



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: February 24, 2011 **REPORT NO.** PC-11-016

ATTENTION: Planning Commission, Agenda of March 10, 2011

SUBJECT: **APPEAL OF STAFF'S DECISION TO APPROVE THE NEIGHBORHOOD USE PERMIT FOR THE BLUEFOOT BAR & LOUNGE – PROJECT NO. 221723 PROCESS TWO**

REFERENCE: Planning Commission Report No. 08-112
<http://www.sandiego.gov/planning-commission/pcreports/08112.pdf>

OWNER: Ghorban Mohtadi (Attachment 9)

APPLICANT: Adam Cook

SUMMARY

Issue(s): Should the Planning Commission approve or deny an appeal of Staff's decision to amend the Neighborhood Use Permit for the continued operation of the Bluefoot Bar & Lounge located at 3404 30th Street within the Greater North Park Community Plan?

Staff Recommendation: Deny the appeal and Approve Neighborhood Use Permit No. 789751 (Amendment to NUP No. 503450).

Community Planning Group Recommendation: At their November 16, 2010 meeting, the North Park Planning Committee voted 10-4-0 to deny the applicants' request and recommend a five-year expiration date of the NUP as detailed in this report (Attachment 8).

Environmental Review: This project was determined to be categorically exempt from the California Environmental Quality Act on November 16, 2010 and the opportunity to appeal that determination ended December 1, 2010.

Fiscal Impact Statement: None with this action. Project costs are paid by the applicant through a deposit account.

Code Enforcement Impact: None with this action.

Community Plan Analysis:

The project is located within the Greater North Park Community Planning area. The Greater North Park Community Plan designates the proposed site for Commercial Use and allows residential development in a mixed-use setting. The Commercial Element of the community plan identifies this site within Area 7 "Other Neighborhood Centers." Uses within this area are intended to serve as neighborhood commercial centers for residents of the surrounding area. The community plan does not provide specific goals, objectives, or recommendations regarding uses that propose the sale of alcohol; only that in general, uses under the existing commercial zone be allowed. It is highly encouraged that uses such as those that sell alcohol take measures to reduce and limit negative impacts such as loitering, excessive noise, littering, etc. especially where such a use is proposed adjacent to existing low density, single-residences.

Community Planning Group Recommendations:

There were three motions taken at the November 16, 2010 meeting of the North Park Planning Committee. The first motion, to deny the applicants' request and recommend a five-year expiration date of the NUP, was approved by a vote of 10-4-0. This recommendation is consistent with the December 9, 2010 decision from Development Services Staff.

The second motion, to deny the request for modifications to Conditions No. 4 & 8 are part of the Alcoholic Beverage Control (ABC) license which is not a part of this action and should be addressed to the ABC. That motion passed 10-1-3.

The third motion to further restrict the hour of operation on Friday and Saturday until 12am was denied 4-9-1 (Attachment 8).

Community Input:

Several calls from the public were received during the review of this project and information was provided as requested.

Appeal Issues:

On December 23, 2010, Jaime Rosales filed an appeal (Attachment 11) of the December 9, 2010, Development Services Staff decision. There were four issues cited by the appellant.

1. The approved NUP is not warranted because there are no previously conforming rights for serving distilled spirits and is in violation of the CN-1-2 zone.

The Municipal Code allows projects to reinstate previously conforming uses through the application of a Neighborhood Use Permit (NUP). The resumption of a previously conforming use that has been discontinued for a period of two or more years requires a Process Two NUP, pursuant to Municipal Code section 127.0108, which establishes the criteria for reinstating previously-conforming uses after 2 years of discontinuance.

During the review of the original application to reinstate previously conforming uses, staff reviewed all the information presented and determined the project did have previous conforming rights to serve distilled spirits. Based on the California Department of Alcoholic Beverage Control records, the project site has operated with a Type 47 or 48 ABC license, which allows for the sale of beer, wine, and distilled spirits, from 1935-1943, 1945-1980, and 1981-1984. Since 1984, the premise has operated under a Type 42 license, which allows for a bar or tavern in which only beer and wine are sold (no distilled spirits allowed). Staff has reviewed this issue again and still believes substantial evidence was provided to resume the previously conforming use to sell beer, wine and distilled spirits. This determination was confirmed by the Planning Commission's approval of NUP No. 503450.

2. The NUP as currently approved negatively affects the quiet enjoyment of residence and the health, safety, and welfare of the neighborhood.

In making the original decision, Staff considered the findings necessary to approve the project as well as community and San Diego Police Department input regarding noise on adjacent residential neighborhoods and determined the conditions contained in the permit were essential to protect the public health, safety, and welfare. Staff believes these conditions are still appropriate as described in the required findings (Attachment 7).

3. The previous NUP was granted on the condition that the owners would take the necessary steps to improve the relationship with the neighbors and mitigate the negative impact which was not done.

The approved permit contains conditions (Attachment 6) designed to address neighborhood issues as discussed at the previous hearing including, but not limited to, restrictions on hours of operation, live entertainment and prevention of loitering. The applicant has indicated they have complied with these conditions and no complaints to Neighborhood Code Compliance (NCC) have resulted in a violation of their approved permit.

4. A five-year expiration date is too long.

Since the approval of the existing NUP on October 2, 2008, NCC has received one complaint and there were no violations identified. In 2008, Development Services Staff recommended approval of the permit with an expiration date of five years. The Planning Commission decreased it to two years. Staff, in conjunction with the San Diego Police Department and the Community Planning Group believe a five-year expiration date is appropriate as indicated in the December 9, 2010 Notice of Decision (Attachment 13).

Conclusion:

Staff has reviewed the application for the Neighborhood Use Permit and has determined that the permit conditions comply with the purpose and intent of the Land Development Code. Staff believes the required findings can be made to support the project. Therefore, staff recommends that the Planning Commission deny the appeal and approve the Neighborhood Use Permit as originally approved by staff.

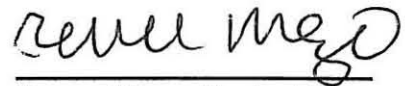
ALTERNATIVES

1. **Deny** the appeal and **Approve** Neighborhood Use Permit No. 789751, with modifications.
2. **Uphold** the appeal and **Deny** Neighborhood Use Permit No. 789751, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,



**Mike Westlake, Program Manager
Development Services Department**



**Renee Mezo, Project Manager
Development Services Department**

WESTLAKE/ROM

Attachments:

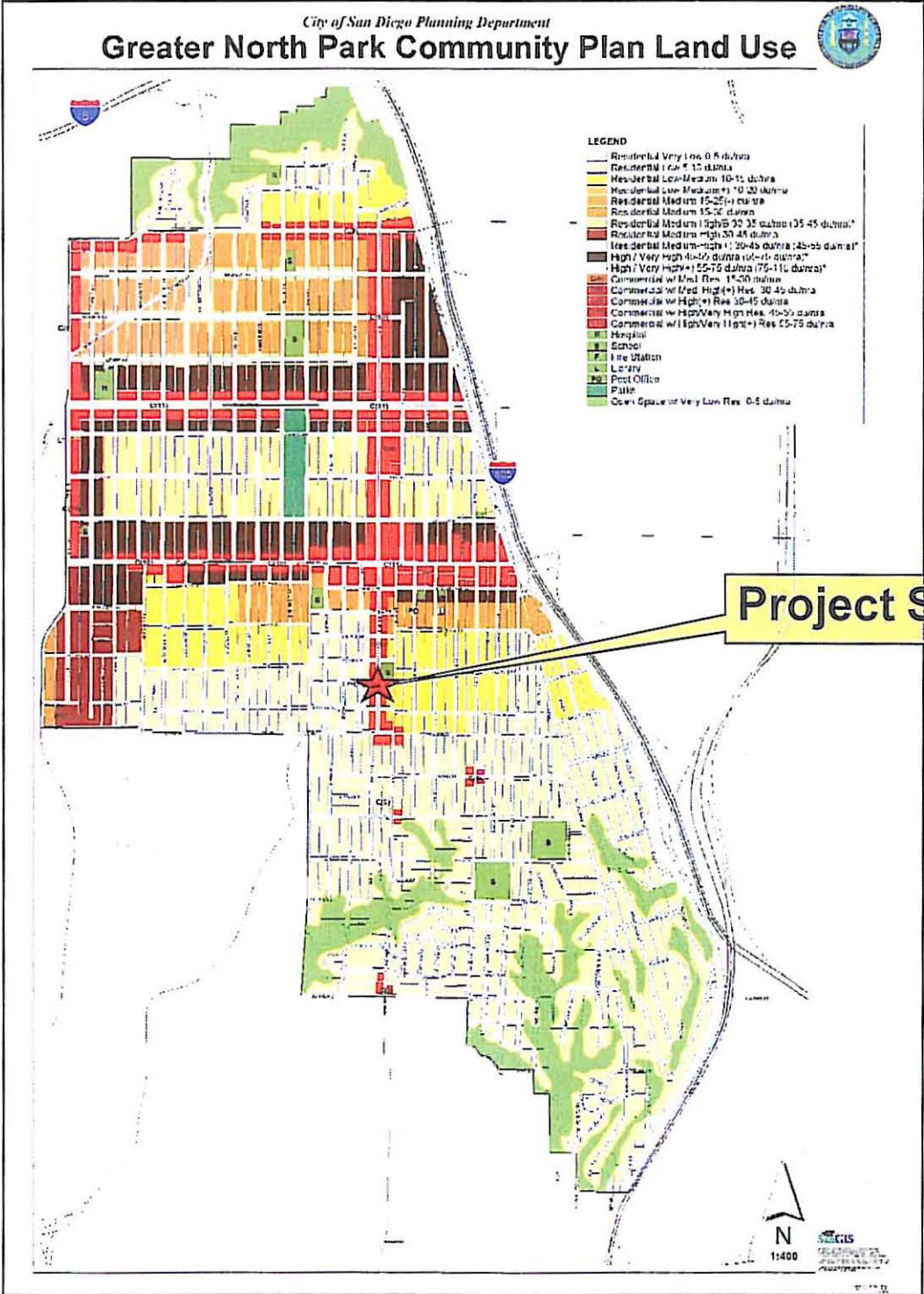
1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Project Plans
6. Draft Permit and Conditions
7. Draft Permit Findings and Resolution
8. Community Planning Group Recommendation
9. Ownership Information
10. Planning Commission Report No. 08-112
11. Appeal- December 23, 2010
12. Environmental Document-CEQA Exemption
13. Notice of Decision- December 9, 2010
14. Site Photos



Aerial Photo

BLUEFOOT BAR & LOUNGE – 3404 30TH STREET
PROJECT NUMBER 221723



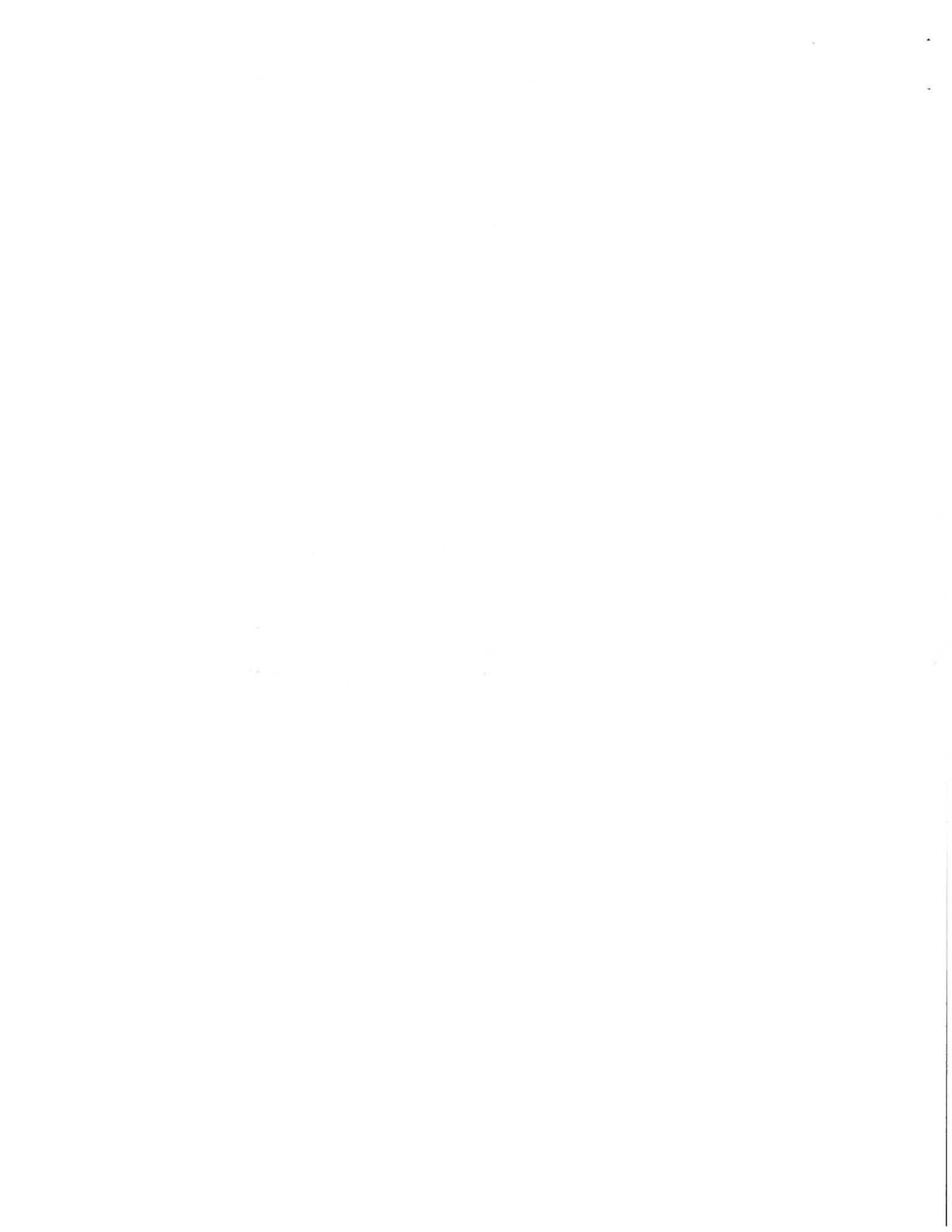


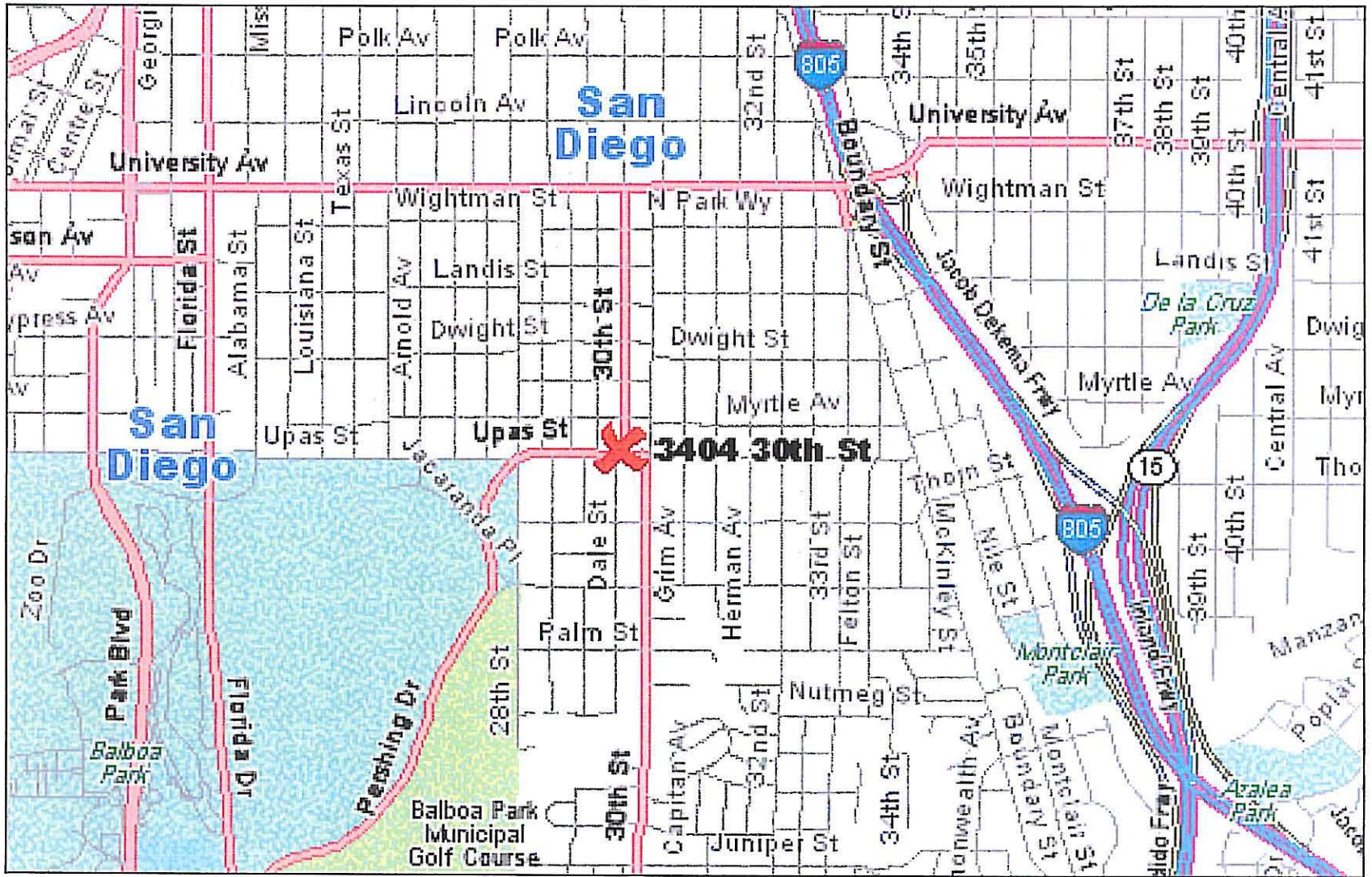
Community Plan Land Use Map

BLUEFOOT BAR & LOUNGE – 3404 30TH STREET

PROJECT NUMBER 221723

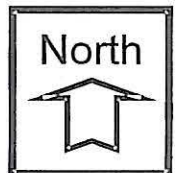






Project Location Map

BLUEFOOT BAR & LOUNGE – 3404 30TH STREET
 PROJECT NUMBER 221723

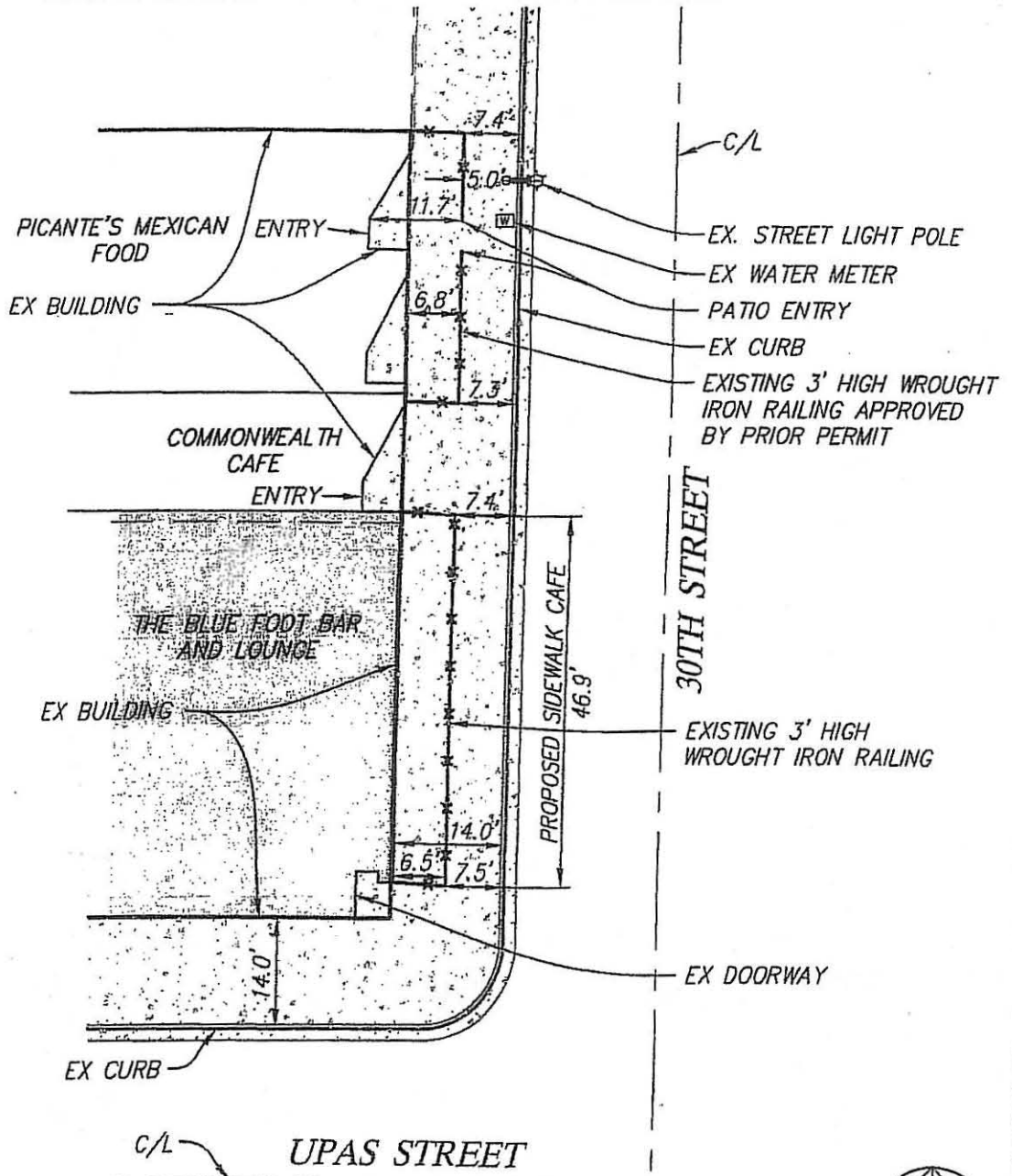


PROJECT DATA SHEET

PROJECT NAME:	Bluefoot Bar and Lounge	
PROJECT DESCRIPTION:	Amend the Neighborhood Use Permit for the continued operation of the Bluefoot Bar & Lounge	
COMMUNITY PLAN AREA:	Greater North Park	
DISCRETIONARY ACTIONS:	Neighborhood Use Permit (Appeal)	
COMMUNITY PLAN LAND USE DESIGNATION:	Neighborhood Commercial	
<u>ZONING INFORMATION:</u>		
ZONE: CN-1-2 (Neighborhood commercial zone for small scale, low-intensity development)		
HEIGHT LIMIT: 30' maximum height limit		
LOT SIZE: 5,000 sf minimum lot size, 10 acre max		
FLOOR AREA RATIO: 1.0 maximum		
FRONT SETBACK: none required		
SIDE SETBACK: 10' or optional 0'		
STREETSIDE SETBACK: none required		
REAR SETBACK: 10' or optional 0'		
PARKING: n/a		
<u>ADJACENT PROPERTIES:</u>	LAND USE DESIGNATION & ZONE	EXISTING LAND USE
NORTH:	Neighborhood Commercial; CN-1-2	Commercial
SOUTH:	Nbhd Com & Low-Dens Res; CN-1-2 & RS-1-7	Commercial, Single Family Res
EAST:	Neighborhood Commercial; CN-1-2	Commercial
WEST:	Low-Density Residential; RS-1-7	Single Family Res
DEVIATIONS OR VARIANCES REQUESTED:	None	
COMMUNITY PLANNING GROUP RECOMMENDATION:	At their November 16, 2010 meeting, the North Park Planning Committee voted 10-4-0 to deny the applicants' request and recommend a five-year expiration date of the NUP.	

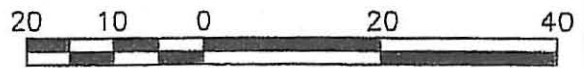
SITE PLAN FOR SIDEWALK CAFE

SHEET 1 OF 3

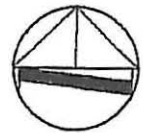


bha, inc.
land planning, civil engineering, surveying

5115 AVENIDA ENCINAS
SUITE "L"
CARLSBAD, CA. 92008-4387
(760) 931-8700



SCALE: 1" = 20'



TENANT	SIDEWALK CAFE ADDRESS	LEGAL DESCRIPTION
ADAM COOK CAP ENTERTAINMENT CORP 4170 PARK BLVD, #6 SAN DIEGO, CA 92103	3404 30TH STREET SAN DIEGO, CA 92104	LOTS 5,6, BLK 32 OF WEST END, MAP 590

RECORDING REQUESTED BY
 CITY OF SAN DIEGO
 DEVELOPMENT SERVICES
 PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 24001209

NEIGHBORHOOD USE PERMIT NO. 789751
 AMENDMENT TO NEIGHBORHOOD USE PERMIT NO. 503450
BLUEFOOT BAR & LOUNGE – PROJECT NO. 221723
 PLANNING COMMISSION
DRAFT

This Neighborhood Use Permit No. 789751 is granted by the PLANNING COMMISSION of the City of San Diego to GHORBAN MOHTADI, Owner, and CAP ENTERTAINMENT CORP., Permittee pursuant to San Diego Municipal Code [SDMC] sections 127.0101 and 141.0621. The site is located at 3404 30th Street in the CN-1-2 Zone, the Federal Aviation Administration Part 77 Overlay Zone and the North Park Redevelopment Project Area, within the Greater North Park Community Plan Area. The project site is legally described as Lots 5 and 6 in Block 32 of West End, Map No. 590.

Subject to the terms and conditions set forth in this Permit, permission is granted to GHORBAN MOHTADI, Owner, and CAP ENTERTAINMENT CORP., Permittee to amend Neighborhood Use Permit (NUP) No. 503450 to continue the previously-conforming rights for the operation of the Bluefoot Bar & Lounge, and the continuation of an approximately 315-square-foot sidewalk café, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"], dated March 10, 2011, on file in the Development Services Department.

The project or facility shall include:

- a. This NUP shall supersede the previously approved NUP No. 503450.
- b. The continued operation of the previously-conforming use with all previously-approved applicable conditions of NUP No. 503450 transferred to this permit, with the exception of the expiration date, which is 5 years from the date of approval, March 10, 2015.
- c. The continued use of previously-conforming rights for hours of operation, the sale of alcoholic beverages other than beer and wine and operating with live entertainment as specified in Condition No. 12 and 13;

- d. The continued use of an approximately 315-square-foot sidewalk café and;
- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in affect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this Permit has been revoked by the City of San Diego, the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.
4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights, which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

PLANNING/DESIGN REQUIREMENTS:

11. Hours of operation shall be limited to 6:00 am - 12:00 Midnight Sunday through Thursday and 6:00 am - 2:00 am on Friday and Saturday.

12. Live entertainment may be provided during the hours of operation provided that all doors and windows of the establishment are closed.

13. Any live music, including disc jockeys, may be provided between the hours of 6:00 am - 11:00 pm Sunday through Thursday and 6:00 am - 1:00am on Friday and Saturday provided that all doors and windows of the establishment are closed.

14. The establishment shall employ at least one licensed security officer commencing from at least 10:00 pm and continuing until one half hour after closing. The primary duty of the security officer shall be to patrol the interior and exterior of the licensed premises in order to alleviate police problems, excessive noise, abusive behavior, disturbances and any other violations of law that occur on or about the premises.
15. The telephone number of the establishment shall be provided inside or outside the structure, doors or windows. The telephone number must be posted and viewable from the outside, in an area that is convenient and accessible for public view. The telephone number shall be a line, direct or otherwise, to an employee or employees designated by the establishment to handle complaints from neighbors.
16. The operator of the establishment shall take reasonable steps to prevent loitering on the premises, in parking lots serving the premises, and on public sidewalks adjacent to the premises.
17. A litter control plan shall be implemented to keep the facility and adjacent property free of litter.
18. The business shall comply with all conditions of the Department of Alcoholic Beverage Control (ABC) license. If conditions in the ABC license are more restrictive than the conditions of this Neighborhood Use Permit, the more restrictive conditions shall prevail.
19. This permit shall expire within 5 years from the date of approval (March 10, 2010) in order to reevaluate compatibility with surrounding development and, if necessary, to add conditions to protect the public health, safety, and welfare. The applicant may reapply for a NUP prior to or on the expiration date.

SIDEWALK CAFÉ REQUIREMENTS

20. The sidewalk cafe shall be used only for dining, drinking and circulation. The cafe may provide either waiter/waitress service or self-service.
21. Sales, service, and consumption of alcoholic beverages within the sidewalk cafe shall be permitted only between the hours of 6:00 am - 10:00 pm Sunday through Thursday and 6:00 am - 12:00 Midnight on Friday and Saturday.
22. A clear path, free of all obstructions to the flow of pedestrian traffic, shall be provided in the public right-of-way and shall be maintained at all times.
23. The furnishings of the sidewalk café shall consist solely of moveable tables, moveable chairs, and moveable umbrellas.
24. Musical instruments or sound reproduction devices shall not be operated or used within the sidewalk café. For purposes of enforcement of Municipal Code Section 59.5.0101 et. seq., the property line shall be considered the boundary of the sidewalk café.
25. The sidewalk café shall be free of litter at all times.

26. Trash or storage areas shall not be located on or adjacent to the public right-of-way.
27. The height of the railing shall not exceed those heights set forth in the conditions and the exhibits, unless a deviation or variance to the height limit has been granted as a specific condition of this Permit.
28. All signs associated with this development shall be consistent with Citywide sign regulations.
29. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code §66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the PLANNING COMMISSION of the City of San Diego on March 10, 2011, Resolution No. XXXX.

PLANNING COMMISSION
RESOLUTION NO. XXXX
NEIGHBORHOOD USE PERMIT NO. 789751
AMENDMENT TO NEIGHBORHOOD USE PERMIT NO. 503450
BLUEFOOT BAR & LOUNGE – PROJECT NO. 221723
DRAFT

WHEREAS, GHORBAN MOHTADI, Owner, and CAP ENTERTAINMENT CORP., Permittee, filed an application with the City of San Diego for a Neighborhood Use Permit to amend Neighborhood Use Permit (NUP) No. 503450 to continue the previously-conforming rights for the operation of the Bluefoot Bar & Lounge, and the continuation of an approximately 315-square-foot sidewalk café, as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 789751;

WHEREAS, the project site is located at 3404 30th Street in the CN-1-2 Zone, the Federal Aviation Administration Part 77 Overlay Zones and the North Park Redevelopment Project Area, within the Greater North Park Community Plan Area;

WHEREAS, the project site is legally described as Lots 5 and 6 in Block 32 of West End, Map No. 590;

WHEREAS, on November 16, 2010, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guideline Section 15301 (Existing Facilities) and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

WHEREAS, on December 9, 2010, Development Services staff approved Neighborhood Use Permit No. 789751 by Resolution No. CM-6159. Jaime Rosales appealed staff's decision on December 23, 2010; and

WHEREAS, on March 10, 2011, the PLANNING COMMISSION of the City of San Diego considered the appeal of Neighborhood Use Permit No. 789751 pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings dated March 10, 2011.

Neighborhood Use Permit - Section 126.0205**1. The proposed development will not adversely affect the applicable land use plan.**

The project proposes to continue the previously conforming uses and a sidewalk café located at 3404 30th Street. The project is located within the Greater North Park Community Planning area. The Greater North Park Community Plan designates the proposed site for Commercial and allows residential development in a mixed-use setting. The Commercial Element of the community plan identifies this site within Area 7 "Other Neighborhood Centers." Uses within this area are intended to serve as neighborhood commercial centers for residents of the surrounding area. The community plan does not provide specific goals, objectives, or recommendations regarding uses that propose the sale of alcohol, only that in general uses under the existing commercial zone be allowed. It is highly encouraged that uses such as those that sell alcohol take measures to reduce and limit negative impacts such as loitering, excessive noise, littering, etc. especially where such a use is proposed adjacent to existing low density, single-residences. Therefore, the project along with the conditions in the permit will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

The project proposes to continue the previously conforming uses and a sidewalk café located at 3404 30th Street. The proposed development is consistent with Municipal Code section 127.0108, which establishes the criteria for continuing previously conforming uses. The project site is located adjacent to residential development and the conditions would allow the continued operation of the commercial establishment while still preserving the residential quality of life existing in the neighborhood. The conditions included in the permit are necessary to ensure that project is not detrimental to public health, safety, and welfare. The proposed development is also consistent with Municipal Code section 141.0621, which establishes safe and effective guidelines for sidewalk cafes. The project establishes eight (8)-feet of clear path and free of obstruction to the flow of pedestrian traffic. The sidewalk café has been conditioned to comply with all code regulations applicable to such use and therefore is not detrimental to public health, safety, and welfare.

3. The proposed development will comply with the applicable regulations of the Land Development Code.

The project proposes to continue the previously conforming uses and a sidewalk café located at 3404 30th Street. The project is consistent with the Greater North Park Community Plan and complies with the development standards of the underlying CN-1-2 Zone, and the Land Development Code Section 141.0621, regulations for sidewalk cafés and 127.0108 for previously conforming uses. The proposed project does not require any

deviation from the applicable regulations. Therefore, the project as conditioned complies with the Land Development Code.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the PLANNING COMMISSION, Neighborhood Use Permit No. 789751 is hereby GRANTED by the PLANNING COMMISSION to GHORBAN MOHTADI and CAP ENTERTAINMENT CORP., in the form, exhibits, terms and conditions as set forth in Permit No. 789751, a copy of which is attached hereto and made a part hereof.

Renee Mezo
Development Project Manager
Development Services

Adopted on: March 10, 2011

Job Order No. 24001209

cc: Legislative Recorder, Planning Department



NORTH PARK PLANNING COMMITTEE

DRAFT MINUTES: November 16, 2010

<http://www.northparkplanning.org>

2901 NORTH PARK WAY, 2ND FLOOR

Mailing address: 3939 ARIZONA ST., SAN DIEGO, CA 92104

I. Called to Order: 6:33 p.m.

II. Members in attendance (14): Robert Barry, Kitty Callen, Dionne Carlson, Steve Chipp, Brandon Cohen, Cheryl Dye, Lynn Elliott, Vicki Granowitz, Lucky Morrison, Judi O'Boyle, Christy Scannell, Rob Steppke, Liz Studebaker, Rene Vidales.

III. Report on NPPC Board Attendance: Steve Chipp has resigned. His position will be filled at the regular election in March.

IV. Addition of urgent non-agenda items. MOTION: Add Bodhi Animal hospital item to agenda. Granowitz/Carlson (14-0-0).

V. Modifications to & Adoption of the 11/16/10 Agenda. MOTION: Adopt the amended agenda. Vidales/Carlson (14-0-0).

VI. Chair's Report/CPC

VII. Approval of Previous Minutes: 10/19/10. MOTION: To approve. O'Boyle/Dye (12-0-2; Chipp abstained)

VIII. Treasurer's Report. Chipp reports \$566.22 in the bank account as of 10/31/10.

IX. Announcements

The North Park Toyland Parade will be Dec. 4.

X. Elected Official Reports

A. Katherine Fortner, Hon. Susan Davis/US Congressional District 53. In lame duck session.

B. Anthony Bernal, Hon. Todd Gloria/City Councilmember District 3. City Council approved equal benefits ordinance and small business ordinance (requires stores over 90,000 square feet to provide economic impact report).

XI. Planner's Report/Marlon Pangilinan.

There will be no more advisory committee meetings for the Community Plan Update in 2010. Will restart in January 2011.

XII. Liaisons Reports

A. Alcohol and Entertainment Working Group/Granowitz. Did not attend last meeting.

B. Balboa Park Committee/Steppke. Did not attend last meeting.

- C. Maintenance Assessment District/Morrison. Met on 11/8 to discuss tree trimming and set schedule.
- D. North Park Main Street/Studebaker. Working to increase assessments and planning Toyland Parade.
- E. North Park Parking Management Working Group/Vidales. No update.
- F. Project Area Committee/O'Boyle. Agreed to have a consultant advise the redevelopment area on public art. The contract was issued at up to \$50,000.

XIII. Non Agenda Public Comment

- A. Joyce Summers/CCDC. Winter homeless shelter is on Newton Ave. Westfield wants to rehabilitate park at Horton Plaza by destroying old Robinsons-May building. Westfield will maintain the space and hold events there.
- B. Christian Chaffee. Wants to bring historic streetcars back to Uptown and connect them to Downtown. For more: sandieghistoricstreetcars.org.
- C. Don Leichtling. If Alcohol and Entertainment Working Group gives a report at NPPC meetings, all North Park committees should be on the NPPC agenda.

XIV. Consent Agenda

Bodhi Animal Hospital, 2200 University Avenue. Applicant Chris Chandler asked for a facade design change and a request for a variance of the required 6-foot setback to a 4-foot setback for the construction of a solar carport shade overhang. UD/PR subcommittee approved at 11/1/10 meeting. MOTION: To approve. Carlson (14-0-0).

XV. Action Items

Bluefoot Bar & Lounge, Project #221723, Type 48 ABC License, Applicant Adam Cook, Process 2 Neighborhood Use Permit (NUP) & ABC License modifications &/or removals.

A. Request to amend the NUP:

- Condition No. 12, request hours of operation to be extended until 2 a.m. Sunday-Thursday
- Condition No 22, request extension of sidewalk café hours until 12 a.m. midnight Sunday-Thursday
- Condition No 20, request creation of permanent NUP with no further expiration dates.

B. ABC License Condition Modification Request/Conditional Removal Request:

- Condition 4 modification would allow "Sales, service and consumption of alcohol beverages in the patio area of the premises to be permitted between 8 a.m. and 12 a.m. each day of the week."
- Condition 8 Removal would allow sales, service and consumption of alcoholic beverages anytime between 6 a.m. and 2 a.m. each day of the week.

Pangilinan explained that this is a discretionary permit processed by city staff, and he explained NUP requirements. Leo Wilson, chair of CPC and Uptown Planners, spoke to NPPC about legalities and timing impacts involved in the committee's decision. Granowitz read the motion passed in January 2008, said NPPC is indemnified, and reiterated if NPPC does not make a recommendation the city can move forward without it and suggested if the NPPC does not want to make a recommendation it could make a motion that shows the direction it wants the item to go based on community goals and needs.

Each side was given 15 minutes for presentation. Adam Cook and Cuong Nguyen, Bluefoot owners, gave a presentation in support of the NUP amendment and license modifications. Dana Hosseini, who lives near Bluefoot, gave a presentation against the changes. Questions from board included: How many meetings have there been between the bar and neighbors? (neighbors said none; owners disputed) Was litter control plan implemented? (owners said they extended it beyond what they're required to do. Are any adjacent businesses present? (several indicated support; one was against) Why do you need to stay open until 2 a.m.? (owners said they are the

only bar in NP required to close at midnight five nights a week) Can police calls affect a liquor license? (Officer Surrillo said yes) How do police handle noise complaints? (Surrillo said calls are prioritized for response) Why have there been no administrative citations? (Surrillo said there are too many variables involved – staffing, timing, etc). Why has the bar's noise patrol effort been more effective in the last month? (owners said walking the area wasn't as effective so they stationed people instead) Asked owners: Do you feel you could be more effective? (owners said they have three guards on weekends and one during the week because no patrol is required on weekdays) Can you increase litter pick-up? (owners said current effort is effective but if there were a need they would try to) Would it be good enough to add Thursday 2 a.m.? (owners said they are open to options) Asked Surrillo: Does Bluefoot stand out as "bad"? (Surrillo said they don't support the requested changes but that this isn't a bar that has narcotics, gangs or other issues) When was previously confirmed use abandoned? (1987) What time do adjacent restaurants close? (midnight)

- 39 people registered support but declined the opportunity to speak
- 17 spoke in support
- 8 spoke in opposition

Motion 1

MOTION: To deny requests to amend condition 12 (request hours of operation to be extended until 2 a.m. Sunday-Thursday), deny condition 22 (request extension of sidewalk café hours until midnight Sunday-Thursday) and deny condition 20 (request creation of permanent NUP) and instead recommend a five-year NUP. Granowitz/Callen (10-4-0 Steppke, Morrison, Scannell, Elliott).

Motion 2

MOTION: To deny the proposed condition #4 modification request and proposed condition removal #8. Steppke/Barry (10-1-3 Scannell).

Abstainers:

Studebaker (not sure it is appropriate action for NPPC)

Chipp (agrees with Studebaker on conflict)

O'Boyle (agrees with Studebaker on conflict)

Motion 3

MOTION: To further restrict hours on Friday and Saturday till 12 a.m. in accordance with other businesses in the neighborhood. Cohen/Morrison. 4-9-1 (Granowitz abstained as undecided)

XVI. Subcommittee Reports

- A. Urban Design/Project Review, Barry/Dye, NP Adult Community Center, 6:00 p.m. 1st Monday. Next meeting: 1/11.
- B. Public Facilities/Public Art, Carlson/Vidales, NPMS, 3076 Univ. Ave, 6:30 p.m. Second Wed in Jan.
- C. Utility Boxes, Barry/Dye. Next meeting TBD.

XVII. Unfinished, New Business & Future Agenda Items

NPPC does not meet in December.

XVIII. Next Meeting Date: January 18, 2011.

XIX. MOTION: To adjourn. (Steppke/Carlson 14-0-0)

Meeting adjourned at 9:34 p.m.



Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: Neighborhood Use Permit Coastal Development Permit
 Neighborhood Development Permit Site Development Permit Planned Development Permit Conditional Use Permit
 Variance Tentative Map Vesting Tentative Map Map Waiver Land Use Plan Amendment • Other _____

Project Title **Project No. For City Use Only**
 Bluefoot Bar & Lounge; NUP Renewal

Project Address:
 3404 30th Street, San Diego, CA 92104

Part I - To be completed when property is held by individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached Yes No

Name of Individual (type or print):
 Ghorban A. Mohtadi
 Owner Tenant/Lessee Redevelopment Agency

Street Address:
 577 Willowspring Dr.
City/State/Zip:
 Encinitas, CA 92024

Phone No: (760) 943-7427 **Fax No:** () same
Signature: G.A. MOHTADI **Date:** 9-28-10

Name of Individual (type or print):

 Owner Tenant/Lessee Redevelopment Agency

Street Address:

City/State/Zip:

Phone No: _____ **Fax No:** _____
Signature : _____ **Date:** _____

Name of Individual (type or print):
 Owner Tenant/Lessee Redevelopment Agency

Street Address:

City/State/Zip:

Phone No: _____ **Fax No:** _____
Signature : _____ **Date:** _____

Name of Individual (type or print):
 Owner Tenant/Lessee Redevelopment Agency

Street Address:

City/State/Zip:

Phone No: _____ **Fax No:** _____
Signature : _____ **Date:** _____



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: August 28, 2008 **REPORT NO.** PC-08-0112

ATTENTION: Planning Commission, Agenda of September 11, 2008

SUBJECT: APPEAL OF STAFF'S DECISION TO APPROVE THE BLUEFOOT BAR & LOUNGE – PROJECT NO. 143884.
PROCESS TWO

OWNERS Ghorban Mohtadi

APPLICANT: Adam Cook

SUMMARY

Issue(s): Should the Planning Commission approve or deny the appeal of Staff's decision to approve a Neighborhood Use Permit to reinstate previously-conforming rights for the operation of the Bluefoot Bar & Lounge, and the addition of a sidewalk café to the existing bar located at 3404 30th Street within the Greater North Park Community Plan?

Staff Recommendation: Deny the appeal and Approve Neighborhood Use Permit No. 503450.

Community Planning Group Recommendation: At their January 15, 2008 meeting, the Greater North Park Community Planning Committee voted 10-1-0 to recommend approval of the proposed project with recommendations as detailed in this report (Attachment 8).

Environmental Review: This project was determined to be categorically exempt from the California Environmental Quality Act on November 29, 2007 and the opportunity to appeal that determination ended December 20, 2007.

Fiscal Impact Statement: None with this action. Project costs are paid by the applicant through a deposit account.

Code Enforcement Impact: A Civil Penalty Notice and Order, Case No. NC 128399, was issued on February 8, 2008 as detailed in this report. The requested Neighborhood Development Permit would correct the violation.

Housing Impact Statement: None with this action. No residential development is existing or proposed on this commercial site.

BACKGROUND

The Bluefoot Bar & Lounge is located between Upas Street and Myrtle Avenue within the Greater North Park Community Plan (Attachment 1). The project site is approximately 0.23-acre in size and is located in the CN-1-2 Zone, the FAA Part 77 Notification Area and the North Park Redevelopment Project Area, within the Greater North Park Community Plan area.

The site is currently occupied by the Bluefoot Bar & Lounge. The site is bounded by commercial development to the north and east, by single-family residential and commercial to the south, and single-family residential development to the west. Prior zoning for the site included the C zone applied in 1930, and the CN zone applied to the site in 1987. The site was rezoned in 2000 to its current CN-1-2 zone. Under the current Municipal Code, eating and drinking establishments are permitted by right except for drive-in and drive-through restaurants and live entertainment; the sale of intoxicating beverages other than beer and wine are not permitted in the CN zones.

Based on the California Department of Alcoholic Beverage Control records, the project site has operated with a Type 47 or 48 ABC license, which allows for the sale of beer, wine, and distilled spirits, from 1935-1943, 1945-1980, and 1981-1984. Since 1984, the premises has operated under a Type 42 license, which allows for a bar or tavern in which only beer and wine are sold (no distilled spirits allowed). The resumption of a previously-conforming use that has been discontinued for a period of 2 or more years requires a Process Two Neighborhood Use Permit, pursuant to Municipal Code section 126.0203 (b).

Project Description:

On November 16, 2007, the applicant filed an application for a Process 2 Neighborhood Use Permit pursuant to Municipal Code section 127.0108, which establishes the criteria for reinstating previously-conforming uses after 2 years of discontinuance. The following three uses are requested for reinstatement:

- 1) Sale of intoxicating beverages other than beer and wine;
- 2) Operating hours until 2:00 a.m.;
- 3) Operating with live entertainment.

The project also requires a Process 2 Neighborhood Use Permit, per section 141.0621, for the addition of an approximately 315-square-foot sidewalk café.

On June 19, 2008, Development Services Staff approved (Attachment 13) a Neighborhood Use Permit to: reinstate the sale of intoxicating beverages other than beer and wine; limit the hours of operation to 6:00 am - 12:00 Midnight Sunday through Thursday and 6:00 am - 2:00 am on Friday and Saturday; limit live entertainment during the hours of operation provided that all doors and

windows of the establishment are closed; allow amplified music between the hours of 6:00 am - 11:00 pm Sunday through Thursday and 6:00 am - 1:00 am Friday through Saturday; permit the use of the sidewalk café; as well as other conditions contained within the Neighborhood Use Permit (Attachment 6).

Neighborhood Code Compliance (NCC)

NCC received a complaint December 10, 2007 regarding the subject site. A Civil Penalty Notice and Order (CPN&O) (Attachment 12) was issued on February 8, 2008. The violations of the San Diego Municipal Code listed are: operating a business contrary to the zoning regulations of the Land Development Code; construction of a sidewalk café without the required Neighborhood Use Permit, Encroachment Maintenance Removal Agreement and Engineering Permits; and a non-permitted sign being displayed.

On November 16, 2007, the applicant filed an application for a Process 2 Neighborhood Use Permit for the reinstatement of previously-conforming uses and the sidewalk café. Compliance inspections were conducted on the following dates:

- February 13, 2008. The result of the inspection was that the business continues to use the sidewalk café contrary to the CPN&O.
- March 21, 2008. Compliance inspection showed the following violations: serving distilled spirits after midnight; sidewalk café was being used; there was live entertainment; and an A-frame sign was placed in the public right-of-way.
- April 8, 2008. Business continues to use the sidewalk café.
- April 25, 2008. The following violations were observed: serving distilled spirits after midnight; sidewalk café was being used; there was live entertainment; and an A-frame sign was placed in the public right-of-way.
- NCC had set a hearing for violation of the CPN&O. The original hearing date was rescheduled for May 20, 2008. While the case was being reviewed by Development Services, NCC did not go forward with the hearing. The case is still open and as of the last inspection is in violation of the CPN&O.

Community Plan Analysis:

The project is located within the Greater North Park Community Planning area. The Greater North Park Community Plan designates the proposed site for Commercial Use and allows residential development in a mixed-use setting. The Commercial Element of the community plan identifies this site within Area 7 "Other Neighborhood Centers." Uses within this area are intended to serve as neighborhood commercial centers for residents of the surrounding area. The community plan does not provide specific goals, objectives, or recommendations regarding uses that propose the sale of alcohol; only that in general uses under the existing commercial zone be allowed. It is highly encouraged that uses such as those that sell alcohol take measures to reduce and limit negative impacts such as loitering, excessive noise, littering, etc. especially where such a use is proposed adjacent to existing low density, single-residences.

Community Planning Group Recommendations:

At their January 15, 2008, meeting the Greater North Park Community Planning Committee voted 10-1-0 to recommend approval of the proposed project with the following recommendations;

1. The business owners will manage loitering during business hours and after closing. *The permit has been conditioned to address loitering.*
2. The permit shall expire within 5 years in order to reevaluate compatibility with surrounding development and, if necessary, to add conditions to protect the public health, safety, and welfare. *The permit has been conditioned to expire in 5 years.*
3. The operator of the establishment shall take reasonable steps to prevent loitering on the premises, in parking lots serving the premises, and on public sidewalks adjacent to the premises. *The permit has been conditioned to address the issue of loitering.*
4. A litter control plan shall be implemented to keep the facility and adjacent property free of litter. *The permit has been conditioned to address the issue of litter.*

Appeal Issues

On June 25, 2008, the applicant filed an appeal (Attachment 11) of the staff decision. The applicant's only issue was the objection of Condition No. 14 which limits the hours of amplified music from 6:00 am - 11:00 pm Sunday through Thursday and 6:00 am - 1:00 am on Friday and Saturday provided that all doors and windows of the establishment are closed. The applicant requests the hours of amplified music be extended one hour from 6:00 am - 12:00 am Sunday through Thursday and 6:00 am - 2:00 am on Friday and Saturday. In making the original decision, Staff considered the findings necessary to approve the project as well as community input regarding noise on adjacent residential neighborhoods and determined the conditions contained in the permit, were essential to protect the public health, safety, and welfare. Staff still feels these conditions are appropriate.

Conclusion:

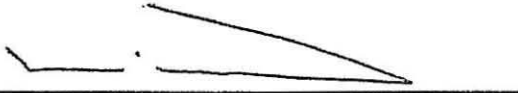
Staff has reviewed the application for the Neighborhood Use Permit and has determined that the permit conditions comply with the purpose and intent of the Land Development Code. Staff believes the required findings can be made to support the project. Therefore, staff recommends that the Planning Commission deny the appeal and approve the Neighborhood Use Permit as originally approved by staff.

ALTERNATIVES

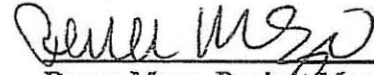
1. **Deny** the appeal and **Approve** Neighborhood Use Permit No. 503450, with modifications.
2. **Uphold** the appeal and **Deny** Neighborhood Use Permit No. 503450, if the findings required

to approve the project cannot be affirmed.

Respectfully submitted,



**Mike Westlake, Program Manager
Development Services Department**




**Renee Mezo, Project Manager
Development Services Department**

WESTLAKE/ROM

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Project Plans
6. Draft Permit and Conditions
7. Draft Permit Findings and Resolution
8. Community Planning Group Recommendation
9. Ownership Information
10. Project Chronology
11. Appeal- June 25, 2008
12. Civil Penalty Notice and Order- February 8, 2008
13. Notice of Decision- June 19, 2008
14. Site Photos

 THE CITY OF SAN DIEGO	City of San Diego Development Services 1222 First Ave. 3rd Floor San Diego, CA 92101 (619) 446-5210	<h2 style="margin:0;">Development Permit/ Environmental Determination Appeal Application</h2>	FORM DS-3031 MAY 2010
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See information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Process Two Decision - Appeal to Planning Commission | <input type="checkbox"/> Environmental Determination - Appeal to City Council |
| <input type="checkbox"/> Process Three Decision - Appeal to Planning Commission | <input type="checkbox"/> Appeal of a Hearing Officer Decision to revoke a permit |
| <input type="checkbox"/> Process Four Decision - Appeal to City Council | |

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

Name: Jaime Rosales	E-mail Address: jaime92104@gmail.com
Address: 3401 29th Street	City: San Diego
	State: CA Zip Code: 92104 Telephone: (619) 723-2948

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

BLUEFOOT BAR AND LOUNGE, PROJECT NO. 221723 APPLICANT: ADAM COOK

4. Project Information

Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
NEIGHBORHOOD USE PERMIT NO. 789751	December 9, 2010	Renee Mezo

Decision (describe the permit/approval decision):
 On Dec. 9, 2010, DSS APPROVED an application to amend NUP No. 503450 to allow the continued operation of the previously-conforming use with all previously-approved applicable conditions of NUP No. 503450 in effect, with the exception of the expiration date, which has been changed to 12/9/15. Hrs. of permitted operation remain unchanged from the prior approval in NUP No. 503450.

5. Grounds for Appeal (Please check all that apply)

- | | |
|--|--|
| <input type="checkbox"/> Factual Error (Process Three and Four decisions only) | <input type="checkbox"/> New Information (Process Three and Four decisions only) |
| <input type="checkbox"/> Conflict with other matters (Process Three and Four decisions only) | <input type="checkbox"/> City-wide Significance (Process Four decisions only) |
| <input type="checkbox"/> Findings Not Supported (Process Three and Four decisions only) | |

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

(1) The approved NUP is not warranted because there are no pre-confirming rights for serving hard liquor & is in violation of CN-1-2.
 (2) The NUP as currently approved negatively affects the quiet enjoyment of residence and the health, safety, and welfare of the neighborhood.

Additionally, a previous NUP was granted on the condition that the owners would take the necessary steps to improve the relationship with the neighbors and mitigate the negative impact which was not done. A five-year expiration date is too long.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:  Date: 12/23/10

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

RECEIVED

DEC 23 2010



THE CITY OF SAN DIEGO

Date of Notice: December 9, 2010

NOTICE OF DECISION

DEVELOPMENT SERVICES DEPARTMENT
Job Order No. 24001209

APPROVAL TYPE(S): NEIGHBORHOOD USE PERMIT NO. 789751
EXEMPT FROM CEQA

PROJECT NAME/NUMBER: BLUEFOOT BAR AND LOUNGE, PROJECT NO. 221723

APPLICANT: ADAM COOK

COMMUNITY PLAN AREA: GREATER NORTH PARK

COUNCIL DISTRICT: 3

CITY PROJECT MANAGER: Renee Mezo, Development Project Manager

MAILING ADDRESS: 1222 First Avenue, MS 501
San Diego, CA 92101-4153

PHONE NUMBER/E-MAIL: (619) 446-5001 rmezo@sandiego.gov

In accordance with the San Diego Municipal Code, the Development Services Department has reviewed an application by the Bluefoot Bar and Lounge for an amendment to an existing, approved Neighborhood Use Permit (NUP) No. 503450. The subject site is improved with a bar, lounge and sidewalk café located at 3404 30th Street in the CN-1-2 Zone, the Federal Aviation Administration Part 77 Notification Area and the North Park Redevelopment Project Area, within the Greater North Park Community Plan Area.

On December 9, 2010, Development Services Staff APPROVED an application to amend NUP No. 503450 to allow the continued operation of the previously-conforming use with all previously-approved applicable conditions of NUP No. 503450 in effect, with the exception of the expiration date, which has been changed to December 9, 2015. Hours of permitted operation remain unchanged from the prior approval in NUP No. 503450.

If you have any questions about this project, the decision, or wish to receive a copy of the resolution approving or denying the project, contact the City Project Manager above.

The decision by staff can be appealed to the **Planning Commission** no later than twelve (12) business days of the decision date. See Information Bulletin 505 "Appeal Procedure", available at www.sandiego.gov/development-services or in person at the Development Services Department, located at 1222 First Avenue, 3rd Floor, San Diego, CA 92101. Please do not e-mail your appeal as it will not be accepted. The decision of the Planning Commission is final.

This project was determined to be categorically exempt from the California Environmental Quality Act on November 16, 2010 and the opportunity to appeal that determination ended December 1, 2010.

This information will be made available in alternative formats for persons with disabilities upon request.

cc: Rob Steppke, Chair of North Park Planning Committee

Revised 4/08/10 HMD





