



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

REGULAR ADJOURNED MEETING
Monday, July 14, 2014
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

Chair Tenice Johnson, Vice Chair Luis Flores, Commissioner Manny Martinez, Commissioner Sergio Sahagun, and Commissioner Don Vodvarka

4. APPROVAL OF MINUTES

The minutes of the June 23, 2014 Planning Commission meeting 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 2014-14
Project Address: 5060 Montclair Plaza Lane
Project Applicant: 5060 Montclair Plaza Lane Owner /
Verizon Wireless
Project Planner: Silvia Gutiérrez, Associate Planner
Request: Conditional Use Permit to allow an
In-Building Distribution Antenna System
CEQA Assessment: Categorically Exempt (Section 15303)
- b. PUBLIC HEARING - CASE NUMBER 2014-16
Project Address: 5200 Moreno Street
Project Applicant: 5060 Montclair Plaza Lane Owner /
99¢ Only Stores
Project Planner: Silvia Gutiérrez, Associate Planner
Request: Conditional Use Permit to allow off-
premises sale of beer and wine
(ABC Type 20 license - "Off-Sale Beer and
Wine")
CEQA Assessment: Categorically Exempt (Section 15301)
- c. CASE NUMBER 2012-5
Project Address: 5301 Holt Boulevard
Project Applicant: Southeast Statesboro, LLC
Project Planner: Michael Diaz, City Planner
Request: Time Extension for Conditional Use Permit
to allow the off-premises sale of beer, wine
and distilled spirits (ABC Type 21 license -
"Off-Sale General")
CEQA Assessment: Categorically Exempt (Section 15301)

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

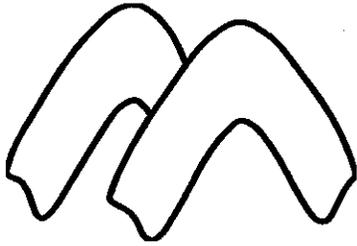
Materials related to an item on this agenda submitted to the Commission after distribution of the agenda packet are available for public inspection at the Planning Division counter during normal business hours.

9. ADJOURNMENT

The City of Montclair Planning Commission is hereby adjourned to the regularly scheduled meeting of July 28, 2014 at 7:00 p.m. in the Council Chambers, 5111 Benito Street, Montclair, California.

CERTIFICATION OF AGENDA POSTING

I, Laura Embree, Administrative Secretary for the City of Montclair, hereby certify that a copy of this agenda was posted on the bulletin board adjacent to the north door of Montclair City Hall on July 10, 2014.



**CITY OF MONTCLAIR
PLANNING COMMISSION**

MEETING DATE: 07/14/14

AGENDA ITEM 6.a

Case No.: 2014-14

Application: Conditional Use Permit (CUP) to allow the installation of an In-Building Distribution Antenna System (IDAS) at Montclair Plaza.

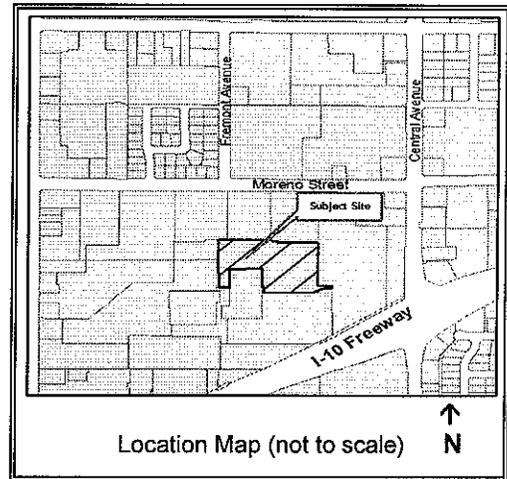
Project Address: 5060 Montclair Plaza Lane

Property Owner: 5060 Montclair Plaza Lane Owner

General Plan: Regional Commercial

Zoning: C-3 (General Commercial) per the North Montclair Specific Plan (NMSP)

Assessor Parcel No.: 1008-181-05



EXISTING SITE FEATURES/CONDITIONS

Structures: 1.2 million square-foot regional shopping center

Parking: 6,218 parking spaces

ADJACENT LAND USE DESIGNATIONS AND USES

	<i>General Plan</i>	<i>Zoning</i>	<i>Use of Property</i>
Site	Regional Commercial	C-3 (General Commercial) per North Montclair Specific Plan	Montclair Plaza
North	Specific Plan	TC (Town Center) and CR (Corridor Residential) per North Montclair Downtown Specific Plan	Montclair Park commercial center
South	Regional Commercial	C-3 (General Commercial) per North Montclair Specific Plan	Montclair Plaza
East	Regional Commercial	C-3 (General Commercial) per North Montclair Specific Plan	Montclair Plaza
East	Regional Commercial	C-3 (General Commercial) per North Montclair Specific Plan	Montclair Plaza

Report on Item Number 6.a

PUBLIC HEARING – CASE NUMBER 2014-14

APPLICATION TYPE(S)	Conditional Use Permit
NAME OF APPLICANT	5060 Montclair Plaza Lane Owner
LOCATION OF PROPERTY	5060 Montclair Plaza Lane
GENERAL PLAN DESIGNATION	Regional Commercial
ZONING DESIGNATION	C-3 (General Commercial) per North Montclair Specific Plan
EXISTING LAND USE	Regional Shopping Center
ENVIRONMENTAL DETERMINATION	Categorical Exemption – Section 15303
PROJECT PLANNER	Silvia Gutiérrez

Project Description

Verizon Wireless is requesting approval of a Conditional Use Permit (CUP) to allow the installation of an In-Building Distribution Antenna System (IDAS) at Montclair Plaza to improve wireless coverage for Verizon customers within the regional shopping center. An IDAS facility is a network of antenna nodes connected to a common source that provides continuous, seamless and robust wireless coverage wireless service within a geographic area or structure. IDAS facilities are commonly found in locations such as hospitals, stadiums, corporate offices and campuses, malls, universities, and large government facilities.

The IDAS facility will be located inside an existing equipment room (Equipment Room No. 10) adjacent to the Barnes and Noble lease space and occupying approximately 22 square feet of floor area. Exterior equipment is limited to a simple GPS antenna placed on the roof behind the existing parapet. In addition, the proposed IDAS allows for future co-location of additional providers to the system framework and the ability to continue to operate and provide communications service in the event of a major power outage that may cause traditional telephone service to be rendered inoperable.

Plans for the project are included in the Commission packets for reference.

Background

- In October 1967, the Planning Commission and City Council approved the Montclair Plaza Master Development Plan pursuant to Precise Plan of Design (PPD) Case No. 100-90.
- In March 1984, the Planning Commission approved A Precise Plan of Design for the Plaza expansion plan (PPD 83-40), which added a second floor level, two new anchors and a parking structure.

- In March 2005, the Planning Commission approved a Conditional Use Permit and Precise Plan of Design (Case No. 2005-5) approving construction of the Barnes and Noble Bookstore with outdoor café seating.
- The Federal Telecommunications Act of 1996 precludes local governments from banning cellular transmission sites based on health concerns about the dangers of exposure to radiofrequency radiation (RFR) and electromagnetic frequency (EMF). This is due to inconclusive evidence about the health risk of exposure to RFR and EMF. Cities and counties retain discretion over design and location of the sites but cannot exclude them. Therefore, the Planning Commission is reminded that it cannot consider any environmental effects of emissions that otherwise comply with FCC regulations, including purported impacts upon health or alleged interference with television reception, in its decision to approve or deny the project.
- The Montclair Municipal Code permits wireless telecommunications facilities subject to the approval of a Conditional Use Permit (CUP). The wireless ordinance provides policies and direction, clarifies existing codes, and sets forth reasonable criteria, development standards and standardized conditions of approval upon which staff is using to evaluate this application.

Planning Division Comments

The primary purpose of the proposed IDAS facility is to improve service capacity and reception for Verizon customers within the Plaza but also would help to improve reception within a one-half (0.5) mile radius of the regional shopping center. The need for the IDAS is driven by the number of cell phone users that occupy the regional shopping center during peak hours. The benefit of the IDAS is the ability to improve service for targeted areas without the bulk associated with a traditional stealth tower facility. Service propagation maps prepared by the applicant indicate a large area of weak service in the central area of the City that would be significantly remedied by the proposed antennas.

According to Verizon representatives, the proposed IDAS facility will be the first such facility in the City. Given the proposed location and the small size of the exterior GPS antenna, the IDAS facility will be virtually invisible.

Conditional Use Permit Findings

- A. The proposed In-Building Distribution Antenna System (IDAS) is essential or desirable to the public convenience and public welfare in that such facility would improve wireless access to telecommunications services for all workers and visitors of Montclair Plaza and within an adjacent 1/2-mile radius of the site. In addition, the proposed IDAS allows for future co-location of additional providers to the system framework and the ability to continue to operate and provide communications service in the event of a major power outage that may cause traditional telephone service to be rendered inoperable.

- B. The proposed IDAS facility would not create hazards considered detrimental to the public health, safety, and welfare, or injurious to the neighborhood based on the data and conclusions contained in the staff report. The proposed IDAS would be located within an enclosed existing equipment room and utilizes only a small GPS panel antenna on the exterior of the building that is screened from view by an existing parapet wall. Lastly, all necessary building permits will be required to ensure that the facility is properly constructed and inspected.
- C. That the proposed IDAS antenna facility at the proposed location conforms to good zoning practice. In accordance with the City's wireless ordinance and other applicable portions of the Zoning Code, the proposed communication facility is properly located so as to have no adverse impacts on the underlying use of the property or negative visual impacts to the appearance of Montclair Plaza.
- D. That such use in such location is not contrary to the objectives of any part of the adopted General Plan, which encourage compliance with Federal law, increased emergency preparedness, enhancement of public convenience and communication, and projects which meet community design objectives.

Wireless Telecommunications Facility Findings

Staff further finds the proposed design and placement of the In-Building Distribution Antenna System (IDAS) communications facility to be consistent with Chapter 11.73 of the Montclair Municipal Code, and believes the necessary findings for allowing the establishment of such a facility can be made as follows:

- A. There is adequate space on the property for the wireless telecommunications facility (IDAS) without conflicting with existing buildings or other improvements on the property, reducing required parking or landscaping, or otherwise compromising applicable development standards. The proposed IDAS facility is entirely within the building and the only antenna is small and roof-mounted behind an existing parapet wall.
- B. The design and placement of the In-Building Distribution Antenna System (IDAS) communications facility will not adversely impact the use of the property, buildings and structures located on the property or the surrounding area or neighborhood. All associated support equipment for the new wireless facility will be installed inside an existing equipment room and requires no discernible changes to the exterior of the building or center.
- C. The proposed IDAS facility, as proposed, is consistent with the provisions of Chapter 11.73 and complies with all other applicable requirements of Title 11 of the Montclair Municipal Code. The facility will not emit excessive noise, vibration, traffic or other disturbance that would have a substantial adverse effect on abutting property or uses located on these properties. Moreover, the proposed facility meets distance requirements from residential properties and the required setbacks of the underlying district.

Public Notice

This item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on July 2, 2014. 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 the staff report was completed, staff had not received any comments or correspondence from the public regarding this application.

Environmental Assessment

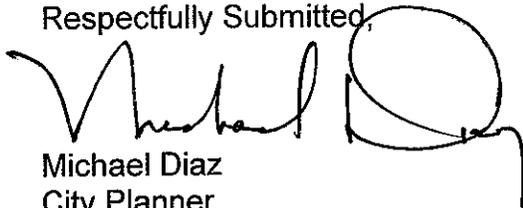
The proposed project involves installation of small, new structures on a developed site. As such, staff has determined that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15303 of the CEQA Guidelines (Class 3 – New Construction or Conversion of Small Structures).

Planning Division Recommendation

Staff recommends the Planning Commission take the following action(s):

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 3 Exemption under State CEQA Guidelines Section 15303.
2. Move to approve a Conditional Use Permit under Case No. 2014-14 to allow the installation of an In-Building Distribution Antenna System (IDAS) facility, roof-mounted GPS panel antenna within an existing equipment room at Montclair Plaza, 5060 Montclair Plaza Lane, per the submitted plans, as described in the staff report, and required findings subject to the conditions in the attached Resolution.

Respectfully Submitted,



Michael Diaz
City Planner

SG/le

Attachments: Draft Resolution of Approval for Case No. 2014-14

c: Christine Song, Planner, Core Dev. Svcs. for Verizon, 2749 Saturn Street, Brea, CA 92821
Grace Anicete, Tenant Coordinator, Montclair Plaza, 5060 Montclair Plaza Lane, Montclair, CA 91763

RESOLUTION NO. 14-1810

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING A CONDITIONAL USE PERMIT UNDER CASE NO. 2014-14 TO ALLOW THE INSTALLATION OF AN IN-BUILDING DISTRIBUTION ANTENNA SYSTEM (IDAS) FACILITY AT MONTCLAIR PLAZA, 5060 MONTCLAIR PLAZA LANE (APN 1008-181-05)

A. Recitals.

WHEREAS, on June 23, 2014, 5060 Montclair Plaza Lane Owner (property owner), in conjunction with Verizon Wireless, initiated an application to allow the installation of an In-Building Distribution Antenna System (IDAS) at Montclair Plaza; and

WHEREAS, an IDAS facility is a network of antenna nodes connected to a common source that provides continuous, seamless and robust wireless coverage wireless service within a geographic area or structure; and

WHEREAS, the proposed IDAS facility will be located inside an existing equipment room (Equipment Room No. 10) adjacent to the Barnes and Noble lease space and occupying approximately 22 square feet of floor area; and

WHEREAS, the system utilizes one small GPS antenna that will be placed on the roof behind and screened from view by an existing parapet wall; and

WHEREAS, the proposed IDAS facility is determined to be subject to Chapter 11.73 of the Montclair Municipal Code, which governs the development of wireless telecommunications facilities within the City and provides policies and sets forth criteria, development standards and standardized conditions of approval upon which to evaluate this application; and

WHEREAS, Verizon Wireless, the wireless carrier, has identified the site as a practical location in central Montclair to do so in order to provide enhanced services to its customers by increasing signal strength and minimizing dropped calls; and

WHEREAS, staff has determined that the application meets the intent and requirements of the Municipal Code and the applicable development standards of the Wireless Telecommunications Ordinance; and

WHEREAS, 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, pursuant to Section 15303 (Class 3 – New Construction or Conversion of Small Structures). In addition, there is no substantial evidence the project will have a significant effect on the environment; 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 July 14, 2014, 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 application were heard, and said application 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 July 14, 2014, including written and oral staff reports, together with public testimony, this Commission hereby finds as follows:

Conditional Use Permit Findings

- A. The proposed In-Building Distribution Antenna System (IDAS) is essential or desirable to the public convenience and public welfare in that such facility would improve wireless access to telecommunications services for all workers and visitors of Montclair Plaza and within an adjacent 1/2-mile radius of the site. In addition, the proposed IDAS allows for future co-location of additional providers to the system framework and the ability to continue to operate and provide communications service in the event of a major power outage that may cause traditional telephone service to be rendered inoperable.
- B. The proposed IDAS facility would not create hazards considered detrimental to the public health, safety, and welfare, or injurious to the neighborhood based on the data and conclusions contained in the staff report. The proposed IDAS would be located within an enclosed existing equipment room and utilizes only a small GPS panel antenna on the exterior of the building that is screened from view by an existing parapet wall. Lastly, all necessary building permits will be required to ensure that the facility is properly constructed and inspected.
- C. That the proposed IDAS antenna facility at the proposed location conforms to good zoning practice. In accordance with the City's wireless ordinance and other applicable portions of the Zoning Code, the proposed communication facility is properly located so as to have no adverse

impacts on the underlying use of the property or negative visual impacts to the appearance of Montclair Plaza.

- D. That such use in such location is not contrary to the objectives of any part of the adopted General Plan, which encourage compliance with Federal law, increased emergency preparedness, enhancement of public convenience and communication, and projects which meet community design objectives.

Wireless Telecommunications Facility Findings

- A. There is adequate space on the property for the wireless telecommunications facility (IDAS) without conflicting with existing buildings or other improvements on the property, reducing required parking or landscaping, or otherwise compromising applicable development standards. The proposed IDAS facility is entirely within the building and the only antenna is small and roof-mounted behind an existing parapet wall.
 - B. The design and placement of the In-Building Distribution Antenna System (IDAS) communications facility will not adversely impact the use of the property, buildings and structures located on the property or the surrounding area or neighborhood. All associated support equipment for the new wireless facility will be installed inside an existing equipment room and requires no discernible changes to the exterior of the building or center.
 - C. The proposed IDAS facility, as proposed, is consistent with the provisions of Chapter 11.73 and complies with all other applicable requirements of Title 11 of the Montclair Municipal Code. The facility will not emit excessive noise, vibration, traffic or other disturbance that would have a substantial adverse effect on abutting property or uses located on these properties. Moreover, the proposed facility meets distance requirements from residential properties and the required setbacks of the underlying district.
3. Based upon the findings and conclusions set forth in the paragraphs above, this Commission hereby approves the application subject to each and every condition set forth below.

Planning

- 1. This Conditional Use Permit approval is for the installation of an In-Building Distribution Antenna System (IDAS) facility at Montclair Plaza. The approved IDAS facility consists of equipment being located in an existing equipment room (Equipment Room No. 10) adjacent to the

Barnes and Noble lease space (occupying approximately 22 square feet of floor area), and one small GPS antenna that will be placed on the roof behind and screened from view by an existing parapet wall, as depicted on approved plans on file with the Planning Division.

2. Approval of this Conditional Use Permit (CUP) shall be valid for six months from the date of Planning Commission action. If no construction drawings have been submitted to the City for plan review within this time frame or a time extension for such CUP amendment granted, then the approval shall automatically expire without further City action.
3. Within five (5) days of approval by the Planning Commission, the applicant shall submit the following payments to the Planning Division:
 - a. A check in the amount of **\$50.00**, payable to "Clerk of the Board of Supervisors," to cover the County administrative fee for filing a Notice of Exemption, as required by the California Environmental Quality Act (CEQA).
 - b. A check in the amount of **\$448.52**, payable to "City of Montclair," to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law.
4. All future changes and modifications to the approved IDAS facility, such as added carriers, new or added antennas of any kind, expansion of floor area, etc., shall require prior review and approval by the City.
5. The applicant and/or property owner shall ensure that a copy of the Planning Commission approval letter, including all conditions of approval, be reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the project.
6. The wireless provider shall obtain and maintain current at all times a business license issued by the City.
7. The proposed interior wireless telecommunications facility and associated support equipment shall be constructed in substantial compliance with plans reviewed and approved by the Planning Commission.
8. The applicant shall be responsible to fully comply with all requirements of the Federal Communications Commission (FCC) regarding electromagnetic frequency (EMF) and radiofrequency radiation (RFR) standards.

9. Any electrical and utility connections serving the facility shall be placed underground in accordance with the requirements of the Montclair Municipal Code.
10. The applicant shall submit to the City certification of continued use of the approved facility on an annual basis at the time of business license renewal for as long as the facility remains in operation. The certification shall indicate that the facility is operating as approved and that the facility complies with the most current FCC safety standards. Facilities that are no longer in operation shall be completely removed within 90 days after the date cessation of operation.
11. Notice of change of ownership of the co-location carrier shall be provided in writing to the Director within 30 days of said change.
12. Within 90 days of commencement of operations, applicants shall provide a preliminary report and field report prepared by a qualified engineer that shows the operation of the facility to be in conformance with the standards established by ANSI and IEEE for safe human exposure to EMF and RFR.
13. The permit may be modified or revoked for failure to abide by the conditions contained herein, or in the event the use is determined to be a nuisance to surrounding properties, businesses, or community at-large.
14. A complete set of plans shall be submitted to the Montclair Police Department to determine the compatibility and non-interference with the City's public safety radio frequencies and services. Building permits shall not be issued unless it is determined that the proposal will not impact the City's radio communications systems.
15. At no time shall equipment noise from any source exceed an exterior noise level for nighttime hours as set forth in Table III-3 of the Montclair General Plan. Any backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 10:00 p.m. and 7:00 a.m. on weekday nights. The carrier shall take corrective action within 30 days of receipt of any reported noise complaint by the Planning Division.
16. To ensure compliance with the conditions of the approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The applicant shall contact the City to schedule an appointment for such inspections.
17. 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.

Building

18. Submit two complete sets of plans for the project, including engineered structural calculations and drawings for the antenna structure, associated facilities and utility plans for review and approval by the Building Division.
19. The developer/contractor is to be responsible for reasonable periodic clean-up of the construction site to avoid hazardous accumulation of combustible trash and debris.
20. Architect's/Engineer's stamp and "wet" signature are required prior to permit issuance.
21. Contractors must show proof of State and City licenses and Workers' Compensation coverage to the City prior to permit issuance.
22. Plans shall be submitted for plan check and approved prior to construction. All plans shall be marked with the project address number. The applicant shall comply with the latest adopted California Codes and all other applicable codes, ordinances, and regulations in effect at the time of permit application. These applicable codes shall be indicated on the first page of submitted plans.
23. All antennas that are visible from the outside of the structure shall be painted or otherwise concealed to match the color of the building to which it is attached. No electrical conduits or other conveyances shall be surface-mounted on the exterior wall of any building.
24. Construction activity shall only be permitted from the hours of 7:00 a.m. to 8:00 p.m. daily.
25. A final inspection is required prior to the use of the subject facility. Final approval by the Building Official shall be contingent upon compliance with all conditions of approval. The applicant shall contact the City to schedule an appointment for such final inspection.

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

APPROVED AND ADOPTED THIS 14TH DAY OF JULY, 2014.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____
Tenice Johnson, Chair

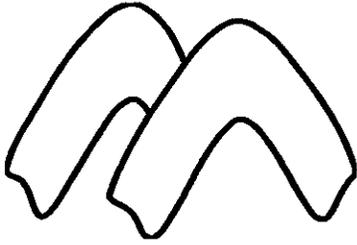
ATTEST: _____
Steve Lustro, Secretary

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 July, 2014, by the following vote, to-wit:

AYES:

NOES:

ABSENT:



**CITY OF MONTCLAIR
PLANNING COMMISSION**

MEETING DATE: 07/14/14

AGENDA ITEM 6.b

Case No.: 2014-16

Application: Conditional Use Permit (CUP) to allow the off-premises sale of beer and wine (ABC Type 20 license) within an existing 19,334 square-foot retail store.

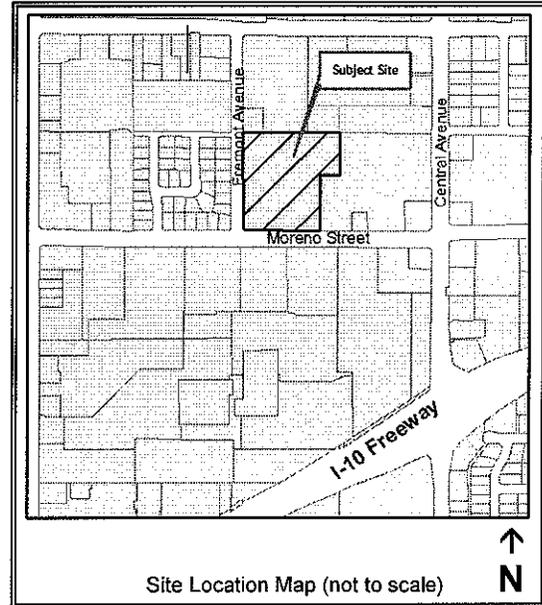
Applicant/Property Owner: 5060 Montclair Plaza Lane
Owner (CIM Group)

Project Address: 5200 Moreno Street

APN: 1008-151-04

General Plan: Planned Development

Zoning: Town Center (TC) per the North Montclair Downtown Specific Plan (NMDSP)



EXISTING SITE FEATURES/CONDITIONS

Structures: 19,334 square-foot commercial tenant space within Montclair Park commercial center

Parking: 429 parking spaces (including 6 disabled-accessible spaces)

ADJACENT LAND USE DESIGNATIONS AND USES

	General Plan	Zoning	Use of Property
Site	Specific Plan	TC (Town Center) per North Montclair Downtown Specific Plan	99¢ Only Store
North	Specific Plan	TC (Town Center) and CR (Corridor Residential) per North Montclair Downtown Specific Plan	Vacant Land
East	Specific Plan	C-3 (General Commercial) per North Montclair Specific Plan	Target/US Bank
South	Regional Commercial	C-3 (General Commercial) per North Montclair Specific Plan	Montclair Plaza
West	Specific Plan	R-1 (Single-Family Residential)	Single-family residences

Report on Item Number 6.b

PUBLIC HEARING - CASE NUMBER 2014-16

APPLICATION TYPE(S)	Conditional Use Permit
NAME OF APPLICANT	5060 Montclair Plaza Lane Owner / 99¢ Only Stores #148
LOCATION OF PROPERTY	5200 Moreno Street
GENERAL PLAN DESIGNATION	Planned Development
EXISTING ZONE DISTRICT	Town Center (TC) per North Montclair Downtown Specific Plan (NMDSP)
EXISTING LAND USE	Discount Retail Store
ENVIRONMENTAL DETERMINATION	Categorically Exempt (Section 15301)
PROJECT COORDINATOR	Silvia Gutiérrez

Project Description

The applicant is requesting approval of a Conditional Use Permit (CUP) to allow the off-premises sale of beer and wine within an existing discount retail store located at the above address in the Montclair Park commercial center. If approved, the store would be able to obtain a Type 20 off-sale license from the State of California Department of Alcoholic Beverage Control (ABC) and sell pre-packaged beer and wine products. The business hours for the 99¢ Only store are 8:00 a.m. to 10:00 p.m., seven days per week. The store has 8-12 staff members per shift.

The proposed display area for non-refrigerated beer and wine products would be limited to three (3) wall shelves at the back of the store nearly 80 feet away from the nearest checkout stand as shown on the submitted floor plan. The overall floor area used to display beer and wine products is approximately 50 square feet.

Background

- 99¢ Only Stores is the nation's largest "small-box" discount retailer with 238 locations in California, 44 in Texas, 33 in Arizona and 17 in Nevada. 99¢ Only Stores' model is to provide selected quality brands of general merchandise at lower prices to its customers in neighborhood-sized stores. This proposal represents the third 99¢ Only Store that would offer beer and wine for sale in the area. The locations in Upland and Ontario currently sell beer and wine.
- The existing lease space presently occupied by the 99¢ Only Store is approximately 19,334 square feet, which includes a sales floor area of approximately 14,500 square feet. The store has been open in Montclair since 2001. Over the years, the store concept has evolved to include grocery items and a large selection of fresh produce, and now beer and wine.

- The subject site is located in the Town Center (TC) land use district of the North Montclair Downtown Specific Plan (NMDSP).
- Chapter 11.42.050.B of the Montclair Municipal Code requires a CUP for a business requesting the sale of alcoholic beverages for off-site consumption.
- ABC Type 20 License ("Off-Sale Beer and Wine") authorizes the sale of beer and wine for consumption off the premises. Minors are allowed on the premises.

Planning Division Comments

Staff finds the proposed request to allow the sale of pre-packaged beer and wine products for off-premises consumption at the existing 99¢ Only Store to be appropriate, as the sale of such products would represent a small and incidental part of the overall general merchandise – including food, beverage, and other sundry items offered by the store. The sale of beer and wine at the 99¢ Only Store is not intended to be a major portion of the store's business, but does make the store more attractive as a convenient one-stop place of business where customers may obtain a wider variety of goods at discount prices.

As proposed, the display area devoted to beer and wine products would constitute less than one (1) percent of the total sales floor area. Given the above limitation, the proposed ABC license would not alter the fundamental nature of the store or adversely impact the center or surrounding community. Moreover, the ability to offer beer and wine products to its customers allows the store to be competitive with other retailers in the area that offer similar products. Staff is recommending the inclusion of the typical conditions of approval associated with requests for off-sale licenses.

The proposed sale of beer and wine products at the store does not require any site changes to the already developed shopping center in which the store is located. There is ample parking in the center, and several improvements (parking lot re-slurry and restripe, new exterior lights, and fresh exterior paint) were recently completed. The center is also well maintained and is home to a mix of uses, none of which would be in obvious conflict with the proposed sale of pre-packaged beer and wine products as part of a larger retail store.

According to the Montclair Police Department (MPD) there are no reported problems with the existing center and they do not anticipate any negative impacts as a result of the proposed ABC license at this store. However, the Police Department has recommended a condition of approval for a video surveillance system to provide coverage of the counter/cashier area, the entry/exit doors, and the area where alcoholic beverages are stored. In addition, MPD recommends that the storefront windows and doors not be obscured by banners, posters, signs or other objects that would inhibit the view in or out of the business. Staff concurs with MPD's recommendations and has included appropriate conditions of approval.

Finally, the issue of abandoned shopping carts needs to be addressed. Abandoned shopping carts are a major concern for the City and a drain on both public and private resources to control. Unfortunately, many of the carts found abandoned around the City are easily identifiable as being from a 99¢ Only Store, most of which were likely taken from the subject store location. To address this issue, a condition of approval has been included to require the installation of a shopping cart containment system for the store. This requirement is now commonplace in all communities, and has been a standard condition of approval by Montclair on all new or expanded businesses that provide shopping carts for the convenience of its customers. All recently opened businesses, such as Dollar General, Family Dollar, Fallas, and 99¢ Wow Bargain, have been required to install cart containment system or devices. Other stores that opened in Montclair over a decade ago, such as CVS Pharmacy on Holt Boulevard and the nearby Target store, have had containment systems in place for a number of years with good success.

The type of containment system to be used by the store is flexible so long as it is effective in keeping carts on site. Some stores have chosen to install what might be called a passive system, where a metal pole is attached to each cart that prevents them from being taken outside the store (i.e., Ross, Fallas, 99¢ Wow Bargain), while others utilize an electronic system embedded into the parking lot (e.g., Target, CVS Pharmacy, Dollar General, Family Dollar) that lock a specially-designed wheel on the cart, preventing its removal from the site. Staff's condition of approval would allow the applicant until January 1, 2015 to submit plans for review and complete installation of a system that meets the goal of the condition.

Conditional Use Permit Findings

Staff believes the necessary findings for granting the CUP request to sell pre-packaged beer and wine products for off-site consumption can be made, as follows:

- A. The proposed sale of pre-packaged beer and wine products at the subject site is essential or desirable to the public convenience and public welfare, in that it offers customers a safe and convenient location to purchase pre-packaged alcoholic beverages in conjunction with other food, soft drinks/beverages, and household products.
- B. The granting of the CUP to allow the off-premises sale of beer and wine (ABC Type 20 license) at the existing discount retail store will not be materially detrimental to the public welfare and to other property in the vicinity. The sale of beer and wine products would only represent a very minor portion (50 square feet) of the store's floor area for display of products. Moreover, the center in which the retail store is located is well maintained and is home to a mix of uses, none of which would be in obvious conflict with the proposed limited sale of pre-packaged beer and wine products within a larger retail store.
- C. The proposed use at the subject location conforms to good zoning practice, in that the off-premises sale of pre-packaged beer and wine products from a

general retail store within a commercial retail center is consistent with what would be allowed in the Town Center (TC) land use district of the North Montclair Downtown Specific Plan (NMDSP), subject to approval of a CUP. The subject site is located in the Montclair Park commercial center, at which major site and building improvements have recently been completed to update its appearance and attract new uses. Ample on-site parking is provided.

- D. The use at the subject location is not contrary to the objective of any part of the adopted General Plan, in that the adopted General Plan encourages the establishment of a wide variety of retail and service uses that provide and support the needs and desires of residents within the community. The proposal allows the store to provide a convenient location for residents to obtain essential goods and products, including beer and wine for off-site consumption.

Department of Alcoholic Beverage Control (ABC) Finding

Staff finds the proposed Type 20 ("Off-Sale Beer and Wine") ABC license at the subject site is desirable to the public convenience or necessity. The discount retail store where the beer and wine products would be sold is located within Census Tract Number 0002.01, which allows up to three (3) Type 20 off-sale ABC licenses. If approved, this would be the first Type 20 off-sale ABC license within the census tract and would not result in an undue concentration of such licenses.

Public Notice

This item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on July 2, 2014. 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, staff has received no comments regarding the proposed ability to off-sale beer and wine products from the existing discount store.

Environmental Assessment

The Planning Division has determined this project to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15301 of the State CEQA Guidelines. The project qualifies because the proposed CUP will have a negligible impact on the primary use of the property. Moreover, there is no substantial evidence the project will pose a potential significant impact to the environment.

Planning Division Recommendation

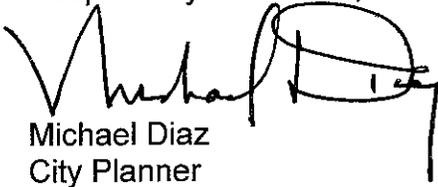
Staff recommends the Planning Commission take the following action(s):

- A. 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.

- B. Move to approve a Conditional Use Permit under Case No. 2014-16 to allow the applicant to obtain a Type 20 ("Off-Sale Beer and Wine") license from the State of California Department of Alcoholic Beverage Control (ABC) in order to sell pre-packaged beer and wine products at the 99¢ Only Store at 5200 Moreno Street, within the Town Center (TC) land use district of the North Montclair Downtown Specific Plan (NMDSP), as described in the staff report and per the submitted plans, subject to the conditions of approval in attached Resolution 14-1811.

Respectfully Submitted,



Michael Diaz
City Planner

MD/le

Attachments: Draft Resolution of Approval for Case No. 2014-16

c: Alfonso Gomez, 99¢ Only Stores, 5500 Eastern Avenue, Suite 1100, Commerce, CA 90040
Steve Rawlings, Rawlings Company, P.O. Box 96, Murrieta, CA 92564

Z:\COMMDEV\ASG\CASES\2014-16 PC REPORT

RESOLUTION NO. 14-1811

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING A CONDITIONAL USE PERMIT UNDER CASE NO. 2014-16 TO ALLOW THE OFF-PREMISES SALE OF BEER AND WINE IN THE TOWN CENTER (TC) LAND USE DISTRICT OF THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN AT 5200 MORENO STREET AND AUTHORIZE THE APPLICANT TO OBTAIN A TYPE 20 ABC LICENSE ("OFF-SALE BEER AND WINE") (APN 1008-151-04)

A. Recitals.

WHEREAS, on June 24, 2014, an application was submitted by 5060 Montclair Plaza Lane Owner (property owner) on behalf of 99¢ Only Stores #148 requesting approval of a Conditional Use Permit (CUP) to allow the off-premises sale of beer and wine (ABC Type 20 license) in conjunction with an existing general merchandise store at 5200 Moreno Street; and

WHEREAS, the subject property is located in the Town Center (TC) land use district of the North Montclair Downtown Specific Plan; and

WHEREAS, Chapter 11.42.050.B of the Montclair Municipal Code requires a CUP for a business enterprise to engage in the sale of alcoholic beverages for off-premises consumption; and

WHEREAS, staff has determined the proposed off-premises sale of beer and wine to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1). The project qualifies for the exemption because the CUP will have a negligible impact on the primary use of the subject tenant space as a retail store or the multi-tenant commercial center as a whole, and requires no physical expansion of the existing building beyond that which currently exists. Moreover, there is no substantial evidence the project will pose a potential significant impact to the environment; 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 July 14, 2014, 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 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 the facts set forth in Part A ("Recitals") of this Resolution are true and correct.
2. Based upon the substantial evidence presented to the Planning Commission during the above-referenced public hearing on July 14, 2014, including written and oral staff reports, together with public testimony, the Commission hereby finds as follows:
 - a. The proposed sale of pre-packaged beer and wine products at the subject site is essential or desirable to the public convenience and public welfare, in that it offers customers a safe and convenient location to purchase pre-packaged alcoholic beverages in conjunction with other food, soft drinks/beverages, and household products.
 - b. The granting of the CUP to allow the off-premises sale of beer and wine (ABC Type 20 license) at the existing discount retail store will not be materially detrimental to the public welfare and to other property in the vicinity. The sale of beer and wine products would only represent a very minor portion (50 square feet) of the store's floor area for display of products. Moreover, the center in which the retail store is located is well maintained and is home to a mix of uses, none of which would be in obvious conflict with the proposed limited sale of pre-packaged beer and wine products within a larger retail store.
 - c. The proposed use at the subject location conforms to good zoning practice, in that the off-premises sale of pre-packaged beer and wine products from a general retail store within a commercial retail center is consistent with what would be allowed in the Town Center (TC) land use district of the North Montclair Downtown Specific Plan (NMDSP), subject to approval of a CUP. The subject site is located in the Montclair Park commercial center, at which major site and building improvements have recently been completed to update its appearance and attract new uses. Ample on-site parking is provided.
 - d. The use at the subject location is not contrary to the objective of any part of the adopted General Plan, in that the adopted General Plan encourages the establishment of a wide variety of retail and service uses that provide and support the needs and desires of

residents within the community. The proposal allows the store to provide a convenient location for residents to obtain essential goods and products, including beer and wine for off-site consumption.

Department of Alcoholic Beverage Control (ABC) Finding

- e. Staff finds the proposed Type 20 ("Off-Sale Beer and Wine") ABC license at the subject site is desirable to the public convenience or necessity. The discount retail store where the beer and wine products would be sold is located within Census Tract Number 0002.01, which allows up to three (3) Type 20 off-sale ABC licenses. If approved, this would be the first Type 20 off-sale ABC license within the census tract and would not result in an undue concentration of such licenses.
3. Planning Division staff has determined the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15301 of the State CEQA Guidelines. The project qualifies because the proposed CUP will have a negligible impact on the primary use of the property. Moreover, there is no substantial evidence the project will pose a potential significant impact to the environment.
4. Based upon the findings and conclusions set forth in paragraphs 1, 2, and 3, above, the Commission hereby approves the application subject to the following conditions set forth below:

Planning

1. Approval of this Conditional Use Permit (CUP) is for the off-premises sale of beer and wine at 5200 Moreno Street, as described in the staff report and depicted on approved plans on file with the Montclair Planning Division. Granting of the CUP shall authorize the applicant to obtain a Type 20 ("Off-Sale Beer and Wine") license from the California State Department of Alcoholic Beverage Control (ABC) for said location.
2. The approved area for display beer and wine products is limited to the northeast corner of the store's sales floor area, approximately 80 feet away from the nearest checkout stand as shown on the submitted floor plan. The display area would consist of three (3) upright non-refrigerated shelves in the northeasterly corner of the store with a total proposed non-refrigerated display area of 50 square feet.

3. The approved Conditional Use Permit shall allow the incidental sale of pre-packaged beer and wine during regular store hours, 8:00 a.m. to 10:00 p.m., seven days per week, and limited to the display area described in the staff report and depicted on approved plans.
4. Within five (5) days of approval by the Planning Commission, the applicant shall submit the following payments to the Planning Division:
 - a. A check in the amount of **\$50.00**, payable to "Clerk of the Board of Supervisors," to cover the County administrative fee for filing a Notice of Exemption as required by the California Environmental Quality Act (CEQA).
 - b. A check in the amount of **\$445.44**, payable to "City of Montclair," to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law.
5. Any substantial changes to the approved use, including an increase in the floor area dedicated to the display of alcoholic beverages, shall require prior City review and approval.
6. Approval of this CUP shall not waive compliance with any regulations as set forth by the California Building Code, City Ordinances, San Bernardino County Health Department, and/or California State Department of Alcoholic Beverage Control (ABC).
7. This CUP approval shall be valid for a period of six months (180 calendar 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 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.
8. 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.
9. The applicant/property owner shall submit to the Planning Division a signed copy of the approval letter in which he/she acknowledges acceptance of the conditions of approval within 15 days from the date of approval by the Planning Commission. Failure to submit said acknowledgment shall result in delay of a final inspection and issuance of a Certificate of Occupancy.

10. A copy of the CUP approval letter and resolution with all conditions of approval related to the application shall be conspicuously posted alongside the establishment's Business License and Certificate of Occupancy, and shall be made available to law enforcement officers, and/or fire, building, and code enforcement inspectors in the course of conducting inspections of said premises.
11. The applicant and/or property owner shall ensure that a copy of the Planning Commission resolution or approval letter, including all conditions of approval, be reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the project.
12. No outdoor display areas for merchandise are authorized as part of this approval. Any temporary promotional outdoor displays shall be subject to a separate Promotional Outdoor Sale Permit pursuant to Chapter 11.68 of the Montclair Municipal Code.
13. The following plans, as applicable, shall be submitted to the Planning and Building Divisions and approved to the satisfaction of the Director of Community Development prior to the sale of beer and wine on the premises:
 - a. Plans for a cart containment system on the premises. Should the applicant choose to install an electronic system within the parking lot, a detailed site plan illustrating the location of embedded loop sensors and all related signage shall be submitted.
 - b. Damaged existing on-site cart corrals shall be repaired and maintained.
14. Shopping carts shall not be stored or stacked on the exterior of the building during regular business hours. Further, shopping carts shall be stored within the demised tenant space during non-business hours.
15. The applicant shall comply with the following operational requirements related to the approval of this CUP:
 - a. Any changes to the physical layout, expansion, or relocation of the primary display areas to those depicted in the site plan shall require prior City review and approval.
 - b. No display of alcoholic beverages shall be made from an ice tub.
 - c. The sale of single containers of beer or malt beverages shall be prohibited. No beer or malt beverages shall be sold in less than

manufacturer-prepackaged three-pack quantities. Wine may be sold in manufacturer-prepackaged, multi-unit quantities. Wine coolers and beer coolers shall not be sold in less than three-pack quantities. No miniatures of any type shall be sold individually.

- d. The on-premises consumption of alcohol beverages is expressly prohibited, whether inside the store or in the parking lot. Applicant shall post notification of this limitation within plain view of employees and customers.
 - e. No signs (temporary or permanent) or banners, advertising the availability of alcoholic beverages, "specials," or any other similar promotion shall be displayed or allowed on exterior walls or storefront windows/doors of the store.
 - f. 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.
- 16. No merchandise displays facing the interior or exterior of the store, boxes, racks, gondolas, shelving, cabinets, shopping baskets and carts, or the like shall be placed directly in front of the storefront windows and main entry/exit doors.
 - 17. The premises shall have no coin operated amusements, such as jukeboxes, video games, small carousel rides or similar riding machines, with the exception of official State lottery machines.
 - 18. No exterior security bars and roll-up doors applied to windows and pedestrian building entrances shall be allowed.
 - 19. No public telephones, vending machines, propane tank cages, children's rides, or other coin- or card-operated machines shall be located on the exterior of the building.
 - 20. The applicant shall install and maintain signs stating "No Loitering or Consumption of Alcoholic Beverages on the Premises" on the exterior of the building and within all parking areas.
 - 21. The applicant shall remove the illegal business identification sign on the north (rear) elevation of the building prior to commencing the sale of beer and wine.
 - 22. The following mandatory conditions are hereby imposed as part of the CUP approval for the off-premises sale of 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, wine, or distilled spirits 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. Applicant shall post notification of this limitation in English and Spanish within plain view of employees and customers.
- d. The exterior appearance of the premises shall be maintained in a manner consistent with the exterior appearance of commercial properties already constructed within the immediate neighborhood so as to not cause blight or deterioration, or to substantially diminish or impair property values within the neighborhood.
- e. The permittee shall comply with all California Department of Alcoholic Beverage Control (ABC) statutes, rules and regulations relating to the sale, purchase, display, possession and consumption of alcoholic beverages.
- f. The permittee shall acknowledge and agree 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 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.
- 23. This permit 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.
 - 24. 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 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.

Building

- 25. Provide a floor plan of the affected display area shelving depicting adequate aisle width for egress as well as accessibility.
- 26. Provide two sets of structural calculations for any shelving exceeding 8'-0" in height.
- 27. Accessible parking stalls shall be restriped to accurately depict their intended use.
- 28. Add signage to the bottom of the "Van Accessible" parking stall that states "\$250 minimum fine."
- 29. Add truncated domes in the access pathway at the front of the parking stalls just before the pathway enters the hazardous vehicular way which crosses in front of the store.

Police

- 30. Maintain a video surveillance system capable of storing the most recent 72 hours of video footage of the counter/cashier area, the entry/exit doors, and the area where alcoholic beverages are stored. Said video

surveillance system shall be inspected, reviewed, and approved by the Montclair Police Department when said system is completed and operational.

31. The applicant shall maintain visibility of the store's interior by limiting the placement of banners, posters, signs or other objects on storefront windows and doors so as not to exceed 25% coverage pursuant to Section 11.72.340 of the Montclair Municipal Code. Further, no tinting or other opaque material that would obscure or prohibit clear visibility into the premises from the outside shall be placed upon storefront windows/doors.

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

APPROVED AND ADOPTED THIS 14TH DAY OF JULY, 2014.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: _____
Tenice Johnson, 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 July, 2014, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Z:\COMMDEV\SG\CASES\2014-16\99 CENTS ONLY OFF-SALE BEER AND WINE\PCRESO



MONTCLAIR

MEMORANDUM

To: Montclair Planning Commission
From: Michael Diaz, City Planner 
Date: July 14, 2014
Subject: Request for time extension for Case No. 2012-5 'A' allowing for an ABC Type 21 license at 7-Eleven, 5301 Holt Boulevard

Applicant's Request

Jumana Hawatmeh, representing the 7-Eleven market at 5301 Holt Boulevard, has requested a time extension for a Conditional Use Permit (CUP) Amendment approved by the Planning Commission on January 27, 2014. The approved amendments are related to the original CUP approval of Case No. 2012-5 that allowed a convenience market with off-sale beer and wine (Type 20 ABC license). The approved amendments to the conditions of approval (as originally contained in PC Resolution No. 12-1757) were changed to:

- a. Allow the upgrade of the existing Type 20 ABC License (Off-Sale Beer and Wine) to a new ABC Type 21 License (Off-Sale General); and
- b. Allow the applicant to sell pre-packaged 3-pack quantities that would be consistent with what is being offered by other convenience stores and/or markets within the City.

The reason for the time extension request is to allow the applicant more time to comply with the Department of Alcoholic Beverage Control (ABC) filing requirements and time frames. The applicant is requesting a six-month time extension, which would extend the approval of the amended CUP with respect to the upgraded ABC license to January 10, 2015. Other than the time extension no other changes have been requested. A copy of Resolution No. 14-1793, approving the above amendments, is included in the Planning Commission packets.

Staff supports the requested time extension request and continues to believe the approved amendments are appropriate for the site. The additional time would allow the applicant to work with ABC procedures for the requested license upgrade. The remaining conditions identified in Resolution No. 14-1793 would continue to be valid and in effect for the project. City approval for the proposed ABC license upgrade would expire and become null and void if the applicant cannot provide documentation that a Type 21 license has been issued or has been duly applied for and is awaiting ABC action.

Planning Division Recommendation

Staff recommends the Planning Commission find the proposed time extension request for Case No. 2012-5 'A' to be appropriate and to approve the request for a six-month CUP time extension to January 10, 2015, subject to the conditions of approval contained in Planning Commission Resolution No. 14-1793.

Enclosure – Planning Commission Resolution No. 14-1793

RESOLUTION NUMBER 14-1793

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR APPROVING AN AMENDMENT OF CONDITIONAL USE PERMIT UNDER CASE NO. 2012-5 'A' TO PERMIT THE UPGRADE OF THE EXISTING TYPE 20 ABC LICENSE (OFF-SALE BEER AND WINE) TO A NEW ABC TYPE 21 LICENSE (OFF-SALE GENERAL) TO ALLOW THE OFF-PREMISES SALE OF BEER, WINE AND DISTILLED SPIRITS IN CONJUNCTION WITH AN EXISTING CONVENIENCE MARKET (7-ELEVEN) IN THE "COMMERCIAL" LAND USE DISTRICT OF THE HOLT BOULEVARD SPECIFIC PLAN AT 5301 HOLT BOULEVARD (APNs 1011-052-14, 15 & 16).

A. Recitals

WHEREAS, on December 18, 2013, 7-Eleven Inc. franchise operators DHN Enterprises, with the consent of the property owner (Southeast Statesboro LLC), filed an application requesting an amendment of conditions of approval for Conditional Use Permit (Case No. 2012-5); and

WHEREAS, on May 14, 2013, the Planning Commission approved the current CUP under Case No. 2012-5 allowing the establishment of the existing convenience store with an ABC Type 20 License permitting the off-premises sale of beer and wine at the subject site; and

WHEREAS, the conditions of approval pertaining to the approved CUP for the subject use under Case No. 2012-5 are contained in Planning Commission Resolution No. 12-1757; and

WHEREAS, the applicant is requesting City approval to upgrade the current Type 20 ABC License (Off-Sale Beer and Wine) to a Type 21 ABC License (Off-Sale General) that would allow the off-sale of beer, wine, and distilled spirits from the convenience market; and

WHEREAS, the applicant also requested a second amendment to modify Condition 10.c. of Resolution No. 12-1757, which would allow the sale of pre-packaged 3-pack beer and/or malt beverages; and

WHEREAS, any modification, intensification, or expansion of the use beyond that which was specifically approved, requires further review and approval by the Planning Commission; and

WHEREAS, this application pertains to the existing 7-Eleven convenience market at the subject address, which is within a multi-tenant commercial center on a 1.68-acre site at the southeast corner of Holt Boulevard and Central Avenue; and

WHEREAS, the existing convenience market is approximately 3,128 square feet in size and fully developed as an up-to-date, modern convenience store; and

WHEREAS, the subject property is located is within the "Commercial" land use district of the Holt Boulevard Specific Plan; and

WHEREAS, staff has determined that the proposed amendments are consistent with the previous CUP approval and meet the intent and requirements of the Holt Boulevard Specific Plan for the proposed use and are not in conflict with the applicable development standards of the "Commercial" land use district; and

WHEREAS, staff has determined the proposed amendment to allow the license upgrade from an ABC Type 20 to an ABC Type 21 license permitting the off-premises sale of beer, wine, and distilled spirits at the existing convenience market 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

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 January 27, 2014, 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 amendment request to the existing 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 January 27, 2014, including written and oral staff reports, together with public testimony, this Commission hereby finds as follows:
 - a. The proposed amendments to upgrade the ABC License to Type 21 (Off-Sale General), allowing the off-premises sale of beer, wine, and distilled spirits, and the proposed modification of Condition No. 10.c for the existing market will augment the operation of the market use and benefit the convenience and welfare of the general

public, in that the market use will make available a convenient location for members of the public to purchase groceries, some prepared food items, and other sundry items, including a wider variety of packaged alcoholic beverages in areas of the City where major grocery stores are non-existent.

- b. Granting of the proposed amendments to the existing CUP, particularly the upgrade of the ABC License to Type 21 (Off-Sale General) will not be materially detrimental to the public welfare and to other property in the vicinity, in that the changes do not result in any physical changes to the property or significant modification to the interior of the market floor plan or to its daily operation activities. Moreover, the area devoted to display distilled spirits would be limited and located behind the transaction counter in a locked cabinet.
 - c. The proposed amendments to the conditions of approval for the existing convenience market at the subject site conforms to good zoning practice, in that the Holt Boulevard Specific Plan and Montclair Municipal Code allow the off-premises sale of alcoholic beverages subject to approval of a CUP. The original CUP was approved for the existing market which has been operating in a professional manner with no major problems or incidents reported. Given the limited scope of the proposed changes, no significant impacts are anticipated. Except for requested changes and new conditions contained in the new Resolution of Approval, all of the remaining conditions of approval related to the original CUP approval would remain in force.
 - d. That the proposed amendments to upgrade the ABC License to Type 21 (Off-Sale General) are consistent with objectives of the adopted General Plan, which encourages the provision of a wide range of retail and service uses within the retail commercial area.
 - e. With regard to Public Convenience or Necessity (ABC finding), the site is not located in an area with an "undue concentration" of retail alcohol outlets. Further, the Commission finds that the proposed amendments to upgrade the ABC License to Type 21 (Off-Sale General) and allow the sale of 3-pack quantities of beer and/or malt beverages will not result in any significant changes to the use that would alter the City's original findings to approve the convenience market with the sale of alcoholic beverages at this location.
3. Planning Division staff has determined 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 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.

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 approval shall permit the following amendments to conditions of approval contained in Planning Commission Resolution No. 12-1757 associated with for Case No. 2012-5:
 - a. An amendment to Conditions 1 and 2 to allow the upgrade of the existing ABC Type 20 License (Off-Sale Beer and Wine) to an ABC Type 21 License (Off-Sale General) that would permit the off-premises sale of beer, wine, and distilled spirits in conjunction with an existing convenience market at 5301 Holt Boulevard. This amendment is subject to the applicant's ability to successfully obtain ABC approval for the upgrade to an ABC Type 21 License.
 - b. An amendment to Condition No. 10.c., to delete the requirement that beer, malt beverages, or caffeinated alcoholic beverages (cans/bottles) be sold in 4-pack configurations and allow the sale of manufacturer pre-packaged quantities of not less than three (3) bottles or cans.
2. In no case shall the sale of single cans or bottles be offered, displayed or sold from the premises.
3. All remaining conditions of approval for Case No. 2012-5 shall be retained as unchanged and continue to be in effect for as long as the permitted use is operating at the approved location.
4. Alcoholic beverages of any kind shall only be sold at the subject site in conjunction with the operation of the approved convenience market and subject to the issuance of a valid State of California Department of Alcoholic Beverage Control license. At all times during the conduct of the permitted use the permittee shall maintain and keep in effect valid licensing approval from ABC as provided by law. Should such licensing be denied, expire or lapse at any time in the future, this approval to sell alcoholic beverages of any kind shall become null and void.
5. No alcohol may be sold to anyone who appears to be under the influence of alcohol or drugs.

6. All distilled spirits shall be stored in a lockable cabinet behind the transaction counter and located no closer than five (5) feet to any building entrance.
7. A copy of the signed Resolution of Approval indicating the approved amendments shall be kept with the original Resolution of Approval (Planning Commission Resolution No. 12-1757) for Case No. 2012-5. Both resolutions 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 officer, fire, building, or code enforcement inspector in the course of conducting an inspection on said premises.
8. This CUP amendment 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 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.
9. Any substantial changes to the nature or scope of the business, as approved by this permit, including, but not limited to, added services, an increase in floor area, relocation, exterior appearance, etc., shall require prior City review and approval. Any substantial changes to the establishment without City approval shall be deemed a violation of this CUP and may be cause for revocation.
10. Approval of this CUP shall not waive compliance with any regulations as set forth in the California Building Code, City Ordinances, by the San Bernardino County Health Department and/or California State Department of Alcoholic Beverage Control (ABC).
11. This decision, or any aspect of this decision, can 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.
12. Within five (5) days of approval by the Planning Commission, the applicant shall submit the following payments to the Planning Division:
 - a. A check in the amount of \$50, payable to "Clerk of the Board of Supervisors," to cover the County administrative fee for filing a Notice of Exemption as required by the California Environmental Quality Act (CEQA).

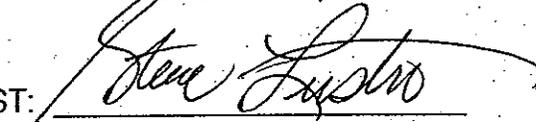
- b. A check in the amount of **\$405.40**, payable to the "City of Montclair," to cover the cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law.
13. To ensure compliance with the conditions of the approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The applicant shall contact the City to schedule an appointment for such inspections.
14. 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.
15. Upon transfer, sale or re-assignment of the establishment to another individual or entity, the applicant shall make full disclosure of these CUP requirements and restrictions to future buyers, transferees or assignees.
16. 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 27TH DAY OF JANUARY, 2014.

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: 
Tenice Johnson, 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 27th day of January, 2014, by the following vote, to-wit:

AYES: Chair Johnson, Vice Chair Flores, Commissioners Martinez, Sahagun and Vodvarka

NOES: None

ABSENT: None

