

DATE ISSUED: October 6, 2005 REPORT NO. PC-05-288

ATTENTION: Planning Commission, Agenda of October 13, 2005

SUBJECT: 7-ELEVEN PLAZA MAYOR CENTER – PROJECT NO. 67724
PROCESS 3

REFERENCE: Hearing Officer, Report No. HO-05-159

OWNER/ 7-11 Inc./
APPLICANT: Steve Maciej (Attachment 9)

SUMMARY

Issue: Should the Planning Commission approve an appeal of the Hearing Officer's decision to deny a Conditional Use Permit for the off-site sale of beer and wine at a convenience store currently under construction?

Staff Recommendation:

Approve the appeal and **Approve** Conditional Use Permit No. 204540

Community Planning Group Recommendation: On July 20, 2005, the Otay Mesa Community Planning Group voted 12-0-0 to recommend approval of the project with no conditions (Attachment 8).

Other Recommendation: The San Diego Police Department-Vice Operations has recommended approval of the proposed alcohol sales (Attachment 14).

Environmental Review: The project is exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19 (other).

Fiscal Impact Statement: All cost associated with the processing of this project are paid from a deposit account maintained by the applicant.

Code Enforcement Impact: None with this action.

Housing Impact Statement: None with this ation.

BACKGROUND

The project is an appeal of the Hearing Officer's decision to deny a request for an alcohol beverage outlet located at 9660 Via De La Amistad within a proposed 2,469 square-foot convenience store. The site is currently developed with a shopping center, the Plaza Mayoral Shopping Center, currently under construction. The property will be developed with two retail buildings and one future building. The proposed 7-11 store would be located within a building that would house other retail tenants including a Starbucks, Baskin and Robbins and a hair salon.

The property is located within the Otay Mesa Community Plan. It is zoned the Otay International Center Precise Plan of the Otay Mesa Development District, with a land use designation of both Commercial and Business Park, and allowable land uses identified as commercial. The project is bounded by commercial retail establishments to the north, undeveloped land to the west, the United States/Mexico boarder crossing to the south and light industrial developments to the east (Attachment 2).

On September 7, 2005 the item was heard by the Hearing Officer with staff recommending approval of the project. During public testimony, the applicant spoke in favor of the project and no speaker slips were filed in opposition to the project. During the processing of the project, no correspondence was received in opposition to the project. After the public testimony, the Hearing Officer denied the Conditional Use Permit. Subsequent to the hearing, the applicant for the project appealed the decision of the Hearing Officer.

DISCUSSION

Project Description:

The project proposes the accessory use of off-site sale of beer and wine within a 2,469 square-foot convenience store. The display area for the alcohol would be located within 40 square feet of an 85-square-foot cooler. The store would be open 24 hours a day and the alcohol sales would be limited to the hours of 10:00 a.m. to 10:00 p.m. Monday through Sunday. Alcohol sales are permitted at this location pursuant to Section 141.0502(b) of the Land Development Code which states that a Conditional Use Permit is required under any one of the following circumstances. This code section clarifies when alcohol sales required a Conditional Use Permit versus where the sale of alcohol is permitted by right without discretionary approval.

- If the site is 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.

- If the site is 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).
- If the site is within a Redevelopment Area.
- If the site is located 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.
- If the site is within 100 feet of residentially zoned property.

In the case of the subject property, a Conditional Use Permit is required as the property is located within Federal Census Tract No. 100.15 where the general crime rate exceeds the citywide average general crime rate by more than 20 percent and because the census tract exceeds the number of alcohol beverage outlets established by the California Businesses and Professional Code. According to staff from the San Diego Police Department (SDPD), only one alcohol beverage outlet for off-site sales is permitted in this census tract. Statistics provided by the SDPD for Federal Census Tract No. 100.15 show that 13 off-site sale alcohol licenses exists. The statistics also indicate that the crime rate for the census tract is 531 percent of the citywide average (or 431% higher than the citywide average) (Attachments 13).

Therefore, pursuant to the above stated criteria, the limited sale of alcoholic beverages at the 7-11 site is not permitted by right, and thus requires a Conditional Use Permit. The purpose and intent of the Conditional Use Permit procedures is to review proposed uses on a case by case basis to determine whether or not and under what conditions the use may be approved at a given site.

The project area is not located within a Redevelopment Area, nor is it within 600 feet of a school, public park, playground or recreational area, church, hospital or San Diego County Welfare District Office. The property is not within 100 feet of residentially zoned property.

Community Plan/Zoning Analysis:

The site is located within the Otay Mesa Community Plan designated for commercial land uses. The site is located within the Otay International Center Precise Plan Subdistrict and identified as Parcel 5B. The Precise Plan states calls for the provision of a variety of commercial and industrial uses supportive to the adjacent border crossing station. It states that there is a need for a broad array of retail shopping including shopping for last-opportunity purchases by people traveling into Mexico. Parcel B specifically allows for commercial land uses and includes such permitted uses as convenience sales and services of food and beverages (Attachment 15). The uses are not subject to limitations, as some uses in the Plan. Staff has determined that the project is consistent with the underlying zoning and that the proposed use would not adversely affect the community plan.

San Diego Police Department Analysis:

The SDPD staff has recommended approval of the alcohol sales. Statistics provided by the SDPD revealed that out of 455 crimes reported in 2004, 240 were auto theft, 177 had to do with larceny/burglary, 22 aggravated assault, 14 robberies and 2 forcible rape. While the statistics do not indicate if the crimes were alcohol related SDPD staff asserts that the majority of the reported crimes are most likely not alcohol related.

One alcohol license is permitted in the 100.15 census tract where 12 currently exists (Attachment 13). According to the SDPD, the number of licenses allowed per census tract is based upon the population base within a census tract meaning the more residents there are then the more off-site sales licenses allowed. Census tract 100.15 covers a large area including the entire Otay Mesa community and sections of San Ysidro. According to the SDPD, the Alcohol Beverage Control (ABC) has determined that there is a low population base for this area.

SDPD staff has determined that the proposed off-site sale of beer and wine is a comparatively small component of the convenience store and that it is not the principal sales product. The products sold at the convenience store vary in diversity and will serve mostly vehicular and pedestrian traffic coming to and from the Mexican boarder port of entry. The SDPD has determined the proposed use is appropriate at this location in part, as it would not be located in close proximity to other alcohol beverage outlets, a school, public park, playground or recreation area. The SDPD has determined that the proposed off-site sales of beer and wine would not be detrimental to the public health, safety, and welfare. The permit prepared for this project includes various conditions and corresponding exhibits of approvals relevant to achieving compliance with the regulations of the Municipal Code and imposes limitations on the alcohol sales (Reference conditions 8 through 21 of the Attachment 6).

Hearing Officer Decision

At the September 7, 2005 hearing, the Hearing Officer denied the project stating an inability to make findings No. 2 and No. 4. These findings are listed below, along with a summary of the Hearing Officer' stated areas of concern.

Finding No. 2: *The proposed development will not be detrimental to the public health, safety, and welfare* Finding No. 4: *The proposed use is appropriate at the proposed location.*

The Hearing Officer concluded that he was unable to make finding No. 2 due to the high crime rate in the census tract. The sale of beer and wine could have a detrimental impact on the health, safety and general welfare by representing a "contributing factor" to an additional increase in crime in the area. The Hearing Officer acknowledged that the information supplied by the SDPD may be skewed due to the proximity of the census tract to the border and, the amount of inter-border crime reported to the Border Patrol and the SDPD. However, the Hearing Officer expressed a concern that no accurate estimation of the actual crime rate for this census tract, exclusive of the inter-border crimes, was presented at the hearing. It was additionally noted by

the Hearing Officer of the close proximity of the site to the Mexico – US border and the availability of similar services within a half a mile distance of the requested site. The Hearing Officer also indicated that the City had determined, in similar situations elsewhere in the City that the sale of alcohol contributed to an increase in crime.

Regarding finding No. 4, the Hearing Officer stated that the proposed use (the sale of beer and wine in a convenience store) was not appropriate for this location. The census tract in which the use would be located has a crime rate 531-percent of the City average. This rate, coupled with the site's proximity to the international border, led the Hearing Officer to conclude that the site would not be suitable for this use. It was additionally noted that establishments providing similar types of service were within a half a mile distance of the subject property.

CONCLUSION

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 both the land use designation and the purpose and intent of the Otay International Precise Plan. 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 be detrimental to the health, safety and welfare of those in the area. The project has been categorically exempted from the California Environmental Quality Act. Staff believes that the required findings to approve the project can be affirmed.

ALTERNATIVES

1. Approve the appeal and Approve Conditional Use Permit No. 204540, with modifications or;
2. Deny the appeal and deny the Conditional Use Permit No. 204540, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

Jeff Strohminger
Deputy Director, Customer Support and
Information Division
Development Services Department

William Zounes
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Attachments:

1. Aerial Photograph

2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Project Site Plan(s)
6. Draft Permit with Conditions
7. Draft Resolution with Findings
8. Community Planning Group Recommendation
9. Ownership Disclosure Statement
10. Project Chronology
11. Appeal Application
12. 2004 Crime Statistics for Census Tract 100.15
13. ABC Off Sale Licenses Census Tract 100.15
14. San Diego Police Department Conditional Uses Permit Recommendation
15. Otay International Center Percise Plan