



CITY OF MONTCLAIR
PLANNING COMMISSION MINUTES

REGULAR ADJOURNED MEETING
Monday, February 11, 2008

CITY COUNCIL CHAMBERS
5111 Benito Street, Montclair, California 91763

CALL TO ORDER

Chairman Flores called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Vice Chairman Vodvarka led those present in the salute to the flag.

ROLL CALL

Present: Chairman Flores, Vice Chairman Vodvarka, Commissioners Johnson, Lenhert and Sahagun, Community Development Director Lustro, Associate Planners Frazier-Burton and Lai, and City Attorney Robbins.

MINUTES

The minutes of the January 14, 2008 meeting were presented for approval. Vice Chairman Vodvarka moved, Commissioner Sahagun seconded, there being no opposition to the motion, the minutes were approved 5-0.

The minutes of the January 28, 2008 meeting were presented for approval. Commissioner Lenhert moved, Commissioner Johnson seconded, there being no opposition to the motion, the minutes were approved 5-0.

ORAL AND WRITTEN COMMUNICATIONS

None.

AGENDA ITEMS

- 6.a PUBLIC HEARING - CASE NUMBER 2008-1
Project Address: 10550 Ramona Avenue
Project Applicant: Richard C. Hunsaker
Project Planner: Carol Frazier-Burton, Associate Planner
Request: Conditional Use Permit for on-sale beer and wine

Associate Planner Frazier-Burton reviewed the staff report.

Commissioner Vodvarka asked what would happen if someone just walked into the restaurant and wanted to order a beer without food. He felt a condition for the sale of beer and wine should include that it only comes with food. Director Lustro stated that it would be almost impossible to regulate that and it is really up to the restaurant operator. If their interest is that they do not want to operate the establishment as a bar and if one or two people wanted to come in and have a beer and leave, it is at the discretion of the operator whether they want to do that. All we can include in the conditions of approval is that food be available during all hours of operation. For example, in this particular case the approved hours would be 9:00 a.m. to 8:00 p.m. If beer and wine are served during those hours, then the kitchen must be open during those hours. There are some risks to the restaurant operator by selling alcohol without meals, similar to a bar operator contributing to somebody drinking too much, etc. What it comes down to is this particular establishment and is run as a family restaurant, and staff does not think they want to establish a reputation that would lead to something like that. City Attorney Robbins pointed out that there is a condition that provides if for whatever reason the business becomes a nuisance, then the CUP could be revoked if people began to loiter or came in just for that purpose. She thought those type of patrons would seek out other types of establishments with longer hours.

Commissioner Johnson noticed in this staff report that the Police Department is supportive of this and she was encouraged by their input.

Commissioner Lenhart moved that, based on the evidence submitted, a finding is made that there will be no significant environmental impact, including a DeMinimis finding of no effect on fish or wildlife, and a Negative Declaration has been prepared, seconded by Vice Chairman Vodvarka, there being no opposition, the motion passed 5-0.

Commissioner Johnson moved to approve the CUP under Case No. 2008-1 for the on-sale of beer and wine (ABC License Type 41) in conjunction with a bona fide eating establishment (Mariscos Licenciado) at 10550 Ramona Avenue, Unit F, by adopting

Resolution No. 08-1673, subject to making the required findings and subject to the 16 conditions of approval, seconded by Commissioner Lenhart, there being no opposition to the motion, the motion passed 5-0.

1. Approval is granted for a CUP to allow on-sale beer and wine (ABC Type 41) in conjunction with a bona fide eating establishment, Mariscos Licenciado Mexican Restaurant, at 10550 Ramona Avenue, Unit F, based on a finding of public convenience and necessity. Any substantial changes to the operation, increase in floor area of the demised space, physical location, or upgrade of license to full alcohol (distilled spirits) sales shall require prior City approval. Any discontinuation or substantial changes to the full service restaurant without City approval shall be a violation of this CUP and may be cause for revocation. Upon transfer, sale or re-assignment of the restaurant to another individual or entity, the applicant shall make full disclosure of the CUP requirements and restrictions to future buyers, transferees or assignees.
2. Conditional Use Permit (CUP) approval shall be valid for a period of six months from the date of Planning Commission approval and shall automatically expire on the six-month anniversary date of Planning Commission action, unless the applicant is diligently pursuing the required license from the Department of Alcoholic Beverage Control (ABC) or implementation of the provisions of this project approval. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's CUP expiration date.
3. The restaurant shall be operated, maintained and open to the general public as a full service (bona fide) eating establishment, serving meals at all times that beer and wine are offered for sale and consumption on the premises. At no time shall the premises be converted into other uses where minors are generally excluded, such as a bar, sports bar, entertainment venue, night club, dance hall or banquet hall operated by either the restaurant owner or outside vendors or promoters. Occasional rental of the dining room for private functions where meals are also served may be permitted, provided that such private functions do not extend beyond the approved hours of operation stated herein. Live entertainment shall require separate review and approval from the City.
4. Approved hours of operation for the restaurant are 9:00 a.m. to 8:00 p.m., Monday through Sunday. No alcoholic beverages shall be served past 8:00 p.m. The applicant may close the restaurant earlier than the hours stated herein. Any changes to the restaurant hours require written notification to the Planning Division and are subject to City approval.
5. Take-out, off-sale, or "to go" beer and wine sales shall not be permitted under this approval. Furthermore, no alcoholic beverage is allowed to be

served or consumed outside of the restaurant premises. Applicant shall post notification of this limitation in English and Spanish within plain view of employees and customers.

6. Prior to the serving of beer and wine on the subject premises, the applicant shall obtain the appropriate license from the Department of Alcoholic Beverage Control (ABC), and demonstrate to the Planning Division that all necessary conditions have been met.
7. A copy of the CUP approval letter with all conditions of approval relating to this application shall be conspicuously posted alongside the establishment's business license and Certificate of Occupancy, and shall be made available for viewing to any law enforcement officers, fire and building inspectors in the course of conducting inspection or bar check on said premises.
8. No window signs either inside or outside, or signs placed inside the business directed toward the outside shall advertise the availability of beer and wine for purchase.
9. The existing building-mounted sign was installed without City approval and issuance of the required building and sign permits. The applicant shall submit scaled drawings of such sign to the Planning and Building Divisions within 14 days of this approval. If it is determined that the existing sign does not meet the requirements of the approved sign program for the property, it shall be removed within 30 days of this approval.
10. The applicant shall be required to reduce the amount of window signage to a maximum coverage of 25 percent of each window within 30 days of this approval.
11. No outdoor seating shall be permitted in conjunction with the operation of the restaurant or granting of this CUP. Should the applicant desire to add outdoor seating in the future, review and approval by the Planning Commission of a separate CUP shall be required.
12. The applicant and restaurant operator may be required by the City to provide at least one on-site uniformed security guard during the restaurant operating hours should the Police Chief determine that such security measure is needed due to the on-sale of alcoholic beverages. The security guard(s) may be employed in coordination and conjunction with the other tenants in the shopping center. The applicant may be required to increase the number of security guards at the discretion of the Montclair Police Department if security concerns warrant such adjustment.
13. The property, inclusive of the building storefronts, exterior and perimeter walls, light fixtures, and sign structure shall be maintained to be free of

graffiti at all time. The applicant shall be responsible to remove any and all graffiti from the premises immediately or no later than 24 hours upon notification by the City.

14. This CUP for on-sale beer and wine may be modified or revoked for failure to abide by these conditions or in the event that the use is determined to be a nuisance to surrounding properties, businesses or the community at large.
15. The following mandatory conditions are hereby imposed as part of the CUP approval for on-sale beer and wine:
 - a. The premises shall be maintained at all times in a neat and orderly manner to be free of trash and debris.
 - b. Trash receptacles shall be provided in such number and at such locations as may be specified by the Planning Commission.
 - c. No beer and wine shall be sold, dispensed or offered for consumption except within the permitted premises, which shall consist of a wholly enclosed building, except as otherwise permitted by the Planning Commission.
 - d. The exterior appearance of the premises shall be designed and maintained in a manner consistent with the exterior appearance of commercial properties already constructed within the immediate neighborhood so as not to cause blight or deterioration, or to substantially diminish or impair property values within the neighborhood.
 - e. The permittee shall comply with all State statutes, rules and regulations relating to the sale, purchase, display, possession and consumption of alcoholic beverages.
 - f. The permittee shall acknowledge and agree that the City has a legitimate and compelling governmental interest in permittee's strict compliance with all conditions imposed upon the permit, including adherence to State statutes, rules and regulations as specified in subsection (e) above. The permittee shall further acknowledge and agree, in writing, that any violation of a State statute, rule or regulation concerning the sale to or consumption of alcoholic beverages by a minor has been determined by the City to have a deleterious secondary effect upon:
 - i. The specific land use requested by the permittee and authorized by the City;

- ii. The compatibility of permittee's authorized land use with adjacent land uses;
- iii. The welfare and safety of the general public within the City.

In view of such deleterious secondary effects, permittee shall acknowledge that the City has specifically reserved the right and authority to impose sanctions, including suspension or revocation of the CUP, as a consequence of one or more violations of a State statute, rule or regulation concerning the sale to or consumption of beer and wine by a minor.

- g. The permit shall, after notice to the permittee and an opportunity to be heard, be subject to the imposition of such additional conditions as may be reasonable and necessary to address problems of land use compatibility, security, or crime control that have arisen since the issuance of the permit.
16. The applicant shall agree to defend, at its sole expense, any action brought against the City, its agents, officers, or employees because of the issuance of this approval; or in the alternative, to relinquish such approval. The applicant shall reimburse the City, its agents, officers, or employees for any damages, loss, court costs and attorney fees that the City, its agents, officers, or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve applicant of its obligations under this condition.

6.b PUBLIC HEARING – CASE NUMBER 2008-3
 Project Address: 8821 Central Avenue
 Project Applicant: Lee Pan Montclair LLC
 Project Planner: Jim S. Lai, Associate Planner
 Request: Conditional Use Permit for on-sale beer and wine

Associate Planner Lai reviewed the staff report. Staff received one letter from a property owner on the south side of the intersection where the Just Tires store is located. They really have no objection, but they want to make sure that there are sufficient conditions to regulate the use and not create a nuisance and staff feels the conditions have sufficiently addressed his concerns and staff has communicated that. Also, placed on the dais in each Commissioner's place setting was a one-page amendment to the conditions of approval by adding Condition No. 13 and it addresses the removal of graffiti and the existing Condition No. 13 will become No. 14.

Commissioner Sahagun asked if letters were mailed out to property owners. Associate Planner Lai replied yes. Commissioner Sahagun asked if there are any problems with the Police Department with the restaurants that already have beer and wine in that shopping center. He stated that he frequents Tokyo Kitchen and does not remember anyone ever getting out of line. Director Lustro stated that the only issue that came up during the review of this particular application was a matter related to one of the other restaurants in that shopping center. There have been some Police issues surrounding the operation and serving of alcoholic beverages, entertainment, etc. That concern by the Police Department was the impetus of a new condition that we have begun including with both of tonight's applications. It appears as Condition No. 7 in both cases and is related to the posting of the CUP letter of approval that is sent out if a CUP is approved. It is to be posted in plain view next to the establishment's business license so that if a law enforcement officer has to visit the business for whatever reason and they have some question about what is allowed and what is not allowed, the officer can make reference to it and determine whether the business is in conformance with the approval. Staff's intent is to include this condition with every CUP, not just those associated with the sale of alcohol. Commissioner Sahagun thought that the restaurants would want to abide by the rules and maintain a good reputation. Sometimes customers might get unruly but most self-regulate themselves.

Chairman Flores asked for clarification on Condition Nos. 13 and 14. Associate Planner Lai replied that Condition No. 13 has been added as a new condition and the old 13 becomes 14.

Vice Chairman Vodvarka moved that, based on the evidence submitted, a finding is made that there will be no significant environmental impact, including a DeMinimis finding of no effect on fish or wildlife, and a Negative Declaration has been prepared, seconded by Commissioner Johnson, there being no opposition to the motion, the motion passed 5-0.

Commissioner Lenhert moved that a finding be made that the proposal for on-sale beer and wine as an accessory to a bona fide restaurant is desirable to the public convenience and a necessity to this use in compliance with Department of Alcoholic Beverage Control (ABC) policy, seconded by Vice Chairman Vodvarka, there being no opposition to the motion, the motion passed 5-0.

Commissioner Sahagun moved to approve a Conditional Use Permit (CUP) under Case No. 2008-3 for the on-sale of beer and wine (Type 41) at a bona fide eating establishment at 8821 Central Avenue, by adopting Resolution No. 08-1672, subject to making the required findings and subject to the 14 conditions of approval, as amended, seconded by Commissioner Johnson, there being no opposition, the motion passed 5-0.

1. Approval is granted for a CUP to allow on-sale beer and wine (ABC Type 41) in conjunction with a bona fide eating establishment, Dolce Café and Bakery, at 8821 Central Avenue, based on a finding of public convenience and necessity. Any substantial changes to the business operation, increase in floor area of the demised space, physical location, or upgrade

of license to full alcohol (distilled spirits) sales shall require prior City approval. Any discontinuation or substantial changes to the full service restaurant without City approval shall be a violation of this CUP and may be cause for revocation. Upon transfer, sale or re-assignment of the restaurant to another individual or entity, the applicant shall make full disclosure of the CUP requirements and restrictions to future buyers, transferees or assignees.

2. Conditional Use Permit (CUP) approval shall be valid for a period of six months from the date of Planning Commission approval and shall automatically expire on the six-month anniversary date of Planning Commission action, unless the applicant is diligently pursuing building plan check toward eventual construction or implementation of the project. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's CUP expiration date.
3. The restaurant shall be operated, maintained and open to the general public as a full service (bona fide) eating establishment, serving meals at all times that beer and wine are offered for sale and consumption on the premises. At no time shall the premises be converted into other uses where minors are generally excluded, such as a bar, sports bar, entertainment venue, night club, dance hall or banquet hall operated by either the restaurant owner or outside vendors or promoters. Occasional rental of the dining room for private functions where meals are also served may be permitted, provided that such private functions do not extend beyond the approved hours of operation stated herein. Live entertainment shall require separate review and approval from the City.
4. Approved hours of operation for the restaurant are 6:00 a.m. to 10:00 p.m. daily. No alcoholic beverages shall be served past the evening closing hours. The applicant may close the restaurant earlier than those stated herein. Any changes to the restaurant hours require written notification to the Planning Division and subject to City approval.
5. Take-out, off-sale, or "to go" beer and wine sales shall not be permitted under this approval. Furthermore, no alcoholic beverage is allowed to be served or consumed outside of the restaurant premises. Applicant shall post notification of this limitation in English and Spanish within plain view of employees and customers.
6. Prior to the serving of beer and wine on the subject premises, the applicant shall obtain the appropriate license from the Department of Alcoholic Beverage Control (ABC), and demonstrate to the Planning Division that all necessary conditions have been met.

7. A copy of the CUP approval letter with all conditions of approval relating to this application shall be conspicuously posted alongside the establishment's business license and Certificate of Occupancy, and shall be made available for viewing to any law enforcement officers, fire and building inspectors in the course of conducting inspection or bar check on said premises.
8. No window signs either inside or outside or signs placed inside the business directed toward the outside shall advertise the availability of beer and wine for purchase.
9. No outdoor seating shall be permitted in conjunction with the operation of the restaurant or granting of this CUP. Should the applicant desire to add outdoor seating in the future, review and approval by the Planning Commission of a separate CUP shall be required.
10. The applicant and restaurant operator may be required by the City to provide at least one on-site uniformed security guard during the restaurant operating hours of 9:00 p.m. until closing should the Police Chief determine that such security measure is needed due to the on-sale of alcoholic beverages. The security guard(s) may be employed in coordination and conjunction with the other tenants in the shopping center. The applicant may be required to increase the number of security guards at the discretion of the Montclair Police Department if security concerns warrant such adjustment.
11. This CUP for on-sale beer and wine may be modified or revoked for failure to abide by these conditions or in the event that the use is determined to be a nuisance to surrounding properties, businesses or the community at large.
12. The following mandatory conditions are hereby imposed as part of the CUP approval for on-sale beer and wine:
 - a. The premises shall be maintained at all times in a neat and orderly manner.
 - b. Trash receptacles shall be provided in such number and at such locations as may be specified by the Planning Commission.
 - c. No beer and wine shall be sold, dispensed or offered for consumption except within the permitted premises, which shall consist of a wholly enclosed building, except as otherwise permitted by the Planning Commission.

- d. The exterior appearance of the premises shall be designed and maintained in a manner consistent with the exterior appearance of commercial properties already constructed within the immediate neighborhood so as not to cause blight or deterioration, or to substantially diminish or impair property values within the neighborhood.
 - e. The permittee shall comply with all State statutes, rules and regulations relating to the sale, purchase, display, possession and consumption of alcoholic beverages.
 - f. The permittee shall acknowledge and agree that the City has a legitimate and compelling governmental interest in permittee's strict compliance with all conditions imposed upon the permit, including adherence to State statutes, rules and regulations as specified in subsection (e) above. The permittee shall further acknowledge and agree, in writing, that any violation of a State statute, rule or regulation concerning the sale to or consumption of alcoholic beverages by a minor has been determined by the City to have a deleterious secondary effect upon:
 - i. The specific land use requested by the permittee and authorized by the City;
 - ii. The compatibility of permittee's authorized land use with adjacent land uses;
 - iii. The welfare and safety of the general public within the City.

In view of such deleterious secondary effects, permittee shall acknowledge that the City has specifically reserved the right and authority to impose sanctions, including suspension or revocation of the CUP, as a consequence of one or more violations of a State statute, rule or regulation concerning the sale to or consumption of beer and wine by a minor.
 - g. The permit shall, after notice to the permittee and an opportunity to be heard, be subject to the imposition of such additional conditions as may be reasonable and necessary to address problems of land use compatibility, security, or crime control that have arisen since the issuance of the permit.
13. The property, inclusive of the building storefronts, exterior and perimeter walls, light fixtures, and sign structure shall be maintained to be free of graffiti at all times. The applicant shall be responsible to remove any and all graffiti from the premises immediately or not later than 24 hours upon notification by the City.

14. The applicant shall agree to defend, at its sole expense, any action brought against the City, its agents, officers, or employees because of the issuance of this approval; or in the alternative, to relinquish such approval. The applicant shall reimburse the City, its agents, officers, or employees for any damages, loss, court costs and attorney fees that the City, its agents, officers, or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve applicant of its obligations under this condition.

INFORMATION ITEMS

City Attorney Robbins stated that after reading the menu from the restaurant in the second agenda item and hearing the comments from people who ate there, she was ravenous.

Commissioner Sahagun was stopped by the crossing guard at (Moreno) school and she told him that Montclair does not have a “slow down” “school zone” painted on the street and said all the other schools have it. He looked around while he drives around the other schools to see if they have words painted on the street and about three or four of the schools that he passed had it. He asked staff to look into Moreno School and other schools in the city and getting this “Slow – School Zone” painted on the street. He told the crossing guard that he would bring it up at the meeting.

Chairman Flores stated that on San José Street at Serrano Middle School, along the east property line, there is a block wall about 5 feet high and 40 feet long that has graffiti on the east side. He thanked the graffiti team for removing the graffiti off the big tank that is on Ramona Avenue.

Chairman Flores inquired about the southwest corner of Mission and Monte Vista, they have been grading for six months. Is there something in the soil? Director Lustro replied that the applicant initially started grading without permits and then he was stopped and had to backtrack. Now they have grading permits and he believed they also pulled the building permits to move forward on the 18,000 square-foot commercial center.

Chairman Flores observed work being done at the former nursery property at the northwest corner of Ramona and Holt Boulevard. He noticed tractors pulling out tree stumps, etc. and it looked very good.

Chairman Flores adjourned the meeting at 7:28 p.m.

Respectfully submitted,

Laura Berke
Recording Secretary