

McMillan, Acquanette (Netta)

From: julianna
Sent: Monday, March 27, 2023 9:30 AM
To: PublicComment-AutoResponse
Cc: 'julianna'; 'David Delgado'; 'Garth Garrett'; Amy Deavoll; 'Tina Miller'; 'martin ratliff'; Annette Yasin
Subject: RE: AGENDA ITEM #15 - QUASI-JUDICIAL ACTION - OPPOSITION TO CROWN CITY BILLIARDS & LOUNGE

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RE: Agenda Item #15. QUASI-JUDICIAL ACTION: APPEAL OF THE BOARD OF ZONING APPEALS' DECISION OF ZONING ADMINISTRATOR'S DETERMINATION NO. 56, 1312 NORTH LAKE AVENUE - CROWN CITY BILLIARDS & LOUNGE, AKA JERRY'S FAMILY BILLIARDS (Planning Dept.)

Honorable Mayor and Members of the City Council,

I am writing as a Mentor Avenue resident and property owner for over twenty years and Past President of the Bungalow Heaven Neighborhood Association to urge you to uphold the Board of Zoning Appeal's unanimous decision to support Zoning Administrator's determination No. 56 and rule that Crown City Billiard's & Lounge ("the pool hall"), a legal nonconforming 'grandfathered' use that sells alcohol (beer and wine), located at 1312 North Lake Avenue and within 150 feet of a residential zoning district shall only be permitted to operate from 7am to 10pm, per Zoning Code Section 17.40.070 (Limited Hours of Operation). For many years, late-night pool hall patronage until at least 1am coupled with the use of the Block 5 parking lot to the rear for the convenience of patrons has severely negatively impacted the health, safety, and welfare of residents.

The applicant argues that a zoning restriction on the nonconforming pool hall's hours of operation, which had not been in effect at the time the business opened in the 1980's, is not applicable as the use has been continuous, and also constitutes a taking since it impacts negatively the business's financial success. On the contrary, the legal nonconforming use as a vested right did not deprive the owner the use of his property upon adoption of changes to the zoning ordinance but instead eliminated all competition as it allows him to reap the benefits of a windfall arising from his existing location and the prohibition against similar types of businesses coming into the district. At the same time, the use is not exempt from further reasonable regulations. All zoning is restrictive and the City's legitimate exercise of its police power to protect the health, safety, and welfare of the community, which the US Supreme Court first upheld in the landmark 1926 case, *Euclid v. Ambler*. The courts have subsequently held that a use that becomes nonconforming as a result of changes in zoning regulations is still subject to reasonable regulations under a city's police power to protect the public health, safety, and welfare that are enacted subsequent to the use being established (*Rhod-A-Zalea v. Snohomish County*, 1998). Pasadena's limitation on hours of operation to 10pm for businesses located within 150 feet of a residential zone, which was adopted after the pool hall first opened—as have similarly the City's probation on public indoor smoking or reduction in proliferation of liquor licenses—is both reasonable and non-discriminatory in that it applies to all commercial uses in the same zoning district regardless of original opening date.

Additionally, the use of Block 5, a cooperative lot to meet parking requirements for businesses along Lake Avenue and Washington Street, has become an attractive nuisance. The lot might also be considered 'legally nonconforming.' A parking lot at that location would not now be permitted in our residentially-zoned National Register historic district and demolishing the contributing historic homes to create the lot would also be prohibited. All businesses that have enjoyed Block 5 for parking have closed well before 10pm, except for the pool hall. When late-night pool hall patrons exit into the rear alley to the lot, after a rousing game and good time, they tend to be loud and/or inebriated and may linger together for some time, which disturbs the enjoyment of a good night's sleep for residents. Additionally, since it is rarely policed, the lot has become an attractive nuisance, a place for more dangerous, non-pool hall-related individuals for late-night 'partying,' drug use and dealing, or other illegal activities, often accompanied by the presence of firearms. Only when pool hall

operations were limited to 10pm and the lot became relatively empty and less attractive did residents begin to feel safe and enjoy some relief from the noise and trash.

Moreover, to operate the pool hall past 10pm, the applicant has the right and shall apply for a Conditional Use Permit (CUP). A CUP requires a public hearing before the Zoning Administrator and allows neighboring residents who are impacted by a use to participate in the decision. Some conditions for operating the pool hall after 10pm might include the following to curtail nuisances:

- Signs shall be erected in Block 5 reminding patrons to be quiet and respectful of neighbors.
- No parking shall be allowed in Block 5 after 10pm and the lot shut by physical barriers. Any vehicles remaining shall be cited and/or towed. Patrons may park along Lake Avenue without restrictions.
- After 10pm, ingress and egress shall be from the front entrance on Lake Avenue only.
- After 10pm, exiting from the rear of the business shall not be permitted for any reason except a bona fide emergency.
- No unaccompanied minors shall be allowed on the premises at any time; no minors shall be allowed on any day after 10pm.

In the interest of residents, please rule to restrict the pool hall's hours of operations from 7am to 10pm per Zoning Code Section 17.40.070 (Limited Hours of Operation) and recommend the appellant apply for a CUP if changes in hours are desired.

Thank you for your concern and consideration.
Sincerely,
Julianna Delgado

Mentor Avenue Resident
Past President, Bungalow Heaven Neighborhood Association

Julianna Delgado, M.Arch, Ph.D, FAICP
President, Southern California Planning Congress
Planning Commissioner, City of Pasadena
Design Commissioner, City of Pasadena
Member, Mayor's Housing Task Force, City of Pasadena

Professor Emerita, Department of Urban and Regional Planning
Co-Director, California Center for Land and Water Stewardship
California State Polytechnic University, Pomona

After enlightenment, do the laundry.
- Zen proverb

McMillan, Acquanette (Netta)

From: Carol Polanskey
Sent: Monday, March 27, 2023 11:29 AM
To: PublicComment-AutoResponse
Subject: Regarding the March 27 Council Meeting agenda item 15 - Crown City Billiards

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Dear City Council,

Regarding the March 27 Council Meeting agenda item 15:

15. **QUASI-JUDICIAL ACTION: APPEAL OF THE BOARD OF ZONING APPEALS' DECISION OF ZONING ADMINISTRATOR'S DETERMINATION NO. 56, 1312NORTH LAKE AVENUE - CROWN CITY BILLIARDS & LOUNGE, AKA JERRY'S FAMILY BILLIARDS** (Planning Dept.)

Recommendation: It is recommended that the City Council:

- (1) Uphold the Board of Zoning Appeals' decision and uphold the Zoning Administrator's Determination that the hours of operation for the business are between 7:00 am to 10:00 pm, pursuant to Zoning Code Section 17.40.070 (Limited Hours of Operation).

I'm writing to voice my support for upholding the Zoning decision that Crown City Billiards' hours of operation are between 7am and 10pm.

I will not be able to attend the meeting in person, so I'm writing to make the following points:

I have been a member of the bungalow heaven community for about 30 years, during which time my neighbors have reported continual late-night public-nuisance problems in the Block 5 parking lot, including the last few years when Crown City Billiards was the only business open past 10pm. Things have recently been much quieter when Crown City was complying with a 10pm closing time.

Crown City seems to claim that they have a Conditional Use permit, but no such permit exists. (See below for excerpt from Board of Zoning Appeals report.)

There is no reason why that particular commercial property has to remain a billiards hall for all time; however, there is a reason why there is a zoning law that limits hours of operation to 10pm when in close proximity to a residential area – it maintains a reasonable level of quality-of-life for the residents. That, and the basic facts of the case, are why the Zoning Board decision must be upheld.

Martin Ratliff

Pasadena

Excerpt from Board of Zoning Appeals report:

However, as it relates to the hours of operation, the applicant has not provided documentation that the City approved hours of operation between 10:00 pm and 7:00 am. Further, any ability to operate with nonconforming hours was abandoned when the appellant submitted the Code Compliance Certificate form and indicated that the business would operate from 9:00 am to 10:00 pm. The 2017 form was relied on by City staff to support the issuance of the Code Compliance Certificate. The approved hours of

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operation are consistent with Zoning Code Section 17.40.070; where a business may only operate between the hours of 7:00 am and 10:00 pm by-right when the site is within 150 feet of a residential zoning district.

A Conditional Use Permit would need to be approved to operate between the hours of 10:00 pm and 7:00 am. As of the date of this report, a Conditional Use Permit application has not been submitted.



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CITY OF PASADENA

March 27, 2023

Direct Dial: 949.430.2114
Email: bhill@jacksontidus.law
Reply to: Irvine Office
File No: 10372-128386

VIA EMAIL: correspondence@cityofpasadena.net, cityclerk@cityofpasadena.net

Mayor and City Council
City of Pasadena ("City")
100 North Garfield Ave.
Pasadena, CA 91101
c/o Mark Jomsky, City Clerk

RE: **March 27, 2023 City Council Agenda Item #15**
APPEAL OF THE BOARD OF ZONING APPEALS' DECISION OF
ZONING ADMINISTRATOR'S DETERMINATION NO. 56,
1312 NORTH LAKE AVENUE - CROWN CITY BILLIARDS &
LOUNGE, AKA JERRY'S FAMILY BILLIARDS (Planning Dept.)

Honorable Mayor and City Council:

This firm represents Crown City Billiards in the above-referenced appeal. Were this letter addressed to the Superior Court, it would simply begin--and end--with this opening paragraph. The City staff expressly concedes that the operation of Crown Billiards as a billiards hall with unrestricted hours of operation is a vested legal nonconforming use:

The business is a nonconforming use. Records indicate that the billiards use has been in operation since January 1985. At the time it was established, **the billiards use was allowed** and **there were no restrictions on hours of operation** applicable to its zoning district (C-2). (March 27, 2023 Staff Report, p. 3 [emphasis added])

The City staff does not make or support a claim of termination of the vested legal nonconforming use, either by violation of applicable law, discontinuance of the nonconforming use, or abatement by operation of law, as would be required by the City's Zoning Code. (Zoning Code, § 17.71.060)

Irvine Office
2030 Main Street, 12th Floor
Irvine, California 92614
t 949.752.8585 f 949.752.0597

Westlake Village Office
2815 Townsgate Road, Suite 200
Westlake Village, California 91361
t 805.230.0023 f 805.230.0087

www.jacksontidus.law

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The remainder of this letter is designed to educate the City leaders about legal nonconforming use, a fundamental vested right, because City staff has absolutely refused to do so, much to the potential detriment of the City's law-abiding taxpaying residents. City staff has utterly abdicated its duty to even mention the City's Zoning Code regarding requirements for termination of legal nonconforming use in its staff report, preferring instead to subject the City to liability for the taking of Crown Billiards' valuable property right to remain in operation under its vested legal nonconforming use.

LEGAL NONCONFORMING USE AVOIDS TAKINGS LIABILITY

Let's start with the basics. Local governments have constitutional police powers: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general law." (Cal. Constitution, Art XI, Sec. 7) But those constitutional police powers cannot be exercised to take private property without just compensation: "Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner." (Cal. Constitution, Art. XI, Sec. 19)

Legal nonconforming uses first came into existence with the advent of American zoning regulation in the early twentieth century. Early municipal planners were concerned that if landowners were made to discontinue existing uses in order to comply with newly enacted zoning regulations, the regulations would be subject to challenge as an unconstitutional taking of private property. Rather than resolving the issue at the time, and possibly facing the loss of the planned zoning concept entirely, they decided that valid existing uses would be allowed to continue as exceptions carved out of an overall plan. (44 AMJUR POF 3d 531, § 1; see Zoning Code, § 17.71.040.)

Under common law, a legal nonconforming use is a lawful use of property, prior to adoption of a zoning ordinance or a subsequent amendment or revision thereof, which the ordinance thereafter prohibits, but which is allowed to continue after enactment of the zoning ordinance (*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1522) "Generally, governmental entities do not apply newly enacted zoning ordinance to close business lawfully operating at the time those ordinances become effective." (*Bauer v. City of San Diego* (1999) 75 Cal.App.4th 1281, 1292)

The City's Zoning Code accordingly defines legally nonconforming land uses as uses "that were lawful before the adoption or amendment of this Zoning Code, but which would be prohibited, regulated or restricted differently under the current terms of the Zoning Code or under future amendments." (Zoning Code, § 17.17.010(A)). The City staff's report is notably completely bereft of any mention of this section or its definition.

The City's Zoning Code expressly allows a legal nonconforming use to continue without interruption by subsequently enacted Zoning Code or future amendments: "A nonconforming use

may be maintained and continued; provided there is no increase or enlargement of the area, space, or volume occupied or devoted to the nonconforming use, except as allowed by this Chapter.” (Zoning Code, § 17.71.030(A)(1)). Again, “Each and every nonconforming use or structure may be continued and maintained, provided that there is no addition, alteration, or enlargement to any use or structure, except as allowed by this Chapter, or unless ordered discontinued, modified, or removed as a public nuisance in compliance with Municipal Code Chapter 14.50 (Property Maintenance and Nuisance Abatement).” (Zoning Code, § 17.71.040)

The right to continued nonconforming use attached to the property as a legal nonconforming use is not purely an economic privilege, but is, instead, a fundamental vested right to avoid an unconstitutional taking of private property. (*Goat Hill Tavern v. City of Costa Mesa, supra*, 6 Cal.App.4th at 1529-1531)

California courts have long held that when land has been put to a lawful use prior to the enactment of a zoning ordinance, there may be a vested right to continue that use, even though it is inconsistent with the ordinance. (*Edmonds v. County of Los Angeles* (1953) 40 Cal.2d 642, 651; *Clemons v. City of Los Angeles* (1950) 36 Cal.2d 95, 104.) The “vested rights” doctrine, insofar as it concerns such nonconforming uses, rests primarily on the constitutional bar against takings. (*Jones v. City of Los Angeles* (1930) 211 Cal. 304, 310-321.)

As a fundamental vested right, legal nonconforming use is entitled to independent review by the Superior Court, meaning the Superior Court will give no deference to the City’s determination as to application of legal nonconforming use in this instance. (*Goat Hill Tavern v. City of Costa Mesa, supra*, 6 Cal.App.4th at 1529-1531)

LEGAL NONCONFORMING USE CONTINUES REGARDLESS OF FUTURE ZONING CODE OR AMENDMENTS, INCLUDING ORDINANCE 6592 AND ITS REQUIREMENT FOR A CONDITIONAL USE PERMIT

Despite and in express contradiction to the above definitions and principles, City staff argues that subsequent Ordinance 6592, which applies new hours to existing businesses, somehow takes away the vested legal nonconforming hours of operation use of the property and requires a conditional use permit for hours of use.

City staff cannot be more wrong. City staff’s argument misreads the definition of legal nonconforming use contained in the City’s Zoning Code, fails to acknowledge the express language of the City’s Zoning Code exempting the property from the Ordinance 6592 conditional use requirement, and fails to acknowledge the common law precedent of the *Goat Hill Tavern* case.

As set forth above, legal nonconforming use is defined as uses “that were lawful before the adoption or amendment of this Zoning Code, but which would be prohibited, regulated or restricted differently under the current terms of the Zoning Code or under future amendments.” (Zoning Code, § 17.17.010(A) [underline added]). Ordinance 6592 is just such a future amendment which does not take away the legal nonconforming hours of operation use.

Furthermore, City staff fails to read the express provisions of its Zoning Code which expressly addresses the particular situation of Ordinance 6592, which added a requirement of a conditional use permit for an hours of operation use that was previously permitted without a conditional use permit (in this instance hours of operation beyond 10 p.m.):

Notwithstanding the other provisions of this Chapter, no use identified in this Zoning Code as a "Conditional Use" that was lawfully in existence as of the effective date of these regulations, shall be deemed nonconforming solely by reason of the application of the Conditional Use Permit procedural requirements, in compliance with Section 17.61.050; provided, that:

A. Use allowed with Conditional Use Permit approval. A land use that was legally established without a Conditional Use Permit but would be required by current Zoning Code provisions to have Conditional Use Permit approval, shall not be altered or enlarged in any way unless a Conditional Use Permit is first obtained. (Zoning Code, § 17.71.100. in pertinent part [underline added])

Thus, under the express language of the City's Zoning Code, the addition of the conditional use permit requirement by Ordinance 6592 did not make the property hours of operation use unlawful and did not require a conditional use permit, unless the use is to be expanded (there is no expansion involved in this situation).

Finally, City staff fails to take into account the common law precedent upholding a preexisting legal nonconforming use pertaining to hours of operation after subsequent requirement for a conditional use permit under the *Goat Hill Tavern* case.

The background facts in the *Goat Hill Tavern* case are remarkably similar to this situation. The property owner had a pre-existing legal nonconforming use. Neighboring property owners, attributing incidents regarding homelessness in a city parking lot adjacent to the business, are asking the City to apply limitations on hours of operation based on city zoning requirements enacted after the business initiated legal operation. There was no evidence that the property operation constituted a nuisance. The Court of Appeal in *Goat Hill Tavern* held that the Tavern had a vested fundamental right to continue its hours of operation and that the City could not shut down the operation of the business. (*Goat Hill Tavern v. City of Costa Mesa, supra*, 6 Cal.App.4th at 1522-1525 & 1529-1531 [unlike this situation, the Goat Hill Tavern had also obtained a conditional use permit to expand the business premises, but in other respects, this situation is similar])

Similar to the *Goat Hill Tavern* case, in this situation, neighborhood residential owners, frustrated with the City's operation of the City's adjacent parking lot and homeless people using the lot, have conveniently pointed the finger of blame at adjoining property owner Crown Billiards (with the City staff willingly joining in rather than taking responsibility for operation of

the City lot). Crown Billiards operates a legitimate competition pool hall frequented by white collar workers, with no parking lot spillover or noise or fighting problems. The adjoining residents made a substantial number of police calls in the year before the subject citation seeking to shut down Crown Billiards, none of them attributable to the operation of Crown Billiards (in fact, in the year after the citation, the neighbors stopped making so many frivolous police calls and the call volume substantially decreased). But increased volume of resident police calls designed to shut down or change the hours of a legal nonconforming legitimate business could not shut down Goat Hill Tavern and should not be allowed to shut down an even more quiet and proper and beneficial City business such as Crown Billiards in this instance.

LEGAL NONCONFORMING USE CONTINUES
REGARDLESS OF THE DISPUTED CODE COMPLIANCE CERTIFICATE

The City's Zoning Code provides express situations in which a vested legal nonconforming use may be terminated. (Zoning Code, § 17.71.060). As addressed above, given that the vested legal nonconforming hours of operation use cannot be in violation of law, the City has failed to establish termination by operation of law under Zoning Code Section 17.71.060(A)(1). Neither does the City contend that it has passed an abatement ordinance to abate the vested legal nonconforming use under Zoning Code Section 17.71.060(C).

The City's only other argument for termination is based upon an apparently falsified Code Compliance Certificate application, apparently claiming that the application manifested an abandonment of the vested legal nonconforming use hours of operation under Zoning Code Section 17.71.060(B).

That apparent argument fails because the mere expression of an intention to abandon the vested legal nonconforming hours of operation use is not sufficient under the City's Zoning Code to trigger abandonment of a vested legal nonconforming use. More is required. The nonconforming use must be actually "discontinued for any reason for a continuous period of at least 12 months" and there must be evidence presented by the City staff of such discontinuance, including "the actual removal of equipment, furniture, machinery, structures, or other components of the nonconforming use and not replaced, the turning off of the previously connected utilities, or [the lack of any] business receipts/records or any necessary licenses available to provide evidence that the use is in continual operation." (Zoning Code, § 17.71.060(B)(3)). Furthermore, there was no determination of abandonment by the Zoning Administrator that would support City staff's argument, given that the Certificate document mysteriously and suddenly appeared only after the Zoning Administrator's decision. (*Id.*)

City staff is apparently relying on some type of estoppel argument in connection with the disputed Code Compliance Certificate application. However, in order to establish estoppel, the City would have to present evidence that it reasonably relied upon the Certificate as sufficient for abandonment. (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 399) The City could not have legally reasonably relied upon the Certificate for abandonment because the City's Zoning Code requires more: actual cessation of use of the vested legal nonconforming hours of operation use. (Zoning

Code, § 17.71.060(B)(3)). Furthermore, as the City concedes, Crown City Billiards has not ceased operation of its vested legal conforming hours of operation use at any time following the Certificate application, thus providing no factual basis for the City to reasonably rely upon the Certificate application.

Assuming, arguendo, that the suspect Certificate could be relied upon to establish abandonment, which it cannot, the City's argument that the Certificate can be relied upon as an official writing despite express direct evidence that the hours portion was not filled out by the authorized representative of Crown City Billiards is incorrect. The presumption for official writings is simply a presumption affecting the burden of evidence. (Evidence Code, §1450). That presumption has been completely overcome by the Declaration of Frank Yanez and by the expert opinion of Michael N. Wakshull of Q9 Consulting, both providing direct evidence that the same person did not fill out the hours part of the form, with the added handwriting of a different person for the portion providing the listed hours of operation.

It does not take a handwriting expert to see that letters like "P" and numbers like "8", and indeed the entire handwriting style, are handwritten completely different on the top portion of the Required Information and the hours portion of the Required Information. It does not take a handwriting expert to note the strange circumstances of the Certificate's sudden presentation by City staff after the Zoning Administrator decision and to note that the box for "Denied" was crossed out and that the box for "Approved" was checked instead, and that the prior staff signature (apparently for the "Denied" box) was whited out and replaced with a new signature. Stated simply, the circumstances of the Certificate's appearance and the alterations to the Certificate just plain stink and make the Certificate application and asserted approval unreliable as evidence of anything.

In conclusion, none of City staff's arguments support upholding the Zoning Administrator's and Board of Zoning Appeals decisions. In fact, everything presented supports granting this appeal and confirming the property's vested legal nonconforming uses of a billiards hall without limitation on hours of operation.

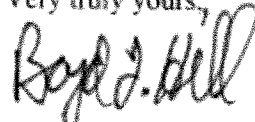
Why would the City Council follow the City staff's advice and subject the City to liability for taking a vested legal nonconforming property interest when there is absolutely no evidence of any nuisance caused by the Crown Billiards use, when the use is contributing significantly to use of local City restaurants, hotels and other commercial uses, when the use and its occupation of a portion of the adjoining City lot is actually helping to keep away homeless who would cause problems, and when its continued operation is allowing the two special needs Yanez children the material support they desperately need?

This whole sham citation simply doesn't make sense from a legal, factual, policy or any other standpoint (unless appeasing a few complaining neighbors is considered sound policy-making). Please do the right thing, grant the appeal, dismiss the citation, and find that the property has a present vested legal nonconforming use for a billiards hall without limitation on hours of operation as per the City's Zoning Code. Crown City Billiards intends to continue to

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City of Pasadena
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operate its business responsibly and to not allow any nuisance caused by its operation in the adjoining City parking lot. Thank you.

Very truly yours,

A handwritten signature in black ink that reads "Boyd J. Hill". The signature is written in a cursive style with a large, prominent initial "B".

Jackson Tidus

Cc: James Lawson
Frank Yanez
Michele Bagneris, City Attorney mbagneris@cityofpasadena.net