

DATE ISSUED: July 27, 2006

REPORT NO. PC-03-235

ATTENTION: **Planning Commission, Agenda of August 3, 2006**

SUBJECT: Pacific Beach Shell Station and Convenience Store- Project No. 4977
Process 3

REFERENCE: Hearing Officer Report No. HO-06-080

**OWNER/
APPLICANT** Asset Gas LLC (Attachment 12)
SUMMARY

Issue(s): Should the Planning Commission approve an appeal of the Hearing Officer's partial approval of a Conditional Use Permit to remodel an existing gas station by converting service bays to a convenience store (expanding an existing mini mart) and to sell beer and wine? The Hearing Officer approved the Conditional Use Permit for the remodel to the gas station, but denied the Conditional Use permit request for off-site sale of beer.

Staff Recommendation: **Approve** the appeal and **Approve** Conditional Use Permit No. 008465 with conditions (Attachment 10).

Community Planning Group Recommendation: The Pacific Beach Community Planning Committee recommended approval of the project on August 23, 2004 by a vote of 14-0-0 with no conditions. On April 26, 2006, the community group placed the item back on their agenda and unanimously voted to recommend denial. Please reference the Discussion section of the report.

Environmental Review: A Negative Declaration has been prepared for the project in accordance with the State of California Environmental Quality Act (CEQA) Guidelines.

Fiscal Impact Statement: None with this project.

Code Enforcement Impact: None with this project.

Housing Impact Statement: Not Applicable.

BACKGROUND

The project is an appeal of the Hearing Officer's May 10, 2006 decision to deny a request for an alcohol beverage outlet located at 2830 Grand Avenue at its intersection with Mission Bay Drive (Attachment 1). The project before the Hearing Officer was a Conditional Use Permit request to allow the remodeling of an existing, previously conforming gas station, and, a Conditional Use Permit for beer and wine sales within an expanded convenience store at the gas station. The Hearing Officer approved the Conditional Use Permit to allow the remodel of the gas station and denied the Conditional Use Permit for alcohol sales, finding that the proposed beer and wine sales would be detrimental to the public health, safety and welfare. The project applicant appealed the decision (Attachment 19).

The property is zoned CV-1-2, a citywide commercial visitor zone, and designated for visitor commercial uses within the Pacific Beach Community Plan (Attachment 2). The site is within the Coastal Overlay Zone and the Transit Overlay Zone. The subject property is currently developed with an existing gas station, service bays and a small convenience store located at 2830 Grand Avenue at its intersection with Mission Bay Drive (Attachment 1). The project requires a Conditional Use Permit to remodel the existing previously conforming service station. The project will expand the convenience store by remodeling the 1,619 automobile repair station and convenience store (automobile service bays total 1,100 square feet; convenience store totals 519 square feet) to a 1,619 square-foot convenience store with a new 182-square-foot, second floor office. This Conditional Use Permit also includes a request to allow the continued sale of beer and wine within the expanded convenience store.

The properties immediately adjacent to the project site include a fast food restaurant ("Rubios") abutting to the north, followed by a motel and a car dealership with frontage on Mission Bay Drive. Across Mission Bay Drive to the east are additional car dealerships and motels. Across Grand Avenue to the south and west is a public park, the Mission Bay Park developed with a public golf course. Continuing west on Grand Avenue on the south side of the street is the Mission Bay High School. Residential development including single and multi-family units, are located on Figueroa Boulevard. The outlying neighborhood is predominately commercial (Attachment 3).

The gas station has been located at this site since 1963, prior to the requirement for a Conditional Use Permit (CUP) for service stations. Expansions to such a use requires a CUP for the automobile service station pursuant to SDMC section 141.0801. The convenience store within the gas station includes an Alcohol Beverage Outlet as the station was issued a Type 20 liquor license from 1984 to 2004. As the license was issued prior to the requirement for a Conditional Use Permit, any expansion to the store now requires a CUP in accordance with San Diego Municipal Code (SDMC) section 141.0502 (B) (ii).

On May 10, 2006 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 numerous citizens spoke in opposition. 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 proposed project would remodel the existing service station which currently includes one building with service bays and a mini mart, fueling stations and ground signs. The specific project elements are as follows:

1. Removal of the service bay areas to allow the expansion of the existing convenience store from 519 square feet to 1,619 square feet (service bay areas total 1,100 square feet).
2. Expansion of the area used for the display of alcoholic beverages.
3. Maintenance of eight fueling stations.
4. Installation of a new sidewalk through the project site to provide a pedestrian connection from Grand Avenue to Mission Bay Drive.
5. Removal of all signs, including two overheight ground signs, to be replaced with signage in conformance with city-wide coastal sign regulations.

Existing Improvements:

As the station has existed at this location for over 40 years, several existing improvements which were constructed legally at the time are no longer in conformance due to changes in code requirements. The property contains several signs that are previously conforming as they are either located within the setback, public right of way, or over the allowable height limit. As conditioned by this permit, all signs on the property would be either relocated or removed and replaced with signs that are in conformance with current standards (Conditions 22 and 23). A traffic and parking study were required for the project. Portions of the existing vehicular circulation for the station (driveways and access) as well as three of the parking spaces (6, 8 and 9) currently encroach into the public right-of-way along Grand Avenue. The Grand Avenue curb-to-property-line distance measures over 40 feet in width adjacent to the subject site where the standard curb-to-property-line distance is 10 feet. As these existing improvements have not impeded traffic visibility nor created conflicts with pedestrians, and, they would remain unchanged with this project, staff have conditioned that Encroachment Maintenance Removal Agreements be obtained for these areas (Condition 36). This agreement will limit future encroachments while giving the City the opportunity to require their removal should the right-of-way be required in the future.

Access to and from the site is via four existing 35-foot wide driveways located along both Mission Bay Drive and Grand Avenue. The current project would reduce these driveways to the currently allowed maximum width of 30 feet. Last, the existing Rubio's restaurant development adjacent to the west has frontage on both Mission Bay Drive and Grand Avenue. Rubio's has its primary access on Mission Bay Drive, but also currently utilizes a driveway on the subject property to provide access from the rear. Permit condition number 32 requires that a shared parking agreement be provided. The project will ensure that all existing improvements and proposed improvements are consistent with current standards.

Community Plan Analysis:

The Pacific Beach Community Plan designates the site for Visitor Commercial uses which allow for visitor-commercial or visitor-serving uses specifically stating that establishments for “food and beverage service” and “retail convenience sales” are allowed. The plan requires conformance to the underlying zone. The site is zoned CV-1-2 a city wide commercial visitor zone which allows for establishments catering to the lodging, dining, and recreational needs of both tourists and the local population. The CV-1-2 zone allows for a mix of visitor-serving uses and residential uses with a pedestrian orientation. The Plan states that the Visitor Commercial designation is appropriate at this location due to the site’s location and visibility with respect to Interstate 5. The Plan also suggests that projects incorporate Transit Oriented Development guidelines such as building articulation, bus shelters, bicycle racks or public art in a public plaza. The proposed remodel to the station includes the provision of a sand sculpture, less than 3-feet in height, within the front portion of the site and the right-of-way. Staff has determined that the property is at a uniquely appropriate location for public art since the site maintains one of the most prominent corners upon entry to the community from I-5. The proposed continued use of the site as a service station, remodeled to expand a convenience store and other accessory improvements, including the sale of alcohol, would not adversely affect the community plan.

Project Issues:

Alcohol Beverage Outlet/Regulatory Framework:

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, any alcoholic beverage outlets meeting any one of the following criteria are subject to the CUP requirement (SDMC Section 141.0502):

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.

Statistics provided by the San Diego Police Department for Federal Census Tract No. 78.00 show the area to be 278.6 percent of the citywide average crime rate (Attachment 6 and 7). Therefore, by definition, the project site is considered to be within a high crime area and a CUP is required for the proposed off-sale of alcoholic beverages 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 Business and Professional Code (Section 23958.4).

The project site is located within Federal Census Tract No. 78.00 which permits a total of four (4) off-sale alcoholic beverage outlets where there are currently four existing off-sale outlets (Attachment 6 and 7). Therefore, with the issuance of one additional license as proposed with this application, the census tract would be considered to be overly concentrated with alcoholic beverage outlets and a CUP is required for the proposed off-sale of alcoholic beverages based on this factor.

3. Within a Redevelopment Area.

The site is not located within a Redevelopment area therefore, a CUP would not be required for the proposed off-sale of alcoholic beverages based on this factor.

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

The site is located approximately 80 feet from Mission Bay Park, which is developed with a public golf course. Therefore, a CUP is required for the off-sale of alcoholic beverages based on this factor. The site is not located within 600 feet of the other above mentioned facilities.

5. Within 100 feet of residentially zoned property.

The site is located approximately 80 feet from a residential zone as the Mission Bay Park is zoned RS-1-7. A CUP is required for the off-sale of alcoholic beverages based on this factor (Attachment 15).

Public Convenience or Necessity/Appeal to the City Manager:

The San Diego Municipal Code states that, if a project site is considered to be within a high crime area, and/or is overly concentrated with alcohol licenses as described above, a determination of “public convenience or necessity” must be made by the local municipalities prior to the ABC issuance of a license. On November 14, 2002, the San Diego City Council adopted Resolution No. R-294124 which delegated authority to determine public convenience or necessity to the Police Department. The adopted Resolution also establishes an administrative hearing process for review of the Police Department’s decisions according to the procedures established in San Diego Municipal Code Section 33.0501. The Conditional Use Permit application to remodel the gas station and for the request to continue beer and wine sales at this location was submitted to the Development Services Department September 2002. In 2002, the Police Department issued a finding of public convenience and necessity, recommending approval of the alcohol beverage outlet (Attachment 6).

Several issues arose during the project’s review including the coastal requirements, traffic concerns, and signage requirements. Upon resolution of these issues, the project was scheduled for the Development Service’s Hearing Officer public hearing for October 2005. Prior to the hearing, Development Services staff were advised by the Police Department that their original review and recommendation dated 2002 needed to be re-evaluated prior to the hearing due to the amount of time that had lapsed since their original review. As such, the project was continued to a date uncertain to allow the applicant to obtain a new review by the Police Department. In November 2005, the Police Department issued a new determination of “public convenience or necessity” and, based upon the high crime rate, undue concentration and, that the use of the premises could potentially aggravate existing police problems, denied the application (Attachment 7). The applicant appealed the decision to the City Manager’s Office.

On December 5, 2005, Thomas Marshall, Administrative Hearing Officer for the City Manager's Office, heard the appeal of the Police Department determination. The Administrative Hearing Officer's disposition reversed the Police Department determination and ruled that the Police Department shall issue a public convenience or necessity determination (Attachment 16).

Alcohol Sales: Project Analysis:

The proposed off-sale alcoholic beverage outlet requires a Conditional Use Permit because the project site does not meet all of the locational criteria of the Land Development Code. If all locational criteria were met, the proposed use would be allowed by right in the CV-1-2 zone. As demonstrated above, the project site is within an area that is by definition considered to be high crime; would be located within a census tract that is considered over concentrated by one license if this additional license is issued, and, is within 600 feet of a public park. Each one of these factors affects 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 policies. Staff has determined that the proposed continued sale of beer and wine within the existing gas station is an appropriate accessory use to the site and would not constitute a significant change of use to the site in terms of the underlying zoning and the community plan.

Locational Criteria-

Mission Bay Park, a public park, which is also zoned residential, is located across Grand Avenue approximately 80 feet from the site. The majority of the park is developed with a fenced public golf course. Grand Avenue is a four-lane major public right-of-way with two-lanes westbound and one lane eastbound, with a median along the project's frontage. The nearest traffic signal for pedestrian crossing is west of the site at the intersection of Grand Avenue and Figueroa Boulevard. Residential development exists over 300 feet from the subject property. Although the park is zoned residential, Park and Recreation Department staff has indicated that the likelihood that Mission Bay Park would be redeveloped with residential uses is minimal.

Public Convenience or Necessity (over-concentration)-

The Hearing Officer of the City Manager's Office determined that the Public Convenience or Necessity standard of the California Business and Professional Code Section No. 23958.4 could be made by the approval of this license. The Hearing Officer identified the following factors in reaching his decision:

1. The original denial letter from the Police Department referenced other police problems.
2. The undue concentration of similar retail outlets within the census tract is discretionary.
3. The community planning group recommended unanimous approval of the use at this location; a group of citizens within and outside the census tract filed a petition in opposition to the application.
4. From 1984 to 2004, previous owners operated an off-sale alcohol retail establishment at this location with no complaints to the ABC.
5. Beneficial factors resulting from the application included the improvement of the neighborhood by the location of a major corporate business and the addition of jobs.

Draft Conditions of Approval -

The approval of a CUP would allow the sale of beer and wine to be conditioned so that current and proposed alcohol sales would not have a negative impact on the surrounding neighborhood. Draft Conditional Use Permit No. 008465 (Attachment 10) includes a number of conditions that would limit the hours of sales, regulate advertising, provide for a well-lighted, cleaner site and prohibit specific on-site activities with the objective of reducing the likelihood of loitering on the property. Additionally, the CUP provides an opportunity for the San Diego Police Department to protest the ABC license for the inclusion of enforceable conditions regulating the type, size, quantities and alcoholic proof of the beverages.

Specifically, the CUP conditions would limit the hours of alcohol beverage sales from 7:00 a.m. to 11:00 p.m. while the gas station and the convenience store would be open 24 hours a day, seven days a week. The CUP would not allow 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 CUP would include a thirty year expiration date from the date the CUP is 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:

The Pacific Beach Community Planning committee recommended approval of the project on August 23, 2004 by a vote of 14-0-0 with no conditions. However, at a subsequent meeting on April 26, 2006, the community group re-heard the project and recommended denial of the application. Unfortunately, neither the applicant nor City staff were advised that the item was placed back on the community group's agenda prior to the group's meeting. On April 28, 2006, a representative of the community group contacted the City project manager via electronic mail stating that the item had been placed back on the agenda a few days earlier and the community group recommended denial. Staff was advised in that electronic mail that the group was unaware that the project included the sales of alcoholic beverages, nor were they informed that such a request was included by the project applicant (Attachments 8 and 9).

While current city staff assigned to the project were not at the 2004 meeting, staff's response is that the Notice of Application dated 2002 and the Negative Declaration dated August 2005, did include the sale of alcoholic beverages and both documents were routed to the community planning group representatives. No comments were received on the environmental document.

On May 9, 2006, staff was sent the formal minutes of the community group's April 26, 2006 meeting (Attachment 17).

Community Response:

Prior to the Hearing Officer hearing, staff received a number of correspondences, primarily in the form of electronic mail and petitions beginning in April 2006, as well as two letters dated 2002 and 2006, in opposition to the proposed alcohol sales. **Due to the volume of this attachment,**

staff did not re-print the correspondences. Please reference the Hearing Officer Report No. HO-06-080, Attachment 14 for copies of those correspondences.

Additionally, prior to the Hearing Officer hearing, Councilmember Kevin Faulconer submitted a letter to the Hearing Officer dated May 9, 2006 regarding the project (Attachment 18).

Hearing Officer Hearing:

At the May 10, 2006 hearing, the applicant spoke in favor of the project and 16 speaker slips were filed in opposition. In summary, public testimony addressed the high crime rate for the census tract; that the issuance of another alcohol license in the community would be detrimental to the public, safety and welfare of the area; and, that there are too many liquor licenses in Pacific Beach. After public testimony, the Hearing Officer denied the Conditional Use Permit request for alcohol sales, but approved the Conditional Use Permit for the proposed remodel to the gas station. The Hearing Officer stated that he did not hear opposition regarding the preparation of the environmental document and he certified the Negative Declaration. The Hearing Officer noted that public testimony did not convey any opposition to the re-establishment of the gas station and, therefore, approved the Conditional Use Permit to allow the remodel of the gas station.

However, with respect to the proposed alcohol sales, the Hearing Officer acknowledged that the crime rate increased from 2002 through 2005 according to the Police Department statistics as referenced in Attachments 6 and 7. He stated that in his opinion, some of the increase in the crime for the area was directly related to the sale of alcohol in the community. He further stated that approving the alcohol sales could create the potential circumstance where the operation of the gas station use with alcohol sales would be detrimental to public health, safety and welfare. Therefore, the Hearing Officer stated that he was able to make all of the Conditional Use Permit findings as outlined by staff as they related to the Conditional Use Permit for the remodel to the gas station, but that he was unable to make Finding No. 2 as it related to the alcohol sales. (Finding No. 2: *The proposed development will not be detrimental to the public health, safety and welfare*).

CONCLUSION

Staff continues to support the request for a Conditional Use Permit for the limited and conditional sale of alcoholic beverages. The project would enhance the site and surrounding area. The alcohol sales would also be regulated by the ABC and enforced by the Police Department. The previous license for alcohol sales at this site was in compliance and no reported crimes have occurred at this location, nor any complaints filed with the ABC. Special considerations and permit conditions have been added to this CUP that would assure that the business will not be detrimental to the public health, safety and welfare of the community. The existing service station and alcohol beverage outlets are both uses which currently require a Conditional Use Permit. This action will now place the facility under the encumbrance of a discretionary action in perpetuity with specific conditions regulating both uses where currently, no such conditions exists. The project is consistent with the underlying zone and the applicable plans and policies in affect for the site.

ALTERNATIVES

1. Approve the appeal and approve Conditional Use Permit No. 008465 with modifications or;
2. Deny the appeal and deny the Conditional Use Permit No. 008465 if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

Mike Westlake
Program Manager
Development Services Department

Sandra Teasley, Project Manager
Development Services Department

Attachments:

1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photograph of Surrounding Land Uses
4. Project Plans
5. Alcohol Outlets within Census Tract 78.00
6. Police Department Public Convenience or Necessity Findings/Crime Stats dated 2002
7. Police Department Public Convenience or Necessity Findings/Crime Stats/Memorandum dated) October 2005
8. Community Planning Group Recommendation (minutes) dated 2002
9. Electronic Email of revised Community Planning Group Recommendation dated 2006
10. Draft Permit with Conditions
11. Draft Resolution with Findings
12. Ownership Disclosure Statement
13. Project Data Sheet
14. Community Responses (received prior to May 10, 2006 Hearing Officer Hearing) Note: Due to the volume of this material, Attachment 14 is not included. Copies may be made available to the public upon request.
15. Aerial of 100' and 600' Radius Map
16. Hearing Officer of the City Manager Office Resolution dated December 2005
17. Revised Community Planning Group Recommendation (minutes) dated April 26, 2006
18. Councilmember Faulconer Correspondence to the Hearing Officer dated May 9, 2006
19. Appeal Application
20. Site Photographs