

CLERK'S OFFICE
AMENDED AND APPROVED
Date: 3-2-04

Submitted by: Chair of the Assembly at
the Request of the Mayor
Prepared by: Planning Department
For reading: March 2, 2004

Anchorage, Alaska
AR 2004-38

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY APPROVING
AN ALCOHOLIC BEVERAGES CONDITIONAL USE FOR A NEW RESTAURANT
LICENSE (BEER AND WINE) IN THE B-3 DISTRICT FOR HONG KONG
RESTAURANT, INC. PER AMC 21.40.180 D.8, LOCATED AT BLOCK 1, LOT 2B,
CLAYTON SUBDIVISION; GENERALLY LOCATED AT 2412 SPENARD ROAD.

(Case 2004-042)

THE ANCHORAGE ASSEMBLY RESOLVES:

Section 1. The conditional use permit for an Alcoholic Beverages Conditional Use for a Restaurant License in the B-3 District for Hong Kong Restaurant, Inc. per AMC 21.40.180 D.8 located at Block 1, Lot 2B, Clayton Subdivision, meets the applicable provisions of AMC 21.50.020 and AMC 21.50.160.

Section 2. The conditional use permit for an Alcoholic Beverages Conditional Use is approved subject to the following conditions:

1. A Notice of Zoning Action shall be filed with the State Recorder's Office within 120 days of the Assembly's approval of a final conditional use approval for a Restaurant License in the B-3 District.
2. The use of the property by any person for the permitted purposes shall comply with all current and future Federal, State and local laws and regulations, including but not limited to, laws and regulations pertaining to the sale, dispensing, service and consumption of alcoholic beverages and the storage, preparation, sale, service and consumption of food. The owner of the property, the licensee under the Alcoholic Beverage Control License and their officers, agents and employees, shall not knowingly permit or negligently fail to prevent the occurrence of illegal activity on the property.
3. Upon demand, the applicant shall demonstrate compliance with a "Liquor Server Awareness Training Program" approved by the State of Alaska Alcohol Beverage Control Board, such as or similar to the program for Techniques in Alcohol Management (T.A.M.).
4. A copy of the conditions imposed by the Assembly in connection with this conditional use approval shall be maintained on the premises involved at a location visible to the public.

5. The Beverage Dispensary License at this location shall be removed upon approval of this conditional use.
6. Reconfiguring the parking spaces in the right of way along Spenard Road to meet current standards. and/or to establish a non-conforming rights to these conditions.
7. Submitting a Joint Access Agreement for Block 1, Lots 1A, 2B and 3A; and a Joint Parking Agreement for lots 2B and 3A. and/or to establish a non-conforming rights to these conditions.
8. Prior to August 15, 2004, installing landscaping per B-3 zoning for Block 1, Lots 2B and 3A; and Block 2 Lot 3A. and/or to establish a non-conforming rights to these conditions.
9. Obtaining a variance for a noncontiguous parking lot, Block 2, Lot 3A; and a Joint Parking Agreement for Block 1, Lot 2B and Block 2, Lot 3A. and/or to establish a non-conforming rights to these conditions.
10. Resolving with the Traffic Department that all parking areas are improved to appropriate standards (striping, parking space size, lane widths, etc).
11. Hours of operation shall be 11:30 AM to 10:00 PM, seven days a week.

Section 3. Failure to comply with the conditions of this conditional use permit shall constitute grounds for its modification or revocation.

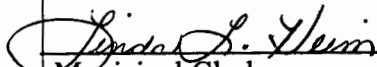
Section 4. This resolution shall become effective immediately upon passage and approval by the Anchorage Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 2nd
day of March 2004.

ATTEST:



Chair


Municipal Clerk

(2004-042)
(001-255-02)



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 138-2004

Meeting Date: March 2, 2004

From: Mayor

Subject: AR 2004-38

Alcoholic Beverages Conditional Use for a New Restaurant (Beer and Wine) License in the B-3 District for a restaurant per AMC 21.40.180 D 8. for the Hong Kong Restaurant.

Hong Kong Restaurant, Inc. has made an application for a conditional use permit for an Alcoholic Beverages Conditional Use in the B-3 District for a Restaurant (beer & wine) License per AMC 21.40.180 D.8. The restaurant has been in operation at the southwest corner of West Fireweed Lane and Spenard Road and currently has a Beverage Dispensary License. If this Restaurant License is approved, the existing Beverage Dispensary License is to be transferred to a restaurant at 223 E. 5th Ave. (Chepo's Fiesta Mexican Restaurant). The owner estimates food service will be 80% of sales and the beer and wine service will be 20% of sales. Hours of operation will be 11:30 AM to 10:00 PM, seven days a week.

The property was platted in 1964, and the original structure was built in 1965. The B-3 zoning district did not require any landscaping at that time and there is no current landscaping for the building or the parking lots. The current code requires landscaping, and staff has recommended some new landscaping requirements. There are several parking spaces along Spenard Road which are in the right of way and need to be relocated. There is a parking lot on the west side of the restaurant which requires an Access Agreement for it to be to be legally used with this facility. A Joint Access Agreement is needed for the affected lots. There is another parking lot used by the restaurant on the south side of 25th Avenue, and that parking lot requires a variance for a noncontiguous parking lot.

Alaska Statute 04.11.100, Restaurant or eating place license, restricts new restaurant licenses from being located in a building with a public entrance within 200 feet of the public entrance of a church building, or from being located within 200 feet of school grounds. To our knowledge, there are no churches, schools or daycare centers within 200 feet. The closest daycare is at 19th Avenue and Spenard Road, about six blocks away. The closest schools are West High and Romig Junior High, approximately 1,300 feet to the northwest.

AMC 21.50.160 B. requires that a list of all alcohol licenses located within a minimum of 1,000 feet of the proposed conditional use be provided. There are fifteen (15) licenses within 1,000

1 feet. The closest license is a Package Store License directly to the east of this property, and on
2 the east side of Spenard Road.

3
4 The Anchorage Police Department did not specifically comment, but their report indicates no
5 criminal history for the applicant and no alcohol related incidents at this location in the past two
6 years. Two hundred forty one public hearing notices were mailed and at the time this report
7 was written, no comment had been received.

8
9 According to the Treasury Division, there are no delinquent Personal Property Taxes and or
10 Real Property Taxes owing. The Department of Health and Human Services comments are in
11 the staff report and they had no negative comments.

12
13 This conditional use for alcoholic beverages in the B-3 District for a Restaurant License
14 generally meets the required standards of Title 21.50.020, 21.50.160 and AS 04.11.090.

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19 Prepared by: Jerry T. Weaver Jr., Zoning Administrator, Planning Department
20 Concur: Mary Jane Michael, Director, Office of Economic and Community
21 Development
22 Concur: Denis C. LeBlanc, Municipal Manager
23 Respectfully submitted: Mark P. Begich, Mayor

**PLANNING DEPARTMENT
STAFF ANALYSIS
CONDITIONAL USE - ALCOHOLIC BEVERAGE SALES**

DATE: March 2, 2004

CASE NO.: 2004-042

APPLICANT: Hong Kong Restaurant Inc.

BUSINESS OWNER: Tung C. Yan

REQUEST: Conditional Use for an Alcoholic Beverages Conditional Use for a Restaurant License per AMC 21.50.020 and 21.50.160 in the B-3 District (AMC 21.40.180).

LOCATION: Clayton Subdivision, Block 1, Lot 2B

STREET ADDRESS: 2412 Spenard Road

COMMUNITY COUNCIL: Spenard

TAX PARCEL: 001-255-02

ATTACHMENTS

1. Location Map
2. Departmental Comments
3. Application
4. Posting Affidavit
5. Historical Information

RECOMMENDATION SUMMARY:

Approval with conditions

SITE:

Acres: The lot is 9,190 sq ft. (0.2 ac)

Vegetation: none

Zoning: B-3 general business district

Topography: Level

Existing Use: Restaurant

Soils: Public water and public sewer

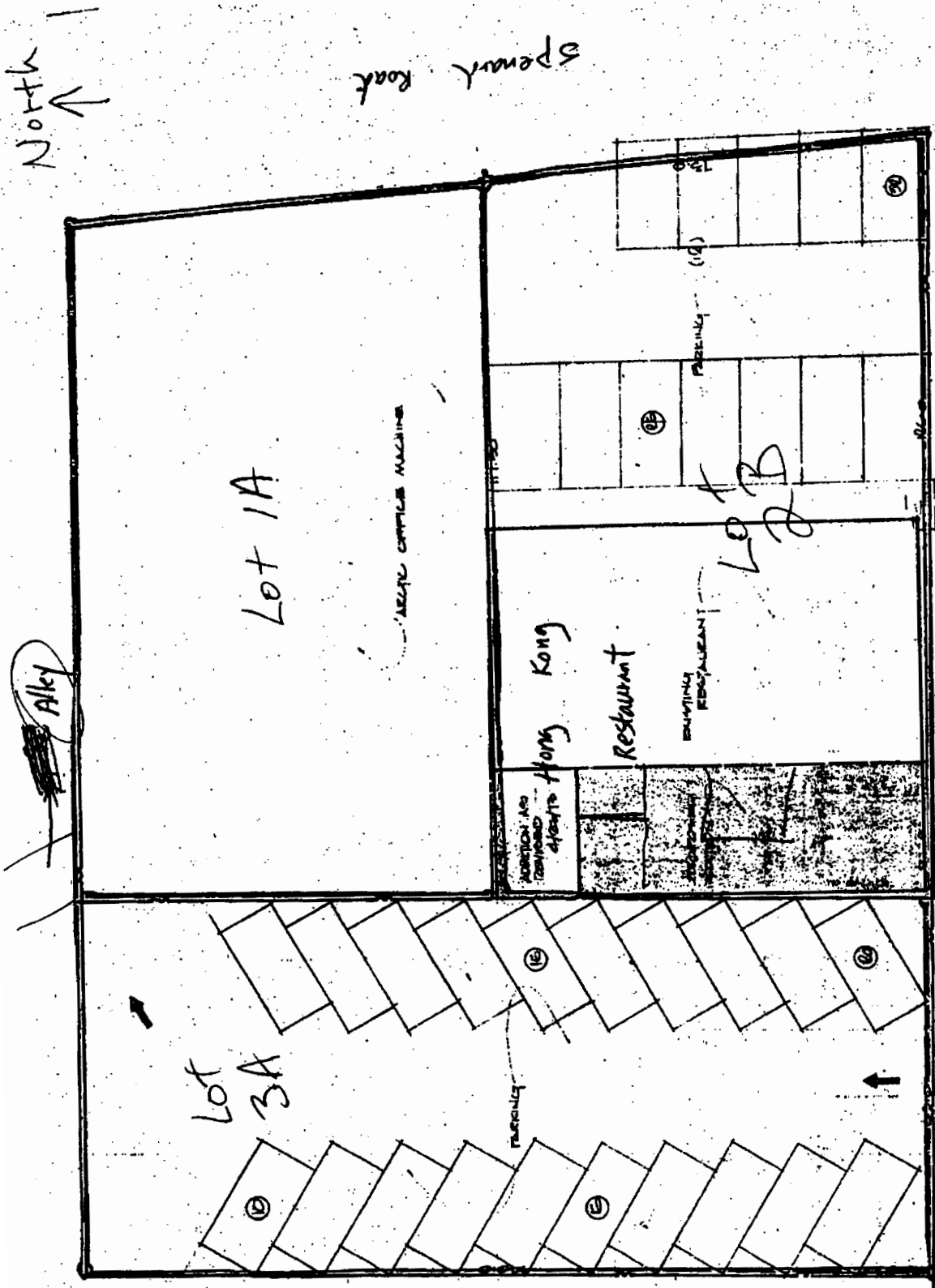
There are 20 additional parking spaces on a lot on 25th Ave behind Shell gas station, across from restaurant lot usage - Clayton, Bldg 2 Lot 3A

Parking Lot
Bldg 2 Lt. 3A
↙

Block 1

25th Ave

GENERAL NOTES



ALCOHOLIC BEVERAGE CONTROL BOARD

LICENSED PREMISES DIAGRAM

D/R/A: Hong Kong Restaurant

PREMISES LOCATION 2412 Spaulding Rd

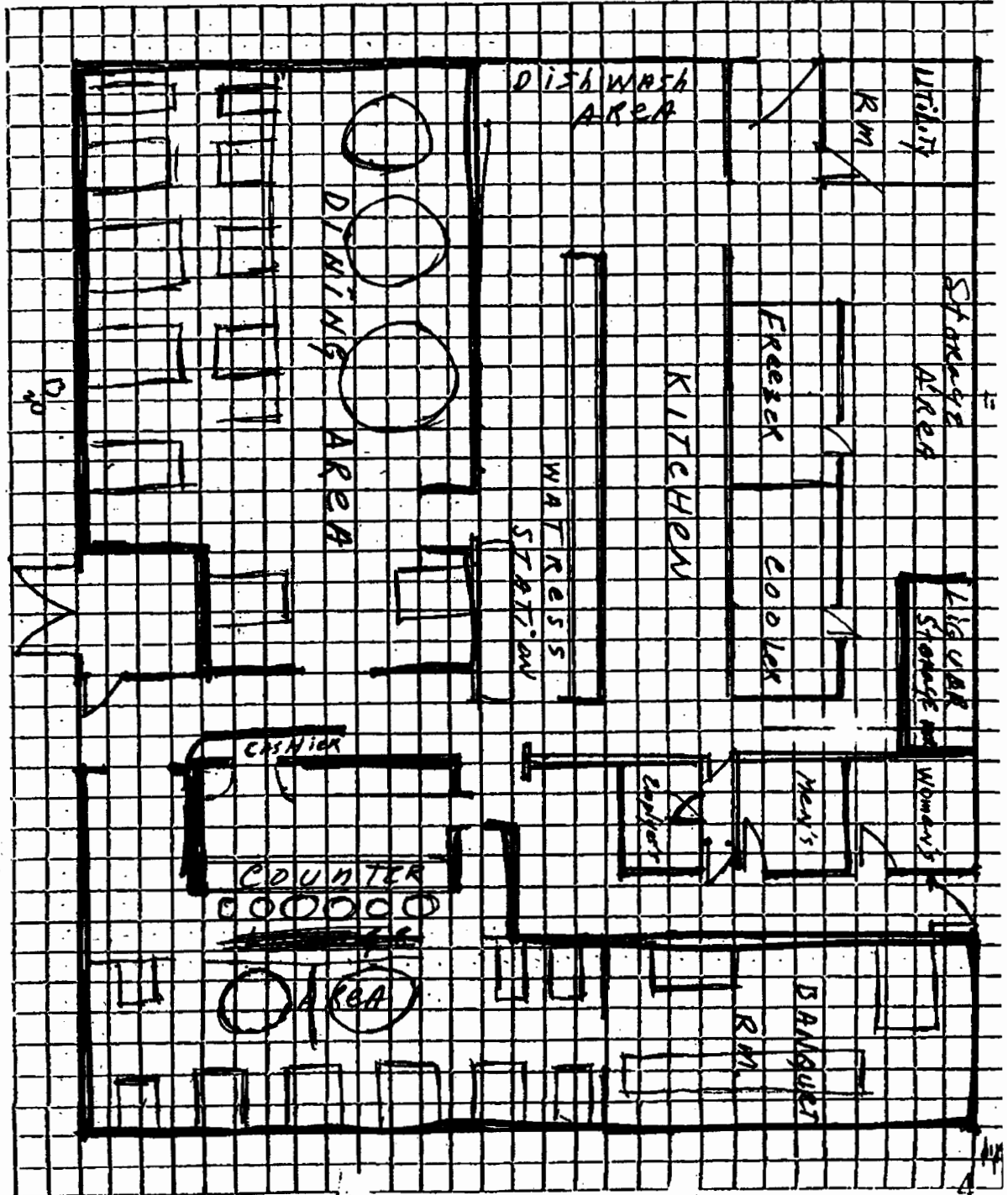
INSTRUCTIONS: Draw a detailed floor plan of your current or proposed licensed premises on the graph below; show all entrances and exits, and all fixtures such as counters, bars, coolers, stages, etc.

Indicate scale used by x after appropriate statement.

SCALE A 1 square = 1 sq. ft.

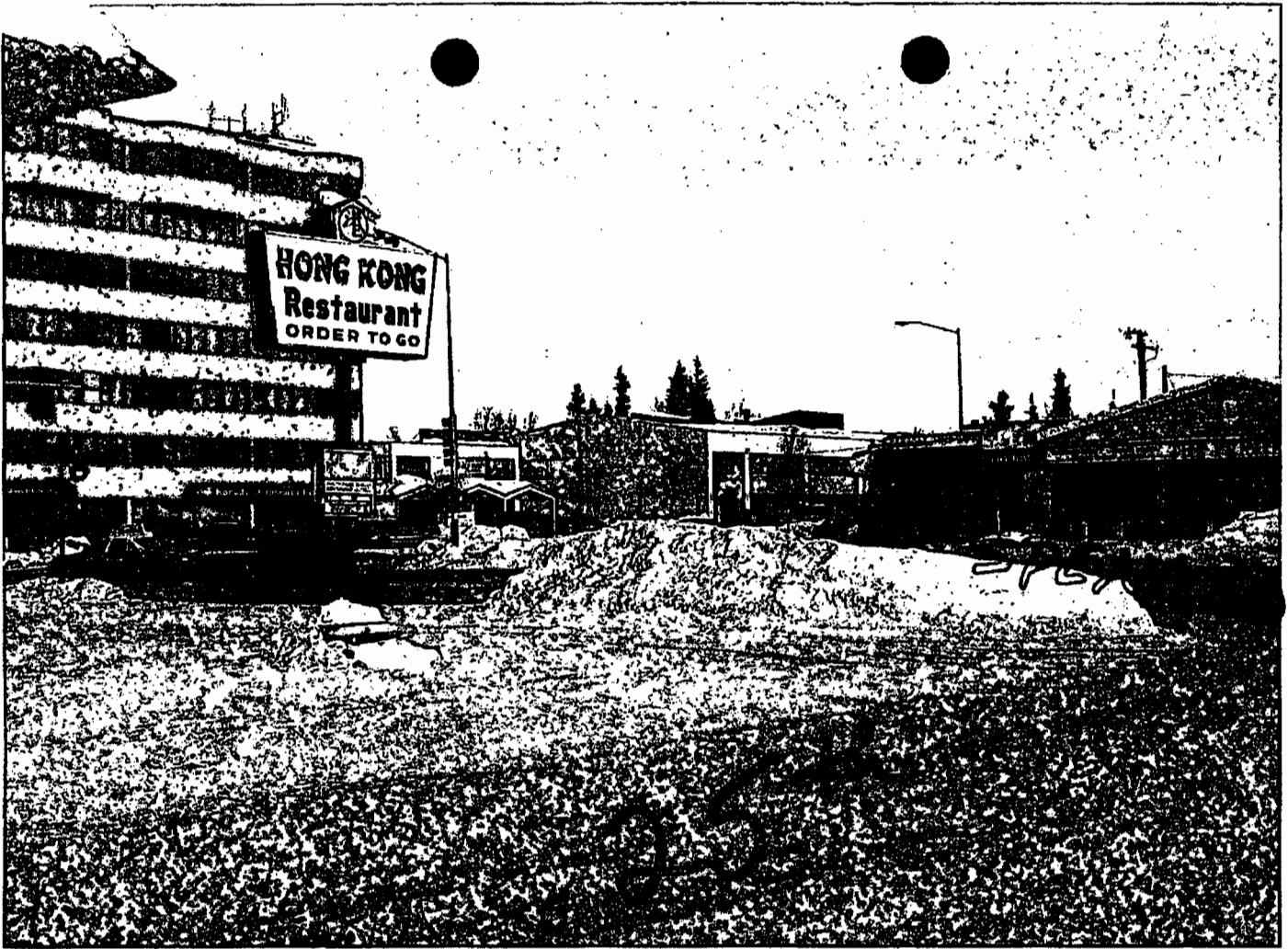
SCALE B 1 square = 2 sq. ft.

Outline the area to be designated for sale, service and consumption of alcoholic beverages in RED.





From intersection of Sperand &
25th





proposed(?) parking
on west side
of bldg.



parking area on
west side of
bldg.

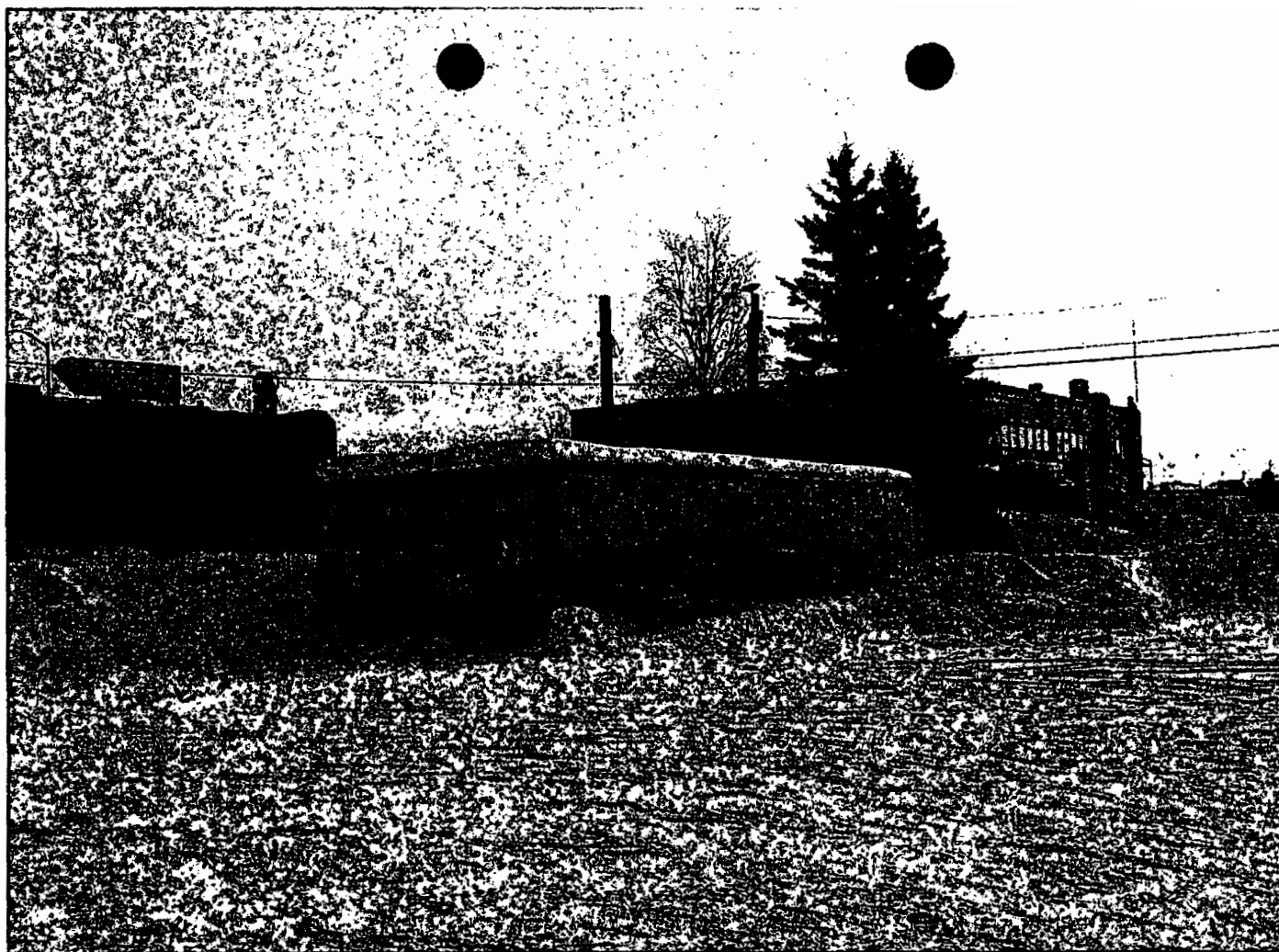


parking
lot

View west
on 25th



parking lot
south side 25th.



parking lot
on south side
25th

COMPREHENSIVE PLAN

Classification: Transit supportive corridor and commercial
Density: n/a

SITE DESCRIPTION AND PROPOSAL:

SURROUNDING AREA

	<u>NORTH</u>	<u>EAST</u>	<u>SOUTH</u>	<u>WEST</u>
Zoning:	B-3	B-3	B-3	B-3
Land Use:	Commercial - retail	Convenience market; restaurant	Commercial - gas station	Vacant - used for parking

PROPERTY HISTORY:

	<i>Zoning</i>	<i>Original City of Anchorage</i>
05-64	Plat 64-34	Earliest plat on record

SITE DESCRIPTION AND PROPOSAL:

This property is the existing Hong Kong restaurant. There is a valid Beverage Dispensary license at the property, it was renewed February 25, 2003. The Dispensary license will be transferred to another restaurant at 223 E. 5th Ave, and replaced by this Restaurant license, if approved.

The Hong Kong Restaurant is approximately 4,200 square feet of gross leaseable area; 60 feet by 70 feet. The alcohol service area (dining area, counter, banquet room) is about 2,200 square feet. There are 80 fixed seats and 20 non-fixed seats. Hours of operation will be 11:30 am to 10:00 pm.

Hours of operation for alcohol sales will be as allowed by law.¹

¹ AMC 10.50.010 closing hours for licensed premises.

- A. Premises licensed under AS 4.11.080 for the service and consumption of alcoholic beverage shall be closed for the sale, service and consumption of alcoholic beverages between the hours of 2:30 a.m. and 10:00 a.m. Monday through Friday and between the hours of 3:00 a.m. and 10:00a.m. on Saturday or Sunday or on a legal holiday recognized by the State under AS 44.12.010.
- B. All other retail premises licensed under AS 4.11.080 shall be closed for the sale of alcoholic beverages between the hours of 1:00 a.m. and 10:00 a.m. Monday through Friday and between the hours of 2:00 a.m. and 10:00 a.m. on Saturday and between the hours of 2:00 a.m. and noon on Sunday.

There are fifteen (15) alcohol licenses within 1,000 feet, including the existing Dispensary license: ten beverage dispensary licenses or beverage dispensary – duplicate licenses, two restaurant/eating place licenses, two package store licenses, and one club license. There are approximately 24 licenses within 3,000 feet.

The applicant has stated that all employees selling alcohol will be trained in accordance with the Alcoholic Beverage Control Board's Liquor Server Awareness Training Program.

Parking lot design, landscaping, and parking lot lighting are pre-existing conditions. There were no Title 21 requirements for landscaping or lighting in 1965. In 1965 the parking requirement was 1 space for every 5 seats; the current parking requirement is 1 space for every 3 seats. There are other parking issues, see item D under Findings below. The Assembly may wish to consider a requirement for some landscaping or a decorative fence. Spenard is a minor arterial and would require buffer landscaping under the current code. The parking areas would require perimeter landscaping.

PUBLIC COMMENTS:

A total of 126 public hearing notices were mailed for this item on January 28, 2004. At the time this report was written, no comments had been received.

FINDINGS

A. *Furtheres the goals and policies of the Comprehensive Development Plan and conforms to the Comprehensive Development Plan in the manner required by Chapter 21.05.*

The *Anchorage 2020 Comprehensive Plan* does not specifically address the sale of alcoholic beverages in the community. A strategy of the adopted *Anchorage 2020*, however, does call for the development of locational standards and criteria for retail sales/service of alcoholic beverages.

Several goals of the *Anchorage 2020* do address related issues such as recreational and economic opportunities. The sales of alcoholic beverages are part of the social, recreational and economic environment of the community.

The property is in an area developed as commercial. The 2020 Plan does not have a specific designation for the area, but the 1982 Plan lists it as commercial. Spenard Road is a transit-supportive development corridor.

B. *Conforms to the standards for that use in this title and regulations promulgated under this title.*

This standard is met.

The property is zoned B-3. A Restaurant license store may be allowed as a conditional use, per AMC 21.40.180 and 21.50.160.

There is a restaurant with a Beverage Dispensary license currently in operation. The Dispensary license will be transferred out, if this new Restaurant license is approved.

C. *Will be compatible with existing and planned land uses in the surrounding neighborhood and with the intent of its use district.*

This standard is met.

The nearby uses are commercial and office. A Beverage Dispensary license in the restaurant has been in place for several years. We are not aware of any schools, churches or day care centers within 200 feet of the parcel. At the time this report was written we had not received comments from DHHS regarding day care. The closest schools are Romig Jr. High about one-quarter west and Stellar Alternative about one-quarter mile east.

D. *Will not have a permanent negative impact on the items listed below substantially greater than that anticipated from permitted development:*

1. *Pedestrian and vehicular traffic circulation and safety.*

This standard is not met.

The five parking spaces the applicant has shown on the site plan adjacent to Spenard Road are partially in the right of way. There is no curb so traffic is able to drive directly in and out on Spenard Rd. from these five spaces. Snow storage is currently placed in the southeast corner of the property, blocking the clear vision triangle at Spenard and 25th.

The applicant has shown a 20 space parking lot on the adjacent property to the west. It does not appear that the applicant owns this property, a parking agreement is required. There is also illegal storage (conex and many wood pallets) in this parking lot. The parking lot is shown as one-way with the entrance on 25th and an exit to an alley on the north side. Access from 25th does not

currently exist due to snow plowing (see photos). According to the plat, there is no legal access to the alley on the north. A joint access agreement with lot 1A is needed in order to allow access to the alley.

The applicant does own a parking lot on the south side of 25th Ave. and marked as parking for the Hong Kong restaurant. As this parking lot does not abut the restaurant lot, a variance is needed. It appears the lot could accommodate about 20 vehicles. There is illegal storage (conex and pallets) in this parking lot as well.

There is no landscaping, sidewalk or directional signage or other method to direct and separate pedestrian and vehicular traffic.

There are a total of 32 parking spaces shown on the east and west sides, adjacent to the restaurant. The five spaces on Spenard are in the right of way, leaving 27 spaces. At least 20 spaces are available across 25th. A restaurant with 80 fixed seats, 20 non-fixed seats, and a building code capacity of 110 people has a parking requirement of 34 to 36 parking spaces.

2. The demand for and availability of public services and facilities.

This standard is met.

All services are in place. The alcohol license is a currently existing use and the change from a dispensary license to a restaurant license will not change the impacts.

3. Noise, air, water, or other forms of environmental pollution.

This standard is met.

An alcohol license will not add significantly to uses that have existed or could be permitted.

4. The maintenance of compatible and efficient development patterns and land use intensities.

This standard is met.

The zoning, land use and the general area land use will not change as a result of this conditional use permit for an alcohol.

Standards Chapter 10.50 Alcoholic Beverages

In the exercise of its powers and under AS 04.11.480 and 15 AAC 104.145 to protest issue, renewal and transfer or alcoholic beverage licenses within the Municipality of Anchorage, the Assembly shall consider whether the proposed license meets each and every factor and standard set forth below

- A. Concentration and land use. Whether transfer of location or issue of the requested license will negatively impact the community through an increase in the concentration of uses involving the sale or service of alcoholic beverages within the area affected and will conform to the separate standards of AMC 21.50.020.**

Within 1,000 feet of this application there are 15 other alcohol licenses.

Within 3,000 feet there are 24 other licenses.

The population cap for a restaurant license has not been reached. The existing dispensary license is proposed to be transferred to a downtown location.

- B. Training. If application is made for issue, renewal or transfer of a beverage dispensary license, restaurant or eating place license, or package store license, whether the applicant can demonstrate prospective or continued compliance with a Liquor "Server Awareness Training Program approved by the State of Alaska Alcoholic Beverage Control Board, such as or similar to the program for Techniques in Alcohol Management (T.A.M.). Until such plan is approved, training by a licensee's employees in the T.A.M. shall constitute compliance with this ordinance.**

This standard is met.

The applicant states that all employees will be trained in accordance with the T.A.M. training and hold the appropriate certificates.

- C. Operations procedures. If application is made for issue, renewal or transfer of a license, whether the applicant can demonstrate prospective or continued compliance with operations procedures for licensed premises set forth in Section 10.50.035 of this code.**

This standard is met.

This conditional use application is for an Alcoholic Beverages Conditional Use in the B-3 District for a Restaurant License per AS 04.11.100 and 04.11.400.

AMC 10.50.035 sets forth that persons seeking the issue or transfer of a license shall comply with restrictions regarding happy hours, games or contests involving the consumption of alcohol, public transportation, notice of penalties, availability of nonalcoholic drinks, compliance determination with Techniques in Alcohol Management (T.A.M.), solicitation of purchase of alcoholic beverages for consumption by employees, and warning signs. The petitioner has stipulated in his application that he will abide by requirements of AMC 10.50.035.

- D. Public safety. When application is made for the renewal or transfer of location, or transfer of ownership of a beverage dispensary license restaurant or eating place license, or package store license, the Assembly shall consider whether the operator can demonstrate the ability to maintain order and prevent unlawful conduct in a licensed premises. In determining the operator's demonstrated ability to maintain order and prevent unlawful conduct, the Assembly may consider police reports, testimony presented before the Assembly, written comments submitted prior to or during the public hearing, or other evidence deemed to be reliable and relevant to the purpose of this subsection. For purposes of this section and Section 10.50.035, "licensed premises" shall include any adjacent area under the control or management of the licensee.**

The Anchorage Police Department report did not written comments, but no incidents had been reported at this location in the last two years. The applicant has no history in the APD files.

DHHS had no negative comments.

- E. Payment of taxes and debts. When application is made for renewal of a license the assembly shall consider, pursuant to AS 4.11.330, whether the applicant is delinquent in payment of taxes owed to the Municipality. When application is made for transfer of ownership of a license the Assembly shall consider, pursuant to AS 4.11.360, whether the Municipality has received either payment or adequate security, for the payment of any debts or taxes, including any estimated taxes for the current year, arising from the conduct of the licensed business. Adequate security for the payment of debts and taxes may be in the form of: 1) escrowed funds sufficient to pay the**

debts and taxes claimed and any escrow fees; 2) actual payment of debts and taxes claimed; or, 3) a guarantee agreement in accordance AMC 10.50.030. Any guarantee agreement shall be in writing, signed by the transferor, transferee and the Municipality.

This standard is met.

There are no delinquent Personal Property Taxes or Real Property Taxes owing at this time according to the Treasury Division.

- F. Public Health. If application is made for the renewal or transfer of location or transfer of ownership of a license, the Assembly shall consider whether the operator has engaged in a pattern of practices injurious to public health or safety such as providing alcohol to minors or intoxicated persons, committing serious violations of State law relevant to public health or safety, or other actions within the knowledge and control of the operator which place the public health or safety at risk. In determining if a pattern of practices injurious to public health or safety exists, the Assembly may consider criminal convictions, credible proof of illegal activity even if not prosecuted, police reports, testimony presented before the Assembly, written comments submitted prior to or during the public hearing, or other evidence deemed to be reliable and relevant to the purpose of this subsection.**

No negative comments were received from the Department of Health and Human Services (DHHS).

- G. Municipality of Anchorage Alcoholic Beverage Licensee Compliance Form. In order to determine whether applicants seeking issue, renewal or transfer of alcoholic beverage licenses have complied with the provisions of this chapter, applicants shall, at the request of the Assembly, submit to the Municipal Clerk such information as is required on a municipal form prepared by the Municipal Clerk known as the Municipality of Anchorage Alcoholic Beverage Licensee Compliance Form. Upon request, operators shall also provide the Municipal Clerk with certificates from all current employees demonstrating that those employees have successfully completed a "Liquor Service Awareness Training Program" such as the program for Techniques in Alcohol Management (T.A.M.) as approved by the Alcoholic Beverage Control Board.**

This form was not requested of this applicant.

RECOMMENDATION:

This application for a Final Conditional Use for alcoholic beverages in the B-3 District for a Package Store License as defined by AS 04.11.100, generally meets the required standards of Title 21 and Title 10.

If after a public hearing on the matter, the Anchorage Assembly finds that the required standards have been met, staff recommends the following conditions of approval:

1. A notice of Zoning Action shall be filed with the State Recorder's Office within 120 days of the Assembly's approval of the final conditional use approval for a Restaurant License for alcohol service in the B-3 district.
2. All uses shall conform to the plans and narrative submitted, except as modified herein.
3. The use of the property by any person for the permitted purposes shall comply with all current and future federal, state and local laws and regulations including but not limited to laws and regulations pertaining to the sale, dispensing, service and consumption of alcoholic beverages and the storage, preparation, sale, service and consumption of food. The owner of the property, the licensee under the Alcoholic Beverage Control Board license and their officers, agents and employees shall not knowingly permit or negligently fail to prevent the occurrence of illegal activity on the property.
4. The applicant shall demonstrate compliance with a Liquor "Server Awareness Training Program approved by the State of Alaska Alcoholic Beverage Control Board, such as or similar to the program for Techniques in Alcohol Management (T.A.M.).
5. A copy of the conditions imposed by the Assembly in connection with this conditional use approval shall be maintained on the premise involved at a location visible to the public.
6. The approved conditional use is reflected on plans on file in the Department, except as amended herein.
7. The Beverage Dispensary License at this location shall be removed upon approval of this conditional use.

8. The parking spaces in the right of way along Spenard Road shall be relocated or removed.
9. Submit a joint access agreement for Block 1, Lots 1A, 2B and 3A; and a joint parking agreement for lots 2B and 3A.
10. Indicate an acceptable snow storage area on the site plan.
11. Resolve directional signage with the Traffic Department.
12. Prior to August 15, 2004, install landscaping per B-3 zoning AMC 21.40.180 N.
13. Obtain a variance for a non-contiguous parking lot, Block 2, Lot 3A; and a joint parking agreement for Block 1, Lot 2B and Block 2, Lot 3A on the south side of 25th Ave.
14. Resolve with the Traffic Department that all parking areas are improved to appropriate standards (striping, parking space size, lane widths, etc).

Content Information

Content ID : 001510

Type: AR_AllOther - All Other Resolutions

Title: Alcoholic Beverages Conditional Use for a New Restaurant (Beer and Wine) License in the B-3 District for a restaurant per AMC 21.40.180 D 8. for the Hong Kong Restaurant.

Author: weaverjt

Initiating Dept: Planning

Description: Alcoholic Beverages Conditional Use for a New Restaurant (Beer and Wine) License in the B-3 District for a restaurant per AMC 21.40.180 D 8. for the Hong Kong Restaurant.

Date Prepared: 2/5/04 10:16 AM

Director Name: Donald S. Alspach

Assembly Meeting Date MM/DD/YY: 03/02/04

Public Hearing Date MM/DD/YY: 03/02/04

Workflow History

<u>Workflow Name</u>	<u>Action Date</u>	<u>Action</u>	<u>User</u>	<u>Security Group</u>	<u>Content ID</u>
AllOtherARWorkflow	2/5/04 10:21 AM	Checkin	weaverjt	Public	001510
AllOtherARWorkflow	2/5/04 3:08 PM	Reject	alspach	Public	001510
AllOtherARWorkflow	2/6/04 10:01 AM	Checkin	weaverjt	Public	001510
Planning_SubWorkflow	2/6/04 12:41 PM	Approve	alspach	Public	001510
MuniManager_SubWorkflow	2/9/04 11:56 AM	Approve	katkusja	Public	001510
MuniMgrCoord_SubWorkflow	2/9/04 11:58 AM	Approve	katkusja	Public	001510

NEW PUBLIC HEARINGS

2004 FEB -9 PM 1:17
CLERK'S OFFICE
H O A