

## City of Garden Grove

## INTER-DEPARTMENT MEMORANDUM

To:	Matthew Fertal	From:	Susan Emery
Dept:	City Manager	Dept:	Community Development
Subject:	AN APPEAL OF CONDITIONAL USE PERMIT NO. CUP-239-08	Date:	February 24, 2009

OBJECTIVE

To transmit the Planning Commission staff report on the Ngoc Hue Restaurant proposal regarding a request for Conditional Use Permit approval to operate an existing restaurant, Ngoc Hue Restaurant, with a new original Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. The restaurant is located on the south side of Westminster Avenue between Flower Street and Hope Street at 10212 Westminster Avenue, Suite 113.

BACKGROUND**Proposed Project CUP-239-08:**

The site is improved with an integrated multi-tenant retail shopping center. The specific tenant space under application is occupied by Ngoc Hue Restaurant, and is a 1,800 square foot space located at the southeast corner of the center. The restaurant has been in operation since August 17, 2005. The subject tenant space was previously occupied by Quan Hy Restaurant. The center consists of restaurants, medical offices, a beauty salon, a travel agency, and several retail stores.

The interior of the existing restaurant consists of dining area, a men's restroom, a women's restroom, a kitchen area, a storage room, and a delivery area.

The restaurant is located in a high-crime district and in an area with an undue-concentration of Alcoholic Beverage Control Licenses. Staff is unable to support a finding for public convenience or necessity, given the crime statistics provided by the Police Department and the over-concentration of ABC licenses in the District.

The potential community benefit of the subject proposal to add beer and wine to the subject restaurant is not sufficiently substantial to outweigh the potential negative impacts of the use, as the addition of beer and wine to the subject restaurant use will not be compatible with the intended character of the area because the subject property is in proximity to the residential neighborhood to the south. Approval of the application may detract from the peaceful environment of

these properties, especially considering the potential negative impacts, which may include loitering and police problems within the nearby residential neighborhood.

**History of the Project:**

September 4, 2008: The Planning Commission originally considered Conditional Use Permit No. CUP-239-08 to operate an existing restaurant, Ngoc Hue Restaurant, with a new original ABC Type "41" License. At the request of the applicant, the case was continued three (3) times to the October 2, 2008, November 6, 2008, and the December 4, 2008, Planning Commission meetings.

December 4, 2008: At the Planning Commission meeting, persons from the audience in favor of the project provided public testimony at the hearing. The issues raised by the Planning Commission were related to the high crime rate of the subject area as well as the undue concentration of ABC licenses in the subject district. The Planning Commission debated whether a finding for public convenience or necessity could be made to justify the approval of an additional ABC on-sale license in the subject area. The Planning Commission voted four-to-three to direct staff to bring back a draft resolution of approval for CUP-239-08, along with Conditions of Approval, for consideration at the following Planning Commission meeting. No one from the public spoke in opposition to the project.

January 15, 2009: Just prior to the Planning Commission meeting, a representative for the applicant submitted a letter requesting continuance of the matter. The Planning Commission decided to proceed with the item and revisited the issues related to the potential negative impacts an additional on-sale ABC License may have on the existing high crime rate, as well as further increasing the undue concentration of on-sale ABC licenses in the subject district. The Planning Commission expressed concerns that there is too much over concentration of existing on-sale ABC licenses in the subject district, and that an additional on-sale ABC license may further negatively impact the high crime rate, thereby posing a major drain on the Police Department. The Planning Commission voted four-to-two to deny Conditional Use Permit No. CUP-239-08 and adopted Resolution No. 5645 for denial. At the hearing, no one from the public spoke in opposition to the project.

**DISCUSSION**

**Appeal of the Proposed Project:**

Council Member Broadwater has appealed the Conditional Use Permit application for the City Council to consider the project. In Council Member Broadwater's appeal, he expressed that this case is a matter of public interest and should be decided by the City Council. Council Member Broadwater is requesting that the City Council review the appeal and take the appropriate action.

FISCAL IMPACT

Project approval may result in an unspecified fiscal impact through a drain on Police resources. There is no fiscal impact to the City regarding denial of this Conditional Use Permit.

COMMUNITY VISION IMPLEMENTATION

The Community Vision Statement seeks to foster small business development, retention and expansion. However, this proposed Conditional Use Permit will not help to facilitate this goal by potentially increasing the crime rate in the subject area as well as further negatively impacting the undue concentration in the district.

RECOMMENDATION

Staff recommends that the City Council:

- Uphold the Planning Commission's decision to deny Conditional Use Permit No. CUP-239-08, and thereby deny the Appeal of the Conditional Use Permit, as indicated on the attached City Council Resolution.

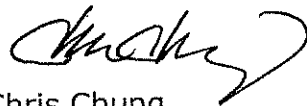


SUSAN EMERY  
Community Development Director

**Approved for Agenda Listing**



**Matthew Ferial**  
City Manager



By: Chris Chung  
Assistant Planner

- Attachment 1: Planning Commission Staff Report dated January 15, 2009
- Attachment 2: Planning Commission Resolution No. 5645
- Attachment 3: Planning Commission Minute Excerpt dated September 4, 2008
- Attachment 4: Planning Commission Minute Excerpt dated October 2, 2008
- Attachment 5: Planning Commission Minute Excerpt dated November 6, 2008
- Attachment 6: Planning Commission Minute Excerpt dated December 4, 2008
- Attachment 7: Planning Commission Minute Excerpt dated January 15, 2009
- Attachment 8: Draft City Council Resolution denying the Appeal of Conditional Use Permit No. CUP-239-08



# COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

<b>AGENDA ITEM NO.:</b> <b>C.4.</b>	<b>SITE LOCATION:</b> South side of Westminster Avenue between Flower Street and Hope Street, at 10212 Westminster Avenue, Suite 113
<b>HEARING DATE:</b> January 15, 2009	<b>GENERAL PLAN:</b> Commercial
<b>CASE NO.:</b> Conditional Use Permit No. CUP-239-08	<b>ZONE:</b> C-1 (Neighborhood Commercial)
<b>APPLICANT:</b> Trong Duong	<b>CEQA DETERMINATION:</b> Exempt
<b>PROPERTY OWNER:</b> Son Nguyen	<b>APN:</b> 099-162-49

## **REQUEST:**

The applicant is requesting Conditional Use Permit approval to operate an existing restaurant, Ngoc Hue Restaurant, with a new original Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License.

## **BACKGROUND:**

The site is improved with an integrated multi-tenant retail shopping center. The specific tenant space under application is occupied by Ngoc Hue Restaurant, and is an 1,800 square foot space located at the southeast corner of the center. The restaurant has been in operation since August 17, 2005. The subject tenant space was previously occupied by Quan Hy Restaurant. The property is located in the C-1 (Neighborhood Commercial) zone and has a land use designation of Light Commercial. The center consists of restaurants, medical offices, a beauty salon, a travel agency, and several retail stores. Currently, the Dionysos Café is the one establishment that operates with an ABC license (Type "41") in the center. The shopping center is adjacent to C-1 zoned properties to the west, south, and east, and PUD-108-96 (Planned Unit Development) zoned properties across Westminster Avenue to the north. There is a residential neighborhood nearby south of the shopping center.

The applicant is requesting Conditional Use Permit approval to operate the existing restaurant with a new State Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Eating Place) License in order to sell beer and wine. Municipal Code, Title 9, Section 9.08.080.B.1, requires a Conditional Use Permit when there is an application for a new original ABC License.

## **DISCUSSION:**

Ngoc Hue Restaurant currently operates as a fine dining Vietnamese restaurant. The interior of the existing restaurant consists of dining area that contains fifteen (15) dining tables for a total of thirty-six (36) seats, booth seats for ten (10) of the

dining tables, and three bar stools for the existing counter area. The total seating arrangement accommodates fifty-three (53) patrons in the existing restaurant.

The interior also includes a men's restroom, a women's restroom, a kitchen area, a storage room, and a delivery area. The applicant does not propose to modify the existing floor plan.

The restaurant currently operates from 9:00 a.m. to 9:00 p.m., seven days a week. The applicant does not propose to change the existing hours of operation. The restaurant is required to serve meals during all hours of operation.

The restaurant is located in a high-crime district, and in an area with an undue-concentration of Alcoholic Beverage Control Licenses. A summary of the district is as follows:

- The subject site is located in Crime Reporting District No. 107.
- The crime count for the District is 140.
- Average crime count per district in the City is 106.
- A District is considered high when it exceeds the Citywide average by 20%.
- The subject District has a crime count of 32% above the citywide average; therefore, it is considered a high-crime area.
- The subject site is located in Alcoholic Beverage Control (ABC) Census Report District No. 889.03.
- ABC Census Reporting District No. 889.03 allows for ten (10) on-sale licenses within the District. Currently, there are seventeen (17) on-sale licenses in the District. Therefore, the approval of this Conditional Use Permit would increase the number of ABC Licenses in this District by one (1), thereby increasing the total number of on-sale licenses in the District to eighteen (18).

As noted above, the subject site is located in an area with an undue concentration of on-sale ABC licenses. Ten (10) licenses are allowed in ABC Census Reporting District No. 889.03, and there are currently seventeen (17) on-sale ABC licenses in this district. Furthermore, the crime count is 32% above the citywide average thus making this a high-crime area.

In reviewing the applicant's request, the Community Development Department and the Police Department are recommending that the applicant's request for the Type "41" ABC license be denied. The addition of another on-sale licensed restaurant in this area has the potential to adversely affect the health, peace and comfort of people residing in the surrounding neighborhoods and of the people who work in the surrounding commercial businesses, by potentially increasing the crime rate of the area.

Furthermore, a finding for public convenience or necessity would have to be made in order to approve an establishment that is requesting a new original Alcoholic Beverage Control license that is located within a district with a high crime rate and/or in an area with undue concentration of ABC licenses. California Business and Professions Code Section 23817.5 prohibits the ABC from issuing new alcoholic

licenses in areas of over-concentration. Business and Professions Code Section 23958 states:

The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4.

Business and Professions Code Section 23958.4 provides the following exception:

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

Staff is unable to support a finding for public convenience or necessity given the crime statistics provided by the Police Department and the over-concentration of ABC licenses in the District.

Finally, the potential community benefit of the subject proposal to add beer and wine to the subject restaurant is not sufficiently substantial to outweigh the potential negative impacts of the use, as the addition of beer and wine to the subject restaurant use will not be compatible with the intended character of the area because the subject property is in proximity to the residential neighborhood to the south. Approval of the application may detract from the peaceful environment of these properties, especially considering the potential negative impacts, which may include loitering and police problems within the nearby residential neighborhood.

**RECOMMENDATION:**

Staff recommends that the Planning Commission take the following action:

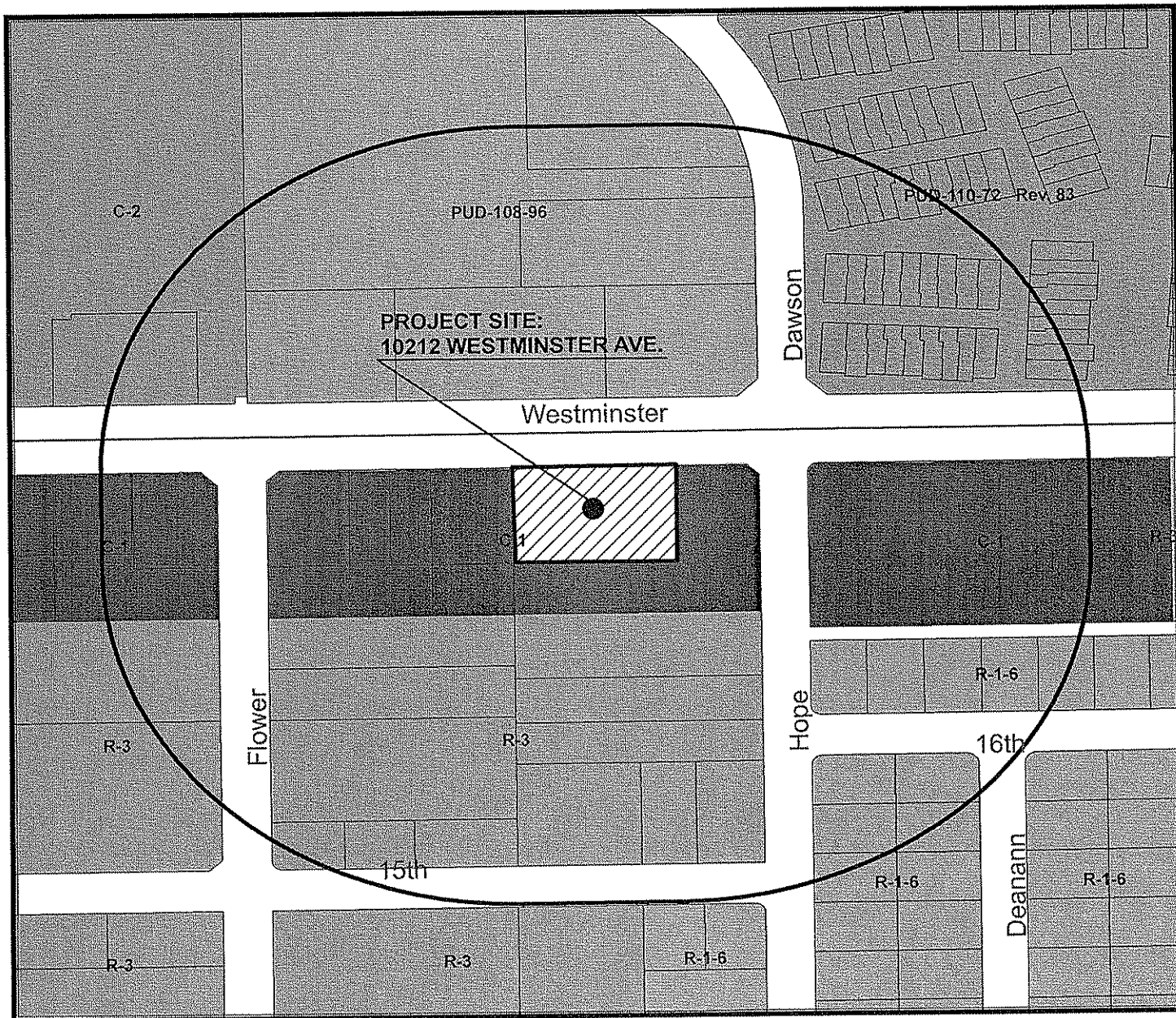
1. Deny Conditional Use Permit No. CUP-239-08.

Karl Hill  
Planning Services Manager


By: Chris Chung  
Assistant Planner




# CONDITIONAL USE PERMIT NO. CUP-239-08



## LEGEND

 PROJECT SITE - 10212 WESTMINSTER AVE.

 500 FEET RADIUS

## NOTES

1. GENERAL PLAN: COMMERCIAL
2. ZONE: C-2 (COMMUNITY COMMERCIAL)

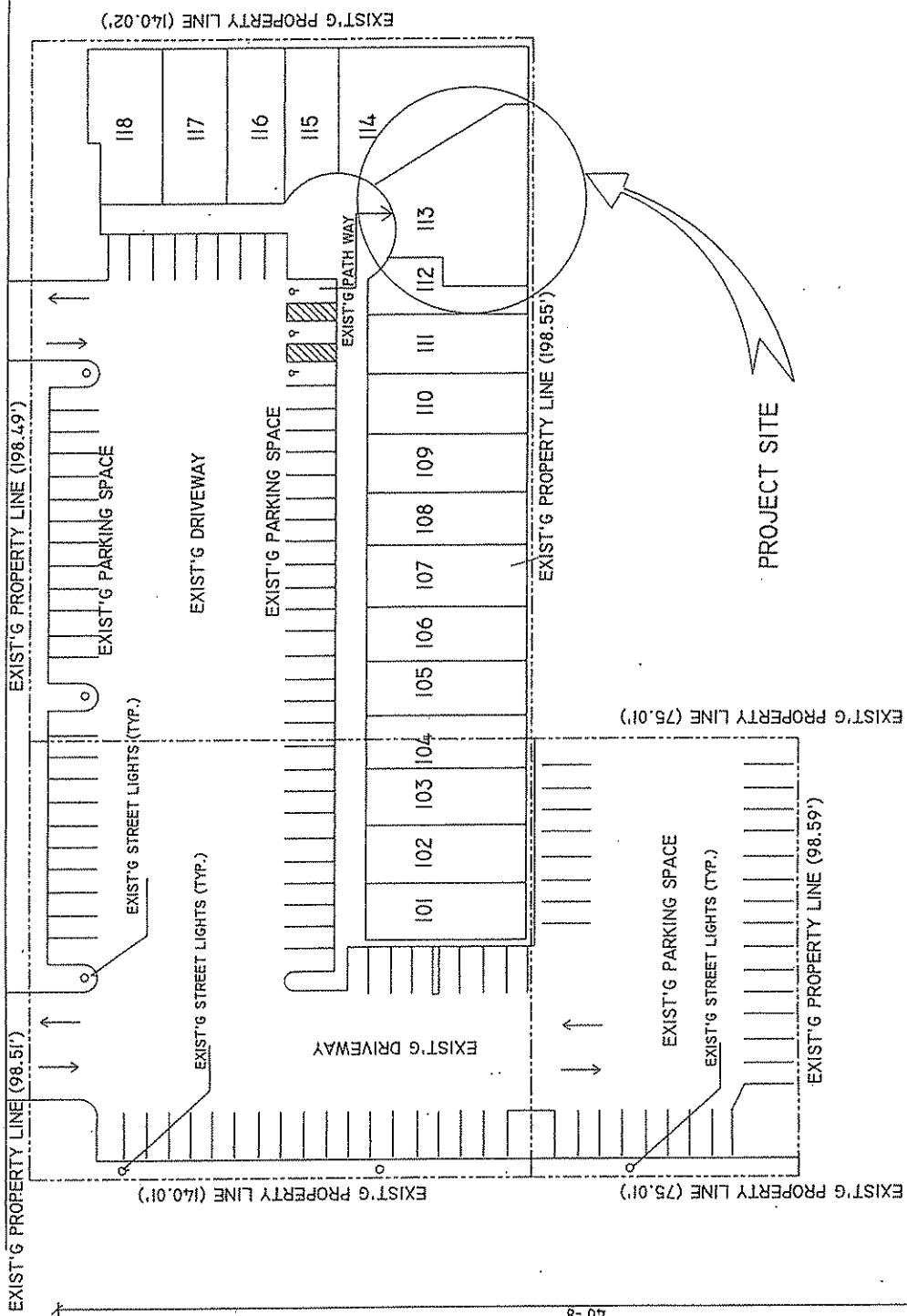


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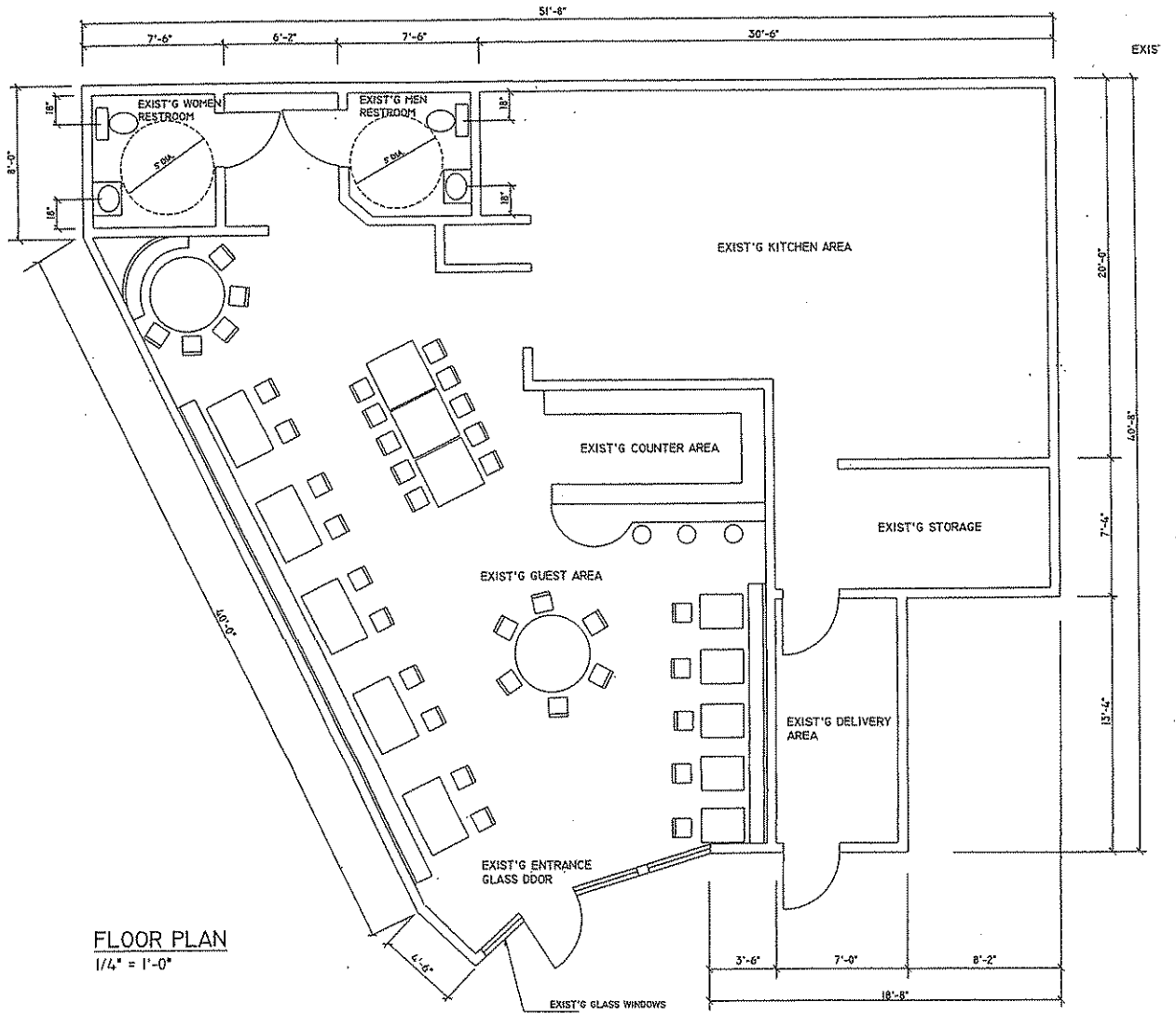
CITY OF GARDEN GROVE  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
GIS SYSTEM  
JULY 2008



WESTMINSTER AVE.



SITE PLAN  
1/32" = 1'-0"



**FLOOR PLAN**  
 1/4" = 1'-0"

RESOLUTION NO. 5645

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE DENYING CONDITIONAL USE PERMIT NO. CUP-239-08.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove does hereby deny Conditional Use Permit No. CUP-239-08 for a property located on the south side of Westminster Avenue, between Flower Street and Hope Street, at 10212 Westminster Avenue, Suite 113, Assessor's Parcel No. 099-162-49.

BE IT FURTHER RESOLVED in the matter of Conditional Use Permit No. CUP-239-08, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by Trong Duong.
2. The applicant is requesting Conditional Use Permit approval to operate an existing restaurant, Ngoc Hue Restaurant, with a new original Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License.
3. The City of Garden Grove has determined that this project is exempt pursuant to Article 19, Section 15301, Existing Facilities, of the California Environmental Quality Act.
4. The property has a General Plan Land Use designation of Light Commercial, and is zoned C-1 (Neighborhood Commercial).
5. Existing land use, zoning, and General Plan designation of property within the vicinity of the subject property have been reviewed.
6. Report submitted by City Staff was reviewed.
7. Pursuant to a legal notice, a public hearing was held on September 4, 2008, and all interested persons were given an opportunity to be heard.
8. The Planning Commission gave due and careful consideration to the matter during its meeting of September 4, 2008; and

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Section 9.24.030 (Conditional Use Permits), are as follows:

FACTS:

The site is located south side of Westminster Avenue, between Flower Street and Hope Street, at 10212 Westminster Avenue, Suite 113, in the C-1 (Neighborhood

Commercial) zone and is developed with an 1,800 square foot Vietnamese restaurant, Ngoc Hue Restaurant.

The property has a General Plan Land Use designation of Light Commercial.

The property is zoned C-1 (Neighborhood Commercial).

The applicant is requesting Conditional Use Permit approval to operate an existing restaurant, Ngoc Hue Restaurant, with a new original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Eating Place) License.

The restaurant is located in a high-crime district, and in an area with an over-concentration of Alcoholic Beverage Control Licenses. A summary of the district is as follows:

- The subject site is located in Crime Reporting District No. 107.
- The crime count for the District is 140.
- Average crime count per district in the City is 106.
- A District is considered high when it exceeds the Citywide average by 20%.
- The subject District has a crime count of 32% above the citywide average; therefore, it is considered a high-crime area.
- The subject site is located in Alcoholic Beverage Control (ABC) Census Report District No. 889.03.
- ABC Census Reporting District No. 889.03 allows for ten (10) on-sale licenses within the District. Currently, there are seventeen (17) on-sale licenses in the District. Therefore, the approval of this Conditional Use Permit would increase the number of ABC Licenses in this District by one (1), thereby increasing the total number of on-sale licenses in the District to eighteen (18).

#### FINDINGS AND REASONS:

1. The subject site has a General Plan Land Use Designation of Light Commercial and is zoned C-1 (Neighborhood Commercial). Eating establishments with alcohol sales are conditionally permitted in this zone. The proposal for an ABC license in an area of high crime & over concentration of licenses is not in keeping in the spirit and intent of the General Plan and Municipal Code. This will create further issues and problems within the area potentially related to crime and other undesired effects on the surrounding area. Therefore, the finding for consistency and conformity with the General Plan and Municipal Code, Title 9, cannot be made.
2. The existing restaurant is located in a high-crime area. The crime count for this district is 32% above the City-wide average. The addition of another on-sale ABC licensed restaurant at this location has the potential to adversely affect the health, peace, comfort, or welfare of persons residing or working in

the immediate area by potentially increasing calls for service by the Police Department for crimes. In reviewing the applicant's request, the Community Development Department and the Police Department are recommending that the applicant's request for the Type "41" ABC license be denied. The addition of another on-sale licensed restaurant in this area has the potential to adversely affect the health, peace and comfort of people residing in the surrounding neighborhoods and of the people who work in the surrounding commercial businesses, by potentially increasing the crime rate of the area.

3. The approval to allow the existing restaurant, Ngoc Hue Restaurant, to operate with a new original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Eating Place) License, may unreasonably interfere with the use, enjoyment, or valuation of the property of other persons located within the vicinity of the site. Therefore, the approval of the subject application would be considered contrary to the goals and policies of the General Plan.
4. The addition of another on-sale ABC license in the subject area may potentially jeopardize, endanger, or otherwise constitute a menace to public health, safety, or general welfare. The potential community benefit of the subject proposal to add beer and wine to the subject restaurant is not sufficiently substantial to outweigh the potential negative impacts of the use, because the intensification of the subject restaurant use will not be compatible with the intended character of the area since the subject property is in proximity to the residential neighborhood to the south. Approval of the application may detract from the peaceful environment of these properties, especially considering the potential negative impacts, which may include loitering and police problems within the adjacent residential neighborhood.

#### INCORPORATION OF FACTS AND REASONS SET FORTH IN STAFF REPORT

In addition to the foregoing, the Planning Commission incorporates herein by this reference, the facts and reasons set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. The Conditional Use Permit does not possess characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.24.030 (Conditional Use Permits). Therefore, the request is hereby denied.

ADOPTED this 15th day of January, 2009

/s/ RON PIERCE  
CHAIR

I HEREBY CERTIFY that the foregoing resolution was duly adopted at the regular meeting of the Planning Commission of the City of Garden Grove, State of California, held on January 15, 2009, by the following votes:

AYES:	COMMISSIONERS:	BANKSON, BEARD, BRIETIGAM, KIRKHAM
NOES:	COMMISSIONERS:	PAK, PIERCE
ABSENT:	COMMISSIONERS:	NGUYEN

/s/ JUDITH MOORE  
SECRETARY

PLEASE NOTE: Any request for court review of this decision must be filed within 90 days of the date this decision was final (See Code of Civil Procedure Section 1094.6).

A decision becomes final if it is not timely appealed to the City Council. Appeal deadline is February 5, 2009.

## MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

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PUBLIC HEARING:      CONDITIONAL USE PERMIT NO. CUP-239-08

APPLICANT:           TRONG DUONG

LOCATION:             SOUTH SIDE OF WESTMINSTER AVENUE BETWEEN FLOWER STREET AND HOPE  
STREET AT 10212 WESTMINSTER AVENUE

DATE:                SEPTEMBER 4, 2008

REQUEST:            Conditional Use Permit approval to operate an existing restaurant, Ngoc Hue  
Restaurant, with an original Alcoholic Beverage Control Type "41" (On-Sale, Beer and  
Wine) License. The site is in the C-1 (Neighborhood Commercial) zone.

Vice Chair Pak moved to continue Conditional Use Permit No. CUP-239-08 to the  
regularly scheduled Planning Commission meeting on October 2, 2008, seconded by  
Commissioner Beard. The motion received the following vote:

AYES:                COMMISSIONERS:    BANKSON, BEARD, KIRKHAM, NGUYEN, PAK,  
PIERCE

NOES:               COMMISSIONERS:    NONE

ABSENT:             COMMISSIONERS:    BRIETIGAM





## MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

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## CONTINUED

PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-239-08  
APPLICANT: TRONG DUONG  
LOCATION: SOUTH SIDE OF WESTMINSTER AVENUE BETWEEN FLOWER STREET AND HOPE STREET AT 10212 WESTMINSTER AVENUE  
DATE: OCTOBER 2, 2008

REQUEST: Conditional Use Permit approval to operate an existing restaurant, Ngoc Hue Restaurant, with an original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine) License. The site is in the C-1 (Neighborhood Commercial) zone.

Vice Chair Pak moved to continue the case to the November 6, 2008 Planning Commission meeting, seconded by Commissioner Brietigam. The motion received the following vote:

AYES:	COMMISSIONERS:	BANKSON, BRIETIGAM, KIRKHAM, NGUYEN, PAK, PIERCE
NOES:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	BEARD



MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

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CONTINUED

PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-239-08  
APPLICANT: TRONG DUONG  
LOCATION: SOUTH SIDE OF WESTMINSTER AVENUE BETWEEN FLOWER STREET AND HOPE STREET AT 10212 WESTMINSTER AVENUE  
DATE: NOVEMBER 6, 2008

REQUEST: Conditional Use Permit approval to operate an existing restaurant, Ngoc Hue Restaurant, with an original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine) License. The site is in the C-1 (Neighborhood Commercial) zone.

Commissioner Kirkham moved to continue the case to the December 4<sup>th</sup>, 2008 Planning Commission meeting, seconded by Commissioner Bankson. The motion received the following vote:

AYES:	COMMISSIONERS:	BANKSON, BEARD, BRIETIGAM, KIRKHAM, NGUYEN, PAK
NOES:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	PIERCE



## MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

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## CONTINUED

PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-239-08  
APPLICANT: TRONG DUONG  
LOCATION: SOUTH SIDE OF WESTMINSTER AVENUE BETWEEN FLOWER STREET AND HOPE STREET AT 10212 WESTMINSTER AVENUE  
DATE: DECEMBER 4, 2008

REQUEST: Conditional Use Permit approval to operate an existing restaurant, Ngoc Hue Restaurant, with an original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine) License. The site is in the C-1 (Neighborhood Commercial) zone.

Staff report was read and recommended denial.

Vice Chair Pak asked staff if there was a map of the 19 existing licenses.

Staff replied no; however, 17 of the 19 addresses were available to be recited from a list.

Commissioner Kirkham commented that the license map was in the CLEW report.

Commissioner Beard asked staff if any of the 17 licenses were located near the subject business. Staff replied that approximately three licenses were located across the street, and that four others were within a block or two.

Commissioner Bankson asked staff for the percentage of crimes associated with the alcohol sales in the area. Staff replied that the census tract dictates the concentration amount; that the crime district is 107 along with 117 and 118; that in District 117, which has four licenses, there is a high call for Police services, ie., 80 or more calls with 47 arrests year to date; that during the past one and a half years other crimes included arrests for attempted homicides, assault with deadly weapons, fights, Conditional Use Permit violations, and illegal alcohol across the street. Also, that there is one other license in the shopping center, and that this request is for a new original license.

Vice Chair Pak asked staff if a wall separated the south side of the shopping center from the residents. Staff replied that a block wall separates the residential area.

Commissioner Nguyen commented that it is not logical to assume that if someone drinks beer, that person would commit a crime.

Staff added that in State Law, it is presumed that an over-concentration or a high-crime area would be further impacted by an additional alcoholic license and that is why Alcoholic Beverage Control (ABC) is prohibitive of issuing a new license; that the exception is that the Planning Commission could make a finding for public need or necessity that would override State policy; that when going over the census tract number of licenses, the City needs to make a finding for public necessity; that the issue is not whether or not the City has the authority to deny a license based on the alleged connection between the use of alcohol and the committing of crimes; that

granting a license is a privilege, not a right; and that the Planning Commission is being asked to override State policy on the number of ABC licenses allowed in a census tract.

Commissioner Nguyen stated that one additional license would not create an impact on crime.

Chair Pierce opened the public hearing to receive testimony in favor of or in opposition to the request.

Mr. Dennis Desnoo, the applicant's representative, approached the Commission and asked the City to consider four issues with regard to granting the license; that the business is a family, fine dining seafood restaurant, not a bar, and that beer and wine would enhance the dining experience; that these are difficult economic times and there is a need for the government to help the business succeed; that there is no impact to residents behind the restaurant; and that there is community support for the license.

Mr. Son Nguyen, the property owner of Rex Plaza, approached the Commission and stated that his plaza is also well known in Vietnam; that he owns four shopping centers; that he has a good relationships with the tenants; that the center includes a medical center; orthopedic services; OB doctor, and a pharmacy; that the restaurant business is down due to the lack of a license; that he would guarantee supervision; and that he has taken security measures, ie., a sophisticated 24-hour camera system and patrol security services.

Vice Chair Pak commented that he can empathize with the situation as the Korean culture also prefers to drink with meals.

Mr. Trong Duong, the restaurant owner, approached the Commission and stated that he would like his business to be more successful and that his hours of operation are from 9:00 a.m. to 7:00 p.m.

Mr. Kevin Duong, the translator, approached the Commission.

Ms. Bong Allen, Ms. VT Tran, Ms. Thu Phan, Ms. Loan Ho, Ms. Lanh Vo, Mr. Duong Tai and Ms. Duyen Cao each approached the Commission and stated that the restaurant's seafood is delicious and the restaurant beautiful; that they are frequent visitors and the staff is friendly with good service; that beer and wine would be an enhancement to the meals and would keep the restaurant successful; that people do leave the restaurant go next door for alcohol; and that there are no crimes.

Commissioner Bankson asked Mr. Duong why he did not apply for a beer and wine license when he opened the restaurant. Mr. Duong replied that his restaurant was for food only, however, customers soon began asking for beer and wine and when potential customers were told there was no beer and wine, they would go next door.

There being no further comments, the public portion of the hearing was closed.

Commissioner Brietigam commented that he was sympathetic; that to grant a license, there must be a finding for public necessity; that there is not a need for convenience as alcohol is available next door; and that he could not support the project.

Vice Chair Pak commented that the General Plan Update 2030 would concentrate on the Little Saigon area that would include entertainment; that Westminster has an outstanding yearly event called A Taste of Little Saigon; that there is a public necessity for a license as the culture is to drink with meals; that each license should be on a case by case basis; that most of the existing 17 licenses are in the northern area of Westminster; and that they have security and a management office on site.

Commissioner Kirkham commented that the Planning Commission needs to go by the law; that the restaurant is beautiful; that a finding needs to be made for a public convenience or necessity; that the street has problems related to alcohol; and that he supports the denial of the license.

Commissioner Brietigam commented that the Planning Commission needs to consider the licenses more carefully; that there is no cultural necessity to consume alcohol with meals just because people are of a certain race; that he wishes the business to succeed, however, the Commission has a responsibility and duty to the Community.

Commissioner Bankson commented that he also empathized with the owner; that the sales of alcohol at this restaurant would probably not significantly contribute to crime in the area; that he agrees that there is no necessity for selling alcohol especially when there are already 17 licenses, when only ten licenses are allowed.

Staff clarified the legal standing stating that for approval, a finding must be made for a public convenience or for public necessity, not both.

Commissioner Nguyen commented that there must be a balance between crime in the area and the growth of businesses; that if laws are man-made, amendments can be made; that the necessity is for a business incentive in this economic crisis; that more cash flow is better for the City; that clientele is in the 40 to 50 year age range and they would be more responsible; that more crimes happen after midnight; that those who commit the crimes are between 19 and 28; that alcohol consumption does sometimes create more crime; that people want the beer and wine with their meal to relax; that this restaurant would sell more food than alcohol versus a bar that would sell more alcohol; that there is security, the restaurant is clean, there is ample parking; that next door is a bar and the patrons are young; and that he would support an approval of the license.

Chair Pierce asked staff if the restaurant next door has a Type "41" or "47" license. Staff replied that the license is a Type "41"; and that there has not been a lot of Police activity next door or at the subject restaurant.

Chair Pierce commented that the shopping center is nice, and because there are no problems with the restaurant next door, he could support the granting of the license.

Commissioner Beard commented that the restaurant is well established; that a finding for public convenience or necessity needs to be found; that licenses should be considered on a case-by-case basis; and that there is a reason 17 licenses already exist.

Vice Chair Pak commented that the Planning Commissioners are being responsible; that some licenses were approved by City Council; that all concerned have always done their due diligence with approving licenses; that there is security; that these are tough times; that in Los Angeles, some owners are asking for operating hours extensions; that a license would not contribute to crime; that Korean rice wine has

now been classified by the State as wine instead of hard liquor; that internet reviews have wonderful comments about the restaurant; and that the Conditional Use Permit could be reviewed after six months.

Commissioner Nguyen commented that if the license was granted, the City has the authority to revoke the permit at any time.

Staff clarified that if the license is granted, the owner has been given a property right; that the Conditional Use Permit (CUP) runs with the land; that the CUP could be sold to another user thereby increasing the asset value; that to revoke a permit, noticing is required along with a hearing and that the City has the burden to prove that the owner should lose the property right; and that the right for approval is within the Planning Commission's discretion.

Commissioner Brietigam commented that granting an ABC license is a long term right; that things change; that only ten licenses are allowed in this tract; that this owner is practical and responsible, however, that may not be the case later with a different owner and the public would suffer; and that decisions must be considered for the long term.

Commissioner Nguyen commented that with the current crisis, only service businesses can survive; that the restaurant could only survive with an incentive to attract customers; and that this restaurant is different from the restaurant next door.

Chair Pierce asked staff how many licenses were in the shopping center. Staff replied one.

Vice Chair Pak commented that it would be good to know the percentage of customers that go to Westminster, thereby increasing that City's revenue because they cannot get beer and wine at this restaurant.

Commissioner Kirkham asked for clarification on revoking a CUP.

Staff replied that the ABC License would be granted through the CUP and if the CUP were revoked, through ABC policy, the license could be terminated.

Commissioner Beard asked for clarification of the finding of necessity or benefit of granting the license.

Vice Chair Pak stated that the license would benefit the City of Garden Grove community and the patrons who use Ngoc Hue restaurant; that the restaurant is a nice, fine dining establishment; alcohol consumption would be less than 20 percent; there are two bathrooms; there is a juice bar across the street; and there would be no contribution to a higher crime rate.

Vice Chair Pak moved to direct staff to bring back a resolution of approval for a Conditional Use Permit that would be subject to review in six months and that would include Conditions of Approval, seconded by Commissioner Nguyen. The motion received the following vote:

AYES:	COMMISSIONERS:	BEARD, NGUYEN, PAK, PIERCE
NOES:	COMMISSIONERS:	KIRKHAM, BRIETIGAM, BANKSON
ABSENT:	COMMISSIONERS:	NONE



## MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

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## CONTINUED

PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-239-08  
APPLICANT: TRONG DUONG  
LOCATION: SOUTH SIDE OF WESTMINSTER AVENUE BETWEEN FLOWER STREET AND HOPE STREET AT 10212 WESTMINSTER AVENUE  
DATE: JANUARY 15, 2009

REQUEST: Conditional Use Permit approval to operate an existing restaurant, Ngoc Hue Restaurant, with an original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine) License. The site is in the C-1 (Neighborhood Commercial) zone.

Staff report was read and recommended that the Planning Commissioners consider all matters pertaining to CUP-239-08, regarding both a Resolution of Approval and a Resolution of Denial, and take the appropriate action. A letter for continuance was noted, however, Staff recommended proceeding with the item.

Commissioner Brietigam asked staff for the number of ABC licenses in the area.

Staff replied that there are 17 licenses with only ten allowed.

Vice Chair Pak asked Staff to clarify if the property owner had guards on the property. Staff replied that the guards are likely the landlord's own policing efforts.

Commissioner Beard asked if the CUP runs with the land onto the next owner. Staff replied yes.

Commissioner Kirkham noted that another ABC License exists next door to the project.

Chair Pierce opened the public hearing to receive testimony in favor of or in opposition to the request.

Mr. Dennis DeSnoo approached the Commission and apologized for the lateness of the request for continuance; and that the applicant and witnesses are not present.

There being no further comments, the public portion of the hearing was closed.

Staff stated that security guards are not the save-all for businesses; that the City hopes the operator would be good; that the original denial recommendation was due to 17 licenses in the area; that the crimes are a major drain on the Police Department; that Staff was directed to come back with a resolution of approval; and that it cannot be guaranteed that the next operator would be a good one.

Staff added that previously, four Commissioners voted for approval, with three voting no; that the applicant's intent was for a full Commission; that if the denial was approved, the item could be appealed to City Council; that technically, the CUP was approved by a 4-3 vote and that currently, the resolution is to be considered.

Commissioner Brietigam commented that there is typically one or more Planning Commissioners absent from the meeting and that he would not support the continuance.

Commissioner Kirkham asked Staff if the City Council could overturn the decision. Staff replied yes, and that now, there are Conditions of Approval to consider.

Chair Pierce asked the Planning Commission if there was a motion for the project.

Commissioner Beard asked Staff if votes could be changed. Staff replied yes; that if the recommendation is for approval, the incorporation of the staff report needs to be stricken.

Commissioner Beard commented that, in light of new information of the Staff and Police recommendations from the previous item, he wanted to vote against the recommendations and move for denial.

Commissioner Brietigam seconded the motion.

Staff added that if the project was approved, a provision was included as part of the Conditions of Approval that the CUP would be reviewed six months from the date of approval and three years thereafter. It was also noted that in light of a potential 3-3 vote, thereby denying the case, the Commission could move to continue to a date with a full Commission.

Commissioner Beard commented that there is too much over concentration and that he would vote for a resolution of denial.

Commissioner Kirkham noted that there was a motion and a second for denial.

Staff explained that there could be discussion with a motion on the table; however, alternative motions could not be entertained until the current motion was acted on.

Vice Chair Pak commented that the December 4<sup>th</sup> discussion is in the Minutes; that the owner has four businesses in Garden Grove; and that it is unfair to not give the applicant an opportunity to rebut.

Commissioner Bankson commented that testimony was heard at the December 4<sup>th</sup> meeting.

Commissioner Beard offered to re-voice his motion; however, he asked Staff that if he withdrew his motion and the second was withdrawn, could the Planning Commission then act on Vice Chair Pak's motion? Staff replied yes.

Commissioner Beard withdrew his motion to approve the denial; however, Commissioner Brietigam did not withdraw his second.

Commissioner Beard then moved to approve the Resolution of Denial for Conditional Use Permit No. CUP-239-08, seconded by Commissioner Brietigam, pursuant to the facts and reasons contained in Resolution No. 5645. The motion received the following vote:

AYES: COMMISSIONERS: BANKSON, BEARD, BRIETIGAM, KIRKHAM

Draft Minute Excerpt – January 15, 2009  
CUP-239-08

NOES:	COMMISSIONERS:	PAK, PIERCE
ABSENT:	COMMISSIONERS:	NGUYEN



## RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE  
DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION  
TO DENY CONDITIONAL USE PERMIT NO. CUP-239-08

WHEREAS, the case, initiated by the Trong Duong, requested Conditional Use Permit approval to operate an existing restaurant, Ngoc Hue Restaurant, with a new original Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License, for property located on the south side of Westminster Avenue, between Flower Street and Hope Street, at 10212 Westminster Avenue, Suite 113, Assessor's Parcel No. 099-162-49; and

WHEREAS, the City of Garden Grove has determined that this action is exempt pursuant to Article 19, Section 15303, New Construction or Conversion of Small Structures, of the California Environmental Quality Act; and

WHEREAS, pursuant to Resolution No. 5645, the Planning Commission, at a public hearing on January 15, 2009, denied Conditional Use Permit No. CUP-239-08; and

WHEREAS, pursuant to legal notice, a public hearing was held by the City Council on February 24, 2009, and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council gave due and careful consideration to the matter during its meeting of February 24, 2009.

## NOW, THEREFORE, BE IT FURTHER RESOLVED:

1. The City Council denies the appeal and upholds the Planning Commission's decision to deny Conditional Use Permit No. CUP-239-08, based upon the facts, findings and reasons set forth in Planning Commission Resolution No. 5645.

A copy of Planning Commission Resolution No. 5645 is on file in the office of the City Clerk and incorporated herein by reference with the same force and effect as set forth in full.