

# Agenda Report

March 27, 2023

**TO:** Honorable Mayor and City Council

**FROM:** Planning and Community Development Department

**SUBJECT: APPEAL OF BOARD OF ZONING APPEALS' DECISION OF ZONING ADMINISTRATOR'S DETERMINATION #56  
1312 NORTH LAKE AVENUE - CROWN CITY BILLIARDS & LOUNGE,  
AKA JERRY'S FAMILY BILLIARDS (QUASI-JUDICIAL ACTION)**

## **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).

## **BACKGROUND:**

What is before the City Council is an appeal of a determination made by the Zoning Administrator regarding the operating hours of Crown City Billiards, also known as Jerry's Billiards, located at 1312 N. Lake Avenue (Attachment H). 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.

### **Zoning Administrator Determination**

On September 29, 2022, the Zoning Administrator determined that the hours of operation for the business are between 7:00 am to 10:00 pm, as required by Zoning Code Section 17.40.070 (Limited Hours of Operation). This section establishes limited hours of operation for commercial uses that are located within 150 feet of a residential zoning district. This section also states that a Conditional Use Permit is required to operate between 10:00 pm and 7:00 am.

The Zoning Administrator's determination was initiated in response to citation CTP2022-00443 (Attachment I), issued by the City's Code Compliance Division to the subject business on April 25, 2022. The citation issued indicated that the business was

operating after 10:00 pm and in violation of Section 17.40.070 (Limited Hours of Operation); the corrective remedy was for the business to end operating hours at 10:00 pm. The business does not have a Conditional Use Permit to operate between 10:00 pm and 7:00 am.

On October 6, 2022, the appellant, Crown City Billiards & Lounge, submitted an appeal of the Zoning Administrator's determination (Attachment G), citing a disagreement with the decision that was made. The appeal stated that the business is a nonconforming business and is not subject to Section 17.40.070.

### Board of Zoning Appeals' Public Hearings

On November 17, 2022, the Board of Zoning Appeals (BZA) considered the appeal, at which time staff presented a report with a recommendation that the BZA uphold the Zoning Administrator's determination (Attachment F). During the hearing, the appellant provided a presentation in opposition to the Zoning Administrator's determination, and 16 members of the public provided testimony; in support and opposition. As part of public testimony, and BZA deliberation, comments and concerns were raised about issues (e, g., noise, trash, and illegal activity) related to the parking lot that is used by the billiards and other commercial tenants of Block 5 and backs up to the residential neighborhood immediately to the east.

At the conclusion of the public hearing, a motion was made to continue the hearing to a date uncertain to allow time for the business owner, property owner, neighbors, and City representatives to meet and discuss issues related to the parking lot and work towards potential solutions and potential compromise for extending the business hours.

After the hearing, City staff contacted the business owner to discuss coordinating a meeting with the neighbors. The business owner, and their representative indicated that they did not wish to meet and wanted to move forward with the appeal process.

On January 12, 2023, a neighborhood meeting related to Block 5 was held by Vice Mayor Williams. City staff attended the meeting to provide an update on code compliance activity, efforts being made the Pasadena Police Department, and to address questions from the neighbors. The business owner did attend the neighborhood meeting.

On January 19, 2023, the Board of Zoning Appeals reviewed the appeal, at which time staff provided an update and a summary of the January 12, 2023 neighborhood meeting. At the neighborhood meeting, staff committed to providing the BZA information on the calls for police service received prior to and after the citation issued on April 25, 2022; specifically, calls made after 10:00 pm.

The BZA was informed that the eight months prior to the citation, where the establishment was open past 10:00 pm, 17 calls for service were made; generally, between the hours of 10:00 pm and 3:00 am. Seven calls for service were made for the

eight months after the citation, within the same hours. Staff noted that calls for service were to the Block 5 location and parking lot, and not specifically to the establishment. Below is a summary of the information provided:

<b>Time Period (8 months)</b>	<b>Calls for Service after 10 PM</b>
May 2022 – December 2022	7
September 2021- April 2022	17

During the hearing, the appellant provided a presentation, and 14 members of the public spoke regarding the subject; in support and opposition.

At the conclusion of the public hearing, a motion was made to uphold the Zoning Administrator's Determination that the hours of operation for the business are between 7:00 am and 10:00 pm. The motion resulted in a 5-0 vote by the members present. As a result, action was taken to uphold the Zoning Administrator Determination.

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

On January 30, 2023, the business owner submitted an appeal application to the City Council (Attachment A). As part of the appeal application, the appellant provided the following reasons (summarized) for the appeal:

- The use is legal and nonconforming and therefore not subject to Section 17.40.070 (Limited Hours of Operation);
- There is no evidence of a revocation, termination, or suspension of a permit to operate the use since a permit was not required at the time of the establishment of the use; and
- That the code compliance certificate approval on file with City records, which indicates the hours of operation of the business is from 9:00 am to 10:00 pm, was not completed by the business operator nor its representative, therefore the City cannot rely on this application to determine the hours of operation.

**ANALYSIS:**

**Nonconforming Use History**

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).

Currently, the subject property is zoned CL-SP-1b (Commercial Limited, North Lake Specific Plan Overlay subdistrict 1b). A billiards use is no longer permitted in the zoning district; however, it may continue operating as a nonconforming use.

### Legislative History for Limited Hours of Operation

In May 1985, Ordinance No. 6096 was adopted by the City Council, limiting the hours of operation from 7:00 am to 10:00 pm for commercial uses located within 100 feet of a residential zoning district. The ordinance did not apply to existing businesses. The limited hours of operation only applied to new businesses or when additions were made to existing businesses. The ordinance established that a Conditional Use Permit was required for new businesses, or business that were expanding, to operate between 10:00 pm and 7:00 am.

Since the business was existing at the time Ordinance No. 6096 was adopted, it was not subject to the restrictions on hours.

However, the City Council revisited the topic and in April 1994, Ordinance No. 6592 (Attachment B) was adopted amending the limited hours of operation requirements and eliminating the distinction that regulations only applied to new and expanding businesses. No exceptions for an existing business were adopted under the new ordinance and the distance to residential zoning districts was increased to 150 feet. For any business to operate between the hours of 10:00 pm and 7:00 am, approval of a Conditional Use Permit was required.

The business has been in operation since January, 1985. It is located on a site that abuts a residential zoning district immediately to the east. Ordinance No. 6592, codified as Zoning Code Section 17.40.070 (Limited Hours of Operation), requires all businesses to obtain a Conditional Use Permit to operate between the hours of 10:00 pm and 7:00 am. The ordinance did not provide for any exceptions. A business that was operating after 10:00 pm, when the ordinance was adopted, was required to obtain a Conditional Use Permit or stop operating at 10:00 pm; the hours of operation for a business were not considered "grandfathered" or established as nonconforming. The business does not have a Conditional Use Permit to operate past 10:00 pm.

### Code Compliance Certificate

After the issuance of the Zoning Administrator Determination on September 29, 2022, an approved Code Compliance Certificate was provided by the Finance Department for the existing business. A Code Compliance Certificate is a form used to verify if a use complies with the Zoning Code and is part of the business license process. The form includes information about, but not limited to, land use, parking spaces, and hours of operation.

As part of the business license application, the appellant submitted a Code Compliance Certificate (Attachment D). The form is dated August 1, 2017 and is signed by the appellant. In the form, the appellant indicated that the hours of operation for the business would be 9:00 am to 10:00 pm. The form was approved by the Current Planning Section of the Planning Division on August 18, 2017.

The hours of operation specified in the approved form are consistent with Zoning Code Section 17.40.070.

### Response to the Appeal

As indicated in this report, and the staff report provided to the BZA, staff acknowledges that the existing billiards use is nonconforming, and it may continue to operate, consistent with the provisions in the Zoning Code. However, as it relates to the hours of operation, as established under Ordinance No. 6592, a Conditional Use Permit is required for any business to operate between the hours of 10:00 pm and 7:00 am; when located within certain proximity to a residential zoning district. The business does not have a Conditional Use Permit for extended hours. The business was required to obtain a Conditional Use Permit after the Ordinance was adopted; however, no Conditional Use Permit was obtained.

The applicant contends that the Code Compliance Certificate form, used to issue their business license, cannot be relied upon by the City. The form indicates that the hours of operation for the business would be 9:00 am to 10:00 pm. However, the appellant states that they did not fill-out the "hours of operation" portion of the form and that they would not have knowingly limited themselves to a 10:00 pm closure. For the January 19, 2023, BZA meeting, the applicant submitted a report (Attachment J) analyzing the handwriting on the entry for the hours of operation, contending the hours of operation portion was completed by someone other than the applicant.

The approved Code Compliance Certificate form is a government record, submitted to the City and relied upon by staff for the issuance of a business license. In any case, as established under Ordinance No. 6592, a Conditional Use Permit is required for any business to operate between the hours of 10:00 pm and 7:00 am; therefore, the form does not have any relevance to the business owner's right to be open past 10:00 pm.

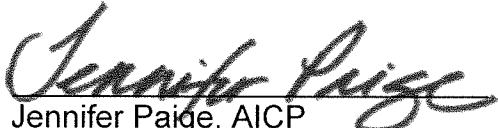
### CONCLUSION:

Staff has considered the appeal and has determined that the Zoning Administrator's Determination was correctly made. Since the business does not have an approved Conditional Use Permit, for extended hours, it is the Zoning Administrator's determination that the hours of operation for the business are between 7:00 am to 10:00 pm, daily. Therefore, it is recommended that the City Council uphold the Board of Zoning Appeals decision, upholding the Zoning Administrator's Determination. If the applicant wants to be open past 10:00 pm, they can submit a Conditional Use Permit application.

**FISCAL IMPACT:**

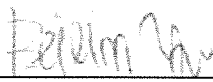
There is no fiscal impact to the City as a result of this action.


Respectfully submitted,

  
Jennifer Paige, AICP  
Director of Planning and Community  
Development

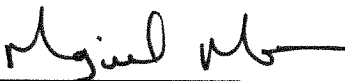
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Attachments (10):

- Attachment A – Appeal Application of the Board of Zoning Appeals' Decision
- Attachment B – Ordinance 6592 adopted April 1994
- Attachment C – Board of Zoning Appeals' Decision Letter dated January 23, 2023
- Attachment D – Code Compliance Certificate dated August 1, 2017
- Attachment E – Memo to Board of Zoning Appeals dated January 19, 2023 (no attachments)
- Attachment F – Board of Zoning Appeals Staff Report dated November 17, 2022 (no attachments)
- Attachment G – Appeal Application of the Zoning Administrator's Determination
- Attachment H – Zoning Administrator's Determination dated September 29, 2022
- Attachment I – Citation CTP2022-00443
- Attachment J – Document Examination Report dated December 14, 2022