

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-258-09		Date:	April 14, 2009

OBJECTIVE

To consider an appeal of the Planning Commission's denial for Conditional Use Permit No. CUP-258-09, which is a request to allow Mon Ami Café and Restaurant to operate with an original Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. Mon Ami Café and Restaurant is part of a commercial shopping center located on the northwest corner of Euclid Street and Business Center Parkway, at 14291 Euclid Street #D116 in the Planned Unit Development No. PUD-104-81/86 Rev. 90 zone.

BACKGROUND

The restaurant is part of a commercial shopping center called the Euclid Retail Center located on the northwest corner of Euclid Street and Business Center Parkway. The restaurant occupies a 2,500 square foot corner tenant space at the southern end of the property. The shopping center has a mixture of retail, restaurant, office, and medical uses. The restaurant has been in operation since March 2007.

The applicant is requesting Conditional Use Permit approval to operate the restaurant with an original State ABC Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. Section 9.08.080.B.5 of Title 9 of the Municipal Code requires Conditional Use Permit approval when there is an application for an original ABC license.

The restaurant is located in a high-crime district, and in an area with an undue concentration of Alcoholic Beverage Control Licenses. In reviewing the applicant's request, it was recommended that the applicant's request for the Type "41" ABC License be denied. Staff expressed concern that an additional 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.

CONDITIONAL USE PERMIT NO. CUP-258-09

April 14, 2009

Page 2

A finding for public convenience or necessity was required to be made in order to approve an establishment that is requesting a new original Alcoholic Beverage Control license located within a district with a high crime rate and/or in an area with undue concentration of ABC licenses. Originally, a finding for public convenience or necessity was not made given the over-concentration of ABC licenses in the Census District.

On February 5, 2009, the Planning Commission considered and denied Conditional Use Permit No. CUP-258-09 with a 6-0 vote, with Commissioner Nguyen absent. In denying the Conditional Use Permit request, the Planning Commission determined that due to the undue concentration of existing on-sale ABC licenses in the area, a finding of public convenience or necessity could not be made, and that the restaurant is located in a shopping center with a high number of calls for Police service.

At a recent City Council Study Session held on March 17, 2009, the City Council determined that the City may consider approving Conditional Use Permit requests from restaurant owners proposing to operate with a Type "41" (On-Sale, Beer and Wine) License, even though the restaurant may be located in an area with a high crime and/or over concentration of on-sale alcohol licenses, if the restaurant owner agrees to comply with the standard conditions of approval.

DISCUSSION

The business owner, Helen Nguyen, has appealed the Conditional Use Permit for City Council consideration. In the appeal, the applicant indicated that consumers have requested alcohol, and that the Mon Ami Café and Restaurant is the only fine dining restaurant in the center that is open for lunch and dinner.

As presented to the Planning Commission, the City Council has been afforded the same opportunity to review the matter, and either deny the Appeal of the Conditional Use Permit or approve the Appeal, thereby approving CUP-258-09 with Findings of Public Convenience and Necessity, along with Conditions of Approval.

FISCAL IMPACT

The approval of this project may result in an unspecified negative fiscal impact on Police resources, although there appears to be no fiscal impact to the City regarding denial of this Conditional Use Permit.

COMMUNITY VISION IMPLEMENTATION

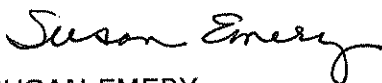
The Community Vision Statement seeks to foster small business development, retention and expansion; however, this proposed Conditional Use Permit will not

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:

- Grant the appeal and approve Conditional Use Permit No. CUP-258-09, subject to the recommended conditions of approval. The applicant agrees to comply with all standard conditions of approval for a restaurant that operates with an Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine) License, as discussed and approved by the City Council in March 2009.




SUSAN EMERY
Community Development Director



By: Maria Parra
Urban Planner

Approved for Agenda Listing



Matthew Fertal
City Manager

- Attachment 1: Appeal Form
Attachment 2: Planning Commission Staff Report dated February 5, 2009
Attachment 3: Planning Commission Resolution No. 5668
Attachment 4: Planning Commission Minute Excerpt dated February 5, 2009
Attachment 5: Draft City Council Resolution denying the Appeal of Conditional Use Permit No. CUP-258-09
Attachment 6: Draft City Council Resolution approving the Appeal of Conditional Use Permit No. CUP-258-09, with Conditions of Approval

APPEAL

Request for City Council or Planning Commission
Public Hearing

RECEIVED
CITY OF GARDEN GROVE
CLERK'S OFFICE

2009 FEB -9 P 5:04

TO: CITY CLERK
CITY OF GARDEN GROVE

Pursuant to Section 9.24.110 of the Municipal Code (see reverse), I hereby appeal the decision of the CIRCLE ONE (Planning Commission) / Zoning Administrator) in Case No. CNP-25809, and petition the CIRCLE ONE (City Council) / Planning Commission) for a public hearing to consider CIRCLE ONE (approving) denying / modifying) the subject application for the following reasons:

- 1/ OUR RESTAURANT IS A FINE DINING PLACE AND THE ONLY ONE SERVING MEAL FOR LUNCH / AND DINNER IN THAT BUILDING COMPLEX.
- 2/ IT IS A QUIET AND PEACEFUL PLACE. NO CALLS EVER TO POLICE DEPT. NO GANG PROBLEM.
- 3/ IT IS A REQUEST / DEMAND FROM PUBLIC CONSUMERS COMING WITHIN AND FROM OUTSIDE THE CITY TO ENHANCE THEIR MEAL.

(Use additional sheets if necessary)

Date: 2/9/09 Appeal Fee (see reverse): \$100.00
 Appellant: REP. MELAN NGUYEN
REP. TONY TRUONG
 Address: 14291 Buckley St # D116
 City & ZIP: Gro, 92843 Daytime Phone No. (714) 468-3198

COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

AGENDA ITEM NO.: C.2.	SITE LOCATION: Northwest corner of Euclid Street and Business Center Parkway, north of Hazard Avenue, at 14291 Euclid Street #D116
HEARING DATE: February 5, 2009	GENERAL PLAN: Mixed Use
CASE NO.: Conditional Use Permit No. CUP-258-09	ZONE: Planned Unit Development No. PUD-104-81/86 Rev. 90
APPLICANT: Helen Nguyen	CEQA DETERMINATION: Exempt
PROPERTY OWNER: Euclid Real Estate Development, Inc.	APN: 099-183-03

REQUEST:

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

BACKGROUND:

The restaurant is part of a commercial shopping center called the Euclid Retail Center that is located on the northwest corner of Euclid Street and Business Center Parkway. The restaurant occupies a 2,500 square foot corner tenant space located at the southern end of the property. The shopping center has a mixture of retail, restaurant, office, and medical uses. The shopping center has a total of six (6) eating establishments: four (4) full-service restaurants (including the Mon Ami Café and Restaurant), one (1) restaurant-nightclub, and one (1) "food to go" restaurant.

The tenant space currently occupied by the Mon Ami Restaurant was formerly a real estate office. In 2006, the business owner applied for building permits to convert the space into a restaurant. The restaurant has been in operation since March 2007.

The applicant is requesting Conditional Use Permit approval to operate the restaurant with an original State ABC Type "41" (On-Sale, Beer and Wine, Eating Place) License. Section 9.08.080.B.5 of Title 9 of the Municipal Code requires Conditional Use Permit approval when there is an application for an original ABC license.

DISCUSSION:

The Mon Ami Café and Restaurant specializes in Vietnamese cuisine that includes steak, steamed fish, traditional beef soup (Pho), and other traditional Vietnamese dishes. The restaurant is 2,500 square feet in size and consists of a 1,322 square foot dining area, a service area, a kitchen, restrooms, and storage areas.

The restaurant also has an outdoor patio eating area, located along Business Center Parkway, which was created without Planning Division approval. This area was previously a landscape planter with a walkway used to access the side doors of the restaurant. Title 9 of the Municipal Code requires Planning Division approval before an outdoor dining or sitting area is created. Staff previously had a conversation with a representative of the restaurant about the requirements for an outdoor dining area; but no approval was ever granted. A letter has been mailed to the applicant indicating that Planning Division approval is required in order to continue the use of the outdoor dining area.

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

- The subject site is located in Crime Reporting District No. 117
- The crime count for the District is 196.
- 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 84% above the citywide average; therefore, it is considered a high-crime area.
- The subject site is located in Alcoholic Beverage Control (ABC) Census Reporting 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. The Planning Commission approved a new on-sale ABC Type "41" License on December 4, 2008 that increased the total number of on-sale license in the Census Reporting District from seventeen (17) to eighteen (18). Approval of this license will increase the total number of on-sale licenses in the census district. If the Planning Commission approves a separate request from Newport Seafood Restaurant (Conditional Use Permit No. CUP-255-09) for an on-sale alcohol license, and also approves this ABC license request, the total number of on-sale licenses in the district will increase to twenty (20).

Since the crime district is located in a census district that has an undue concentration of on-sale licenses, the Planning Commission is required to make a finding of public convenience or public necessity to approve the request. The Police Department has determined that no finding of public convenience or public

necessity can be made due to the number of existing on-sale ABC licenses in the census district and in the shopping center, and are recommending that the applicant's request for a new ABC Type "41" (On-Sale, Beer and Wine) License be denied.

As noted above, the restaurant is located in an area with an undue concentration of on-sale ABC licenses. Ten (10) on-sale ABC licenses are allowed in ABC Census Reporting District No. 889.03, and there are currently seventeen (17) on-sale ABC licenses in the district. License number eighteen (18) was recently approved by the Planning Commission on December 4, 2008, and is currently pending issuance by the Department of Alcoholic Beverage Control.

The shopping center has a total of six (6) eating establishments: four (4) full-service restaurants (including the Mon Ami Café and Restaurant), one (1) restaurant-nightclub, and one (1) "food to go" restaurant.

Out of the six (6) restaurants, three (3) currently operate with a Type "41" (On-Sale, Beer and Wine) License, and one (1) operates with a Type "47" (On-Sale, General) License. The restaurants that operate with a Type "41" and a Type "47" ABC Licenses are:

Type "41" (On-Sale, Beer and Wine)

- 1) Hoa An Quan located at 14291 Euclid Street #D101
- 2) Huyen Restaurant located at 14241 Euclid Street #C111-112
- 3) The Boiling Crab located at 14241 Euclid Street #C116

Type "47" (On-Sale, General)

- 4) Can Restaurant located at 14241 Euclid Street #C101

These four (4) eating establishments offer patrons beer and wine for on-site consumption. Consequently, the introduction of a new on-sale license to this area will not provide a public convenience or necessity as these existing restaurants are venues where residents can dine and have alcohol with their meals.

Furthermore, the Census District has seventeen (17) existing restaurants that currently operate with either a Type "41" (On-Sale, Beer and Wine) or Type "47" (On-Sale, General) ABC License. Sixteen (16) licenses are in the City of Garden Grove, and one (1) license is located in the City of Santa Ana. This Census Reporting District also encompasses a portion of the City of Santa Ana, which explains why there is an ABC licensed establishment on the list. Below is a list of the on-sale alcohol licenses in the Census District (see Exhibit "A" for map location):

	Type of License	Business Name	Address
1	41	Hoa An Quan	14291 Euclid St #D101
2	41	Huyen Restaurant	14241 Euclid St #C111
3	41	The Boiling Crab	14241 Euclid St #C116
4	47	Can Restaurant	14241 Euclid St #C101
5	47	Shakey's Pizza	10742 Westminster Ave
6	41	Phuong Restaurant	10722 Westminster Ave
7	41	Wong's Restaurant	10642 Westminster Ave
8	41	Can Tho Restaurant	10544 Westminster Ave
9	41	Tu Do Restaurant	10284 Westminster Ave
10	41	Quan Sao Dem	10212 Westminster Ave
11	41	The Crawfish House	10112 Westminster Ave
12	47	Pho Quang Trung	10072 Westminster Ave
13	41	Van Restaurant	14122 Brookhurst St
14	41	My Nguyen Restaurant	14282 Brookhurst St
15	41	Phuong Hoang Restaurant	10557 Bolsa Ave
16	41	4 Mua Restaurant	10561 Bolsa Ave
17	41	Thien Thanh Restaurant	5423 W. 1 st Street (Santa Ana)
18	41 (Pending)	Ngoc Huy Restaurant	10212 Westminster Ave
19*	41	Newport Seafood Restaurant	10541 Bolsa
20	41	Mon Ami Café and Restaurant	14291 Euclid Street

*If the Planning Commission approves the request of Newport Seafood Restaurant to operate with an on-sale ABC Type "41" (On-Sale, Beer and Wine) License per Conditional Use Permit No. CUP-255-09, and if the Mon Ami Café and Restaurant request is also approved, the total number of on-sale licenses in the census district will increase to twenty (20) on-sale ABC licenses.

Staff has determined that the sale of beer and wine at this restaurant will not serve a public convenience or public necessity as the district is over concentrated with on-sale alcohol licenses, and since the shopping center has four (4) existing restaurants that serve alcohol. The addition of another restaurant with an on-sale alcohol license has the potential to adversely affect the health, peace and comfort of people who work and/or reside in the area by potentially exacerbating the existing crime problems and increasing the number of call for service by the Police Department to the center that can further create undesirable affects to the center, to the surrounding commercial properties, and to the adjacent residential neighborhoods.

According to the Police Department, the shopping center currently has a high number of calls for service by the Police Department. The center has numerous problems with several of the existing businesses that also include Conditional Use Permit violations. Also, there have been over 200 responses and over 40 arrests at this center. Approval of this new on-sale ABC license can potentially exacerbate the existing crime problems in the shopping center and in crime district.

Although the applicant indicates that a license to sell beer and wine is necessary to keep existing customers coming to the restaurant, and to survive the economic situation, the Police Department recommendations are based on the possible impacts that another license may have on the community, and not on the financial gains or losses of the business owner. Therefore, due to the undue concentration of on-sale licenses, and the inability to make a finding of public convenience or public necessity, the Police Department does not recommend support of this ABC license request.

RECOMMENDATION:

Staff recommends that the Planning Commission take the following action:

1. Deny Conditional Use Permit No. CUP-258-09.



Karl Hill
Planning Services Manager



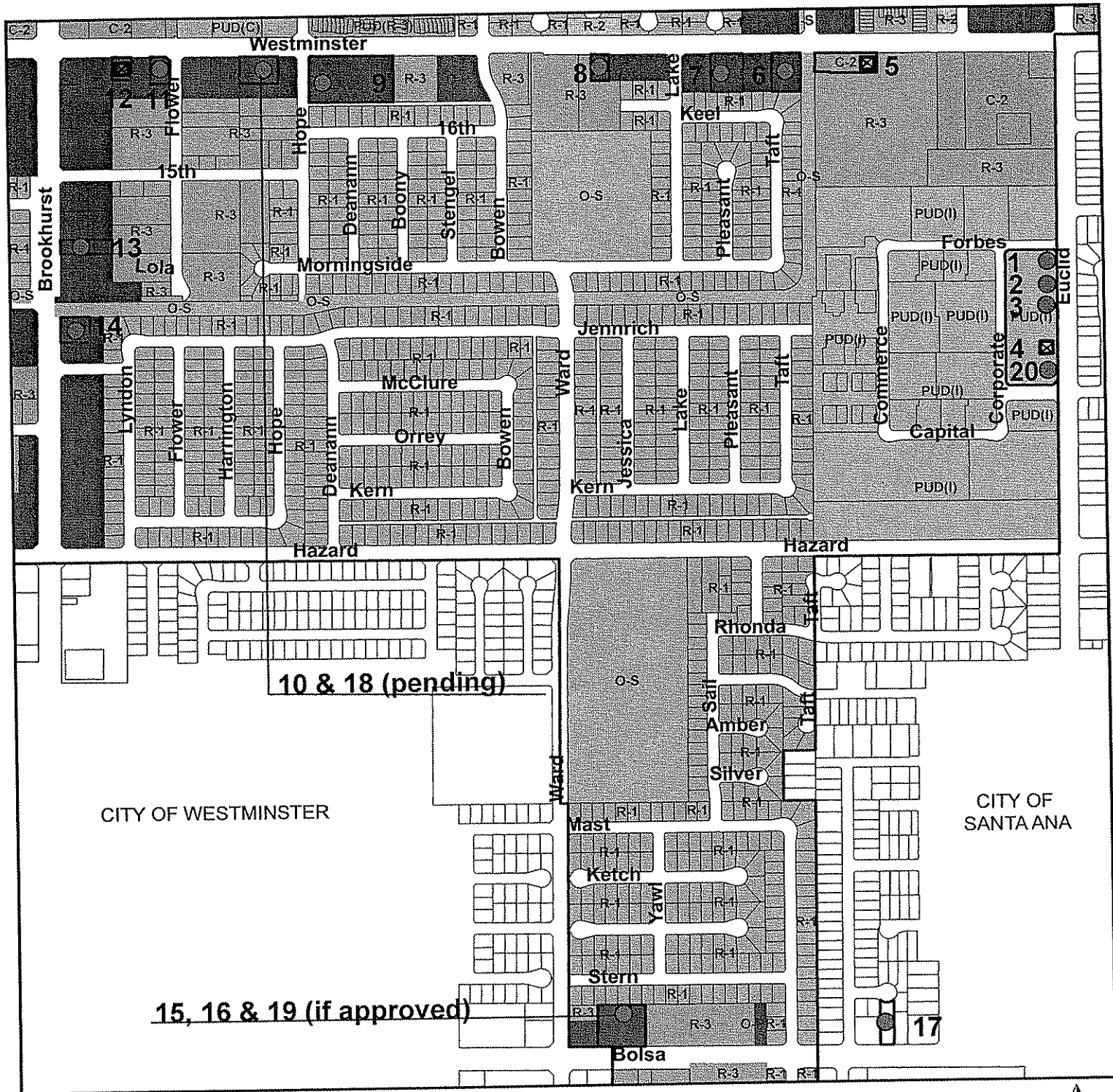
By: Maria Parra
Urban Planner



GARDEN GROVE

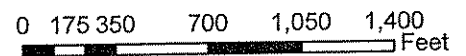
EXISTING ON-SALE ALCOHOLIC BEVERAGE CONTROL LICENSES IN CENSUS REPORTING DISTRICT NO. 889.03

Exhibit "A"



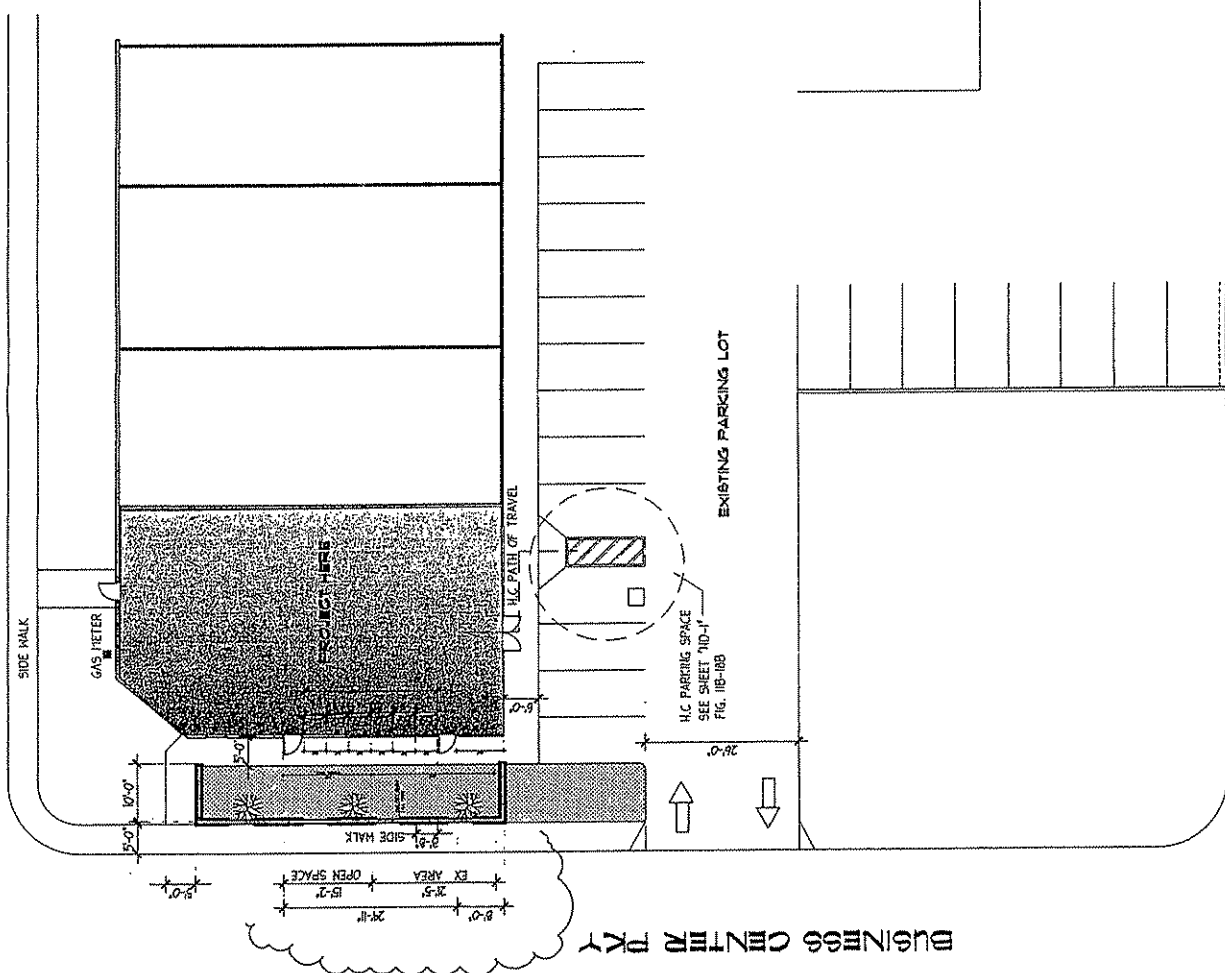
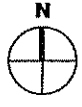
LEGEND

- TYPE "41" (On-Sale, Beer and Wine)
- ⊠ TYPE "47" (On-Sale, General)



CITY OF GARDEN GROVE
 COMMUNITY DEVELOPMENT DEPARTMENT
 PLANNING DIVISION
 GIS SYSTEM
 JANUARY 2009

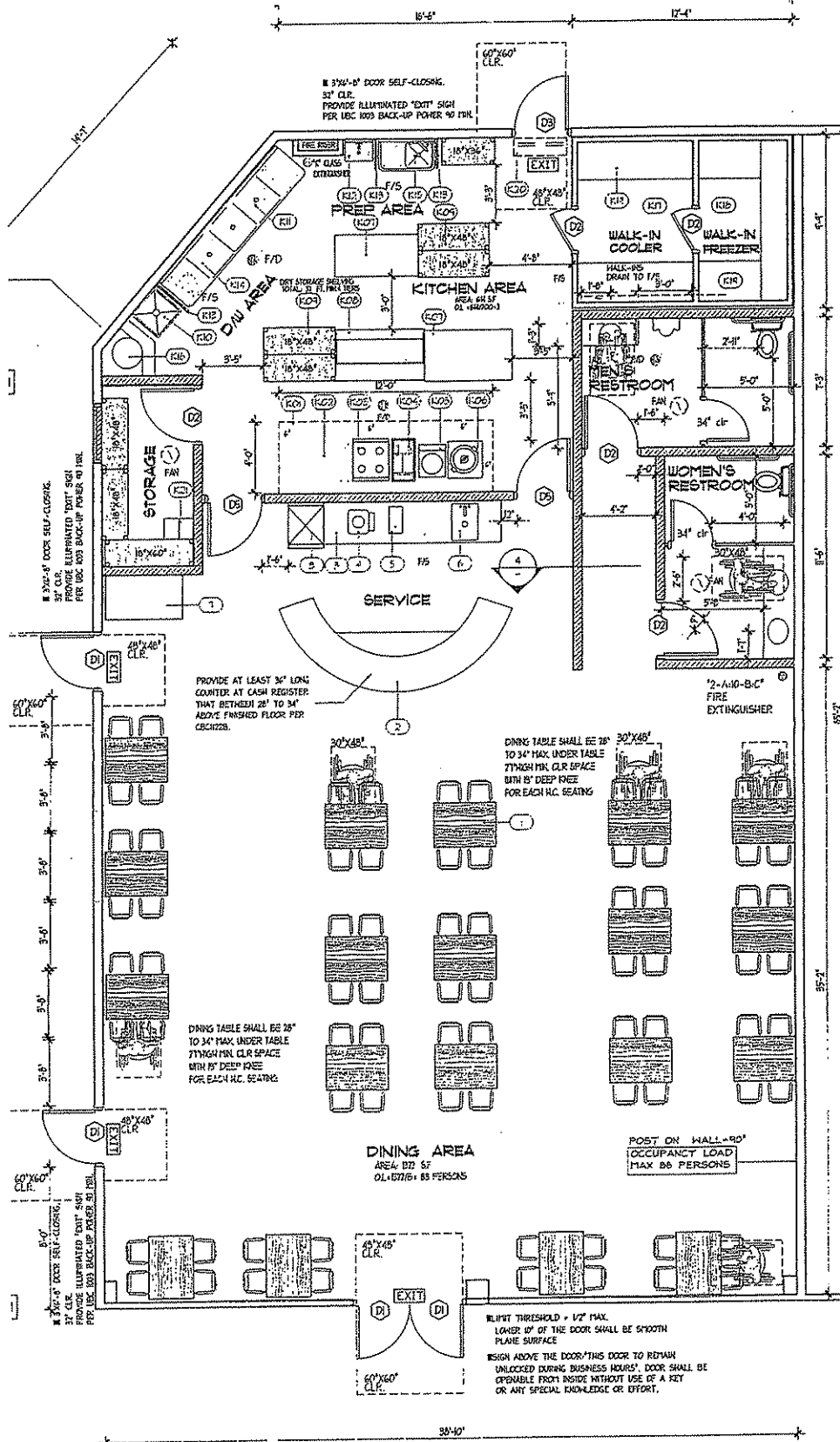
PROPOSED PROJECT: 10175 GARDEN GROVE ROAD, NORTH GARDEN GROVE, CA 92651. SHEET NO. 10175-GG-01-01-01-01. DATE: 11/15/2017. DRAWN BY: J. WILSON. CHECKED BY: M. HARRIS. SCALE: AS SHOWN. PROJECT NO.: 10175-GG-01.



BUSINESS CENTER PKY

CUP-258-09

EXISTING ASBEST



1. 3/4"-0" DOOR SELF-CLOSING.
 2 3" CLR.
 PROVIDE ILLUMINATED "EXIT" SIGN
 PER IBC 1033 BACK-UP POWER 90 MIN.

1. 3/4"-0" DOOR SELF-CLOSING.
 2 3" CLR.
 PROVIDE ILLUMINATED "EXIT" SIGN
 PER IBC 1033 BACK-UP POWER 90 MIN.

PROVIDE AT LEAST 36" LONG
 COUNTER AT CASH REGISTER
 TRAY BETWEEN 28" TO 34"
 ABOVE FINISHED FLOOR. PER
 CBC1202.

DINING TABLE SHALL BE 28"
 TO 34" MAX UNDER TABLE
 27" HIGH MIN CLR SPACE
 MIN 18" DEEP SPACE
 FOR EACH H.C. SEATING

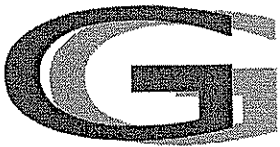
DINING TABLE SHALL BE 28"
 TO 34" MAX UNDER TABLE
 27" HIGH MIN CLR SPACE
 MIN 18" DEEP SPACE
 FOR EACH H.C. SEATING

DINING AREA
 AREA 617 SF
 61-677/16 = 88 PERSONS

POST ON WALL - 90"
OCCUPANCY LOAD
 MAX 88 PERSONS

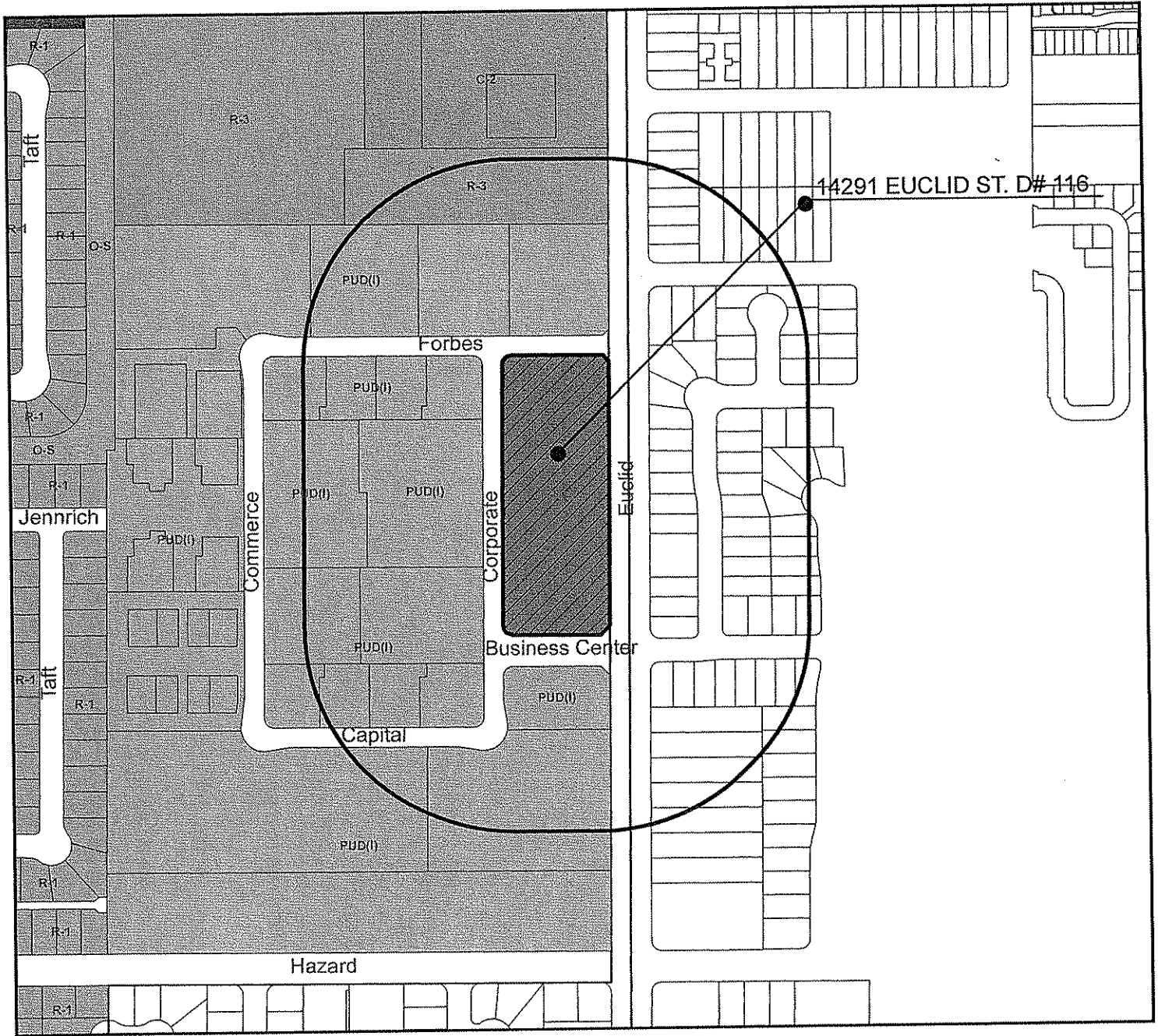
SLIP/THRESHOLD - 1/2" MAX.
 LOWER 1/2" OF THE DOOR SHALL BE SMOOTH
 PLANE SURFACE
 DESIGN ABOVE THE DOOR THIS DOOR TO REMAIN
 UNLOCKED DURING BUSINESS HOURS. DOOR SHALL BE
 OPENABLE FROM INSIDE WITHOUT USE OF A KEY
 OR ANY SPECIAL KNOWLEDGE OR EFFORT.

(TENANT IMPROVEMENT ONLY)





CONDITIONAL USE PERMIT NO. CUP-258-09

GARDEN GROVE



LEGEND

 PROJECT SITE - 14291 EUCLID ST. D#116

 500 FEET RADIUS

NOTES

1. GENERAL PLAN: MIXED USE
2. ZONE: PLANNED UNIT DEVELOPMENT
NO. PUD-104-81/86 REV. 90



0 145 290 580 870 1,160
Feet

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

RESOLUTION NO. 5668

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE DENYING CONDITIONAL USE PERMIT NO. CUP-258-09.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove does hereby deny Conditional Use Permit No. CUP-258-09 for a property located on the northwest corner of Euclid Street, and Business Center Parkway, north of Hazard Street, at 14291 Euclid Street #D116, Assessor's Parcel No. 099-183-03.

BE IT FURTHER RESOLVED in the matter of Conditional Use Permit No. CUP-258-09, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by Helen Nguyen for Mon Ami Café and Restaurant.
2. The applicant is requesting Conditional Use Permit approval to operate an existing restaurant, Mon Ami Café and Restaurant, with an 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 Mixed Use, and is zoned Planned Unit Development No. PUD-104-81/86 Rev. 90.
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 February 5, 2009, 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 February 5, 2009; 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 restaurant is part of a commercial shopping center called the Euclid Retail Center that is located on the northwest corner of Euclid Street and Business Center Parkway. The restaurant occupies a 2,500 square foot corner tenant space located at the southern end of the property. The shopping center has a mixture of retail, restaurant, office, and medical uses.

The applicant is requesting Conditional Use Permit approval to operate an existing restaurant, Mon Ami Café and Restaurant, with an 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 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. 117
- The crime count for the District is 196.
- 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 84% 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. The Planning Commission approved a new on-sale ABC Type "41" License on December 4, 2008 that increased the total number of on-sale license in the Census Reporting District from seventeen (17) to eighteen (18). Approval of this license will increase the total number of on-sale licenses in the census district. If the Planning Commission approves a separate request from Newport Seafood Restaurant (Conditional Use Permit No. CUP-255-09) for an on-sale alcohol license, and also approves this ABC license request, the total number of on-sale licenses in the district will increase to twenty (20).

FINDINGS AND REASONS:

1. The proposed use will not be consistent with the City's adopted general plan.

The subject site has a General Plan Land Use Designation of Mixed Use and is zoned Planned Unit Development No. PUD-104-81/86 Rev. 90. Eating establishments with alcohol sales are conditionally permitted in this zone.

The restaurant is located in a high-crime area, and in a census district that has an undue concentration of on-sale ABC licenses. The census district allows for ten (10) on-sale licenses, and there are currently seventeen (17) on-sale ABC licenses in the district. The Planning Commission approved the eighteenth (18th) on-sale license on December 4, 2008.

Approval of the proposed on-sale ABC license is not in keeping with the spirit and intent of the General Plan. One of the goals of the General Plan is to reduce crime and to create safer neighborhoods. The restaurant is located in a shopping center that currently has a high number of calls for service by the Police Department. The center has numerous problems with several of the existing businesses that also include Conditional Use Permit violations. Therefore, approval of the proposed license can potentially exacerbate the crime problems and the calls for service by the Police Department to the shopping center that can subsequently worsen and negatively impact the existing work and living conditions of the surrounding commercial and residential properties. Therefore, approval of this license is not in meeting the goals of the General Plan, and therefore is not in consistency and conformity with the General Plan.

2. The proposed use will adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area.

The existing restaurant is located in a high-crime area, in a center with a high number of calls for services, and in a census district with an undue concentration of on-sale ABC licenses. The crime count in the district is 84% above the Citywide average, and the center has a high number of calls for services that includes over 200 responses and over 40 arrests. The census district allows for ten (10) on-sale licenses, and there are currently seventeen (17) on-sale licenses. The Planning Commission approved the eighteenth on-sale ABC licensed on December 4, 2008.

The restaurant is located in a shopping center that has three (3) existing restaurants operating with an ABC Type "41" (On-Sale, Beer and Wine) license, and one (1) restaurant-nightclub operating with a Type "47" (On-Sale, General) License. These establishments provide a convenience to the local residents and surrounding businesses by offering alcoholic beverage for on-site consumption with their meals. The addition of a new on-sale ABC license in the same shopping center will not provide a public convenience or public necessity as the four (4) existing restaurants are venues where residents can dine and have alcohol with their meals.

Furthermore, the addition of another on-sale ABC licensed restaurant has the potential to adversely affect the health, peace, comfort, or welfare of persons residing or working in the immediate area by potentially exacerbating the

crime incidents at the shopping center that will subsequently increase the number of calls for service by the Police Department.

3. The proposed use will interfere with the use, enjoyment or valuation of property of other persons located in the vicinity of the site.

Granting the approval to allow the existing restaurant, Mon Ami Café and Restaurant, to operate with an new original ABC 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 as the restaurant is located in an area within an undue concentration of on-sale alcohol licenses, and in a shopping center and crime district with high crime problems. Approval of another on-sale license may result in an increase to the crime rate and calls for service by the Police Department, as well as causing other undesirable affects that will impact the surrounding commercial and residential properties. Therefore, the approval of the subject application would be considered contrary to the goals and policies of the General Plan that seeks to reduce the crime rate and to maintain safe neighborhoods.

4. The proposed use will endanger or otherwise constitute a menace to public health, safety or general welfare.

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 negative impacts that the addition of a new on-sale alcoholic license may have on the community outweighs the potential economic benefits that the business may achieve by obtaining the license. Furthermore, since the restaurant is located in a shopping center that has numerous crime problems and calls for service by the Police Department, the addition of a new on-sale license may potentially increase the crime and calls for service by the Police Department.

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 5th day of February, 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 February 5, 2009, by the following votes:

AYES:	COMMISSIONERS:	BANKSON, BEARD, BRIETIGAM, KIRKHAM, PAK, PIERCE
NOES:	COMMISSIONERS:	NONE
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 26, 2009.

MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-258-09
APPLICANT: HELEN NGUYEN
LOCATION: NORTHWEST CORNER OF EUCLID STREET AND BUSINESS CENTER, NORTH OF
HAZARD STREET AT 14291 #D116
DATE: FEBRUARY 5, 2009

REQUEST: To allow a restaurant, Mon Ami Café and Restaurant, to operate with an Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine) License. The site is in the Planned Unit Development No. PUD-104-81/86 Rev. 90 zone.

Staff report was read and recommended denial. One letter of opposition was written by Ted Broberg.

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

Mr. Tony Truong, the applicant's representative, approached the Commission.

Commissioner Beard asked Mr. Truong to explain his reason for public convenience or necessity.

Mr. Truong replied that the necessity would be that the success of his restaurant would generate more tax revenue for the City; and that a glass of beer or wine to enhance a patron's meal would be a service to the public.

Vice Chair Pak asked Mr. Truong if he had discussed the license request with the Police Department or City Staff.

Mr. Truong replied that he submitted the application and asked the opinion of the Planning Division, who then recommended that he speak to the Police Department; and that the Police Department response was adverse, as there were already too many licenses in the area.

Vice Chair Pak noted that crime is very high in that area being 85% over the Citywide average.

Mr. Truong stated that his restaurant is a fine dining facility serving filet mignon, steamed fish, and traditional beef soup; that he has been at the location almost two years; that the hours of operation are 9:00 a.m. to 9:00 p.m.; that there is no bar or place to put one; that there have been no calls to the Police or crime problems; that the restaurant is a peaceful place that caters also to County and City officials; that the majority of diners ask for beer and wine; that many restaurants are going out of business, which fosters greater competition between restaurants and the need to create more options for the public; and that he needs the help of the Planning Commission for survival.

Commissioner Bankson asked Mr. Truong why he did not apply for a beer and wine license when he opened the restaurant?

Mr. Truong responded that he did not know the procedure, as this was the first time he has operated a restaurant, and that they thought they could get a license later on.

Mr. John Davies of Newport Beach, approached the Commission and stated that he would like to support the restaurant and the license; that he and his family drive up to go to the restaurant; that he was surprised that the area was high crime district; that he enjoys the food and entertains clients in his business; that there are many entrée choices; that there have been no safety concerns with bringing children to the restaurant; and that it would be nice to have a glass of beer or wine to go with the meal.

Commissioner Beard asked Mr. Davies if he would continue to go the restaurant if there was no beer and wine license. Mr. Davies replied yes, as they have great food, however, not having beer and wine may be a decision maker when entertaining.

Vice Chair Pak asked Mr. Davies if he uses the patio area.

Mr. Davies replied yes, a few times.

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

Vice Chair Pak asked Staff if the restaurant was in the same shopping center as The CAN restaurant. Staff replied yes, and that the building is owned by the same people.

Commissioner Brietigam commented that he is impressed that the restaurant has been successful in the last year and a half, bringing in clientele from Newport Beach, which clearly indicates that if the restaurant food is good, alcohol does not need to be served in order for the restaurant to be successful; that the elements of high crime and over saturation of ABC licenses already exist in the area and he sees no finding of public necessity or convenience, therefore, he would support the denial.

Commissioner Kirkham commented that there are already three Type "41" licenses, and a troublesome Type "47" license in the shopping center; that adding this license would make five licenses in a small complex; that this complex is number one on the calls for service from the Police Department; and that he would support the denial.

Commissioner Beard agreed and stated that though he is pro-business, as is the Commission, and the City, the statistics and the facts are that there is an over concentration of licenses; and that he would support the Staff's and Police Department's recommendation of denial.

Commissioner Bankson commented that he does not doubt the restaurant is nice and that beer and wine would enhance the dining experience, however, based on the facts, and no compelling reason for necessity or convenience, he could not support the license.

Vice Chair Pak stated that the applicant has the option to appeal the Planning Commission's decision to City Council if the request is denied; that the number of licenses issued should have stopped at ten; and that a decision was made a few weeks ago to cut down on the crime rate in the shopping center.

Minute Excerpt – February 5, 2009
CUP-258-09

Chair Pierce commented that the applicant could look at different locations that are not oversaturated.

Commissioner Brietigam moved to approve the denial of Conditional Use Permit No. CUP-258-09, seconded by Commissioner Kirkham, pursuant to the facts and reasons contained in Resolution No. 5668. The motion received the following vote:

AYES:	COMMISSIONERS:	BANKSON, BEARD, BRIETIGAM, KIRKHAM, PAK, PIERCE
NOES:	COMMISSIONERS:	NONE
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-258-09

WHEREAS, the case, initiated by Helen Nguyen requested Conditional Use Permit approval to operate a restaurant, Mon Ami Café and 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 northwest corner of Euclid Street and Business Center Parkway, north of Hazard Avenue at 14291 Euclid Street #D116, Assessor's Parcel No. 099-183-03; and

WHEREAS, 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; and

WHEREAS, pursuant to Resolution No. 5668, the Planning Commission, at a public hearing on February 5, 2009, denied Conditional Use Permit No. CUP-258-09; and

WHEREAS, pursuant to legal notice, a public hearing was held by the City Council on April 14, 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 April 14, 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-258-09, based upon the facts, findings and reasons set forth in Planning Commission Resolution No. 5668.

A copy of Planning Commission Resolution No. 5668 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.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
GRANTING THE APPEAL AND APPROVING CONDITIONAL USE PERMIT
NO. CUP-258-09

WHEREAS, the case, initiated by Helen Nguyen, requested Conditional Use Permit approval to operate an existing restaurant, Mon Ami Café and 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 northwest corner of Euclid Street and Business Center Parkway, north side of Hazard Avenue, at 14291 Euclid Street #D116, Assessor's Parcel No. 099-183-03; and

WHEREAS, 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; and

WHEREAS, pursuant to legal notice, a public hearing was held by the City Council on April 14, 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 April 14, 2009.

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the City Council, as required under Municipal Code Section 9.24.030, are as follows:

FACTS:

The restaurant is part of a commercial shopping center called the Euclid Retail Center that is located on the northwest corner of Euclid Street and Business Center Parkway. The property is zoned Planned Unit Development No. PUD-104-81/86 Rev. 90. The restaurant occupies a 2,500 square foot corner tenant space located at the southern end of the property.

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

On February 5, 2009, the Planning Commission considered and denied Conditional Use Permit No. CUP-258-09 with a 6-0 vote, with Commissioner Nguyen absent. In denying the Conditional Use Permit request, the Planning Commission determined that due to the undue concentration of existing on-sale ABC licenses in the area, a finding of public convenience or necessity could not be made, and that the restaurant is located in a shopping center with a high number of calls for Police service.

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. 117.
- The crime count for the District is 196.
- 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 84% 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. The City Council approved the appeal request of the Ngoc Huy Restaurant, located at 10212 Westminster Avenue, to operate with a Type "41" on-sale license, on February 24, 2009, which increased the total number of licenses in the census district from seventeen (17) to eighteen (18). If the City Council approves the appeal request of the Newport Seafood Restaurant (Conditional Use Permit No. CUP-255-09) for an on-sale license, and also approves this ABC license request, the total number of on-sale licenses in the district will increase to twenty (20).

FINDING OF PUBLIC CONVENIENCE OR NECESSITY

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 an over-concentration of ABC licenses. California Business and Professions Code Section 23817.5 prohibits the Department of Alcoholic Beverage and Control 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, in part, 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.

Although the ABC Census Reporting District No. 889.03 shows there to be more on-sale licenses than is typically allowed, the City Council is supportive of the request for an additional beer and wine ABC license for the subject restaurant. ABC Census Reporting District No. 889.03 allows for ten (10) on-sale licenses within the District, and currently, there are seventeen (17) on-sale licenses in the District with the eighteenth license having been approved by the City Council on February 24, 2009 for the Ngoc Huy Restaurant.

The City Council is able to support a finding for public convenience or necessity given the potential community benefit through the addition of a beer and wine license, which would provide an additional amenity that would enhance the dining experience at the Mon Ami Café and Restaurant. The City Council has determined that the use will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area. The conditions of approval will minimize potential impacts to the adjoining area. Provided the conditions of approval are adhered to for the life of the project, the use will be harmonious with the persons who work and live in the area.

Furthermore, the existing establishment shall continue to provide an assortment of foods normally offered in restaurants, and the kitchen shall be open, and preparing food during all hours that the establishment is open. At all times the establishment is open, the sale of alcohol shall be incidental to the sale of food; and the quarterly gross sales of alcoholic beverages shall not exceed 35% of the total gross sale of food during the same period. Lastly, no live entertainment, (karaoke, one-man band, solo performer, live music, etc.) including amplified music, shall be permitted on the premises.

The City Council has reviewed the request and is supporting the proposal. All standard conditions of approval for a Type "41" License will apply.

FINDINGS AND REASONS:

1. The proposed use will be consistent with the City's adopted general plan

The subject site has a General Plan Land Use Designation of Mixed Use and is zoned Planned Unit Development No. PUD-104-81/86 Rev. 90. Eating establishments with alcohol sales are conditionally permitted in this zone. This approval will allow the restaurant to sell beer and wine. Provided that the conditions of approval are complied with, the use will be consistent with the General Plan.

2. The proposed use will adversely affect the health, peace, comfort or welfare of the persons residing or working in the surrounding area.

The use will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area. The conditions of approval will minimize potential impacts to the adjoining area. The restaurant

will now operate with a Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. This approval will allow the restaurant to sell beer and wine. Provided the conditions of approval are adhered to for the life of the project, the use will be harmonious with the persons who work and live in the area.

3. The proposed use will not interfere with the use, enjoyment or valuation of the property of other persons located in the vicinity of the site.

The use will not unreasonably interfere with the use, enjoyment or valuation of the property of other persons located within the vicinity of the site, provided the conditions of approval are adhered to for the life of the project. By operating as a bona-fide public eating-place with ancillary beer and wine sales for on-site consumption, the use will be compatible with the surrounding uses.

4. The proposed use will not endanger or otherwise constitute a menace to public health, safety or general welfare.

The use will not jeopardize, endanger, or otherwise constitute a menace to public health, safety, or general welfare. The conditions of approval will ensure the public health, safety, and welfare.

NOW, THEREFORE, BE IT FURTHER RESOLVED:

1. The City Council grants the appeal and approves Conditional Use Permit No. CUP-258-09.
2. In order to fulfill the purpose and intent of the Municipal Code and thereby promote the health, safety, and general welfare, the following Conditions of Approval, attached as Exhibit "A", shall apply to Conditional Use Permit No. CUP-258-09.
3. The City Council finds and determines that the public convenience or necessity will be served by issuance of a Type "41" (On-Sale, Beer and Wine, Public Eating Place) License for the Mon Ami Café and Restaurant.

EXHIBIT "A"
Conditional Use Permit No. CUP-258-09

14291 Euclid Street Suite No. D116

CONDITIONS OF APPROVAL

General Conditions

1. The applicant shall record a "Notice of Agreement with Conditions of Approval and Discretionary Permit Approval," as prepared by the City Attorney's Office, on the property. Proof of such recordation is required prior to issuance of an ABC license. All conditions of approval are required to be adhered to for the life of the project, regardless of property ownership. Any changes of the conditions of approval require approval by the Hearing Body.
2. Approval of this Conditional Use Permit shall not be construed to mean any waiver of applicable and appropriate zoning and other regulations; and wherein not otherwise specified, all requirements of the City of Garden Grove Municipal Code shall apply. Modifications which do not change the intent of the project may be approved by the Community Development Director.
3. If major modifications are made to the approved floor plan, site plan, or other related changes, that result in the intensification of the project or create impacts that have been previously addressed, the proper entitlements shall be obtained reflecting such changes.

Police Department

4. There shall be no gaming tables or gaming machines, as outlined in City Code Sections 8.20.010 and 8.20.050, on the premises at any time.
5. Hours of operation shall be permitted only between the hours of 8:00 a.m. to 10:00 p.m., Sunday through Thursday, and 8:00 a.m. to 11:00 p.m. Friday and Saturday.
6. There shall be no customers or patrons in or about the premises when the establishment is closed.
7. In the event security problems occur, and at the request of the Police Department, the permittee, at his own expense, shall provide a California licensed, uniformed security guard(s) on the premises during such hours as requested by the Police Department.
8. All pay phones located on the property, adjacent to the premises, shall be limited to out-going calls only. This condition shall be complied with within 30 days following approval of this application.

9. The sale of alcoholic beverages for consumption off the premises is prohibited. No consumption of alcoholic beverages shall occur outside the establishment at any time.
10. There shall be no enclosed booths on the premises at any time. Walls and/or partitions exceeding thirty-six (36) inches in height, which partially enclose or separate booths, shall be of a clear and transparent material. No item shall be placed in the area of the booths that would limit or decrease the visibility of the interior of the business from any location within the business.
11. The applicant shall redesign the outside patio dining area to have clear barriers to prevent alcohol from being passed outside the patio. The clear barriers must be 6'-0" in height as measured from the ground. Final placement and design of the clear barriers shall be reviewed and approved by the Planning Division and the Police Department.
12. The business, prior to operating with an ABC Type "41" License, shall show proof to the Police Department that all members of the business staff have completed the LEAD training (Licensee Education on Alcohol and Drugs) through the Alcohol Beverage Control Department.

Community Development Department

13. Approval of this Conditional Use Permit will allow the establishment to operate with a Type "41" ABC License. There shall be no additional changes in the design of the floor plan without the approval of the Community Development Department, Planning Division. Any additional changes in the approved floor plan, which has the effect of expanding or intensifying the present use, shall require a new Conditional Use Permit.
14. The establishment shall be operated as a "Bona Fide Public Eating Place" as defined by ABC. The restaurant shall contain sufficient space and equipment to accommodate a full restaurant kitchen, and the kitchen shall be open and preparing food during all hours the establishment is open. The establishment shall provide an assortment of foods normally offered in restaurants.
15. In the event that an Alcoholic Beverage Control (ABC) License is suspended for any period of time and/or fined for any ABC violation as a result of disciplinary action, the Conditional Use Permit shall be presented to the Planning Commission for review or further consideration.

16. At all times when the establishment is open for business, the sale of alcoholic beverages shall be incidental to the sale of food.
17. Alcohol sales shall not exceed 35% of the business gross sales. The owner of the establishment shall, upon request, provide the City of Garden Grove with an audited report of sales ratio of food to alcoholic beverages.
18. No outside storage or displays shall be permitted at any time.
19. A prominent, permanent sign stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee. The sign lettering shall be four (4) to six (6) inches high with black letters on a white background. The sign shall be displayed near or at the restaurant's entrance, and shall also be visible to the public.
20. No live entertainment, i.e., dancing, karaoke, solo performer, live music, sport bar or disc-jockey entertainment, etc., including amplified music, shall be permitted on the premises.
21. There shall be no raised platform, stage or dance floor allowed on the premises at any time.
22. There shall be no chairs or stools at any counter area.
23. There shall be no uses or activities permitted of an adult-oriented nature as outlined in City Code Section 9.08.070.
24. There shall be no separate bar or lounge area to provide direct service of alcoholic beverages to customers.
25. There shall be no deliveries to or from the premises before 8:00 a.m. and after 9:00 p.m., seven days a week.
26. All rear doors shall be kept closed at all times, except to permit employee ingress and egress, and in emergencies.
27. Litter shall be removed daily from the premises, including adjacent public sidewalks, and from all parking areas under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis, to control debris.

28. All trash bins shall be kept inside the trash enclosure, and gates closed at all times, except during disposal and pick-up. Trash pick-up shall be based on the existing schedule provided by the commercial center.
29. Graffiti shall be removed from the premises, and all parking lots under the control of the licensee and/or the property owner, within 120 hours upon notification/application.
30. The applicant is advised that the establishment is subject to the provisions of State Labor Code Section 6404.5 (ref: State Law AB 13), which prohibits smoking inside the establishment as of January 1, 1995.
31. No roof-mounted mechanical equipment shall be permitted unless a method of screening complementary to the architecture of the building is approved by the Community Development Department, Planning Division. Said screening shall block visibility of any roof-mounted mechanical equipment from view of public streets and surrounding properties.
32. No satellite dish antennas shall be installed on said premises unless, and until, plans have been submitted to and approved by the Community Development Department, Planning Division. No advertising material shall be placed thereon.
33. Permits from the City of Garden Grove shall be obtained prior to displaying any temporary advertising (i.e., banners).
34. Signs shall comply with the City of Garden Grove sign requirements. No more than 15% of the total window area and clear doors shall bear advertising or signs of any sort. No signs advertising alcoholic beverages shall be placed on the windows.
35. Any modifications to existing signs or the installation of new signs shall require approval by the Community Development Department, Planning Services Division prior to issuance of a building permit.
36. The applicant shall keep the area located directly behind the restaurant free and clear of materials, trash and debris. No outside storage shall be allowed at any time.
37. A copy of the decision and the conditions of approval for Conditional Use Permit No. CUP-258-09 shall be kept on the premises at all times.

38. The permittee shall submit a signed letter acknowledging receipt of the decision approving Conditional Use Permit No. CUP-258-09, and his/her agreement with all conditions of approval.
39. The Conditional Use Permit shall be reviewed within one year from the date of this approval, and every three (3) years thereafter, in order to determine if the business is operating in compliance.
40. The applicant shall, as a condition of project approval, at its sole expense, defend, indemnify and hold harmless the City, its officers, employees, agents and consultants from any claim, action, or proceeding against the City, its officers, agents, employees and/or consultants, which action seeks to set aside, void, annul or otherwise challenge any approval by the City Council, Planning Commission, or other City decision-making body, or City staff action concerning Conditional Use Permit No. CUP-258-09. The applicant shall pay the City's defense costs, including attorney fees and all other litigation related expenses, and shall reimburse the City for court costs, which the City may be required to pay as a result of such defense. The applicant shall further pay any adverse financial award, which may issue against the City including but not limited to any award of attorney fees to a party challenging such project approval. The City shall retain the right to select its counsel of choice in any action referred to herein.