

TOWNSHIP OF LOWER MERION
Building & Planning Department

MEMORANDUM

TO: Douglas S. Cleland, Township Manager

FROM: Robert E. Duncan, Director of Building & Planning

SUBJECT: Kelly's Taproom Outdoor Dining

DATE: June 2, 2009

The owner of Kelly's Taproom at 1107 West Lancaster Avenue, Bryn Mawr has submitted a request to use an existing 2nd floor roof deck facing Lancaster Avenue for outdoor dining. The applicant's letter appears as if they may be seeking parking relief from the Board. The actual approval required is to amend the approved land development plan to include the use of the roof deck for outdoor dining.

In the late 1990's, the Board of Commissioners granted land development approval to the previous owner of Kelly's to renovate and expand this facility by building a second floor addition. The expansion was never completed and the property changed ownership in the 2002/2003 timeframe. Prior to completing the expansion, the current owner agreed to enter into a covenant establishing restrictions on the use and hours of operation of the 2nd floor space. A copy of the covenant is attached.

The use of the second floor was limited to a restaurant use. The second exit from the upper floor is over a roof deck and down an existing set of stairs to ground level. The owner is now seeking permission to place tables for outdoor dining on a portion of this 2nd floor roof deck.

The covenant included language addressing the potential for future expansion to enclose the 2nd floor roof area on page two, #5. This section of the covenant does not specifically refer to outdoor dining on the roof area but it does provide the Board with an opportunity to review the complaint records to determine whether the restaurant use caused unreasonable disturbances to the immediate neighborhood before authorizing an expansion.

I have obtained a copy of Police Incident reports relating to disturbances at Kelly's between April 2004 and May 2009. A copy of this report is attached. The report provides a general description of the incidents reported to the Police. I have not provided the detailed incident report to avoid providing names and personal information associated with each incident.

Staff is willing to support the outdoor dining request since most of the incident reports appear to relate to the Taproom use of the building, subject to a condition regulating the hours of operation of the outdoor dining. Staff recommends that the outdoor dining seating close by 9:30 PM with the last customer seating no later than 8:30 PM. This time frame will coincide with the requirement to close all windows and doors along Lancaster Avenue.

If you or any Board members have any questions relating to this topic please give me a call.

MIDATLANTIC RESTAURANT GROUP, L.P.
BRYN MAWR RENOVATION GROUP, L.P.

"Kelly's Taproom"
632 Overhill Road
Ardmore, PA 19003

April 17, 2009

Robert Duncan, Director of Building and Planning
Lower Merion Township
75 E. Lancaster Avenue
Ardmore, PA 19003

Re: Outside dining for Kelly's Taproom 1107 W. Lancaster Avenue

Mr. Duncan:

I am with Kelly's Taproom at 1107 W. Lancaster Avenue in Bryn Mawr, Pennsylvania. In 2005 we constructed an outside deck that has continued to remain closed due to the Lower Merion Township zoning requirements for parking. With the passing of the proposed ordinance to amend the code Chapter 155, which would reduce parking requirements for restaurants with outdoor dining areas and to reduce the minimum clear width of sidewalks in areas used for outdoor dining to four feet, we would be allowed to open this deck and begin outdoor dining. Given this change in township ordinance, we would like to formally request the township's approval to allow our outside dining area of Kelly's to open for business.

Enclosed with this request is the required \$150 fee made payable to the Lower Merion Township according to the direction from Mr. Michael Wylie.

If other information is necessary for the Board of Commissioners to grant this request, please notify me as soon as possible so I can respond timely. I have sent this same request to the Bryn Mawr Civic Association's president, Mr. Harold Wilson.

Thank you for your attention to this request and I look forward to hearing from you soon.

Sincerely,



Angie Clubine

o/b/o

Eugene F. Mitchell
Managing Partner

RECEIVED
APR 20 2009
BUILDING DIVISION
LOWER MERION TOWNSHIP

DECLARATION OF COVENANTS

THIS DECLARATION OF COVENANTS ("Declaration") made this 13th day of February 13, 2004, by BRYN MAWR RENOVATION GROUP, L.P., a Pennsylvania Limited Partnership ("Declarant").

BACKGROUND

- A. Declarant is the owner of a parcel of land known as 1107 W. Lancaster Avenue in Lower Merion Township, Montgomery County, Pennsylvania, identified as Montgomery County Tax Parcel No. 40-00-30364-007 ("Property").
- B. The Property is, pursuant to the Code of the Township of Lower Merion ("Code"), located in a C 2 Commercial zoning district. The C 2 Commercial District permits land to be used for numerous uses, including "taprooms" and "restaurants" (as defined in the "Code") and residential uses.
- C. The Property contains a building (the "Building") that was historically used as Kelly's Beer Parlour, a "taproom." The Building also contained a residential dwelling unit. The Property, and its use for taproom and residence purposes, is lawfully nonconforming to the Code's off-street parking requirements. Portions of the taproom were used as a large open gathering space. Such areas within the taproom are considered by the Zoning Officer of the Township of Lower Merion to be places of public assembly for purposes of applying the off-street parking requirements of the Code.
- D. The Township of Lower Merion ("Township") granted land development approval for various improvements to the Property including an expansion of the taproom with an apartment and accessory deck area overhead ("Taproom Expansion Plan"). The prior owner of the Property began construction of these improvements which were never completed. The Building and Property are in need of various work.
- E. Under the Taproom Expansion Plan and the historical use of the Property, the combined uses generate an off-street parking requirement under the Code of 27 off-street parking spaces, as detailed in Exhibit "A" attached hereto and made a part hereof.
- F. After taking title to the Property, Declarant has undertaken several actions to repair the Building and clean up the Property. Declarant desires to make certain modifications to the Building design to make the Building more aesthetically pleasing and to allow for conversion of the use of the Building from a taproom to a restaurant.

- G. Presently under the Taproom Expansion Plan, kitchen facilities are minimal. In order to make a restaurant a more viable use, Declarant desires to expand the kitchen facilities, which has the effect of reducing area previously devoted to use as a place of assembly and which would have otherwise been available for service of patrons. In turn, Declarant desires to eliminate the apartment and accessory deck in favor of indoor seating for restaurant patrons.
- H. Declarant desires to facilitate completion of the improvements to the Property and conversion of its use from taproom to a restaurant use by voluntarily imposing the following restrictions on the use and development of the Property.

NOW THEREFORE, Declarant declares that the Property shall henceforth be held, used and maintained subject to the following covenants and restrictions.

1. Conversion of Space. Declarant shall convert 350 square feet of the first floor of the Building previously devoted to use as a place of public assembly for the taproom to kitchen area for the restaurant. In turn, the second story apartment and accessory deck shall be eliminated and such space shall be improved and used as indoor seating area (with accessory areas such as bathrooms and service areas) comprising 700 square feet ("Second Floor Area"). This Declaration shall not prohibit putting the Building and/or the Property to other uses provided that such uses are permitted by the Code. This determination would be made based on a first floor taproom use and a second floor apartment use.

2. Hours of Operation. The Second Floor Area shall close not later than 11:00 P.M. each day and shall not thereafter reopen earlier than 9:30 A.M. the following day. Customers shall not be seated on the floor after 10:15 P.M.

3. Cessation of Restaurant Use. Should Declarant cease restaurant operations and revert to taproom use of the Building, Declarant shall abandon the restaurant use of the Second Floor Area and such area shall either remain empty, unoccupied and unused or converted to use as an apartment or other uses as are permitted by the Code or by the Township. This determination would be made based on a first floor taproom use and a second floor apartment use.

4. Facade Openings. The windows and doors along the Lancaster Avenue and Roberts Road facades shall remain closed at or before 9:30 PM.

5. Possible Additional Expansion. If after two (2) years after operating the restaurant such operation has not caused an unreasonable disturbance to the immediate neighborhood, Declarant may request permit(s) to enclose the roof area above the entrance on Lancaster Avenue subject to demonstrating compliance with all regulations relating to the issuance of such permits from those governmental agencies having jurisdiction. This Declaration shall not prohibit any expansions to the Property and/or the Building in the future provided they are permitted by the Code. This determination would be made based on a first floor taproom use and a second floor apartment use.

6. Resolution of Complaints. If the Director of Building and Planning of the Township of Lower Merion determines on the basis of investigations and complaints that use of this facility is causing unreasonable noise or other disturbances, Declarant will hire security personnel between the hours of 8:00 p.m. and 2:00 a.m. on Thursday, Friday and Saturday evenings to quell such disturbances. If the security personnel are able to eliminate further disturbances in the neighborhood, Declarant may petition the Director of Building & Planning to cease the use of such security personnel until such time as, in the opinion of the Director, such disturbances reoccurs.

7. Binding Effect/Enforceability. This Declaration shall be binding upon and inure to the benefit of Declarant while it is the owner of the Property. This Declaration shall also be binding upon and inure to the benefit of any future owners of the Property, their successors and assigns. This Declaration shall inure to the benefit of and be enforceable by the Township of Lower Merion and/or the Bryn Mawr Civic Association, its successors and assigns. This Declaration shall be binding for so long as the Building is used for restaurant purposes.

8. Operation of Establishment. Declarant shall cause the restaurant to be operated in accordance with all applicable regulations, ordinances and laws.

9. Notices of Violation. If any individual or entity shall determine Declarant is in violation of its obligations hereunder, Declarant shall be advised of the specifics of such violation and be given a minimum of thirty (30) days to respond and/or cure such violation, prior to any individual or entity with enforcement rights hereunder undertaking legal proceedings to enforce this Declaration.

10. Recording. This Declaration of Covenants shall be recorded in the Office for the Recording of Deeds, Norristown, Pennsylvania.

IN WITNESS WHEREOF, Declarant through its General Partner has executed this Declaration the day and year aforesaid.

BRYN MAWR RENOVATION GROUP, L.P.

By: Eugene Mitchell
Eugene Mitchell, General Partner

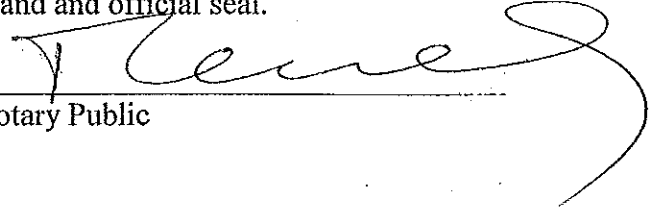
STATE OF New Jersey :
COUNTY OF Bergen :

:SS

On this, the 13 day of February, 2004, before me Teona Kerkadze the undersigned officer, personally appeared E. Mitchell, who acknowledged himself to

be a General Partner of Bryn Mawr Renovation Group, L.P., a partnership, and that he as such General Partner, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the partnership by himself as General Partner.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

T/B&P/1107LancCovenants-Kellys11-03

TEONA KERKADZE
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES OCTOBER 02, 2007

Parking Calculations for 1107 W. Lancaster Avenue

Historic Use

<u>Uses</u>	<u>Square Footage</u>	<u>Parking Generated</u>
Taproom	1055	10.55
Place of Assembly	700	14.0
Residence	N.A.	<u>2.0</u>
		27 spaces

Proposed Restaurant Use

<u>Use</u>	<u>Square Footage</u>	<u>Parking Generated</u>
Restaurant	2655	27

KELLYS BAR 1107 W LANCASTER AVE

April 2004 to May 25, 2009

Incident#	UCR Codes	Incident Description
0503170006	4519	OTHER PUBLIC SERVICE
0504010003	2300 2231 4477	PUBLIC DRUNKENESS
0504010009	2300 4477	PUBLIC DRUNKENESS
0504020007	4519	OTHER PUBLIC SERVICE
0504090003	4463	LOUD RADIO/TV/MUSIC
0504220012	2440 2300 4477	DISORDERLY CONDUCT-STATE LAW VIOLATION
0504230008	2653	OTHER OFFENSES-REGULATORY
0504240005	2300	PUBLIC DRUNKENESS
0504300004	2440	DISORDERLY CONDUCT-STATE LAW VIOLATION
0509070147	4519	OTHER PUBLIC SERVICE
0510220187	2653	OTHER OFFENSES-REGULATORY
0510230011	2300 4477	PUBLIC DRUNKENESS
0511070158	2820	LOST/MISSING PROPERTY
0512100013	2440 2300 4477	DISORDERLY CONDUCT-STATE LAW VIOLATION
0512110015	2440 4477	DISORDERLY CONDUCT-STATE LAW VIOLATION
0601190234	2231 4477	LIQUOR LAW-18 YRS OR OLDER
0601210014	4519	OTHER PUBLIC SERVICE
0601270011	4465 4477	UNWANTED GUEST
0601270190	2440 2240	DISORDERLY CONDUCT-STATE LAW VIOLATION
0602030018	2300 2440 4477	PUBLIC DRUNKENESS
0602050006	2440	DISORDERLY CONDUCT-STATE LAW VIOLATION
0602050013	2440 4477	DISORDERLY CONDUCT-STATE LAW VIOLATION
0602050016	4465 4477	UNWANTED GUEST
0602110095	4519 4477	OTHER PUBLIC SERVICE
0602220015	2300	PUBLIC DRUNKENESS
0603020163	4465	UNWANTED GUEST
0603020167	2300 2440	PUBLIC DRUNKENESS
0603040129	0617	THEFT-OVER \$200-FROM BUILDINGS
0603240153	3411 2300 2440	PUBLIC ACCIDENT-PRIV PROP-INJURY
0603250159	2300 4477 2440	PUBLIC DRUNKENESS
0603260102	2300 4477 4448	PUBLIC DRUNKENESS
0603260110	2300 4448	PUBLIC DRUNKENESS
0604020008	2300 2231	PUBLIC DRUNKENESS
0604080011	4465	UNWANTED GUEST
0604280003	2300 4477	PUBLIC DRUNKENESS
0605030162	2653	OTHER OFFENSES-REGULATORY
0605110178	2300 4477	PUBLIC DRUNKENESS
0605190005	2440	DISORDERLY CONDUCT-STATE LAW VIOLATION
0606090226	4486	CUSTOMER DISPUTE
0606110005	2440	DISORDERLY CONDUCT-STATE LAW VIOLATION
0606250005	2300	PUBLIC DRUNKENESS
0607090010	2440	DISORDERLY CONDUCT-STATE LAW VIOLATION

KELLYS BAR 1107 W LANCASTER AVE

April 2004 to May 25, 2009

Incident#	----	UCR Codes	----	Incident Description
0608110001	2440	4479	2240	DISORDERLY CONDUCT-STATE LAW VIOLATION
0608170123	4469			SUSPICIOUS PERSON/CIRCUMSTANCES/VEHICLES
0609160020	2300			PUBLIC DRUNKENESS
0609300007	2300	4477		PUBLIC DRUNKENESS
0610070007	2300	2440	4477	PUBLIC DRUNKENESS
0610200062	4493			PROPERTY LOST/MISS/STOL
0610210008	2300			PUBLIC DRUNKENESS
0610270138	2300			PUBLIC DRUNKENESS
0611010002	0800	2440	2300	SIMPLE ASSAULT
0611010005	2300	2240		PUBLIC DRUNKENESS
0611100005	4519			OTHER PUBLIC SERVICE
0611190006	4461	2240		POLICE INFORMATION RECEIVED
0611240118	1450	2440	2300	CRIMINAL MISCHIEF - OTHER
0701120001	2300	2440	4477	PUBLIC DRUNKENESS
0701150007	2440	4477	4479	DISORDERLY CONDUCT-STATE LAW VIOLATION
0701210010	2440	4477		DISORDERLY CONDUCT-STATE LAW VIOLATION
0702060010	1450	4477		CRIMINAL MISCHIEF - OTHER
0702090149	4519			OTHER PUBLIC SERVICE
0702140003	1831	2240		DRUGS-POSSESSION-COCAINE, HEROIN
0703300013	4519			OTHER PUBLIC SERVICE
0703310043	4515			OPEN DOOR/WINDOW
0704040017	2121	4480	4479	DUI-DRUGS
0704120013	4453			ALARM ACTIVATION
0705230014	2300			PUBLIC DRUNKENESS
0706200127	4489			ROAD RAGE
0707280003	2440	2240		DISORDERLY CONDUCT-STATE LAW VIOLATION
0707290004	4486			CUSTOMER DISPUTE
0708260011	2440	2300	2240	DISORDERLY CONDUCT-STATE LAW VIOLATION
0709010008	2300			PUBLIC DRUNKENESS
0709070027	4453			ALARM ACTIVATION
0709070177	2440			DISORDERLY CONDUCT-STATE LAW VIOLATION
0709080009	2440	4477		DISORDERLY CONDUCT-STATE LAW VIOLATION
0709080014	2300	2440		PUBLIC DRUNKENESS
0709260082	3413			PUBLIC ACCIDENT-TWSP PROP-INJURY
0709280017	4453			ALARM ACTIVATION
0709300018	2653	2240		OTHER OFFENSES-REGULATORY
0709300020	4519	2240		OTHER PUBLIC SERVICE
0710070001	2440			DISORDERLY CONDUCT-STATE LAW VIOLATION
0712070009	4453			ALARM ACTIVATION
0712160012	2300	2240		PUBLIC DRUNKENESS
0712220012	2440			DISORDERLY CONDUCT-STATE LAW VIOLATION
0712220107	2410			D.C.- HARASSMENT BY COMMUNICATION

KELLYS BAR 1107 W LANCASTER AVE

April 2004 to May 25, 2009

Incident#	---- UCR Codes ----			Incident Description
0801250008	2440	2300	4477	DISORDERLY CONDUCT-STATE LAW VIOLATION
0801260013	2300	4477		PUBLIC DRUNKENESS
0802070040	1410			CRIMINAL MISCHIEF TO AUTOMOBILES
0802210006	2730	4477		OPERATING UNDER SUSPENSION
0803140008	2300	4477	2240	PUBLIC DRUNKENESS
0804110007	4519	2240		OTHER PUBLIC SERVICE
0804130058	2440	4477		DISORDERLY CONDUCT-STATE LAW VIOLATION
0804150024	4453			ALARM ACTIVATION
0804220039	4453			ALARM ACTIVATION
0804250033	4453			ALARM ACTIVATION
0804290026	4453			ALARM ACTIVATION
0806100009	4453			ALARM ACTIVATION
0807200034	4453			ALARM ACTIVATION
0808020028	4453			ALARM ACTIVATION
0808040021	4453			ALARM ACTIVATION
0808200002	2440	4479	2240	DISORDERLY CONDUCT-STATE LAW VIOLATION
0810100137	2300	2440	4477	PUBLIC DRUNKENESS
0810150025	4515			OPEN DOOR/WINDOW
0810170122	2440			DISORDERLY CONDUCT-STATE LAW VIOLATION
0810240007	2300	4477		PUBLIC DRUNKENESS
0810250131	2440			DISORDERLY CONDUCT-STATE LAW VIOLATION
0810250158	0800	4479	4477	SIMPLE ASSAULT
0811090001	2300	2240		PUBLIC DRUNKENESS
0812140013	2300			PUBLIC DRUNKENESS
0812170042	4453			ALARM ACTIVATION
0812190009	2300	4477	2440	PUBLIC DRUNKENESS
0901010033	4515			OPEN DOOR/WINDOW
0901030034	4453			ALARM ACTIVATION
0901120008	4453			ALARM ACTIVATION
0901300008	2440	2240	4477	DISORDERLY CONDUCT-STATE LAW VIOLATION
0902010008	3411	4477	2240	PUBLIC ACCIDENT-PRIV PROP-INJURY
0902120022	4515			OPEN DOOR/WINDOW
0902210014	2300	2240		PUBLIC DRUNKENESS
0904040020	4453			ALARM ACTIVATION
0904050001	2231			LIQUOR LAW-18 YRS OR OLDER
0904180082	4493			PROPERTY LOST/MISS/STOL
0905010009	4493			PROPERTY LOST/MISS/STOL
0905020132	4463	2240		LOUD RADIO/TV/MUSIC
0905070015	4515	2240		OPEN DOOR/WINDOW
0905170006	2440			DISORDERLY CONDUCT-STATE LAW VIOLATION

Number of Incidents: 124