

# East Lawrence Neighborhood Association

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November 16, 2021

RE: SUP 21-00266 (Agenda Items B.9a and B.9b)

Dear Mayor and City Commissioners:

I am writing in support of the above referenced Special Use Permit (SUP) application for a proposed East Lawrence Wine Academy at 801 Pennsylvania Street, only if subject to the conditions stated at the end.

**The East Lawrence Neighborhood Association (ELNA)** and its precursor organizations have effectively advocated for the preservation and enhancement of East Lawrence, its public safety and public spaces, historic buildings, infrastructure, culture and quality of life for over 40 years. ELNA seeks to amplify all voices within our diverse community. Whenever possible, ELNA takes a collaborative approach to resolving neighborhood concerns. The reason this discussion is even happening right now is because in the 1970's, the neighborhood association successfully prevented the construction of the Haskell Loop highway on the land where the new 801 Pennsylvania building is now located. We take the long view.

**The applicant, Uncorked Pianist LLC has been very forthcoming, cooperative and collaborative** in addressing neighborhood concerns about another alcohol-based business in the northeastern quadrant of East Lawrence. The owners of the business, Michael and Mary Kirkendoll proposed several restrictive conditions in their original application, before even meeting with ELNA. The original application restricted hours of operation, restricted amplified music, and most significantly, restricted the duration of the SUP to the three-year term of their lease, with the opportunity for a three-year renewal. The original application provided that the SUP should not be transferable to another entity. After a meeting between the applicant and ELNA's Board, ELNA requested two additional conditions be added, that the applicant's principal owner be required to reside on premises, since this is a "live-work" space, and that there be an annual compliance review. Applicant agreed to both of these conditions and submitted language to the Planning Department reflecting that agreement.

**The underlying philosophy of land use regulation** is to protect the public health, safety and welfare of the community and to set specific guidelines for what is to take place where. If someone wishes to deviate from those guidelines, they must seek special dispensation. That is what the applicant is doing with this SUP application and rezoning request. The applicant requested the conditions that they needed to operate their business successfully. ELNA finds it confusing and extremely troubling that the Planning Department recommended to the Planning Commission that the SUP be assignable to the next leaseholder, and granted in perpetuity, when the applicant was requesting a three-year, non-transferable SUP. Under this scheme, the SUP exception to the land use regulations would become the rule at this location, in perpetuity. To their credit, the Planning Commission recommends a more limited term of ten years, still much longer than what was applied for, and longer than ELNA is comfortable with. The Planning Commission recommendation does not address ELNA's transferability concern. We can envision a scenario in which the Wine Academy is wildly successful and decides they would like to move to another space where they can serve 40 patrons instead of 23. They would have proven themselves to be a responsible business concern, so everyone is enthusiastic about their plan. If the SUP is non-transferable, they would apply for a new SUP at the new location, relocate and everyone is happy. If the SUP is assignable to a new leaseholder, suddenly, we have two alcohol-based businesses

instead of one. If the new business is less responsible, it is on the neighbors to have to be proactive under our complaint-based enforcement system. This is not something that either the applicant or the neighborhood association has requested. Why is the Planning Department insistent on recommending it? When this applicant no longer needs this SUP at this location, just let it expire.

**Parking** is the other major concern that is not adequately addressed in the staff report and recommendation. The report asserts that there is “shared parking” throughout the district. This was a common (mis)perception shared by the city staff, the neighborhood association and most businesses in the area until very recently. With the recent settlement of a lawsuit between the applicant’s landlord and the City of Lawrence, that is no longer the case. The business entity that owns 801 Penn controls all off street parking at that location. A related business entity will soon become eligible to purchase what is currently City-owned parking south of the Poehler Building for \$1, for use as they see fit. Other than what is available on the street, “shared parking” in the area is now a fiction. Requiring the applicant to update a chart showing that there are theoretically sufficient parking spaces in the area to meet its parking requirement does not address the actual issue of where exactly is the space for these cars to be parked.

**This is an uncomfortable letter** for me to write as ELNA President. ELNA’s Board voted to support the East Lawrence Wine Academy’s applications to embark upon this project, with the specific conditions that were agreed to with the applicant. The vote was not unanimous. Several neighbors are concerned about another alcohol-based business in East Lawrence, particularly one which deviates from the 55% non-alcohol sales requirement. Your packet contains letters from two of them, including our immediate past President. A majority of us are very pleased by, or at least accepting of the business concept being proposed. Everyone agrees that Michael and Mary Kirkendoll are wonderful people who are going to be really good neighbors. They, and their attorney, have been sincere and straightforward in addressing every concern, and had anticipated and addressed most of our concerns before we even had to bring them up. It is unfortunate to be placed in an adversarial posture by the recommendations before you when ELNA and the applicant worked so hard to achieve agreement on how to move forward. The concerns that ELNA is expressing have everything to do with process, and nothing to do with the Kirkendolls, their business plan or their counsel.

**This is about setting a positive precedent for best practices** in dealing with this and future SUP proposals in the overlay district and elsewhere in Lawrence. This city is full of sad examples of unintended consequences from inappropriate, unnecessary incentives and perks that were granted by governing bodies past. In this instance, the applicant requested a short-term renewable, non-transferable SUP. There is absolutely no reason to create the potential for long term unintended consequences of doing otherwise. As noted above, ELNA takes the long view.

**The East Lawrence Neighborhood Association requests the following:**

1. Remove this item from the consent agenda for further discussion.
2. Change the SUP term in Section 3(b)(vi) from ten years to six years (the original proposal for a three-year term, renewable for another three years).
3. Add a new Section 3(c): This Special Use Permit is granted to this applicant and is not transferable. Nothing herein creates any right to an assignable property interest in this Special Use Permit to benefit any successor entity.
4. The City Commission should direct the Planning Department to start working forthwith on revising expectations and protocols for dealing with parking requirements in the overlay district in light of the recent legal settlement and the imminent sale of the public parking lot south of the Poehler building. No future SUP or site plan should rely on the fiction of a chart noting available “shared parking” spaces.

**ELNA sincerely welcomes the East Lawrence Wine Academy** to the East Lawrence neighborhood. The proprietors have made every effort to launch their business the right way, and we do not wish to delay them in pursuing their passion and their livelihood. The two proposed revisions to conditions can be added quickly tonight on first reading and should result in no delay and no hardship to the applicant. The parking concerns, while extremely important, should not be the applicant's to resolve alone at this time, but neither will ELNA allow that can to be kicked down the road indefinitely. We look forward to being a collaborative, but persistent partner in seeing that parking issues in the overlay district are resolved.

**Thank you for your thoughtful consideration!**

A handwritten signature in dark ink, reading "Barry M. Shalinsky". The signature is fluid and cursive, with the first name "Barry" and last name "Shalinsky" clearly legible.

Barry M. Shalinsky

ELNA President

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cc: Michael and Mary Kirkendoll  
Patrick Watkins