

**CITY OF SAN DIEGO
M E M O R A N D U M**

DATE: August 15, 2005

TO: Chairman Barry Schultz and Members of the Planning Commission

FROM: Patrick Hooper, Development Project Manager

SUBJECT: College Arco - Project No. 69427

The College Arco Conditional Use Permit was continued from the July 28, 2005, to the August 25, 2005, Planning Commission docket. The request for the continuance was made on behalf of the San Diego State University (appellant) based on the fact that three Planning Commissioners were absent from the July 28, 2005, meeting and they felt it was important to have additional Commissioners to hear this item. The project owner/applicant spoke against the continuance stating that four Commissioners constitute a quorum and that the item was properly noticed. The owner/applicant also stated that many people had taken [time] off from work to participate in the hearing and that it was unfair and costly to further delay the proceeding.

A motion to continue the item to the August 25, 2005, meeting docket was passed 4-0-0. The Planning Commission Report (No. PC-05-223) prepared by staff for the July 28, 2005, meeting has been reissued with no changes or modifications (Attached).

Housing Impact Statement: The College Area Community Plan designates the project site for Mixed Use Commercial/Residential development at 75 to 110 dwelling units per net residential acre. No residential units are proposed with the request for a Conditional Use Permit to allow alcohol sales, therefore no impacts to housing affordability and availability would be incurred within the College Area community. Additionally, due to the nature of this request, the provisions of the Inclusionary Housing Ordinance would not be applicable.

BACKGROUND:

The College Area Community Plan designates the site for mixed use commercial/residential land use (Attachment 2). The property is zoned CN-1-2 and includes the Community Plan Implementation Overlay Zone Type "B" (CPIOZ-B). The project site is also located within the Core Sub area of the College Community Redevelopment Project Area (Attachment 1). The property was developed and is operating as an automotive service station with two canopies and a total of ten fuel dispensers. A newly remodeled, 1,153 square-foot building includes the sales area, restrooms and a convenience store featuring prepackaged food and beverage items. The property is surrounded by a variety of institutional, commercial and high density residential land uses including the San Diego State University property to the west, restaurant and retail sales to the north, commercial offices to the east and student housing to the south.

Two previous applications seeking a Conditional Use Permit for the limited sale of alcoholic beverages at this address have been filed with the Development Services Department over the last several years. For a brief overview of the application process and summary of the hearing outcomes, please refer to the Project Chronology (Attachment 12)

DISCUSSION:

Project Description

On May 25, 2005, the Hearing Officer approved the application for limited sales which included all of the restrictive conditions and limitations of the previous permit. In approving the Conditional Permit, the Hearing Officer concluded that the issues purported by the opposition did not provide a nexus between the limited sale of alcohol and the problems associated with the risk of underage drinking by local students. The Hearing Officer determined that it would be inappropriate to burden a small business owner, who is ostensibly complying with the applicable development regulations, with the prevention, supervision or policing of the students for the potential of criminal activity beyond that which would be required by law and any restrictions placed on the license by the Alcohol Beverage Control.

The most current application for a Conditional Use Permit requesting the limited sale of alcohol at the College Arco is essentially the same petition as the previous projects. And, with two exceptions, the land use and regulatory issues on the site and within the neighborhood have not changed since the December 16, 2004 hearing.

The first exception is that the crime rate within the Federal Census Tract has decreased approximately 29 percent down from 165% to 136% of the citywide average from the previous year Census data (Attachment 13). However, it should be noted that the crime statistics used to calculate the citywide average do not include crimes reported within the jurisdiction of the University Police.

The other change is that the new application proposes to include a periodic review (each 3rd year) to determine any Police or ABC violations reported on the property and compliance with the CUP conditions. Additionally, the latest draft permit proposes to include all of the more restrictive permit conditions applied by the staff prior to the December 16, 2004, Planning Commission hearing. Those conditions include further limiting the hours of alcohol sales from 9:00 A.M. to 11:00 P.M. (rather than 6:00 A.M. to Midnight), limiting the sales area dedicated to refrigerated alcohol product to 100 square-feet and an outright prohibition on the sale of kegs. These limitations are in addition to restrictions on the size, packaging and content of alcoholic beverages permitted for sale on the site as well as conditions regulating the premises including exterior lighting, pay phones, arcade games, signage and graffiti control.

Regulatory Requirements

Alcoholic beverage outlets are permitted by right as a Limited Use pursuant to Section 141.0502(b) of the Land Development Code (LDC). However, alcoholic beverage outlets that do not comply with the regulations of this section may only be permitted with a Conditional Use Permit pursuant to LDC Section 141.0502(c).

The Limited Use Regulations Section 141.0502(b)(1) requires that a Conditional Use Permit is required for alcoholic beverage outlets in the following locations:

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.

The project is located within Federal Census Tract No. 29.04 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. 29.04 show the area to be 136 percent of the citywide average, or (stated more simply) 36% percent higher than the citywide average. Therefore, by definition, the project site is considered to be within a high crime area and therefore, a Conditional Use Permit would be required for the proposed off-sale alcoholic beverage outlet.

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 Businesses and Professional Code (Section 23958.4).

The project is located within Federal Census Tract No. 29.04 which permits a total of five off-sale alcoholic beverage outlets. There is currently only one existing off-sale outlet within the Census Tract therefore; the addition of the proposed outlet would still be below the allowable limit. However, the project is within 600 feet of Census Tract 28.04, which has one more actual outlet (four) over what is permitted (three).

3. Within a Redevelopment Area.

The proposed project is located within the College Community Redevelopment Project Area and therefore, a Conditional Use Permit would be required for the proposed off-sale alcoholic beverage outlet.

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

The proposed project is within 600 feet of the San Diego State University Campus therefore, a Conditional Use Permit is required for the off-sale of alcoholic beverages.

5. Within 100 feet of residentially zoned property.

The proposed project is within 100 feet of residentially zoned property therefore, a Conditional Use Permit is required for the off-sale of alcoholic beverages.

This code section is often misinterpreted to mean that alcohol sales are not permitted in any instance where one or more of the above conditions apply. However, the code section is only clarifying when a Conditional Use Permit is required versus where the sale of alcohol is permitted by right and without discretionary approval. Therefore, pursuant to the above stated criteria, the limited sale of alcoholic beverages at the College Arco site is not permitted [by right], and thus requires a Conditional Use Permit (due to the proximity of the San Diego State University Campus, residentially zoned property, the College Community Redevelopment Project Area and the crime statistics for the Federal Census Tract).

Project-Related Issues

Based on extensive public testimony at previous hearings, the only significant project issues are whether or not the limited sale of beer and wine is considered to be a contributing factor to underage and unsupervised binge drinking on and around the San Diego State University campus and, whether or not an additional outlet in the vicinity would significantly compound that issue.

Appeal Issues

The appeal of the Hearing Officer's decision to approve the project concludes that the required findings are not supported by information provided to the decision maker at the May 25, 2005 hearing. Specifically, the appeal contends that (a) the proposed development *would* be

detrimental to the public health, safety and welfare; and (b) the proposed use *is not* appropriate at the proposed location. The appeal seeks to highlight research demonstrating a correlation between the increased risks of crime with the increase of alcohol outlets; that underage drinking is both a crime and a significant problem in the College Area; and that the Project Manager's recommendation to approve the project is based on the selective use of data to support the staff position.

The research proffered by the appellant concludes that there is a correlation between outlet density and crime. Using a representative sampling of colleges and universities the Harvard School of Public Health concluded:

"The results suggest that neighborhood disruptions around colleges due to heavy alcohol use may be reduced by limiting the presence of alcohol outlets in those areas..."

The appeal also cites additional research that concludes underage drinking is more prevalent when the circumstances include a lack of adult supervision in a peer facilitative environment where alcohol is readily available. The University admits that the campus and surrounding area lends itself an unsupervised, peer driven atmosphere and therefore the addition of an outlet would exploit that situation.

Staff Response: The staff does not dispute research that suggests a correlation may exist between the number of alcohol outlets and crime within a given area. In fact, staff considers the restrictions placed on the permit to be effectively keeping with the spirit of limiting the presence of alcohol available at the proposed outlet while not placing an outright prohibition on any new facilities. Staff also notes that no explanation is provided as to what constitutes "outlet density" within the research and feels it would be unreasonable to identify this project area as being high density in terms of outlets when there is only one existing off-sale outlet within an area in which five off-sale outlets are permitted.

The appeal also questions the crime statistics used to determine the definition of a high crime area because the University Police statistics are not included in the calculation. The appeal concludes that on average, an additional 259 alcohol related arrests (2002-2003) should be factored into the equation.

Staff Response: Staff agrees that the actual crime statistics would be higher if the University's data were included. However, the Land Development Code establishes a process by which high crime areas are determined and the staff does not have the regulatory authority to modify the manner in which high crime areas are defined or reported. The San Diego Police Department has reviewed the project and determined that the permit conditions are sufficient to mitigate any potential impacts associated with an additional outlet in the college area.

The appeal takes issue with the staff position that underage drinking is "not a land-use issue" and that conditions limiting the type and quantity of alcohol that can be sold at the College Arco disputes this logic. The appeal contends that the limitations are put in place to expressly to

reduce the impacts associated with this type of facility and therefore, it is a legitimate land use issue.

Staff Response: The staff position regarding the land use issue is being misquoted. The staff has stated in previous reports (addressing this project) “that while we understand the issues facing the University and the Police Department regarding underage drinking, the prevention and enforcement of the activity is not a land use issue that is addressed within the Land Development Code”. However, since the sale of alcohol is a codified and regulated activity, staff feels it is appropriate for the decision maker to impose restrictions intended to reduce the consequences the sales may have on a neighborhood.

The appeal also rebukes the notion that the existing on-sale outlets located on the campus contribute to the problem of underage drinking. Respondents to telephone surveys indicate that only 4% of respondents drinking occurred at on campus facilities while 73% indicated that drinking resulted from off-sale facilities.

Staff Response: This issue was raised in public testimony. The staff recognizes the distinction between on-sale versus off-sale outlets and has no position on this issue.

The appeal also questions the conclusions drawn by staff in the finding that the use is appropriate in the proposed location when the Land Development Code includes criteria defining when a Conditional Use Permit for the sale of alcohol is required. The appeal contends that the staff report “discounts” the criteria “as merely triggering a CUP process” when in fact it should be used as a rationale to deny the application.

Staff Response: The staff recommendation that the finding - the proposed use is appropriate at the proposed location - could be affirmed is based on the project proposing a commercial use in an area expressly designated in the Community Plan for commercial uses and specifically zoned by the Land Development Code for commercial activity. Staff considered the recommendation of the San Diego Police – Vice Operations and the ABC licensing statistics as well as all other recommendations both in favor of, and opposed to the project.

Staff Recommendation

When considering the College Arco project, staff determined that the limited sale of alcohol at this location would not significantly contribute to the problems associated with underage and/or unsupervised drinking in the College area.

The University’s statistics show that alcohol consumption already occurs with relative frequency on and around the campus. This despite the fact that currently there is only one source of off-sale alcohol (the adjacent 7/11 store) in the immediate vicinity, and statistically the area is not considered to be overly saturated in terms of off-sale outlets. In other words, the problems associated with alcohol consumption already exist and are likely to continue regardless of the outlet density in the area.

Therefore, staff concluded that the addition of one additional off-sale outlet with extremely restrictive conditions specifically designed to deter the type of large quantity sales typically associated with underage and binge drinking (I.E. keg beer and late night sales) would not adversely impact or exacerbate the current situation.

Alternately, staff concluded that a recommendation to deny the CUP based solely on the propensity of college students to consume alcohol would unfairly burden an individual small business owner by withholding a source of income enjoyed by competitive businesses citywide. Additionally, staff feels it is appropriate in this instance to consider the reputation and character of the applicant who by all accounts, including public testimony by the opposition to be an individual that operates in compliance with all local and state regulations and policies and is proactive in training and enforcing customer identification and age requirements.

Therefore, the staff recommendation to approve the project has not changed and is based on the following factors:

- The use is consistent with the land use designation of the College Area Community Plan.
- The use is consistent with the purpose and intent of the underlying CN-1-2 Zone and all of the applicable development regulations of the Land Development Code.
- Alcohol Beverage Commission (ABC) statistics verify that the area is not oversaturated with off-sale outlets meaning five are permitted within the Census Tract and only one (a 7/11 store) is operating within the area.
- The San Diego Police Department recommendation to approve the project has considered the proximity to the University and student housing and believes the addition of one more outlet would not be substantially detrimental to the public health, safety and welfare. Further, the Police Department feels that restrictive permit conditions would mitigate community and police concerns regarding the sale, consumption and abuse of alcohol by students and residents of the College Area community (Attachment 10).
- The Conditional Use Permit significantly limits the types and quantities of alcoholic beverages and the space allocated for the sales of the product.

Development Services staff and the Vice Operations of the San Diego Police Department believe that the conditions applied to this permit would be sufficiently restrictive to ensure that the sale of alcohol from this site would not significantly contribute to the problem of underage or binge drinking associated with the area. Meaning, large quantities of alcohol associated with parties and binge drinking would not be available from this outlet due to the limitations on sales space and the prohibition of selling kegs. Additionally, stopping alcohol sales at 11:00 P.M. ensures alcohol from this outlet would not be available when bars close or parties break up in the surrounding area.

As stated in previous reports and reiterated above, staff understands and appreciates the concerns forwarded by the University and the community group regarding underage drinking. However, the prevention, deterrence and enforcement of that activity are not land use issues addressed or regulated within the Land Development Code. These issues are more appropriately addressed by the coordinated efforts of the Office of Student Affairs, the University Police, the San Diego Police Department and the Alcohol Beverage Control. However, to ensure that the proposed limitations of the permit are sufficient and to further ensure that the proposed use is maintained as an appropriate use in the community, staff is recommending that a periodic review of the Conditional Use Permit be undertaken every third year for the life of the CUP. The periodic review should focus on compliance with the CUP conditions, violations against the ABC License and any criminal activity associated with the sale of alcohol at the site by the San Diego Police Department.

Community Plan Analysis

The College Area Community Plan does not address the sale of alcoholic beverages. Therefore, the proposed request would not adversely impact the land use goals and recommendations in the College Area Community Plan.

Planning Group Recommendation

On May 11, 2005, the College Area Community Council voted 10-9-1, and passed a motion to recommend denial of the Conditional Use Permit. The motion to deny the CUP was based on several factors. The group cited what they had considered an increase in the crime rate within Census Tract 29.04 and the over saturation of alcohol outlets in a Census Tract within 600 feet of Census tract 29.04. The planning group also cited the proximity of the proposed outlet to residential uses, a church and the SDSU campus as contributing factors in their decision as well as consistency with two previous recommendations to deny the project (Attachment 9).

In regard to the conflicting information with the crime rate between the staff analysis and the community group, staff contacted the data systems analyst for the Vice Operations of the Police Department and confirmed that the most current crime rate statistics within Census Tract 29.04 show a downward trend from 165% to 136% of the citywide average. Staff and the data systems analyst believe the community group is citing the increase from 144% to 165% which accurately reflects the crime rate increase from the 2003 data for the 2004 rates. However, the annual calculations reflecting new crime rates by Census Tracts in the City were updated on March 31, 2005, using the more current 2004 data for the 2005 rates.

Staff also confirmed that two adjacent Census tracts (28.04 and 27.02) are in fact oversaturated by one outlet over and above what is permitted and the actual number of outlets in the area. Census Tract 28.04 is permitted two off-site outlets and has three, while Tract 27.02 is permitted four off-site outlets and the actual number of existing outlets is five (Attachment 14).

Critical Project Features to Consider During Substantial Conformance Review

Staff support of the proposed Conditional Use Permit is based largely on the limitations placed on the alcohol sales in general. Any proposed amendment or Substantial Conformance Review to this permit should not alter the type or quantity of alcohol, increase the amount of shelf or cooler space dedicated to alcohol, increase the percentage of total sales generated by alcohol or increase the hours alcohol can be sold.

Critical Project Features to Consider During the 3-Year Period Review

Periodic three year reviews of this Conditional Use Permit (CUP Condition No. 11) should include field inspections of the premises and research of reported violations related to the sale of alcoholic beverages and criminal activity. The review should include the Alcohol Beverage Control records, San Diego Police Department service calls to the site, University Police Department issues and any Neighborhood Code Compliance cases. A staff report detailing the periodic review including the methodology and a recommendation from the Development Services Department Director would be forwarded to the Planning Commission in order to determine if additional action is required.

CONCLUSION

Development Services staff continues to support the request for a Conditional Use Permit for the limited and conditional sale of alcoholic beverages. The recommendation to support the project is based on the consistent nature of the proposed use with the recommended land use in the College Area Community Plan and the purpose and intent of the CN-1-2 (commercial neighborhood) Zone. Staff determined that the project complies with the development regulations of the underlying zone and all other applicable sections of the Land Development Code. Staff also considered the alcoholic beverage outlet statistics from the Alcoholic Beverage Control and the recommendation of the San Diego Police Department-Vice Operations. Further, staff believes that the permit conditions limiting the sale of alcohol on the property are sufficiently restrictive to ensure that the off-site sale of alcoholic beverages would not significantly contribute to, or increase incidences, of underage and binge drinking in the area. The project has been categorically exempted from the California Environmental Quality Act and all other project issues have been resolved. Staff believes the required findings to approve the project can be affirmed (Attachment 6)

ALTERNATIVE

1. **DENY the appeal and APPROVE Conditional Use Permit No.**

Respectfully submitted,

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and Information Division
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ESCOBAR-ECK/JPH

Attachments:

1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photograph
4. Project Data Sheet
5. Project Floor Plan
6. Draft Permit with Conditions
7. Draft Resolution with Findings
8. Copy of Appeal
9. San Diego Police Department Recommendation
10. Community Planning Group Recommendation
11. Ownership Disclosure Statement
12. Project Chronology
13. Existing Alcohol Outlets

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