

## BOARD OF ALDERMEN

ITEM NO. C(1)

### AGENDA ITEM ABSTRACT

MEETING DATE: JUNE 24, 2008

**TITLE: 110 BREWER LANE CUP MINOR MODIFICATION**

<b>DEPARTMENT:</b> PLANNING DEPARTMENT	<b>PUBLIC HEARING:</b> YES No <u>X</u>
<b>ATTACHMENTS:</b> A. RESOLUTION B. LAND USE PERMIT APPLICATION C. 110 BREWER LANE CUP DOCUMENT D. ORIGINAL CUP SITE PLAN E. PARKING JUSTIFICATION LETTER F. REQUEST FOR NONCONFORMING SITUATIONS TO REMAIN LETTER	<b>FOR INFORMATION CONTACT:</b> JEFF KLEAVELAND, 918-7332

### PURPOSE STATEMENT

Edwin Andrews, Inc. has submitted an application for a Minor Modification of the existing 110 Brewer Lane Conditional Use Permit. This modification is a necessary component of “The Butler” CUP/CU Rezoning proposed for the adjacent property. If for some reason the adjacent project is not approved, then this modification request will be withdrawn.

### INFORMATION

Assuming The Butler CUP/CU Rezone request is approved, this modification request will need to be executed to formally record the required (and requested) changes to this property as it relates to the development of The Butler project.

The property is currently zoned B-1(G) and is identified by Orange County tax map number 7.92.A.21. The property has sixteen (16) three bedroom apartment units and a 6,500 square foot (sf) Tae Kwan Do studio.

The proposed modification of this property enables access to “The Butler”, a proposed five story mixed use building on the adjacent property. Beyond securing said access, the Minor Modification will include expanded parking (17 spaces) and associated infrastructure (including a dumpster/recycling area for the Butler). The 110 Brewer Lane Minor Modification does not include a rezoning request.

Some details of this modification are included in “*The Butler*” mixed-use building Conditional Use Permit/CU Rezoning agenda item staff report. Certain details, however, require additional details as discussed below:

#### Parking

The 110 Brewer Lane CUP property, which has sixteen residences and an exercise studio (use 6.102), was approved with 65 existing parking spaces (10 of which are compact). After the *minor modification* it will have 82 spaces (an increase in 17 standard spaces). The applicant’s justification for this increase is based upon the experience of periodic parking insufficiency per the attached justification letter (Attachment E). Once “The Butler” mixed use building is completed, the additional capacity on this property can serve the peak parking needs of both properties. Because of this, staff recommends the following condition:

- CUP Condition: That the applicant be allowed to deviate from the CUP-approved parking requirement of 65 spaces by providing 82 spaces based upon their written parking justification letter provided with this agenda item (Attachment E). The letter states that they have found the parking to be insufficient at times.

#### Proposed Exterior Lighting:

The applicant is proposing five new lighting poles (with shielded fixtures) in the revised parking configuration. These are configured to meet the standards of the ordinance though two of the fixtures along the Libba Cotten Bikeway need to provide additional shielding to bring the light levels down to .2fc at the property line. Because of this situation, staff suggests that any decision be withheld to a later meeting pending a corrected lighting plan:

- Prior to decision: That, prior to the Board of Aldermen making a decision on the Minor Modification request, the applicant must submit a corrected lighting plan exhibiting conformance with the applicable LUO provisions (i.e.: Section 15-243 of the LUO).

#### Existing Nonconformities

Since the 110 Brewer Lane CUP was approved in 1994, some details of the project have been made nonconforming by new amendments to the LUO. Section 15-64 of the LUO allows the Board to request elimination of nonconforming situations when the cost of doing so is clearly proportional to the benefits of correcting the situation.

In particular, the completed minor modification will be nonconforming in the following areas:

- 1) the *Downtown Livability Area (DLA) and Urban Amenities* provisions of Section 204 of the LUO,
- 2) The recreation requirements of 15-198
- 3) the *existing* exterior lighting requirements of Sections 15-242 and 243 of the LUO and
- 4) the stormwater provisions of Article XVI of the LUO. The applicant has provided a "Request for Nonconforming Situations to Remain" letter that addresses these items (Attachment F).

Though 110 Brewer Lane has a small interior courtyard serving the residences and users of the property, the applicant argues that further retrofitting 110 Brewer Lane to provide additional downtown livability areas and urban amenities in light of the proposed modification will prove impractical and disproportionately expensive (Attachment F).

The recreation provisions of Section 15-196 of the LUO require new projects to provide facilities equivalent to points assessed on a per unit basis. For 110 Brewer Lane's sixteen units, this would amount to 188.96 recreation points (16 du x 11.81). Though the property contains a 5900 sf Tae Kwan Do studio which is a valuable recreation amenity, use of the studio is based on membership, interest and the payment of fees. For this reason it cannot be considered as a facility that fully satisfies the recreational requirements of Section 15-196.

Per the original CUP the following recreation facilities were proposed, a courtyard barbeque area, a basketball hoop and court, a bike path easement, and a gazebo. The minor modification currently eliminates the basketball area. The gazebo was never constructed and a weight room in the Tae Kwan Do

facility was credited toward these points. Staff is still working with the applicant to determine the best way to avoid decreasing the number of recreation points provided on site and will offer further information in August.

With respect to existing lighting, the facility's light poles that meet with the height requirements of the ordinance (15') but exceed the illumination provisions with poorly shielded light fixtures throughout the property. Though the location of the poles will make it difficult to satisfy the provisions of the ordinance in some areas, the replacement of their fixtures will substantially improve the situation without costly relocation of the poles. Because of this, staff recommends that the Board consider imposing the following condition:

- That prior to construction plan approval, the existing light fixtures on the existing light poles throughout the parking area be replaced with full cutoff fixtures that are fully shielded along all property lines.

Note that the applicant is not at this time agreeing to the suggested condition.

Regarding stormwater infrastructure, 110 Brewer Lane has been modified to serve not only its own needs but those of The Butler. All *new* impervious surfaces are being treated for water quality *and* water quantity while treatment for the pre-existing impervious surface is allowed to remain as permitted (ten year storm, water quantity only). However, in the proposed stormwater system, the detention capacity for the existing impervious surface has been upgraded to the 25 year storm. The project has been reviewed by the Town Engineer and is found to be in compliance with our ordinance; the applicant argues in his letter that the grandfathered non-conformity with regards to the existing impervious surface water quality be allowed to remain (Attachment F).

Some of the remaining conditions in the staff recommendations below are repeated from The Butler project recommendations as they directly pertain to the 110 Brewer Lane site. Please refer to The Butler staff report for clarification. As a matter of procedure, it is necessary to record some conditions on the face of both permits to ensure that all encumbrances are in place.

## **RECOMMENDATION**

Upon receiving a corrected lighting plan and additional information regarding recreation facilities that exhibit compliance with the LUO, Town staff expects to recommend that the Board of Aldermen approve the Minor Modification to the 110 Brewer Lane Conditional Use Permit to allow: necessary driveway access to 120 Brewer Lane (the location of the proposed Butler mixed use building), parking expansion, and, infrastructure improvements, subject to the following conditions:

1. That the applicant be allowed to deviate from the CUP-approved parking requirement of 65 spaces by providing 82 spaces based upon their written parking justification letter provided with this agenda item (Attachment E). The letter states that they have found the parking to be insufficient at times.
2. That prior to construction plan approval, the existing light fixtures on the existing light poles throughout the parking area be replaced with full cutoff fixtures that are fully shielded along all property lines.

3. That prior to construction plan approval the applicant provide to the Town evidence of a shared-access and use easement (or equivalent) agreed upon by the owners of the 110 Brewer Lane mixed use project so as to secure access to the proposed project at 120 Brewer Lane at 110 Brewer Lane. Such shared uses shall be shown and referenced on any plat recorded for the projects as well.
4. That the applicant must receive a Town of Carrboro driveway permit for Brewer Lane, prior to construction plan approval, if found to be necessary.
5. That, prior to construction plan approval, a maintenance agreement for stormwater and solid waste facilities shared by the 110 and 120 Brewer Lane properties and their owners be approved by the Town Attorney.
6. That screening gates be provided for the proposed dumpster to prevent views of the dumpster from the south, while still allowing access as needed.
7. That the applicant shall provide to the Zoning Division, prior to the recordation of the final plat for the project or before the release of a bond if some features are not yet in place at the time of the recording of the final plat, Mylar and digital as-builts for the stormwater features of the project. Digital as-builts shall be in DXF format and shall include a base map of the whole project and all separate plan sheets. As-built DXF files shall include all layers or tables containing storm drainage features. Storm drainage features will be clearly delineated in a data table. The data will be tied to horizontal controls.
8. That the developer shall include a detailed stormwater system maintenance plan, specifying responsible entity and schedule. The plan shall include scheduled maintenance activities for each unit in the development, (including cisterns, bioretention areas, swales, check dams, and irrigation pond), performance evaluation protocol, and frequency of self-reporting requirements (including a proposed self-reporting form) on maintenance and performance. The plan and supporting documentation shall be submitted to Town engineer and Environmental Planner for approval prior to construction plan approval.
9. That prior to construction plan approval the design for the landscape island along the western property line (on the east side of "The Butler" mixed-use building) be shortened as necessary to facilitate movement of solid waste and recycling trucks, as recommended by Orange County Solid Waste.
10. That the applicant must obtain all necessary temporary and permanent easements prior to construction plan approval.