



CITY OF EDMONDS

121 5TH AVENUE NORTH • EDMONDS, WA 98020 • (425) 771-0220 • fax (425) 771-0221

HEARING EXAMINER

MIKE COOPER
MAYOR

In the Matter of the Application of)	NO. PLN2010-0066
)	
Craig Hanway on behalf of)	Scott's Bar and Grill
Cesar Casasbeaux/Restaurants Unlimited)	Outdoor Seating CUP
)	
For Design Review and)	FINDINGS, CONCLUSIONS,
a Conditional Use Permit)	AND DECISION
_____)	

SUMMARY OF DECISION

The request for a conditional use permit (CUP) to allow outdoor seating in excess of ten percent of the number of existing interior seats at Scott's Bar & Grill, located at 8115 - 244th Street SW, in Edmonds, Washington is **GRANTED**, subject to conditions.

SUMMARY OF RECORD

Request:

Craig Hanway, on behalf of Cesar Casasbeaux of Restaurants Unlimited/Scott's Bar & Grill (Applicant), requested a CUP to allow 64 outdoor seats in a new outdoor seating area. Because the restaurant has a total of 290 interior seats, the request represents 22% outdoor seating, which is greater than the ten percent outdoor seating allowed outright in the underlying zone, triggering the requirement for conditional use review.

Hearing Date:

The City's Hearing Examiner conducted an open record hearing on the request on January 20, 2011.

Testimony:

At the open record hearing, the following individuals presented testimony under oath:

1. Gina Coccia, Planner, City of Edmonds
2. Craig Hanway, Applicant Representative
3. Cesar Casasbeaux, Applicant
4. Alvin Rutledge

Exhibits:

At the open record hearing the following exhibits were admitted into the record:

- Exhibit 1 City of Edmonds Planning Division Staff Report, dated December 28, 2010, with the following attachments:

Findings, Conclusions, and Decision
City of Edmonds Hearing Examiner
Scott's Bar & Grill CUP, No. PLN2010-0066

1. Zoning & Vicinity Map
2. Land Use Application
3. Applicant's Criteria Statement
4. Site Plan
5. Elevations
6. Seating Plan
7. Photographs of area proposed for development
8. Public Notice and Affidavits

Exhibit 2 Comments from Al Rutledge, received January 6, 2011

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicants requested a CUP to allow outdoor seating in excess of ten percent of the number of existing interior seats at Scott's Bar & Grill, located at 8115 - 244th Street SW, in Edmonds, Washington.¹ The subject property is located in General Commercial (CG) zone. *Exhibit 1, Attachments 1 and 2.*
2. Scott's Bar & Grill is a 5,480 square foot one-story restaurant seating 290 patrons inside. The CG zone allows outdoor dining outright, up to ten percent of the total indoor seating; however, the Applicant wishes to develop a larger outdoor seating area with 64 seats. This would represent 22% of the indoor seating, triggering the requirement for conditional use review. Only outdoor seating in excess of ten percent is being reviewed in the instant application. *Exhibit 1, page 1-; Exhibit 1, Attachments 2 and 6.*
3. The Applicant has submitted a building permit application with plans showing a redesigned parking area west of the restaurant, a retaining wall, and additional landscaping. The overall project would create a 1,025 square foot open air dining pavilion, open on all sides and fully covered by a roof. Outdoor amenities would include seating for 64 guests, a fire place, and additional landscaped screening to the west. The overall project would undergo design review at time of building permit. Alterations to the proposed plans in order to satisfy parking lot, landscaping, and other requirements could result in a change in the total area of outdoor seating or number of outdoor seats. Planning Staff recommended that the permit, if issued, limit approval to no more than 64 seats without additional review for compliance with conditional use criteria. *Exhibit 1, pages 1, 5; Exhibit 1, Attachments 4, 5, and 6; Coccia Testimony.*
4. The Edmonds Community Development Code (ECDC) establishes the following purposes for the CG zone (among others):

¹ The subject property is known as Tax Parcel Number 00491100001505. *Exhibit 1, page 1.*

- C. Provide and encourage the opportunity for different sections along the Highway 99 corridor to emphasize their unique characteristics and development opportunities rather than require the corridor to develop as an undifferentiated continuum. New development should be high-quality and varied – not generic – and include amenities for pedestrians and patrons.
- D. Encourage a variety of uses and building types. A variety of uses and building types is appropriate to take advantage of different opportunities and conditions. Where designated in the comprehensive plan, the zoning should encourage mixed-use or taller high-rise development to occur.
- F. New development should be allowed and encouraged to develop to the fullest extent possible while assuring that the design quality and amenities provided contribute to the overall character and quality of the corridor. Where intense development adjoins residential areas, site design (including buffers, landscaping, and the arrangement of uses) and building design should be used to minimize adverse impacts on residentially zoned properties.

ECDC 16.60.005.

5. The site is located in the Highway 99 Corridor north of Home Depot and Costco, which are just across the King/Snohomish County line in Shoreline. Surrounding development is primarily commercial. To the east is a bank. To the west is a commercial building with three storefronts: a realty office; an auto repair, and a health food retailer. Edmonds Way borders the site to the north. Scott's Bar & Grill shares access with the three retail storefronts to the west, and their parking areas are connected. Further to the west on 244th Street are a multifamily development and a car dealership. The multifamily residential development is more than 300 feet west of the area proposed for outdoor seating. *Exhibit 1, pages 1, 3; Exhibit 1, Attachment 1; Hanway Testimony; Casasbeaux Testimony.*
6. Scott's Bar & Grill hours of operation are: Monday through Thursday, 11:00 am to 10:00 pm; Friday: 11:00 am to 11:00 pm; Saturday 10:00 am to 11:00 pm; and Sunday 10:00 am to 10:00 pm. The Applicant proposes to allow use of the outdoor seating area during all hours of operation. *Exhibit 1, page 4; Exhibit 1, Attachment 3; Casasbeaux Testimony; Hanway Testimony.*
7. The Edmonds municipal code contains provisions regulating noise, which define the following as public disturbance: loud and frequent, repetitive or intermittently continuous sounds made by the unamplified human voice or voices between the hours of 10:00 p.m. and 7:00 a.m. *ECDC 5.30.130.E.* In order to prevent noise from patrons in the proposed outdoor dining area from creating public disturbance noise impacts, Planning Staff recommended that approval be conditioned on the requirement that the Applicant cease seating patrons outdoors at 10:00 pm seven days per week. *Exhibit 1, pages 4-5; Coccia Testimony.*

8. The Applicant noted that there are no residential uses in the immediate vicinity, that the CG zone is the most permissive, and that substantial buffers will exist. The site of the outdoor dining area would be buffered by topography and Edmonds Way, as well as screened by vegetation, to the north. Uses to the east would be screened by the restaurant building itself. To the south, the parking lots separates the proposed outdoor dining area from adjacent 244th Street SW, south of which are large commercial parcels. Uses to the west, including the multifamily residential development, would be screened by the retail building to the west, as well as by proposed additional landscaping. The outdoor dining area would not include music as an amenity. Based on an asserted lack of potential impacts, the Applicant requested that the outdoor dining area be allowed to operate without restriction during normal business hours, which would extend till 11:00 pm on Friday and Saturday nights only. *Exhibit 1, page 4; Exhibit 1, Attachment 1; Hanway Testimony.*
9. None of the retail uses in the building adjacent to the west are open past 10:00 pm and none have outdoor activities that could be adversely impacted by outdoor dining noise impacts. *Casasbeaux Testimony.*
10. The Applicants requested that the conditional use permit run with the land and be available to future operators. *Casasbeaux Testimony; Exhibit 1, Attachment 2.*
11. The Comprehensive Plan designation for the site is "Corridor Development" and it is located within the Highway 99 Corridor. Proposed uses must be found to be consistent with the applicable goals and policies of the Comprehensive Plan, below:
 - B.6. New development should be allowed and encouraged to develop to the fullest extent possible while assuring that the design quality and amenities provided contribute to the overall character and quality of the corridor. Where intense development adjoins residential areas, site design (including buffers, landscaping, and arrangement of uses) and building design should be used to minimize adverse impacts on residentially-zoned properties. *(2009 City of Edmonds Comprehensive Plan, page 64)*

The Highway 99 arterial has been recognized historically as a commercial district which adds to the community's tax and employment base. Its economic vitality is important to Edmonds and should be supported. Commercial development in this area is to be encouraged to its maximum potential. *(2009 City of Edmonds Comprehensive Plan, page 71)*
12. The proposal was considered by the City's Building and Engineering Divisions, Public Works and Parks Departments, and the Fire District. None of the review agencies presented concerns or opposed approval of the request, acknowledging that review for compliance with codes would occur during building permit review. *Exhibit 1, page 2.*
13. Notice of application and public hearing was posted, mailed to neighboring property owners within 300 feet, and published in The Herald, consistent with the notice provisions of ECDC 20.91. *Exhibit 1, page 2; Exhibit 1, Attachment 8.*

14. At hearing, public comment was offered supporting the idea of allowing the Applicant the same hours of operation as the King County businesses across 244th Street SW enjoy, in order to allow the Edmonds-based business to fairly compete. *Rutledge Testimony; Exhibit 2.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner has jurisdiction to hear and decide CUP requests pursuant to ECDC 20.100.010.A.3 and 20.05.010.

Criteria for Review:

Pursuant to ECDC 20.05.010, the Hearing Examiner may not approve a CUP unless the following findings can be made:

- A. That the proposed use is consistent with the comprehensive plan;
- B. Zoning Ordinance. That the proposed use, and its location, is consistent with the purposes of the zoning ordinance and the purposes of the zoning district in which the use is to be located, and that the proposed use will meet all applicable requirements of the zoning ordinance;
- C. Not Detrimental. That the use, as approved or conditionally approved, will not be significantly detrimental to the public health, safety and welfare, and to nearby private property or improvements unless the use is a public necessity; and
- D. Transferability. The hearing examiner shall determine whether the conditional use permit shall run with the land or shall be personal.

Other Applicable Codes:

ECDC 16.60.040.A, Operating restrictions.

A. Enclosed Building. All uses shall be carried on entirely within a completely enclosed building, except the following:

...

- 7. Outdoor dining meeting the criteria of Chapter 17.75 ECDC.

ECDC 17.75, Outdoor Dining

17.75.020 Primary uses requiring a conditional use permit.

Outdoor dining shall be a primary use requiring a conditional use permit in the BN – neighborhood business zone, BC – community business zone, BD – downtown business zone, CW – commercial waterfront zone, and CG – general commercial zone, for outdoor seating which exceeds 10 percent of the existing interior seating in the establishment or more than eight seats, whichever is greater. This use shall be established and maintained only in accordance with the terms of a conditional use permit approved by the hearing examiner as a Type III-B decision under the procedural requirements contained in

Chapter 20.06 ECDC. At a minimum, the conditions considered for imposition by the hearing examiner may include a restriction on operating hours, location of the outdoor seating, and/or buffering of the noise and visual impacts related to the outdoor dining seating. All seating permitted pursuant to the conditional use permit shall be located outside of public rights-of-way. If outdoor seating is approved under these provisions, no additional parking stalls shall be required for the outdoor dining.

Conclusions Based on Findings:

1. With conditions, the proposed outdoor dining use would be consistent with applicable City of Edmonds Comprehensive Plan goals and policies for the “Corridor Development” land use designation within the Highway 99 Corridor. A condition of approval limiting the maximum number of seats to 64 would ensure that development of the proposal would remain consistent with the project as reviewed, preventing potential impacts to adjacent commercial uses. *Findings 5 and 11.*
2. Pursuant to ECDC 16.60.005, the several identified purposes of the CG zone encourage maximum development of commercial parcels in the Highway 99 corridor. Outdoor seating is allowed outright up to ten percent of indoor seating, and in excess of ten percent indoor seating with conditional use approval. Compliance with bulk/dimensional requirements, building and fire codes, and design review standards would be assured through building permit review. *Findings 1, 2, 3, and 4.*
3. As conditioned, the proposal would not be detrimental to the public health, safety, or welfare, and would not have adverse impacts on surrounding uses. The site's location, between two major arterials and surrounded by several intense retail uses, is isolated from residential or other sensitive uses. Existing topography and vegetation would provide buffers, and additional vegetation would be installed, further buffering the adjacent commercial uses from outdoor dining impacts. The nearest residential use is more than 300 feet to the west, and it is buffered by existing buildings and landscaping. Additional landscaping is proposed to the west of the outdoor dining area. There are no other uses in the immediate vicinity that involve outdoor activities of a nature that would be sensitive to the impacts that could arise from outdoor dining. The site is ideally situated to prevent disturbance to other uses from the proposed outdoor dining. A condition of approval would require further review in the event that the Applicant or subsequent operator requests to either expand hours of operation between 10:00 pm and 7:00 am or expand outdoor dining beyond 64 seats. *Findings 5, 6, 7, 8, 9, and 12.*
4. Given the extremely low opportunity for adverse impacts to other uses, the CUP should be transferable to future operators of the business. *Findings 5, 8, 9, and 10.*

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DECISION

Based on the preceding findings and conclusions, the request for CUP to allow outdoor seating in excess of ten percent of the number of existing interior seats at Scott's Bar & Grill, located at 8115 - 244th Street SW, in Edmonds, Washington is **GRANTED**, subject to the following conditions:

1. Design review shall be conducted with the building permit application. The layout and number of seats identified in the site plan in the record at *Exhibit 1, Attachment 6* may change during design review; however, the outdoor dining area shall not exceed a maximum of 64 seats without further conditional use review.
2. Further conditional use review shall also be required in the event that the Applicant or subsequent operator(s) requests to expand hours of operation between 10:00 pm and 7:00 am.

DECIDED this 3rd day of February 2011.



Sharon A. Rice
City of Edmonds Hearing Examiner



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HEARING EXAMINER

MIKE COOPER
MAYOR

RECONSIDERATION AND APPEAL

The following is a summary of the deadlines and procedures for filing requests for reconsideration and appeals. Any person wishing to file or respond to a request for reconsideration or an appeal should consult the relevant ordinances and/or contact the Planning Division of the Development Services Department for further procedural information.

REQUEST FOR RECONSIDERATION

ECDC 20.06.010 contains the procedures for requesting reconsideration of a Hearing Examiner decision. Requests for reconsideration must be filed with the City Planning Director within 10 calendar days of the Hearing Examiner's decision no later than 4:30 p.m. on the last business day of the reconsideration period. Only parties of record (i.e., the applicant, any person who testified at the open record hearing on the application, any person who individually submitted written comments on the application, or the City of Edmonds) may file a request for reconsideration. The grounds for reconsideration are limited to errors of procedure, errors of law or fact, errors of judgment, or the discovery of new evidence that was not known and could not in the exercise of reasonable diligence have been discovered. Reconsideration requests must contain the information specified in ECDC 20.06.010(D) and be accompanied by the required filing fee.

APPEALS

Pursuant to ECDC 17.50.090(A)(3) and ECDC 20.19.050, appeals may be taken from the hearing examiner's decision to the city council under the provisions of Chapter 20.07 ECDC. An appeal must be filed within 14 days after the issuance of the hearing body's written decision. The city council's decision on appeal shall be final. A request for reconsideration is not a condition precedent to an appeal. Judicial appeals must be filed within 21 days from the date of the city's final decision in a given matter pursuant to the procedures established in the Land Use Petition Act.

EFFECT OF REQUEST FOR RECONSIDERATION ON APPEAL DEADLINE

The timely filing of a request for reconsideration stays the Hearing Examiner's decision until such time that the Hearing Examiner issues a decision on reconsideration, and the appeal period commences on the date of issuance of the decision on reconsideration.

LAPSE OF APPROVAL

ECDC 20.05.020(C) states: "Time Limit. Unless the owner obtains a building permit, or if no building permit is required, substantially commences the use allowed within one year from the date of approval, the conditional use permit shall expire and be null and void, unless the owner files an application for an extension of the time before the expiration date."

NOTICE TO COUNTY ASSESSOR

The property owner may, as a result of the decision rendered by the Hearing Examiner, request a change in the valuation of the property by the Snohomish County Assessor's Office.



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HEARING EXAMINER

MIKE COOPER
MAYOR

OFFICE OF THE HEARING EXAMINER CITY OF EDMONDS, WASHINGTON

In the matter of the application of)	
)	
Scott's Bar and Grill)	No. PLN2010-0066
)	
)	
)	
For a)	DECLARATION OF SERVICE
<u>Conditional Use Permit</u>)	

I, Sharon A. Rice, the undersigned, do hereby declare:

- That the "Offices of Sharon Rice Hearing Examiner PLLC" maintains a professional services agreement with the City of Edmonds, Washington for the provision of Hearing Examiner services, and I make this declaration in that capacity; that I am now and at all times herein mentioned have been a citizen of the United States, a resident of the State of Washington, over the age of eighteen (18), and competent to be a witness and make service herein; and that on February 3, 2011, I served a copy of the decision in case PLN-2010-0066 upon the following individuals at the addresses below by first class US Mail:

Cesar Casasbeaux
1818 N. Northlake Way
Seattle, WA 98103

City of Edmonds Planning Division
121 Fifth Avenue North, First Floor
Edmonds, WA 98020

Craig Hanway, CA & DS, Inc.
1905 - 10th Avenue W #101
Seattle, WA 98119

Clerk of the Edmonds City Council
121 Fifth Avenue North, First Floor
Edmonds, WA 98020

Alvin Rutledge
7101 Lake Ballinger Way
Edmonds, WA 98026

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, this 3rd day of February 2011, at Edmonds, Washington.


Sharon A. Rice