

Agenda Report

April 29, 2013

TO: Honorable Mayor and City Council

FROM: Planning & Community Development Department

SUBJECT: CONSIDERATION OF CALL FOR REVIEW: EXPRESSIVE USE PERMIT #6052 AND ASSOCIATED VARIANCE AT 25 NORTH RAYMOND AVENUE, THE NEW YORK DELI

RECOMMENDATION:

It is recommended that the City Council consider a call for review to the City Council of a Hearing Officer Decision regarding Expressive Use Permit No. 6052, at 25 North Raymond Avenue, the New York Deli.

EXECUTIVE SUMMARY:

On Monday, April 22nd the City Council, at the request of Councilmember Bryant, voted to call for review a Hearing Officer Decision to the Board of Zoning Appeals regarding Expressive Use Permit No. 6052 and a related Variance, and modification of Conditional Use Permit No. 5465 and a related Variance at 25 North Raymond Avenue, the New York Deli.

Subsequent to this action, it was determined that appeals of Expressive Use Permits are heard by the City Council and not the Board of Zoning Appeals. Consequently, the direction of this matter to the Board of Zoning Appeals is not possible under the City's Code as it relates to the Expressive Use Permit. Staff is therefore recommending that the City Council consider whether to call for review to itself, Expressive Use Permit No. 6052 and a related Variance.

BACKGROUND/SUMMARY:

On April 15, 2013, Councilmember Bryant requested a call for review of the Hearing Officer's decision regarding the above cited case.

On April 22, 2013 the City Council voted to Call for Review Expressive Use Permit (EUP) #6052 along with its associated Variances and Conditional Use Permit at 25 North Raymond Avenue ('The New York Deli') to the Board of Zoning Appeals (see page 2, Project Summary for a complete list of requested entitlements).

As indicated below, the subject property is located within the Alcohol Density 1 (AD 1) Overlay District. The AD Overlay was established to prevent the overconcentration of these uses within this area and requires that a nightclub with alcohol service or a use that sells alcohol for off-site consumption be located at least 250 feet from another such facility. In determining compliance with this standard, the straight line distance between the closest corners of the affected tenant spaces is used. This method of measurement is generally less restrictive than measuring parcel to parcel or building to building but reflects the intent the code regarding the separation of these 'facilities' and has always been used by staff when calculating distances between uses. In this case, the New York Deli is 240 feet from another such facility and the applicant's request for an EUP for a nightclub with alcohol service and off-site sales of alcohol was not in compliance with AD standards. Consequently, variances from the AD Overlay section have been requested to deviate from the distance requirement.

The Zoning Code differentiates EUPs from all other entitlements in the City in that the call for review of these types of applications must be heard by the City Council, not the Board of Zoning Appeals. Consequently, while the Board of Zoning Appeals may properly hold a hearing regarding the request for modifications to the existing Conditional Use Permit and the Variance from the distance separation requirements of the AD Overlay to sell alcohol for off-site consumption, the City Council is the proper review authority for appeals or Calls for Review of EUPs. In its presentation on April 22, 2013, this was overlooked by staff.

CALL FOR REVIEW

Due to the unique processing requirements of EUPs, the City Council is requested to consider whether or not to hear a Call for Review of the Variance to deviate from the 250 foot distance separation requirement of the AD Overlay Zone and the Expressive Use Permit to allow a nightclub with alcohol service at a future City Council meeting. Should the request for a Call for Review succeed, the public hearing before the City Council would occur on May 20, 2013 in order to comply with the Code's particular requirement that hearings on Expressive Use Permits occur within 30-days of a Call for Review (PMC Section 17.61.060.1(2)).

As previously directed by the City Council, the Board of Zoning Appeals is anticipated to hear the appeal of the Modification of Conditional Use Permit #5465 and its related Variance on May 15, 2013.

Should the consideration of the Call for Review of the Expressive Use Permit and its associated variance fail, the modification of the Conditional Use Permit and its Variance would continue to be heard by the Board of Zoning Appeals and the Hearing Officer's disapproval of the Expressive Use Permit and its Variance would stand.

Finally, while the Zoning Code requires that an appeal or Call for Review of an Expressive Use Permit be heard within 30 days, because this Expressive Use Permit is

subject to the AD-1 (Alcohol Density Overlay) regulations, it has an increased public notice requirement of 28 days instead of 14 days. Should Council decide to call up the EUP, these two requirements cannot both be achieved in this instance. Because the Expressive Use Permit timeline is in place to protect Constitutional rights, it should control. Therefore, should Council decide to consider the matter, staff will meet the 30-day deadline in which to hold an Expressive Use Permit review hearing, and will provide public notice of the associated Variance (mailings to owners and occupants within 500 feet of the property, posting of notices on light poles, etc. within 500 feet of the property, and the posting of a three-foot by four-foot sign at the site) as far in advance as possible and within the general 14 day noticing period.

PROJECT SUMMARY:

On April 3, 2013 a public hearing before the Hearing Officer was held to consider an Expressive Use Permit, a modification of a previously approved Conditional Use Permit, and two Variances for a property within the AD Overlay Zone. The requested entitlements are summarized below:

- 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 Saturdays 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.

City staff recommended disapproval of the Expressive Use Permit and both Variances. For Modification of the Conditional Use Permit City staff recommended approval of longer hours to sell alcohol (to 1:00 a.m.) and display of alcohol in the refrigerator case (limited to 50 percent of case area) and disapproval of the sale of alcohol for off-site consumption, charging of entry fees, and customized lighting and sound systems for events.

After receiving public testimony, the Hearing Officer upheld the staff recommendation to approve certain modifications to the existing Conditional Use Permit and disapprove: 1) the requested variances to deviate from the minimum separation requirements of the AD Overlay and 2) the EUP.

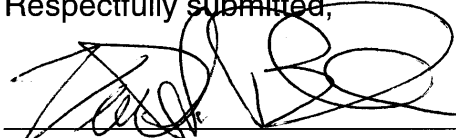
ENVIRONMENTAL ANALYSIS:

The consideration of a Call for Review has been determined to be exempt from the CEQA process pursuant to State CEQA Guidelines Section 15378, as the consideration is not a "project" as defined by CEQA. Should the Call for Review be heard by the City Council at a future date, the project will be analyzed per CEQA at that time.

FISCAL IMPACT:

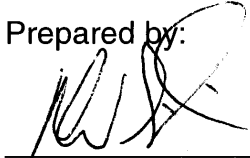
The consideration of a Call for Review will not have any fiscal impact.

Respectfully submitted,



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