color and/or stain of both the screening fence and patio enclosure fence are labeled, for approval by Planning Division staff.
6. That there be no food or drink service in the outdoor enclosure.
7. That the applicant prepares and submits one site plan showing all approved site improvements for final sign-off.
8. That the details of the modified fence enclosure (increasing the height of the rear wall from 4 to 6 feet) be provided on sign-off plans, for approval by Planning Division staff.
9. That the applicant confirms that previously-noted sound proofing efforts have been installed to limit sound escaping from the side door and note additional efforts being taken, for approval by staff.