



# Planning Division Fact Sheet

CORRECTED: JUNE 3, 2008 (page 2 underlined)

Re: **Proposed Tavern at approximately 751 N. 300 West**  
Jam in the Marmalade

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## **BACKGROUND**

According to City Building Permit and County Assessor information, the structure at 751 North 300 West was built as a lounge addition to a service station in 1957 and is approximately 1,874 square feet in size. In approximately 1968 the structure became a stand alone tavern (the Cedar Lounge) which operated at this location through 2003.

## **BUSINESS LICENSING PUBLIC HEARING**

### ***Spacing from Community Locations***

The City's Business Licensing Regulations for Alcohol require spacing between alcohol establishments and uses such as churches, public K-12 schools, and parks. Section 6.08.120B of the City Code reads as follows:

Proximity To Park, School Or Church: No class C beer establishment and no class B or C nonprofit club may be licensed or operate under the provisions of this code which is in close proximity to a public park, public elementary, junior high or high school, or a church, without having first received approval from the mayor or the mayor's designee. Such approval shall be given only after:

1. The mayor or the mayor's designee has received recommendations regarding such an establishment from the planning division and the city police department; and

2. A public hearing has been held, with actual written notice having been given, where applicable, to the director of the public services, to the school superintendent or to the church, and with notice having been given to the city and the residents thereof by at least one publication in a paper of general circulation in Salt Lake County at least ten (10) days before the hearing, in each case stating the purpose, time, date and location of such hearing; and

3. A finding by the mayor or the mayor's designee that the proposed location will not materially interfere with the activities and functions of such parks or school, or interfere with church worship or church-related activities. For the purposes of this section, a public park or public elementary, junior high or high school or church which is located six hundred (600) or more feet from the proposed establishment shall not be considered to be in close proximity to such establishment and no notices or hearings need be given or held prior to the granting of a class C beer license or class B or C private club license. With respect to the six hundred foot (600') limitation, it shall be measured from the nearest entrance of the proposed establishment by following the shortest route of either ordinary pedestrian traffic, or, where applicable, vehicular travel along public thoroughfares, whichever is the closer, to the property boundary of the public school, church, public park.

The original door of the tavern was located 596 from Warm Springs Park.

The State has similar spacing regulations to these types of community facilities (Chapter 32A. Utah State Code Annotated). The State Alcohol Beverage Control regulations define a *community location* as a church, school, park, playground, or library. The State Alcohol Beverage Control regulations require a 600 foot *pedestrian travel measurement* between an alcohol establishment and a *community location* and a 200 foot *straight line measurement* restriction between an alcohol establishment and a *community location*. The State Alcohol Beverage Control Commission can grant a variance to the 600 foot pedestrian spacing requirement from an alcohol establishment and a “*community location*”. They can also grant a variance from the 200 foot spacing requirement if it involves the spacing of the alcohol establishment from a library or park. However, the State Alcohol Beverage Control Commission cannot grant a variance to the 200 foot spacing requirement from an alcohol establishment and a school, church, or playground.

There are four additional criteria that the Control Commission must consider when determining whether to grant a variance. The Control Commission may grant a variance if:

- 1) Written consent for the variance is obtained from the local governmental authority (which would be the Mayor’s designated hearing officer);
- 2) A public hearing has been held;

- 3) The Commission determines that granting the variance will not be detrimental to the public health, peace, safety, and welfare of the community; and
- 4) The governing authority of the *community location* (church, school, park, library or playground) gives its written consent. If the governing authority of the *community location* does not give its written consent, the Commission must find that:
  - a. There is substantial unmet public demand to consume alcohol in a public setting within the geographic boundary of the local (governmental) authority in which the business seeking the alcohol license is to be located;
  - b. There is no reasonably viable alternative for satisfying the unmet public demand other than through the establishment of the license at the location; and
  - c. There is no reasonably viable alternative location within the geographic boundary of the local (governmental) authority in which the licensed business is to be located to satisfy the unmet demand.

### ***Spacing between Similar Uses***

City regulations also require a 660 foot spacing requirement between alcohol establishments (see Section 6.08.120.A.b). In 1996, the owner of Faces located at 659 N 300 West, requested approval for a private club. The Planning Commission approved the request with conditions. In the August 1, 1996, Planning Commission staff report, staff acknowledged the existing tavern at 751 North 300 West (the subject of this Fact Sheet). In the Staff Report, staff notes that the spacing requirement between similar uses is 600 feet. This statement was incorrect. The spacing requirement from community facilities such as parks, churches and public schools is 600 feet; however, the spacing between similar uses is 660 feet (see Section 6.08.120. A.1.b of the City Code). The project was heard again by the Planning Commission on March 16, 2000, to address the conditions of the 1996 approval. In those minutes, the Planning Director at the time, Bill Wright, noted that when the owner applies for the private club license with the Business Licensing Division, a screening will be done to make sure that a private club at the proposed location is within the Ordinance standards. It is not apparent whether that screening, in fact, occurred. Faces is actually 622 feet south of the proposed Jam in the Marmalade. The error of the spacing for Faces private club was not discovered until the analysis was undertaken in developing this Fact Sheet.

### ***Entrance on a Major Street***

The City Business Licensing regulations for Alcohol require that the door of the establishment should face towards a major street. The 300 West Street is identified as a Major Street, but Reed Avenue is not. The Hearing Officer can also allow for the establishment to be located on streets other than a Major Street under specific circumstances (Section 6.08.120C of the City Code). **The purpose of the business licensing hearing is limited to this issue.**

Section 6.08.120C provides the ability for a Hearing Examiner to grant approval for a tavern to front on a street other than a Major Street following a public hearing, but only:

1. After the hearing examiner has received recommendations from the Planning Division and the Police Department; and
2. a. If the street is at least sixty feet (60') in width [Reed Avenue is thirty-eight feet (38') in width] or
  - b. If the entrance is within the interior of the block, the entrance is from a courtyard or mall like area with paved vehicular access and property lighting and
3. If the addition of the requested tavern will not cause the number of licensed taverns to exceed nine on the exterior and interior of the block.

The door for the establishment faces Reed Avenue which is less than 60 feet wide. It is the Planning Division's opinion that the entrance is also not within the interior of the block. Therefore, the Planning Division is of the opinion that the only way the applicants can pursue the business license is if the applicants include an entrance door along the 300 West elevation of the building. In doing so, the entrance must still be at least 200 feet from Warm Springs Park, as measured in a straight line from the nearest entrance of the proposed tavern to the nearest property boundary of the park; and at least 600 feet from Warm Springs Park, as measured from the nearest entrance of the proposed tavern by following the shortest route of either ordinary pedestrian traffic, or where applicable, vehicular travel along public thoroughfares, whichever is the closest to the property boundary of the park. The State Alcohol Beverage Control Commission can grant a variance to the 600 foot pedestrian travel spacing requirement to the park, but not to the 200 foot straight line spacing requirement.

The applicants may present their case to the hearing officer as to why they believe their application meets the criteria of an *entrance within the interior of the block, a courtyard or mall like area with paved vehicular access and property lighting*. If they are successful with this argument, then the hearing officer, per Section 6.08.120. C

5 can grant an exception to the regulations but only after making findings that the proposed location for said establishment will not:

- a. Create an undue concentration of class C beer establishments or class B or C private clubs;
- b. Materially interfere with the free flow of pedestrian or vehicular traffic;
- c. Create an undue burden in controlling and policing illegal activities in the vicinity;
- d. Create a nuisance to the community; or
- e. Adversely affect the health, safety and morals of the residents of the city.

### **Status**

The City held a public hearing with the Hearing Officer on April 11, 2008. Prior to the Hearing Officer reconvening the hearing, the Police Department and the Planning Division must submit their recommendations to the Hearing Officer. These recommendations will be available to the public for its review prior to the hearing. **The purpose of the business licensing hearing is limited to the issue relating to an exception to the entrance door facing a Major Street.**

### **RELEVANT LAND USE INFORMATION**

*While not pertinent to the Business Licensing Hearing, the following land use information provides a historical context for this project.*

The property is zoned Mixed Use and has been since 1996. The Mixed Use zoning district allows a tavern/ lounge/ brewpub that is 2,500 square feet or less in floor area as a conditional use.

Non-conforming Use Status In 2005, the City made a written interpretation that the use of a tavern/lounge/ brewpub had not been abandoned (see February 25, 2005, Letter to Tony Vina, Property Owner, from Kevin LoPiccolo, Zoning Administrator). Although the City has this interpretation in writing, staff has not been able to locate the file with more detailed information on which the interpretation was based.

Since 2005, the tavern has held an active business license. The previous establishment, the Hideout, had an active business license that would have expired in November 2007. However, when the current owner applied for a business

license on May 16, 2007, the Hideout's license became void. In any event, the timeframe between the Hideout closing and the current owner applying for a business license was less than a year. The Abandonment of Nonconforming Use timeframe is one calendar year as indicated in Section 21A.38.070 of the Salt Lake City Zoning Ordinance.

Appeals of the Zoning Administrator's determination of the status of a nonconforming use or noncomplying structure may be made to the Board of Adjustment within 30 days of the decision (21A.38.140 and 21A.16.030. A of the Salt Lake City Zoning Ordinance).

Robert McCarthy and Brian Morris, representing the Jam in the Marmalade applied for a business license for a Class C beer establishment in April 2007 and for various building permits in January and April 2008.

### ***Conditional Use Process (typical)***

The City has made a finding that there is a non-conforming use right to continue to operate a tavern at this location from a land use standpoint. If there had been no tavern use at this location, then the applicant could have applied for a conditional use for a tavern / lounge/ brewpub in the Mixed Use Zoning District. The entire block is zoned Mixed Use, a Special Purpose Zoning Classification and therefore, there are no abutting residentially zoned properties to the subject parcel.

The public process for a Conditional Use request is as follows:

1. Community Council/Citizen Input – If an application for a Conditional Use were submitted, the Planning Division would notify the Capitol Hill Community Council of the application. The Community Council can request the applicant present information to the members of the Community Council at a regularly scheduled meeting. The Community Council is a vehicle for obtaining public input. They do not have the authority to approve or deny the request.
2. Planning Commission Public Hearing and Decision – The Planning Commission is the decision making body for Conditional Uses. A notice would be mailed to all property owners within 450 feet of the subject property 14 days prior to the public hearing. A sign giving notice of the public hearing would also be posted on the site 10 days prior to the public hearing.
3. Appeals of the Planning Commission's Decision- Appeals of the Planning Commission's decision are required to be made within 30 days of the record of decision to the Land Use Appeals Board.

4. Appeals of the Land Use Appeals Board Decision- Appeals of the Land Use Appeals Board decision must be made within 30 days of the record of decision to Third District Court.

### ***Pending Zoning Text Changes***

The City Council is currently reviewing the appropriateness of amending the Zoning Ordinance relating to Conditional Uses. Included in the information they are reviewing is the Planning Commission's recommendation to allow private clubs as a Conditional Use in the Mixed Use Zoning District. The Council is targeting July 8, 2008, to make its decision on the Conditional Use text changes.

Petition 400-06-45, by Lou Corsillo, was a petition to allow private clubs in the R-MU zoning district as a conditional use. This petition did not include the Mixed Use Zoning District. The issue has been combined with the project noted above to reexamine all Conditional Uses.