

Agenda Report

TO: CITY COUNCIL

DATE: AUGUST 3, 2009

FROM: CITY MANAGER

SUBJECT: CALL FOR REVIEW OF ZONING ADMINISTRATOR INTERPRETATION (ZA #32), 217 SOUTH MICHIGAN AVENUE (EDDIE'S MARKET)

RECOMMENDATION:

It is recommended that the City Council:

1. Acknowledge that this action is categorically exempt from CEQA; and
2. Overturn the Board of Zoning Appeal decision and uphold the decision of the Zoning Administrator regarding Section 17.71.060.B of the Zoning Code, that the nonconforming alcohol sales at 217 So. Michigan Ave. (Eddie's Market) has been discontinued for more than 12-months and cannot be reestablished.

BACKGROUND:

The Zoning Administrator made a determination in December 2008 that the nonconforming sales of beer and wine for off-site consumption cannot be reestablished at 217 South Michigan Avenue (Eddie's Market) since alcohol was not sold on the property for more than 12 consecutive months. The property is located in the RM-48 (Multi-Family Residential, 48 units per acre), and is currently developed with a commercial building, which is and has been used as a food market. The property also had a license from the California Department of Alcoholic Beverage Control (ABC) to sell beer and wine for off-site consumption. Both these uses are considered nonconforming uses since they are not allowed in the RM-48 Zoning District.

The property owner submitted an appeal of the Zoning Administrator's interpretation of the nonconforming alcohol sales based on the fact that Section 17.71.060.B.3.a.2 of the City's Zoning Code states:

- (2) If the [nonconforming] use is discontinued for a continuous period of 12 months or more, the land or structure shall lose its nonconforming status. The use shall be considered discontinued when any of the following apply:

- (a) The intent of the owner to discontinue use of the nonconformity is apparent;
or
- (b) Where characteristic furnishings and equipment of the use have been removed and not replaced with equivalent furnishings and equipments during this time.

The appellant argued that he never intended to discontinue the alcohol sales use for a continuous period of 12 months since repairs to the market has been under way since September 2007, when the last tenant was evicted.

At its May 20, 2009 Public Hearing, the Board of Zoning Appeals overturned the Zoning Administrator's decision finding that the alcohol sales use could not have been reestablished prior to the reopening of the market use, and therefore the 12-month discontinuance should start on the date the market reopened (May 2008).

The City Council at their June 8, 2009 meeting discussed the Board of Zoning Appeals decision and the implications this could have on other existing nonconforming uses throughout the City and called this application up for review as well as initiated a Zoning Code Amendment by asking staff to amend the Zoning Code in order to remove the provisions related to intent and to clarify that the termination of a nonconforming use starts when the use has been discontinued.

The Zoning Code Amendment was reviewed by the Planning Commission at its July 8, 2009 meeting at which time the Planning Commission recommended approval of the amendments to the City Council. The City Council at its July 23, 2009 meeting reviewed and approved the amendments to the City's Zoning Code, as well as the first reading of the Ordinance. The second reading of the Ordinance is scheduled for the August 3, 2009 City Council meeting.

ANALYSIS

In considering any interpretation of the Zoning Code, the Zoning Administrator reviews the language identified in the Zoning Code and the intent. In this case, the provisions of Section 17.71.060.B.3.a.2 state that a use shall be considered discontinued when the intent of the owner to discontinue use of the nonconformity is apparent; or where characteristic furnishings and equipment of the use have been removed and not replaced with equivalent furnishings and equipments during this time.

In such situations, the property owner is required to show to the satisfaction of the Zoning Administrator that he never intended to discontinue the nonconforming use. Based on the facts submitted by the appellant, the Zoning Administrator found that the appellant has not provided sufficient fact to show his intent to continue the nonconforming sales of alcohol.

According to City records, no building, electrical or plumbing permit was obtained since September 2007. The property owner had the opportunity to obtain the ABC license to

continue selling alcohol from the previous tenant and declined to do so because of the price offered. Lastly, the property owner could have applied for a new license with the ABC office, and the property owner did not. These facts show the property owner did not have the intent to continue the sales of alcohol use on the subject property.

May 20, 2009 Board of Zoning Appeals Meeting

The Board of Zoning Appeals found that there were special circumstances related to this situation and determined that the sales of alcohol could not have resumed prior to the market use reopened in May 2008. As such, the Board of Zoning Appeals determined that the 12-month discontinuance for the alcohol sales shall start on the date the market reopened.

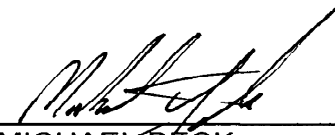
ENVIRONMENTAL REVIEW

Under CEQA Guidelines, Article 5, Section 15061(b)(3) describes the “general rule.” The general rule states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The action of the Board of Zoning Appeals regarding the Zoning Administrator’s interpretation of Section 17.71.060.B of the Zoning Code, Abatement and Termination – Termination by discontinuance will not result in an impact and can be seen with certainty to have no significant effect on the environment.

FISCAL IMPACT:

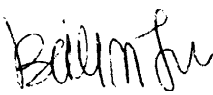
The project is recommended for disapproval and would have no fiscal impact on services. However, if approved, the project may also have the potential to increase police calls for service due to alcohol sale, which may have a negative fiscal impact on public safety.

Respectfully submitted,




MICHAEL BECK
City Manager

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Approved by:



Richard J. Bruckner
Director of Planning and Development

Attachments:

- A: Zoning Administrator's Determination Letter
- B: Board of Zoning Appeals Staff Report
- C: Board of Zoning Appeals Decision Letter