



THE CITY OF SAN DIEGO

REPORT TO THE HEARING OFFICER

HEARING DATE: May 10, 2006 REPORT NO. HO-06-080

ATTENTION: Hearing Officer

SUBJECT: PACIFIC BEACH SHELL STATION AND CONVENIENCE STORE –
PROJECT NO. 4977

LOCATION: 2830 Grand Avenue

OWNER/
APPLICANT: Asset Gas LLC. (Attachment 12)

SUMMARY

Requested Action - Should the Hearing Officer approve a Conditional Use Permit to remodel an existing gas station by converting service bays to a convenience store (expanding an existing mini mart) and other accessory improvements, and, to sell beer and wine?

Staff Recommendations: - APPROVE Conditional Use Permit No. 008465 with conditions and CERTIFY the Negative Declaration (Attachment 10).

Community Planning Group Recommendation – The Pacific Beach Community Planning Committee recommended approval of the project on August 23, 2004 by a vote of 14-0-0 with no conditions. See Discussion section of the report for updated information from the community group (Attachments 8 and 9).

Environmental Review - A Negative Declaration has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) Guidelines.

BACKGROUND

The subject property is currently developed with an existing gas station, service bays and a small convenience store located a 2830 Grand Avenue and its intersection with Mission Bay Drive (Attachment 1). The project requires a Conditional Use Permit to remodel the existing previously

conforming service station through the following improvements: 1) expand the convenience store by remodeling the 1,619 automobile repair station and convenience store (automobile service bays total 1,100 square feet; convenience store totals 519 square feet) to a 1,619 square-foot convenience store with a new 182-square-foot, second floor office. This Conditional Use Permit also includes a request to allow the sale of beer and wine within the convenience store. The property is zoned CV-1-2, a citywide commercial visitor zone, and designated for visitor commercial uses within the Pacific Beach Community Plan (Attachment 2). The site is within the Coastal Overlay Zone and the Transit Overlay Zone.

The properties immediately adjacent to the project site include a fast food restaurant (“Rubios”) abutting to the north, followed by a motel and a car dealership with frontage on Mission Bay Drive. Across Mission Bay Drive to the east are additional car dealerships and motels. Across Grand Avenue to the south and west is a public park, the Mission Bay Park developed with a public golf course. Continuing west on Grand Avenue on the south side of the street is the Mission Bay High School. Residential development including single and multi-family units, are located on Figueroa Boulevard. The outlying neighborhood is predominately commercial (Attachment 3).

The gas station has been located at this site since 1963, prior to the requirement for a Conditional Use Permit (CUP) for service stations. Expansions to such a use requires a CUP for the automobile service station pursuant to SDMC section 141.0801. The project includes a request to sell beer and wine which requires a CUP for an alcohol beverage outlet, pursuant to SDMC section 141.0502. The convenience store was added to the facility in 1984. The store had a type 20 off-sale beer and wine license from 1984 through 1992.

DISCUSSION

Project Description:

The proposed project would remodel the existing service station which currently includes one building with service bays and a mini mart, fueling stations and ground signs. The specific project elements are as follows:

1. Removal of the service bay areas to allow the expansion of the existing convenience store from 519 square feet to 1,619 square feet (service bay areas total 1,100 square feet).
2. Expansion of the area used for the display of alcoholic beverages.
3. Maintenance of eight fueling stations.
4. Installation of a new sidewalk through the project site to provide a pedestrian connection from Grand Avenue to Mission Bay Drive.
5. Removal of all signs, including two overheight ground signs, to be replaced with signage in conformance with city-wide coastal sign regulations.

Existing Improvements:

As the station has existed at this location for over 40 years, several existing improvements which were constructed legally at the time are no longer in conformance due to changes in code requirements. The property contains several signs that are previously conforming as they are either located within the setback, public right of way, or over the allowable height limit. As conditioned by this permit, all signs on the property would be either relocated or removed and replaced with signs that are in conformance with current standards (Conditions 22 and 23). A traffic and parking study were required for the project. Portions of the existing vehicular circulation for the station (driveways and access) as well as three of the parking spaces (6, 8 and 9) currently encroach into the public right-of-way along Grand Avenue. The Grand Avenue curb-to-property-line distance measures over 40 feet in width adjacent to the subject site where the standard curb-to-property-line distance is 10 feet. As these existing improvements have not impeded traffic visibility nor created conflicts with pedestrians, and, they would remain unchanged with this project, staff have conditioned that Encroachment Maintenance Removal Agreement be obtained for these areas (Condition 36). This agreement will limit future encroachments while giving the City the opportunity to require their removal should the right-of-way be required in the future.

Access to and from the site is via four existing 35-foot wide driveways located along both Mission Bay Drive and Grand Avenue. The current project would reduce these driveways to the currently allowed maximum width of 30-feet. Last, the existing Rubio’s restaurant development adjacent to the west has frontage on both Mission Bay Drive and Grand Avenue. Rubio’s has its primary access on Mission Bay Drive, but also currently utilizes a driveway on the subject property to provide access from the rear. Permit condition number 32 requires that a shared parking agreement be provided. The project will ensure that all existing improvements and proposed improvements are consistent with current standards.

COMMUNITY PLAN ANALYSIS:

The Pacific Beach Community Plan designates the site for Visitor Commercial uses which allow for visitor-commercial or visitor-serving uses specifically stating that establishments for “food and beverage service” and “retail convenience sales” are allowed. The plan requires conformance to the underlying zone. The site is zoned CV-1-2 a city wide commercial visitor zone which allows for establishments catering to the lodging, dining, and recreational needs of both tourists and the local population. The CV-1-2 zones allows for a mix of visitor-serving uses and residential uses with a pedestrian orientation. The Plan states that the Visitor Commercial designation is appropriate at this location due to the site’s location and visibility with respect to Interstate 5. The Plan also suggests that projects incorporate Transit Oriented Development guidelines such as building articulation, bus shelters, bicycle racks or public art in a public plaza. The proposed remodel to the station includes the provision of a sand sculpture, less than 3-feet in height, within the front portion of the site and the right-of-way. Staff has determined that the property is at a uniquely appropriate location for public art since the site maintains one of the most prominent corners upon entry to the community from I-5. The proposed continued use of the site as a service station, remodeled to expand a convenience store and other accessory improvements, including the sale of alcohol, would not adversely affect the community plan.

Project Issues:

Alcohol Beverage Outlet/Regulatory Framework:

Alcoholic beverage outlets are permitted by right as a Limited Use pursuant to Section 141.0502(b) of the Land Development Code (LDC), meaning alcohol sales are permitted by right if certain locational criteria are met. However, any alcoholic beverage outlets meeting any one of the following criteria are subject to the CUP requirement (SDMC Section 141.0502):

1. Within a Federal Census tract, or within 600 feet of a Census Tract, where the general crime rate exceeds the citywide average general crime rate by more than 20 percent.

Statistics provided by the San Diego Police Department for Federal Census Tract No. 78.00 show the area to be 278.6 percent above the citywide average crime rate (Attachment -6 and 7). Therefore, by definition, the project site is considered to be within a high crime area and a CUP is required for the proposed off-sale of alcoholic beverages based on this factor.

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 the California Business and Professional Code (Section 23958.4).

The project site is located within Federal Census Tract No. 78.00 which permits a total of four (4) off-sale alcoholic beverage outlets where there are currently four existing off-sale outlets (Attachment 6 and 7). Therefore, with the issuance of one additional license as proposed with this application, the census tract would be considered to be overly concentrated with alcoholic beverage outlets and a CUP is required for the proposed off-sale of alcoholic beverages based on this factor.

3. Within a Redevelopment Area.

The site is not located within a Redevelopment area therefore, a CUP would not be required for the proposed off-sale of alcoholic beverages based on this factor.

4. Within 600 feet of a public or private accredited school, public park, playground or recreational area, church, hospital or a San Diego County Welfare District Office.

The site is located approximately 80 feet of Mission Bay Park, which is developed with a public golf course. Therefore, a CUP is required for the off-sale of alcoholic beverages

based on this factor. The site is not located within 600 feet of the other above mentioned facilities.

5. Within 100 feet of residentially zoned property.

The site is located approximately 80 feet from a residential zone as the Mission Bay Park is zoned RS-1-7, and approximately 300 feet from residential development to the west. A CUP is required for the off-sale of alcoholic beverages based on this factor (Attachment 15).

Public Convenience or Necessity/Appeal to the City Manager:

The San Diego Municipal Code states that, if a project site is considered to be within a high crime area, and/or is overly concentrated with alcohol licenses as described above, a determination of “public convenience or necessity” must be made by the local municipalities prior to the ABC issuance of a license. On November 14, 2002, the San Diego City Council adopted Resolution No. R-294124 which delegates authority to determine public convenience or necessity to the Police Department. The adopted Resolution also establishes an administrative hearing process for review of the Police Department’s decisions according to the procedures established in San Diego Municipal Code Section 33.0501. The Conditional Use Permit application to remodel the gas station and for beer and wine sales at this location was submitted to the Development Services Department September 2002. In 2002, the Police Department issued a finding of public convenience or necessity, recommending approval of the alcohol beverage outlet (Attachment 6).

Several issues arose during the project’s review including the coastal requirements, traffic concerns, and signage requirements. Upon resolution of these issues, the project was scheduled for the Development Service’s Hearing Officer public hearing for October 2005. Prior to the hearing, Development Services staff were advised by the Police Department that their (PD) original review and recommendation dated 2002 needed to be re-evaluated prior to the hearing due to the amount of time that had lapsed since their original review. As such, the project was continued to a date uncertain to allow the applicant to obtain a new review by the Police Department. In November 2005, the Police Department issued a new determination of “public convenience or necessity” and, based upon the high crime rate, undue concentration and, that the premises would aggravate existing police problems, denied the application (Attachment 7). The applicant appealed the decision to the City Manager’s Office.

On December 5, 2005, Thomas Marshall, Administrative Hearing Officer for the City Manager’s Office, heard an appeal of the Police Department determination. The Administrative Hearing Officer’s disposition reversed the Police Department determination and ruled that the Police Department shall issue a public convenience or necessity determination (Attachment 16).

Alcohol Sales: Project Analysis

The proposed off-sale alcoholic beverage outlet requires a Conditional Use Permit because the project site does not meet all of the locational criteria of the Land Development Code to allow the proposed use by right in the CV-1-2 zone. As demonstrated above, the project site is within an area that is by definition considered to be high crime; would be located within a census tract that is considered over concentrated by one license if this additional license is issued, and, is within 600 feet of a public park. Each one of these factors affects the need for the Conditional Use Permit. The project has been reviewed by the Development Services staff and the San Diego Police Department for conformance to the applicable land use regulations and policies. Staff has determined that the proposed sale of beer and wine within the existing gas station is an appropriate accessory use to the site and would not constitute a significant change of use to the site in terms of the underlying zoning and the community plan.

Locational Criteria-

The Mission Bay Park, a public park, which is also zoned residential, is located across Grand Avenue approximately 80 feet from the site. The majority of the park is developed with a public golf course. Grand Avenue is a four-lane major public right-of-way with two-lanes westbound and one lane eastbound, with a median along the project’s frontage. The nearest traffic signal for pedestrian crossing is west of the site at the intersection of Grand Avenue and Figueroa Boulevard. The nearest residential development exists approximately 300 feet from the subject property across Figueroa Boulevard. Although the park is zoned residential, Park and Recreation Department staff has indicated that the likelihood that the Mission Bay Park would be redeveloped with residential uses is minimal.

Public Convenience or Necessity (over-concentration)-

On December 5, 2005, The Hearing Officer of the City Manager’s Office determined that the Public Convenience or Necessity standard of the California Business and Professional Code Section No. 23958.4 could be made by the approval of the license. The Hearing Officer identified several factors in reaching his decision as noted in the resolution of that meeting (Attachment 16).

Subsequent to this decision, the ABC advised staff that the previous alcohol license for beer and wine sales within the mini mart was issued from 1984 through 1992. Police Department staff has indicated that this does not change their current recommendation of approval with conditions which will be recommended to the ABC if this item is approved (Attachment 10, Draft Permit, pages 6 and 7).

Draft Conditions of Approval-

The approval of a CUP would allow the sale of beer and wine to be conditioned so that current and proposed alcohol sales would not have a negative impact on the surrounding neighborhood. Draft Conditional Use Permit No. 008465 (Attachment 10) includes a number of conditions that would limit the hours of sales, regulate advertising, provide for a well-lighted, cleaner site and prohibit specific on-site activities with the objective of reducing the likelihood of loitering on the property. Additionally, the CUP provides an opportunity for the San Diego Police Department to protest the ABC license for the inclusion of enforceable conditions regulating the type, size, quantities and alcoholic proof of the beverages.

Specifically, the CUP conditions would limit the hours of alcohol beverage sales from 7:00 a.m. to 11:00 p.m. while the gas station and the convenience store would be open 24 hours a day, seven days a week. The CUP would not allow pinball games, arcade-style video and electronic games, or coin-operated amusement machines on the premises. Exterior public pay phones that permit incoming calls would not be permitted on the premises, on adjacent public sidewalks, or areas under the control of the owner or operator. Advertising would be limited to interior signs only and “No Loitering” signs would be required to be prominently displayed on the premises. Finally, the CUP would include a thirty year expiration date from the date the CUP is approved. The permit could be extended through the appropriate review and decision process and may be subject to additional conditions at that time.

Community Planning Group Recommendation:

The Pacific Beach Community Planning committee recommended approval of the project on August 23, 2004 by a vote of 14-0-0 with no conditions. However, at a subsequent meeting on April 26, 2006, the community group re-heard the project and recommended denial of the application. On April 28, 2006, staff was advised via electronic mail that the group was unaware that the project included the sales of alcoholic beverages, nor were they informed that such a request was included by the project applicant (Attachments 8 and 9). While current city staff assigned to the project were not at the 2004 meeting, staff response is that the Notice of Application dated 2002 and the Negative Declaration dated August 2005, did include the sales of alcoholic beverages and both documents were routed to the community planning group representatives. No comments were received on the environmental document.

Community Response:

Staff has received a number of correspondences, primarily in the form of electronic mail and petitions beginning in April 2006, as well as two letters dated 2002 and 2006, in opposition to the proposed alcohol sales (Attachment 14).

CONCLUSION:

Staff recommends approval of the Conditional Use Permit for the remodel and the continued sale of alcoholic beverages. The project would enhance the site and surrounding area. The alcohol sales would also be regulated by the ABC and enforced by the Police Department. The previous license for alcohol sales at this site was in compliance and no complaints filed with the ABC. Special considerations and permit conditions have been added to this CUP that would assure that the business will not be detrimental to the public health, safety and welfare of the community. The existing service station and the proposed alcohol beverage outlet are both uses which currently require a Conditional Use Permit. This action will now place the facility under the encumbrance of a discretionary action in perpetuity with specific conditions regulating both uses where currently, no such conditions exist. The project is consistent with the underlying zone and the applicable plans and policies in affect for the site.

ALTERNATIVES:

1. Approve Conditional Use Permit No. 008465 with modifications.
2. Deny Conditional Use Permit No. 008465, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

Sandra Teasley, Development Project Manager

Attachments:

1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photograph of Surrounding Land Uses
4. Project Plans (deliver to the Development Services Dept. Hearing Officer)
5. Alcohol Outlets within Census Tract 78.00
6. Police Department Public Convenience or Necessity Finding/Crime Stats dated 2002
7. Police Department Public Convenience or Necessity Finding/Crime Stats/Memorandum dated October 2005
8. Community Planning Group Recommendation (minutes) dated 2002
9. Electronic Email of revised Community Planning Group Recommendation dated 2006
10. Draft Permit with Conditions
11. Draft Resolution with Findings
12. Ownership Disclosure Statement
13. Project Data Sheet
14. Community Responses
15. Aerial of 100' and 600' Radius Map
16. Hearing Officer of the City Manager Office Resolution dated December 2005