

**BOARD OF ALDERMEN**

ITEM NO. C(1)

**AGENDA ITEM ABSTRACT  
MEETING DATE: AUGUST 26, 2008**

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

<b>DEPARTMENT:</b> PLANNING DEPARTMENT	<b>PUBLIC HEARING:</b> YES <input checked="" type="checkbox"/> NO
<b>ATTACHMENTS:</b> <b>A. RESOLUTION</b> <b>B. LAND USE PERMIT APPLICATION</b> <b>C. 110 BREWER LANE CUP DOCUMENT</b> <b>D. ORIGINAL CUP SITE PLAN</b> <b>E. PARKING JUSTIFICATION LETTER</b> <b>F. REQUEST FOR NONCONFORMING SITUATIONS TO REMAIN LETTER</b>	<b>FOR INFORMATION CONTACT:</b> <b>PATRICIA MCGUIRE, 918-7327</b> <b>JEFF KLEAVELAND, 918-7332</b>

**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 that project is approved, this modification will need to be executed as a matter of procedure, thereby formally recording the required (and requested) changes to this property made necessary by “The Butler” project. If that project is not approved, this modification request will be withdrawn.

**INFORMATION**

The property is currently B-1(G) and is identified respectively by Orange County tax map numbers 7.92.A.21. The property has sixteen (16) three bedroom apartment units and a 6500 sf Tae Kwan Do studio.

The proposed modification of this property is necessary to enable 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. The 110 Brewer Lane Minor Modification does not include a rezoning request.

Details of this modification are included in “*The Butler*” mixed-use building Conditional Use Permit/CU Rezoning agenda item staff report. However, those things requiring additional detail are 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).

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.

- CUP Condition: That, prior to construction plan approval the site lighting for the new lighting units be revised to meet the provisions of 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 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 6500 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.

To pay a fee in lieu of these points would cost \$186.98/point or \$35,331.74, a cost that the applicant feel's is disproportionate to the benefits of correcting the situation, especially considering the spatial constraints of the property (Attachment F).

With respect to lighting, the facilities existing 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 the following condition:

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

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).

The remaining conditions in the staff recommendations below are redundant with many of the conditions that affect this property, as drafted for “The Butler” CUP. Please refer to that staff report for clarification. As a matter of procedure, these conditions must be recorded with this property to fully encumber the proposed use for both properties.

### **RECOMMENDATION**

Town staff recommends 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).
2. That the existing light fixtures on the existing light poles throughout the parking area be replaced with full cutoff fixtures that are fully shielded along the all property lines.
3. That prior to construction plan approval the applicant provide to the Town evidence of a shared-access 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 and that said easement will be shown and referenced on the final plat.
4. That screening gates be provided for the proposed dumpster to prevent views of the dumpster from the south, while still allowing access as needed.
5. That, prior to final plat approval, a maintenance agreement for stormwater facilities used jointly by the 110 and 120 Brewer Lane properties and their owners be approved by the Town Attorney.
6. 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.

7. 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.
8. 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.
9. That prior to construction plan approval, a shared-use and maintenance easement be approved by the Town Attorney and recorded regarding the solid waste facility arrangement for the both the 110 and 120 Brewer Lane Properties.