

MICHAEL LOGRANDE
CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

PATRICIA BROWN
R. NICOLAS BROWN
SUE CHANG
ANIK CHARRON
LARRY FRIEDMAN
LOURDES GREEN
ERIC RITTER
MICHAEL S.Y. YOUNG

CITY OF LOS ANGELES
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

DEPARTMENT OF
CITY PLANNING

S. GAIL GOLDBERG, AICP
DIRECTOR

OFFICE OF
ZONING ADMINISTRATION

200 N. SPRING STREET, 7TH FLOOR
LOS ANGELES, CA 90012
(213) 978-1318
FAX: (213) 978-1334
www.lacity.org/PLN

September 22, 2008

Betty Fraser and Derise De Carlo (A)(O)
Dish Functional, Inc.,
dba Grub Restaurant
911 North Seward Street
Los Angeles, CA 90038

Brian Silvera (R)
1218 El Prado Avenue, Suite 128
Torrance, CA 90501

CASE NO. ZA 2007-5056(ZV)(ZAD)
ZONE VARIANCE/ZONING
ADMINISTRATOR'S DETERMINATION
911 Seward Street
Hollywood Planning Area
Zone : R2-1XL
D. M. : 144B185
C. D. : 4
CEQA : ENV 2007-5057-MND
Legal Description : Lot 42, Tract 4355

Pursuant to Charter Section 562 and Los Angeles Municipal Code Section 12.27-B, I hereby APPROVE:

a variance from Sections 12.09-A and 12.21-A,10 of the Municipal Code to permit the legalization and conversion of a single-family dwelling to a restaurant use and a variance to permit the sale and dispensing of beer and wine for on-site consumption, as otherwise not permitted in the R2-1XL Zone in conjunction with the proposed converted restaurant, and

a variance from Section 12.26-E,5 of the Municipal Code to permit three required parking spaces for the restaurant use to be provided by lease agreement in lieu of a recorded covenant within 750 feet of the restaurant; and,

Pursuant to Los Angeles Municipal Code Section 12.24-X,7, I hereby APPROVE:

a Zoning Administrator's determination to permit the continuation, use and maintenance of an over-in-height fence, within the front yard setback of a restaurant located within the R2 Zone, to exceed the maximum height of 3 feet 6 inches otherwise permitted by the Municipal Code,

upon the following additional terms and conditions:

1. All other use, height and area regulations of the Municipal Code and all other applicable government/regulatory agencies shall be strictly complied with in the development and use of the property, except as such regulations are herein specifically varied or required.

2. The use and development of the property shall be in substantial conformance with the plot plan submitted with the application and marked Exhibit "A", except as may be revised as a result of this action.
3. The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the Zoning Administrator to impose additional corrective Conditions, if, in the Administrator's opinion, such Conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.
4. All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.
5. A copy of the first page of this grant and all Conditions and/or any subsequent appeal of this grant and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the Zoning Administrator and the Department of Building and Safety for purposes of having a building permit issued.
6. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this approval which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.
7. Maximum square footage for the restaurant shall not exceed 1,386 square feet or 660 square feet of outdoor patio space. Indoor seating shall not exceed 51 seats and outdoor seating shall not exceed 25 seats. No seating is permitted on any public right-of-way.
8. Hours of operation for the restaurant shall not exceed 9 a.m. to 9 p.m. Sunday through Wednesday and 9 a.m. to 10 p.m., Thursday through Saturday. No after-hours use of the restaurant is permitted.
9. The restaurant shall be maintained as a bonafide full service restaurant with a kitchen as defined in the Los Angeles Municipal Code. The restaurant shall provide a menu containing an assortment of foods which shall be made available at all times that the restaurant is open.
10. A minimum of three required parking spaces shall be provided off-site at 942-952 Seward Avenue subject to a valid lease agreement for the exclusive use of the restaurant during all hours of operation. If additional parking spaces are determined to be required in accordance with the Municipal Code, said spaces shall be provided in the same manner as described herein. A copy of such lease, including any amendments, shall be submitted to the Zoning Administrator for inclusion in the file.

If a new location for parking is necessary, a new lease agreement shall be submitted to the Zoning Administrator as required herein within 30 days of any change.

11. An additional minimum of 15 non-required parking spaces shall be provided at the same location noted above for the use of restaurant patrons. The parking spaces made available shall not constitute required parking for any other use.
12. The restaurant shall not be leased out to private parties, where the general public is excluded or to an outside promoter. No cover charge or admission charge is permitted.
13. No dancing, juke box, piano bar or live entertainment is permitted on the premises and no music is permitted in the patio area. No conditional use for dancing has been requested or approved herein.
14. No pool tables or coin operated electronic, video or mechanical amusement devices shall be maintained on the premises.
15. These conditions of approval shall be retained on the property at all times and shall be produced immediately upon the request of the Zoning Administrator, Police Department or Department of Building and Safety.
16. The applicant shall be responsible for maintaining the area adjacent to the premises over its control free of litter. The adjacent public sidewalk shall be swept on a daily basis after the close of business by the establishment's personnel.
17. Any exterior lighting shall be installed such that the light is directed onto the subject site. Lighting shall be adequate to identify anyone in the front of the building at night and shall be shielded from any residential uses.
18. No banners or other signs are permitted, except for an existing identification wall sign along Barton Avenue and an existing projecting sign along Seward Avenue as further depicted on photos attached to the file. No variance has been requested or granted for any deviations from the sign provisions applicable to the R2 Zone.
19. The applicant owner and on-site manager(s) shall comply with all applicable laws and conditions and shall properly manage the facility to discourage illegal and criminal activity on the subject premises and any accessory parking areas over which they exercise control, including insuring that no activities associated with narcotics sales, use or possession, gambling or prostitution occur.
20. Within six months of the effective date of this action, all employees and managers involved with the sale of alcoholic beverages shall enroll in the Los Angeles Police Department "Standardized Training for Alcohol Retailers (STAR)". Upon completion of such training, the applicant shall request the Police Department to issue a letter identifying which employees completed the training. The applicant shall transmit a copy of the letter from the Police Department to the Zoning Administrator as

evidence of compliance. In the event there is a change in the licensee, within one year of such change, this training program shall be required for all staff.

21. Electronic age verification devices which can be used to determine the age of a customer purchasing an item for which a minimum age is required shall be installed on the premises at each point-of-sale location. Said devices shall be maintained in an operational condition and all employees shall be instructed in their
22. These conditions of approval as well as a copy of any Business permit, insurance information and any emergency contact phone numbers shall be retained on the property at all times and shall be produced immediately upon the request of the Zoning Administrator, the Police Department, the Department of Building and Safety or other enforcement agency.
23. There shall be no use of the subject premises which involve Section 12.70 of the Los Angeles Municipal Code uses (Adult Entertainment).
24. A camera surveillance system shall be installed which will cover all common areas as well as high-risk areas and entrances and exits. Video tapes shall be maintained for 30 days and shall be made available to the Police Department or other enforcement agency upon request
25. The rear/side door(s) of the premises shall be equipped on the inside with an automatic locking device and shall be kept closed at all times. This door shall not be used as a means of access by patrons to and from the premises. Temporary use of this door(s) for delivery of supplies does not constitute a violation. Said door(s) are not to consist solely of a screen or ventilated security door.
26. The fence within the front yard setback of the property shall not exceed a height of 4 feet 3 inches and shall be landscaped with ivy or other planting material that provides maximum coverage of the fence.
27. Mitigation measures identified in the environmental document ENV-2007-5057-MND shall be incorporated as conditions of this grant as summarized below:
 - a. Aesthetics (Light)

Outdoor lighting shall be designed and installed with shielding, so that the light source cannot be seen from adjacent residential properties.
 - b. Explosion/Release (Asbestos Containing Materials)
 - 1) Prior to the issuance of the demolition permit, the applicant shall provide a letter to the Department of Building and Safety from a qualified asbestos abatement consultant that no ACM are present in the building. If ACM are found to be present, it will need to be abated in compliance with the South Coast Air Quality Management District's Rule 1403 as well as all other state and federal rules and regulations.

- 2) Prior to issuance of any permit for demolition or alteration of the existing structure(s), a lead-based paint survey shall be performed to the written satisfaction of the Department of Building and Safety. Should lead-based paint materials be identified, standard handling and disposal practices shall be implemented pursuant to OSHA regulations.

c. Food Service Industry (Restaurants, Bakeries, Food Processors)

Environmental impacts may result from the release of toxins into the stormwater drainage channels during the routine operation of restaurants, bakeries, and food producers. However, the potential impacts will be mitigated to a level of insignificance by incorporating stormwater pollution control measures. Ordinance Nos. 172,176 and 173,494 specify Stormwater and Urban Runoff Pollution Control which requires the application of Best Management Practices (BMPs). Chapter IX, Division 70 of the Los Angeles Municipal Code addresses grading, excavations, and fills. Applicants must meet the requirements of the Standard Urban Stormwater Mitigation Plan (SUSMP) approved by Los Angeles Regional Water Quality Control Board, including the following: (A copy of the SUSMP can be downloaded at: <http://www.swrcb.ca.gov/reqcb4/>).

- 1) Any connection to the sanitary sewer must have authorization from the Bureau of Sanitation.
- 2) Cleaning of oily vents and equipment to be performed within designated covered area, sloped for wash water collection, and with a pretreatment facility for wash water before discharging to properly connected sanitary sewer with a CPI type oil/water separator. The separator unit must be: designed to handle the quantity of flows; removed for cleaning on a regular basis to remove any solids; and the oil absorbent pads must be replaced regularly according to manufacturer's specifications.
- 3) Store trash dumpsters either under cover and with drains routed to the sanitary sewer or use non-leaking and water tight dumpsters with lids. Wash containers in an area with properly connected sanitary sewer.
- 4) Reduce and recycle wastes, including oil and grease.
- 5) Store liquid storage tanks (drums and dumpsters) in designated paved areas with impervious surfaces in order to contain leaks and spills. Install a secondary containment system such as berms, curbs, or dikes. Use drip pans or absorbent materials whenever grease containers are emptied.

- 6) All storm drain inlets and catch basins within the project area must be stenciled with prohibitive language (such as "NO DUMPING - DRAINS TO OCEAN") and/or graphical icons to discourage illegal dumping.
- 7) Signs and prohibitive language and/or graphical icons, which prohibit illegal dumping, must be posted at public access points along channels and creeks within the project area.
- 8) Legibility of stencils and signs must be maintained.
- 9) Materials with the potential to contaminate stormwater must be: (a) placed in an enclosure such as, but not limited to, a cabinet, shed, or similar stormwater conveyance system; or (b) protected by secondary containment structures such as berms, dikes, or curbs.
- 10) The storage area must be paved and sufficiently impervious to contain leaks and spills.
- 11) The storage area must have a roof or awning to minimize collection of stormwater within the secondary containment area.
- 12) The owner(s) of the property will prepare and execute a covenant and agreement (Planning Department General form CP-6770) satisfactory to the Planning Department binding the owners to post construction maintenance on the structural BMPs in accordance with the standard Urban Stormwater Mitigation Plan and/or per manufacturer's instructions.
- 13) Prescriptive methods detailing BMPs specific to this project category area available. Applicants are encouraged to incorporate the prescriptive methods into the design plans. These Prescriptive Methods can be obtained at the Public Counter or downloaded from the city's website at: www.lastormwater.org. (See Exhibit A).

d. Public Services (Fire)

The following recommendations of the Fire Department relative to fire safety shall be incorporated into the building plans, which includes the submittal of a plot plan for approval by the Fire Department either prior to the recordation of a final map or the approval of a building permit. The plot plan shall include the following minimum design features: fire lanes, where required, shall be a minimum of 20 feet in width; all structures must be within 300 feet of an approved fire hydrant, and entrances to any dwelling unit or guest room shall not be more than 150 feet in distance in horizontal travel from the edge of the roadway of an improved street or approved fire lane.

e. Utilities (Water Treatment or Distribution)

- 1) If the project results in a remodeling or expansion of restrooms, the applicant shall, to the satisfaction of the Department of Building and Safety:
 - a) Install and/or retrofit high-efficiency toilets (maximum 1.28 gpf), including dual-flush water closets, and high-efficiency urinals (maximum 0.5 gpf), including no-flush or waterless urinals, in all restrooms as appropriate. Rebates may be offered through the Los Angeles Department of Water and Power to offset portions of the costs of these installations.
 - b) Install and/or retrofit restroom faucets with a maximum flow rate of 1.5 gallons per minute and of a self-closing design.
- 2) If the project results in a remodeling or expansion of the kitchen areas, the applicant shall install and utilize only high-efficiency Energy Star-rated dishwashers in the restaurant, if proposed to be provided.
- 3) Single-pass cooling equipment shall be strictly prohibited from use. Prohibition of such equipment shall be indicated on the building plans and incorporated into tenant lease agreements. (Single-pass cooling refers to the use of potable water to extract heat from process equipment, e.g., vacuum pump, ice machines, by passing the water through equipment and discharging the heated water to the sanitary wastewater system.)

f. Utilities (Solid Waste)

Recycling bins shall be provided at appropriate locations to promote recycling of paper, metal, glass, and other recyclable material. These bins shall be emptied and recycled accordingly as a part of the project's regular solid waste disposal program.

Condition Nos. 28 through 36 are alcohol-specific conditions which have been volunteered by the applicant.

28. No cocktail lounge is permitted.
29. There shall be no exterior advertising of any kind, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages.
30. The sale of alcoholic beverages for consumption off-site is strictly prohibited.
31. No off-site sales of alcohol as a secondary use to the on-site sales are permitted.

32. Fortified wine shall not be sold.
33. No alcohol shall be allowed to be consumed on any adjacent property under the control of the applicant.
34. No Happy Hour shall be permitted.
35. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensee's business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department upon demand.
36. No portable bars shall be permitted. A waitress/waiter for table service shall conduct any alcoholic beverage service.
37. The authorization granted herein for the sale of alcohol, specifically beer and wine, and for the off-site parking by lease is for a period of **five (5) years** from the effective date of this grant. Thereafter, this authorization shall become null and void and a new variance to allow the sale of alcohol and off-site parking will be required. The variance granted for a restaurant use shall not be subject to this term limit
38. **Within 30 days of the effective date of this action**, a covenant acknowledging and agreeing to comply with all the terms and conditions established herein shall be recorded in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770) shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Zoning Administrator for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Zoning Administrator for attachment to the subject case file.

OBSERVANCE OF CONDITIONS - TIME LIMIT - LAPSE OF PRIVILEGES - TIME EXTENSION

All terms and conditions of the approval shall be fulfilled before the use may be established. The instant authorization is further conditional upon the privileges being utilized within two years after the effective date of approval and, if such privileges are not utilized or substantial physical construction work is not begun within said time and carried on diligently to completion, the authorization shall terminate and become void. A Zoning Administrator may extend the termination date for one additional period not to exceed one year, if a written request on appropriate forms, accompanied by the applicable fee is filed therefore with a public Office of the Department of City Planning setting forth the reasons for said request and a Zoning Administrator determines that good and reasonable cause exists therefore.

TRANSFERABILITY

This authorization runs with the land. In the event the property is to be sold, leased, rented or occupied by any person or corporation other than yourself, it is incumbent upon you to advise them regarding the conditions of this grant.

VIOLATIONS OF THESE CONDITIONS, A MISDEMEANOR

Section 12.29 of the Los Angeles Municipal Code provides:

“A variance, conditional use, adjustment, public benefit or other quasi-judicial approval, or any conditional approval granted by the Director, pursuant to the authority of this chapter shall become effective upon utilization of any portion of the privilege, and the owner and applicant shall immediately comply with its conditions. The violation of any valid condition imposed by the Director, Zoning Administrator, Area Planning Commission, City Planning Commission or City Council in connection with the granting of any action taken pursuant to the authority of this chapter, shall constitute a violation of this chapter and shall be subject to the same penalties as any other violation of this Code.”

Every violation of this determination is punishable as a misdemeanor and shall be punishable by a fine of not more than \$1,000 or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

APPEAL PERIOD - EFFECTIVE DATE

The applicant's attention is called to the fact that this variance is not a permit or license and that any permits and licenses required by law must be obtained from the proper public agency. Furthermore, if any condition of this grant is violated or not complied with, then this variance shall be subject to revocation as provided in Section 12.27 of the Municipal Code. The Zoning Administrator's determination in this matter will become effective after OCTOBER 7, 2008, unless an appeal therefrom is filed with the City Planning Department.

It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted.

Forms are available on-line at www.lacity.org/pln. Public offices are located at:

Figueroa Plaza
201 North Figueroa Street,
4th Floor
Los Angeles, CA 90012
(213) 482-7077

Marvin Braude San Fernando
Valley Constituent Service Center
6262 Van Nuys Boulevard, Room 251
Van Nuys, CA 91401
(818) 374-5050

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final

pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

NOTICE

The applicant is further advised that all subsequent contact with this office regarding this determination must be with the Zoning Administrator who acted on the case. This would include clarification, verification of condition compliance and plans or building permit applications, etc., and shall be accomplished **BY APPOINTMENT ONLY**, in order to assure that you receive service with a minimum amount of waiting. You should advise any consultant representing you of this requirement as well.

FINDINGS OF FACT

After thorough consideration of the statements contained in the application, the plans submitted therewith, the report of the Zoning Analyst thereon, the statements made at the public hearing on August 19, 2008, all of which are by reference made a part hereof, as well as knowledge of the property and surrounding district, I find that the five requirements and prerequisites for granting a variance as enumerated in Section 562 of the City Charter and Section 12.27-B,1 of the Municipal Code have been established by the following facts:

BACKGROUND

The property is a level, rectangular-shaped corner parcel of land, consisting of approximately 0.27 acres (approximately 5175.4 square feet), having approximately 60.49 feet of frontage on the south side of Barton Avenue, sides for a distance of approximately 85 feet along Seward Street and has a uniform depth of approximately 85 feet. The property is zoned R2-1XL.

Adjoining properties (Ownership Nos. 101 and 104) to the north across Barton Avenue are zoned MR1-1 and are vacant.

Adjoining property to the south (Ownership No. 14) is zoned R2-1XL and is developed with a two-story single-family dwelling. Beyond that to the south is zoned R2-1XL and developed with a one-story single-family dwelling. Vehicular ingress/egress is via a shared driveway along Seward Street located in the immediate vicinity of that property's northeast corner. The driveway is shared between Ownership Nos. 14 and 15.

Adjoining property to the east across Seward Street is zoned R3-1 and developed with a two-story sound studio.

Adjoining property to the west (Ownership No. 2) is zoned R2-1XL and developed with a one-story single-family dwelling with a detached garage. Vehicular ingress/egress is via a driveway along Barton Avenue located in the immediate vicinity of that property's northeast corner.

Seward Street, adjoining the property to the east is a Local Street dedicated a width of 50 feet and improved with curb, gutter and sidewalk.

Barton Avenue, adjoining the property to the north is a Local Street dedicated a width of 50 feet and improved with curb, gutter and sidewalk.

Previous zoning related actions on the site/in the area include:

Subject Property

Building Permit No. 95 WV25146, issued April 10, 1995, indicated that the property consisted of two dwelling units and an office in a separate building.

Building Permit No. 95 WV25147, issued April 10, 1995, indicated that the subject property consisted of two dwelling units and an office in a separate building.

Surrounding Properties

Case No. ZA 2005-7008(CUB)(ZV) – On September 29, 2006, the Zoning Administrator approved a conditional use permit for the sale and dispensing of a full line of alcoholic beverages for on-site consumption, in conjunction with the expansion of an existing night club, located at 6502-6510 West Santa Monica Boulevard.

Case No. ZA 99-0842(CUB) – On March 29, 2000, the Zoning Administrator approved a modification of the operation of an existing restaurant currently serving beer and wine, so as to now allow the sale and dispensing of a full line of alcoholic beverages for on-site, located at 1006 North Seward Avenue.

Case No. ZA 94-0779(ZV) – January 9, 1995, the Zoning Administrator approved a request to allow the continued use and maintenance of a dance floor in conjunction with an existing 192 seat night/club lounge with live entertainment, located at 6506-6505 West Santa Monica Boulevard.

MANDATED FINDINGS

In order for a variance to be granted, all five of the legally mandated findings delineated in City Charter Section 562 and Municipal Code Section 12.27 must be made in the affirmative. Following (highlighted) is a delineation of the findings and the application of the relevant facts of the case to same:

- 1. The strict application of the provisions of the Zoning Ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the zoning regulations.**

The applicant operates an existing restaurant in an R2 Zone, a use that is not permitted by the underlying zone, and which thus has triggered the variance request. Furthermore, a zone variance instead of a conditional use is required to sell any type of alcoholic beverages in a residential zone, hence the second variance request. Since the change of use to a restaurant triggers parking

requirements which cannot be provided on-site, the applicant has requested a third variance to allow such required parking to be provided off-site by lease in lieu of a covenant.

The property is currently developed with a two-story, two-unit residential building at the rear and a restaurant with patio at the front. There is no evidence or Certificate of Occupancy found that the conversion of the prior use to a restaurant was legalized through permits or the required discretionary approvals, which would have been necessary as the current and prior zoning permitted only residential uses. According to the representative, the prior zoning on the property was R3, a multi-residential zone. A review of prior building permits dating as far back as 1980 references the uses on the property as including an apartment and an office. It would appear that the office could be the building currently used for the restaurant but no Certificate of Occupancy was found for said use either so said use of the building appears to have not been permitted. According to the representative, the use prior to the conversion to a restaurant was that of a movie editing business.

The applicant noted that in 1997, a restaurant (Jamaica Gardens) was established on the property by a prior owner. The current applicant took over the former restaurant in 2001 as a lunch and catering establishment. According to the applicant, the absence of a Certificate of Occupancy for the use and of the legal zoning to permit the use, was discovered when the desire to expand the business to serve dinner and to serve alcohol was pursued.

The conversion to a restaurant use also triggers a new parking requirement. The applicant's representative had determined that seven parking spaces were required. The Zoning Administrator noted at the hearing, that it appeared that this number might be too high as the property is within an Enterprise Zone and the Municipal Code allows an exemption which allows one parking space per 500 square feet. In this instance, this would translate into three required parking spaces as the outdoor patio area is not calculated. The applicant's representative, subsequent to the hearing, confirmed this number with the Department of Building and Safety. Thus, for purposes of the variance request, the required parking has been noted as being three parking spaces instead of the seven that had been identified in the application. Nonetheless, the applicant is proposing to provide additional parking off-site above that number but at a minimum the required parking is identified, which is to be available at all times that the restaurant is open.

The strict application of the zoning ordinance does not permit a commercial use in this zone. Furthermore, a zone variance instead of a conditional use is required to sell any type of alcoholic beverages in a residential zone. It appears that the building has been used commercially since 1980, albeit without any apparent approval. It has been operated since 1997 as a restaurant. The property is located amidst a mix of zones, which include an MR-zoned property (Manufacturing) across Barton Avenue and R3 residentially-zoned property across Seward Avenue, which is actually developed with a sound studio and not residential uses

Discretionary action to allow the sale of alcoholic beverages can be requested by a restaurant as an adjunct to the service of food for the convenience of the patrons of that restaurant through the conditional use process in commercial zones. If the property was zoned commercial, a conditional use could have been requested. Instead, the residential zoning of the site requires a zone variance in order to obtain the same privileges for the subject site. Absent the underlying zoning, a conditional use would have been possible instead of the instant variance request.

The proposed facility is located on a site which has no on-site parking for the converted use. As noted, the required parking for the restaurant is three spaces. The subject request does not seek a reduction of the required parking but rather the authority to permit the required parking to be allowed to be provided off-site through a lease agreement and without the need for the filing of a covenant to run with the land. Section 12.26-E,5 sets forth that required parking spaces that are provided on a different lot from the use which they are to serve must be guaranteed through the recordation of a covenant with the County Recorder. The subject variance allows for such parking to be provided without the need to record a covenant on the other property. Additional off-site non-required parking is also to be provided. Denial of the variances would result in unnecessary hardship inconsistent with the intent of the zoning regulations. The legalization of the use to a restaurant space does not represent new construction but the retention of a former single-family dwelling to be used as a restaurant within an area where a mixture of uses exist which do not necessarily reflect the underlying zoning. With regards to parking, the strict application of the zoning regulations would impair the applicant from continuing to operate a business and making reasonable use of the property due to the physical inability to provide parking on-site.

2. **There are special circumstances applicable to the subject property such as, size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity.**

The unique features and circumstances of this site include its location, which is on a corner property, directly across from existing and proposed commercial uses, and not exclusively within a strictly residential area. These features include a fully improved property which has no additional land available for parking and which has had a history as a commercial use.

3. **Such variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of such special circumstances and practical difficulties or unnecessary hardships, is denied the property in question.**

As relates to the sale of alcohol, granting the variance will allow the subject restaurant to have the same privilege to serve alcoholic beverages as is enjoyed by many other local area restaurants. In this instance, the variance allows for some parity with other properties which are zoned for commercial uses, which is how the subject property is functionally characterized. Due to development in the area, other

landowners are reluctant to provide parking through a covenant which impairs the ability to develop property in the future. No reduction of the required parking is proposed. Citywide, properties have been granted variances to allow parking to be provided off-site by lease and to convert appropriately sited uses to others not permitted by the underlying zone. In this instance the applicant seeks to be on par with such properties.

4. **The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the same zone or vicinity in which the property is located.**

The public hearing on the matter was attended by the applicants and their land use representative as well as representatives, respectively, of the Office of the Fourth Council District, the Central Neighborhood Council, the Business Improvement District and neighbors. Many spoke in support of the request citing the aesthetic improvements that have been made to the property, the service provided to the neighborhood and its local appeal and culinary recognition. The establishment was noted to be neighborhood-friendly and a good business which creates pedestrian traffic. The applicant also submitted form letters in support of the request.

A representative of the Police Department also testified indicating that there was no opposition to the request but wanted to emphasize that no portable bars should be permitted. Subsequent to the hearing, the Police representative submitted recommended conditions, most of which have been incorporated into this grant.

The grant authorized herein incorporates a number of conditions which have been imposed upon the use, some of which are based on conditions which have been volunteered by the applicant and, as noted, by the Police Department. These conditions will continue to make the use more compatible with other uses in the surrounding community and provide for monitoring of the establishment. Included in this authorization are a number of conditions volunteered by the applicant, some of which are directly related to the sale of alcohol, which otherwise the City cannot impose.

The hours are reasonable as they do not extend beyond 10 p.m. nightly. Required parking is available for the exclusive use of the restaurant and will be provided during all hours of operation. The applicant will also provide additional parking within one-half block of the site at a location where the Certificates of Occupancy, as submitted by the representative, reflects a bonus of 18 non-required parking spaces. Of these spaces, three are amongst the required parking for the restaurant. Other conditions include a requirement for alcohol retail sales training (STAR) for employees and managers.

The subject grant for alcohol sales and parking only, is authorized for a term of five years after which time the applicant will need to file a new variance. The term grant allows the City an opportunity to review the operation of the restaurant anew vis-à-vis the sale of alcohol and parking availability. If the operation has been conducted appropriately and without creating problems for the neighborhood, then a

subsequent decision on a new variance may take that into favorable consideration. A record of poor compliance and/or nuisance complaints would allow the City the discretion to not grant a variance and thus avoid the need to proceed with prolonged nuisance abatement proceedings. Thus, as conditioned, the use is not anticipated to be materially detrimental to the development of the immediate neighborhood.

5. **The granting of the variance will not adversely affect any element of the General Plan.**

The Hollywood Plan Map designates the property for Low Medium I Residential land uses with corresponding zones of R2, RD5, RD4 and RD3 and Height District No. 1XL.

While the use is not permitted by the corresponding zone, the property does retain residential uses at the rear of the property. In a sense, it functions as a mini mixed use project wherein, the services provided by the restaurant are targeted at meeting the needs of neighbors, both residential and commercial, who can easily access the site. If the use is discontinued, any future use of the property will be required to conform to both the underlying zone and the residential designation under the Plan. As such, there is no adverse affect on the Community Plan or the General Plan."

FINDINGS - FENCE

In order for an over-in-height fence/wall request to be approved, all of the legally mandated findings in Section 12.24-X,7 of the Municipal Code must be made in the affirmative. The following section states such findings in bold type with the applicable justification set forth immediately thereafter.

6. **The proposed fence is in conformity with the public necessity, convenience, general welfare and good zoning practice and will be in substantial conformance with the various elements and objectives of the General Plan.**

The Hollywood Plan Map designates the property for Low Medium I Residential land uses with corresponding zones of R2, RD5, RD4 and RD3 and Height District No. 1XL.

The grant of this request will not adversely affect any element of the General Plan as the basic use of the property is consistent with the General Plan and the matter under review is not dealt with directly in any adopted General Plan element. The grant as conditioned is found to be in conformity with the public necessity, convenience, general welfare and good zoning practice and is in substantial conformance with the objectives of the General Plan.

7. **The proposed fence will not be materially detrimental to the property or improvements in the same zone or vicinity in which the property is located. Consideration has been given to the appropriateness of the materials, design**

and location, including effects on the view and security to the subject property.

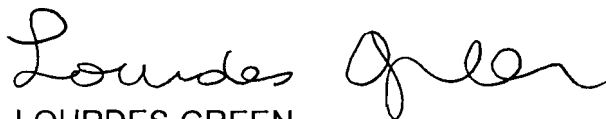
The requested fence is designed to provide a modest enclosure surrounding the outdoor restaurant patio and thus buffer restaurant patrons from the adjacent streets. Since the underlying zone is R2, the maximum permitted height for a fence in the front yard is 3-1/2 feet. The request is to permit the continued use of a 4-foot 3-inch fence within the front yard setback. The fence is constructed of chain link and lattice work and covered with morning-glory vine.

The applicant's representative indicates that the fence is on the average shorter than other fences associated with residential uses on Barton Avenue. The restaurant use, which is a corner location across commercial uses, is better served by the fence which provides a more defined separation between street and patio.

The fence is not anticipated to create any detrimental impacts. As conditioned, the proposed fence will not have any impacts on solar access, ventilation or privacy to the adjoining property owners.

ADDITIONAL MANDATORY FINDINGS

8. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that this project is located in Zone C, areas of minimal flooding.
9. On June 18, 2008, a Mitigated Negative Declaration (ENV 2007-5057-MND) was prepared for the proposed project. On the basis of the whole of the record before the lead agency including any comments received, the lead agency finds that with imposition of the mitigation measures described in the MND (and identified in this determination), there is no substantial evidence that the proposed project will have a significant effect on the environment. I hereby adopt that action. This Mitigated Negative Declaration reflects the lead agency's independent judgment and analysis. The records upon which this decision is based are with the Environmental Review Section of the Planning Department in Room 750, 200 North Spring Street.



LOURDES GREEN
Associate Zoning Administrator
Direct Telephone No. (213) 978-1313

LG:lmc

cc: Councilmember Tom LaBonge
Fourth District
Adjoining Property Owners
County Assessor