

AGENDA ITEM: 5.

DATE: 10-18-10

STAFF REPORT

CONDITIONAL USE PERMIT NO. 10-04

DATE: October 18, 2010

TO: Lancaster Planning Commission

FROM: Planning Department

APPLICANT: Crosspoint Development, LLC

LOCATION: 1006 West Avenue H

REQUEST: A Conditional Use Permit for off-site sale and consumption of alcohol (Type 20, sale of beer and wine only at an existing mini-market), and a request for a waiver under Section 17.42.040.C of the Lancaster Municipal Code to allow the sale of beer and wine within 300 feet of residentially designated property

RECOMMENDATION: Review the presented information and approve, conditionally approve, or deny the request as the Commission deems appropriate.

BACKGROUND: This request was originally heard by the Planning Commission on April 19, 2010. The original request was for both a waiver of the separation distance requirements contained in Section 17.42040.C of the Municipal Code and the approval of a Type 21 alcohol license to allow for the sale of beer, wine, and distilled spirits. The Planning Commission voted 5-0 (two Commissioners were absent from the meeting) to deny the request for the waiver and the sale of alcohol. The Commission, in taking this action, noted concerns about approving a waiver to the normal distance separation requirements that could create a precedent for approving similar requests in the future, ultimately undermining the intent of the City's alcohol regulations. A copy of both the original staff report and the minutes from that meeting are attached to this staff report.

The applicant appealed the denial to the City Council on April 30, 2010, and the Council heard the appeal on June 22, 2010. A copy of the City Council staff report and the minutes of the meeting are attached to this staff report. The Council discussed a number of different issues related to this request, including the desirability of this type of alcohol sales near a neighborhood, potential justifications for granting a distance waiver, the opinions of nearby residents regarding the request, and whether limiting the type of alcohol sold to beer and wine, along with other operating restrictions, would reduce potential effects on the neighborhood. Ultimately, the Council voted to continue the matter and allow staff and the applicant to take steps to engage the nearby residents and determine their feelings regarding the request.

Staff and the applicant made several efforts to gain further input from residents, including distribution of a short survey via door hangers (the survey was also available to complete on-line) and holding a neighborhood meeting on August 11, 2010. No members of the public attended the meeting, and nineteen (19) people responded to the survey. Of those responding, a majority stated they were opposed to the sale of alcohol. The survey did not specifically ask whether a respondent lived near the project site; however, five of the respondents did self-identify themselves as nearby residents.

In September the applicant indicated that he intended to amend his request to only include the sale of beer and wine (ABC License Type 20). A copy of the letter is attached to this staff report. The Council has referred this revised request back to the Commission for consideration.

LEGAL NOTICE: Notice of Public Hearing was mailed to all property owners within a 500-foot radius of the project, posted in three places, posted on the subject property, and noticed in a newspaper of general circulation per prescribed procedure.

ANALYSIS: The key issue to be considered in reviewing this request is whether a waiver should be granted under Section 17.42.040.C of the Municipal Code. Related questions, such as whether operating restrictions should be placed on the use, also must be evaluated, but can only be done within the context of the waiver issue. The purpose of this analysis is to provide a process for evaluating the request and highlight pertinent information that should be considered.

Separation Distance Requirements

The City's alcohol ordinance (Section 17.42.040) establishes separation distance requirements between certain types of alcohol sellers and uses identified as "sensitive uses". This provision in the ordinance goes to the core reason that the City has enacted regulations for alcohol sales, which is to deal with the potential for negative external effects on adjacent areas that certain alcohol establishments can create. These effects can include noise, loitering, trash and debris, or increased need for police services, for example, but are not intended to include more social concerns (whether the consumption of alcohol in the community is good or bad, for example). The ordinance makes a distinction between retail uses that sell alcohol as an incidental activity (grocery stores, drug stores, etc.) and those that are primary alcohol sellers, such as mini-markets. Incidental sellers are considered to have external negative effects that are minimal, and the positive effects that the retail uses provide to the community outweigh these negative effects. Primary alcohol sellers, on the other hand, are considered much more likely to create adverse effects on surrounding uses and do not have sufficient positive benefits to outweigh these effects.

Waiver of Distance Requirements

Section 17.42.040.C contains a provision to allow for a waiver of the normal distance requirements of the alcohol ordinance. The waiver provision acts as a "safety valve" when application of the normal requirements produces results that are not in line with the overall intent of the ordinance. The waiver provision requires that two findings be made; first, that the alcohol beverage establishment will serve a specific community need, and second that the approved waiver is not expected to create an adverse effect on adjacent property, uses, or residents. These provisions are written broadly to allow for a fair evaluation of specific circumstances. The City has approved a waiver request in the past; the Planning Commission approved a waiver of distance requirement in November 2008 for the location of the V.F.W. Post location on Division Street, a site that is within both 300 feet of residential

property and within 1,000 feet of a school. In this case, the Commission felt that a V.F.W. Post met a specific community need, and that any impact on adjacent uses was expected to be minimal because of the private nature of the facility.

Issues and Concerns

As noted previously, the alcohol ordinance sets separation distances to help minimize potential conflicts between certain types of alcohol establishments and sensitive uses, but also allows for a waiver of those in cases where a specific need is identified and the use is not expected to adversely affect the adjacent area. There are a number of issues and concerns that can legitimately be considered by the Planning Commission in analyzing this request:

- The applicant, and several members of the public, have pointed out that this site is located approximately one mile from the closest retail outlets where alcohol is available, generally located along Avenue I. Further, this site is located along a portion of the City's peripheral loop system (Avenue H), which is designed to be a major carrier of traffic between the west and east sides of the City. No other commercial establishments exist along Avenue H, and allowing the sale of alcohol would provide some convenience for motorists travelling along the street, particularly those headed eastbound.
- The site is adjacent to residential uses on the west, south, and east, and can be pretty easily accessed on foot from the adjacent neighborhood to the west and south. However, in the long term, no additional sensitive uses are expected to develop in the area, because the vacant property north of Avenue H is designated and zoned for the development of industrial uses.
- The applicant has indicated that the sale of alcohol is necessary for the economic success of the business, and that the failure of the business and creation of an empty set of buildings would create a greater adverse effect on the area than the sale of alcohol.
- The Sheriff's Department was contacted as part of the initial review of this request. As noted in the Planning Commission staff report of April 19, 2010, the Sheriff's Department did indicate a concern for public safety, based on the proximity of the residences and the number of crimes that had occurred in the area. At the City Council meeting of June 22, 2010, Captain Anderson indicated that the primary concern regarding the sale of alcohol at a location such as this is people who want to loiter on the site and drink, and he felt that this could be adequately controlled. Staff also discussed the applicant's latest request (sale of beer and wine only) with Sheriff's Department, and their response was that they felt the use could operate without significant effect on the surrounding area provided that restrictions are placed on the types of products sold (no single containers for beer or malt liquor products, for example) and the hours of alcohol sales.
- The City's alcohol ordinance assumes that a primary alcohol seller, such as a mini-market, will have a negative effect on surrounding sensitive uses. The waiver process essentially places the burden of proof for the waiver on the applicant; in other words, it is the applicant's responsibility to justify the granting waiver, not the City's responsibility to justify the separation distance established by the ordinance.

- In considering whether to grant a waiver, the Commission can consider the issue of precedent. While it is true that each waiver request is evaluated separately, and is dependent on the specific circumstances of each site and use, potential applicants, staff, and City officials do, as a practical matter, review what has been done in similar situations when considering such requests. It is worth noting that there are several mini-markets in the City that do not sell alcohol, including locations at the northeast corner of Avenue J and 25th Street West and the northwest corner of 20th Street West and Avenue J-8. Conversely, there are mini-markets that do sell alcohol in areas near sensitive uses where there are few alcohol-related problems, including the northeast corner of Avenue L-8 and 60th Street West.
- The Planning Commission has the ability to place restrictions on the operations of an alcohol establishment, provided that the restrictions are reasonably related to addressing potential negative effects. In the past, these restrictions have included limitations on size and type of products sold, allowable sales and display area for alcoholic beverages, hours of sales, security requirements, and other factors.

Decision and Findings

The Planning Commission must weigh and evaluate all the evidence, including information contained in this staff report and presented as part of public testimony, and make a decision on this revised request. The Commission's decision, as well as the findings (the explanation and reasons for the Commission's decision) will be formulated by staff into a resolution that will be the formal record of the decision. If the Commission chooses to approve the request, any restrictions or conditions made as a part of the approval will be written and included by staff as part of the resolution. As always, the final Commission decision is appealable to the City Council.

Respectfully submitted,

Brian S. Ludicke, Planning Director

cc: Applicant