



Agenda Report

March 9, 2020

TO: Honorable Mayor and City Council

FROM: Planning & Community Development Department

**SUBJECT: APPEAL OF BOARD OF ZONING APPEAL'S DECISION ON
REVOCATION OF CONDITIONAL USE PERMIT #5535
LOCATED AT 300 W. GREEN ST., 100-248 S. ORANGE GROVE
BLVD., AND 363 W. DEL MAR BLVD.**

RECOMMENDATION:

It is recommended that the City Council conduct a quasi-judicial appeal hearing and take the following action:

1. Adopt the Environmental Determination, that the project is exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15321, Class 21, Enforcement Actions by Regulatory Agencies), and there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. Section 15321 exempts actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered by the regulatory agency; and
2. Uphold the Board of Zoning Appeal's decision and approve Revocation of Conditional Use Permit #5535, subject to the findings in Attachment A.

EXECUTIVE SUMMARY:

On July 17, 2019, the Hearing Officer considered, at its regularly noticed hearing, Revocation of Conditional Use Permit (CUP) #5535. This was a City-initiated public hearing to consider the revocation of the CUP, originally approved by the Hearing Officer on March 6, 2013. CUP #5535 allows private group events, such as weddings and receptions, at various designated locations within the Ambassador College Campus. The approval includes a Minor CUP to allow shared parking with Maranatha High School and the Elk's Lodge, as well as an additional Minor CUP to allow off-street valet parking during the events. As authorized by Section 17.78.090 (Permit Revocation

or Modification) of the Zoning Code, the Hearing Officer has the authority to revoke any discretionary land use permit, such as a Conditional Use Permit.

Staff recommended that the Hearing Officer approve Revocation of CUP #5535. Staff assessed current conditions and concluded that the findings necessary for revocation could be made and that there were reasonable grounds for revocation. The analysis demonstrated that there were changed circumstances caused by the applicant, where the findings contained in the original CUP could no longer be made in a positive manner and the public health, safety, and welfare require the revocation. Furthermore, staff determined that the use allowed by the CUP had become detrimental to the public health, safety, and welfare, and the manner of operation is creating a public nuisance. At the conclusion of the public hearing, and after public testimony, the Hearing Officer adopted the environmental determination and approved Revocation of Conditional Use Permit #5535 (Attachment B).

On July 26, 2019, Pasadena Lots 70, LLC filed an appeal (Attachment C) with the Board of Zoning Appeals citing disagreement with the decision of the Hearing Officer.

On October 30, 2019, the Board of Zoning Appeals considered Revocation of CUP #5535. Staff recommended that the Board of Zoning Appeals uphold the decision of the Hearing Officer and approve the revocation of the CUP. At the conclusion of the public hearing, and after public testimony, the Board of Zoning Appeals voted (5-0) to adopt the environmental determination and approve the revocation (Attachment D).

On November 12, 2019, Pasadena Lots 70, LLC submitted an appeal application (Attachment E) to the City Council. Staff recommends that the City Council uphold the Board of Zoning Appeals' decision, approving the revocation of the CUP based on the findings in Attachment A.

BACKGROUND:

The Zoning Administrator has determined that there are reasonable grounds for revocation of Conditional Use Permit (CUP) #5535. The CUP was originally approved by the Hearing Officer on March 6, 2013 (Attachment F). The CUP allows private group events, such as weddings and receptions, at four designated locations within the Ambassador College Campus: the Merritt Mansion, Terrace Villa, Italian Garden and Fowler Garden. The approval included a Minor CUP to allow shared parking with Maranatha High School (169 S. St. John St.) and the Elk's Lodge (400 W. Colorado Blvd.), as well as an additional Minor CUP to allow off-street valet parking during the events.

Pursuant to Chapter 17.78 of the Zoning Code, upon a determination by the Zoning Administrator that there are reasonable grounds for revocation of a discretionary permit, a public hearing shall be scheduled by the Zoning Administrator before the review authority which originally approved the permit. The City's action to revoke the CUP shall

have the effect of terminating the entitlement and denying the privileges granted by the original approval.

Acting on the provisions of Section 17.78.090 (Permit Revocation or Modification) of the Zoning Code, the City has the authority to revoke any discretionary land use permit, such as a Conditional Use Permit, if any one of the following findings of fact can be made in a positive manner:

- a. Circumstances under which the permit or entitlement was granted have been changed by the applicant to a degree that one or more of the findings contained in the original permit or entitlement can no longer be made in a positive manner and the public health, safety, and welfare require the revocation;
- b. The permit or entitlement was issued, in whole or in part, on the basis of a misrepresentation or omission of a material statement in the application or in the applicant's testimony presented during the public hearing for the permit or entitlement;
- c. One or more of the conditions of the permit or entitlement have not been substantially fulfilled or have been violated;
- d. The exercise of rights granted by the permit or entitlement has been discontinued for a continuous period of at least 12 months;
- e. The improvement authorized in compliance with the permit or entitlement is in violation of any code, law, ordinance, regulation, or statute; or
- f. The improvement/use allowed by the permit or entitlement has become detrimental to the public health, safety, or welfare, or the manner of operation constitutes or is creating a public nuisance.

The Zoning Administrator has determined, pursuant to finding “a”, that the circumstances under which CUP#5535 was granted have been changed by the applicant to a degree that the findings contained in the original CUP can no longer be made in a positive manner and the public health, safety, and welfare require the revocation. The Zoning Administrator has also determined, pursuant to finding “f” above, that the use allowed by the CUP has become detrimental to the public health, safety, and welfare, and the manner of operation is creating a public nuisance.

Hearing Officer Public Hearing

The Revocation of CUP #5535 was presented to the Hearing Officer at a public hearing on July 17, 2019. Staff recommended that the Hearing Officer approve the revocation, based on the analyses that the findings necessary for revocation could be made.

At the hearing, staff provided an overview of the project and presented grounds for revocation. During public testimony, four members of the public spoke in favor of the revocation of the CUP. Speakers in support of the revocation expressed concern regarding the operational impacts of the events.

At the conclusion of public testimony, the Hearing Officer approved the revocation, as recommended by staff. This decision was based on the findings included in Attachment B (Decision Letter). To supplement the decision, the Hearing Officer provided an addendum with explanation for approval of the revocation (Attachment G).

Board of Zoning Appeal's Public Hearing

On July 26, 2019, Pasadena Lots 70, LLC filed an appeal (Attachment F) with the Board of Zoning Appeals citing disagreement with the decision of the Hearing Officer.

On October 30, 2019, the Board of Zoning Appeals considered an appeal of the Hearing Officer's decision to approve the revocation of the CUP. A response to each of the appellant's claims was provided to the Board of Zoning appeals as a component of the staff report. Staff recommended that the Board of Zoning Appeals adopt the environmental determination and approve the revocation of the CUP. At the hearing, the appellant spoke in opposition to the revocation proceedings. During public testimony, members of the public spoke in support of the revocation. At the conclusion of the public hearing, and after public testimony, the Board of Zoning Appeals voted (5-0) to adopt the environmental determination and approved the revocation.

APPEAL OF BOARD OF ZONING APPEALS DECISION:

On November 12, 2019, Pasadena Lots 70, LLC submitted an appeal application (Attachment E) to the City Council. The hearing before the City Council is a de novo hearing where the City Council has no obligation to honor the prior decisions and has the authority to make an entirely different decision.

The appellant has cited the following reasons for the appeal of the Board of Zoning Appeals' decision:

- Since the issuance of the CUP, the applicant has been in compliance with all the conditions of approval; and
- The Board of Zoning Appeals' decision did not meet the stringent standard for revocation of a vested CUP right.

Responses to the Appeal:

APPELLANT CLAIM: Since the issuance of the CUP, the applicant has been in compliance with all the conditions of approval.

STAFF RESPONSE: Condition No. 2, from CUP #5535, states:

The events shall only occur within the following four areas as described in the attached Exhibit A - Ambassador Events CUP Map: Italian Garden, Merritt Mansion, Terrace Villa, and Fowler Garden. No events approved under this

Conditional Use Permit shall occur within the Great Lawn Area upon the issuance of the certificate of occupancy for Building Permits BLD2011-01116 and BLD2011-01117 by the City for the newly constructed residential dwelling units on the Ambassador West Campus, as described in the attached Exhibit A. A new or modification to this Conditional Use Permit will be required if the location of the event areas is modified.

As discussed in the analysis, when CUP#5535 was approved, the privileges granted included event space within the Merritt Mansion, Terrace Villa, Italian Garden and Fowler Garden areas of the Ambassador College Campus. Subsequent to the approval of the CUP, the applicant sold the Merritt Mansion and the Terrace Villa to separate private parties to be used as residences. The applicant incorporated the Italian Garden as part of the recreational open space for an adjacent 39-unit, for sale, multi-family residential project, and is now under private ownership and under the control of the homeowners association of the multi-family residential development. Of the four locations approved for event space, only the Fowler Garden remains under ownership of the applicant and continues to be used for event space. Accordingly, all events are now concentrated in one location, rather than being dispersed amongst four. The location of the event spaces has been modified and, as a result, the applicant has not been in compliance with this condition of approval.

Condition No. 7, from CUP #5535, states:

There shall be no more than 32 group events permitted per calendar. These group events include any event, regardless of size. An event by the same party utilizing two locations on campus shall be counted as one event only. Two events by two different parties occurring at the same time, on the same date, shall be counted as two events. The applicant shall provide the Zoning Administrator at the beginning of each month a list of group events for the month listing the date, time, location, number of attendees and staff, parking location, and parking agreement.

A list of group events has not been submitted to the Zoning Administrator since November, 2015 and, as a result, the applicant has not been in compliance with this condition of approval.

APELLANT CLAIM: The Board of Zoning Appeals' decision did not meet the stringent standard for revocation of a vested CUP right.

STAFF RESPONSE: It is staff's position that the findings to revoke the CUP can be made. The Board of Zoning Appeals determined that the findings could be made to revoke the CUP. Staff has provided responses to the required findings in Attachment A.

ANALYSIS:

The Zoning Administrator has determined, pursuant to finding “a” of Section 17.78.090 (Permit Revocation or Modification), that the circumstances under which CUP#5535 was granted have been changed by the applicant to a degree that the findings contained in the original CUP can no longer be made in a positive manner and the public health, safety, and welfare require the revocation.

When CUP#5535 was issued to the applicant (City Ventures, LLC), the privileges granted included up to 32 group events per calendar year within the Merritt Mansion, Terrace Villa, Italian Garden and Fowler Garden areas of the Ambassador College Campus. The Merritt and Terrace Villa mansions include interior and exterior event spaces while The Italian Garden and Fowler Garden are exclusively outdoor event spaces. Approximately 100 on-site parking spaces were provided on three surface parking lots along Green Street. Shared parking was approved to utilize the parking lot at Elk’s Lodge located at 400 West Colorado Boulevard as well as the parking lot at Maranatha High School located at 169 South St. John Avenue, which is located adjacent to the east of the campus. Elk’s Lodge contains 246 parking spaces, while Maranatha High School contains 250 parking spaces. The approval also included the use of off-street valet parking during events, with a valet attendant located adjacent to Green Street.

Subsequent to the approval of the CUP, the applicant sold the Merritt Mansion to a private party. The applicant also sold Terrace Villa to a separate private party. City records indicate that building permits have been issued to utilize both structures as single-family residences. The applicant incorporated the Italian Garden as part of the recreational open space for an adjacent 39-unit, for sale, multi-family residential project, and is now under private ownership and under the control of the homeowners association of the multi-family residential development.

Since the original approval of the CUP, 148 multi-family residences have been constructed on the Ambassador College Campus, in and around areas originally approved for events. Although a majority of these residences were contemplated when the CUP was approved, the current operation of the use, in conjunction with the adjacency of the built-out residential environment, have resulted in a condition that creates conflict. The original CUP contemplated up to 32 events to occur, per year, at four locations throughout the Ambassador College Campus. In addition, the CUP approved up to 300 maximum daily guests for events from Sunday through Thursday and up to 500 maximum daily guests on Friday and Saturday among the four event spaces. The number of daily guests allowed is the maximum permitted at the four event locations on any given day. However, only Fowler Garden, an outdoor event space, remains under ownership of the applicant that is used for event space; Fowler Garden is immediately adjacent to multi-family and single-family residences along its boundary. Without Terrace Villa or Merritt Mansion to provide kitchen or restroom amenities, the events at Fowler Garden rely on either additional amenities brought on-site or the use of amenities from adjacent facilities not originally contemplated under the CUP. As a

result, pursuant to finding “f” of Section 17.78.090 (Permit Revocation or Modification), the use allowed by the CUP has become detrimental to the public health, safety, and welfare, and the manner of operation is creating a public nuisance.

City records indicate that events have not been held at the Merritt Mansion, Terrace Villa or the Italian Garden for at least the past two years. Substantiated by conversations with the property owners or their representatives, there are no intentions by the owners of the Merritt Mansion, Terrace Villa or the Italian Garden to utilize these areas as event space or to exercise any of the privileges granted by CUP#5535. Of the four approved locations approved for event space, only the Fowler Garden remains under ownership of the applicant and is used for event space.

The 100 on-site parking spaces, formerly provided along Green Street, no longer exist. The applicant received approval to demolish the surface parking lots to accommodate a for-sale multi-family residential project. Furthermore, the sharing of parking at the Elk’s Lodge is no longer being exercised by the applicant. At this time, the only parking utilized for the events is at Maranatha High School. The use of off-street valet parking during events, with a valet attendant, is provided by the applicant at Maranatha High School; not along Green Street, as originally approved.

Based on these changed circumstances caused by the applicant, the findings contained in the original CUP can no longer be made in a positive manner and the public health, safety, and welfare require the revocation. Specifically, the following three findings contained in the original CUP cannot be continued to be made:

3. *The proposed use is not in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of any applicable specific plan.*
4. *The establishment, maintenance, or operation of the use would, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*
6. *The design location, operating characteristics, and size of the proposed use would not be compatible with the existing and future land uses in the vicinity in terms of aesthetic values, character, scale, and view protection.*

The original CUP contemplated up to 32 events per year, at four locations throughout the Ambassador College Campus. In addition, the CUP approved up to 300 maximum daily guests for events from Sunday through Thursday and up to 500 maximum daily guests on Friday and Saturday among the four event spaces. The number of daily guests allowed is the maximum permitted at the four event locations on any given day. However, only Fowler Garden, an outdoor area, remains under the ownership of the applicant and available for use as event space; Fowler Garden is immediately adjacent to multi-family and single-family residences along its western boundary. Without Terrace Villa or Merritt Mansion to provide kitchen or restroom amenities, the events at Fowler

Garden rely on either additional amenities brought on-site or the use of amenities from adjacent facilities not originally contemplated under the CUP. Allowing up to 32 outdoor events per year, with up to a daily maximum guest attendance of 300-500 at one outdoor event space immediately adjacent to multi-family and single-family residences, results in a commercial use that is not compatible with the adjoining residential neighborhood due to event impacts (e.g. amplified music, lighting, number of event attendees, event set-up and tear-down). Under the current circumstances, the concentration of event impacts (e.g. amplified music, lighting, number of event attendees, event set-up and tear-down) at one outdoor event location, immediately adjacent to multi-family and single-family residences along its western boundary, would be detrimental to the health, safety and general welfare of persons residing in the neighborhood and not compatible with the character of the abutting residential uses. Furthermore, the existing use is not in conformance with Policy 25.7 of the Land Use Element of the General Plan (Buffering Adjoining Residential Areas). This policy is intended to ensure that commercial uses adjoining residential neighborhoods are designed to be compatible with each other.

ENVIRONMENTAL ANALYSIS:

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15321, Class 21, Enforcement Actions by Regulatory Agencies), and there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. Section 15321 exempts actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered by the regulatory agency.

CONCLUSION:

It is staff's determination that there are reasonable grounds for revocation. Based on the changed circumstances caused by the applicant, the findings contained in the original CUP can no longer be made in a positive manner and public health, safety, and welfare require the revocation. Furthermore, staff has determined that the use allowed by the CUP has become detrimental to public health, safety, and welfare, and the manner of operation is creating a public nuisance. Therefore, staff recommends that the City Council uphold the Board of Zoning Appeals' decision to revoke Conditional Use Permit #5535 with the findings in Attachment A.

FISCAL IMPACT:

There is no fiscal impact as a result of this action and will not have any indirect or support cost requirements.

Respectfully submitted,



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Prepared by:



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Reviewed by:



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Approved by:



STEVE MERMELL
City Manager

Attachments: (10)

- Attachment A – Recommended Specific Findings
- Attachment B – Hearing Officer Decision Letter (dated July 19, 2019)
- Attachment C – Appeal Application of Hearing Officer decision (received July 26, 2019)
- Attachment D – BZA Decision Letter (dated October 31, 2019)
- Attachment E – Appeal Application of BZA decision (received November 12, 2019)
- Attachment F – Decision Letter for CUP#5535 (dated March 13, 2013)
- Attachment G – Hearing Officer Decision Addendum
- Attachment H – BZA Staff Report (dated October 30, 2019), without attachments
- Attachment I – Hearing Officer Staff Report (dated July 17, 2019), without attachments
- Attachment J – Correspondence Received for the October 30, 2019 BZA hearing