

Jomsky, Mark

Subject: Call for Review

From: Bryant, Joel
Sent: Sunday, April 14, 2013 10:55 PM
To: Jomsky, Mark
Subject: RE: Call for Review

Hi Mark,

I am submitting this email as my request to call up Expressive Use Permit No. 6052 to the City Council. I will be thoroughly reviewing this case over the next week in preparation for discussing the validity of calling the item to the City Council. Please contact me should you have any questions or comments.

Best Regards,

Joel Bryant
District 3

04/222012
Item 13



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

April 4, 2013

Haamed Temory
25 North Raymond Ave
Pasadena, CA 91103

**Subject: Expressive Use Permit #6052
Modification of Conditional Use Permit #5465
25 North Raymond Avenue
Council District #3**

**PLN2013-00143
PLN2013-00006**

Dear Mr. Temory:

Your application for an **Expressive Use Permit and Modification of Conditional Use Permit at 25 North Raymond** was considered by the **Hearing Officer on April 3, 2013.**

1. **Expressive Use Permit:** To establish a "nightclub" through the installation of a 96 square foot removable dance floor for use on holidays, Fridays, and Saturday from 9:00 p.m. to 2:00 a.m.
2. **Variance:** To establish a "nightclub" with alcohol service within 250 feet of an existing bar or tavern, billiard parlor with alcohol service, nightclub with alcohol service, or use which provide sales of alcohol for off-site consumption within the AD-1 (Alcohol Density overlay, 1) district.
3. **Conditional Use Permit (modification):** Modify five conditions of approval to allow: a) the sale of alcohol for on-site consumption from 7:00 a.m. to 2:00 a.m. seven days a week; b) the display of alcohol for sale in a refrigerator case; c) the sale of alcohol for off-site consumption; d) the charging of entry fees for events, e) and customized lighting and sound systems for events.
4. **Variance:** To allow the sale of alcohol for off-site consumption within 250 feet of an existing bar or tavern, billiard parlor with alcohol service, nightclub with alcohol service, or use which provide sales of alcohol for off-site consumption within the AD-1 (Alcohol Density overlay, 1) district.

After careful consideration of this application, and with full knowledge of the property and vicinity, it was decided by the Hearing Officer to: 1) **disapprove** the Expressive Use Permit application; 2) **disapprove** the first Variance for separation between uses; 3) **approve** some of the requested modified conditions (and deny other requested modified conditions) as shown in

the findings in Attachment A and the conditions in Attachment B; and 4) **disapprove** the second Variance for separation between uses in accordance with submitted plans stamped **April 3, 2013**.

You are hereby notified that, pursuant to Pasadena Municipal Code Chapter 17.72, any person affected or aggrieved by the decision of the Hearing Officer has the right to appeal this decision within **ten days (April 15, 2013)**. The effective date of this case will be **eleven days after the hearing date (April 16, 2013)**. Prior to such effective date, a member of the City Council or Planning Commission may request that it be called for review to the Board of Zoning Appeals. However, if there is a request for a call for review, the appeal period will continue to run. If the tenth day falls on a day when City offices are closed, the appeal deadline shall be extended through the next day when offices are open. The decision becomes effective on the eleventh day from the date of the decision. The regular Appeal fee is \$3,505.50. The Appeal fee for Non-profit Community-based Organizations pre-registered with Neighborhood Connections is \$1,752.75.

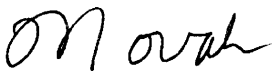
Any permits necessary may be issued to you by the Building Division on or after the effective date stated above. A building permit application may be submitted before the appeal deadline has expired with the understanding that should an appeal be filed, your application may, at your expense, be required to be revised to comply with the decision on the appeal. A copy of this decision letter (including conditions of approval and any mitigation monitoring program) shall be incorporated into the plans submitted for building permits.

For a period of twelve months following the effective date of disapproval of a land use permit, no application for the same or substantially the same permit shall be filed except on grounds of new evidence, proof of changed circumstances, or if the disapproval was without prejudice.

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Title 14, Chapter 3, Section 15301, Class 1, Existing Facilities). Class 1 exempts projects that involve negligible or no expansion of an existing use. The proposed applications would not result in permanent physical changes to the business.

For further information regarding this case please contact **David Sinclair** at **(626) 744-6766**.

Sincerely,



Paul Novak
Hearing Officer

Enclosures: Attachment A, Attachment B, Attachment C (Floor Plan)

xc: City Clerk, City Council, Building Division, Public Works, Power Division, Water Division, Design and Historic Preservation, Hearing Officer, Code Enforcement-Jon Pollard, Case File, Decision Letter File, Planning Commission (9)

ATTACHMENT A
SPECIFIC FINDINGS FOR EXPRESSIVE USE PERMIT #6052 AND
MODIFICATION OF CONDITIONAL USE PERMIT #5465

Expressive Use Permit #6052

1. *The proposed use is allowed with an Expressive Use Permit within the subject zoning district and does not comply with the applicable development and design requirements of the subject zoning district and with all applicable provisions of this Zoning Code.* Nightclubs ("Commercial Entertainment") are permitted in the CD-1 zoning district subject to the approval of an Expressive Use Permit. In this case the need for an Expressive Use Permit is required because the applicant intends to install a 96 square foot dance floor for customer dancing. However, the establishment of the proposed nightclub requires the approval a Variance because the use is located within 250 feet of an existing "Bar or Tavern". Staff is unable to make all of the necessary findings to support the Variance applicable and consequently, cannot make this finding that the proposed use complies with all applicable provisions of the Zoning Code.
2. *The proposed use will not provide and maintain police services and crime prevention services to establish and maintain minimum response time for police calls for service as established by the city's approved general plan.* The Pasadena Police Department has reviewed the application and has stated that it is, "...not in agreement with the proposed modifications." This is based on, "...concerns affecting our daily operations as well as community safety." As a result, this finding cannot be made.

Variance #1 (Separation between uses: nightclub with alcohol service (EUP #6052))

3. *There are not exceptional or extraordinary circumstances or conditions applicable to the subject site that do not apply generally to sites in the same zoning district.* The 250-foot separation regulation for a new nightclub with alcohol service applies equally to all properties in the AD-1 overlay district; this property is not treated differently or singled-out. *Vertical Wine Bistro* (at 70 North Raymond Avenue) is an established business and is within the 250-foot separation. The Conditional Use Permit that allowed *Vertical Wine Bistro* to be established as a bar was approved in December 2005, and subsequent modifications in 2006, 2007, and 2008 allowed the expansion of the wine bar, the off-site sales of alcohol, and customer dancing. The separation requirement has been in place long before *The New York Deli* was approved as a restaurant with alcohol sales in 2011 and before the current application was submitted in January 2013.

Conditional Use Permit #5465 (Modification)

4. *There are changed circumstances sufficient to justify the modification of the original approval.* The applicant, and business owner, has requested several modifications of the existing conditions of approval related the services provided at the establishment, with the intent of accommodating additional customers. While city staff is unable to make all of the findings to approve all of the modifications, it has been determined that an increase in the hours of alcohol sales and the limited display of alcohol can be justified and as a result the finding for modification can be made.
5. *The proposed location of the site for the Conditional Use Permit would not adversely affect the general welfare of the surrounding property owners.* The operation of a restaurant with on-site sale and consumption of alcoholic beverages is consistent with the activity of the

surrounding uses. The subject site is located within the Central District's Old Pasadena area, which is identified as a retail/entertainment destination with a variety of restaurants and retail uses. The use will operate in accordance with the City's laws, ordinances, and conditions of approval that ensure the continuity of the compatible coexistence of this use with surrounding area. The hours of alcohol sales as conditioned and the limited display of alcohol is not anticipated to be problematic or a nuisance.

6. *The proposed location of the site for the Conditional Use Permit would not result in an undesirable concentration of premises for the sale of alcoholic beverages, including wine, in the area.* An overconcentration of alcohol establishment as defined by the State ABC exists in the Census Tract; however, the ability to sell alcoholic beverages at a full-service, bona fide restaurant is considered an amenity. Also, the project is located within the Central District's Old Pasadena area, a highly identifiable regional retail and entertainment destination. Conditions of approval have been included that will limit the potential for negative impacts and to ensure that the business will not deviate from the planned operation as recommended for approval by city staff
7. *The proposed location of the site for the Conditional Use Permit would not detrimentally affect the nearby surrounding area after giving special consideration to the proximity and nature of the proposed use with respect to the following: a. Residential uses and residential districts; b. Hospitals, park and recreation facilities, places of public assembly, public or private schools, and religious assembly uses that attract minors and other similar uses; and c. Other establishments offering alcoholic beverages (including wine) for sale for consumption both on- and off-site.* Residential uses are located on the upper floors of this mixed-use building, but are located within an urbanized district of Pasadena. Approximately 3,500 square feet of restaurant use was included in the original approval of the mixed-use project, and this full-service restaurant has been at this location since October 2010. Given the urbanized location and encouraged mix of residential, commercial, retail, and entertainment uses in the Central District, it has been determined that a restaurant with incidental alcohol sales will not be detrimental to the area. The conditions of approval will ensure that the use is maintained as a bona fide restaurant.
8. *The proposed location of the site for the Conditional Use Permit would not aggravate existing problems created by the sale of alcohol (e.g., littering, loitering, noise, public drunkenness, and sales to minors).* Bona-fide restaurants with incidental sales of alcoholic beverages are not considered a problematic use and do not contribute to an aggravation of any existing problems in the vicinity. With this approval, the project is subject to the City's Condition/Mitigation Monitoring Program. Noncompliance with any of the conditions of approval or any of the provisions of the Zoning Code may result in the revocation or modification of the Conditional Use Permit.
9. *The proposed use is in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of any applicable specific plan.* As conditioned, the proposed use is consistent with Objective 10, Diverse Economy, of the Land Use Element of the General Plan. The on-site sale of a full-line of alcoholic beverages with the conditions of approval will promote a diverse economy base and long-term economic contribution to the City.

Variance #2 (Separation between uses: sales of alcohol for off-site consumption (CUP#5465))

10. There are not exceptional or extraordinary circumstances or conditions applicable to the subject site that do not apply generally to sites in the same zoning district. The 250-foot separation regulation for a business that sells alcohol for off-site consumption applies equally to all properties in the AD-1 overlay district; this property is not treated differently or singled-out. *Vertical Wine Bistro* (at 70 North Raymond Avenue) is an established business located less than 250 feet from *The New York Deli*. The Conditional Use Permit that allowed *Vertical Wine Bistro* to be established as a bar was approved in December 2005, and subsequent modifications in 2006, 2007, and 2008 allowed the expansion of the wine bar, the off-site sales of alcohol, and customer dancing. The separation requirement has been in place long before *The New York Deli* was approved as a restaurant with alcohol sales in 2011 and before the current application was submitted in January of 2013.

**ATTACHMENT B
CONDITIONS OF APPROVAL FOR
MODIFICATION OF CONDITIONAL USE PERMIT #5465**

The applicant or successor in interest shall meet the following conditions. These conditions supersede the conditions of approval from all previous Conditional Use Permit.

1. The site/floor plans submitted for building permits and/or future development shall substantially conform to the site/floor plans stamped "Received at Hearing, April 3, 2013," except as modified herein.
2. The approval of this application authorizes the on-site sale of a full-line of alcoholic beverages in conjunction with the operation of a 3,662 square foot restaurant with a bar area of 417 square feet, as depicted in the approved floor plan.
3. Pursuant to Chapter 17.78 of the Zoning Code, the Zoning Administrator can call for a review of the approved conditions at a duly noticed public hearing if it can be reasonably shown that there are grounds for revocation or modification of this Conditional Use Permit. These conditions may be modified or new conditions may be added to reduce any impacts of the use. The Hearing Officer may revoke the Conditional Use Permit if sufficient cause is given as allowed by Section 17.78 of the Zoning Code.
4. Any change to these conditions of approval or expansion of the use shall require the modification of this Conditional Use Permit or a new Conditional Use Permit, except as allowed by Section 17.64.050 (Changes to an Approved Project) of the Zoning Code.
5. The applicant or successor in interest shall meet the applicable code requirements of all other City Departments.
6. The final decision letter and conditions of approval shall be incorporated in the building plans as part of the building plan check process.
7. The proposed project, Activity Number **PLN2010-00229 and PLN2013-00006**, are subject to the City's Condition Monitoring Program and is subject to **Final Zoning inspection**. Condition Monitoring is required for your project. Under the Monitoring Program, your project will be inspected by Code Compliance staff to determine compliance with the conditions of approval. The Condition Monitoring inspection will occur during the term of the project. The Final Zoning Inspection will occur at the completion of the project. Required monitoring fees for inspections shall be paid on or after the effective date of this permit, but prior to the issuance of any building permits. Contact the Code Compliance Staff at (626) 744-4633 to verify the fee. All fees are to be paid to the cashier at the Permit Center located at 175 N. Garfield Avenue. The cashier will ask for the activity number provided above. Failure to pay the required monitoring fees prior to initiating your approved land use entitlement may result in revocation proceedings of this entitlement.

Planning Division

8. The last alcoholic beverage shall be served no later than one-half hour before closing or 1:00 a.m., whichever earlier.
9. The sale of alcoholic beverages shall be in conjunction with food sales. Food service with a full menu shall be made available during all hours of business operation.
10. The premises shall operate under Type 47 (On-Sale General Eating Place) alcohol license and be maintained as a bona-fide eating establishment. The premises shall not obtain Type 48 (On-Sale General Public Premises) or any other public premises type licenses without the approval of a Conditional Use Permit and/or Expressive Use Permit.
11. The bar area shall be defined by a barrier depicted on the approved plan. The west side of the bar counter shall not have any seating and shall be maintained as a servers' station.
12. Alcoholic beverages (limited to individual bottles or cans) may be displayed or stored in the refrigerated showcase in the dining area. The doors of the case shall remain locked during business hours and may only be accessed by employees. Alcohol may not occupy more than a length of 12'-6", or half, of the refrigerator case, whichever is less.
13. The off-site sale and/or consumption of alcohol are strictly prohibited.
14. Alcoholic beverages shall not be served in disposable containers.
15. No cover charges, entry fees, or minimum drink orders shall be charged /required of patrons. There shall be no restrictions on the age of customers.
16. Promoter-produced parties or events shall be prohibited. These events include private parties that involve with third persons who profit from organizing and/or drawing attendees to the events.
17. Customized lighting and sound system conducive of a nightclub atmosphere shall be prohibited at all times.
18. Amplification of music shall comply with the regulations of Chapter 9.36 of Pasadena Municipal Code.
19. Signs advertising brands and types of alcoholic beverages or the availability of alcohol for sale at the subject site shall not be visible from the exterior of the premises.
20. The following preventive measures shall be undertaken to reduce the potential for alcohol related problems:
 - a) Taxicab phone numbers shall be posted in a conspicuous location at all times in the area(s) where alcohol is served to customers;
 - b) All employees selling or serving alcohol shall be required to participate in an alcohol training program offered by the Alcoholic Beverages Control prior to the operation of selling/serving alcohol;

- c) The availability of a variety of non-alcoholic beverages shall be made known and offered to customers, and
 - d) No more than four video games shall be permitted.
21. These conditions of approval must be posted in a conspicuous location for public viewing within the restaurant on a continuous basis for the life of this Conditional Use Permit beginning on the date the alcohol sales commence.
 22. The site and surrounding area shall be maintained in a litter and graffiti free manner. Any graffiti that should appear on the site shall be removed within 48 hours.
 23. Compliance with the City of Pasadena Refuse Storage regulations, see Section 17.40.120 of the Pasadena Municipal Code, shall be maintained at all times.
 24. Customer dancing is prohibited at all times.
 25. Live entertainment, as allowed by Section 17.80 (Restaurants with Limited Live Entertainment), is permitted.
 26. Private events are permitted, however all conditions of approval shall still apply during such events.

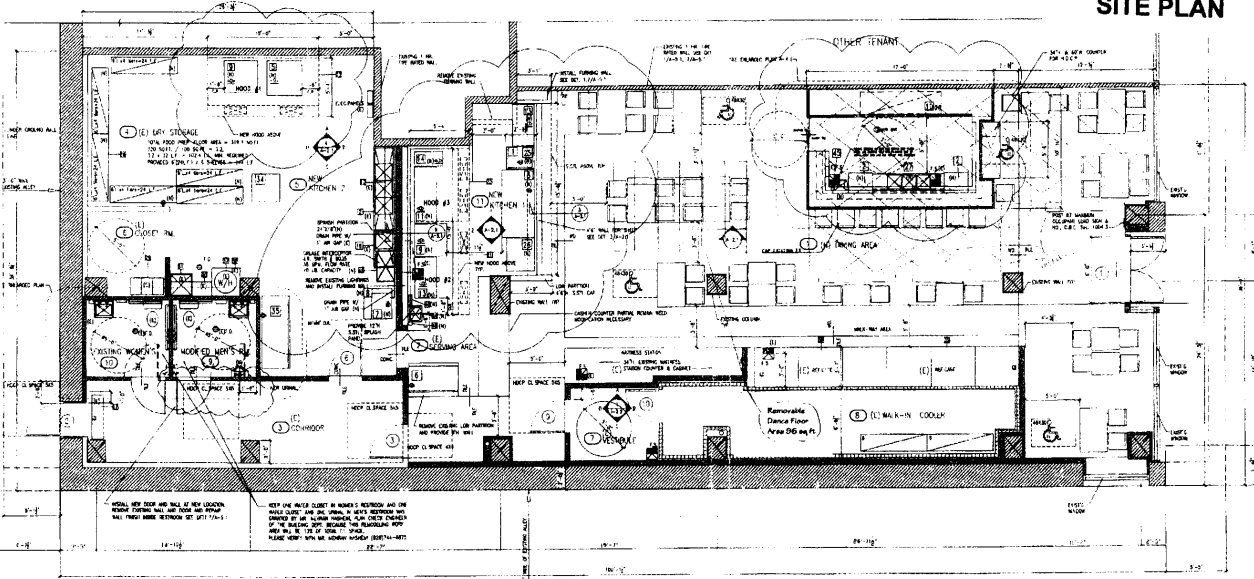
Public Health Department

27. The applicant must comply with all local, state, and federal tobacco control laws, including but not limited to, Pasadena Municipal Code Sections 8.78.071 to 8.78.072, which prohibits smoking in unenclosed areas of bars and restaurants (e.g. outdoor dining areas).

Public Works Department

28. This application does not permit sidewalk dining in the public right-of-way. If the applicant intends to serve any food or beverages in the public right-of-way, an application shall be filed with the Department of Public Works for a sidewalk dining occupancy permit to establish or maintain a sidewalk dining area within the public right-of-way. Sidewalk dining shall comply with all the requirements of Chapter 12.13, entitled "Sidewalk Dining on Public Walkways," of the Pasadena Municipal Code.

ATTACHMENT C SITE PLAN



FIRE DEPT. NOTES:
 1. PER CALIF. SECTION 1014, EGRESS SHALL NOT PASS THROUGH INTERNAL STORAGE ROOM, CLOSET OR SPACE SIMILAR USE.
 2. POST THE OCCUPANT LOAD NEAR THE MAIN ENTR. (C.B.C. SEC. 1024.3)

PLAN
 ○ NEW PARTITION

- REVISD BAR AREA**
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REVISED AREA CALCULATION
 DINING AREA 804 SQ. FT.
 BAR AREA 417 SQ. FT.
 WALK-WAY AREA 199 SQ. FT.
 TOTAL FLOOR AREA 1420 SQ. FT.

RECEIVED
 FLOOR PLAN

NO.	DESCRIPTION
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OWNER: **ATELIER-U**
 PROJECT: **NEW YORK DELI**
 PASADENA

DATE: 11/15/2011
 TIME: 10:00 AM