

By: Mark Whisenhunt
Introduced: Oct. 17, 2016
Public Hearing: Nov. 7, 2016
Action: Approved

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION RESOLUTION NO. 16-37**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMIT FOR THE OPERATION OF AN ALCOHOLIC BEVERAGE DISPENSARY (BAR) AT THE 907 CLUB, LOCATED WITHIN TOWNSHIP 17 NORTH, RANGE 3 WEST, SECTION 21; TAX ID# 5428000T00A, SEWARD MERIDIAN.

WHEREAS, an application had been received from RMB LLC, dba. Nine Oh Seven, Corporation for a conditional use permit for the operation of an alcoholic beverage dispensary (bar) at the 907 Club, located within Township 17 North, Range 3 West, Section 21; Tax ID# 5428000T00A, Seward Meridian; and

WHEREAS, MSB 17.70.020(A)(1) requires a conditional use permit for the operation of an alcoholic beverage dispensary (bar); and

WHEREAS, unless this type of use is maintained under and in accordance with a lawfully issued permit, an alcoholic beverage dispensary (bar) is declared to be a public nuisance; and

WHEREAS, an operation of such a land use without a permit is prohibited; and

WHEREAS, Goal LU-1 of the Borough-Wide Comprehensive Plan (2005 Update) is to Protect and enhance the public safety, health, and welfare of Borough residents; and

WHEREAS, Policy LU1-1 Borough-Wide Comprehensive Plan (2005 Update) is to Provide for consistent, compatible, effective, and efficient development within the Borough; and

WHEREAS, Goal LU-2 of the Borough-Wide Comprehensive Plan (2005 Update) is to Protect residential neighborhoods and associated property values; and

WHEREAS, Policy LU2-1 of the Borough-Wide Comprehensive Plan (2005 Update) is to Develop and implement regulations that protect residential development by separating incompatible uses, while encouraging uses that support such residential uses including office, commercial and other mixed-use developments that are shown to have positive cumulative impacts to the neighborhood; and

WHEREAS, Goal LU-3 of the Borough-Wide Comprehensive Plan (2005 Update) is to Encourage commercial and industrial development that is compatible with residential development and local community desires; and

WHEREAS, Policy LU3-1 of the Borough-Wide Comprehensive Plan (2005 Update) is to Develop and implement regulations that provide for non-residential development; and

WHEREAS, the Big Lake Comprehensive Plan (2009) Guide Map shows this parcel within the "*Gateway Corridor*", which is defined as "*mixed-use corridor*" that includes the first row of lots on either side of the road; and

WHEREAS, the comprehensive plan states the "Gateway Mixed Use Corridor" area is intended to balance two objectives: *"to allow for a range of uses and, at the same time, to ensure this corridor provides an attractive entry to Big Lake."* Specific objectives for this area include: Allow a mix of uses, including commercial activities and residential uses; and discourage large scale, industrial uses; and

WHEREAS, the developed properties along South Big Lake Road are predominantly commercial, but some industrial and residential uses are also present; and

WHEREAS, the nearest operating alcoholic beverage dispensary in the Big Lake area is Floaters on Big Lake Road, about one quarter mile from this site; and

WHEREAS, the subject parcel was originally Lots 2, 3, & 4, of Block 1 of the "Rocky Big Lake Subdivision". The "Rocky Big Lake Subdivision" has since been re-subdivided and is now known as, Rocky Lake Subdivision, Rocky Big Lake Subdivision, and Marjorie's Manor. Covenants that apply to the subject property are recorded with the State of Alaska's Recorder's office, in Book 186 Page 928; and

WHEREAS, Rocky Lake Subdivision abuts the proposed conditional use; and

WHEREAS, Alaska Administrative Code 11 AAC 20.922 - Use of Power Boats at Rocky Lake State Recreation Site, prohibits the use of jet skis, jet boats with inboard motors, and airboats; and

WHEREAS, Rocky Lake State Recreation Site is less than 600 feet from the proposed conditional use; and

WHEREAS, Rocky Lake State Recreation Site has quiet hours of 10:00PM to 6:00AM, daily; and

WHEREAS, the application material shows a 2,496 square foot bar with a 150 square foot enclosed smoking room, and an arctic entryway; and

WHEREAS, the application material states the proposed hours of operation are: restaurant/food service is 6:00 a.m. to 12:00 a.m. and liquor service is 10:00 a.m. to 2:00 a.m.; and

WHEREAS, the nearest developed residential lot abuts the subject parcel to the northeast; and

WHEREAS, MSB 8.52.010(A) declares: "The borough hereby finds and declares that noise, volume-enhanced sounds and their concomitant vibration are significant sources of environmental pollution which represent a present and increasing threat to public peace and to the health, safety, and welfare of the residents of the borough. Loud noise and amplified sounds have an adverse effect on the psychological and physiological well-being of persons."; and

WHEREAS, the proposed structure will have a log sided "cabin look"; and

WHEREAS, the applicant has signed an agreement with some neighboring property owners to further make the conditional use compatible with, preserve, and not materially detract from the value, character and integrity of the surrounding area by imposing the following four conditions:

1. No access to Rocky Lake Dr. from Marjorie's Manor Tract A.
2. Establish and maintain a vegetative screening buffer based on the existing 8' high earth berm which we are fine with. The buffer shall also include a continuous row of trees to mitigate noise, 4'-6' tall, spaced 8' apart. Buffer berm shall be hydro-seeded with natural wild grass mix.
3. No outside band stand, outdoor concerts or amplified audio performances.
4. Meet the Dark Sky lighting standards. All lighting shall be downcast with half lens luminaires on the building and parking lot to limit illuminations to adjoining properties. No flashing lights to distract drivers or create a nuisance to neighbors; and

WHEREAS, according to the application material, a combination of foam insulation, sheetrock and a noise reduction product known

as Acoustica Barrier (DB-3, Model #DB348X96BX) will be used in the walls and ceiling to achieve a 90% reduction in noise; and

WHEREAS, according to the application material, triple paned windows will be installed in the proposed structure to achieve a 68% reduction in noise; and

WHEREAS, the nearest school is Big Lake Elementary which is about 4,200 feet from this site. State regulations preclude beverage dispensary licenses within 200 feet of a school; and

WHEREAS, the nearest church is about 1,200 feet from this site. State regulations preclude beverage dispensary licenses within 200 feet of a church; and

WHEREAS, the operator of the proposed use is required to operate in accordance with Alaska Statute, which includes but is not limited to, mandatory alcohol server education; and

WHEREAS, according to the application material, measures which include contacting law enforcement, will be taken to ensure individuals who may be impaired do not leave the premises operating a vehicle, ATV, snow-machine or by walking; and

WHEREAS, the subject property is 4.96-acres in size. The proposed conditional use will occupy approximately 1.85-acres on the east side of the property, which accesses South Rosalie Court; and

WHEREAS, a Matanuska-Susitna Borough driveway permit is required for access onto South Rosalie Court. The applicant has

requested the Borough to conduct a final inspection for the constructed driveway; and

WHEREAS, according to the application material, an arctic entry will be constructed and its door will face east towards Rosalie Court to minimize noise spilling from the building; and

WHEREAS, according to the site plan dated July 15, 2016, an 8-foot tall wooden fence is to be constructed along the northeast property line that abuts a residential development; and

WHEREAS, the adjacent properties to the back (north and northwest) side of this lot are developed with residential homes; and

WHEREAS, the parking lot and driveway have been paved; and

WHEREAS, the operation must comply with the maximum permissible sound level limits allowed, per the requirements of MSB 8.52 - Noise, Amplified Sound and Vibration; and

WHEREAS, South Rosalie Court is not a Matanuska-Susitna Borough maintained road; and

WHEREAS, only two properties, including the proposed conditional use access onto South Rosalie Court; and

WHEREAS, according to a report dated April 30, 2014, by Alaska Rim Engineering, South Rosalie Court has been built to Matanuska-Susitna Borough standards; and

WHEREAS, ITE Trip Generation 7th Edition shows a "Drinking Place" of 2,400-square feet in size is expected to produce 37 trips

per peak PM hour, which does not require a traffic impact analysis;
and

WHEREAS, the Alaska Department of Transportation (ADOT) was solicited for comments. ADOT did not submit any comments for the proposed conditional use; and

WHEREAS, the borough does not have parking standards, however, according to the site plan dated July 15, 2016, 44 parking spaces and two handicap accessible spaces will be provided; and

WHEREAS, the building and parking lot have been designed by Brian McMillen, a registered professional architect in the state of Alaska; and

WHEREAS, the Alcoholic Beverage Control Board (ABC) has no record of violations by Robert Mark Button; and

WHEREAS, no information has been submitted to the borough indicating the applicant is untrustworthy or unfit to conduct business in the borough or that the applicant is a potential source of harm to the public; and

WHEREAS, the Planning Commission has reviewed this application with respect to standards set forth in MSB 17.70.100 and 17.70.110; and

Whereas, the Planning Commission conducted a public hearing on November 7, 2016 on this matter; and

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby adopts the aforementioned

findings of fact and makes the following conclusions of law supporting approval of Planning Commission Resolution 16-37:

1. The conditional use is compatible with, will preserve, and will not materially detract from the value, character and integrity of the surrounding area (MSB 17.70.100(A)(1)(a)).
2. The proposed use with conditions, will not be harmful to the public health, safety, convenience and welfare (MSB 17.70.100(A)(1)(b)).
3. Sufficient setbacks, lot area, buffers or other safeguards have been provided (MSB 17.70.100(A)(1)(c)).
4. There will not be negative effects upon the properties in the area due to such factors as dust, noise, obtrusive advertising and glare (MSB 17.70.100(A)(2)(a)).
5. there should not be any negative effect on the safe, efficient flow of traffic on any highway, arterial, collector or street from which access to and from the establishment is obtained (MSB 17.70.100(A)(2)(b)).
6. Measures are in place to reduce any negative effect upon adjacent and nearby properties (MSB 17.70.100(A)(2)(c)).
7. Adequate parking is being provided (MSB 17.70.100(A)(2)(d)).

8. Access to the premise will not create an unreasonable traffic hazard (MSB 17.70.100(A)(2)(e)).
9. Traffic will not overtax existing road systems (MSB 17.70.100(A)(2)(f)).
10. The proposed conditional use is compatible with the character of the surrounding neighborhood (MSB 17.70.100(A)(2)(g)).
11. There is no evidence that the proposed conditional use will increase the crime rate in the area or increase alcohol-related accidents (MSB 17.70.110(B)(1)).
12. The applicant has not had a liquor license suspended or revoked in the 12 months preceding the application (MSB 17.70.110(B)(2)).
13. The applicant has demonstrated that he is trustworthy and fit to conduct business in the borough or that the he is not a potential source of harm to the public (MSB 17.70.110(B)(3)).

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Planning Commission finds this application does meet the standards of MSB 17.70 and does hereby approve the conditional use permit for the operation of an alcoholic beverage dispensary (bar), with the following conditions:

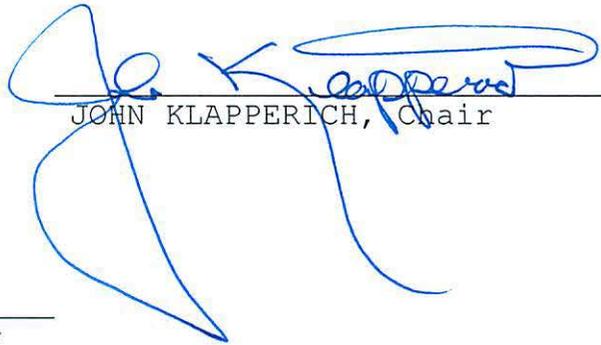
1. The owner and/or operator shall comply with all other applicable federal, state, and local regulations.
2. All aspects of the operation shall comply with the description detailed in the application material and with the conditions of this permit; and an amendment to the Conditional Use Permit shall be required prior to any alteration or expansion of the conditional use.
3. The Matanuska-Susitna Borough driveway permit for access to 2541 S. Rosalie Court shall be finalized prior to operating the conditional use.
4. The applicant shall install indoor sound dampening panels in the bar structure, as detailed in the application. Proof of installation of the sound damping panels shall be provided to the Borough prior to operating.
5. The operation shall comply with the maximum permissible sound level limits allowed, per the requirements of MSB 8.52 - Noise, Amplified Sound and Vibration.
6. Patrons shall enter and exit the enclosed smoking room through the bar only.
7. All parking for the conditional use shall be on-site.
8. There shall be no outdoor amplified sound or entertainment of any kind.

9. Access related to this conditional use shall be made onto South Rosalie Court only. There shall be no access to Rocky Lake Dr. from Marjorie's Manor Tract A.
10. Signage and lighting shall be:
 - a. Non-glare, located and shielded to direct the light towards the ground, in order to minimize light spillage onto adjacent properties and upward into the night sky.
 - b. Lights in the parking lot and signage must be mounted no more than 20 feet above ground.
 - c. Flashing lights are prohibited, with the exception of seasonal holiday lights used during the period directly associated with the holiday.
11. An earthen berm, at least eight feet in height, shall be constructed and maintained adjacent to the north and west sides of the parking lot. The berm shall be vegetated with a wild grass mix to prevent soil erosion. Atop the berm shall be a row of trees, planted approximately eight feet apart and shall be four to six feet in height at the time of planting. As suggested by the applicant the trees shall alternate between deciduous and conifer atop the berm. All vegetation including that shown on the site plan dated July 15, 2016, shall be planted by August 1, 2017.

12. Due to the proximity of the utility easement from the vegetated berm, the applicant shall obtain and provide to the Borough, non-objection letters from all applicable utility companies prior to operating.
13. A wooden fence, at least eight feet in height, shall be constructed and maintained in good repair along the northeast property line as shown on the site plan dated July 15, 2016.
14. In the case where one or more utility company objects to the earthen berm, a wooden fence at least eight feet in height shall be constructed and maintained adjacent to the north and west sides of the parking lot. This fence shall connect to the wooden fence referenced in condition #13.
15. Prior to operating, the applicant shall submit an updated site plan, showing the location of the eight foot tall earthen berm identified in condition #11 or the fence identified in condition #14.
16. Hours of operation shall not exceed: 6:00 a.m. - 10:00 p.m., Sunday through Thursday; and 6:00 a.m. - 12:00 a.m., Friday and Saturday.
17. The operation shall provide parking lot security daily, starting at 10:00 p.m. until the premises are vacated.

Security shall ensure patrons are not loitering or violating the Borough's noise ordinance.

ADOPTED by the Matanuska-Susitna Borough Planning Commission this 7th day of November, 2016.



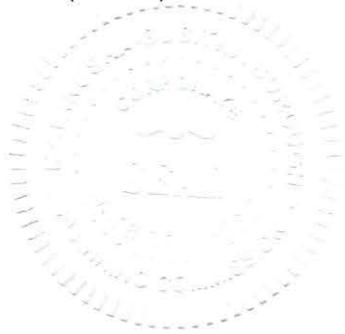
JOHN KLAPPERICH, Chair

ATTEST



MARY BRODIGAN, Planning Clerk

(SEAL)



YES: Klapperich, Anderson, Healy, Kendig, Adams, and Rauchenstein

NO: Vague