

City of Culver City, California
City Council Agenda Item Report

Meeting Date: 6/8/2009		Item Number: <u>PH-1</u>	
Agenda Item: Public Hearing - An Appeal of an Administrative Use Permit for the Off-Sale of Beer And Wine Incidental to a Proposed 7-Eleven Convenience Store Located at 5900-5902 Washington Boulevard, and Adoption of a Resolution Related Thereto.			
Contact Person/Dept.: Thomas Gorham, Christina Rios/CDD		Phone Number: (310) 253-5727 (310) 253-5756	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☐ No ☒	
Public Hearing: ☒		Action Item: ☐ Attachments: ☒	
Public Notification: Notices mailed to all property owners and occupants within a 500-foot radius of the project site (5/14/09); Master E-Mail Notification List (6/03/09); Applicant and property owner (5/14/09).			
Department Approval: Sol Blumenfeld (06/2/09)		City Attorney Approval: Carol Schwab (by H. Baker)(06/03/09)	
Chief Financial Officer Approval: Jeff Muir (by N. Kimball)(06/03/09)		City Manager Approval: Mark Scott (06/03/09)	
<u>RECOMMENDATION:</u> Staff recommends the City Council consider the appeal of the Director's approval of the Administrative Use Permit and either: A. Deny the appeal and uphold the Director's approval of the Administrative Use Permit; OR B. Grant the appeal, in part, and modify the Director's approval of the Administrative Use Permit by imposing additional conditions; OR C. Grant the appeal in its entirety, overturn the Director's approval, and deny the Administrative Use Permit. <u>PROCEDURE:</u> 1. Mayor calls on staff for a brief staff report and Council poses questions to staff as desired. 2. Mayor seeks a motion to open the public hearing, providing the applicant the first opportunity to speak, followed by the general public. 3. Mayor seeks a motion to close the public hearing after all testimony has been presented.			

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4. Council discusses the matter and arrives at its decision.

BACKGROUND:

The proposed Administrative Use Permit (AUP) is a request to sell beer and wine incidental to a new 7-Eleven convenience store. The store is proposed to be located in an existing small retail center on the southwest corner of Washington and La Cienega Boulevards in the East Washington (EW) Overlay Zone and would occupy approximately 2,500 square feet of tenant space.

The primary convenience store use is a permitted use in the EW zone and the proposed use, off-sales of beer and wine incidental to a convenience store, is allowed within the subject zoning district with the approval of an AUP subject to required findings. The proposed use was found to be consistent with the Zoning Code standards and regulations and with the General Corridor General Plan designation.

Chapter 17.530 of the Zoning Code establishes procedures for reviewing Administrative Use Permits and provides that such permits be reviewed for compatibility, configuration, design, location and potential impacts of the proposed uses and suitability of the use to the site and surrounding uses. Generally, the types of uses that are subject to administrative approval are noted in the permitted use list for the applicable zone or in the subject case for alcohol sales, in Chapter 17.400.015 (IG), underlying zone in East Washington Overlay Zone.

In order to grant an approval for an Administrative Use Permit, the Director or his designee must make all of the following findings:

1. The proposed use is allowed within the subject zoning district and the approval of the Administrative Use Permit complies with all other applicable provisions of this Title and the CCMC.
2. The proposed use is consistent with the General Plan and any applicable Specific Plan.
3. The design, location, size and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity of the subject site.
4. The subject site is physically suitable for the type and intensity of use being proposed, including access, compatibility with adjoining land uses, shape, size, provision of utilities, and the absence of physical constraints.
5. The establishment, maintenance or operation of the proposed use will not be detrimental to the public interest, health, safety or general welfare, or injurious to

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persons, property, or improvements in the vicinity and zoning district in which the property is located.

During the AUP comment period, staff received comments of concern mainly from nearby businesses including a petition from the east Culver City business owners opposing the approval of alcohol sales (Attachment 3). Their concerns are briefly summarized below:

- Increase in alcohol sales will result in crime.
- Increase in crime will require the City to invest more time and funding for police force.
- Alcohol sales will cause a nuisance in the retail center parking lot.

On April 3, 2009, an AUP was approved for the off sales of alcoholic beverages incidental to a new 7-Eleven convenience store after determining that the required findings could be made.

Attachment No. 1 contains the AUP Decision Letter and discusses the findings and conditions of approval.

The AUP is conditioned to ensure compatibility with the surrounding uses and the following special conditions of approval are included to address potential nuisance issues:

- Consumption of alcohol on the premises shall be strictly prohibited. Signage shall be posted at the project site prohibiting alcohol consumption on the premises and shall be visible to the public.
- There shall be no exterior advertising or sign of any kind, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
- All windows shall be maintained reasonably free of signs and other material which would inhibit views into the facility.
- The subject facility, including the parking lot, shall be maintained in an attractive condition and be kept free of trash and debris at all times.
- Exterior lighting on the building shall be maintained and provide sufficient illumination of the immediate vicinity so as to render objects or persons clearly visible. Said lighting shall be directed in such a manner so as to not illuminate any nearby properties.
- Electronic age verification device(s) shall be installed on the premises which are used to determine the age of any individual attempting to purchase alcohol.

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These devices shall be maintained in an operational condition and all employees shall be instructed in their use.

- At any time during the period of validity of this permit, should documented evidence be submitted showing continued violation of any condition of this permit, resulting in an unreasonable level of disruption or nuisance to the neighboring properties, the Deputy Community Development Director reserves the right to revoke or modify the Administrative Use Permit as outlined in Culver City Municipal Code (“CCMC”) Section 17.660.015 A.
- A Covenant and Agreement shall be signed and notarized prior to the business tax certificate issuance certifying the property owner acknowledges and agrees the covenant and agreement shall run with the land and shall be binding on any subsequent owners, heirs or assigns.

The AUP approval was based on the determination that the proposed use, off-sales of beer and wine incidental to a convenience store, will serve the community and is compatible with the existing surrounding commercial uses. The subject site does not immediately abut any residential properties and the project site is found to be physically suitable for the proposed use. Staff prepared an analysis of the surrounding uses and found that there were no similar uses in the immediate vicinity (within 300 feet) of the proposed project.

In making the mandatory findings, staff determined that:

1. The primary convenience store use is a permitted use in the EWO and IG zone. The proposed use, off-sales of beer and wine incidental to a convenience store, is allowed within the subject zoning district with the approval of an Administrative Use Permit (AUP) subject to required findings. The required findings to approve the AUP have been made herein. The proposed use as conditioned will comply with all other applicable provisions of Title 17- Culver City Zoning Code and the CCMC.
2. The proposed use, off-sales of beer and wine incidental to a convenience store, is consistent with the General Corridor General Plan designation which promotes small commercial establishment that serve the community. The proposed use will provide basic shopping opportunities for the nearby commercial tenants, commuters and the nearby residential neighborhood. There is no Specific Plan for this area.
3. There is a variety of commercial uses surrounding the project site and within the retail center that the project is located. The subject site does not immediately abut any residential properties and does not have direct access to any residential neighborhoods. The closest residential uses are over 300 feet away to the west across Ballona Creek. The project has been conditioned to ensure compatibility with the neighborhood and future land uses in the vicinity of the subject site. Should

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unexpected negative impacts arise from the conduct of the proposed use, this Administrative Use Permit may be subject to revocation or modification as deemed necessary. Improvements to the site including landscaping, parking, and façade were previously approved through a building permit. The interior improvements for the convenience store will be reviewed through a building permit and will meet all current building, zoning, and fire codes.

4. The 7-Eleven convenience store will be located in a small retail center that includes Pizza Hut, an optometry office, and a salon which are uses commonly found in a small retail center. The proposed convenience store will occupy approximately 2,500 square feet of tenant space and tenant improvements for the space will be reviewed separately. The retail center requires 20 on-site parking spaces pursuant to the Zoning Code and 28 on-site parking spaces are being provided. The project site is compatible with surrounding commercial uses and is found to be physically suitable for the proposed use subject to compliance with the conditions of approval contained herein.

5. The applicant is requesting to sell alcohol (beer and wine) incidental to a convenience store that would serve those who live and work nearby and permit them to patronize a neighborhood establishment rather than driving elsewhere. The convenience store will also offer packaged groceries, prepared food, and essential products used for daily living.

The proposed use will serve the public convenience and welfare and as cited is compatible with the character of the surrounding uses. The conditions of approval will ensure that the operation of the convenience store including off-sales of beer and wine will not be detrimental to the public interest, health, safety, or general welfare, or injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located.

On April 6, 2009, Councilmember Armenta requested an opportunity to discuss the decision with the Council to consider an initiation of appeal. With the consent of the City Council, the item was placed on the agenda for the City Council's consideration of whether or not to initiate an appeal of the Director's decision to approve the AUP.

Pursuant to Zoning Code Section 17.500.010 Table 5-1 Review Authority (Attachment No. 6), the City Council has the authority to act on appeal of an Administrative Use Permit

DISCUSSION:

At the April 20, 2009 City Council meeting, after thorough discussion, some of the Council Members expressed concerns over crime at existing convenience/liquor

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stores in the City, over concentration of alcohol sales in the area, and impacts to nearby schools and surrounding neighborhoods. The Council determined to initiate an appeal of the AUP approval.

The City Council requested information on crime data at existing convenience stores and number of licenses allowed by the State Department of Alcohol Beverage Control (ABC).

The Culver City Police Department confirmed there has been a total of 5 attempted robberies and robberies at the two existing 7-Eleven convenience stores on Washington Boulevard and one robbery at the existing ARCO AM/PM, adjacent to the project site, within the past 2 years. No injuries were reported.

Currently there are 5 establishments along Washington Boulevard between Sherbourne and La Cienega with off-sale licenses including one convenience store, one market, one bar and two liquor stores (Attachment 2).

A separate permit for the proposed alcohol sales at the 7-Eleven is required from ABC, which has the authority to add additional conditions and restrictions on the license.

The subject site is surrounded by commercial and industrial uses and does not immediately abut any residential properties. The closest residential uses are over 300 feet away. The nearest school and park is more than 1,000 feet away.

At the Council meeting, the property owner and applicant stated the project meets all of the required findings necessary to support approval of an AUP because of the following:

- The proposed use of alcohol sales is incidental to a convenience store and is surrounded by a variety of commercial uses.
- The proposed convenience store will serve the community and provide basic shopping needs.
- The project site does not immediately abut any residential properties, schools, or parks.
- The conditions of approval will ensure that the proposed operation is compatible with the surrounding neighborhood.

The applicant also stated a training program will be implemented for the safe and legal sale of alcoholic beverages. This includes, preventing on-premises consumption, sales to minors and to anyone intoxicated.

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In the event that the Council determines that it wants to modify the staff recommendation it may wish to include a condition requiring the AUP to be reviewed by staff 6 months and then 1 year from date of opening or operation and report to the Planning Commission and City Council on any violations related to the use. Further the Council may consider limiting the hours during which alcoholic beverages could be sold. As outlined in the current conditions of approval, if any violations are found the AUP may be called back for reconsideration and the AUP may be modified or revoked pursuant to Chapter 17.660 of the Zoning Code.

Pursuant to CCMC Section 17.640.030.C.2, if the Council determines to grant the appeal, it should be based upon an error in fact, dispute of the findings made in the approval of the AUP or inadequacy of the conditions imposed to mitigate potential impacts.

FISCAL IMPACT:

This is a private venture project with no City or Agency funds reserved for the project. If appeal is denied and the Director's approval is upheld, then the City would gain commercial taxes once the project is operational. The use may generate additional City costs in the event that there are emergency services call outs to the site.

ATTACHMENTS:

1. April 3, 2008 AUP Decision Letter
2. Map of Existing Liquor Sales
3. Written Public Comments
4. Draft Resolution No. 2009-R___ Denying the Appeal
5. Draft Resolution No. 2009-R___ Granting the Appeal
6. CCMC Section 17.500.010 Table 5-1 Review Authority

MOTION:

That the Council either:

- A. Adopt a Resolution denying the appeal and upholding the Director's approval of the Administrative Use Permit for the off-sales of beer and wine incidental to a proposed 7-Eleven convenience store;

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OR

- B. Adopt a Resolution granting the appeal, in part, and modifying the Director's approval of the Administrative Use Permit by imposing additional conditions as determined by the City Council;

OR

- C. Adopt a Resolution granting the appeal, in its entirety, overturning the Director's approval and denying the Administrative Use Permit for the off-sales of beer and wine incidental to a proposed 7-Eleven convenience store.