

Agenda Report

TO: CITY COUNCIL

DATE: MARCH 19, 2001

FROM: CITY MANAGER

SUBJECT: APPEAL OF EXPRESSIVE USE PERMIT #3820 AT 960 BOSTON COURT

CITY MANAGER'S RECOMMENDATION: It is recommended that after a public hearing, the City Council:

1. Acknowledge that the project is categorically exempt from the California Environmental Quality Act (CEQA) as Class 3 and 32 for new construction and urban in-fill developments;
2. Find that the proposed commercial entertainment use is consistent with the General Plan; and
3. Adopt the findings contained in Attachment B and the conditions of approval contained in Attachment C and approve the expressive use permit request.

EXECUTIVE SUMMARY:

Approval of this application will permit a commercial entertainment use (99 seat equity waiver theater with a 61 seat recital hall) to be constructed at 960 Boston Court on an existing self-service parking lot. Staff's recommendation of approval was based on the compatibility of the commercial entertainment use with surrounding uses in the area, the fact that the use will be meeting the parking requirements and recommended conditions of approval would minimize any impacts on adjacent uses. The proposed hours of operation of 10 am to 11 p.m., seven days a week, will not result in substantial impacts to the surrounding uses. On-site parking consists of 45 spaces of which 37 are required for the theater use. The Zoning Hearing Officer heard this application on February 7, 2001 and approved the expressive use permit with conditions. On February 14, 2001, a group of local business owners within close proximity to the project site filed an appeal with the City Clerk.

BACKGROUND:

On December 20, 2000, the Zoning Hearing Officer heard the application for the Expressive Use Permit. He approved the application with conditions as recommended by staff. There were no added or modified conditions. The decision of the Zoning Hearing Officer was appealed on January 2, 2001 to the City Clerk. The reasons for the appeal include incorrect notification of

owners within the required 300-foot radius and the loss of the existing parking lot. Based on this information staff reviewed the ownership list and confirmed that there were property owners missing from the list. Because of this incorrect notification, the Zoning Administrator ordered a new hearing and rescheduled it for February 7, 2001. Staff collected data from the assessor's records and updated the mailing list of owners.

On February 7, 2001, the Zoning Hearing Officer heard the case and received testimony from the applicant and his representatives. He also heard testimony from six people in opposition. Initial concerns raised by those in opposition included: 1) the loss of the parking lot that supports the adjacent and surrounding businesses, 2) noise from the proposed use, 3) the setbacks adjacent to the commercial buildings to the south, 4) lack of parking on the street and in the structure across the street and 4) security and crime. Additional issues that were raised related to three buildings to the south of the parking lot that have rear yards adjacent to the parking lot. With the proposed project these businesses will have no access to the rear of their buildings. Finally, there was an issue raised regarding the declaration of the property as surplus land and a concern as to why property owners and businesses in the area were not notified. Those that spoke in opposition also presented a petition of 64 names and signatures to stop the removal of the parking lot. They also submitted 20 letters from property owners within a 300-foot radius of the project site regarding their need for the parking lot. After receiving the testimony, the Zoning Hearing Officer approved the expressive use permit application with conditions.

On February 14, 2001 a group of business and property owners within a 300-foot radius of the project site filed an appeal with the City Clerk. The basis of their appeal are the following reasons: 1) The project should not have been given a categorical exemption under the guidelines of the California Environmental Quality Act required for new construction; 2) Failure to meet the Pasadena Municipal Code requirements for offering surplus City property for sale; 3) Loss of the parking lot that is used by surrounding businesses. The parking lot supports the City's goals for using shared parking in the downtown. Over half of the property owners within a 300-foot radius of the Boston Court lot have submitted written statements regarding the importance of the lot to businesses in the area; and 4) Loss of parking by business owners outside of the immediate area including Lake and Colorado business owners. The above reasons for appeal will be discussed further in the analysis below.

ANALYSIS:

The applicant is requesting to operate a commercial entertainment use that consists of a 99 seat equity waiver theater for live productions with a recital hall containing 61 seats. The theater will be used for productions of the American Theater, classical plays, and new works plays. The recital hall will include performances from string quartets, classical music, jazz, classical folk music and piano recitals of classical music. The site where the use is proposed is a public parking lot owned by the City and currently in escrow.

An Expressive Use Permit is required for a theater use to ensure any potential effect that the commercial entertainment use will have on adjacent commercial or residential uses are reviewed and conditioned to be compatible. The proposed theater is adjacent to other commercial entertainment uses such as the Ice House, La Boom Club and the Academy Theater. The proposed theater use does not meet the definition of an adult business use and therefore is only subject to the findings of the expressive use permit. The criteria for approval of an expressive use permit include compliance with development standards, design criteria, sanitation provisions, fire safety regulations and crime prevention services. The proposed project is in compliance with the development standards for the district.

The project site is surrounded by commercial uses which include retail and commercial businesses and the Ice House to the south, the Department of Social Security to the north, offices to the west, a parking lot, La Boom nightclub, Academy Theater, commercial businesses and residential properties to the east. The majority of these uses are daytime uses with the exception of the two nightclubs and theater.

The proposed theater building is 12,209 square feet, two stories in height and situated along the Mentor Avenue frontage with proposed on-grade parking at the side and rear. There are 45 parking spaces proposed for the project with 37 being required by the zoning code. The first floor of the building consists of the theater with 99 fixed seats and an elevated stage with dressing rooms and other ancillary uses at the rear. The recital hall on the south side of the building contains 61 unfixed seats. The second floor will be used for equipment storage and a place for the technicians to operate lighting and sound. Alcohol will not be served but a concession stand is shown to serve pre-packaged items and drinks. The proposed hours of operation will be from 10:00 a.m. until 11:00 p.m. seven days a week with performances occurring in the evening between 7:00 p.m.-10:30 p.m. with the exception of school productions on Wednesdays from 1:00 p.m.-3:00 p.m. The students would arrive by bus. The proposed hours of operation would not result in substantial impacts based on conflicting hours of operation with the adjacent commercial uses in the area that primarily have day time hours of operation.

The basis of the appeal by the surrounding property owners and business owners described earlier include the following issues:

(1) The project should not have been given a categorical exemption under the guidelines of the California Environmental Quality Act required for new construction.

Staff made an environmental determination based on the merits of the project and the general thresholds called out in the CEQA guidelines to determine the appropriate environmental determination. The project was determined to be exempt under the New Construction exemption Section 15303 based on a net floor area of 10,000 square feet. After further review staff determined that the project was also exempt under the In-fill Development exemption, Section 15332 for projects in an urban area. This exemption is only applicable to projects that are meeting all of the development standards of the Zoning Code. In review of the general thresholds for CEQA to determine that a project will have significant effect on the environment the following definition applies: "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land air, water, mineral flora fauna ambient noise, and objects of historic or aesthetic significance.

Staff's review of the project did not identify any environmental impacts based on the CEQA guideline thresholds. The Public Works and Transportation Department reviewed the project and determined that there were no impacts related to traffic and parking. Therefore, the project qualified for the exemptions stated above.

(2) Failure to meet the Pasadena Municipal Code requirements for offering surplus City property for sale.

This property was reviewed by the Planning Commission and the City Council prior to its declaration as surplus property. The City Council declared this land as surplus property and directed it to be sold on August 16, 1999.

The Zoning Hearing Officer's decision to approve the Expressive Use Permit is not required to take into account the issue of whether or not the City followed the correct procedure in declaring this land as surplus property. The Zoning Hearing Officer based his decisions on the merits of the application with the assumption that the City correctly followed the procedures. The declaration of the land as surplus or the sale of the land is not under the review authority of the Zoning Hearing Officer. His decisions are based on the appropriateness of the proposed land use for the site considering its surroundings and if the findings to approve the project can be made.

- (3) Loss of the parking lot that is used by surrounding businesses. The parking lot supports the City's goals for using shared parking in the downtown. Over half of the property owners within a 300-foot radius of the Boston Court lot have submitted written statements regarding the importance of the lot to businesses in the area.**

Neighboring properties object to the loss of the parking lot because the lot provides additional parking in an area where many of the properties do not have on-site parking, however the Zoning Hearing Officer has the responsibility to decide if the proposed land use before him is appropriate for the site and to address conflicts of the use with adjacent properties. It is not within the authority of the Zoning Hearing Officer to decide if the existing parking lot should remain.

- (4) Loss of parking by business owners outside of the immediate area includes Lake and Colorado business owners.**

The parking lot provided additional parking to the surrounding area. However, the City Council determined that this land was surplus and the property was sold and is currently in escrow. It is beyond the scope of the Zoning Hearing Officer to determine whether the parking lot should have remained because it served the property owners along Lake and Colorado.

GENERAL PLAN

The proposed use is in the sub area district A5 and is in compliance with the following objectives of the general plan; Objective 1(Targeted Development) Direct higher density development away from Pasadena's residential neighborhoods and into targeted areas, creating an exciting urban core with diverse economic, housing, cultural and entertainment opportunities. Further, Policy 1.1 (Targeted Development Areas) Geographical areas have been identified where the bulk of future economic development is to occur. Policy 1.5 (Urban Villages) authorizes and encourages Urban Villages where appropriate and feasible in the urban core. Objective 10: Diverse Economy, Policies 10.1 Target new development into the urban core, the Northwest Enterprise Zone, along East Colorado, and to other specific growth areas. Policy 10.6 (New Businesses) Recruit new business to provide retail and other services and employment and other opportunities for Pasadena residents and visitors. Policy 10.10-(Regional Center) Encourage targeted development of cultural, scientific, corporate, entertainment and educational businesses and uses to promote Pasadena as a center for such activities in our region. The proposed theater use will be located in the Central District, which has been identified as the urban core for the City. The use will be developed amongst other commercial uses and is near the end of the boundary for the Playhouse District. The proposed theater use

will further the City's goals to provide entertainment and cultural activities within the central district.

ENVIRONMENTAL DETERMINATION

Staff made an environmental determination based on the merits of the project and the general thresholds called out in the CEQA guidelines to determine the appropriate environmental determination. The project was determined to be exempt under the New Construction exemption Section 15303 based on a net floor area of 10,000 square feet in area on sites zoned for such use, on sites zoned for such use, if not involving significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive. After further review staff determined that the project was also exempt under the In-fill Development exemption, Section 15332 for projects in an urban area that comply with the following conditions (a) The project is consistent with all applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; (b) the proposed development occurs within the city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) the project site has no value as habitat for endangered, rare or threatened species; (d) approval of the project would not result in any significant effects relating to traffic, noise air quality or water quality; (e) the site can be adequately served by all required utilities and public services. In review of the general thresholds for CEQA to determine that a project will have significant effect on the environment the following definition applies: "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land air, water, mineral flora fauna ambient noise, and objects of historic or aesthetic significance.

Staff's review of the project did not identify any impacts based on the CEQA guideline thresholds. The Public Works and Transportation Department reviewed the project and determined that there were no impact related to traffic and parking. Therefore, the project qualified for the exemptions stated above.

FISCAL IMPACT:

It is anticipated that the approval of this Expressive Use Permit for a commercial entertainment use will provide the following fees and tax benefits to the City:

Annual health permit fees of \$462.00 for inspection of the concession stand.

Annual business license tax of \$178.30.

Annual estimated property taxes to the city would be \$11,496.00.

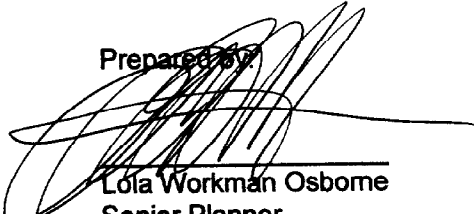
Construction permit fees of \$156,000.00.

Construction tax of \$43,340.00


Respectfully submitted,


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LIST OF ATTACHMENTS