



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: August 2, 2007 **REPORT NO. PC-07-098**

ATTENTION: Planning Commission, Agenda of August 9, 2007

SUBJECT: TASTE OF ITALY - PROJECT NO. 116364, PROCESS 4

**OWNER/
APPLICANT:** Torrey Hills Marketplace, L.L.C., Owner

SUMMARY

Issue(s): Should the Planning Commission approve a Planned Development Permit amendment to allow the sale of distilled spirits at a restaurant located at 4653 Carmel Mountain Road, within the Torrey Hills Community Planning Area?

Staff Recommendation:

APPROVE Planned Development Permit No. 395902, amending Planned Development Permit No. 2118 to allow the sale of distilled spirits at an existing restaurant.

Community Planning Group Recommendation: On February 20, 2007, the Torrey Hills Community Planning Board voted 8-2-1 to recommend approval, with conditions.

Environmental Review: The proposed activity is exempt from CEQA pursuant to Section 15301 (Existing facilities) of the State California Environmental Quality Act Guidelines.

Fiscal Impact Statement: None with this action. All costs associated with the processing of this application are paid for by the applicant.

Code Enforcement Impact: Neighborhood Code Compliance (NCC) will monitor the case as the permit process proceeds in a timely manner. If the permit is denied or the process stopped, NCC will proceed with standard enforcement procedures to obtain compliance with the San Diego Municipal Code.



BACKGROUND

The restaurant is located within an existing shopping center at the southeast corner of Carmel Mountain Road and East Ocean Air Drive in the CN-1-2 Zone of the Torrey Hills Community Plan. The shopping center is identified as a "Neighborhood Commercial Center" by the Torrey Hills Community Plan. The shopping center is bounded by open space to the south and east, commercial development to the west (across East Ocean Air Drive), and single family residential development to the north (across Carmel Mountain Road).

The shopping center in which the restaurant is located was approved by City Council on February 18, 2003 through Planned Development Permit No. 2118. An amendment to this Planned Development Permit is being proposed to allow a deviation to the property development regulations that prohibit the sale of intoxicating beverages other than beer and wine at eating and drinking establishments within the CN zones.

On September 22, 2005, the Development Services Department approved an Alcoholic Beverage Control (ABC) Zoning Affidavit form for the Taste of Italy Restaurant located in this shopping center. On the Zoning Affidavit, staff erroneously indicated that the zone on the property was CC-1-3. That zone permits a Type 47 alcohol license allowing the sale of beer, wine, and spirits. The City subsequently determined that the actual zone on this property is CN-1-2. This zone permits eating and drinking establishments by right but limits the types of alcohol served to beer and wine.

On July 27, 2006, Neighborhood Code Compliance opened a code violation case. On August 23, 2006, the Development Services Department sent a letter to the restaurant owner, Diah Asker, acknowledging that the ABC Zoning Affidavit was approved in error, and requested that a discretionary permit be submitted to the City, or that alcohol sales be limited to beer and wine. On January 29, 2007 the applicant applied for a Planned Development Permit.

DISCUSSION

Project Description:

The Taste of Italy restaurant is located at 4653 Carmel Mountain Road, Suite 311 and 312, within an existing shopping center at the southeast corner of Carmel Mountain Road and East Ocean Air Drive. The shopping center is presently developed with eight buildings: A Vons grocery store, medical officer center, and other retail/offices uses. The Taste of Italy restaurant occupies a 2515 square foot tenant space in the southeast corner of the center. More specific uses of the restaurant tenant space are broken down as follows:

- 181 square feet of bar area (or 7% of the tenant space);
- 1230 square feet of dining area (or 49% of the tenant space); and
- 1104 square feet of for food preparation and restrooms (or 44% of the tenant space).

The restaurant hours of operation are 11:00 a.m. to midnight, 7 days per week.

Deviations:

As allowed through the Planned Development Permit process, the applicant is requesting a deviation from the property development regulations of the CN zone that permit eating and drinking establishments by right but limit serving intoxicating beverages to beer and wine. The deviation request to allow the restaurant to serve distilled spirits is supported by staff and the community.

Community Plan Analysis:

The 17.1 acre site is within a shopping center identified as a "Neighborhood Commercial Center" by the Torrey Hills Community Plan. The Community Plan identifies types of commercial uses which may occur, including a neighborhood market, drug store, smaller retail shops and restaurants. A CN zone is specifically identified by the Community Plan to implement planned land uses for this site. Uses that are not permitted by the CN zones are not consistent with Community Plan land use. The sale of distilled alcoholic beverages often occur within a restaurant. The restaurant use is a use permitted by the existing CN-1-2 zone that is also identified as a typical neighborhood-serving commercial use by the Community Plan. The Community Plan does not specifically address the sale of alcohol. Approval of a deviation to the development regulations of the CN-1-2 zone to allow the sale of distilled alcoholic beverages in addition to the sale of beer and wine will not, therefore, adversely affect the Torrey Hills Community Plan.

Environmental Analysis:

The proposed activity is exempt from CEQA pursuant to Section 15301 (Existing facilities) of the State California Environmental Quality Act Guidelines.

Project-Related Issues:

Community Input

The existing upscale, sit down restaurant has been well received by the community; therefore, the Torrey Hills Community Planning Board did recommend approval of the project with the following conditions:

1. **Condition:** The business must achieve a higher percentage of sales through food than through alcoholic beverages.

Staff Response: Staff is not recommending inclusion of this condition in the permit in that the City does not have the means to enforce such a condition. A similar condition is already imposed by the State Department of Alcoholic Beverage Control through the issuance of the Type 47 license, which is described, in part, as: "Must operate and maintain the licensed premises as a bona fide eating place. Must make actual and substantial sales of meals, during the normal meal hours that they are open, at least five days a week."

2. **Condition:** The deviation is limited to this business only.

Staff Response: Staff is not recommending inclusion of this condition. The deviation is an entitlement that runs with the land, not the business. Any future restaurant in suites 311 and 312 will be afforded this entitlement. The permit does not allow the sale of intoxicating beverages other than beer and wine within any other suites. Any other deviation requests by Taste of Italy or other tenants/owners within the shopping center will have to apply for an amendment to Planned Development Permit No. 2118.

3. **Condition:** The suites revert back to the original CN-1-2 zone, restricting the sale of intoxicating beverages if no longer occupied by the Taste of Italy.

Staff Response: Staff is not recommending inclusion of this condition. The permit will be specific to a restaurant in suites 311 and 312, and will run with the space, not a particular tenant.

4. **Condition:** That by finding in favor of Taste of Italy, these findings are not extended to include [any other] equivalent footnoted details (i.e. hours of operation, live entertainment and drive-through restaurants) to any other establishment within the CN 1-2 zone.

Staff Response: The permit is to allow the sale of distilled spirits to a restaurant in suites 311 and 312 only. The existing Planned Development Permit No. 2118 already contains a condition for hours of operation (condition no. 26) and prohibits drive-in and drive-through restaurants and live entertainment (condition no. 27). Any other deviation requests by Taste of Italy or other tenants/owners within the shopping center will have to apply for an amendment to Planned Development Permit No. 2118.

Conclusion:

The existing restaurant is a permitted use, providing a sit-down restaurant that has been well received by the community. The use is consistent with the recommended land use of the Torrey Hills Community Plan and complies with the underlying zone property development regulations with the exception of the deviation requested. Draft conditions of approval have been prepared for the project (Attachment 7) and Findings required to approve the project are included in the draft resolution (Attachment 8).

ALTERNATIVES

1. **Approve** Planned Development Permit No. 395902, amending Planned Development Permit No. 2118, **with modifications.**
2. **Deny** Planned Development Permit No. 395902, amending Planned Development Permit No. 2118, **if the findings required to approve the project cannot be affirmed.**

Deviations:

As allowed through the Planned Development Permit process, the applicant is requesting a deviation from the property development regulations of the CN zone that permit eating and drinking establishments by right but limit serving intoxicating beverages to beer and wine. The deviation request to allow the restaurant to serve distilled spirits is supported by staff and the community.

Community Plan Analysis:

The 17.1 acre site is within a shopping center identified as a "Neighborhood Commercial Center" by the Torrey Hills Community Plan. The Community Plan identifies types of commercial uses which may occur, including a neighborhood market, drug store, smaller retail shops and restaurants. A CN zone is specifically identified by the Community Plan to implement planned land uses for this site. Uses that are not permitted by the CN zones are not consistent with Community Plan land use. The sale of distilled alcoholic beverages often occur within a restaurant. The restaurant use is a use permitted by the existing CN-1-2 zone that is also identified as a typical neighborhood-serving commercial use by the Community Plan. The Community Plan does not specifically address the sale of alcohol. Approval of a deviation to the development regulations of the CN-1-2 zone to allow the sale of distilled alcoholic beverages in addition to the sale of beer and wine will not, therefore, adversely affect the Torrey Hills Community Plan.

Environmental Analysis:

The proposed activity is exempt from CEQA pursuant to Section 15301 (Existing facilities) of the State California Environmental Quality Act Guidelines.

Project-Related Issues:

Community Input

The existing upscale, sit down restaurant has been well received by the community; therefore, the Torrey Hills Community Planning Board did recommend approval of the project with the following conditions:

1. **Condition:** The business must achieve a higher percentage of sales through food than through alcoholic beverages.

Staff Response: Staff is not recommending inclusion of this condition in the permit in that the City does not have the means to enforce such a condition. A similar condition is already imposed by the State Department of Alcoholic Beverage Control through the issuance of the Type 47 license, which is described, in part, as: "Must operate and maintain the licensed premises as a bona fide eating place. Must make actual and substantial sales of meals, during the normal meal hours that they are open, at least five days a week."

Respectfully submitted,



Mike Westlake
Program Manager
Development Services Department



Leslie Goossens
Project Manager
Development Services Department

ESCOBAR-ECK/LAG

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Project Site Plan
6. Project Floor Plan
7. Draft Permit with Conditions
8. Draft Resolution with Findings
9. Copy of existing Planned Development Permit No. 2118
10. Community Planning Group Recommendation
11. Ownership Disclosure Statement
12. Project Chronology