

DATE ISSUED: July 29, 2010 **REPORT NO. PC-10-063**

ATTENTION: Planning Commission, Agenda of August 5, 2010

SUBJECT: PB QWIK - PROJECT NO. 197358. PROCESS THREE

**OWNER/
APPLICANT:** Richard Garmo
Robert Zakar

SUMMARY

Issue(s): Should the Planning Commission approve or deny an appeal of the June 2, 2010 Hearing Officer's decision granting Conditional Use Permit No. 698742 for the off-site sale of alcoholic beverages at 1059 Garnet Avenue in the Pacific Beach Community?

Staff Recommendation: DENY the appeal and APPROVE Conditional Use Permit No. 698742 as conditioned.

Community Planning Group Recommendation: On March 24, 2010 the Pacific Beach Planning Group voted 6-5-0 to approve the project with nine recommended conditions. Those in opposition to the motion expressed objections to two of the conditions indicating they believed limitations on hours of operation and a percentage of sales space were too restrictive. The community planning group recommendation is discussed further within this report.

Environmental Review: This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on February 19, 2010, and the opportunity to appeal that determination ended March 12, 2010.

Fiscal Impact Statement: There are no fiscal impacts with this application. All cost associated with processing this application are from a deposit account paid for and maintained by the applicant.

Code Enforcement Impact: None.

Housing Impact Statement: This application is for the commercial retail sale of alcohol

within an existing vacant storefront at 1059 Garnet Avenue in the CC-4-2 Zone within the Pacific Beach Community Plan area. The project site includes four existing two-bedroom residential dwelling units at the rear of the property. The four market-rate rental units would not be affected with this application.

BACKGROUND

The 0.14-acre site is located at 1059 Garnet Avenue in the CC-4-2 Zone within the Pacific Beach Community Plan area. The CC-4-2 zone is intended for a wide array of commercial retail uses and commercial services. The Pacific Beach Community Plan designates the property and surrounding area as commercial land use with an emphasis on community serving retail uses.

The property is developed with two detached structures comprising both a commercial and a residential element on the site. The commercial component is a 2,460 square-foot one-story structure fronting Garnet Avenue and is the intended location for the proposed alcohol sales. The commercial space was formerly occupied by a clothing boutique but has stood vacant for several months. The residential component is located at the back of the lot and accessed from the rear alley. The two-story apartment building is approximately 2,040 square feet and contains four one-bedroom dwelling units. The residential component is not a subject of this Conditional Use Permit application aside from the fact it occupies a portion of the property.

Surrounding land uses in the neighborhood include a variety of community serving and visitor serving establishments including nightclubs, retail outlets and restaurants. Multi-family residential development is located one block north and south along the commercial corridor.

DISCUSSION

Project Description:

The project proposes to establish a type-21 off-sale alcoholic beverage outlet within an existing vacant commercial space along the Garnet Avenue commercial corridor. The Type 21 license would allow for the sale of both fermented alcohol products (beer and wine) and distilled spirits such as whiskey, vodka and gin. The ABC liquor license was previously assigned to the abutting property to the east and located within a commercial building at 1079 Garnet Avenue. However a new lease agreement between the property owner and the license holder could not be agreed upon thereby necessitating the relocation of the business and transfer of the license. The previous PB Qwik Mart predated the current code requirement for a Conditional Use Permit and the transfer of the license triggered the applicable ordinance.

Previously Conforming Rights

The existing development has been determined to enjoy previously conforming rights relative to the amount of required off street parking. Based on current code requirements the total parking requirement for the commercial space and the residential units would be 6 parking spaces. Four spaces would be required for the residential units and two spaces would be required for the commercial retail space. However, pursuant to Section 127.0103, the premises have previously

conforming rights to maintain the existing four parking spaces. All four existing spaces are designated to the residential dwelling units. The 2,460 square-foot commercial space will not have off-street parking whether alcohol sales are permitted or not. However, Garnet Avenue between Ingram Street and Mission Boulevard is an area of high pedestrian activity and a majority of the storefronts within this local do not have off-street parking.

Alcohol Sales as Limited Use

The pending Alcohol Beverage Control (ABC) license is defined as “off-sales” which would require all of the alcohol sold at the store to be consumed off of the premises. Alcoholic beverage outlets are permitted by right as a “Limited Use” pursuant to Section 141.0502(b) of the Land Development Code (LDC). A Limited Use may be permitted by right in the zone if the alcohol beverage outlet meets all of the development regulations and location criteria for a separately regulated use. Alcoholic beverage outlets that do not comply with the location criteria of this section may still be permitted with a Conditional Use Permit pursuant to LDC Section 141.0502(c) of the LDC.

The Limited Use Regulations of the Land Development Code, Section 141.0502(b)(1) do not permit alcoholic beverage outlets by right (i.e. would require a Conditional Use Permit) in any of 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 property is in Census Tract No. 0079.01 which reported a crime rate 527.2 percent higher than the citywide average based on the statistics provided by the San Diego Police Department. A Census Tract is considered to have “high crime” if the crime rate exceeds 120 percent of the city-wide average. Therefore, a CUP is required for the off-sale of alcoholic beverages at this location based on this factor.

- 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 subject property is within Census Tract No. 0079.01 which based on the California Businesses and Professional Code Section 23958.4 permits a total of four (4) off-sale alcoholic beverage outlets. There are currently eleven (11) existing off-sale alcohol beverage outlets within Census Tract 0079.01 rendering it over saturated by the conventional standards. Therefore, a CUP is required for the off-sale of alcoholic beverages at this location based on this factor

- 3. Within a Redevelopment Area.**

The project site is not within a Redevelopment Project Area.

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

Office.

The project site is not located within 600 feet of these types of facilities.

5. Within 100 feet of residentially zoned property.

The project site is within 100 feet of residentially zoned property. Therefore, a CUP is required for the off-sale of alcoholic beverages at this location based on this factor

6. Within 600 feet of a place of religious assembly.

The project site is not within 600 feet of religious assembly.

Alcohol Sales-Project Analysis:

The proposed off-sale alcoholic beverage outlet at this site requires a Conditional Use Permit because the project site does not meet all of the location criteria of the Municipal Code. As demonstrated above, the project site is within a Census Tract that: 1) is defined as having a high crime rate; 2) exceeds the recommended number of existing outlets; and 3) is within 100 feet of residentially zoned property. Any one of these factors establishes the need for the Conditional Use Permit.

The project has been reviewed by the Development Services staff and the San Diego Police Department for conformance to the applicable land use regulations and polices. The staff recommendation to support the project relies on the fact that the Census Tract is in a densely populated, high intensity commercial corridor where crime rates are typically inflated over less dense neighborhoods. Additionally, the license is already existing in the neighborhood and is being transferred from one address to an adjacent property, therefore, this action would not constitute an addition of an off-site facility and should not adversely impact the community. Accordingly, Staff is recommending approval of the project as proposed.

Draft Conditions of Approval

The project approval would allow the sale of liquor to be conditioned so that the alcohol sales would not have a negative impact on the surrounding neighborhood. The CUP includes a number of conditions that would limit advertising, provide for a well-lighted, clean site and prohibit specific on-site activities with the objective of reducing the likelihood of loitering and other criminal activity on the property. Additionally, the CUP provides an opportunity for the San Diego Police Department to include enforceable conditions regulating the type, size, quantities and alcoholic content (proof by volume) of the beverages. Further, both the staff and the Police Department concluded that if the permit were appropriately conditioned, the proposed alcohol sales would not have a negative impact on the surrounding neighborhood.

The CUP would prohibit pinball games, arcade-style video and electronic games, or coin-operated amusement machines on the premises. Exterior public pay phones that permit incoming calls would not be permitted on the premises, on adjacent public sidewalks, or areas under the control of the owner or operator. Advertising would be limited to interior signs only and “No

Loitering” signs would be required to be prominently displayed on the premises. Finally, the Conditional Use Permit would include a 20-year expiration date from the date the CUP was approved. The permit could be extended through the appropriate review and decision process and may be subject to additional conditions at that time.

Community Planning Group Recommendation

On March 24, 2010 the Pacific Beach Planning Group voted 6-5-0 to approve the project with nine recommended conditions. Meeting minutes (attachment 9) indicate the five votes opposing the motion to approve the project did so because they felt proposed conditions limiting the hours of operation and the sales area devoted to alcohol were too restrictive. The planning group has provided several recommendations they would like applied to the CUP and or ABC license. A brief discussion of each recommendation follows:

- *No sales of high-risk beverages, including fortified wines, wine coolers, 32 oz or greater beers, or malt liquor – enforced by ABC.*

Staff Comment: Conditions dealing with the type, proof and packaging of alcohol are placed on the ABC license and not the CUP. A recommendation from the San Diego Police Department – Vice to the ABC has been included as an information item in the permit. The note indicating this type of restriction would be enforced by the ABC is correct.

- *No sales of single units of alcohol as requested by SDPD Vice.*

Staff Comment: Similar to the previous recommendation, this would be appropriate only on the ABC License. SDPD – Vice has made this recommendation as well but would not be a local enforcement issue.

- *Reduced hours of selling alcohol to stop at midnight*

Staff Comment: Whether or not hours of operation (for alcohol sales) constitutes a land use issue is a matter of some debate in that the Land Development Code does apply certain operational restrictions to other types of uses – however that is normally based on the zoning rather than a specific use. Regardless, the ABC typically allows alcohol sales from 6:00 A.M. to 2:00 A.M. and any reduction would be required to be a condition of the liquor license and enforced by the ABC.

- *A limit to the percentage of display space of alcoholic beverages to 10%*

Staff Comment: Staff does not agree with this recommendation because both the previous (1079 Garnet) and proposed business is primarily a liquor store rather than a food mart where such a condition may be warranted. The draft Conditional Use Permit does not contain this language.

- *Provide a security plan to insure no consumption in the adjacent public areas.*

Staff Comment: There is no specific provision in the Land Development Code to require a

security plan and it would be a difficult condition to enforce. Staff notes that consuming alcohol outside of the establishment within the public right-of-way is already an illegal misdemeanor offense and not the responsibility of local shop owners to enforce. The draft Conditional Use Permit does not contain this language.

- *Windows closest to the cash register will be clear of signage*

Staff Comment: Limitations regarding the amount of signage and transparency have been included in the draft Conditional Use Permit.

- *Staff will be trained in responsible beverage sales*

Staff Comment: The comment is noted. However, this recommendation cannot be enforced by the City of San Diego. The ABC has user prevention and education programs as well as penalty guidelines for license holders. Training is provided free of charge but not mandatory.

- *Cashiers will be over the age of 21 and not be under the influence of alcohol or drugs*

Staff Comment: Age limits for cashiers cannot be imposed by the City of San Diego. State law provides only that employees under the age of 18 be supervised by a person 21 years of age or older.

- *No sales of products known to be used for drug purposes; small plastic baggies, cigarette papers, pipes and screens known to be used for smoking or inhaling drugs.*

Staff Comment: The sales of drug paraphernalia is illegal and would be enforced by the San Diego Police Department. The sale of legal items that could be used for smoking, inhaling or packaging drugs is not a land use issue with this type of application. Compliance with this recommendation would be at the discretion of the proprietor.

Community Plan Analysis:

The Pacific Beach Community Plan does not specifically address alcohol sales as a land use issue which is generally defined as retail sales. However, the Plan notes that one of the key community issues is the Garnet Avenue commercial strip continues to exhibit deterioration and economic decline. The Plan also notes that commercial establishments in the community have increasingly developed with automobile rather than a pedestrian or transit orientation. The proposed development would partially implement some of the Plan's overall goals by occupying and improving an existing vacant commercial building within a pedestrian oriented storefront within the commercial corridor.

Appeal-Related Issues:

On June 2, 2010, the Hearing Officer of the City of San Diego conducted a public hearing on the matter of a Conditional Use Permit application for the off-premise sales of alcoholic beverages. After receiving the staff report and hearing public testimony, the Hearing Officer approved CUP

No. 698742 with conditions provided by city staff and the Pacific Beach Planning Board. On June 15, 2010, the Hearing Officer decision was appealed by the Planning Board citing the reasons that the decision to approve the project conflicted with other matters and that the findings to approve the CUP could not be supported. A summary of the appeal application and the staff response follows:

The appeal application accurately states that the proposed location is in an area of 1) high crime as defined by the San Diego Police Department; 2) exceeds the number of permitted off-sale licenses in the census tract; and 3) is located within 100 feet of residentially zoned property. The appeal notes that these issues are reason to deny the CUP based on the history of alcohol-related incidents within the Pacific Beach community and further states that the conditions applied to the CUP are insufficient to effectively reduce alcohol related incidents in the future. Specifically, the appeal application is requesting a Midnight restriction on the sale of alcohol at this location.

Staff Response:

The City staff concurs with the appellant that the proposed location is within an area with a history of alcohol-related issues and high crime. However, the proposed CUP is being required for the transfer of an existing ABC license acquired and held by the applicant since 1992. Prior to being acquired by the current holder, the license was established and in existence within the community since 1962. Approval of this CUP would not constitute an increase to the number of licenses within the area and would not have any net effect on the crime statistics over and above the current condition. Additionally, crime statistics provided by the San Diego Police Department indicate that between January 2009 and December 2009 there were zero (0) arrests and two (2) crime cases at 1079 Garnet where the license was being utilized. Further, ABC records indicate that only one minor disciplinary action was issued to the operator citing the presence of an open container in the off-sales establishment.

The San Diego Police Department reviewed the application and determined that limiting the sale of alcohol after Midnight was not required. Staff agrees with the standard 2:00 A.M. condition because the nature of the surrounding community is primarily an entertainment district with high intensity pedestrian activity occurring well past midnight. No other off-sale operator within the vicinity has a midnight restriction and staff felt it would be unreasonable to apply the limitation to one operator.

Staff concluded that the transfer of the license would be beneficial to the community in several ways. Foremost of these benefits would be the ability for the City to apply restrictions, limitations and conditions in the CUP that were nonexistent at the previous location. Additionally, relocating the license would occupy a vacant commercial space and partially implement the Pacific Beach Community Plan goal of revitalizing Garnet Avenue.

Conclusion:

Staff supports the request for a Conditional Use Permit for the sale of alcoholic beverages based on the zone regulations and conditions contained within this development permit. Further, the San Diego Police Department has reviewed the application and supports the CUP with the proposed conditions. Specific permit conditions have been added to this discretionary application

that would assure that the business would be a cohesive element of the neighborhood and would not be detrimental to the public health, safety and welfare of the community. The project is consistent with the underlying commercial zone and the applicable land use plan's goals, recommendations and policies in affect for the site. An environmental initial study performed by the Development Services Department determined that the proposed project was exempt from further environmental review pursuant to CEQA and staff believes the applicable findings to approve the project can be positively affirmed by the Planning Commission.

ALTERNATIVES:

1. **Approve Conditional Use Permit No. 698742, with modifications.**
2. **Deny Conditional Use Permit No. 698742, if the findings required to approve the project cannot be affirmed.**

Respectfully submitted,

Mike Westlake
Program Manager
Development Services Department

Patrick Hooper
Project Manager
Development Services Department

WESTLAKE/JPH

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Draft Permit Resolution with Findings
6. Draft Permit with Conditions
7. SDPD Recommendation
8. Community Planning Group Recommendation
9. Ownership Disclosure Form
10. Environmental Exemption
11. Copy of Appeal
12. Project Site Plan
13. Existing Outlets Map – Census tract 79.01