



THE CITY OF SAN DIEGO

Report to the Planning Commission

DATE ISSUED: November 23, 2016 REPORT NO. PC-16-095

HEARING DATE: December 1, 2016

SUBJECT: 7-ELEVEN- 3911 University Avenue, Process 3

PROJECT NUMBER: [442481](#)

REFERENCE: Report to the Hearing Officer No. [HO-16-056](#)

OWNER/APPLICANT: Cypress Development, Owner and Allen Sipe, Applicant (Attachment 13)

SUMMARY:

Issue: Should the Planning Commission approve or deny an appeal of the Hearing Officer's decision to approve a Conditional Use Permit for the transfer of an existing Type 20 Off-Sale Beer & Wine Alcohol Beverage License for off-site consumption, to be used at a new 2,150-square-foot, 7-Eleven convenience store located at 3911 University Avenue, within the City Heights Community Plan area?

Staff Recommendation: Deny the appeal and uphold the decision of the Hearing Officer to Approve Conditional Use Permit No. 1547444.

Community Planning Group Recommendation: On December 7, 2015, the City Heights Area Planning Committee reviewed the project and voted 8-7-0 to recommend approval with recommendations (Attachment 8).

Environmental Review: The project was determined to be exempt pursuant to California Environmental Quality Act CEQA Guidelines Section 15301, Existing Facilities, and an appeal of the CEQA determination was filed on March 11, 2016. The City Council denied the CEQA appeal on July 19, 2016. The scope of the subject hearing considers only the project and not the environmental determination.

Fiscal Impact Statement: None with this action; the cost of processing this project is paid by the applicant through a deposit account.

Code Enforcement Impact: None with this action.

BACKGROUND

The project proposes a Conditional Use Permit (CUP) to allow a Type 20 Off-Sale Beer & Wine Alcohol Beverage License within a 2,150-square-foot, 7-Eleven convenience store. The 0.32-acre project site is located at 3911 University Avenue in the CU-2-3 Zone of the Central Urbanized Planned District within the City Heights Community Plan area (Attachments 1 & 2).

A Jiffy Lube oil change center, now closed, was previously operational on the project site (Attachment 3). The applicant plans to demolish the existing building and redevelop the site into a two-suite retail site, with one of the tenants being the new 2,150-square-foot 7-Eleven convenience store. The project is within a commercial zone surrounded by commercial, retail, educational institutions and residential uses. Commercial uses are permitted by right in the CU-2-3 Zone, therefore, the construction of the retail suites qualified to be processed as a ministerial building permit, which is currently under review (PTS No. 442481). Construction is expected to begin in several months. The Alcohol Beverage License to be utilized by this project would be transferred two blocks from an existing market located at 3805 University Avenue, also within the City Heights Community Plan area.

The San Diego Police Department has updated their recommendation with the new 2015 crime statistics that were not available prior to the Hearing Officer docket (Attachment 9). The San Diego Police Department recommendation was modified to include updated 2015 crime statistics. During that process it was confirmed that the Health Sciences High School and Middle College are located across the street at 3910 University Avenue is 86 feet away and the Cherokee Elementary School is 594 feet away from the proposed 7-Eleven. Because these school uses are less than 600 feet from the project site a Conditional Use Permit (CUP) is required as discussed below.

Hearing Officer Decision:

On August 24, 2016, the 7- Eleven 3911 University Avenue CUP application was presented to the Hearing Officer of the City of San Diego at a noticed public hearing. The Hearing Officer was provided with a staff report and recommendations from the Development Services Department, the San Diego Police Department, and the City Heights Area Planning Committee, all recommending approval of the project. After hearing public testimony, both in support and opposition, the Hearing Officer continued the project to a date certain of September 21, 2016, to allow the applicant an opportunity to consider additional permit conditions to mitigate some of the issues raised by the community.

On September 21, 2016, the Hearing Officer allowed additional public testimony both in support and opposition to the project. The Hearing Officer revised two permit conditions and added 15 new conditions. After hearing all testimony and reviewing the project record the Hearing Officer supported the required findings and approved CUP No. 1547444 (Attachment 5).

DISCUSSION

Development Regulations and Location Criteria

A Type 20 Off-Sale Beer & Wine Alcohol Beverage License is defined as “off-sales,” which does not allow the alcohol sold at the store to be consumed on the premises. The underlying CU-2-3 Zone is intended to allow a mix of heavy commercial, limited industrial uses, and is intended to accommodate development with pedestrian orientation and medium-high density residential use. The CU-2-3 Zone also allows alcoholic beverage outlets as a limited use subject to regulations set forth in San Diego Municipal Code ([SDMC Section 141.0502\(c\)](#)). An alcoholic beverage outlet that does not comply with these requirements, including certain location criteria per [SDMC Section 141.0502\(b\)\(1\)](#), may still be permitted with a Process Three CUP pursuant to [SDMC Section 141.0502\(c\)](#), and requires a recommendation from the San Diego Police Department (SDPD). The proposed transfer of an existing alcoholic beverage license to this location requires a CUP because the project site does not meet all of the locational criteria set forth in SDMC Section 141.0502(b)(1) and [155.0251\(d\)](#) as explained below:

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 SDPD has updated their recommendation with the new 2015 crime statistics that were not available prior to the Hearing Officer docket. The subject property is in Census Tract No. 24.01, which reported a crime rate of 113.3 percent of the city-wide average based on the updated statistics provided by the SDPD (Attachment 9). The crime rate for this census tract dropped from a high of 131.5% in 2014 to 113.3% in 2015. The alcohol crime rate was 86.1% in 2014 and is now 69.5 in 2015. A Census Tract is considered to have “high crime” if the crime rate exceeds 120 percent of the city-wide average. Based on this updated information the project site is not located within a “high crime” Census Tract. Therefore, the project meets this locational criteria and a Conditional Use Permit is not required.

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 subject property is in Census Tract No. 24.01, which based on the California Business and Professional Code Section 23958.4 permits a total of two off-sale alcoholic beverage outlets. Currently there are four existing off-sale alcoholic beverage outlets within Census Tract 24.01. While the transferring of an existing license to this site project would not increase the number of licenses, the project does not meet this locational criteria as it would still exceed the total allowed off-sale alcoholic beverage outlets within the Census Tract.

3. 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 Health Sciences High School and Middle College are located across the street at 3910 University Avenue 86 feet away, Cherokee Elementary School is 594 feet away, both Iglesia Gentil Cristo at 3738 University, and the church of Jesus Christ at 3830 39th Street are within 600 feet of the project site. Therefore, the project does not meet this locational criteria and a CUP is required.

4. Within 100 feet of residentially zoned property.

The project site is not within 100 feet of residentially zoned properties. The project is adjacent to multi-family residences located immediately south of the project. These residences are within the CU-2-3 Zone and have previously conforming rights to remain. The CU-2-3 Zone is a commercial zone intended to accommodate heavy commercial and limited industrial development with pedestrian orientation. The CU-2-3 Zone also allows alcoholic beverage outlets as a conditional use subject to regulations set forth in [SDMC Section 141.0502\(c\)](#). Due to the adjacent multi-family residences being located in the commercial zone the project meets the locational criteria.

Community Plan Consistency

The City Heights Community Plan designates the site for Industrial Land Use ([Figure 11, Page 38](#)), and the proposed commercial land use is consistent with the permitted uses allowed in the underlying CU-2-3 Zone, and does not conflict with applicable policies in the Plan. The City Heights Community Plan does not specifically address alcoholic beverage outlets. However, one goal is ...to provide a full range of commercial goods and services to the Mid-City Population. The sale of alcohol products is defined as a commercial retail use in the Land Development Code and permitted with the approval of a CUP. The City Heights Community Plan states the site can be used for commercial development; therefore the CUP to allow the sale of alcohol would not adversely affect the City Heights Community plan.

Alcohol Sales-Project Analysis

In 2010, a Type 20 Off-Sale Beer & Wine Alcohol Beverage License was issued at the current 38th Street Market, located at 3805 University Avenue for the sale of beer and wine for off-premises consumption, with a limited number of conditions attached. The transfer of the 38th Street Market Type 20 Off-Sale Beer & Wine Alcohol Beverage License will allow additional Alcohol Beverage Control conditions to be applied to the new CUP. The license is currently active and the owners are selling beer and wine at the 38th Street Market. Once the license is transferred the 38th Street Market will not have the right to sell alcohol.

The transferring of the current Type 20 Off-Sale Beer & Wine Alcohol Beverage License will not increase the number of licenses within the Community or within census tract 24.01. The pending transfer of the Type 20 Off-Sale Beer & Wine Alcohol Beverage License is defined as "off sales" which would require all of the alcohol sold at the store to be consumed off the premises. The proposed alcoholic beverage outlet at this location requires a CUP because the project site does not meet the locational criteria of SDMC Section 141.0502(b)(1) and due to its location within the Central Urbanized Planned District, SDMC Section 155.0251(d).

Staff is recommending approval of the project as conditioned by staff and the SDPD (Attachment 8). Any new ABC licenses at the 38th Street Market would require a new CUP application and approval.

The CUP includes conditions that limit the hours of sales; regulate the type, volume, and alcohol content of the beverages; limit advertising, address loitering and graffiti through immediate corrective action, with the objective to reduce the potential for loitering and criminal activity on the property. Additionally, the CUP includes a 10-year expiration date. The permit could be extended through the appropriate review and decision process and may be subject to additional conditions at that time (Attachment 6).

Appeal Issues:

On October 4, 2016, the Development Services Department received an appeal of the Hearing Officer Decision (Attachment 7). This appeal was filed by Robert Zakar. The appellant cited factual error, conflict with other matters, findings not supported, and new information as the grounds for the appeal. Staff has reviewed the appeal and provides the following responses:

Appeal Issue 1: The 7-Eleven at 3911 University ("Project") was approved with factual errors in the San Diego Police Department ("SDPD") recommendation relative to surrounding uses that trigger the need for a Conditional Use Permit ("CUP"), including the proximity to residential use, schools and social services. Factual errors were also identified in the police summary for crime statistics and existing alcohol licenses within the applicable census tract. Finally, the Hearing Officer Report contained factual errors as described in the attached letter dated September 16, 2016.

Staff Response: The proposed transfer of an existing alcoholic beverage license to this location requires a CUP because the project site does not meet all of the locational criteria set forth in SDMC Section 141.0502(b)(1) and [155.0251\(d\)](#). No factual errors were presented to the Hearing Officer. The San Diego Police Department has updated their recommendation with the new 2015 crime statistics which were not available prior to the Hearing Officer meeting. During that process it was confirmed that the Health Sciences High School and Middle College are located across the street at 3910 University Avenue 86 feet away and that the Cherokee Elementary School is 594 feet away from the proposed 7-Eleven, and therefore are within the locational criteria requiring a Conditional Use Permit (CUP).

Appeal Issue 2: The San Diego Municipal Code ("SDMC") makes concentration of alcohol serving permits a factor in the approval of alcohol-related uses such as this Project. Approval of this CUP would create "a covenant running with the land" paving the way for an additional Alcohol Beverage Control ("ABC") license in this census tract if the proposed ABC license transfer is not approved.

Appeal Issue 3: The City has no jurisdiction over this transfer and no way to compel the current license holder to even apply for such a transfer.

There is nothing to stop the Project applicant from simply making its application to the ABC for a new license with the added benefit that it will have the land use authority for a new ABC license at this Project site.

There is no way to ensure a transfer (as opposed to approval of an additional license) occurs and the City can only wait for ABC to make a decision related to the transfer. Absent such a transfer, however, the City's findings regarding overconcentration will be invalid.

Staff Response:

The State of California Alcoholic Beverage Control Department (ABC) is responsible for licenses and authorizations for Type 20 Off-Sale Beer and Wine Licenses. The City of San Diego does not have the authority to issue Alcoholic Licenses. However, the City does have the authority to permit the land use. The subject property is in Census Tract No. 24.01, which based on the California Business and Professional Code Section 23958.4 permits a total of two off-sale alcoholic beverage outlets. Currently there are four existing off-sale alcoholic beverage outlets within Census Tract 24.01. Due to the number of permitted alcoholic beverage outlets within in this census tract any new ABC license or in this case any transferred ABC license would required approval of a CUP consistent with SDMC Section 141.0502(b)1(B)). Approval of the CUP would give the City the opportunity to impose appropriate conditions related to public health and safety. Any new ABC licenses at the 38th Street Market location would require a CUP because the project site does not meet the locational criteria of SDMC [Section 141.0502\(b\)\(1\)](#) and due to its location within the Central Urbanized Planned District, SDMC [Section 155.0251\(d\)](#).

In addition, the Hearing Officer added the following permit condition to ensure no additional licenses would be issued in this census tract as a result of this project: Prior to utilization of this permit, the Owner/Permittee shall demonstrate that a Type 20 license has been transferred and that this permit does not result in any increase in the number of licenses within the census tract (Attachment 6, Condition No. 22).

Appeal Issue 4:

In addition, and contrary to information provided in the Hearing Officer Report, there are public and accredited schools as well as churches within 600 feet of the proposed alcohol use. This error is repeated in, and forms the basis of, the SDPD Public Convenience and Necessity findings recommendation.

Staff Response:

The proposed transfer of an existing alcoholic beverage license to this location requires a CUP because the project site does not meet all of the locational criteria set forth in [SDMC Section 141.0502\(b\)\(1\)](#) and [155.0251\(d\)](#).

An alcoholic beverage outlet that does not comply with these requirements, including certain location criteria per [SDMC Section 141.0502\(b\)\(1\)](#), may still be permitted with a Process Three CUP pursuant to [SDMC Section 141.0502\(c\)](#), and requires a recommendation from the San Diego Police Department (SDPD).

The updated San Diego Police Department recommendation has identified both the Health Sciences High School and Middle College located across the street at 3910 University Avenue approximately 86 feet away and Cherokee Elementary School 594 feet away and therefore is within the locational criteria requiring a CUP. The additional information does not change staff's conclusion or recommendation of approval. Nor does the additional information change the decision making process, the project is still a Process Three, Hearing Officer Decision.

In addition, the Hearing Officer added the following condition to the CUP: The coolers containing alcoholic beverages shall be locked one half hour before and one half hour after the start of school and the end of school daily for Cherokee Pointe Elementary and the HSMC Charter School (Attachment 6, Condition No. 27).

Appeal Issue 5:

Finally, the SDMC makes review by the City Heights Area Planning Committee ("CHAPC") a procedural element of the approval process. As further described below, under the "New Information" heading, a representative of SDPD advised that "the only way for the City Heights Planning group to review this Project for a second time would be in the Hearing Officer's decision." This directive interfered with the CHAPC exercising its discretion to agendaize this matter again for further review.

Staff Response:

On December 7, 2015, the City Heights Area Planning Committee reviewed the project and voted 8/7/0 to recommend approval. The City Heights Area Planning Committee chair testified at the noticed public hearing on August 24, 2016, and stated the committee was standing by their official vote. The community planning group vote is a recommendation for approval and not a requirement. The Hearing Officer felt comfortable with moving forward with a decision and approved the project. The Hearing Officer also stated that if the City Heights Area Planning Committee wanted to revise their official vote they could decide to hear the project again and provide another vote for the appeal. A revised vote from the City Heights Area Planning Committee was not received prior to the preparation and printing of this report.

Appeal Issue 6:

This basis is at the heart of this appeal because the proposal to sell alcohol at this location cannot be supported by facts. The required findings for alcohol sales is that the "use is appropriate at the proposed location" which generally considers other uses in the neighborhood. Other findings include compliance with the Land Development Code and consistency with the applicable Community Plan.

Staff Response:

The City Heights Community Plan does not specifically address alcoholic beverage outlets; however the sale of alcohol products is defined as a commercial retail use in the Land Development Code and permitted with the approval of a CUP. The transferring of the current Type 20 Off-Sale Beer & Wine Alcohol Beverage License will not increase the number of licenses within the Community or within census tract 24.01. The existing license at 3805 University does not operate under an existing CUP and has an older ABC license. The existing license has very few conditions including limiting alcohol sales past 2 AM. Allowing the transfer of this license would give the ABC an opportunity to put additional conditions on the existing alcohol license.

On September 21, 2016, the Hearing Officer, approved CUP No. 1547444 with two revised permit conditions and 15 additional conditions to ensure the Community concerns were addressed (Attachment 10).

The majority of the Hearing Officer Conditions were taken directly from the City Heights Area Planning Committee recommendation or were slightly modified to be more enforceable. The City Heights Community Plan recommends that the site can be used for commercial development; therefore, the CUP to allow the sale of alcohol would be consistent with the City Heights Community Plan.

Appeal Issue 7:

The Hearing Officer approved the CUP with so many conditions and limitations in order to make it "fit" that it could and should be reasonably concluded that this is NOT an appropriate use at the proposed location. While location criteria for surrounding uses triggers a CUP the proposed permit conditions cannot effectively mitigate an alcohol outlet and make it suitable for this neighborhood. Specifically, some of the permit conditions are really only recommendations and not requirements. Consequently, the City can't enforce them and the Department of Alcoholic Beverage Control is not required to impose them.

Staff Response: The proposed transfer of an existing alcoholic beverage license to this location requires a CUP because the project site does not meet all of the locational criteria set forth in [SDMC Section 141.0502\(b\)\(1\)](#) and [155.0251\(d\)](#).

An alcoholic beverage outlet that does not comply with these requirements, including certain location criteria per [SDMC Section 141.0502\(b\)\(1\)](#), may still be permitted with a Process Three CUP pursuant to [SDMC Section 141.0502\(c\)](#), and requires a recommendation from the San Diego Police Department (SDPD). The Hearing Officer's decision added conditions that he believed to be appropriate under the exiting circumstances.

The San Diego Police Department also does daily patrols throughout City Heights Community to ensure public safety. In addition, if any of the permit conditions are not being followed, any person could call the San Diego Code Compliance Department and file a complaint. The Code Compliance Department would ensure the conditions are being enforced on the project site. The existing license at 3805 University does not operate under an existing CUP and has an older ABC license. The existing license has very few conditions including limiting alcohol sales past 2 AM. Allowing the transfer of this license would give the ABC an opportunity to put additional conditions on the existing alcohol license. In addition, approval of the CUP would give the decision maker to place additional permit conditions on the CUP.

Appeal Issue 8: The surrounding neighborhood is considered to be high crime and over saturated with existing licenses. The school directly across the street is adamantly opposed to an alcohol license directly across the street from the school. There is another school within 600 feet which is also adamantly opposed to the sale of alcohol in such close proximity. There are also a church and a park within 600 feet and there are residential uses directly adjacent to the Project site.

Staff Response Please see staff response above to Appeal Issue No. 2.

Appeal Issue 9: The proposed site sits just one lighted intersection from the freeway. This proximity invites theft, robbery and minors making beer runs with an easy escape on the freeway. A new MTS bus station is under construction on the property abutting the Project site that will attract hundreds of minors who ride the bus. For these reasons, sale of alcohol at this site is not suitable.

Staff Response: Both sites are in the urban core of the City of San Diego on major streets with public transportation. The CUP includes conditions of approval from the Development Services Staff, the Hearing Officer, the San Diego Police

Department and the City Heights Area Planning Committee all to ensure alcohol sale are suitable for the proposed location.

Appeal Issue 10: The Mid Cities Community Plan City Heights Element requires new construction on University Avenue to be located at the street with parking in the rear of the site. Because the proposed Project is located on a corner lot the building should be sited at the corner of 39th Street and University Avenue. It is not. The building is proposed to be located some 50-feet away from 39th street substituting an arbor for the required building. This type of design-based circumvention of the design guidelines is not the intent of the community plan.

Staff Response: The design and construction of the commercial structure is not a part of the CUP scope. The commercial development for this site is being reviewed ministerially under Project No. 440566, with construction expected to begin in several months. Commercial structures may be constructed by right in conformance with the CU-2-3 Zone regulations on the project site. The Building Development Review Section of the Development Services Department Planning have completed their review of the project and has no issues related to the setbacks or siting of the structure. Therefore, the ministerially approved location and construction of the commercial structure is not part of the scope of the CUP.

Appeal Issue 11: The applicant says the Project simply transfers an existing alcohol use by two (2) blocks, but there are important differences between the proposed and the existing site of this ABC license making this characterization inappropriate:

Staff Response: *Please see staff responses below.*

Appeal Issue 12: The proposed site is one (1) lighted intersection from a freeway on-ramp; the existing site is separated from the freeway by two (2) lighted intersections.

Staff Response: Please see staff response above to Appeal issue Nos. 2 & 3.

Appeal Issue 13: The proposed site has a school across the street and another within 600 feet; the existing does not have incompatible facilities within 600 feet.

Staff Response: Please see staff response above to Appeal issue Nos. 2 & 3.

Appeal Issue 15: The proposed site is close to a park and a there is a church across the street; the existing site does not have these same proximate uses.

Staff Response: Please see staff response above to Appeal issue Nos. 2 & 3.

Appeal Issue 16: The City cannot guarantee transfer of this existing license.

Staff Response: Comment Noted.

Appeal Issue 17: Conditions at the proposed, more incompatible site, are identical to, if not more lenient than, at the existing location.

Staff Response: The existing 38th Street Market license location would also require a CUP due to the proximity of church and educational uses. Iglesia Gentil Cristo is at 3738 University, the Health Sciences High School and Middle College is at 3910 University and the church of Jesus Christ at 3830 39th Street, are all within 600 feet of the 38th Street Market location. In addition, please see staff's response above to Appeal issue No. 2 with regard to the existing 38th Street Market conditions.

Appeal Issue 18: The Hearing Officer was unaware, at the hearing on September 21, 2016, that inappropriate information had been provided by SDPD to the CHAPC regarding the Committee's ability to schedule further review of the Project. As a result, a reconsideration (moved and seconded) was never voted on. This has created a procedural gap that must be corrected before a final decision is made.

Staff Response: Please see staff response above to Appeal issue No. 22.

Appeal Issue 19: At September meeting of the CHAPC, a motion to reconsider the Project was made and seconded. The intent of the motion was to place this Project on the October Committee meeting agenda for a rehearing. It is relevant that, at the August Hearing Officer Hearing for the Project, the hearing officer specifically asked for this matter to be reheard by the CHAPC. Rather than consider the motion the (acting) chair closed the meeting and stated that Vice Sergeant Robert Stinson, had advised that reconsideration was not permitted; in particular, that "the only way for the City Heights Planning group to review this Project for a second time would be in the Hearing Officer's decision." (See attached email dated September

6, 2016). It is not the role of the SDPD to interpret the CHAPC bylaws or to tell the Committee what matters it can or cannot take up.

Staff Response: Please see staff response above to Appeal issue No. 22.

Appeal Issue 20: *The fact that an SDPD representative told CHAPC it could not reconsider this matter was not known to the Hearing Officer at the time of the hearing on September 21, 2016.*

Staff Response: Please see staff response above to Appeal issue No. 22.

Appeal Issue 21: *The fact of the matter is this. The CHAPC membership has changed in recent months and a majority of the board is opposed to another alcohol outlet in the neighborhood.*

Staff Response: Please see staff response above to Appeal issue No. 22.

Appeal Issue 22: *The original recommendation of approval from the CHAPC nearly a year ago and in the face of inaccurate and incomplete information was only by an 8 to 7 vote. The CHAPC members that voted to approve did not know that the principle of Cherokee Point Elementary School had provided a letter in opposition to the Project or that a majority of neighbors in the community are now opposed to the Project. Over a thousand community members oppose this Project in one form or another. The Hearing Officer in August recognized this fact and asked the Chair to revisit the matter. The Chair refused. When the matter was brought up at the September CHAPC meeting, SDPD inaccurately advised that the CHAPC was precluded from placing it on a future agenda.*

Staff Response: On December 7, 2015, the City Heights Area Planning Committee reviewed the project and voted 8-7-0 to recommend approval. The group also provided several proposed conditions. The City Heights Area Planning Committee chair testified at the noticed public hearing on August 24, 2016, and stated they were standing by their official vote. The Hearing Officer stated that if the City Heights Area Planning Committee wanted to hear the project again they could provide another recommendation for the appeal. A revised vote from the City Heights Area Planning Committee was not received prior to the preparation and printing of this report.

Conclusion:

The project has been reviewed by City staff and the San Diego Police Department for conformance with the applicable development regulations and land use policies. Staff support of the proposed alcoholic beverage outlet at this location is based on the commercial nature of the site, and its location within the Central Urbanized Commercial Zone. The operation of a 7-Eleven convenience store including the sale of beer and wine for off-premises consumption is consistent with the industrial land use designation of the City Heights Community Plan and is permitted by the underlying CU-2-3 Zone.

The Hearing Officer determined that there was substantial evidence in the record to approve CUP No. 1547444 and concluded that the proposed alcohol sales would not have an adverse impact on the surrounding neighborhood with incorporation of the proposed conditions. Staff recommends the Planning Commission deny the appeal and uphold the approval of CUP No. 1547444. The draft permit includes conditions proposed by the Development Services Department, the Hearing Officer, the San Diego Police Department, and the City Heights Community Planning Committee.

ALTERNATIVES

1. Deny the appeal and uphold the Hearing Officer's Decision to approve Conditional Use Permit No. 1547444, if the findings required to approve the project can be affirmed.
2. Approve the appeal and deny Conditional Use Permit No. 1547444, if the findings to approve the project cannot be affirmed. Respectfully submitted,


Elyse W. Lowe
Deputy Director
Development Services Department


Derrick Johnson (D.J.)
Development Project Manager
Development Services Department

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. Copy of Appeal
8. Community Planning Group Recommendation
9. San Diego Police Department Updated Recommendation
10. Copy of Hearing Officer Conditions

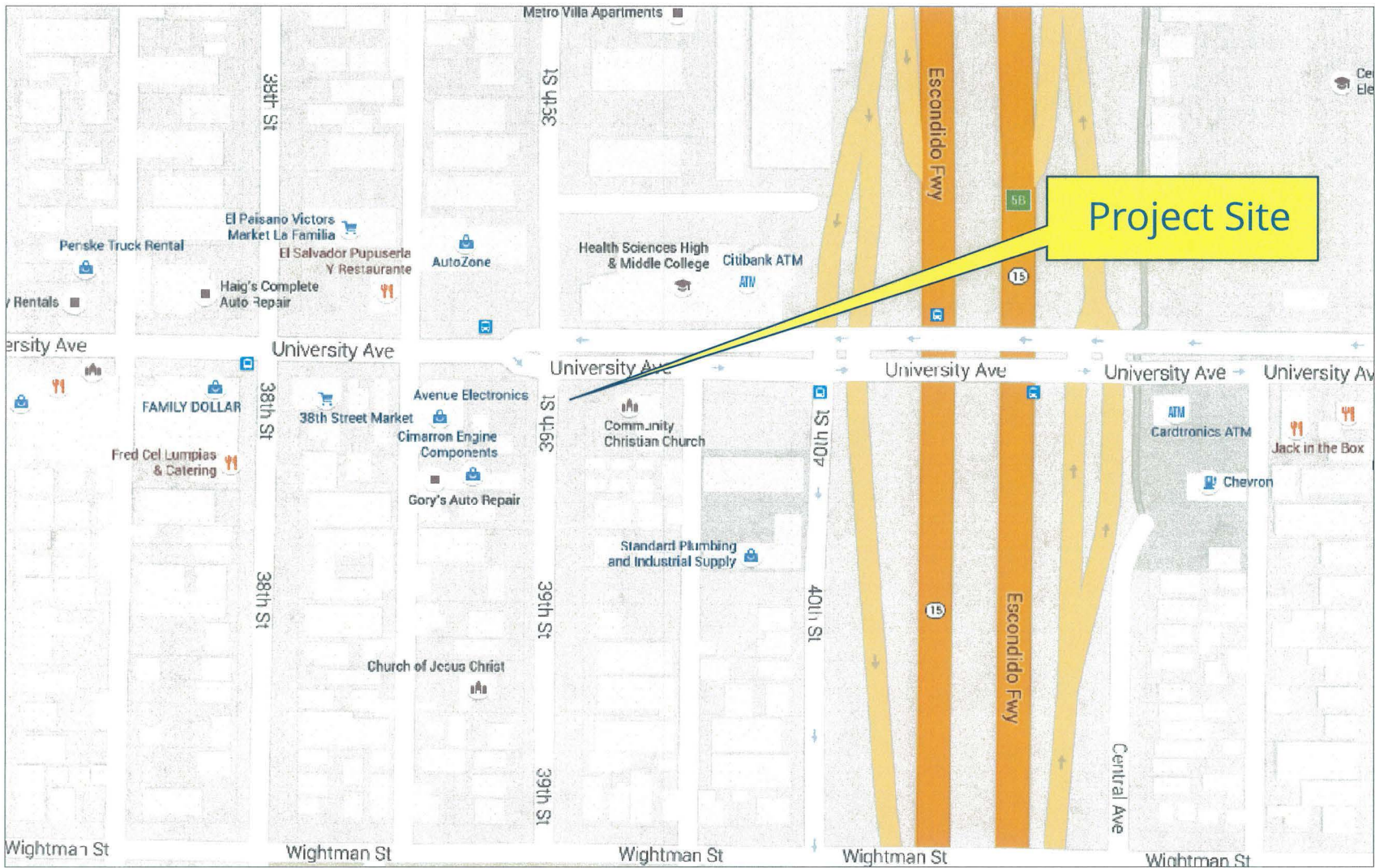
11. Project Site Plans
12. Photos
13. Ownership Disclosure Statement



Location Aerial Photo

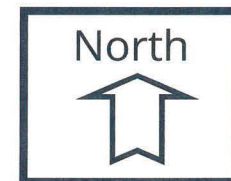
**7-ELEVEN CUP - 3911 UNIVERSITY AVENUE
PROJECT NO. 442481**

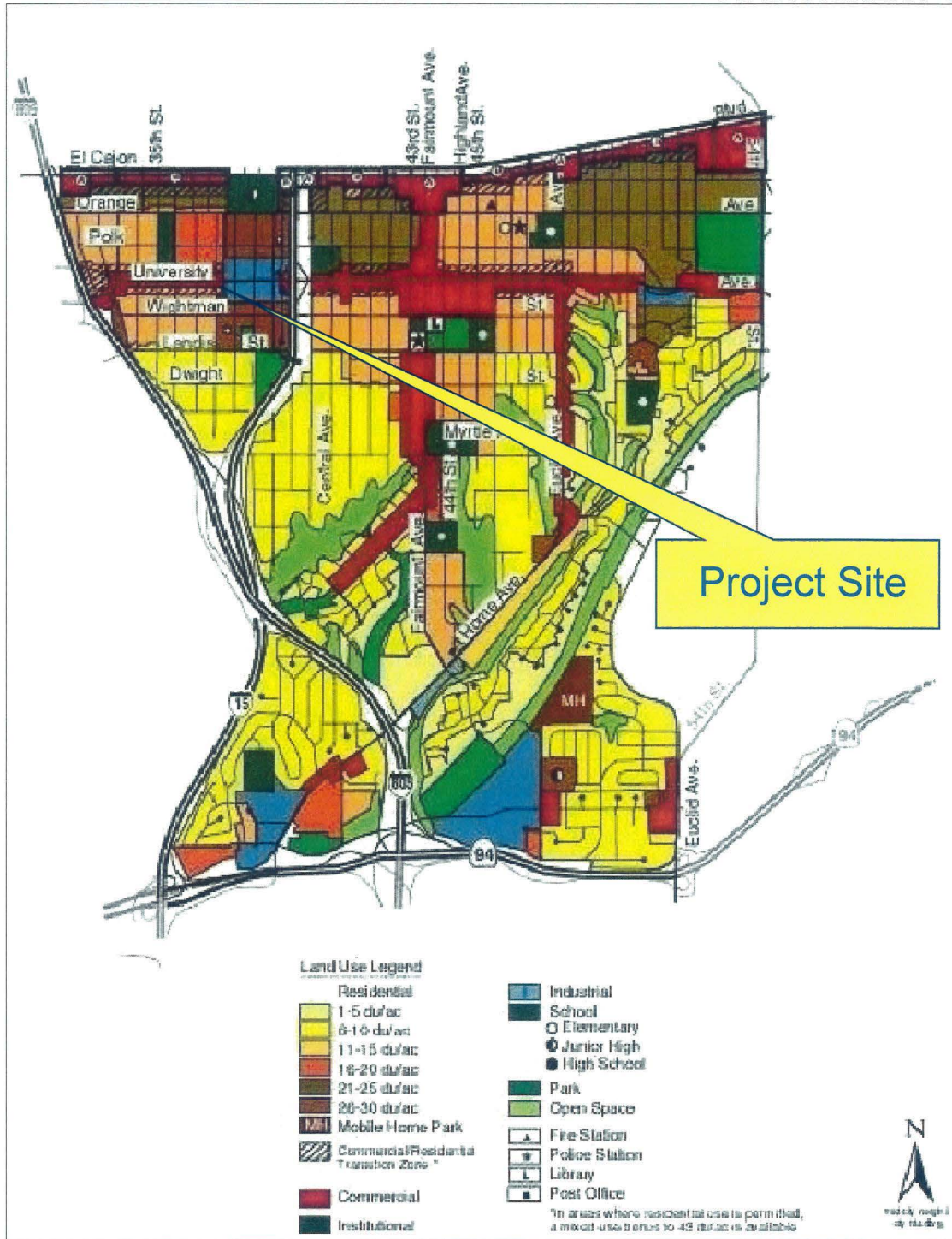




Project Location Map

7-ELEVEN CUP - 3911 UNIVERSITY AVENUE
PROJECT NO. 442481





Land Use Map

7-ELEVEN CUP - 3911 UNIVERSITY AVENUE
PROJECT NO. 442481



PROJECT DATA SHEET		
PROJECT NAME:	7-Eleven CUP	
PROJECT DESCRIPTION:	Conditional Use Permit to transfer an existing Type 20 Off-Sale Alcohol License to a new convenience store to be constructed at 3911 University Avenue.	
COMMUNITY PLAN AREA:	City Heights	
DISCRETIONARY ACTIONS:	Conditional Use Permit	
COMMUNITY PLAN LAND USE DESIGNATION:	Industrial	
ZONING INFORMATION:		
ZONE:	CU-2-3 – Mix of heavy commercial & light industrial with pedestrian orientation and medium-high density residential use.	
HEIGHT LIMIT:	50'	
LOT SIZE:	0.32 acre	
FLOOR AREA RATIO:	max FAR of the site	
FRONT SETBACK:	0' min, 10' max	
SIDE SETBACK:	10', 0' option	
STREETSIDE SETBACK:	0' min, 10' max	
REAR SETBACK:	10', 0' option	
PARKING:	13 spaces proposed	
ADJACENT PROPERTIES:	LAND USE DESIGNATION & ZONE	EXISTING LAND USE
NORTH:	Industrial; CU-2-3	Commercial and Educational Uses
SOUTH:	Industrial; CU-2-3	Multi-Family Residential
EAST:	Industrial; CU-2-3	Commercial Uses
WEST:	Industrial; CC-5-4	Vacant
DEVIATION REQUESTED:	None.	
COMMUNITY PLANNING GROUP RECOMMENDATION:	On December 7, 2016, the City Heights Community Planning Group voted 8/7/0 to recommend approval of the project.	

**PLANNING COMMISSION RESOLUTION NO.
CONDITIONAL USE PERMIT NO. 154744
7-11 ELEVEN – CUP, 3911 UNIVERSITY AVENUE PROJECT NO. 442481**

WHEREAS, Jack Cypress and Cypress Development, Owner/Permittee, filed an application with the City of San Diego to operate an alcoholic beverage outlet and conditioned upon the issuance and transfer of a license (Type 20 Beer and Wine License for the sale of alcoholic beverages for off-site consumption) from the State Department of Alcoholic Beverage Control (ABC) and subject to the City's land use regulations (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 154744), on portions of a 0.23-acre site; and

WHEREAS, the project site is located in the CU-2-3 Zone of the Central Urbanized Planned District, within the City Heights Community Plan Area, and will be located at 3911 University Avenue, within a 2,150-square-foot, 7-Eleven convenience store; and

WHEREAS, the project site is legally described as: Lots 1, 2, 3 and 4, Block 54 City Heights, Map No. 1007; and

WHEREAS, the project was determined to be exempt pursuant to California Environmental Quality Act CEQA Guidelines Section 15301, Existing Facilities and an appeal of the CEQA determination was filed on March 11, 2016. The City Council denied the CEQA appeal on July 19, 2016; and

WHEREAS, on September 21, 2016, the Hearing Officer of the City of San Diego approved Conditional Use Permit No. 154744 pursuant to the Land Development Code of the City of San Diego; and

WHEREAS, on October 4, 2016, Robert Zakar filed an appeal of the Hearing Officer's decision and the project came before the Planning Commission on appeal; and

WHEREAS, on December 1, 2016, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 154744 pursuant to the Land Development Code of the City of San Diego; NOW THEREFORE

BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission denies the appeal and affirms the decisions of the Hearing Officer, and adopts the following written Findings, dated December 1, 2016.

CONDITIONAL USE PERMIT (CUP) FINDINGS - SECTION 126.0305:

1. The proposed development will not adversely affect the applicable land use plan.

The project proposes a CUP for the operation of an alcohol beverage within a 2,150-square-foot, 7-Eleven convenience store, specifically for a Type 20 license allowing for the sale of beer and wine for off-site consumption. Although, the City Heights Community Plan designates the site for Industrial Land Use, the proposed commercial land use is consistent with the permitted uses allowed in the

underlying CU-2-3 Zone, and does not conflict with applicable policies in the City Heights Community Plan. The sale of alcoholic beverages is not addressed in the Community Plan, however one goal is, "to provide a full range of commercial goods and services to the Mid-City Population." The City Heights Community Plan does not specifically address alcoholic beverage outlets; however the sale of alcohol products is defined as a commercial retail use in the Land Development Code and permitted with the approval of a CUP. The City Heights Community Plan recommends the site can be used for commercial development; therefore the CUP to allow the sale of alcohol would not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

The project proposes a CUP for the operation of an alcohol beverage within a 2,150-square-foot, 7-Eleven convenience store, specifically for a Type 20 license allowing for the sale of beer and wine for off-site consumption.

Separate from the Alcoholic Beverage Control (ABC), this CUP places restrictions on the 7-Eleven convenience store which relate to the sale of alcohol. Approval of this application would condition the sale of alcohol so that the alcohol sales would not have a negative impact on the surrounding neighborhood. The applicants are purchasing the existing license from the 38th Street Market Avenue, that currently has no conditions attached, and moving that license one block east to the new location. The transfer will allow more contemporary standard Alcohol Beverage Control conditions to be applied to the new CUP. The transferring of the current Alcohol Beverage License will not increase the number of license within the Community or within census tract 24.01. The project will have to comply with all the regulations listed in SDMC [141.0502\(b\)](#) which would limit the hours of sales, regulate the square footage of area for alcohol to be sold, regulate advertising, provide for a well-lighted area, 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 includes conditions regulating the type, size, and quantities of the beverages. The conditions would also limit the hours of alcohol beverage sales from 10:00 a.m. to 12:00 pm. Advertising will be limited and "No Loitering" signs would be required to be prominently displayed on the premises.

The proposed 7-Eleven will be consistent with the recommended commercial land use, therefore there will be no conflict with the current development pattern in the neighborhood. The project was determined to be exempt pursuant to California Environmental Quality Act CEQA Guidelines Section 15301, Existing Facilities and an appeal of the CEQA determination was filed on March 11, 2016. The City Council denied the CEQA appeal on July 19, 2016.

Both staff and the San Diego Police Department have concluded that the CUP as conditioned would not have a negative impact on the surrounding neighborhood. Therefore, with the proposed conditions regulating the sale of alcoholic beverages, the proposed development will not be detrimental to the public's health, safety or welfare.

3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The CU-2-3 Zone is intended to accommodate development with pedestrian orientation and medium-high density residential use. These zones are applied to accommodate existing development patterns or encourage patterns that are deemed to be appropriate for the community. The focus is on pedestrian-oriented establishments where the primary commercial function is geared to a single stop activity. Alcohol sales are an allowed use with a Conditional Use Permit pursuant to San Diego Municipal Code Section 141.0502 and the project complies with the applicable regulations of the Land Development Code including parking, floor area ratio and no deviations are requested as a part of this application.

4. The proposed use is appropriate at the proposed location.

The project proposes a CUP for the operation of an alcohol beverage within a 2,150-square-foot, 7-Eleven convenience store, specifically for a Type 20 license allowing for the sale of beer and wine for off-site consumption. The project is within a commercial zone surrounded by commercial, retail services, educational institutions and residential uses.

Separate from the Alcoholic Beverage Control (ABC), this CUP places restrictions on the 7-Eleven convenience store which relate to the sale of alcohol. Approval of the CUP as conditioned would not have a negative impact on the surrounding neighborhood. The CUP includes a number of conditions that would limit the hours of sales, regulate the square footage of area for alcohol to be sold, regulate advertising, provide for a well-lighted, cleaner site and prohibit specific on-site activities with the objective of reducing the likelihood of loitering and other criminal activity on the property.

The project will have to comply with all the regulations listed in SDMC [141.0502\(b\)](#), and the sales will be limited to the hours of 10:00 a.m. to 12:00 p.m. and limit to a maximum of 20 percent of the floor area dedicated to alcohol sales.

Both staff and the San Diego Police Department have concluded that the CUP as conditioned not have a negative impact on the surrounding neighborhood. Therefore, with the proposed use is appropriate at the proposed location.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Conditional Use Permit No. 159199 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 159199, a copy of which is attached hereto and made a part hereof.

Derrick Johnson (DJ)
Development Project Manager
Development Services

Adopted on: September 21, 2016

IO#: 24006169

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION
501

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

INTERNAL ORDER NUMBER: 24006169

CONDITIONAL USE PERMIT No. 1547444
7-11 ELEVEN – CUP, 3911 UNIVERSITY AVENUE - PROJECT No. 442481
PLANNING COMMISSION

This Conditional Use Permit No. 1547444 is granted by the Planning Commission of the City of San Diego to Jack Cypress, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 141.0502. The 0.32-acre project site is located at 3911 University Avenue in the CU-2-3 Zone of the Central Urbanized Planned District within the City Heights Community Plan area. The project site is legally described as: Lots 1, 2, 3 and 4, Block 54 City Heights, Map No. 1007.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner Jack Cypress, Owner/Permittee to: allow for the transfer of an existing alcoholic beverage license to allow the operation of an alcoholic beverage outlet conditioned upon the issuance of a license from the State Department of Alcoholic Beverage Control and subject to the City's land use regulations] described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated December 1, 2016, on file in the Development Services Department.

The project shall include:

- a. Operation of an alcoholic beverage outlet conditioned upon the issuance of a license (Type 20 Beer & Wine License for the sale of alcoholic beverages for off-site consumption) from the State Department of Alcoholic Beverage Control;
- b. Off-street parking;
- c. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by December 15, 2019.
2. The utilization of this CUP is contingent upon the approval of a license to sell alcohol at this location by the California Department of Alcoholic Beverage Control [ABC]. The issuance of this CUP does not guarantee that the ABC will grant an alcoholic beverage license for this location.
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

9. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

11. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

ENGINEERING REQUIREMENTS:

12. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to reconstruct the non-ADA compliant east existing driveway with current City Standard concrete driveway, adjacent to the site on 39th Street.

13. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to reconstruct the non-ADA compliant curb ramp at the southeast corner of University Avenue, and 39th Street and University Avenue with current City Standard curb ramp, per SDG-132, adjacent to the site on 39th Street.

14. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to reconstruct the non-ADA compliant curb ramp at the alley entrance, with current City Standard curb ramp, per SDG-136, adjacent to the site.

PLANNING/DESIGN REQUIREMENTS:

15. All signs associated with this development shall be consistent with sign criteria established by the City-wide sign regulations.

16. The Conditional Use Permit (CUP) shall expire on September 8, 2026.

17. The project site shall be used as a market and the sale of alcoholic beverages shall be accessory and limited to maximum of 2.5% of the display area of the market. Any storage of alcoholic beverages that is not accessible to customers shall not be included in the 2.5%. All alcoholic beverages offered for sale shall be located within coolers.

18. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

19. The sales of alcoholic beverage shall only be permitted between the hours of 10:00 a.m. and midnight.

20. The owner or operator shall post a copy of the Conditional Use Permit conditions in the licensed premises in a place where they may be readily viewed by any member of the general public or any member of a government agency.

21. The display area for alcoholic beverages shall be in direct view of the market cashier.

22. Prior to utilization of this permit, the Owner/Permittee shall demonstrate that a Type 20 license has been transferred and that this permit does not result in any increase in the number of licenses within the census tract.

23. Hearing Officer Condition: The premises shall be maintained as a market, and the quarterly annual sales of alcoholic beverages shall not exceed 15 percent of the quarterly annual sales of all other products.

24. Hearing Officer Condition: All employees of the market shall complete a Responsible Beverage Seller course.

25. Hearing Officer Condition: There shall be direct pedestrian access from the University Avenue sidewalk into all tenant spaces on the premises.

26. Hearing Officer Condition: The building shall comply with transparency requirements of the zone. Signs, displays, equipment, shelving, or other items shall be located within the market to allow for views through the windows from University Avenue.

27. Hearing Officer Condition: The coolers containing alcoholic beverages shall be locked one half hour before and one half hour after the start of school and the end of school daily for Cherokee Pointe Elementary and the HSMC Charter School.
28. Hearing Officer Condition: No distilled spirits of any kind may be sold.
29. Hearing Officer Condition: No loitering may be allowed on the premises or any adjacent area under the control of the Owner/Permittee. If necessary, the Owner/Permittee shall hire and post security guards to enforce this condition.
30. Hearing Officer Condition: Security cameras which cover all of the premises, parking areas, and adjacent public sidewalks shall be installed, maintained, and used.
31. Hearing Officer Condition: The owner or operator shall provide illumination, at a minimum level of 0.4 foot candles per square foot, on the exterior of the alcoholic beverage outlet, including adjacent public sidewalks and areas under the control of the owner or operator. The illumination shall be in operation during all hours of darkness while the outlet is open for business so that persons standing on or near the *premises* at night are identifiable by law enforcement personnel. The required illumination shall be shielded and directed so that it does not shine on adjacent properties.
32. Hearing Officer Condition: There shall be no signage on the exterior of the structure or on the windows that advertise alcoholic beverages.
33. Hearing Officer Condition: Pool or billiard tables, foosball or pinball games, arcade style video and electronic games, or coin-operated amusement devices are not permitted on the premises.
34. Hearing Officer Condition: Exterior public pay phones that permit incoming calls are not permitted on the premises, adjacent public sidewalks, or areas under the control of the owner or operator.
35. Hearing Officer Condition: The owner or operator shall provide trash receptacles, conveniently located for use by patrons, inside and outside the alcoholic beverage outlet, including adjacent public sidewalks and areas under the control of the owner or operator. At least one 13-gallon trash receptacle shall be located inside the *premises*. At least one 32-gallon trash receptacle shall be located outside the alcoholic beverage outlet, and at least one additional 32-gallon trash receptacle shall be located in the parking areas under the control of the owner or operator.

POLICE DEPARTMENT REQUIREMENTS:

36. Wine shall not be sold in bottles or containers smaller than 750 ml.
37. Beer, malt beverages and wine coolers in containers of 16-ounce or less cannot be sold in single containers, but must be sold in manufacturer pre-packaged multi-unit quantities.

38. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the license shall be removed or painted over within 48 hours of being applied.

39. The applicant shall post and maintain a professional quality sign facing the premises parking lot that reads: NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES. VIOLATORS ARE SUBJECT TO ARREST. The sign shall be at least two square feet with two inch block lettering. The sign shall be in English and Spanish.

40. Exterior advertising of alcoholic beverages or interior advertising of alcoholic beverages that is visible from the exterior of the premises shall be prohibited in order to prevent under-age drinking.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code Section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on December 1, 2016 and Reso No. _____.

ATTACHMENT 6

CUP No. 1547444
Date of Approval: December 1, 2016

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Derrick Johnson (DJ)
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

Cypress Development
Owner/Permittee

By _____
Jack Cypress
President

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**



City of San Diego
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101

THE CITY OF SAN DIEGO

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
AUGUST 2015

In order to assure your appeal application is successfully accepted and processed, you must read and understand Information Bulletin 505, "Development Permits/Environmental Determination Appeal Procedure".

1. Type of Appeal:

- Appeal of the Project
- Appeal of the Environmental Determination

2. Appellant: Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

Name: Robert Zakar E-mail Address: robertzakar@yahoo.com
 Address: 4055 University Avenue City: San Diego State: CA Zip Code: 92105 Telephone: (619) 440-9900

3. Project Name:
7-11 ELEVEN – CUP, 3911 UNIVERSITY AVENUE

4. Project Information Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
PROJECT NO. 442481	09/21/16	Derrick Johnson

Decision: (Describe the permit/approval decision)
Conditional Use Permit to allow the transfer of an existing Type 20 Beer and Wine License, for off-site consumption, located at 3805 University Avenue, to a newly constructed 2,150-square-foot, 7-Eleven convenience store located at 3911 University Avenue, within the City Heights Community Plan Area. Exempt from Environmental.

5. Grounds for Appeal: (Please check all that apply)

- Factual Error
- Conflict with other matters
- Findings Not Supported
- New Information
- City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

See Attachment A

RECEIVED

OCT 4 2016

DEVELOPMENT SERVICES

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:  Date: 10-3-16

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

ATTACHMENT 7

Development Permit/Environmental Determination Appeal Application
Attachment A – Ground for Appeal (DS-3031, Item 5)

In addition to the particular issues described below, the attached letter dated September 16, 2016, contains additional factual information in support of this Appeal and is made a part by this reference.

Factual Errors. The statements or evidence relied upon by the decision maker when approving, conditionally approving, or denying a permit, map, or other matter were inaccurate. SDMC § 112.0506 (c)(1).

The 7-Eleven at 3911 University (“Project”) was approved with factual errors in the San Diego Police Department (“SDPD”) recommendation relative to surrounding uses that trigger the need for a Conditional Use Permit (“CUP”), including the proximity to residential use, schools and social services. Factual errors were also identified in the police summary for crime statistics and existing alcohol licenses within the applicable census tract. Finally, the Hearing Officer Report contained factual errors as described in the attached letter dated September 16, 2016.

Conflict with Other Matters. The decision to approve, conditionally approve, or deny the permit, map, or other matter is in conflict with a land use plan, a City Council policy, or the Municipal Code. SDMC § 112.0506 (c)(4).

The San Diego Municipal Code (“SDMC”) makes concentration of alcohol serving permits a factor in the approval of alcohol-related uses such as this Project. Approval of this CUP would create “a covenant running with the land” paving the way for an additional Alcohol Beverage Control (“ABC”) license in this census tract if the proposed ABC license transfer is not approved. The City has no jurisdiction over this transfer and no way to compel the current license holder to even apply for such a transfer. There is nothing to stop the Project applicant from simply making its application to the ABC for a new license with the added benefit that it will have the land use authority for a new ABC license at this Project site. There is no way to ensure a transfer (as opposed to approval of an additional license) occurs and the City can only wait for ABC to make a decision related to the transfer. Absent such a transfer, however, the City’s findings regarding overconcentration will be invalid.

In addition, and contrary to information provided in the Hearing Officer Report, there are public and accredited schools as well as churches within 600 feet of the proposed alcohol use. This error is repeated in, and forms the basis of, the SDPD Public Convenience and Necessity findings recommendation.

Finally, the SDMC makes review by the City Heights Area Planning Committee (“CHAPC”) a procedural element of the approval process. As further described below, under the “New Information” heading, a representative of SDPD advised that “the only way for the City Heights Planning group to review this Project for a second time would be in the Hearing Officer’s decision.” This directive interfered with the CHAPC exercising its discretion to agendaize this matter again for further review.

ATTACHMENT 7

Development Permit/Environmental Determination Appeal Application
Attachment A – Ground for Appeal (DS-3031, Item 5)

Findings Not Supported. The decision maker's stated findings to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker. SDMC § 112.0506 (c)(3).

This basis is at the heart of this appeal because the proposal to sell alcohol at this location cannot be supported by facts.

The required findings for alcohol sales is that the "use is appropriate at the proposed location" which generally considers other uses in the neighborhood. Other findings include compliance with the Land Development Code and consistency with the applicable Community Plan.

The Hearing Officer approved the CUP with so many conditions and limitations in order to make it "fit" that it could and should be reasonably concluded that this is NOT an appropriate use at the proposed location. While location criteria for surrounding uses triggers a CUP the proposed permit conditions cannot effectively mitigate an alcohol outlet and make it suitable for this neighborhood. Specifically, some of the permit conditions are really only recommendations and not requirements. Consequently, the City cannot enforce them and the Department of Alcoholic Beverage Control is not required to impose them.

The surrounding neighborhood is considered to be high crime and over saturated with existing licenses. The school directly across the street is adamantly opposed to an alcohol license directly across the street from the school. There is another school within 600 feet which is also adamantly opposed to the sale of alcohol in such close proximity. There are also a church and a park within 600 feet and there are residential uses directly adjacent to the Project site.

The proposed site sits just one lighted intersection from the freeway. This proximity invites theft, robbery and minors making beer runs with an easy escape on the freeway. A new MTS bus station is under construction on the property abutting the Project site that will attract hundreds of minors who ride the bus. For these reasons, sale of alcohol at this site is not suitable.

The Mid Cities Community Plan City Heights Element requires new construction on University Avenue to be located at the street with parking in the rear of the site. Because the proposed Project is located on a corner lot the building should be sited at the corner of 39th Street and University Avenue. It is not. The building is proposed to be located some 50-feet away from 39th street substituting an arbor for the required building. This type of design-based circumvention of the design guidelines is not the intent of the community plan.

The applicant says the Project simply a transfers an existing alcohol use by two (2) blocks, but there are important differences between the proposed and the existing site of this ABC license making this characterization inappropriate:

ATTACHMENT 7

Development Permit/Environmental Determination Appeal Application Attachment A – Ground for Appeal (DS-3031, Item 5)

- The proposed site is one (1) lighted intersection from a freeway on-ramp; the existing site is separated from the freeway by two (2) lighted intersections.
- The proposed site has a school across the street and another within 600 feet; the existing does not have incompatible facilities within 600 feet.
- The proposed site is close to a park and there is a church across the street; the existing site does not have these same proximate uses.
- The City cannot guarantee transfer of this existing license.
- Conditions at the proposed, more incompatible site, are identical to, if not more lenient than, at the existing location.

New Information. New information is available to the applicant or the interested person that was not available through that person's reasonable efforts or due diligence at the time of the decision. SDMC § 112.0506 (c)(2).

The Hearing Officer was unaware, at the hearing on September 21, 2016, that inappropriate information had been provided by SDPD to the CHAPC regarding the Committee's ability to schedule further review of the Project. As a result, a reconsideration (moved and seconded) was never voted on. This has created a procedural gap that must be corrected before a final decision is made.

At September meeting of the CHAPC, a motion to reconsider the Project was made and seconded. The intent of the motion was to place this Project on the October Committee meeting agenda for a rehearing. It is relevant that, at the August Hearing Officer Hearing for the Project, the hearing officer specifically asked for this matter to be reheard by the CHAPC. Rather than consider the motion the (acting) chair closed the meeting and stated that Vice Sergeant Robert Stinson, had advised that reconsideration was not permitted; in particular, that "the only way for the City Heights Planning group to review this Project for a second time would be in the Hearing Officer's decision." (See attached email dated September 6, 2016). It is not the role of the SDPD to interpret the CHAPC bylaws or to tell the Committee what matters it can or cannot take up. The fact that an SDPD representative told CHAPC it could not reconsider this matter was not known to the Hearing Officer at the time of the hearing on September 21, 2016.

The fact of the matter is this. The CHAPC membership has changed in recent months and a majority of the board is opposed to another alcohol outlet in the neighborhood. The original recommendation of approval from the CHAPC nearly a year ago and in the face of inaccurate and incomplete information was only by an 8 to 7 vote. The CHAPC members that voted to approve did not know that the principle of Cherokee Point Elementary School had provided a letter in opposition to the Project or that a majority of neighbors in the community are now opposed to the Project. Over a thousand community members oppose this Project in one form or another. The Hearing Officer in August recognized this fact and asked the Chair to revisit the matter. The Chair refused. When the matter was brought up at the September CHAPC meeting, SDPD inaccurately advised that the CHAPC was precluded from placing it on a future agenda.

ATTACHMENT 7

From: Stinson, Robert
Sent: Tues, Sepr 06, 2016 11:53 AM
To: Marc Munic; Mayer, Kevin; Patty Vaccariello; De Los Reyes, Romeo
Subj: 7 - Eleven at 3911 University Ave.

Hello All,

There has been some confusion in the alcohol CUP for the potential 7-eleven at 3911 University Ave. There was a question of whether a new license could be obtained in old location (3805 University Ave) easily. In the event the license at 3805 University Ave is transferred to 3911 University Ave, any new license for 3805 University would have to go through the normal new application process with ABC, a PCN process with the SDPD Vice, and a CUP process with the city. I provided a brief background information on the project for additional details:

7-Eleven applied for a Public Convenience or Necessity finding with SDPD Vice on August 7, 2015. A PCN/CUP was presented by Bill Adams at the City Heights Planning Group on December 6, 2015 where it was approved. After the investigation culminating with community input, SDPD approve Public Convenience or Necessity on December 7, 2015.

SDPD provided a CUP recommendation of approval with conditions afterwards. There was a CUP hearing on August 24, 2016, which was continued to September 21, 2016. The only way for the City Heights Planning group to review this project for a second time would be in the Hearing Officer's decision. Here is a wording from the CUP last recommendation from SDPD:

This amended recommendation reflects errors in the original recommendation and new data from 2015 crime rates. The crime rate for census tract 24.01 dropped from 131.5% in 2014 to 113.3% in 2015. A crime rate above 120% is considered high. The alcohol crime rate for census tract 24.01 was 86.1% in 2014 and is now 69.5% in 2015. The concentration level for on-sale licenses are four in a census tract that allows two. This shows the area is over concentrated with off-sale licenses.

However 7-Eleven is taking an existing license from 3805 University Ave and transferring it to 3911 University Ave and not increasing the concentration level. The existing license is 368' away from Health Sciences High School and Middle College and 639' away from Cherokee Elementary School. The existing license at 3805 University does not operate under an existing CUP and has an older ABC license with few if any conditions other than sales past 2AM. Any person could potentially buy the license at the current location and operate under old non-contemporary conditions with no city regulation. The license is active. Even a suspension would not mean the license had been cancelled. Allowing the transfer of this license would not only allow ABC to put more contemporary conditions on it, it would allow the City to place restrictions on it as well.

ATTACHMENT 7

The proposed transferred license has off-sale incorporated into it. The Police Department has concerns with noise and alcohol related crimes in the area because the Health Sciences High School and Middle College are located across the street at 3910 University Ave (86' away) and Cherokee Elementary School (594' away). There are also residents also within 100' feet of the property but the area is not residentially zoned.

The San Diego Police Department agrees to the issuance of this license providing the following conditions are included in the Alcoholic Beverage Control License:

1. Sales and service of alcoholic beverages shall be permitted only between the hours of 10:00 AM and 12:00 AM each day of the week.
2. Wine shall not be sold in bottles or containers smaller than 750 ml.
3. The sales of beer or malt beverages in quantities of quarts, 40 oz., or similar size containers are prohibited.
4. No wine shall be sold with an alcohol content of greater than 15% by volume except for "Dinner Wines".
5. The petitioner(s) shall post and maintain a professional quality sign facing on the front of the premises that reads as the follows: NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES. VIOLATORS ARE SUBJECT TO ARREST. The sign shall be at least two feet square with two inch block lettering. The sign shall be in English and Spanish.
6. No loitering shall be allowed on the premises. If it necessary, a licensed security guard shall be present to control enforcement of this provision.
7. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the licensee(s) shall be removed or painted over within 48 hours of being applied.
8. Beer, malt beverages or wine cooler products, regardless of container size, must be sold in manufacturer pre-packaged multi-unit quantities.
9. There shall be no exterior advertising or sign of any kind, including advertising, directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages which are clearly visible from the exterior shall constitute a violation of this conditions.
10. There shall be no amusement machines or video game devices on the premises at any time.

ATTACHMENT 7

11. Store employees shall lock the doors of coolers containing alcoholic beverages half an hour (1/2) before and after the start and end of school hours.

Best Regards,
Sergeant Robert Stinson
San Diego Police Department
Vice Administration - Permits and Licensing
1401 Broadway, San Diego, CA. 92101 (MS #735)
(619) 531-2282



September 16, 2016

VIA EMAIL & U.S. MAIL

Robert Vacchi, Director
Development Services Department
1222 First Avenue, MS 301
San Diego, CA 92101

Council President Pro-Tem Marty Emerald
City Council District 9
202 C Street MS 10-A
San Diego, CA 92131

Re: 7-Eleven – CUP, 3911 University Avenue, Project No: 442481 (“Project”)

Dear Mr. Vacchi and Council President Pro Tem Emerald:

Our firm represents Mark Kassab, and Mazda Mehraz, who are members of the City Heights Area Planning Committee (“Planning Committee”), and community member Robert Zakar. The purpose of this letter is to bring to the attention of the City’s Hearing Officer, City Council and the Development Services Department issues of concern and irregularities in the process including factual inaccuracies contained in the Report to the Hearing Officer dated August 17, 2016 (Report No. HO-16-056) (“Hearing Officer Report”) related to the Project. For all of the reasons described in this letter, the Project should be returned to the Committee for further review before the City takes up the matter of granting or denying the requested permit.

Procedural Issues and Inaccuracies

1. Owner, Cypress Development, and Applicant Allen Sipe (collectively, “Proponents”), are seeking approval of a CUP to allow a Type 20 Off-Sale Beer & Wine Alcohol Beverage License within a purported 2,150 square-foot 7-Eleven convenience store located at 3911 University Avenue. Proponents represent that an existing Type 20 in use at 3805 University Avenue will be “transferred” to the new location. These representations are inaccurate and potentially unenforceable.

- Nothing in CUP No. 1547444 (Attachment 6 to Hearing Officer Report) requires the transfer of the Type 20 License in use at 3805 University Avenue. There is no information in the record that Proponents even control the Type 20 License in use at 3805 University Avenue. As a result, approval of this CUP could allow for two (2) Type 20 licenses within just two blocks in this already oversaturated area.

ATTACHMENT 7

*Robert Vacchi, Development Services Director
Council President Pro-Tem Marty Emerald*

September 16, 2016
Page 2

- The Hearing Officer on August 24, 2016 raised this same concern and indicated that additional or revised conditions would be needed.
 - Without an accompanying building permit, there is no assurance that 7-Eleven will be the operator or that 7-Eleven even plans to construct a store at this location.
2. The Hearing Officer Report states that within 600 feet of the proposed use, there is no “public or accredited school, a public park, playground or recreational area, church, hospital or a San Diego County Welfare District Office.” This is incorrect.
- A very brief review of the surrounding area reveals the Church of Jesus Christ at 3830 39th Street (291 feet away); Cherokee Point Elementary School at 3735 38th Street (556 feet away), and Health Sciences High School at 3910 University Avenue (just 91 feet away).
 - The Planning Committee recommendation of December 14, 2015 (discussed in greater detail below) inappropriately suggests that “charter schools should not count the same as existing school sites.” This does not permit the City to deviate from the Municipal Code which clearly provides for consideration of both public and accredited schools in its location criteria.
 - While not within the 600 foot radius, it is worth mentioning that the project is close to both Teralta Park and Park de la Cruz. Whether the ABC License is transferred from 3805 University Avenue or, as the community suspects, Proponents will seek a new ABC License for the 3911 University Avenue location, approval of this CUP will bring alcohol sales closer to these public parks.
3. The Hearing Officer Report also indicates that “staff has received several letters in both opposition and support from the community at large regarding the project” and includes those letters as Attachment 10 to the Report. This is incorrect.
- Attachment 10 consists exclusively of 63 pages of letters and petitions in opposition to the Project citing concerns about existing oversaturation of alcohol serving uses and proximity to schools, and parks. Even the City Heights Business Association, established to promote the economic revitalization of the community and enhance its growth as an international marketplace, opposes the project (March 9, 2016 letter).
4. The City currently has on record a letter of support by the City Heights Area Planning Committee (“Planning Committee”) dated December 14, 2015. However, for the reasons described below, the recommendation is based on incomplete and inaccurate information.
- In response to a request by the Hearing Officer at the Project hearing on August 24, 2016 that the matter be reheard by the Planning Committee, the Chair unilaterally refused that

ATTACHMENT 7

*Robert Vacchi, Development Services Director
Council President Pro-Tem Marty Emerald*

September 16, 2016
Page 3

request without the authority to do so and should have brought it to the Committee for consideration.

- When this matter was considered nearly a year ago on December 7, 2015, the Committee Chair was provided with a copy of a letter in opposition from the principal of Cherokee Point Elementary School. This letter was never read, and therefore the Planning Committee did not have all of the information that would have been important to making this decision.
 - To the extent that conditions of approval have changed since the December 7, 2015 consideration, this matter should be returned to the Planning Committee so that those revised conditions can be considered. Failure to do so makes the Planning Committee's prior recommendation of "approval" inapplicable.
5. The Hearing Officer Report and recommendation rely upon a positive recommendation from the San Diego Police Department ("SDPD"), however that Recommendation (Hearing Officer Report Attachment 9) is inconsistent and inaccurate.
- The SDPD Recommendation contains the same inaccuracy related to the proximity to schools and churches (within 600 feet) that is contained in the Hearing Officer Report.
 - Though the SDPD Recommendation is premised upon the assumption that the Type 20 License at 3805 University will be moved to the Project location, there is no CUP condition compelling that result. Indeed, because the issuance of Type 20 Licenses is under the exclusive control of the California Department of Alcohol Beverage Control ("ABC"), it is doubtful the City can effectively control this issue by use of a CUP condition.
 - Though the SDPD Recommendation in these matters is routinely undertaken by the local substation (that is where this consideration originated), for some reason, the approval here was signed by Vice.
 - At least one condition imposed in the SDPD Recommendation - "the sale of beer or malt beverages in quantities of quarts, 40 oz., or similar size containers are prohibited" - appears to have been left out of the CUP conditions.
 - Conditions that SDPD recommends are just that, "recommendations." The ultimate decision whether to place these conditions is up to the ABC and out of the City's hands. The community cannot rely on the imposition of these conditions via the CUP process.

Robert Vacchi, Development Services Director
Council President Pro-Tem Marty Emerald

September 16, 2016
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Other Concerns

The Hearing Officer Report accurately states that within 100 feet there is no residentially zoned property. While technically accurate, it does not tell the whole story and the consideration should not end there. While surrounding property is zoned CC-5-4, CUPD-CT-5-4, and CUPD-CU-2-3, there are single family and other residential uses within the relevant 100 foot radius. These are homes and apartments in which children and families live. Indeed, the same kind of uses that the regulation was intended to buffer from this kind of use.

It is telling that the Hearing Officer on August 24, 2016, requested that this matter be returned to the Planning Committee for additional consideration. In the intervening 10 months since the Planning Committee reviewed the proposal, significant additional information has become available, the conditions of approval have changed, and there is doubt about the ability of the City, through its CUP process, to ensure the Type 20 license of 3805 University Avenue can be "moved" to this location. Re-review by the Planning Committee will not delay the process and it is clear that there are inaccuracies and misrepresentations in the Hearing Officer Report that also need to be reviewed and corrected.

For all of these reasons, and in the spirit of transparency and fairness, this matter should be returned to the Planning Committee for additional review.

Very truly yours,

DEVANEY PATE MORRIS & CAMERON, LLP



Leslie E. Devaney
Managing Partner

LED/mcl

cc: Mayor
City Council Members
Scott Chadwick, Chief Operating Officer
Elyse Lowe, Project Submittal and Management Division
Chris Larson, City of San Diego Hearing Officer
Chief, SDUSD Police Department
Chief, San Diego Police Department
Principal, Cherokee Point Elementary School
HSHMC
Members, City Heights Area Planning Committee
SAY San Diego

CITY HEIGHTS AREA PLANNING COMMITTEE

Postoffice Box 5859
City Heights CA 92165
(619) 284-2184

December 14, 2015

MEMORANDUM FOR: Derrick Johnson, Development Project Manager,

From: Committee Chairwoman
Patty Vaccariello _____

Subj: CUP for a Type 20 License at 7-11

At the December 7, 2015 meeting of the City Heights Area Planning Committee the Committee heard a presentation for a Conditional Use Permit (CUP) for a Type 20 beer and wine license that would be located on the South East corner of University and 39th. The owner is purchasing an existing license at 38th and University, that currently has no conditions attached, and moving that license two blocks to the new location. The owner plans to redevelop the new site into a two suite retail site where one of the tenants would be a new 7-11. Some of the concerns expressed at the meeting were increased transient activity and increased trash in a census tract that already has high crime.

After extensive comments from the board and the community a motion was made to deny the CUP. That motion failed 7/8/0 (chair not voting).

A second motion was made to approve the Conditional Use Permit for a Type 20 license with the attached conditions (below). The motion passed 8/7/0 (chair not voting).

The Committee welcomes the opportunity to put conditions on a license that currently has none, and does not consider a two block move to be any more detrimental than the current location. We believe charter schools should not count the same as existing school sites. After hearing from representatives of 7-11 the Committee is satisfied that the operator has a strict monitoring process in place to prevent violations of the conditions.

Cc: Allen Sipe
Jack Campagna
Jose Gandara

RECOMMENDED C.U.P. AND ABCD LICENSE CONDITIONS

The police department recommends certain conditions to be placed on the Conditional Use Permit that is needed before applicants can receive an ABCD Type-20 license (Beer/Wine). The Development Services Department attaches other conditions. Communities should urge the City and police department to apply the conditions below or an expanded set developed by the Community, rather than having the vice unit and the Development Services Department recommending different conditions that might conflict with one another:

- Alcoholic beverages may be sold only from 8:00AM to 10:00PM.
- Wines shall not be sold in containers or bottles of less than 750ml.
- Beer, malt beverages, wine coolers, or beer coolers may only be sold in manufacturers multi-unit packages, in quantities of six containers or more per package. No individual container or bottle in any of the packages may exceed 39-ounces in volume. No single containers of beer, malt beverages, wine coolers, or beer coolers may be sold.
- No beverage may be sold with an alcohol content greater than 15% by volume, except that "dinner wines" which have been aged more than two years may contain up to 25% by volume.
- No distilled spirits of any kind may be sold.
- No more than [insert a fixed number] square feet of the premises shall be used to display alcoholic beverages and that area shall not be increased regardless of any future expansion of the premises. The area of all chilled product display boxes containing alcoholic beverages shall be included in the [fixed] square foot maximum area.
- No loitering may be allowed on the premises or on any adjacent area under the control of the licensee. If necessary, the licensee shall hire and post security guards to enforce this condition.
- Security cameras which cover all of the premises and parking shall be installed and maintained. Recordings shall be available to any law enforcement agent or agency on request.
- The parking, the exterior of the premises, the adjacent public sidewalks, and all other adjacent areas under the licensee's control shall be illuminated to a level of 0.4 foot-candles. The illumination shall be maintained during all hours of darkness that the premises are open for business, so that persons standing on or near the premises at night are identifiable to law enforcement personnel. Illumination shall be directed and shielded so that it does not shine onto other owner's properties.

ATTACHMENT 8

- The licensee shall post and maintain a professional quality sign facing each parking lot that reads as follows: "NO LOITERING, NO LITTERING, NO OPEN CONTAINERS, NO DRINKING OF ALCOHOLIC BEVERAGES ON THE PREMISES, PARKING AREAS, OR ADJACENT SIDEWALKS. VIOLATORS ARE SUBJECT TO ARREST". The signs shall be in English and Spanish. The printing shall be two-inch or taller block lettering, and the signs shall be large enough to contain all the lettering.
- The premises shall conform to the transparency requirement for the zone in which it is located, and the licensee shall not post signage, or position displays or any other object that interferes with the transparency requirement.
- The total area of advertising signage that indicates alcoholic beverages or alcohol sales shall not exceed 630 square inches total for the premises and shall not be placed so as to interfere with transparency.
- Any graffiti applied to or any litter deposited on the premises or adjacent public sidewalks or adjacent area(s) under the licensee's control shall be removed or painted over, as appropriate, within 48 hours of its application or deposit.
- No amusement machines or video game, no pool or billiard table, no foosball or pinball machine, no arcade style video or electronic game, and no coin-operated amusement device may be allowed on the premises.
- No pay telephone shall be maintained anywhere on the premises or on any adjacent area under the licensees' control.
- The licensee shall list the business address and telephone number in the telephone directory that serves the premises.
- The licensee shall place trash receptacles convenient for use by patrons inside and outside the premises and in the parking area and near adjacent sidewalks and in any other adjacent area under the control of the licensee. At least one 13-gallon receptacle shall be located inside the premises. At least one 32-gallon receptacle shall be located outside the premises, and at least one additional 32-gallon receptacle shall be located in each parking area.
- The licensee shall conspicuously post a copy of these Conditions at the premises and maintain them visible so they may be viewed by the public or any government official.
- This Conditional Use Permit will expire and become void ten (10) years from its approval date. The Municipal Code §141.0502(c)(7) details how extensions of the expiration date may be applied for and considered.

**SAN DIEGO POLICE DEPARTMENT
CONDITIONAL USE PERMIT RECOMMENDATION**

PREMISE ADDRESS: 3911 University Ave, San Diego

TYPE OF BUSINESS: 7-11 Store (Type-20 Off Sales Beer and Wine License #483260)

FEDERAL CENSUS TRACT: 24.01

NUMBER OF ALCOHOL LICENSES ALLOWED: 2

NUMBER OF ALCOHOL LICENSES EXISTING: 4

CRIME RATE IN THIS CENSUS TRACT: 113.3%
(Note: Considered High Crime If Exceeds 120% of City-wide Average)

THREE OR MORE REPORTED CRIMES AT THIS PREMISE WITHIN PAST YEAR YES NO

IS THE PREMISE WITHIN 600 FEET OF INCOMPATIBLE FACILITY YES NO

IS THE PREMISE WITHIN 100 FEET OF RESIDENTIALLY ZONED PROPERTY YES NO

ABC LICENSE REVOKED AT THIS PREMISE WITHIN PAST YEAR YES NO

HAS APPLICANT BEEN CONVICTED OF ANY FELONY YES NO

WILL THIS BUSINESS BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY,
AND WELFARE OF THE COMMUNITY AND CITY YES NO

COMMENTS/OTHER FACTORS CONSIDERED: This admended recommendation reflects errors in the original recommendation and new data from 2015 crime rates. The crime rate for census tract 24.01 dropped from 131.5% in 2014 to 113.3% in 2015. A crime rate above 120% is considered high. The alcohol crime rate for census tract 24.01 was 86.1% in 2014 and is now 69.5% in 2015. The concentration level for on-sale licenses are four in an census tract that allows two. This shows the area is over concentrated with off-sale licenses.

However 7-Eleven is taking an existing license from 3805 University Ave and transferring it to 3911 University Ave and not increasing the concentration level. The existing license is 368' away from Health Sciences High School and Middle College and 639' away from Cherokee Elementary School. The existing license at 3805 University does not operate under an existing CUP and has an older ABC license with few if any conditions other than sales past 2AM. Any person could potentially buy the license at the current location and operate under old non-contemporary conditions with no city regulation. The license is active. Even a suspension would not mean the license had been cancelled. Allowing the transfer of this license would not only allow ABC to put more contemporary conditions on it, it would allow the City to place restrictions on it as well.

The proposed transferred license has off-sale incorporated into it. The Police Department has concerns with noise and alcohol related crimes in the area because the Health Sciences High School and Middle College are located across the street at 3910 University Ave (86' away) and Cherokee Elementary School (594' away). There are also residents also within 100' feet of the property but the area is not residentially zoned.

SUGGESTED CONDITIONS: The San Diego Police Department agrees to the issuance of this license providing the following conditions are included in the Alcoholic Beverage Control License:

1. Sales and service of alcoholic beverages shall be permitted only between the hours of 10:00 AM and 12:00 AM each day of the week.
2. Wine shall not be sold in bottles or containers smaller than 750 ml.
3. The sales of beer or malt beverages in quantities of quarts, 40 oz., or similar size containers are prohibited.
4. No wine shall be sold with an alcohol content of greater than 15% by volume except for "Dinner Wines".
5. The petitioner(s) shall post and maintain a professional quality sign facing on the front of the premises that reads as the follows: NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES. VIOLATORS ARE SUBJECT TO ARREST. The sign shall be at least two feet square with two inch block lettering. The sign shall be in English and Spanish.
6. No loitering shall be allowed on the premises. If it necessary, a licensed security guard shall be present to control enforcement of this provision.
7. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the licensee(s) shall be removed or painted over within 48 hours of being applied.
8. Beer, malt beverages or wine cooler products, regardless of container size, must be sold in manufacturer pre-packaged multi-unit quantities.
9. There shall be no exterior advertising or sign of any kind, including advertising, directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages which are clearly visible from the exterior shall constitute a violation of this conditions.
10. There shall be no amusement machines or video game devices on the premises at any time.
11. Store employees shall lock the doors of coolers containing alcoholic beverages half and hour (1/2) before and after the start and end of school hours.

SAN DIEGO POLICE DEPARTMENT RECOMMENDATION:

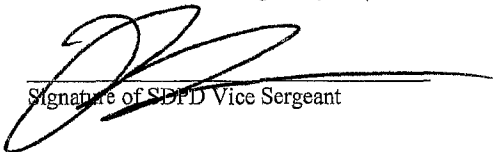
APPROVE

DENY

ROBERT STINSON

Name of SDPD Vice Sergeant (Print)

619-531-2282
Telephone Number


Signature of SDPD Vice Sergeant

8/24/16
Date of Review



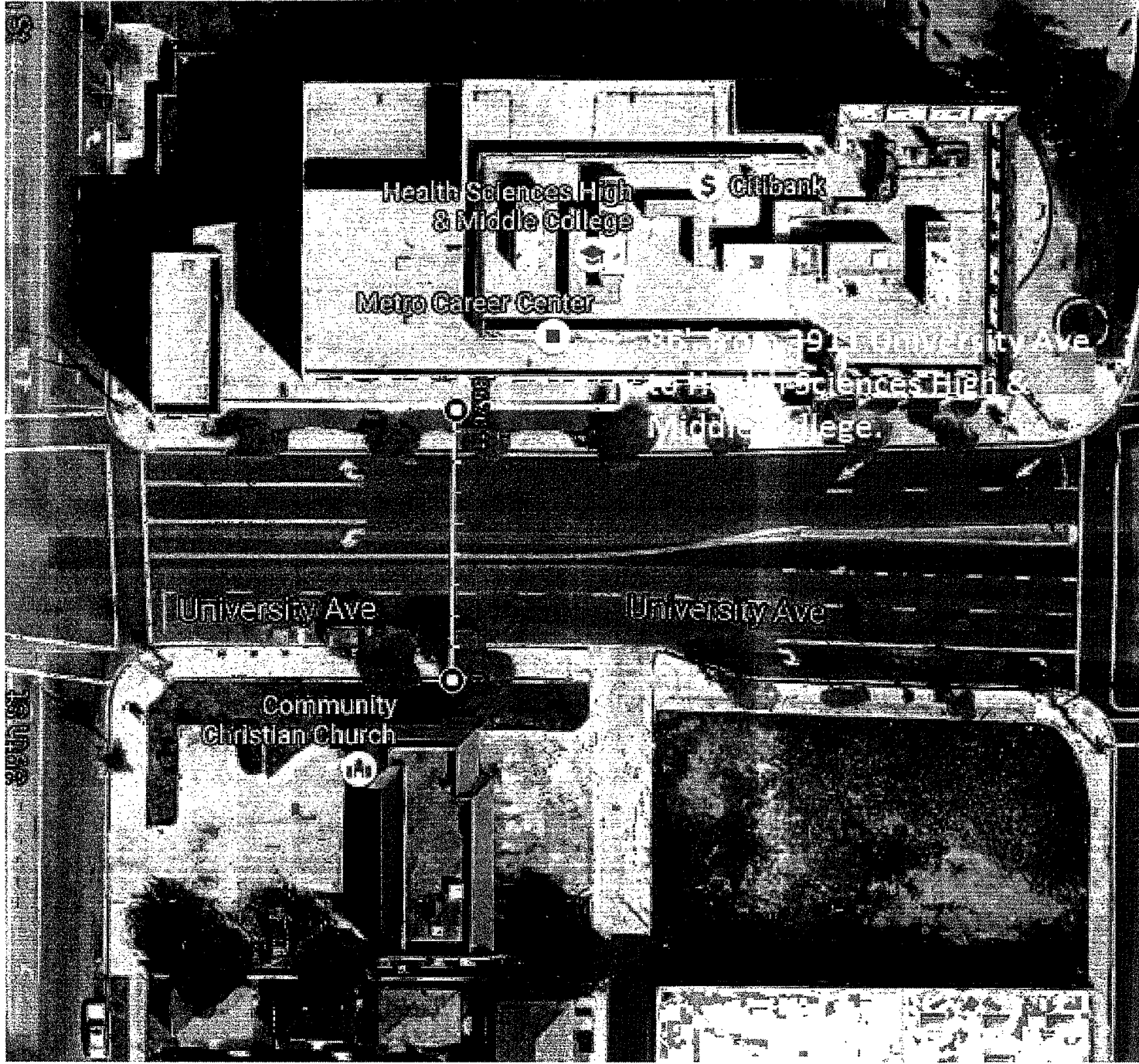
**California Department of Alcoholic Beverage
Control
For the County of SAN DIEGO - (Off-Sale Licenses)
and Census Tract = 24.01**

Report as of 8/23/2016

License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1) 2498	ACTIVE	21	1/1/1978	8/31/2016	ORAM, AMIR Z 3515 UNIVERSITY AVE SAN DIEGO, CA 92104 Census Tract: 0024.01	MARKET PLACE THE		3710
2) 469738	ACTIVE	21	9/18/2008	1/31/2017	MOGZ INC 3605 UNIVERSITY AVE SAN DIEGO, CA 92104-2316 Census Tract: 0024.01	COREYS LIQUOR		3710
3) 483260	ACTIVE	20	2/4/2010	1/31/2017	HAMANA, FLOUNA FAHMI 3805 UNIVERSITY AVE SAN DIEGO, CA 92105-1323 Census Tract: 0024.01	38TH STREET MARKET		3710
4) 488483	ACTIVE	20	6/27/2013 3:55:09 PM	6/30/2017	CHEVRON STATIONS INC 3359 UNIVERSITY AVE SAN DIEGO, CA 92104-2219 Census Tract: 0024.01	CHEVRON 1977	PO BOX 2292, BUSINESS LICENSE & PERMIT BREA, CA 92822-2292	3710

--- End of Report ---

For a definition of codes, view our [glossary](#).



86' FROM 3911 UNIVERSITY AVE
TO ~~CITIBANK~~
HEALTH SCIENCES HIGH AND
MIDDLE COLLEGE



594' FROM 3911 UNIVERSITY
AVE TO CHEROKEE ELEMENTARY
SCHOOL



368' FROM 3805 UNIVERSITY TO 3911 UNIVERSITY



371' from old location to Health Sciences High and Middle College.

Measure distance
Click on the map to add to your path
Total distance: 371.39 ft (113.20 m)

371' FROM 3805 UNIVERSITY TO HEALTH SCIENCE HIGH & MIDDLE COLLEGE



639' FROM 3805 UNIVERSITY AVE TO CHEROKEE ELEMENTARY



ABC Report

Required Parameters

Reporting Period: 01/2015 to 12/2015
 Agency: SAN DIEGO

Optional Parameters

Geographical Area:
 Group by: Census Tract 002401

Prior Report Number: B98S328R

CRIME TYPES	CRIME TOTALS
CRIMINAL HOMICIDE	0
FORCIBLE RAPE	1
ROBBERY	6
AGGRAVATED ASSAULT	12
BURGLARY	21
LARCENY	43
MOTOR VEHICLE THEFT	17
Total Part I Crime:	100

ARREST TYPES	ARREST TOTALS
SIMPLE ASSAULT	10
OTHER PART II CRIMES	61
CHILD AND FAMILY	9
DEADLY WEAPONS	3
EMBEZZLEMENT	0
FRAUD	1
GAMBLING	0
MALICIOUS MISCHIEF	6
NARCOTICS	19
SEX CRIMES	0
FORGERY	0
OTHER NON-CRIMINAL	10
Total Part II Arrest:	119

Census Tract Total = Part I Crime + Part II Arrest: 219
 Census TractAve. (Agency / Census Tract): 193.3
 Agency Wide Total = Part 1 Crime + Part II Arrest: 58,387
 Census Tract Total as % of Census Tract Average: : 113.3%
 (120% is considered high crime area)

HEARING OFFICER ADDITIONAL CONDITIONS

Replace Condition 16 with:

The project site shall be used as a market and the sale of alcoholic beverages shall be accessory and limited to maximum of 2.5% of the display area of the market. Any storage of alcoholic beverages that is not accessible to customers shall not be included in the 2.5%. All alcoholic beverages offered for sale shall be located within coolers.

Replace Condition 18 with:

The sale of alcoholic beverages shall only be permitted between the hours of 10:00 am and 12:00 am midnight.

New Conditions:

The display area for alcoholic beverages shall be in direct view of the market cashier.

Prior to utilization of this permit, the Owner/Permittee shall demonstrate that a Type 20 license has been transferred and that this permit does not result in any increase in the number of licenses within the census tract.

The premises shall be maintained as a market, and the quarterly annual sales of alcoholic beverages shall not exceed 15 percent of the quarterly annual sales of all other products.

All employees of the market shall complete a Responsible Beverage Seller course.

There shall be direct pedestrian access from the University Avenue sidewalk into all tenant spaces on the premises.

The building shall comply with transparency requirements of the zone. Signs, displays, equipment, shelving, or other items shall be located within the market to allow for views through the windows from University Avenue.

The coolers containing alcoholic beverages shall be locked one half hour before and one half hour after the start of school and the end of school daily for Cherokee Pointe Elementary and the HSMC Charter School.

No distilled spirits of any kind may be sold.

No loitering may be allowed on the premises or any adjacent area under the control of the Owner/Permittee. If necessary, the Owner/Permittee shall hire and post security guards to enforce this condition.

Security cameras which cover all of the premises, parking areas, and adjacent public sidewalks shall be installed, maintained, and used.

The owner or operator shall provide illumination, at a minimum level of 0.4 foot candles per square foot, on the exterior of the alcoholic beverage outlet, including adjacent public sidewalks and areas under the control of the owner or operator. The illumination shall be in operation during all hours of darkness while the outlet is open for business so that persons standing on or near the *premises* at night are identifiable by law enforcement personnel. The required illumination shall be shielded and directed so that it does not shine on adjacent properties.

There shall be no signage on the exterior of the structure or on the windows that advertise alcoholic beverages.

Pool or billiard tables, foosball or pinball games, arcade style video and electronic games, or coin-operated amusement devices are not permitted on the premises.

Exterior public pay phones that permit incoming calls are not permitted on the premises, adjacent public sidewalks, or areas under the control of the owner or operator.

The owner or operator shall provide trash receptacles, conveniently located for use by patrons, inside and outside the alcoholic beverage outlet, including adjacent public sidewalks and areas under the control of the owner or operator. At least one 13-gallon trash receptacle shall be located inside the *premises*. At least one 32-gallon trash receptacle shall be located outside the alcoholic beverage outlet, and at least one additional 32-gallon trash receptacle shall be located in the parking areas under the control of the owner or operator.

Recommendation for ABC license:

No beverage may be sold with alcohol content greater than 15% by volume, except that "dinner wines" which have been aged more than two years may contain up to 25% by volume.



3883 RUFFIN ROAD SUITE B
SAN DIEGO, CA 92123
(425)251-6222
(425)251-8782 FAX

CIVIL ENGINEERING, LAND PLANNING,
SURVEYING, ENVIRONMENTAL SERVICES

CLIENT:

CUP - Alcohol Sales
7ELeven # 1037420
3911 UNIVERSITY AVE
SAN DIEGO, CA 92105

NO.	DATE	REVISION DESCRIPTION



DEVELOPMENT INFORMATION:

CUP APPLICATION

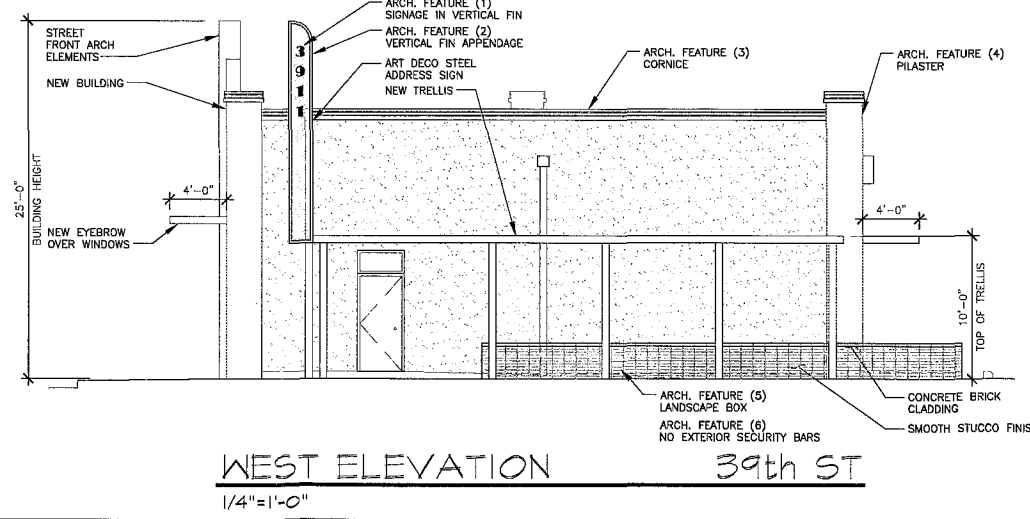
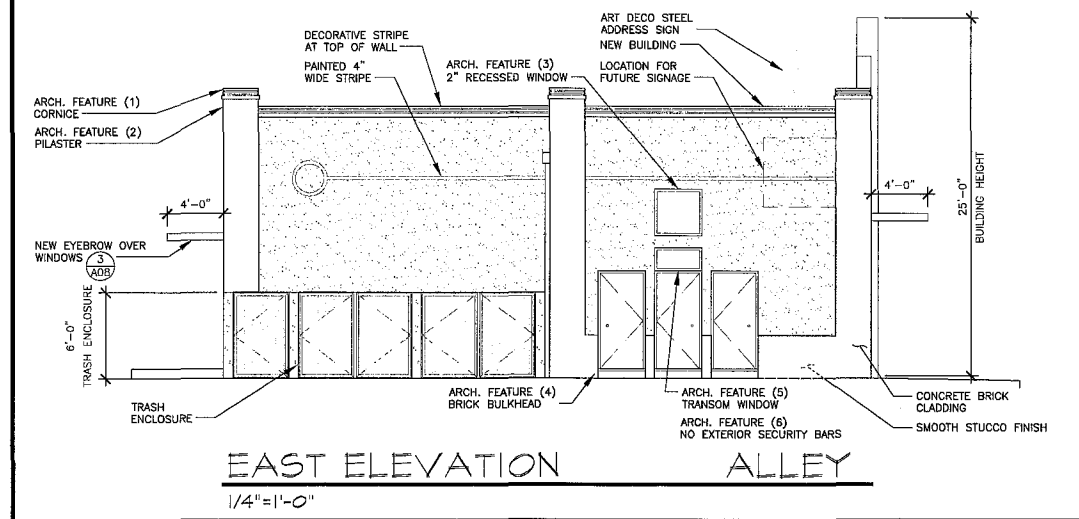
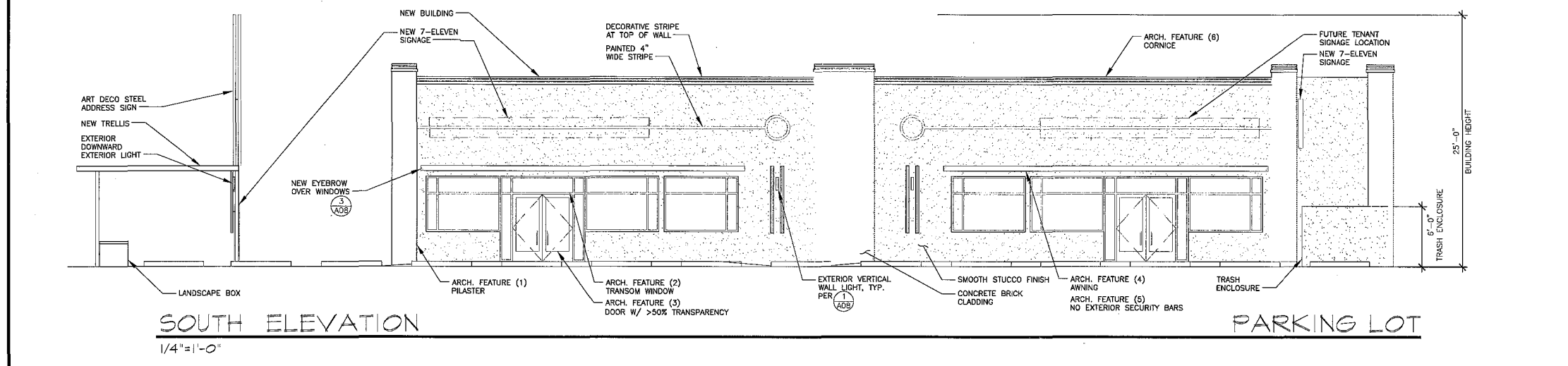
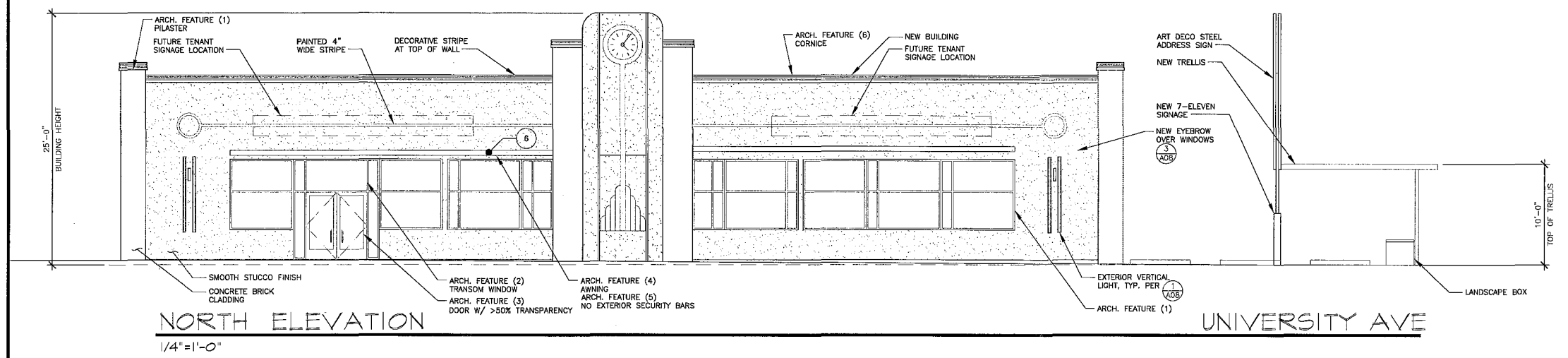
SITE ADDRESS:
3911 UNIVERSITY AVE
SAN DIEGO, CA 92105

DESIGNED BY: -
CHECKED BY: A. SIFE
DRAWN BY: B. DOW
VERSION: 8/11/15 PROJECT NO: BCE #17370
DRAWING TITLE:

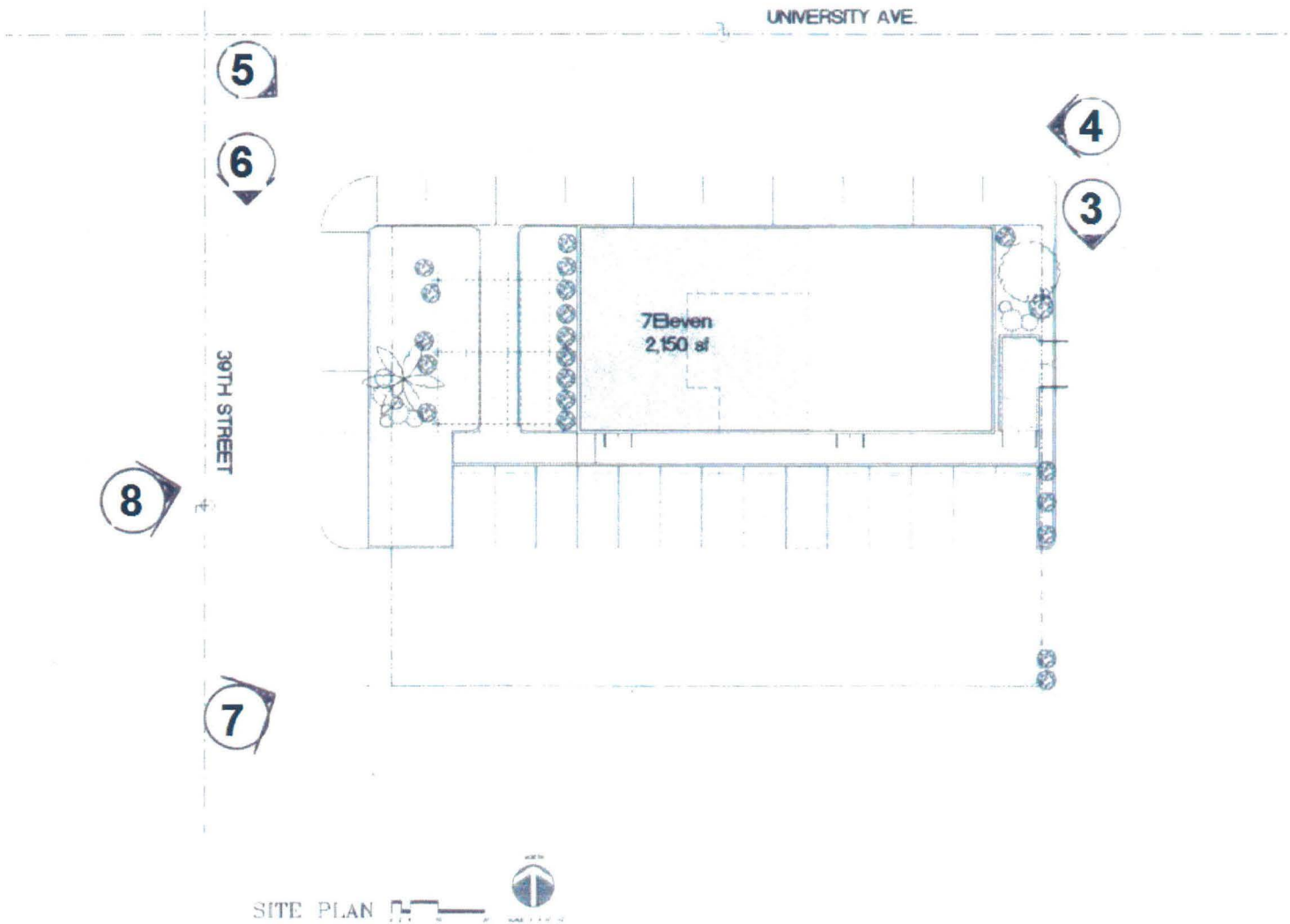
ELEVATIONS

SHEET NO:

A-2.0



File: Current Projects\Barghausen\7 Elevations\BCE\17370 University and 39th\CUP Submission\CUP_39th and University.dwg Date/Times: 12/10/2015 4:26 PM Scale: 0.953009 AS/FE Xref: -



Site No. 1037420

39th Street /University Ave
San Diego, CA 92105

Photo Key Plan



Photo 1



West Building Elevation
off 39th St

7Eleven 3911
University Ave

New 7Eleven location to
which license will be
transferred.

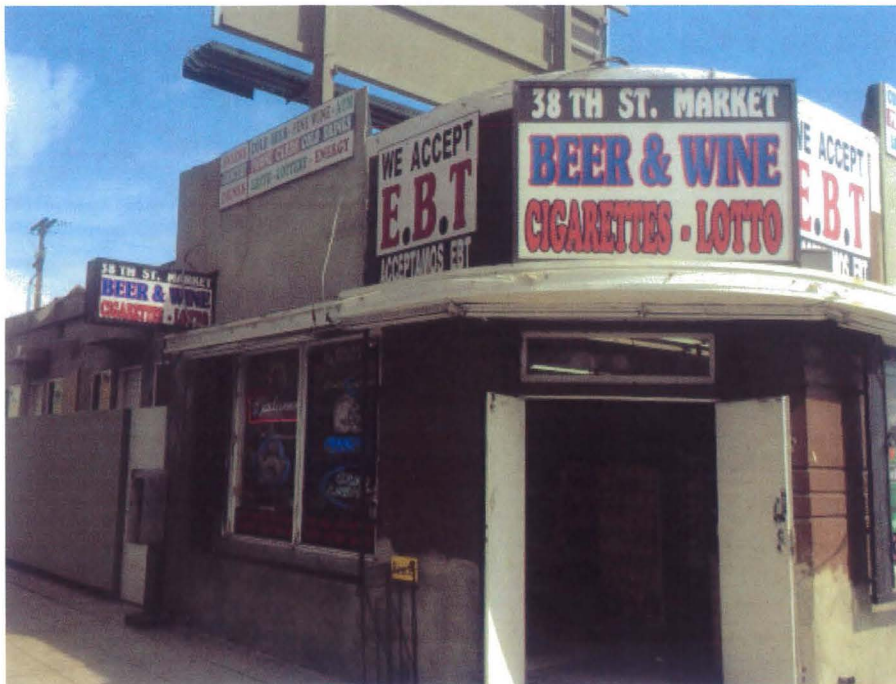


Photo 2

3805 University Ave
38th St Market

License # 483260
Type 20

To be transferred to
7Eleven



Site No. 1037420

39th Street /University Ave
San Diego, CA 92105

2.6 Site Photos



ATTACHMENT 12



Photo 3

East Building Elevation
off alley

Looking south down alley
with power pole in
center of frame.

Alley width 20 ROW per
APN Map



Photo 4

East Building Elevation
from across alley at
University

Sidewalk looking down
northern building
facade



Site No. 1037420

39th Street /University Ave
San Diego, CA 92105

2.6 Site Photos





Photo 5

cWC Building Elevation
off 39th Street. at
University

Street trees in
foreground.



Photo 6

Looking South across
University Ave down
39th at the intesection



Site No. 1037420

39th Street /University Ave
San Diego, CA 92105

2.6 Site Photos





Photo 7

West Building Elevation
off 39th St

Driveway right. .
Adjacent residential on
south property line.



Photo 8

Ease Building Elevation
from alley

Driveway into alley
shown



Site No. 1037420

39th Street /University Ave
San Diego, CA 92105

2.6 Site Photos



 City of San Diego
Development Services
 1222 First Ave., MS-302
 San Diego, CA 92101
 (619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: Neighborhood Use Permit Coastal Development Permit
 Neighborhood Development Permit Site Development Permit Planned Development Permit Conditional Use Permit
 Variance Tentative Map Vesting Tentative Map Map Waiver Land Use Plan Amendment • Other _____

Project Title 7-Eleven CUA **Project No. For City Use Only** 442481

Project Address:
3911 University Ave

Part I - To be completed when property is held by Individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached Yes No

Name of Individual (type or print): _____
 Owner Tenant/Lessee Redevelopment Agency
 Street Address: _____
 City/State/Zip: _____
 Phone No: _____ Fax No: _____
 Signature : _____ Date: _____

Name of Individual (type or print): _____
 Owner Tenant/Lessee Redevelopment Agency
 Street Address: _____
 City/State/Zip: _____
 Phone No: _____ Fax No: _____
 Signature : _____ Date: _____

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 Owner Tenant/Lessee Redevelopment Agency
 Street Address: _____
 City/State/Zip: _____
 Phone No: _____ Fax No: _____
 Signature : _____ Date: _____

Project Title:	Project No. (For City Use Only)
Part II - To be completed when property is held by a corporation or partnership	
Legal Status (please check):	
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability -or- <input type="checkbox"/> General) What State? _____ Corporate Identification No. _____ <input type="checkbox"/> Partnership	
<p><u>By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property.. Please list below the names, titles and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all corporate officers, and all partners in a partnership who own the property). A signature is required of at least one of the corporate officers or partners who own the property. Attach additional pages if needed. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process. Additional pages attached <input type="checkbox"/> Yes <input type="checkbox"/> No</u></p>	
Corporate/Partnership Name (type or print): R.S. Bills, Inc., a California corporation	Corporate/Partnership Name (type or print):
<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee	<input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee
Street Address: P.O. Box 9915, Rancho Santa Fe, CA 92067	Street Address:
City/State/Zip: 760-548-4562	City/State/Zip:
Phone No: _____ Fax No: _____ (Robert S.Bills)	Phone No: _____ Fax No: _____
Name of Corporate Officer/Partner (type or print): President	Name of Corporate Officer/Partner (type or print):
Title (type or print):	Title (type or print):
Signature : _____ Date: 8-25-2015	Signature : _____ Date:
Corporate/Partnership Name (type or print):	Corporate/Partnership Name (type or print):
<input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee	<input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee
Street Address:	Street Address:
City/State/Zip:	City/State/Zip:
Phone No: _____ Fax No: _____	Phone No: _____ Fax No: _____
Name of Corporate Officer/Partner (type or print):	Name of Corporate Officer/Partner (type or print):
Title (type or print):	Title (type or print):
Signature : _____ Date:	Signature : _____ Date:
Corporate/Partnership Name (type or print):	Corporate/Partnership Name (type or print):
<input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee	<input type="checkbox"/> Owner <input type="checkbox"/> Tenant/Lessee
Street Address:	Street Address:
City/State/Zip:	City/State/Zip:
Phone No: _____ Fax No: _____	Phone No: _____ Fax No: _____
Name of Corporate Officer/Partner (type or print):	Name of Corporate Officer/Partner (type or print):
Title (type or print):	Title (type or print):
Signature : _____ Date:	Signature : _____ Date: