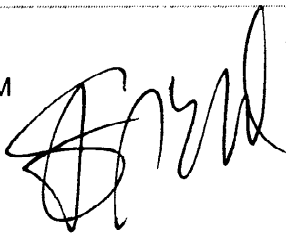


Jomsky, Mark

From: Madison, Steve
Sent: Monday, March 16, 2009 8:33 PM
To: Jomsky, Mark
Subject: request for call-up



Mark--I wish to agendize for consideration the action taken by the Hearing Officer on March 4, 2009 regarding revocation/modification of conditional use permit #2051 and conditional use permit #2421 (case no. PLN#2009-00012, 61 N. Raymond Avenue), for consideration for review by the Council BOZA as appropriate. If any further information is needed, please advise. Thanks.

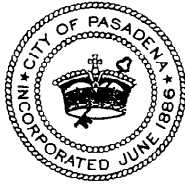
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CITY OF PASADENA

03/23/2009

-7-B-3-

04/06/2009

7.B.1.



PLANNING & DEVELOPMENT DEPARTMENT
PLANNING DIVISION

March 6, 2009

John Pena
Vive
61 N. Raymond Avenue
Pasadena, CA 91103

Michael Schlesinger
Cambra LLC
9440 Santa Monica Boulevard, Suite 708
Beverly Hills, CA 90210

**Subject: Revocation/Modification of Conditional Use Permit #2051 PLN#2009-00012
and Conditional Use Permit #2421
61 N. Raymond Avenue
Council District 3**

Dear Mr. Pena:

Your application for a **Revocation/Modification to Conditional Use Permit #2051 and Conditional Use Permit #2421** at 61 N. Raymond Avenue was considered by the Hearing Officer on **March 4, 2009**.

REVOCATION/MODIFICATION OF CUP #2051 AND CUP #2421:

1) Conditional Use Permit #2051: The Hearing Officer will review the Conditional Use Permit for full alcohol sales for an existing restaurant (Vive). The purpose for the hearing is to determine whether there are reasonable grounds to revoke the Conditional Use Permit or modify the conditions of approval. Grounds for revocation or modification include violation of the existing conditions of approval and/or operation of the business in a manner that constitutes a nuisance.

2) Conditional Use Permit #2421 (which includes Minor Conditional Use Permit #2863): The Hearing Officer will also review the Conditional Use Permit for the same purpose noted above, which was approved in 1991 for live entertainment and dancing for an existing restaurant (Vive).

After careful consideration of this application, and with full knowledge of the property and vicinity, the Hearing Officer made the findings as shown on Attachment A to this letter. Based upon these findings, it was decided by the Hearing Officer that the Modification to the Conditional Use Permits be **approved** with the new conditions listed in Attachments B and C and in accordance with submitted plans stamped **March 4, 2009**.

You are advised that an application for a building permit is not sufficient to vest the rights granted by this approval. The building permit must be issued and construction diligently

pursued prior to the expiration of this approval. It should be noted that the time frame within which judicial review of the decision must be sought is governed by California Code of Civil Procedures, Section 1094.6. The right granted by this approval may be revoked if the entitlement is exercised contrary to the conditions of approval or if it is exercised in violation of the Zoning Code.

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 (March 16, 2009)**. The effective date of this case will be **March 17, 2009**.

Prior to such effective date, a member of the City Council or Planning Commission may stay the decision and request that it be called for review to the Board of Zoning Appeals. However, 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 \$3,029.81. The Appeal fee for Non-profit Community-based Organizations pre-registered with Neighborhood Connections is \$1,514.91.

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. **You should call the Current Planning office at 626-744-6777 to find out if any appeal or call for review has been filed before you submit your building permit application.** 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.

The Hearing Officer adopted the environmental determination that the project 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 1, §15301, Existing Facilities).

For further information regarding this case please contact **Jason Mikaellan** at **(626) 744-6754**.

Sincerely,



Paul Beard
Hearing Officer

Enclosures: Attachment A, Attachment B, Attachment C

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

**ATTACHMENT A
SPECIFIC FINDINGS FOR MODIFICATION**

CONDITIONAL USE PERMIT #2051 AND CONDITIONAL USE PERMIT #2421

1) Modification of Conditional Use Permit #2051 – for on-site full alcohol sales

(Original findings for approval made on November 1, 1989 and updated on October 16, 1991)

1. *The proposed location of the conditional use is in accordance with the special purposes of this title and the purposes of the district in which the site is located because the subject development is located in an area zoned Central District which permits alcohol sales through the conditional use permit process.*
2. *The proposed location of the conditional use and the proposed conditions under which is would be operated or maintained will be consistent with the General Plan and environmental performance standards of Section 17.64.260 and will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use, nor injurious to properties or improvements in the vicinity because the development is located in the Central District which permit the land use proposed in this application. Additionally, the sale of alcohol beverages would be conducted in accordance with environmental performance standards of Section 17.64.260.*
3. *The proposed conditional use will comply with the provision of this title, including any specific condition required for the proposed conditional use in the district in which it would be located in that conditions of approval will ensure the continued compliance with all provisions of this title.*
4. *The proposed location of the conditional use permit will not adversely affect the general welfare of the surrounding property owners in that alcoholic beverages would be sold in conjunction with food items consequently reducing the potential for adverse impact to adjacent land uses resulting from public intoxication.*
5. *The proposed location of the conditional use will not result in an undesirable concentration of premises for the sale of alcoholic beverages, including beer and wine, in the area in that the development would be designed and operated in a manner to attract a professional clientele. Alcohol sales in conjunction with a restaurant use has not been an undesirable land use in Old Pasadena in the past.*
6. *The proposed location of the conditional use will not detrimentally affect the nearby surrounding area after giving consideration to the proximity and nature of the proposed use with respect to residential structures, churches, schools, hospitals, public playgrounds, places of assembly which attract minors and other similar uses, or other establishments offering alcoholic beverages (including beer and wine) for sale for consumption on-site of off-site in that alcohol served in conjunction with a restaurant use has not in the past adversely impacted adjacent land uses in the Central District.*
7. *The proposed location of the conditional use will not aggravate existing problems created by the sale of alcohol, such as loitering, public drunkenness, sale to minors, noise and littering*

because a waiting area for restaurant patrons will be provided within the restaurant to ensure that loitering would not occur.

(finding to modify hours of operation made on February 5, 1997)

8. *The changed circumstance sufficient to modify the original approval is that the restaurant's location in Old Pasadena is such that on Federal holidays and New Year's Eve limited hours would be a hardship for the business.*

(new finding for modification made on March 4, 2009)

9. *There are sufficient grounds to justify revocation that can be corrected by modifying the existing conditions and imposing new and additional conditions in that through the revocation process and a public hearing to revoke this use, a new set of twenty six conditions have been developed to correct and mitigate problems with the use. These conditions are shown in Attachment B. These conditions are a combination and clarification of the prior conditions which approved this use and new conditions designed to mitigate problems with the use. If the owners of this use comply with these conditions the use will not be a public nuisance and will be compatible with the surrounding area, and revocation of the use will not be necessary. This new set of conditions are designed to insure that the use remains primarily a restaurant with limited dancing and entertainment, and includes conditions which require crowd control, noise levels controls, security guards, an alcohol management training program for employees, and participation in the City's Mitigation Monitoring Program. Condition #26 requires that a public hearing be conducted within one year to review compliance with the new conditions imposed by this action.*

2) Modification of Conditional Use Permit #2421 (which includes Minor Conditional Use Permit #2863) – for live entertainment and dancing

(Original findings for approval made on October 16, 1991 and updated on June 15, 1994)

10. *The proposed location of the conditional use is in accordance with the special purposes of Title 17 and the purposes of the district in which the site is located in that the subject site is located in the Old Pasadena Central District which is intended to provide entertainment areas oriented to pedestrian activity. The proposed live entertainment would be consistent with these purposes since the site is in the Old Pasadena Central District at the intersection of two pedestrian oriented streets and the proposed use would allow dancing to enhance an existing live entertainment use entitled under Conditional Use Permit #2421.*
11. *The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and environment performance standards of Section 17.64.260 and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of such use, nor injurious to properties or improvements in the vicinity in that the land use objectives of the General Plan promote economic vitality and pedestrian oriented commercial centers. The project will encourage the continued success of the existing restaurant with live entertainment by providing incidental dancing. The project will have a negligible impact upon the environment since the existing use is existing and has operated with the entertainment permit for several years. The Police Department has reviewed this*

application and is not opposed to the proposed modification to the existing entertainment license.

12. *The proposed conditional use will comply with the provisions of Title 17, including any specific condition required for the proposed conditional use in the district in which it would be located* in that any violation of the regulations of Title 17 or the conditions of approval of this application would be grounds for revocation of this entitlement and the termination of the use. The project has met all the applicable development standards of the revised Zoning Ordinance.

(new finding for modification made on March 4, 2009)

13. *There are sufficient grounds to justify revocation that can be corrected by modifying the existing conditions and imposing new and additional conditions in that through the revocation process and a public hearing to revoke this use, a new set of twenty six conditions have been developed to correct and mitigate problems with the use. These conditions are shown in Attachment B. These conditions are a combination and clarification of the prior conditions which approved this use and new conditions designed to mitigate problems with the use. If the owners of this use comply with these conditions the use will not be a public nuisance and will be compatible with the surrounding area, and revocation of the use will not be necessary. This new set of conditions are designed to insure that the use remains primarily a restaurant with limited dancing and entertainment, and includes conditions which require crowd control, noise levels controls, security guards, an alcohol management training program for employees, and participation in the City's Mitigation Monitoring Program. Condition #26 requires that a public hearing be conducted within one year to review compliance with the new conditions imposed by this action.*

**ATTACHMENT B
MODIFIED CONDITIONS OF APPROVAL**

CONDITIONAL USE PERMIT #2051 AND CONDITIONAL USE PERMIT #2421

1. The site plan and floor plan shall substantially conform to the plans submitted and stamped "Received at Hearing, March 4, 2009", except as modified herein.
2. The approval of this application is for a Conditional Use Permit for on-site full alcohol sales (beer, wine and distilled spirits) for an existing restaurant and for live entertainment with dancing. Live entertainment shall be limited to dancing with amplified music and disc jockeys, live musical acts performed by groups of not more than four members and other similar activities subject to the review and approval of the Zoning Administrator. Live entertainment may occur on not more than four days per week.
3. Establishment of the dance floor area shall substantially conform to the plans submitted for this application, which shows a 250 square foot dance floor in the northeast room of the tenant space. Any modification to the size or location of the dance floor shall be subject to the review and approval of the Zoning Administrator.
4. The Zoning Administrator, at any time, can call for a review of the approved conditions at a duly noticed public hearing. 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.
5. These conditions of approval shall supersede all previously approved conditions of approval for Conditional Use Permit #2051, Conditional Use Permit #2421 (which also includes Minor Conditional Use Permit #2863).
6. The hours of operation shall be limited to 11:00 a.m. until 11:00 p.m. on Sunday through Thursday and from 11:00 a.m. until 1:00 a.m. (the following day) on Friday, Saturday, Federal Holidays and New Year's Eve.
7. The subject use shall be maintained as a bona-fide eating establishment and shall remain open for lunch and dinner clientele. Food service shall remain available during all hours of operation. There shall be no cover charge to enter the restaurant, with the exception of after 10:00 p.m. on Friday, Saturday, Federal Holidays and New Year's Eve.
8. The sale of alcoholic beverages shall not exceed the sale of food and non-alcoholic beverages on a quarterly basis. To ensure the primary use of the premises to be maintained as a restaurant, a record shall be maintained at the premises at all times and be presented to the City agencies for review upon request.
9. Alcoholic beverages shall be served in non-disposable containers.
10. The off-site sale and off-site consumption of alcohol is strictly prohibited.
11. The owner shall continually educate staff regarding alcohol laws. All employees selling or serving alcohol shall be required to participate in an alcohol management training program prior to the operation of selling/serving alcohol.

12. The following prevention measures shall be undertaken to reduce the potential for alcohol related problems:
 - a. Security guard service shall be provided at the site and the immediate vicinity from 8:00 p.m. until one-half hour after closing on Friday and Saturday and any other evening where live entertainment is present.
 - b. Taxicab phone numbers shall be posted in a conspicuous location at all times in the area(s) where alcohol is served to customers.
 - c. The availability of non-alcoholic beverages shall be made known and offered to customers.
13. The applicant shall incorporate more permanent seating in the main dining hall, bar area and lounge area west of the bar. The design of the seating shall be subject to the review and approval of the Zoning Administrator.
14. The applicant shall install signs indicating the area of the restaurant reserved for dancing. Additional signs shall be placed in the restaurant stating dancing is not permitted in other areas of the restaurant. The location of the signs shall be subject to the approval of the Zoning Administrator.
15. Outside promoters shall not be permitted without specific consent from the Police Department and Zoning Administrator.
16. The applicant shall provide a crowd control plan for review by the Planning Department and Police Department. This shall include a method of retaining all queues to the establishment of the subject site. The plan shall mitigate congregation of patrons along the sidewalk and/or public right-of-way. Security guard service and restaurant management shall be responsible for enforcing the crowd control plan.
17. The use shall comply with the City's Noise Ordinance (Chapter 9.36 of the Pasadena Municipal Code). In addition, noise readings of amplified sound from the site shall not exceed 15 decibels above ambient noise levels at curbside directly in front of the establishment. All doors and windows shall remain closed during business hours.
18. The site shall be maintained in a litter and graffiti free manner. Any graffiti that should appear on the site shall be removed within 48 hours.
19. Video games or similar loitering attractions shall not be permitted on-site.
20. Any signs erected to advertise live entertainment must comply with the regulations of Chapter 17.48 of the Municipal Code. Signs advertising brands of alcoholic beverages or the availability of alcohol beverages for sale shall not be visible from any location off the subject site unless the sign is exempt from Chapter 17.48 of the Municipal Code.
21. The number of parking credits allowed under Variance #10956 shall not be exceeded.
22. The applicant shall meet the applicable code requirements of all other City Departments.
23. 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 the Conditional Use Permit.

24. The final decision letter and conditions of approval shall be incorporated in the final tenant improvement building plans.
25. The proposed project, Activity Number **PLN2009-00012**, is subject to the City's Condition and Mitigation Monitoring Program and is also 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 at 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 monitoring fees may result in revocation proceeding of this entitlement.
26. The Hearing Officer shall hold a public hearing within one year of the effective date of this approval to review for compliance the modified conditions of approval.

ATTACHMENT C

**MEMORANDUM - CITY OF PASADENA
DEPARTMENT OF PUBLIC WORKS**

DATE: February 23, 2009

TO: Denver Miller, Zoning Administrator
Planning and Development Department

FROM: City Engineer
Department of Public Works


RE: Conditional Use Permits #2051 and #2421
61 North Raymond Avenue

The Department of Public Works has reviewed the application for Conditional Use Permits #2051 and #2421 at 61 North Raymond Avenue. The applicant is for the on-sits sale of full-alcohol sales and live entertainment at an existing restaurant (Vive). The modification of the Conditional Use Permit should be based upon satisfying all of the following conditions:

1. 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 on the subject frontage. Sidewalk dining shall comply with all the requirements of Chapter 12.13, entitled "Sidewalk Dining on Public Walkways", of the Pasadena Municipal Code.
2. The applicant shall repair any existing or newly damaged curb, gutter and sidewalk avoiding any damage to existing street trees and using the City's Tree Protection Standards available from the Parks and Natural Resources Division (744-4514), along the subject frontage.
3. All costs associated with these conditions shall be the applicant's responsibility.

Unless otherwise noted in this memo, all costs are based on the General Fee Schedule that is in effect at the time these conditions are met. A processing fee will be charged against all deposits.

If you have questions regarding the above conditions and requirements of the ordinances, please contact Sean Singletary, of this office, at (626) 744-4273.


DANIEL A. RIX
City Engineer

DAR:ss

Jomsky, Mark

From: Andrew Casana [andrew@englanderpr.com]
Sent: Monday, March 23, 2009 9:46 AM
To: Jomsky, Mark
Subject: continuance

Hello Mr. Jomsky,

I am writing you on behalf of our client:

Michael Schlesinger
Cambra Realty
9701 Wilshire Boulevard, 10th Floor
Beverly Hills, CA 90212
Main: 866-246-6413
Fax: 310-388-3169
michael@cambrare.com

We are asking for a continuance of the matter about Club Vive' and their CUP which is on tonight's Pasadena City Council agenda. Councilmember Madison has agreed to have the item continued so that we can discuss the matter with him.

Thank you

Andrew P. Casana
Partner
Englander and Associates
801 South Figueroa Street
Suite 1050
Los Angeles, Ca 90017
213-741-1500 office
213-747-4900
310-800-4734 Cel.
www.englanderassociates.com

3/23/2009

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7.B.3.

CORPORATE OFFICES

April 3, 2009

Pasadena City Council
100 N Garfield Avenue
Suite # 228
Pasadena, California
91101

Re: **Vive – Revocation of Conditional Use Permit # 2051 and #2421
and Expressive Use Permit # 4955**

Gentlemen,

We understand that Steve Madison brought the potential revocation of Conditional Use Permit (CUP) # 2051 and #2421 to Council on March 23rd and it has now been continued until April 6th. We will be out of town on April 6th but we would like register our support for revocation of all of the above mentioned permits.

As an owner and Landlord of two buildings in Old Pasadena, we have grave concerns about the activities that occur, on a regular basis, at Vive. Their activities continue to compromise and potentially endanger all of the law abiding businesses in Old Pasadena. Almost two years ago, Vive was officially notified of numerous violations of its CUP. It did not change its operation to comply with its CUP even while going through the motions of applying for modifications to its CUP. It postponed and prolonged the process as long as it could and eventually its application for modifying its CUP was denied even after an appeal. The City finally called up the case for review to determine whether the City should revoke its CUP and instead of revoking the CUP, the City proposed a new set of conditions that the establishment must adhere to. Unfortunately, Vive has demonstrated and continues to demonstrate that it does not believe it needs to comply with the conditions placed upon it.

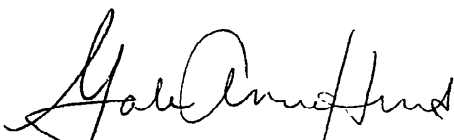
Vive is a restaurant, not a bar. As such, it is required to serve food at all times. It must generate more than 50% of its revenue from sources other than alcohol. Dancing is allowed in a small room in the northeast portion of the space but not in the main dining room. Music should be amplified to a level that can be heard but that does not disturb conversation. There is no loitering permitted outside nor are customers allowed to line up along the street. Closing time is supposed to be 11 PM during the week and 1 AM on the weekends.

Even now, after numerous warnings, Vive operates with flagrant disregard of the conditions placed upon it by its CUP. Vive promotes itself as a lounge not a restaurant in on air advertising, print ads and on its web site. They have lines of customers outside the building waiting to enter, they consistently clear out their main dining room to create a dance floor (see attached pictures printed from their website), they are open later than 1 AM on the weekends, and their noise level is consistently above the allowed noise level per their CUP.

By rewarding their defiant behavior and allowing them to continue to operate at this point sets a new standard for businesses in the City of Pasadena. It is a clear message to all businesses that they do not need to comply with the conditions the City places upon them.

We urge the City Council to do the right thing and revoke the CUP for Vive. If you have any questions regarding our comments, you can reach me at (323) 850-3040 or by email at jt@valhallapix.com.

Sincerely,


Gale Anne Hurd


Julie Thomson





