

TO: CITY MANAGER

2003 APRIL 30

FROM: DIRECTOR PLANNING AND BUILDING

SUBJECT: REZONING REFERENCE # 02-56
Shark Club Rooftop Patio Enclosure Extension
Response to Public Hearing Concerns

PURPOSE: To provide Council with a response to concerns raised at the Public Hearing for Rezoning Reference #02-56.

RECOMMENDATION:

1. **THAT** copies of this report be sent to all those who spoke or made a submission at the 2003 March 18 Public Hearing for Rezoning Reference #02-56.

R E P O R T

On 2003 February 17 Council adopted the recommendation to forward the subject rezoning, which involves a request to construct a patio enclosure extension on the roof terrace of the mixed-use commercial/residential development, to the 2003 March 18 Public Hearing. Some concerns were expressed by adjacent residents of the proposed patio, primarily regarding potential noise and view related issues related to the patio. On 2003 April 7 Council gave Second Reading to the subject rezoning and directed staff to report back on 3 issues. This report is in response to that Council direction.

As background, the approved Comprehensive Development plans (Rezoning Reference #49/97) for this property includes an open, rooftop, third floor level patio with a partial roof. This patio area, which is part of the Shark Club restaurant located on the second floor below, has been approved, but not constructed. The approved plans for the site include a rooftop restaurant terrace, with a small area covered by a roof, but with no walls included. With the design of this patio, its usage would be highly dependent on the weather and restricted in time of use. The applicant is now proposing a larger roofed patio area, but more significantly, the roofed area will be enclosed on three sides and partially open on the south side facing Loughheed Highway. The proposed extension of the patio enclosure would allow the restaurant terrace to be used more intensively during all types of weather. The enclosure of the patio, as well as the incorporation of measures recommended by a Consulting Engineer in Acoustics would also act to minimize noise impacts on adjacent residences. This should make the new more fully enclosed patio more compatible with the adjacent apartment tower. The proposal also includes a fully open patio area to the south of the more enclosed patio portion.

Additionally, in conjunction with a request for extension of operating hours of the Shark Club liquor primary facility, the applicant and the property owner are in the process of entering into a Section 219 Covenant which restricts the use of the patio by requiring the usage of and access to the open, outdoor portion of the patio to be physically closed and not in use after 10:00 p.m. and that there be no amplified music on the open patio or the partially enclosed patio at any time.

Three concerns raised at the Public Hearing are discussed as follows:

Issue #1: Should all music be prohibited after 10:00 p.m., not just amplified music?

The Section 219 Covenant, which was established as a requirement in connection with a request for an extension of hours of sale for the liquor primary licence (Liquor Licence Application #02-6), that the owner has recently executed, indicates that there will be no amplified music on the entire patio at any time, not just after 10:00 p.m. The Covenant also prohibits the use of the open patio area after 10:00 p.m. A question has been asked, however, whether non-amplified music (e.g. piano playing) played within the largely enclosed patio area could disturb the residents of the adjacent apartment tower and whether the Covenant should be amended to prohibit all music. It is noted that the covered patio, which does not abut the apartment building, is enclosed on all sides with the exception of the side facing Lougheed Highway and will be built in accordance with approved acoustical studies to minimize noise. In consideration of the design of the enclosed patio, the Covenant restricting amplified music and input from pertinent staff, and the general ambient noise levels, Environmental Services staff of the Engineering Department do not consider the playing of non-amplified music on the patio as a concern. In light of the above, unless otherwise directed by Council, the currently executed Section 219 Covenant will be deposited in the Land Title Office for registration.

Issue #2: Concern about music coming through ventilation or elevator shaft.

Concern was expressed regarding noise emanating from the restaurant/liquor primary establishment below toward the adjacent apartment tower through the ventilation system or elevator shaft. While there is one ventilation stack which is part of the kitchen exhaust system which comes out on the patio/roof from the kitchen, Environmental Services staff and the Acoustical Consultant for the project consider it unlikely that this would be the source of the noise from the establishment below. It appears more likely that the noise coming from the lower level was coming through an opening into the third floor roof through the future stairwell landing. This is a temporary situation due to incomplete construction and should be resolved once the stairwell, which is to be fully enclosed, and the patio enclosure are completed.

It is further noted that the ventilation system associated with the new patio enclosure will be vented on the west side of the enclosure with a silencer system and would not constitute a noise problem.

Issue #3 Will the patio enclosure block view from the fourth floor?

This question arose in response to a concern from a resident of the fourth floor, which is one level above the proposed patio. Some of the views toward the southeast, from the apartment tower located northwest of the proposed patio, will be blocked by the enclosure, however, the views blocked would appear to represent a small portion of the overall view corridor to the south. It is also noted that the view would have been partially blocked by the patio roof currently approved under the Comprehensive Development zoning.

The proposed extension of the patio enclosure, in concert with the recommended acoustical treatment and restrictions on amplified music on the patio and no useage of the outdoor open patio past 10:00 p.m., should reduce the likelihood of noise problems for the adjacent residents while providing an enjoyable rooftop open space for patrons of the establishment.

This is for the information of Council.



J. S. Belhouse
Director Planning and Building

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cc: City Clerk

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