



# Agenda Report

May 8, 2017

**TO:** Honorable Mayor and City Council

**FROM:** Planning and Community Development Department

**SUBJECT: APPEAL OF THE BOARD OF ZONING APPEALS' DECISION ON  
MODIFICATION OF EXPRESSIVE USE PERMIT #3537  
490 EAST UNION STREET (PASADENA MUSEUM OF CALIFORNIA  
ART)**

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Adopt the Environmental Determination that the proposed 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, Class 1 §15301, Existing Facilities); and
2. Uphold the Board of Zoning Appeals' decision and approve Modification to Expressive Use Permit #3537.

## **EXECUTIVE SUMMARY:**

On February 15, 2017, the Board of Zoning Appeals considered at its regularly noticed hearing, an appeal of the Hearing Officer's decision to approve Modification to Expressive Use Permit #3537. The request would allow modifications to existing conditions of approval to allow 55 events per calendar year to occur on the open terrace located on the third floor of the existing structure. Of the proposed 55 events, 29 events would be large events with a maximum of 140 attendees at any one time and 26 events would be small events with a maximum of 75 attendees. The proposed hours for the events would be from 6:00 p.m. to 10:00 p.m. Sunday through Thursday, and 6:00 p.m. to 11:00 p.m. on Friday and Saturday. Additionally, a Minor Conditional Use Permit was also submitted to allow the off-site sharing of parking spaces located at 505 East Colorado Blvd. The proposed events would require a maximum of 77 parking spaces, while the subject site contains 35 parking spaces. At the conclusion of the public hearing, the Board of Zoning Appeals made a motion to uphold the Hearing Officer's decision to adopt the environmental determination and to approve the Modification to

Expressive Use Permit #3537. The motion resulted in a 4-1 vote by the five members present.

On February 23, 2017, the Maryland Homeowners Association submitted an appeal application (Attachment C) to the City Council. The hearing before the City Council is a de novo hearing where the Council has no obligation to honor the prior decisions and has the authority to make an entirely different decision.

Staff recommends that the City Council uphold the Board of Zoning Appeal's February 15, 2017 decision and approve Modification to Expressive Use Permit #3537 (Attachment A).

**BACKGROUND:**

Expressive Use Permit #3537 was approved in February 1999 to allow the establishment of a privately financed art gallery/museum, which was classified as a Commercial Entertainment land use. As part of the approval, nine conditions of approval were incorporated.

Specifically, condition #4 states: The hours of operation for the proposed art gallery/museum facility shall be from 10:00 am to 8:00 pm Wednesday through Sunday. Special public events in the art gallery/museum, outside the above hours of operation, may occur not more than eight times a year.

Further, condition #8 states: The maximum number of people allowed in the art gallery/museum during the hours of operation shall be 30 persons, except for special events and organized bus tours, which shall be limited to 40 persons.

The applicant, Bob Oltman, has submitted a Modification to Expressive Use Permit #3537 to modify the number of events and the number of attendees as outlined in the two existing conditions of approval above. The modification requests 98 events per calendar year as part of the existing art gallery/museum, of which 72 events would be large events consisting of a maximum of 140 attendees, and 26 events would be small events consisting of a maximum of 75 attendees. Of the 72 large events, 67 events would be rental events, such as private parties and weddings. The table below describes each type of event and which day of the week they would occur:

Type of Events (# attendees)	Small Events			Large Events				
	Family Day (75)	Educational (50)	Outreach (75)	Opening day (140)	Fundraising (140)	Rental (140)		
Weekday		5	1			10	16	
Friday			1			10	11	
Saturday	3	9	1	3	2	32	50	
Sunday		4	2			15	21	
Total per Type	3	18	5	3	2	67	98	
Total per Size		26			72			

The proposed 72 large events are proposed to occur between 6:00 p.m. and 10:00 p.m. Sunday through Thursday, and 6:00 p.m. to 11:00 p.m. on Friday and Saturday. The 26 small events are proposed to occur mainly between 6:00 p.m. and 10:00 p.m., however some small events are proposed to occur during the weekday when the art gallery is closed to the public, such as on Monday from 9:00 a.m. to 11:00 a.m., and on Tuesday afternoons. No two events would occur at the same time on the same day, and the events would also not occur when the art gallery is open to the public. Although the hours of operation for the art gallery were approved to be between 10:00 am to 8:00 pm, Wednesday through Sunday, the current hours of operation are from 12:00 pm to 5:00 pm, Wednesday through Sunday, except on the third Thursday of the month, when the art gallery is open from 12:00 pm to 8:00 pm. A condition of approval is recommended that the events only occur when the art gallery is not open to the public to avoid any conflict with the operation of the art gallery.

The events are proposed to occur on the existing third floor of the structure and would include the new Event Hall/Gallery room which was previously part of the existing residential unit and measures 2,244 square feet, and the Event Terrace/Café, an existing open courtyard area, which measures 3,316 square feet. An additional 967 square feet is dedicated to the restrooms, pantry, storage, and refuse storage area. The total area used for the events would be 6,527 square feet. The remainder of the third floor space would remain as a single-dwelling unit, measuring approximately 3,200 square feet.

A Minor Conditional Use Permit has also been submitted to allow the off-site sharing of parking spaces located at 505 East Colorado Boulevard. This parking lot is located just east of the subject site, on the southwest corner of Union Street and Oakland Avenue, and is part of the property located at 505 East Colorado Boulevard. This site is improved with a two-story commercial building that is occupied by administrative business professional office and bank uses. The parking lot contains 58 parking spaces, 18 of which are in tandem configuration.

The application was presented to the Hearing Officer at a public hearing on September 7, 2016. Staff's recommendation to the Hearing Officer was to approve Modification to Expressive Use Permit #3537 with a condition authorizing a total of 55 events, as opposed to the 98 events proposed by the applicant. In reviewing the request, staff was of the opinion that the proposed 67 large rental events were excessive, as they translated to more than 5 events per month. It was recommended by staff that the number of large rental events be limited to 24, which was equivalent to two events per month.

It was staff's assessment that with the reduced number of events, as recommended by staff, these activities would remain ancillary to the primary art gallery/museum use. Staff was also of the opinion that with the sharing of parking spaces, the number of attendees proposed could be accommodated on site and on the adjacent parking lot without resulting in an impact on the other surrounding properties. Conditions of

approval were recommended to limit the noise level in the open Event Terrace area to ensure compatibility with the surrounding setting.

At the conclusion of the meeting, and after hearing public testimony, the Hearing Officer approved Modification to Expressive Use Permit #3537, with the condition of approval authorizing 55 events per calendar year. On September 19, 2016, Strefan Fauble, on behalf of the Maryland Homeowner's Association, submitted an appeal application (Attachment E) to the Board of Zoning Appeals.

On February 15, 2017, the Board of Zoning Appeals considered the appeal of the Hearing Officer's decision to approve Modification to Expressive Use Permit #3537. During the Board of Zoning Appeals hearing, in addition to the appellant, two people spoke against request. The applicant and six speakers spoke in favor of the request. Those speaking in opposition to the request had the following concerns:

- Environmental Determination,
- Number of events,
- Traffic and parking, and
- Noise

At the conclusion of the public hearing, the Board of Zoning Appeals made a motion to uphold the Hearing Officer's decision to adopt the environmental determination and to approve Modification to Expressive Use Permit #3537, with the condition authorizing no more than 55 events to occur per calendar year, specifically limiting the large rental events to 24 per calendar year. That motion resulted in a 4-1 vote by the five members present.

On February 23, 2017, the Maryland Homeowners Association submitted an appeal application (Attachment C) to the City Council. The hearing before the City Council is a de novo hearing where the Council has no obligation to honor the prior decisions and has the authority to make an entirely different decision.

#### **APPEAL OF BOARD OF ZONING APPEALS DECISION:**

The appellant cited disagreement with the environmental determination for the project as the basis of his appeal of the Board of Zoning Appeals' decision. The appellant believes that the modifications do not constitute a negligible expansion of use, since the number of permitted event would increase. The applicant requested a modification to allow 98 events per calendar year however, after considering the request the Hearing Officer and the Board of Zoning Appeals approved a maximum of 55 events per calendar year.

According to the applicant, since the opening of the art gallery/museum in 2002, its operation has expanded to include education programs for adults and children, with attendance between 25 to 100 attendees; outreach events with attendance between 50 to 75 attendees; as well as family days with attendance between 25 and 75 attendees.

These events occur between 18 to 26 times per year. Additionally, five times per year the art gallery/museum hosts opening and fundraising events with attendance between 150 to 200 people. Rental events with attendance between 150 to 200 people have also occurred between 50 to 70 times since the opening of the art gallery/museum. The staff recommended project as approved by the Hearing Officer and Board of Zoning Appeals authorizes 55 events per calendar year.

As such, the existing use currently consists of the art gallery/museum operation in addition to similar ancillary programs and events. The modification requests approval of the programs and events which have been occurring at the site. The request consists of lower-capacity events (fewer attendees), but with a higher frequency for the large rental events. Based on this existing condition, the staff recommended project would be considered a negligible expansion of the existing use under CEQA. As a result, the project has been determined to be exempt from environmental review pursuant to CEQA. Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, Class 1 §15301, Existing Facilities). Section 15301 applies to the operation and permitting of uses in existing structures where there is negligible or no expansion of the use.

#### **GENERAL PLAN CONSISTENCY:**

As conditioned, the proposed modifications to the art gallery use are consistent with General Plan Land Use Element Policy 4.3 (An Active Central District), which encourages development to continue and reinforce the Central District as a vital, pedestrian-oriented place, linked to local and regional transit designed for all ages and serving as the focal point of community identity, business activity, employment, living, governance, and culture. The modification of the conditions of approval to allow events at an existing art gallery/museum would attract more activity to the Central District area and promote the area as a focal point of business activity.

Additionally, the approval of the Minor Conditional Use Permit to allow the off-site sharing of parking spaces is consistent with General Plan Land Use Element Policy 19.3 (Parking Management), which encourages management of parking to reduce the amount of land devoted to frequently vacant parking lots through parking management tools. The sharing of the existing parking spaces at 505 East Colorado Boulevard is a good practice, reducing the amount of land dedicated to surface parking. Lastly, lowering the number of off-street parking spaces is one way to promote non-vehicular modes of transportation.

#### **CONCLUSION:**

Staff concludes that the findings necessary for approval of the Modification to the Expressive Use Permit can be made. The proposed events would remain ancillary to the primary art gallery/museum use, and it would activate the surrounding area during the evenings. Additionally, the findings to approve the Minor Conditional Use Permit to allow the off-site sharing of parking spaces can also be made. With the sharing of

parking spaces, the number of attendees proposed can be accommodated on site and on the adjacent parking lot without resulting in an impact on the other surrounding properties. Conditions of approval are recommended to limit the noise level in the open Event Terrace area to ensure compatibility with the surrounding setting. Therefore, staff recommends that the City Council approve the application with the findings in Attachment A and the Conditions of Approval in Attachment B.

**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, Class 1 §15301, Existing Facilities). Section 15301 applies to the operation and permitting of uses in existing structures where there is negligible or no expansion of the use. The Pasadena Museum of California Art has existed on the subject site since 2002. There have been similar ancillary events occurring at the museum for a number of years.

**FISCAL IMPACT:**

There is no fiscal impact as a result of this action.

Respectfully submitted,



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Attachments

Attachment A – Specific Findings

Attachment B – Conditions of Approval

Attachment C – Appeal Application of Board of Zoning Appeals' decision dated February 23, 2017

Attachment D – Board of Zoning Appeals Staff Report dated February 15, 2017

Attachment E – Appeal Application of Hearing Officer's decision dated September 19, 2016

Attachment F – Hearing Officer Staff Report dated September 7, 2016