

Agenda Report

TO: CITY COUNCIL

DATE: JUNE 9, 2008

FROM: CITY MANAGER

SUBJECT: APPEAL OF EXPRESSIVE USE PERMIT #4955, 61 N. RAYMOND AVENUE (VIVE RESTAURANT AND LOUNGE)

RECOMMENDATION

It is recommended that the City Council:

1. Acknowledge that this action is categorically exempt from CEQA; and
2. Disapprove the appeal of Expressive Use Permit #4955:
 - a. Expressive Use Permit – To relocate the dance floor area for an existing restaurant. The original permit for live entertainment and dancing was approved in 1991 and modified in 1994; and
 - b. Modification to Conditional Use Permit No. 2051 – To extend the hours of alcohol sales for an existing restaurant to 1:30 a.m. daily. The original permit for alcohol sales was approved in 1989 and modified in 1991, which limited the hours of alcohol sales to 11:00 p.m. Sunday through Thursday and 1:00 a.m. Friday and Saturday.

BACKGROUND

The appellant, Vive Restaurant and Lounge, submitted 1) an Expressive Use Permit to relocate the dance floor area for the existing restaurant and 2) a Modification to Conditional Use Permit to extend the hours of alcohol sales for the existing restaurant to 1:30 a.m. daily. The appeal was noticed for the April 21, 2008 City Council meeting. However, the appellant requested the item be continued.

The Hearing Officer disapproved the applications, as recommended by staff, at a March 5, 2008 public hearing. The applicant subsequently appealed the decision to the City Council. Unlike other entitlements, which are first appealed to the Board of Zoning Appeals, Expressive Use Permits are appealed directly to the City Council.

ANALYSIS

Expressive Use Permit – Relocate the Dance Floor

In 1994, the business received a permit to provide live entertainment and a 216 square foot dance floor (18 feet by 12 feet) in the northeast corner of the restaurant in a separate room. One of the conditions of approval stated that the dance floor shall substantially conform to the plans submitted and any modifications to the size or location of the dance floor shall be subject to the review and approval of the Zoning Administrator.

In 2007, the business relocated and expanded the size of the dance floor without City approval. The Planning Division met with the applicant and stated that the dance floor would need to be in its original location or the applicant would need to apply for a new Expressive Use Permit to relocate the dance floor (see Attachment B, Existing and Proposed Vive Floor Plan). The applicant subsequently submitted an application for a new Expressive Use Permit to relocate the dance floor to the middle of the main dining area. The applicant proposes to limit the dance floor area to 216 square feet by constructing a low wall around the dance floor area, to distinguish the dance floor area from the rest of the main dining room.

At the Hearing Officer meeting, staff did not support the request to relocate the dance floor. One of the existing conditions of approval is that the use is to operate as a bonafide eating establishment at all times and the sale of alcohol and presence of live entertainment is to be subsidiary to the sale of food. The standards for a restaurant with entertainment and alcohol sales are different for a nightclub with alcohol sales. If the use were to be reclassified as a nightclub with alcohol sales, it would be subject to the Alcohol Density Overlay requirements, which requires a 250-foot separation from any other bar, billiard parlor or nightclub with alcohol sales or use with off-site alcohol sales. Currently, there are two bars with alcohol sales and one business with off-site alcohol sales within a 250-foot radius of the subject site.

The current area approved for dancing is located in a separate room in the northeast corner of the restaurant. The dance floor occupies the majority of the small room, which limits the potential for dancing to overflow into other areas of the restaurant. Since the dance floor is located away from the entrance in a separate room, it does not dominate the interior of the restaurant use.

The proposed dance floor would be located in the main dining room near the entrance of the restaurant. The main dining room is significantly larger than the proposed dance floor and it would be difficult to physically separate dancing from the other areas of the restaurant. Since the dance floor would be located near the main entrance, it would dominate the interior of the restaurant use allowing it to operate more like a nightclub.

Modification to Conditional Use Permit #2051 – To Extend Hours of Alcohol Sales

In 1989, the business received a permit for alcohol sales for the restaurant, which was modified in 1991. The hours of alcohol sales are currently limited to 11:00 p.m. on

Sunday through Thursday and 1:00 a.m. on Friday and Saturday. The applicant submitted an application to modify the hours of alcohol sales to 1:30 a.m. daily.

However, at the Hearing Officer meeting, staff did not support the request to extend the hours of alcohol sales. Within a 250-foot radius of the subject site, eight other establishments currently provide on-site alcohol sales. Based on the analysis provided by the Department of Alcoholic Beverage Control, the subject site is located within Census Tract #4619, which has 48 businesses with alcohol sales for on- or off-site consumption. This is considered an undue concentration of establishments that sell alcohol. A request to extend the hours of alcohol sales would further compound the undue concentration of the surrounding area.

Police Department Recommendation for Disapproval

The Police Department has specific concerns regarding the application. Police calls for service for the restaurant increased substantially over the past three years, from 13 calls for service in 2005 and 11 in 2006 to 41 in 2007. The number of arrests has also increased from one each in 2005 and 2006 to seven in 2007. A large number of the calls for service and arrests was related to public drunkenness. The Police Department attributes the increase in calls and arrests to two main changes which occurred in 2007 – the dance floor was relocated and made more visible attracting more customers and activity in the area and there were increased police foot patrols in the Old Pasadena area.

The Police Department is concerned that the past record of the business (increased calls for service), the type and extent of the current entitlement requests (a more visible dance floor with extended hours of alcohol sales) and the proposed site plan design (dance floor in the middle of the main dining room) would result in the business operating like a nightclub rather than a bonafide restaurant. The Police Department is concerned that if the requested entitlements were approved, calls for service and arrests will continue to increase and compromise police response times and overall service for the Old Pasadena area.

March 5, 2008 Hearing Officer Meeting

At the Hearing Officer meeting, several members of the public spoke both in opposition to and in favor of the request. Those in opposition felt the proposed changes to the business would allow it to operate as a nightclub. They were concerned that another nightclub in Old Pasadena would have a negative impact on the surrounding area and would increase police calls for service. Those in favor felt the use would still continue to operate as a restaurant and would have a positive impact in Old Pasadena.

At the meeting, staff recommended disapproval of the changes and recommended that the live entertainment component continue only as originally approved (i.e. with the dance floor away from the main dining room and earlier hours of alcohol sales) with all existing conditions of approval maintained and enforced.

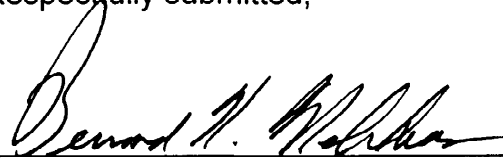
ENVIRONMENTAL REVIEW:

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Administrative Code, Title 14, Chapter 3, §15303, Class 3, New Construction or Conversion of Small Structures). This section specifically applies to the conversion of existing small structures from one use to another such as restaurants where there are minor modifications to the structure and the square footage is less than 10,000 square feet.

FISCAL IMPACT:

The project is recommended for disapproval and would have no fiscal impact on services. However, if approved, the project may also have the potential to increase police calls for service in Old Pasadena, which may have a negative fiscal impact on public safety.

Respectfully submitted,



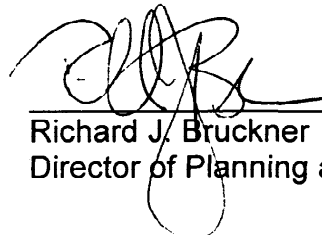
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City Manager

Prepared by:



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Approved by:



Richard J. Bruckner
Director of Planning and Development

Attachments:

- A. June 9, 2008 recommended City Council Specific Findings for Disapproval
- B. Existing and Proposed Floor Plan for Vive
- C. March 7, 2008 Hearing Officer Decision Letter and Specific Findings for Disapproval
- D. March 5, 2008 Hearing Officer staff report
- E. Existing combined Conditions of Approval from past entitlements
- F. Decision Letters from past entitlements
- G. Correspondence from March 7, 2008 Hearing Officer meeting