

Submitted by:

Chair of the Assembly at  
the Request of the Mayor  
Planning Department  
December 14, 2004

Prepared by:  
For reading

CLERK'S OFFICE

APPROVED

Date: 12-14-04 Anchorage, Alaska  
AR 2004-307

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY APPROVING AN ALCOHOLIC BEVERAGES CONDITIONAL USE IN THE B-3 DISTRICT FOR A NEW RESTAURANT, OR EATING PLACE USE PER AMC 21.40.180 D.8. FOR NOBLE'S DINER RESTAURANT; LOCATED ON LOT 10A, BLOCK 11, FAIRVIEW EXTENSION SUBDIVISION; SITE ADDRESS BEING 4133 MT. VIEW DRIVE; GENERALLY LOCATED ON THE NORTHWEST CORNER OF MT. VIEW DRIVE AND NORTH PARK STREET.

(Noble's Diner Restaurant) (Case 2004-178)

THE ANCHORAGE ASSEMBLY RESOLVES:

**Section 1.** The conditional use permit for an Alcoholic Beverages Conditional Use in the B-3 District for a new Restaurant, or Eating Place use per AMC 21.40.180 D.8. for Noble's Diner Restaurant; located on Lot 10A, Block 11, Fairview Extension Subdivision; site address being 4133 Mt. View Drive, meets the applicable provisions of AMC 21.50.020 and AMC 21.50.160.

**Section 2.** The subject conditional use permit for an Alcoholic Beverages Conditional Use in the B-3 District for a new Restaurant, or Eating Place License per AMC 21.40.180 D.8. for Noble's Diner is subject to the following conditions of approval:

1. A Notice of Zoning Action shall be filed with the State District Recorder's Office within 120 days of the Assembly's approval of a final conditional use approval for a Restaurant/Eating Place Serving Alcoholic Beverages in the B-3 District.
2. All uses shall conform to the plans and narrative submitted.
3. This conditional use approval is for an Alcoholic Beverages Conditional Use in the B-3 District for a restaurant/eating place use per AMC 21.40.180 D.8 for Noble's Diner, a 2,584 square-foot building located on Lot 10A, Block 11, Fairview Extension Subdivision. The restaurant has 11 booths with 44 fixed seats and 40 non-fixed seats for a total of 84 seats. Alcohol sales are estimated to be 15 percent of the total gross receipts compared to 85 percent of food sales.

1 The restaurant may operate 365 days a year with hours of operation as permitted  
2 by law.

3  
4 4. The use of the property by any person for the permitted purposes shall comply  
5 with all current and future Federal, State and local laws and regulations  
6 including, but not limited to, laws and regulations pertaining to the sale,  
7 dispensing, service and consumption of alcoholic beverages and the storage,  
8 preparation, sale, service and consumption of food. The owner of the property,  
9 the licensee under the Alcoholic Beverage Control License and their officers,  
10 agents and employees, shall not knowingly permit, or negligently fail to prevent  
11 the occurrence of illegal activity on the property.

12  
13 5. Upon demand, the applicant shall demonstrate compliance with a "Liquor  
14 Server Awareness Training Program" approved by the State of Alaska Alcohol  
15 Beverage Control Board, such as or similar to the program for Techniques in  
16 Alcohol Management (TAM).


17  
18 6. A copy of the conditions imposed by the Assembly in connection with this  
19 conditional use approval shall be maintained on the premises at a  
20 location visible to the public.

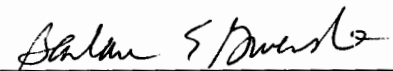
21  
22 **Section 3.** Failure to comply with the conditions of this conditional use permit shall  
23 constitute grounds for its modification or revocation.

24  
25 **Section 4.** This resolution shall become effective immediately upon passage and  
26 approval by the Anchorage Assembly.

27  
28 PASSED AND APPROVED by the Anchorage Assembly this 14th  
29 day of December 2005.

30  
31  
32  
33  
ATTEST:

  
Chair

  
Municipal Clerk



**MUNICIPALITY OF ANCHORAGE**  
**ASSEMBLY MEMORANDUM**

No. AM 894-2004

Meeting Date: December 14, 2004

**From:** Mayor  
**Subject:** Alcoholic Beverages Conditional Use in the B-3 District for a Restaurant/Eating Place Use per AMC 21.40.180 D.8 for Robert Kinneen, Jr., dba Noble's Diner.

1 Robert Kinneen has made application for a restaurant/eating place alcoholic beverages  
2 conditional use in the B-3 District for Lot 10A, Block 11, Fairview Extension Subdivision,  
3 per AMC 21.40.180 D.8 for an new restaurant, Noble's Diner.

4  
5 The proposal is for a new restaurant license #4452 at 4133 Mt. View Drive, located at the  
6 northwest corner of Mt. View Drive and North Park Street. The building consists of 2,584  
7 square feet. The following licenses are located within 1,000 feet of this location: one  
8 restaurant, two package stores and one beverage dispensary licenses. Approval of this  
9 conditional use will add a second restaurant/eating place beer and wine license to this area.

10  
11 Noble's Diner Restaurant will specialize in "quality comfort food" using fresh Alaskan  
12 produce, seafood and products. The restaurant will occupy the entire 2,584 square-foot  
13 building, with 11 booths with 44 fixed seats and 40 non-fixed seats. The restaurant will  
14 typically be open Monday – Saturday from 10:00 AM to 10:00 PM with beer and wine  
15 available from 11:00 AM to 10:00 PM. However, the restaurant may choose to operate  
16 seven days a week with hours of operation as permitted by law. The petitioner estimates  
17 that 15% of his total sales will be for alcohol; employees will be trained in handling  
18 inebriated patrons, and will be trained in accordance with the Alcoholic Beverage Control  
19 Board's "Liquor Server Awareness Training Program." A video camera will be installed  
20 inside the restaurant showing all of the public serving area, as well as a video camera  
21 showing partial coverage of the parking lot. As part of the arts and cultural district, they  
22 will host a First Friday each month featuring local artists, showcase local films, and  
23 participate in other activities that highlight the district.

24  
25 Approving this restaurant/eating place license would add a second restaurant/eating place  
26 license. There appear to be no churches or schools within 200 feet of the petition site. The  
27 Anchorage Police Department had no liquor related incident calls during the past two years  
28 to this address, but did report three thefts, one assault, two frauds, one disorderly conduct  
29 and one misuse of plate incidents. Treasury provided no comments regarding personal or  
30 business taxes. The Department of Health and Human Services provided a response  
31 questioning the lack of community standards for alcoholic beverage conditional uses.

1  
2 This conditional use for the beverages dispensary license in the B-3 District generally  
3 meets the applicable provisions of AMC Titles 10 and 21, and Alaska Statute 04.11.090.  
4  
5

6 Prepared by: Jerry T. Weaver Jr., Zoning Administrator, Planning Department

7 Concur: Tom Nelson, Director, Planning Department

8 Concur: Mary Jane Michael, Director, Office of Economic & Community  
9 Development

10 Concur: Denis C. LeBlanc, Municipal Manager

11 Respectfully submitted: Mark Begich, Mayor  
12

**2004-178**



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

**DATE:** December 14, 2004

**CASE NO.:** 2004-178

**APPLICANT:** Robert Kinneen, Jr., dba Noble's Diner

**REPRESENTATIVE:** Robert Kinneen

**REQUEST:** Conditional Use for an Alcoholic Beverages Conditional Use in the B-3 District for a Restaurant/Eating License and Use per AMC 21.40.180 D.8

**LOCATION:** Lot 10A, Block 11, Fairview Extension Subdivision; generally located on the northwest corner of Mt. View Drive and North Park Street.

**STREET ADDRESS:** 4133 Mt. View Drive

**COMMUNITY COUNCIL:** Mt. View/Russian Jack

**TAX PARCEL:** 005-026-51/ Grid SW 1136

**ATTACHMENTS**

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

**RECOMMENDATION SUMMARY:**

Generally meets the required Title 21 standards including AMC 21.50.160, and Title 10.50.

**SITE:**

Acres: 12,954 SF  
Vegetation: None  
Zoning: B-3  
Topography: Level  
Existing Use: Restaurant

Soils: Public Sewer & Water

**COMPREHENSIVE PLAN**

Classification: N/A (Anchorage 2020)  
Commercial (1982 Anchorage Bowl Comprehensive Plan)  
Density: N/A

**SURROUNDING AREA**

	NORTH	EAST	SOUTH	WEST
Zoning:	R-4	B-3	B-3	B-3
Land Use:	Multi-family Residential	Commercial	Commercial	Commercial

**SITE DESCRIPTION AND PROPOSAL:**

The application site consists of a 12,954 square foot (SF) located at the northwest corner of Mt. View Drive and North Park Street. The property is zoned B-3. The 2,584 SF building previously housed the former La Casita Del Mar restaurant. The structure was constructed in 1979, according to CAMA records. Access to the on site parking lot is from both streets.

This proposal is for a conditional use for a new restaurant/eating place liquor license for beer and wine in this structure. La Casita Del Mar restaurant's alcohol beverage conditional use became null and void on June 27, 2004 in accordance with AO 2004-6 when no renewal application or new application was submitted to the ABC Board within 120 days of February 28, 2004 when the ABC Board removed the previous license #2965 from the premise. The petitioner's ABC application for a new restaurant license is dated September 16, 2004, and a copy was received by the Municipal Clerk's Office on October 28, 2004. The following licenses are located within 1,000 feet of this location: one restaurant licenses, two package stores, and one beverage dispensary license.

Noble's Diner will specialize in "quality comfort food" using fresh Alaskan produce, seafood and products. The restaurant will occupy the entire 2,584 SF building , have 11 booths with 44 fixed seats and 40 non-fixed seats. The restaurant will typically be open from 10:00 AM to 10:00 PM Monday - Saturday, with beer and wine available from 11:00 AM to 10:00 PM. However, the restaurant may choose to operate on 7-days a week with hours of operation as permitted by law. The petitioner estimates that 15% of his total sales will be from alcohol. A video camera will be installed inside the restaurant showing all of the serving area, as well as partial coverage of the parking lot. Security proposed is to limit alcohol consumption to meals only and to allow close supervision by the owner or manager on the site. All servers having direct

contact with alcohol will be TAM trained. The restaurant will provide recorded music for entertainment. As part of the arts and cultural district, they will host a First Friday each month featuring local artists, showcase local films and participate in other activities that highlight the district.

There are no churches or schools within 200 feet of the restaurant.

#### **PUBLIC COMMENTS:**

Eighty-six (86) public hearing notices (PHNs) were mailed November 4, 2004. At the time this report was written three PHNs were returned as undeliverable. No response was received from Mountain View or Russian Jack Park Community Council.

#### **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.***

This site location is near a Neighborhood Commercial Center depicted on the Land Use Policy Map of the Anchorage 2020 comprehensive plan at the existing commercial locations surrounding (Bragaw and Mt. View Drive.

The Anchorage 2020 Comprehensive Plan does not specifically address the sale of alcoholic beverages in the community. A strategy of the adopted Anchorage 2020 Plan, however, calls for the development of locational standards and criteria for retail sales/service of alcoholic beverages. To date this has not been done.

The Anchorage 2020 Plan (ref. P.40) contains a generalized community vision that advocates "an active learning community with abundant cultural amenities." Several goals of the Anchorage 2020 Plan do address related issues such as recreational and economic opportunities. The sale of alcoholic beverages is part of the social, recreational and economic environment of the community.

The Anchorage 2020 Plan incorporates community issues associated with social well being as provided in the Housing and Community Development Consolidated Plan. These goals provide that Anchorage should create an atmosphere of "a welcoming, culturally diverse community with opportunities for all residents to be responsible and active participants in a caring community."



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

This standard is met.

Except for the alcoholic beverages conditional use standards established in AMC 21.50.160, the Assembly has not adopted specific zoning regulations for alcoholic beverage sales. The B-3 General Business district zoning regulations allows alcoholic beverage sales through the conditional use permit process: AMC 21.40.180 D.8. Restaurants, cafes, and other places serving food or beverages. Uses involving the retail sale, dispensing or service of alcoholic beverages may be permitted by conditional use only in accordance with AMC 21.50.160.

**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 petition property is within the Mt. View Drive commercial area that is expected to remain in that land use category for the foreseeable future. In and around this location are found numerous restaurants, offices, retail stores, commercial businesses and other non-residential uses. Land to the south, east and west are zoned B-3; land to the north is a mix of multi-family style dwellings. There appear to be no churches, day care or schools within 200 feet of the site property line.

The Department of Health and Human Services provided a response questioning the lack of community standards for alcoholic beverage conditional uses.

Alaska Statute 04.11.100, Restaurant or eating place license, restricts transfer or renewal of restaurant licenses from being located in a building having a public entrance within 200-feet of the boundary line of a school or a church building in which religious services are regularly conducted, or public entrance of a church building. The petitioner has applied for a new restaurant license (not a transfer or a renewal of a restaurant license) by the Alaska ABC Board and this Assembly, and is therefore exempt from the 200-foot separation statute.

AMC 21.50.160.B asks that a list of all alcohol licenses located within a minimum of 1,000 feet of the proposed conditional use be provided. There are one restaurant/eating places, two package store, and one beverage dispensary licenses within 1,000-feet of the proposed

restaurant. Approving this restaurant/eating place license would add a second restaurant/eating place license.

Name	Address	License Number	Type of License
Mt. View Brown Jug	119 Klevin Street	759	Package Store
West Mt. View Brown Jug	131 S. Bragaw	1561	Package Store
Jamico's Pizzeria	3952 Mt. View Dr.	3889	Restaurant/Eating Place
Park Lanes Lounge	4350 Ames Avenue	133	Beverage Dispensary

**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 met.

There appears to be sufficient area on site, north and west of the building, for the 29 required parking spaces. Both streets include a sidewalk. There are public transit stops along Mt. View Drive with public sidewalks.

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

This standard is met.

The addition of a restaurant at this location will not impact public services. This structure has previously served as a restaurant. The site is served with public water and sewer.

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

This standard is met.

A restaurant/eating place license will not cause any environmental pollution. The parking lot is paved, which helps control air pollution.

**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 a restaurant/eating place.

**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.**

See table and narrative on page 5 for other alcohol licenses within 1,000 feet of this application.

The issuance of another conditional use for a restaurant will not adversely impact the immediate area or surrounding uses.

**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 involved in the dispensing of alcoholic beverages, all managers and assistant managers and the

owners of the restaurant 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 use.

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 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.**

This standard appears to be met.

The Anchorage Police Department reports the following non-liquor related incidents that occurred either inside, near, in front, or to the rear of the subject location: three theft, one assault, two fraud, one disorderly conduct and one misuse of plate.

- 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 Municipality

This standard is met.

Treasury reviewed the subject property for real property taxes or business personal taxes, and report no outstanding or delinquent taxes.

- 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.

This is not applicable; this is for a new license not a transfer or renewal of a license.

- 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 State of Alaska 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 restaurant use generally meets the required standards of Title 21 and Title 10, and AMC 21.50.160.

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 District Records Office within 120 days of the Alcoholic Beverage Control Board's approval of the license.
2. All uses shall conform to the plans and narrative submitted.
3. This conditional use approval is for an Alcoholic Beverages Conditional Use in the B-3 District for a restaurant/eating place use per AMC 21.40.180 D.8 for a 2,584 SF building located at 4133 Mt. View Drive, Fairview Extension Subdivision, Block 11, Lot 10A. The restaurant has 11 booths with 44 fixed seats and 40 non-fixed seats. Alcohol sales are estimated to be 15 % of total gross receipts compared to 85 % food sales. The restaurant may operate 365 days a year with hours of operation as permitted by law.
4. Upon demand 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. 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
6. A copy of the conditions imposed by the Assembly in connection with this conditional use approval shall be maintained on the premise at a location visible to the public.

**Content Information****Content ID :** 002412**Type:** AR\_AllOther - All Other Resolutions

Alcoholic Beverages Conditional Use in the B-3 District for a

**Title:** Restaurant/Eating Place Use per AMC 21.40.180 D.8 for Robert Kinneen, Jr., dba Noble's Diner.**Author:** weaverjt**Initiating Dept:** Planning

Alcoholic Beverages Conditional Use in the B-3 District for a

**Description:** Restaurant/Eating Place Use per AMC 21.40.180 D.8 for Robert Kinneen, Jr., dba Noble's Diner.**Date Prepared:** 11/23/04 12:46 PM**Director Name:** Tom Nelson**Assembly Meeting**  
**Date MM/DD/YY:** 12/14/04**Public Hearing Date**  
**MM/DD/YY:** 12/14/04**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	11/23/04 12:48 PM	Checkin	weaverjt	Public	002412
Planning_SubWorkflow	11/23/04 1:52 PM	Approve	nelsontp	Public	002412
ECD_SubWorkflow	11/23/04 3:57 PM	Approve	thomasm	Public	002412
MuniManager_SubWorkflow	12/2/04 8:04 AM	Approve	leblancdc	Public	002412
MuniMgrCoord_SubWorkflow	12/6/04 7:11 AM	Approve	abbottmk	Public	002412

CLERK'S OFFICE  
2004 DEC -6 PM 12:30  
M.O.A.