



THE CITY OF SAN DIEGO

REPORT TO THE HEARING OFFICER

HEARING DATE: April 13, 2005

REPORT NO. HO-05-053

ATTENTION: Hearing Officer

SUBJECT: FLAMING SKEWER, CONDITIONAL USE PERMIT (CUP), AND SITE DEVELOPMENT PERMIT (SDP)/MID-CITY COMMUNITIES PLANNED DISTRICT – ALCOHOLIC BEVERAGE OUTLET - PROJECT NO. 59038, JOB ORDER NO. 42-3817. PROCESS 3.

LOCATION: 3896-B Fifth Avenue

APPLICANT: Yusuf G. Arnitah

SUMMARY

Requested Action - Should the Hearing Officer approve an application for a Conditional Use Permit to establish and maintain an Alcoholic Beverage Outlet, and a Site Development Permit to accommodate a shared parking agreement within the Mid-City Communities Planned District and Uptown Community Plan Area?

Staff Recommendation –

1. **APPROVE** Conditional Use Permit No. 174199 with conditions as noted in the Draft Permit (Attachment 6).
2. **APPROVE** Site Development Permit No. 205241 with conditions as noted in the Draft Permit (Attachment 6).

Community Planning Group Recommendation – As of April 8, 2005, information provided to staff indicates that the Uptown Community Planning Group took action on this item at their monthly meeting on April 5, 2005. It is anticipated that a copy of the Group's recommendation will be available at the public hearing on April 13, 2005.

Environmental Review – Staff has reviewed the application and determined that the project is exempt pursuant to Section 15303 (New Construction or Conversion of Small

Structures), Article 19 of the California Environmental Quality Act (CEQA), and that there are no environmental issues.

BACKGROUND

The property is addressed as 3896-B Fifth Avenue and located on the west side of Fifth Avenue between University Avenue to the north and Robinson Avenue to the south (Attachment 3), within the CN-1A (Commercial–Node) Zone of the Mid-City Communities Planned District within the Uptown Community Plan Area.

The Commercial-Node Zones are intended to provide for pedestrian oriented commercial and mixed-use districts in selected higher activity areas such as major intersections. Parking and vehicle access are located so as to minimize disruption of pedestrian continuity. Residential use above street level commercial use is encouraged to intensify development on major transportation corridors where transit and other services are generally available and to foster pedestrian activity.

The Uptown Community Plan designates the subject site for mixed-use commercial development. The plan encourages both daytime and nighttime activities that extend the usage of commercial activity areas and strengthen the commercial vitality of the Hillcrest business district through such uses as a restaurant or delicatessen. Recommendations of the Plan applicable to the subject site promote an atmosphere conducive to a pleasing pedestrian environment with improved pedestrian circulation, enhanced landscaping within the public right-of-way and tree plantings.

The subject property is comprised of four legal lots subdivided in 1890 and developed with a two- and three-story, mixed-use building with residential apartments on the upper floors and commercial space on the ground floor. The ground floor area was previously occupied by a retail clothing store (“The Gap”) since 1993, and is currently vacant. The project is proposed to be located within a 2,000 square-foot portion of this larger vacant space and represents a change in use of the premises.

Land Development Code Section 142.0510(3) requires that when a change in use is proposed to a use that requires more off-street parking spaces than the previous use, parking shall be required for the new use. The change in use of the premises from retail clothing to retail food sales/deli use constitutes an intensification of use based on trip generation which requires an increase in the off-street parking requirement. A total of three (3) additional off-street parking spaces are required to be provided. Currently no off-street parking spaces are provided, nor is any vacant land available on the premises on which off-street parking spaces might be added. Staff review has determined that a shared parking agreement must be acquired by the Applicant/Property Owner and recorded with the County prior to issuance of building permits to accommodate the change in use.

Land Development Code Section 103.1504.h.1.c. requires approval of a Site Development Permit/Mid-City Communities Development Permit for projects located within the Mid-City Communities Planned District which utilizes the shared parking provision of

the Land Development Code, pertaining to shared parking agreements. Therefore, a Site Development Permit is being included with this project. Draft findings are included with the Draft Resolution (Attachment 7) for consideration by the Hearing Officer.

Surrounding properties in the neighborhood are developed with a variety of residential, retail commercial and office uses, including restaurants.

DISCUSSION

Submitted plans indicate that the delicatessen will comprise an approximately 1,620 sq. ft. portion of an approximately 2,000 sq. ft. interior tenant improvement space located on the ground floor of the existing building. The remainder of the tenant improvement space includes bathrooms, walk in coolers, display cases, food preparation and storage areas.

The Applicant is requesting the transfer of an existing Type 21 General Off-Sale Liquor License from a previous location nearby, to the proposed site. This is intended to accommodate the retail sales of alcoholic beverages in an approximate 100 sq. ft. portion of the delicatessen. (The licensee is requesting to transfer the License from the previous site located within Census Tract 4.00 to Census Tract 3.00. This transfer will result in a net loss in the number of licenses and a decrease in the degree of overconcentration of licenses within Census Tract 4.00, and a net increase in the number of licenses and an increase in the degree of overconcentration of licenses in Census Tract 3.00).

State of California Department of Alcoholic Beverage Control (ABC) regulations pertaining to a Type 21 General Off-Sale Liquor License do not allow consumption of alcoholic beverages on-site. ABC licensing regulations indicate that a Type 47 On-Sale General – Eating Place License (Restaurants) is required to accommodate the sale of beer, wine and distilled spirits for consumption on the licensed premises. ABC regulations preclude the transfer or exchange of Type 21 to Type 47 licenses, and provide for acquisition of Type 47 licenses through a lottery process. Acquisition of existing Type 47 licenses must otherwise be obtained by purchase on the open market.

The property owner has indicated a desire to maintain the existing Type 21 license. City staff has determined that this type of license is inconsistent with the use of the premises as a restaurant. Therefore, Condition No. 19 has been added to the draft Permit (Attachment 6) which prohibits consumption of alcoholic beverages on-site. Condition No. 20 limits the primary use of the premises to a delicatessen providing ‘take-out’ food for consumption off-site only, and prohibits interior dining area commonly associated with a restaurant use, while allowing an accessory use of the premises for off-site sales as allowed by a Type 21 General Off-Sale Liquor License.

Land Development Code Section 141.0101 specifies the purpose of the separately regulated use regulations, which are to provide for specific uses that may be desirable and appropriate in a particular zone, if limitations or conditions are placed on the development of those uses to

minimize detrimental effects to neighboring properties or incompatibility with the permitted uses of the base zone.

Land Development Code Section 141.0502 specifies that any establishment for which a Type 20 Beer and Wine License or a Type 21 General Off-Sale Liquor License has been obtained from, or for which an application has been submitted to, the California Department of Alcoholic Beverage Control (ABC) for permission to sell alcoholic beverages for off-site consumption shall be regulated as an alcoholic beverage outlet. Alcoholic beverage outlets are permitted within the CN-1A Zone as limited uses subject to LDC regulations. The limited use regulations, pursuant to LDC Section 141.0502(b) (1) do not permit alcoholic beverage outlets in any of the following locations:

1. Within a census tract, or within 600-feet of a census tract, where the general crime rate exceeds the city-wide average general crime rate by more than 20 percent.

The subject property is located within a census tract (3.00) where the general crime rate is noted as 146.6 percent above the city-wide average general crime rate.

2. Within a census tract, or within 600-feet of a census tract, where the ratio of alcoholic beverage outlets exceeds the standards established by California Business and Professions Code Section 23958.4.

The subject property is located within a census tract (3.00) which permits a maximum of three (3) off-sale alcoholic beverage outlet. There are currently seven (7) existing off-sale alcoholic beverage outlets, and the granting of any additional alcoholic beverage outlets would further exceed the standards. The transfer of the license from Census Tract 4.00 to Census Tract 3.00 would represent an increase of one license in Census Tract 3.00 (and a decrease of one license in Census Tract 4.00).

With regard to 1 and 2 noted above, California Business and Professional Code Section 23958.4 provides that “the local governing body may issue a license if a determination is made that the public convenience and or necessity would be served by the issuance”. On November 14, 2000, the City council adopted Resolution No. R-294124 which delegates the authority to determine public convenience and necessity for alcoholic beverage licensing to the Police Department. On July 22, 2004, the Police Department determined that “public convenience and necessity” will be served by issuance of the license to accommodate the alcoholic beverage outlet (Attachment 11).

3. In an adopted Redevelopment Project Area.

The subject property is not located within a redevelopment area.

4. Within 600-feet of a public or private accredited school, a public park, a playground or recreational area, a church, a hospital, or a San Diego County welfare district office.

The subject property is not located within 600-feet of a public or private accredited school, public park, playground or recreational area, church, hospital, or San Diego County welfare district office.

5. Within 100-feet of a residentially zoned property.

The subject property is not located within 100-feet of a residentially zoned property.

Alcoholic beverage outlets that do not comply with these regulations may nevertheless be permitted if a Conditional Use Permit (CUP) is approved pursuant to LDC Section 141.0502(c). These regulations include provisions for a recommendation by the Police Department, off-street parking and conditions addressing issues related to on-premise activities, design of the area devoted to alcoholic beverage sales, hours-of-operation, security measures, and lighting, litter, graffiti or nuisance abatement, or other special requirements for the premises. Proposed conditions are included with the draft permit for consideration by the Hearing Officer.

Land Development Code Section 142.0535(c) provides that with regard to the control of parking spaces to serve intensified uses, that the off-premises parking shall be owned or controlled by the owner of the use requiring the off-street parking spaces. When off-premises parking are to be provided, the owner or lessee of record of the premises shall furnish evidence that is satisfactory to the City Manager that they own or have a sufficient interest in the property to provide the minimum off-street parking spaces required by the Land Development Code. Whether off-street parking spaces are to be provided on property that is owned by the applicant or another owner, the applicant shall provide to the County Recorder for recordation, covenants that have been executed by the owners of the property on which the off-premises parking is proposed and the owners of the use requiring the off-street parking spaces. The covenant shall be for the benefit of the City, in a form approved by the City Attorney, to the effect that the owners will continue to maintain the parking spaces as long as the use it serves exists. The covenant shall also recite that the title to, and right to, use the lots upon which the parking is to be provided will be subservient to the title to the premises where the primary use it serves is situated and shall warrant that the lots are not and will not be made subject to any other covenant or contract for use without prior written consent of the City. If the owners of the use should thereafter provide parking equal in area within the same distance and under the same conditions as the ownership upon another lot than the premises made subservient in a previous covenant, the City will, upon written application accompanied by the filing of a similar covenant, release the original subservient premises from the previous covenant. The owners shall furnish at their own expense title reports or other evidence the City may require to insure compliance with the provisions of this section.

Land Development Code Section 142.0535(d) provides that off-premises parking spaces are not to be reduced. Off-premises parking spaces provided in accordance with this section shall be maintained as long as the structure or use for which they are provided exists unless an equivalent substitute number of spaces is provided and thereafter maintained in compliance with the Land

Development Code. In no event shall parking facilities that are provided or maintained for a structure or use be considered as providing any of the required space for any other structure or use.

Condition No. 13.b. has been included with the draft Permit (Attachment 6) which requires that a shared parking agreement be consummated and recorded to accommodate the change in use of the premises. This agreement will ensure that three off-street parking spaces are provided and maintained as required.

Conclusion

The intent of the CUP process is to review proposed uses on a case-by-case basis to determine whether, and under what conditions, the use may be approved at a given site. The proximity to the various community elements, the crime rate, and the ratio of alcoholic beverage outlets within the community are a combination of factors which the staff can consider to recommend approval of the proposed use at this site. The purpose of the SDP is to establish a review process for proposed development that, because of the site, location, size, or some other characteristic, may have significant impacts on resources or on the surrounding area, even if developed in conformance with all regulations. The intent of the SDP is to apply site-specific conditions as necessary to assure that the development does not adversely affect the applicable land use plan and to help ensure that all regulations are met.

Although the Uptown Community Plan does not specifically address alcoholic beverage outlets, staff has determined that this proposed accessory retail use implements the policies and goals of the community plan and applicable regulations of the Land Development Code. With the implementation of a shared parking agreement to address parking issues created by the intensification in use of the property, staff can support the required findings for the requested actions, and included in the draft resolution as Attachment 7.

ALTERNATIVES

1. Approve CUP No. 174199 and SDP No. 205241 with modifications.
2. Deny CUP No. 174199 and SDP No. 205241 if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

WILLIAM C. TRIPP
Development Project Manager
Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map

4. Project Data Sheet
5. Project Plans
6. Draft Permit with Conditions
7. Draft Resolution with Findings
8. Ownership Disclosure Statement
9. Project Chronology
10. Census Tract and Liquor License Distribution Map
11. Statement of Public Convenience and Necessity