

To: **Planning Commission**  
From: **Melissa Sonnek, City Planner**  
Date: **September 21, 2021**

**PC Case 21-11 - Conditional Use Permit for On-Sale Beer and Wine and Outdoor Seating at 870 Dodd Rd – El Cubano**

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**REQUEST:**

Gladys Pagan, on behalf of El Cubano, is requesting two conditional use permits for the property at 870 Dodd Rd.

1. On-Sale Liquor, and
2. Outdoor seating area.

**ATTACHMENTS:**

Application  
Public Notice  
Site Layout



## EXISTING LAND USES AND ZONING:

	Land Use	Zoning
<b>Subject Property</b>	Commercial	B2 – Neighborhood Business
<b>Properties to North</b>	Residential	R2 – Two Family Residential
<b>Properties to East</b>	Residential	R2 – Two Family Residential
<b>Properties to South</b>	Residential	R1 – Single Family Residential
<b>Properties to West</b>	Residential ( <i>St. Paul</i> )	R2 – Townhouse Residential ( <i>St. Paul</i> )

## ANALYSIS:

### Zoning Ordinance

#### Section 153.156 Conditional Uses

Within the B-2 Neighborhood Business District, no structure or land shall be used for the following uses, except by conditional use permit:

- (F) On-sale liquor establishments;
- (G) Outdoor seating, subject to following provisions.
  - (1) Seating areas shall be shown on a seating plan, identifying the number of tables and chairs and their approximate location.
  - (2) Seating areas shall be located on private property.
  - (3) Seating areas shall not obstruct required accesses, entrances or exits.
  - (4) A minimum of a four-foot walkway shall be provided between tables.
  - (5) If the principal use abuts a residential zoning district, outdoor electronic speaker devices shall not be operated between 9:00 p.m. and 7:00 a.m.
  - (6) Tables and chairs shall be maintenance free furniture that enhances the appearance of the business.
  - (7) No food or beverages shall be served outside of the seating area.
  - (8) Lighting shall only illuminate the seating area. Lighting levels must not exceed zero foot-candles at abutting property lines.
  - (9) All tables and chairs shall be kept in a clean and sanitary manner. Outdoor trash receptacles shall be provided.
  - (10) For outdoor seating areas for up to eight seats:
    - (a) No tables, chairs or other furnishings shall remain in the seating area when the business is closed;
    - (b) No additional parking spaces shall be required; and
    - (c) No alcoholic beverages shall be served in the seating area, except for non-fortified wine.

(11) For outdoor seating areas for more than eight seats:

- (a) The seating area shall be enclosed by approved landscaping and fencing;
- (b) The outdoor seating area shall be entered only through the principal building. There shall be no exit gates from the outdoor seating area unless required by the Building Code;
- (c) In addition to the required number of parking spaces pursuant to the principal use, additional parking shall be required at a ratio of one parking space for every four seats in the outdoor seating area; and
- (d) Signage shall be posted that prohibits the consumption of alcohol outside of the seating area.

## **PROPOSAL:**

El Cubano approached City Staff and expressed an interest in acquiring a liquor license to expand their existing menu to sell beer and wine inside their restaurant as well as on the outdoor patio/seating area. Since this seating area was set up during covid with social distancing precautionary requirements, it was never formally approved by the City. Therefore, in addition to the liquor license and the on-sale CUP, the applicant is also requesting a CUP for the outdoor seating area. This will require the seating area be enclosed to meet code requirements.

### **1) On-sale liquor, beer and wine**

As detailed in the code requirements outlined above, in order to serve beer and wine, a Conditional Use Permit is required along with an annual liquor license from the City. Therefore, Staff is recommending a condition of approval that the applicants apply for and obtain an annual liquor license from the City.

### **2) Outdoor Seating**

In addition, the site currently has an outdoor seating/patio area that seats up to 36 customers, 3 cabanas seating 4 people, 5 tables seating 4 people, and 2 tables seating 2 people (see attached site layout). Staff is recommending a condition of approval that the applicant adhere to Section 153.156(G) of the ordinance, including the use of maintenance free furniture.



In order to serve alcohol on the outdoor seating/patio, the code requires that the patio be fully enclosed with ingress/egress only provided through the building (see section 153.156(G)(11)(b) above). As a result, Staff is recommending a condition of approval that requires the patio to be enclosed by appropriate fencing if alcohol is served.

City Staff informed the applicant that necessary ingress/egress along with the fencing could cause a few tables/seats to be lost. The applicant has stated they are comfortable with this.

### **Hours of Operation**

#### **Current**

Tuesday – Sunday 11am – 9pm

#### **Proposed**

Monday – Sunday 11am – 10pm

### **Employees**

Full time – 4 per shift (2 servers and 2 cooks)

### **Parking**

Per code, the required minimum number of parking stalls is 45 stalls (36 for restaurant and 9 for outdoor patio). With this in mind, the site has operated with 3 parking stalls since at least the mid to early 1990's, likely longer since according to Dakota County property records the building was built in 1929. While there have been many different businesses that have occupied the space throughout the years it was more or less operating with a parking lot that was considered legal non-conforming (or grandfathered).

However, by converting the three parking spaces to an outdoor patio, this caused the site to no longer be legal non-conforming and consequently must be brought up to present code requirements. The options available would be either a variance (for 36 stalls) or the expansion of the Smith/Dodd Overlay. More information on the specifics of the expansion of this zoning overlay are included in the next item. However, in short one of the unique flexibilities offered by this overlay is the ability for commercial sites to forego the required minimum parking. Staff believes this to be the best and most appropriate option as this site, as well as the other sites being incorporated into the overlay, have operated with very little off-street parking and will likely continue to do so even after future redevelopment.

### **STAFF RECOMMENDATION:**

**Staff recommends the APPROVAL of the Conditional Use Permit to allow on-sale liquor and an outdoor seating area in a B2 – Neighborhood Business at 870 Dodd Road, subject to the following conditions:**

1. The approval of the conditional use permits is contingent upon the approval of a the expansion of the Smith/Dodd Overlay,
2. The applicant shall apply for and obtain all applicable building permits,
3. The applicant shall apply for and maintain a valid liquor license with the City of West St. Paul,
4. The applicant shall adhere to the outdoor seating requirements listed in Section 153.156(G) of the city ordinance,
5. The applicant shall provide details on the existing/proposed outdoor seating and fencing with the submittal of a building permit,
6. In order to serve alcohol on the outdoor patio, the patio must be enclosed by appropriate fencing with entry only provided through the interior of the building or as otherwise required by fire and/or building code, and
7. All delivery services shall be restricted to between the hours of 7:00 AM and 9:00 PM.