



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: April 10, 2008

REPORT NO. PC-08-039

ATTENTION: Planning Commission, Agenda of April 17, 2008

SUBJECT: APPEAL OF THE HEARING OFFICER'S DECISION TO APPROVE THE PARADISE FOOD MART CONDITIONAL USE PERMIT - PROJECT NO. 109652. PROCESS THREE.

REFERENCE: Hearing Officer Report, HO-08-004
Council Policy 600-24, http://docs.sandiego.gov/councilpolicies/cpd_600-24.pdf

OWNER/ J and J Food Store, Inc./Adila Azar Aziz and
APPLICANT: Marsha Amin, Esq. (Attachment 29)

SUMMARY

Issue(s): Should the Planning Commission approve or deny an appeal of the Hearing Officer's decision to approve Conditional Use Permit No. 488917 for the sale of beer and wine for off-site consumption at an existing grocery store located at 7702 Paradise Valley Road?

Staff Recommendation: DENY the appeal and uphold the Hearing Officer's decision to APPROVE Conditional Use Permit No. 488917

Community Planning Group Recommendation: On November 14, 2007, the Skyline-Paradise Hills Planning Committee voted 10-0 to deny Paradise Food Mart's Conditional Use Permit for the sale of beer and wine for off-site consumption with no conditions (Attachment 22).

Environmental Review: The project is exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15301, Existing Facilities (Attachment 19). This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on October 19, 2007, and the opportunity to appeal that determination ended November 2, 2007.

Fiscal Impact Statement: All costs associated with the processing of this application are paid for by the applicant.

Code Enforcement Impact If the permit is denied, Neighborhood Code Compliance will proceed with standard enforcement procedures to cause the property owner to cease the selling of alcoholic beverages at this location.

Housing Impact Statement: Not Applicable.

BACKGROUND

The subject property is located at 7702 Paradise Valley Road on the northeast corner of Paradise Valley Road and Deep Dell Road (Attachment 1). The 0.34 acre site is within the Skyline-Paradise Hills Community Plan area and is zoned CC-1-3. The Skyline-Paradise Hills Community Plan designates this site for Neighborhood Commercial (Attachment 2). The subject property is developed with a grocery store, and is in compliance with the goals and recommendations of the community plan. However, the community plan does not specifically address the proposed alcohol beverage outlet.

The grocery store was constructed in 1972 when the lot included the adjacent parcel to the east. At that time, twelve parking spaces were provided. In 1974, the lot was subdivided into two parcels. The site currently has 11 parking spaces due to one parking space being removed to accommodate an accessible parking space. The 2,400 square-foot grocery store and 11 parking spaces will remain with no construction proposed (Attachment 3).

The adjacent property to the east is commercial development with offices and an eating establishment. The properties across the street from Paradise Valley Road and Deep Dell Road are single family residences. The adjacent property to the north is a multi-family apartment complex.

In 2005, the Development Services Department completed a State of California Department of Alcoholic Beverage Control (ABC) Zoning Affidavit form for the applicant's grocery store at 7702 Paradise Valley Road. On the Zoning Affidavit, staff erroneously indicated that a Conditional Use Permit (CUP) was not required. The 7702 Paradise Valley Road property is zoned CC-1-3, Commercial Community. Alcoholic beverage outlets are a permitted use with limitations in the CC-1-3 zone.

The Development Services Department's error was discovered in 2006. On March 14, 2006, the Development Services Department sent a letter to the Paradise Food Mart operator, Azar Adil Aziz, acknowledging the ABC Zoning Affidavit was approved in error, and requested a discretionary permit application be submitted to the City.

Neighborhood Use Permit

A Neighborhood Use Permit application was originally submitted on November 30, 2006 for the Paradise Food Mart project because the applicant asserted the grocery store had a previously conforming use as an alcoholic beverage outlet from previous operators of the store. The decision to approve or deny a Neighborhood Use Permit is a Process Two decision, decided by City Staff. A Notice of Future Decision was mailed to the property owners and tenants within 300-feet of the subject property (Attachment 4). The Notice of Decision informs persons receiving the notice of the City's intent to render a decision and to allow those interested persons to request a notification of that decision. The decision is appealable to the Planning Commission. Staff did receive letters in opposition (Attachment 5) and support (Attachment 6) to the project. On April 10, 2007, the Skyline-Paradise Hills Planning Committee voted to recommend denial of the Neighborhood Use Permit (Attachment 7).

For the Neighborhood Use Permit review, the owner or person asserting previously conforming rights may offer evidence that the use had not been discontinued for more than 2 consecutive years. In April 2007, the applicant provided evidence of alcohol license history at 7702 Paradise Valley Road. The information provided indicated the last alcohol license was canceled in 1999, and a new license was issued in 2005; therefore, the use had been discontinued for approximately 6 years. A Neighborhood Use Permit could not be supported and the applicant was required to apply for a Conditional Use Permit instead.

Amended application to Conditional Use Permit

In July 2007, the applicant amended the Paradise Food Mart application to a Conditional Use Permit, which became a Process Three decision. A new Notice of Application was mailed in September 2007 to property owners and tenants within 300-feet of the subject property which amended the application from a Neighborhood Use Permit to a Conditional Use Permit for off-sale beer and wine within an existing grocery store (Attachment 8).

On January 9, 2008, the Conditional Use Permit was approved by the Hearing Officer. At the hearing, two speaker slips were filed in favor of the project and five speaker slips were filed in opposition (Attachment 25). Documents submitted to the Hearing Officer by those in opposition of the Conditional Use Permit are provided as Attachment 26. Cathy Ramsey Harvey, President of the Greater Skyline Hills Community Association, submitted a letter dated January 9, 2007 (Attachment 27), and William S. Glover submitted a letter, dated January 8, 2008, to the Hearing Officer in opposition to the project (Attachment 28).

After public testimony and questions, the Hearing Officer approved the Conditional Use Permit request for alcohol sales. The Hearing Officer stated that he was able to make all of the Conditional Use Permit findings.

DISCUSSION

The project is an appeal of the Hearing Officer's decision to approve a Conditional Use Permit for the sale of beer and wine for off-site consumption at the existing 7702 Paradise Valley Road grocery store.

Regulatory Analysis

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

The Limited Use regulations, pursuant Section 141.0502 (b) (1), do not permit alcoholic beverage outlets by right (i.e. would require a Conditional Use Permit) in the following locations:

1. Within a 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 subject site is located in Census Tract Number 31.15 and the general crime rate does not exceed the citywide average general crime rate by more than 20 percent. Current crime rate statistics provided by the San Diego Police Department for census tract no. 31.15 is 61.1%, where 120% is considered high crime area.

The subject site is located within 600 feet of Census Tract Number 32.13 and Census Tract Number 32.14. The crime rate statistics for census tract no. 32.13 is 24.7% and for census tract no. 32.14 is 13.1%, where 120% is considered high crime rate area. Census tract no. 32.13 and 32.14 are not high crime rate areas. The subject project is not within 600 feet of a census tract, where the general crime rate exceeds the citywide average general crime rate by more than 20 percent.

2. Within a census tract, or within 600 feet of a census tract, where the ratio of alcohol beverage outlets exceeds the standards established by the California Business and Professional Code (Section 23958.4).

Currently in the subject site's census tract no. 31.15, there are two (2) off-sale retail alcohol licenses existing where a total of five (5) off-sale alcohol licenses are permitted and therefore, the project does not exceed the number of alcohol beverage outlets in the area.

Census Tract Numbers 32.13 and 32.14 are within 600 feet of the subject site's Census Tract Number 31.15. Census tract 32.13 permits three (3) off-sale alcohol licenses. Currently there are no off-sale licenses in census tract 32.13. Census tract 32.14 permits three (3) off-sale alcohol licenses. Currently there are two (2) off-sale retail alcohol licenses existing in census tract 32.14. The subject site is within 600 feet of two (2) census tracts that do not exceed the number of alcohol beverage outlets in the area.

	Census Tract	Number of Off-Sale Retail Alcohol Licenses allowed	Number of Off-Sale Retail Alcohol Licenses existing	Crime Rate in this Census Tract (120% is high crime)
Paradise Food Mart at 7702 Paradise Valley Road	31.15	5	2	61.1%
Census Tract Within 600 ft. of Paradise Food Mart	32.13	3	0	24.7%
Census Tract Within 600 ft. of Paradise Food Mart	32.14	3	2	13.1%

3. In an adopted Redevelopment Project Area.

The subject site is not located within a Redevelopment Area.

4. Within 600 feet of a public or private accredited school, a public park, a playground or recreational area, a church except those established in accordance with Section 141.0404(a), a hospital, or a San Diego County welfare district office.

The subject site is not located within 600 feet of a public or private accredited school, public park, playground or recreational area, church, hospital, or San Diego County welfare district office.

5. Within 100 feet of a residentially zoned property.

The subject site is located within 100 feet of a residentially zoned property. A multi-family apartment complex to the north and single family residences to the west are within 100 feet of the subject site.

The subject project requires a Conditional Use Permit because it is located within 100 feet of a residentially zoned property.

PUBLIC CONVENIENCE AND NECESSITY:

On November 14, 2000, the San Diego City Council adopted Resolution No. R294124, which delegates the authority to determine public convenience or necessity for alcoholic beverage outlets licensing to the Police Department. A Public Convenience or Necessity determination is reviewed prior to the State of California Department of Alcoholic Beverage Control's issuance of an alcohol license. The Public Convenience or Necessity (PCN) determination is required for a premise located in an area which has an over-concentration of alcoholic beverage licenses and/or a higher than average crime rate.

In 2005, the State of California Department of Alcoholic Beverage Control (ABC) did not require a PCN determination at 7702 Paradise Valley Road by the San Diego Police Department because the site was located within a Census Tract with a low crime rate and low concentration of alcohol licenses. The Public Convenience or Necessity determination is not required for this Conditional Use Permit because the project was already analyzed prior to the issuance of the ABC alcohol license and ABC determined a Public Convenience or Necessity was not required.

APPEAL ISSUES:

On January 24, 2008, the Hearing Officer's decision was appealed by the Chair of the Skyline-Paradise Hills Community Planning Group, citing A) Factual Error, B) Conflict with other matters, and C) New Information. The Skyline-Paradise Hills Community Planning Group identified three appeal issues in the appeal application (Attachment 23). In addition, to clarify the three appeal issues, subsequent correspondence was received by the Development Project Manager from the Chair of the Skyline-Paradise Hills Community Planning Group (Attachment 24). The reasons for appeal are as follows:

A. Factual Error

Factual Error: Development Services issued license by-passing public conveniences or necessity guidelines/Do not utilize 30 day/90 day criteria over site (Attachment 23).

Factual Error: Development services issued license in error for the following reason (Attachment 24).

1. *1972 7702 Deep Dell was a Circle K marketplace which lost their alcohol license.*
2. *March 7, 1997 a process 3 was requested but denied.*
3. *License detail inquiry of April 3, 2007 License #62527 type 20 statues of 07-26-93 original issue date 05-01-75*
4. *Guidelines for determining public convenience or necessity.*
 - A. *(9) Whether the premises are located within 100 feet of residential zoned property*
 - B. *(10) whether any other information supplied by the applicant, or other compact evidence shows that "THE PUBLIC CONVENIENCE OR NECESSITY" will be served by issuance of the license. When consideration is given in determining "PUBLIC CONVENIENCE OR NECESSITY" any of the foregoing guidelines may be sufficient ground for denial. EACH APPLICATION SHALL BE JUDGED ON AN INDIVIDUAL BASIS AND ANY ONE CRITERIA OR COMBINATION OF CRITERIA MAYBE WAIVED AS THE RESULT OF IMPOSED CONDITION.*
5. *New application (which this would have been) referred to the SDPD for investigation and recommendation with ample time period (30-90 days)*

Staff Response to Factual Error:

The City of San Diego Municipal Code does not include or require any type of 30 day or 90 day criteria over the site for a Conditional Use Permit. A Public Convenience or Necessity (PCN) determination is only reviewed prior to ABC's issuance of an alcohol license. When a premise is located within a census tract with an over-concentration of alcoholic beverage licenses and/or a higher than average crime rate, ABC requires a PCN determination by the local Police Department.

The subject property is within a census tract with low crime rate and low concentration of alcohol licenses and ABC did not require the PCN determination prior to ABC issuing the alcohol license in 2005. Based on current information today, the subject property is still within a census tract with low crime rate and low concentration of alcohol licenses. Therefore, the Public Convenience or Necessity determination was not required.

In addition, the State of California Department of Alcoholic Beverage Control (ABC) has a Public Notice of Application for an Alcoholic Beverage License Application. The ABC requires as part of their process, a notice to be posted on the premises applying for an alcohol license for 30 days. When a business posts their ABC notice with the intent to sell alcohol, a 30 day protest window begins for the Police Department and the community.

The SDPD did file a condition protest in 2005 during the 30 day protest period. The SDPD worked with ABC to place conditions on the Paradise Food Mart's ABC alcohol license, which are provided in Attachment 14.

B. Conflict with other matters

Conflict with other matters: All information not contained in decision process concerning opposition from community at large./Only one set of planning group minutes in report (Attachment 23).

Conflicts with other matter: All information not contained in decision process concerning opposition from community at large, on one set of planning groups minutes in report (Attachment 24).

1. Missing minutes of April 10, 2007, Action item project #109652 Paradise food mart presentation given by Dr. Sami Jehad (610) 660-4579.

2. Petition against liquor license March 30, 2007

3. Letter of protest from

A. Greater Skyline hills Community Association

*B. William S. Glover
8492 Noeline Lane*

San Diego, Ca 92114
619.479.6020

Staff Response to Conflict with other matters:

Staff did receive correspondence of opposition and support when the application was for a Neighborhood Use Permit (Attachment 5 & 6). This correspondence was not provided to the Hearing Officer for the Conditional Use Permit, as the CUP was being treated as a new application for a new use, not a continuation of a previously approved use

The Hearing Officer Report included the November 2007 Skyline-Paradise Hills Planning Committee recommendation for Conditional Use Permit denial. The Hearing Officer also received A) Letter by Cathy Ramsey Harvey, President of the Greater Skyline Hills Community Association and B) Letter by William S. Glover, 8492 Noeline Lane, San Diego, CA 92114, (619) 479-6020 for the January 9, 2008 hearing.

C. New Information

New Information: Minutes-skyline paradise planning group of April 10, 2007. Letter of protest December 18 2006 full rep of issuing officer of October 11 2005/ Importance of maintaining proper correspondence with community planning groups in order to elevate possible decertification (Attachment 23).

New Information (Attachment 24)

- 1. Recipet of express mail to "Department of Alcohol Beverage control prior to "notice of future decision" Dec. 14, 2006.*
- 2. No notice of application until September 12, 2007.*
- 3. License detail inquiry of Wednesday March 28, 2007.*
- 4. At time of request there were 5 off-sale retail alcohol license existing.*
 - A. Moonlight Market--Corner of Skyline Dr. and Meadowbrooke*
 - B. Pay-low Market--Meadowbrooke & Paradise Vally Rd.*
 - C. Arco Service Station Meadowbrooke & Paradise Valley Rd.*
 - D. Package Store 20 & 21*
 - E. Danny liquor store(Which is now closed and licenses has been revoked never to issued again at that location)*
- 3. Report to hearing officer page 3 of 5 a state! The ABC license was not revoked at this premises within the past year.*

The License that was issued in Oct 2005 not legal as per page 2 of 5. "IN 2005 THE DEVELOP SERVICES DEPARTMENT APPROVED A DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL (ABC) ZONING AFFIDAVIT FORM FOR THE PARADISE FOOD MART @ 7702 Paradise Valley Road, ON THE ZONING AFFIDAVIT, STAFF ERRONEOUSLY INDICATED THAT A CONDITIONAL USE PERMIT (C.U.P.) WAS NOT NEEDED"

CONCERNS OF COMMUNITY: *calls for police services at the first quarter 2007 1-1-*

2007 4-02-07 causing downtime for police officers.

A. 300-400 Meadowbrooke dr. Total # of calls= 33 Total out of service time 24.70 hours.

B. 300-400 Deep Dell Rd total # of calls= 16 total, Downtime = 27.96 hours.

These are calls reported not necessarily the incidents that officers initiate on their own. Most calls for police will require at least two officers initially.

"COMMUNITY CONCERNS/COMPLAINTS WERE VALID AND SDPD SOUTHEASTERN OFFICERS HAVE AND WILL CONTINUE TO ADDRESS ILLEGAL DRINKING OR DRUNK IN PUBLIC OFFENCE. CONCERN ABOUT ROBBERY OF THE RECYCLING ON THE PAYLOW MARKET PARKING LOT IS BEING ACTIVELY INVESTIGATED."

Information from the first quarter of 2007: We would like to see or you can fax it to me at 619-470-3743 office Ernest Herbert full report as the C.U.P recommendation states. The council district has received complained regarding this location being licensed to sell alcohol.

Assessment letter of January 2, 2007 page 3 key item II key issues #1 provide documentation prior to "discontinued"

Cycle issues report page 1 of 8 items #2,4,6, and 7.

Page 2 of 8 provide documentation curb ramp.

Page 5 of 8 demonstrate previously conforming rights.

Staff response to New Information:

The Conditional Use Permit application to sell beer and wine for off-site consumption was reviewed against the City of San Diego Land Development Code, Separately Regulated Uses Section. The use required a Conditional Use Permit due to it's proximity to residentially zoned property. The site is not within or adjacent to a high crime rate area nor is it within or adjacent to an area with an over-concentration of alcohol beverage outlets.

The SDPD did review the CUP Application for the sale of beer and wine for off-site consumption at the existing grocery store and recommends approval (Attachment 9). The SDPD worked with ABC in obtaining the appropriate conditions on the ABC license for Paradise Food Mart when it was issued in October 2005.

COMMUNITY PLANNING GROUP RECOMMENDATION:

When the application was for a Neighborhood Use Permit, the Skyline-Paradise Hills Planning Committee vote to deny Paradise Food Mart Neighborhood Use Permit on April 10, 2007 with no conditions (Attachment 7).

After the Paradise Food Mart's application was amended to a Conditional Use Permit, the

Skyline-Paradise Hills Planning Committee vote to deny Paradise Food Mart Conditional Use Permit on November 14, 2007 with no conditions (Attachment 22).

CONCLUSION


The 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. Staff continues to support the request for a Conditional Use Permit for the limited and conditional sale of alcoholic beverages. The only reason that Paradise Food Mart requires a Conditional Use Permit is because it is located within 100 feet of a residentially zoned property. Paradise Food Mart is located in a census tract that does not have an over concentration of alcohol licenses and does not have a high crime rate. The sale of beer and wine for off-site consumption will be regulated through a Conditional Use Permit, the ABC license (regulated by the State of California Department of Alcoholic Beverage Control), and enforced by the San Diego Police Department.

Permit conditions have been added to the CUP, in addition to the ABC license conditions, that would assure that the business will not be detrimental to the public health, safety and welfare of the community. This action will now place the facility under the encumbrance of a discretionary action in perpetuity with specific conditions regulating the alcohol use based on City regulations where currently, no such conditions exist. The project is consistent with the underlying zone and the applicable plans and policies in affect for the site. The Hearing Officer was able to make the four findings and recommend Conditional Use Permit approval for the off-site consumption beer and wine sales at an existing grocery store.

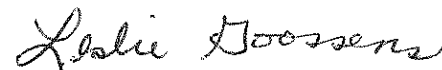
ALTERNATIVE

1. **Approve the appeal and Deny Conditional Use Permit No. 488917, if the findings required to approve the project cannot be affirmed.**

Respectfully submitted,



Mike Westlake
Program Manager
Development Services Department



for Cherlyn Cac
Development Project Manager
Development Services Department

BROUGHTON/CC

Attachments:

1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photograph
4. Notice of Future Decision: Neighborhood Use Permit
5. Letters requesting Notice of Decision and opposition petition during the Neighborhood Use Permit application
6. Letters of support during the Neighborhood Use Permit application
7. Skyline-Paradise Hills Planning Committee vote to deny Paradise Food Mart Neighborhood Use Permit on April 10, 2007
8. Notice of Application: Conditional Use Permit
9. San Diego Police Department Conditional Use Permit Recommendation
10. 2006 Crime Statistics for Census Tract No. 0031.15
11. Map of Census Tract 0031.15
12. 600 Foot Radius Map of Paradise Food Mart
13. Alcoholic Beverage Control Active Licenses for Census Tract No. 0031.15
14. Alcoholic Beverage Control Conditions for Paradise Food Mart
15. Alcoholic Beverage License for Paradise Food Mart
16. Alcoholic Beverage Control License Information for Paradise Food Mart
17. Project Plans
18. Project Data Sheet
19. California Environmental Quality Act (CEQA) Exemption
20. Draft Conditional Use Permit with Conditions
21. Draft Resolution with Findings
22. Skyline-Paradise Hills Planning Committee vote to deny Paradise Food Mart Conditional Use Permit on November 14, 2007
23. Appeal Application
24. Clarification of Appeal Issues
25. Speaker Slips at January 9, 2008 Hearing Officer Hearing
26. Documents given to Hearing Officer by opposition
27. Cathy Ramsey Harvey, President of the Greater Skyline Hills Community Association Letter, dated January 9, 2007
28. William S. Glover Letter, dated January 8, 2008
29. Ownership Disclosure Statement
30. Project Chronology