



CITY OF MONTCLAIR
PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS
5111 Benito Street, Montclair, California 91763

REGULAR ADJOURNED MEETING
Monday, September 14, 2009
7:00 p.m.

It is respectfully requested that you please silence your cell phones and other electronic devices while the meeting is in session. Thank you.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Chairman Luis Flores, Vice Chairman Maynard Lenhert, Commissioner Tenice Johnson, Commissioner Sergio Sahagun, and Commissioner Don Vodvarka

4. APPROVAL OF MINUTES

The minutes of the August 24, 2009 Planning Commission meetings are presented for consideration.

5. ORAL AND WRITTEN COMMUNICATIONS ON NON-AGENDA ITEMS

The public is invited to address the Planning Commission regarding any items that are not on the agenda. Comments should be limited to matters under the jurisdiction of the Planning Commission. It is respectfully requested that speakers limit their comments to no more than three minutes in length.

Any person wishing to address the Planning Commission on an agenda or non-agenda item should complete a speaker's card and submit it to the City Planner. Speaker's cards are available at the entrance to the Council Chambers.

6. AGENDA ITEMS

- a. PUBLIC HEARING - CASE NUMBER 2009-15
 - Project Address: 9047 Central Avenue
 - Project Applicant: Sushi Town/Michael & Sue Roybal
 - Project Planner: Jim S. Lai, Associate Planner
 - Request: Conditional Use Permit to allow on-sale beer and wine in conjunction with a bona fide eating establishment

7. INFORMATION ITEMS

Although the Planning Commission is prohibited from taking action on or discussing items not on the posted agenda, a member of the Planning Commission may ask for information, request a report back or to place a matter of business on the agenda for a subsequent meeting, ask a question for clarification, make a brief announcement, or briefly report on his or her own activities, provided the foregoing are related to, or within the jurisdiction of, the Planning Commission.

8. PUBLIC INSPECTION OF MATERIALS

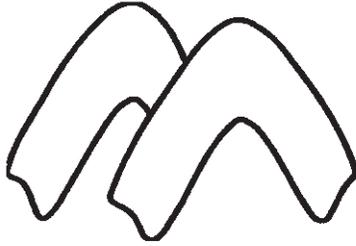
Materials related to an item on this agenda submitted to the Commission after distribution of the agenda packet are available for public inspection at the Planning Division counter during normal business hours.

9. ADJOURNMENT

The City of Montclair Planning Commission is hereby adjourned to the regularly scheduled meeting of September 28, 2009 at 7:00 p.m. in the Council Chambers, 5111 Benito Street, Montclair, California.

CERTIFICATION OF AGENDA POSTING

I, Laura Berke, Administrative Secretary for the City of Montclair, hereby certify that a copy of this agenda was posted on the bulletin board adjacent to the south door of Montclair City Hall on September 10, 2009.



CITY OF MONTCLAIR
PLANNING COMMISSION

MEETING DATE: 09/14/09

AGENDA ITEM 6.a

Case No.: 2009-15

Application: CUP for on-premises sale of beer and wine in conjunction with a bona fide eating establishment

Applicant/Property Owner:
 Sushi Town Japanese Restaurant
 CHI Enterprises / J&P Development

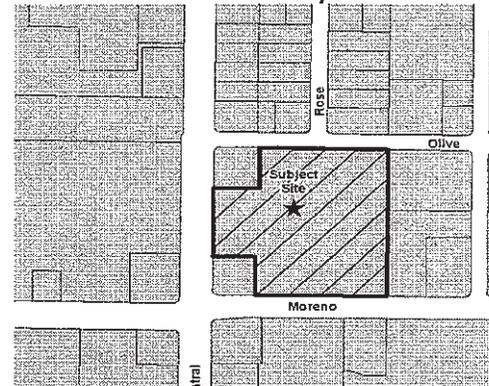
General Plan: Regional Commercial

Zoning: C-3 (General Commercial)

Project Address: 9047 Central Avenue

APN: 1008-033-11-0000

Location Map



EXISTING SITE FEATURES/CONDITIONS

Structures: 1,450 square-foot lease space within an existing single-story commercial building in the Montclair Promenade shopping center

Parking: Site is fully-improved with approximately 486 parking spaces, including required disabled-accessible stalls for the center

City/Public Utility Easements: None on site

Trees/Significant Vegetation: Typical landscaping on site; no significant or heritage trees.

ADJACENT LAND USE DESIGNATIONS AND LAND USES

	<i>General Plan</i>	<i>Zoning</i>	<i>Use of Property</i>
Site	Regional Commercial	C-3 (General Commercial)	Commercial
North	General Commercial	C-3 (General Commercial)	Commercial
East	Regional Commercial	C-3 (General Commercial)	Commercial
South	Regional Commercial	C-2 (Restricted Commercial)	Commercial
West	Regional Commercial	C-2 (Restricted Commercial)	Commercial

Report on Item Number 6.a

PUBLIC HEARING - CASE NUMBER 2009-15

APPLICATION TYPE	Conditional Use Permit
NAME OF APPLICANTS	CHI Enterprises / J&P Development for Sushi Town Japanese Restaurant
LOCATION OF PROPERTY	9047 Central Avenue
GENERAL PLAN DESIGNATION	Regional Commercial
ZONING DESIGNATION	C-3 (General Commercial)
EXISTING LAND USE	Restaurant in Shopping Center
ENVIRONMENTAL DETERMINATION	Categorical Exemption – Section 15301 (Existing Facilities)
PROJECT PLANNER	Jim S. Lai

Project Description

The applicant is requesting approval of a Conditional Use Permit (CUP) to allow on-sale beer and wine (Type 41 ABC license) in conjunction with a bona fide family restaurant located at 9047 Central Avenue. Sushi Town Japanese Restaurant has been in operation at the Montclair Promenade shopping center since 2005 and offers sushi, rolls, grilled foods and other Japanese cuisine. The restaurant is approximately 1,450 square feet in size and has a maximum seating capacity of 38 persons.

The hours of operation for the restaurant are 11:00 a.m. to 9:00 p.m., Monday through Saturday and 12:00 noon to 7:30 p.m. on Sunday. No exterior remodeling, outdoor seating, entertainment or bar areas are being proposed.

The applicants have provided a site plan, floor plan and menu which are included in the Commission packets for reference.

Background

- On-premises sale of beer and wine as an accessory use to an eating establishment is allowed in the General Commercial (C-3) zone plan, subject to the approval of a CUP pursuant to Section 11.42.020.D of the Montclair Municipal Code. A CUP does not change the underlying zoning of property, but allows certain identified uses subject to conditions.
- The subject site is one of the many retail tenants within the Montclair Promenade center at the northeast corner of Central Avenue and Moreno Street. The center includes a hair salon, nail spa, retail tool store, clothing store, coffee, sandwich and electronic stores in multiple buildings.

Planning Division Comments

Sushi Town is a small, family-operated Japanese restaurant with full table service. Staff's inspection of the premises and a review of the floor plan indicate that it is indeed a bona fide restaurant offering sit-down family dining with full lunch and dinner menus. There are no separate rooms, pool tables, sound stage, dance floor, large screen TV or counter that would suggest or create a bar-type environment. The availability of beer and wine will not significantly alter the nature of the business, as the premises must remain available for customers of all ages, including minors. The hours of operation are also characteristic of a typical restaurant use.

There is adequate parking on the site to support the business and whatever increase in business the restaurant might expect with the new beer and wine license. Moreover, staff does not expect the beer and wine license at the existing restaurant to adversely impact other businesses in the center or surrounding properties. There is no on-sale license of alcohol outlet within a 500-foot radius of this restaurant. The Police Department does not oppose the request given the full-service menu, lack of a bar counter, dance floor, entertainment or pool tables and early closing hours.

Conditional Use Permit Findings

Staff believes the necessary findings for granting the CUP for on-premises sale of beer and wine (Type 41 ABC license) in conjunction with a bona fide restaurant can be made, as follows:

- A. The proposed on-premises sale of beer and wine in conjunction with the full menu food service within a bona fide family restaurant would be an essential and desirable use for the general public convenience and welfare, in that the inclusion of beer and wine would make the dining experience more enjoyable for the general public of legal drinking age. Such availability of alcohol is common among other similar restaurants in the vicinity.
- B. Granting of the CUP for the proposed on-sale beer and wine license will not be materially detrimental to the public welfare and to other property in the vicinity, in that the proposed use will be located in a well-established family restaurant in a shopping center that has adequate parking, security lighting and maintenance standards. Moreover, the proposed use will be located entirely within the lease space so as not to present outdoor activities that cannot be accommodated on the site. Lastly, the proposed use will not negatively impact any sensitive land uses in the surrounding area.
- C. The proposed on-premises sale of beer and wine at the subject site conforms to good zoning practice, in that the Montclair Municipal Code allows the on-premises sale of beer and wine in the C-3 (General Commercial) zoning district, subject to CUP approval. The CUP allows the City to place reasonable conditions to govern

the overall operation of the use, including the sale of beer and wine so that it does not detract from the general quality of the shopping center and surrounding area.

- D. That such use in such location is not contrary to the objective of any part of the adopted General Plan, in that the adopted General Plan encourages a wide range of retail and service uses within the retail commercial area.

Department of Alcoholic Beverage Control (ABC) Finding

There is a requirement of the Department of Alcoholic Beverage Control (ABC) that the local governing agency determine that public convenience and necessity would be served if a CUP is approved for alcoholic beverages.

Staff recommends the Commission make a finding that the proposal for on-premises sale of beer and wine as an accessory to a bona fide restaurant is desirable to the public convenience and a necessity to this use. With regard to Public Convenience or Necessity (ABC finding), the Commission finds that the proposed Type 41 license (On-Sale Beer and Wine) associated with this bona fide family eating establishment is not in an area with an "undue concentration" of alcohol outlets. The restaurant is well-established and offers full menu table service and does not have a late closing hour. Moreover, the area in which the restaurant is located is not within a geographical region identified as a high crime area by local law enforcement.

Public Notice

This item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on September 4, 2009. Public hearing notices were also mailed to property owners within a 300-foot radius of the exterior boundaries of the project site in accordance with State law for consideration of this discretionary zoning entitlement. At the time this report was prepared, no comments or inquiries had been received by staff regarding the proposal.

Environmental Assessment

The project qualifies as a Class 1 exemption under State CEQA Guidelines Section 15301, which exempts projects involving little to no expansion of existing structures or uses. As such, a DeMinimis finding of no impact on fish and wildlife will be prepared.

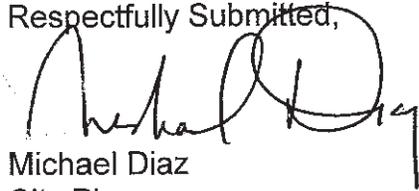
Planning Division Recommendation

Staff recommends that the Planning Commission take the following actions:

1. Move that, based upon evidence submitted, the project is deemed exempt from the requirements of the California Environmental Quality Act (CEQA). Further, the project qualifies as a Class 1 exemption under State CEQA Guidelines Section 15301, which covers infill projects in significantly developed areas.

2. Move to approve a Conditional Use Permit under Case No. 2009-15, subject to making the required findings and subject to the 16 conditions as described in attached Resolution Number 09-1704.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Diaz", written over a horizontal line.

Michael Diaz
City Planner

JL/b

Attachments: Draft Resolution of Approval for Case Number 2009-15

RESOLUTION NUMBER 09-1704

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING A CONDITIONAL USE PERMIT UNDER CASE NO. 2009-15 TO ALLOW THE ON-PREMISES SALE OF BEER AND WINE (TYPE 41) IN CONJUNCTION WITH A BONA FIDE RESTAURANT IN THE C-3 (GENERAL COMMERCIAL) ZONING DISTRICT AT 9047 CENTRAL AVENUE.

A. Recitals

WHEREAS, Sushi Town Japanese Restaurant, with the consent of the property owner, CHI Enterprises / J&P Development, filed an application for a Conditional Use Permit (CUP) to allow the on-premises sale of beer and wine (Type 41 ABC license) in conjunction with a bona fide eating establishment at 9047 Central Avenue, on August 31, 2009; and

WHEREAS, Sections 11.28.20.A.12 and 11.42.020.D of the Montclair Municipal Code require a CUP for such use upon review of development standards, zoning regulations and land use compatibility with surrounding properties; and

WHEREAS, staff has determined that the proposal meets the intent and requirements of the ordinance for such use and the applicable development standards of the C-3 (General Commercial) zoning district and the Alcoholic Beverages Ordinance; and

WHEREAS, staff has determined that the proposed on-premises sale of beer and wine within a bona fide family restaurant would not have a significant effect on the environment and has prepared a Categorical Exemption pursuant to Section 15301 of the California Environmental Quality Act (CEQA) and a DeMinimis finding of no effect on fish and wildlife; and

WHEREAS, a notice of public hearing was duly given and posted in the manner and for the time frame prescribed by law; and

WHEREAS, on September 14, 2009, commencing at 7:00 p.m. in the Council Chamber at Montclair City Hall, the Planning Commission conducted a public hearing at which time all persons wishing to testify in connection with said CUP request were heard, and said CUP was fully studied.

B. Resolution

NOW, THEREFORE, it is hereby found, determined, and resolved by the Planning Commission of the City of Montclair as follows:

1. This Commission hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.

2. Based upon the substantial evidence presented to this Commission during the above-referenced public hearing on September 14, 2009, including written and oral staff reports, together with public testimony, this Commission hereby finds as follows:
- a. The proposed on-premises sale of beer and wine in conjunction with the full menu food service within a bona fide family restaurant would be an essential and desirable use for the general public convenience and welfare, in that the inclusion of beer and wine would make the dining experience more enjoyable for the general public of legal drinking age. Such availability of alcohol is common among other similar restaurants in the vicinity.
 - b. Granting of the CUP for the proposed on-sale beer and wine license will not be materially detrimental to the public welfare and to other property in the vicinity, in that the proposed use will be located in a well-established family restaurant in a shopping center that has adequate parking, security lighting and maintenance standards. Moreover, the proposed use will be located entirely within the lease space so as not to present outdoor activities that cannot be accommodated on the site. Lastly, the proposed use will not negatively impact any sensitive land uses in the surrounding area.
 - c. The proposed on-premises sale of beer and wine at the subject site conforms to good zoning practice, in that the Montclair Municipal Code allows the on-premises sale of beer and wine in the C-3 (General Commercial) zoning district, subject to CUP approval. The CUP allows the City to place reasonable conditions to govern the overall operation of the use, including the sale of beer and wine so that it does not detract from the general quality of the shopping center and surrounding area.
 - d. That such use in such location is not contrary to the objective of any part of the adopted General Plan, in that the adopted General Plan encourages a wide range of retail and service uses within the retail commercial area.
 - e. With regard to Public Convenience or Necessity (ABC finding), the Commission finds that the proposed Type 41 license (On-Sale Beer and Wine) associated with this bona fide family eating establishment is not in an area with an "undue concentration" of alcohol outlets. The restaurant is well-established and offers full menu table service and does not have a late closing hour. Moreover, the area in which the restaurant is located is not within a geographical region identified as a high crime area by local law enforcement.

3. Planning Division staff has determined that the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines. The project qualifies under the Class 1 exemption under State CEQA Guidelines Section 15301, which exempts projects involving little to no expansion of existing structures or uses. In addition, there is no substantial evidence that the project will have a significant effect on the environment. The Planning Commission has reviewed the Planning Division's determination of exemption and, based on its own independent judgment, concurs with staff's determination of exemption and directs staff to prepare a Notice of Exemption and a DeMinimis finding of no effect on fish and wildlife; and
4. Based upon the findings and conclusions set forth in paragraphs 1, 2 and 3, above, this Commission hereby approves the application subject to each and every condition set forth below.

Planning

1. This Conditional Use Permit (CUP) approval shall allow the on-premises sale of beer and wine (Type 41 ABC license) in conjunction with a bona fide eating establishment within a 1,450 square-foot lease area at 9047 Central Avenue. 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.
2. This CUP approval shall be valid for a period of six months (180 days) 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 obtaining the necessary license from the Department of Alcoholic Beverage Control (ABC). 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. This decision, or any aspect of this decision, may be appealed to the City Council within 15 days from the date of Planning Commission action, subject to filing the appropriate forms and related fees.
4. Within five days of approval, the applicant shall submit a check in the amount of \$50 to cover the County administrative fee for filing a Notice of Exemption as required by the California Environmental Act (CEQA). The check shall be made payable to the Clerk of the Board of Supervisors.
5. The restaurant shall continue to 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 subject to the issuance and maintenance of a valid State of California Type 41 (On-Sale Beer and Wine) license.

6. At no time shall any portion of 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.
7. No outdoor dining and/or service of alcoholic beverages shall be permitted.
8. Live entertainment of any kind shall require separate review and approval from the City.
9. Approved hours of operation for the restaurant are 11:00 a.m. to 9:00 p.m., Monday through Saturday and 12:00 noon to 7:30 p.m. on Sunday. No alcoholic beverages shall be served past the evening closing hours. The applicant may close the restaurant earlier than those hours stated herein. Any changes to the restaurant hours require written notification to the Planning Division and subject to City approval.
10. Upon transfer, sale or re-assignment of the restaurant to another individual, corporation, partner or entity, the applicant shall make full disclosure of the CUP requirements and restrictions to future buyers, transferees or assignees.
11. 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.
12. Approval of this CUP shall not waive compliance with any regulations as set forth in the Uniform Building Code, City Ordinances, by the San Bernardino County Health Department and/or California State Department of Alcoholic Beverage Control (ABC).
13. The business shall maintain a litter free environment to the business as well as the surrounding areas.
14. 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 at the site.
15. The following mandatory conditions are hereby imposed as part of the CUP approval for off-sale beer and wine:

- a. The premises shall be maintained at all times in a neat and orderly manner.
- b. No beer and wine shall be sold, dispensed or offered for consumption outside of the permitted premises, which shall consist of a wholly enclosed building, except as otherwise permitted by the Planning Commission.
- c. The permittee shall comply with all State statutes, rules and regulations relating to the sale, purchase, display, possession and consumption of alcoholic beverages.
- d. 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 (c), 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.

- e. 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. 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 inspections or bar checks on said premises.

17. Any violations of the conditions of approval may result in the revocation or modification of this permit, including the imposition of fines in the event that the use is determined to be a nuisance to surrounding properties, businesses or the community at large.
18. The applicant shall agree to defend, at his 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 his obligations under this condition.

The Secretary to this Commission shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED THIS 14TH DAY OF SEPTEMBER, 2009.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____
Luis Flores, Chair

ATTEST: _____
Steve Lustro, Secretary

I, Steve Lustro, Secretary of the Planning Commission of the City of Montclair, do hereby certify that the foregoing Resolution was duly and regularly introduced, passed, and adopted by the Planning Commission of the City of Montclair, at a regular meeting of the Planning Commission conducted on the 14th day of September, 2009, by the following vote, to-wit:

AYES:

NOES:

ABSENT: