

Control license located within a district with a high crime rate and/or in an area with an 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-255-09 with a 6-0 vote, with Commissioner Nguyen absent. In denying the Conditional Use Permit request, the Planning Commission determined that a finding of public convenience or necessity could not be made as the restaurant is located in an area with an undue concentration of on-sale ABC licenses. Furthermore, the Planning Commission stated that they could not take financial gains or losses of the business into consideration when making a decision.

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, Ngo Trong, has appealed the Conditional Use Permit for City Council consideration. In the appeal, the applicant has expressed that the rent for the tenant space has increased, and that the addition of a beer and wine license will increase the restaurant's business.

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-255-09 with Findings of Public Convenience and Necessity, along with Conditions of Approval.

FISCAL IMPACT

The approval of the 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-255-09, 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

SUSAN EMERY
Community Development Director

Maria Parra

By: Maria Parra
Urban Planner

Approved for Agenda Listing

Matthew Fertal
Matthew Fertal
City Manager

- Attachment 1: Appeal Form
Attachment 2: Planning Commission Staff Report dated February 5, 2009
Attachment 3: Planning Commission Resolution No. 5667
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-255-09
Attachment 6: Draft City Council Resolution approving the Appeal of Conditional Use Permit No. CUP-255-09, with Conditions of Approval

APPEAL

Request for City Council or Planning Commission
Public Hearing

RECEIVED
CITY OF GARDEN GROVE
CITY CLERK'S OFFICE

2009 FEB 25 A. 10: 10

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. CUP-255-09, 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:

TWO Beer and Wine licence ARE existing
which in some center giving them
unfair Advantage especially when considering
THE FACT that my Rent has increase
from \$2,500 to \$8,900. If I have determined
the addition of Beer & wine sales would
increase the Restaurant Business.

(Use additional sheets if necessary)

Date: 02-24-2009 Appeal Fee (see reverse): _____

Appellant: NGO TRONG

Address: 10541 BOISA AVE

City & ZIP: CA. 92843 Daytime Phone No.: (714) 554-3996

COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

AGENDA ITEM NO.: C.1.	SITE LOCATION: North side of Bolsa Avenue, east of Ward Street at 10541 Bolsa Avenue
HEARING DATE: February 5, 2009	GENERAL PLAN: Light Commercial
CASE NO.: Conditional Use Permit No. CUP-255-09	ZONE: C-1 (Neighborhood Commercial)
APPLICANT: Ngo Trong	CEQA DETERMINATION: Exempt
PROPERTY OWNER: DTD Properties	APN: 099-51-331

REQUEST:

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

BACKGROUND:

The restaurant is located in a small shopping center located on Bolsa Avenue that is zoned C-1 (Neighborhood Commercial). The restaurant occupies a 3,000 square foot tenant space located on the west end of the shopping center. The shopping center has a total of nine (9) tenant spaces that include three (3) restaurants, a coffee shop, a beauty salon, a retail food store, a courier/mail service store, a video rental store, and a dry cleaner.

The business owner has operated the restaurant under sole ownership since 2005; however, the business owner was previously a business partner of the establishment since 1996. The business owner recently applied for a building permit to construct a new restroom and to relocate the existing fish tanks. The business owner also applied for a business license name change to change the name of the business from "Newport Seafood Food To Go" to "Newport Seafood Restaurant". According to business license records, Newport Seafood was established in 1991, and was operating as both a fresh seafood market and a "Food To Go" establishment. Staff was informed by the applicant that the business is operating only as a restaurant, and that it is no longer a fresh seafood market.

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:

Newport Seafood Restaurant is a restaurant that specializes in preparing fresh seafood dishes. The business has fish tanks with live seafood, such as lobsters, and a deli refrigerator with shrimp, squid, and other type of seafood that is prepared and cooked for customers.

The restaurant consists of a dining area, a service area, a kitchen, restrooms, and storage areas. At the time of inspection, the dining area was being remodeled. According to the floor plan, the restaurant will have a dining area that will consist of approximately thirteen (13) tables with a total seating of 76 seats.

The restaurant currently operates from 11:00 a.m. to 9:00 p.m., Monday through Thursday, 11:00 a.m. to 10:00 p.m. Friday and Saturday, and 11:00 a.m. to 9:00 p.m. on Sundays. The applicant does not propose to change the existing hours of operation.

The restaurant is located in a low-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. 118
- The crime count for the District is 40.
- 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 37% below the citywide average; therefore, it is considered a low-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 District to nineteen (19).

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, 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 three (3) restaurants in operation, including Newport Seafood Restaurant. Two (2) of the restaurants currently operate with an ABC Type "41" (On-Sale, Beer and Wine) License: Phuong Hoang Restaurant, located at 10557 Bolsa Avenue, that specializes in Chinese and Vietnamese cuisine, and 4 Mua Restaurant located at 10561 Bolsa Avenue, that specializes in Vietnamese cuisine. The two (2) restaurants currently provide beer and wine to the local residents and the community. Consequently, the introduction of a new on-sale license to the area will not provide a convenience or necessity as the two (2) existing restaurants are venues where residents can dine and enjoy alcohol with their meals.

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 Ave

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. The addition of another restaurant with an on-sale license has the potential to adversely affect the health, peace and comfort of the people who work and/or reside in the area by potentially increasing the crime rate and creating undesirable affects on the adjacent residential neighborhoods.

Furthermore, although the restaurant is located in a crime district with a low crime count, Crime Reporting District No. 118 is in the same Census Reporting District that has two (2) other crime districts that have a high crime count. Crime Reporting District No. 117, located to the north, has a crime count that is 84% above the Citywide average, while Crime Reporting District No. 107, which is located west of Crime District No. 117, has a crime count that is 32% above the Citywide average (see Exhibit "B"). These two (2) crime districts currently generate a high number of calls for service by the Police Department, and the addition of a new on-sale ABC license in the Census Reporting District can exacerbate existing crime problems.

Although the applicant states that a license to sell beer and wine is necessary to increase revenues, 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-255-09.



Karl Hill
Planning Services Manager



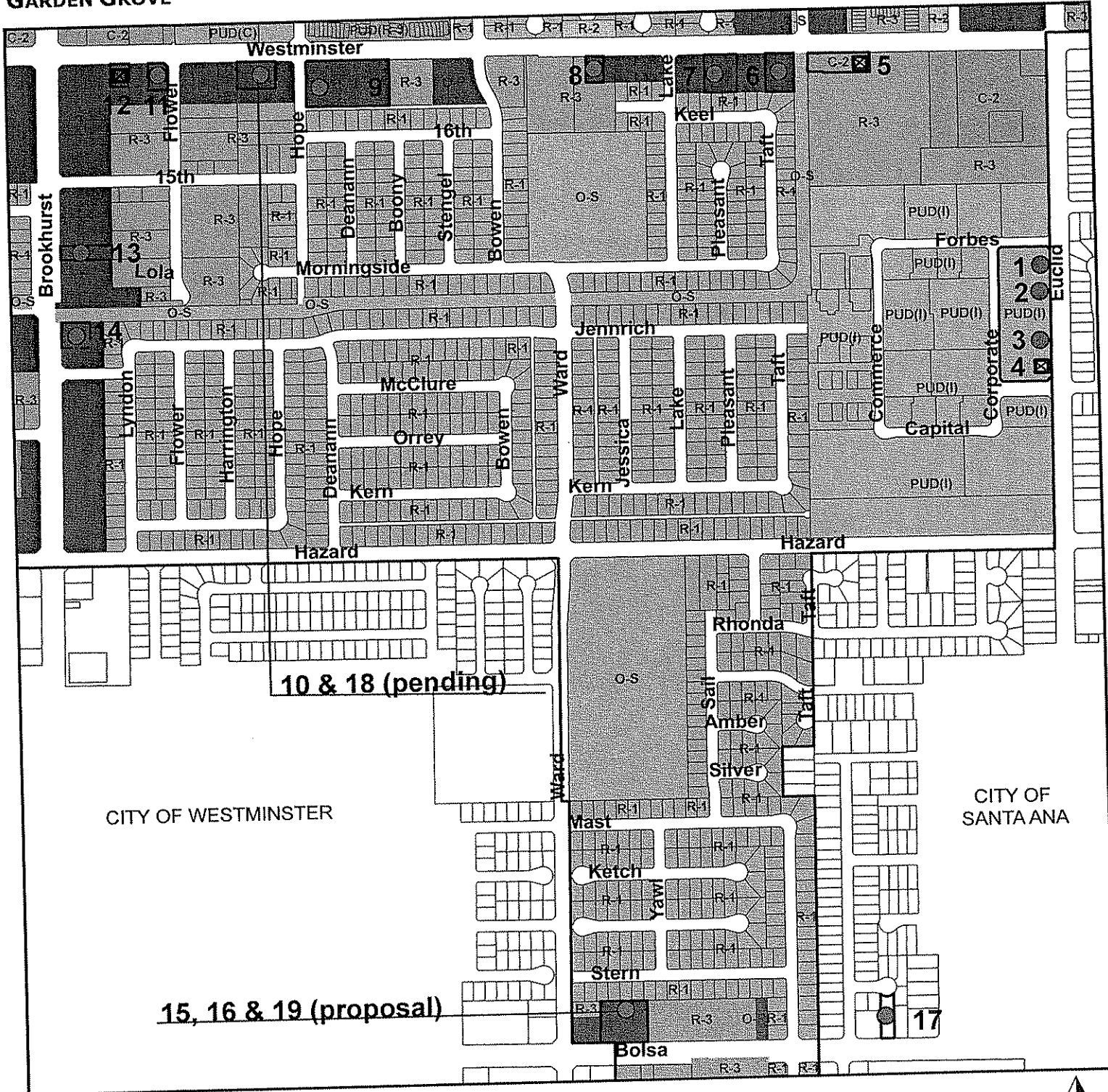
By: Maria Parra
Urban Planner



GARDEN GROVE

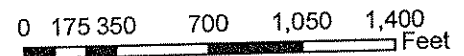
EXISTING ON-SALE ALCOHOLIC BEVERAGE CONTROL LICENSES IN CENSUS REPORTING DISTRICT NO. 889.03

Exhibit "A"



LEGEND

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

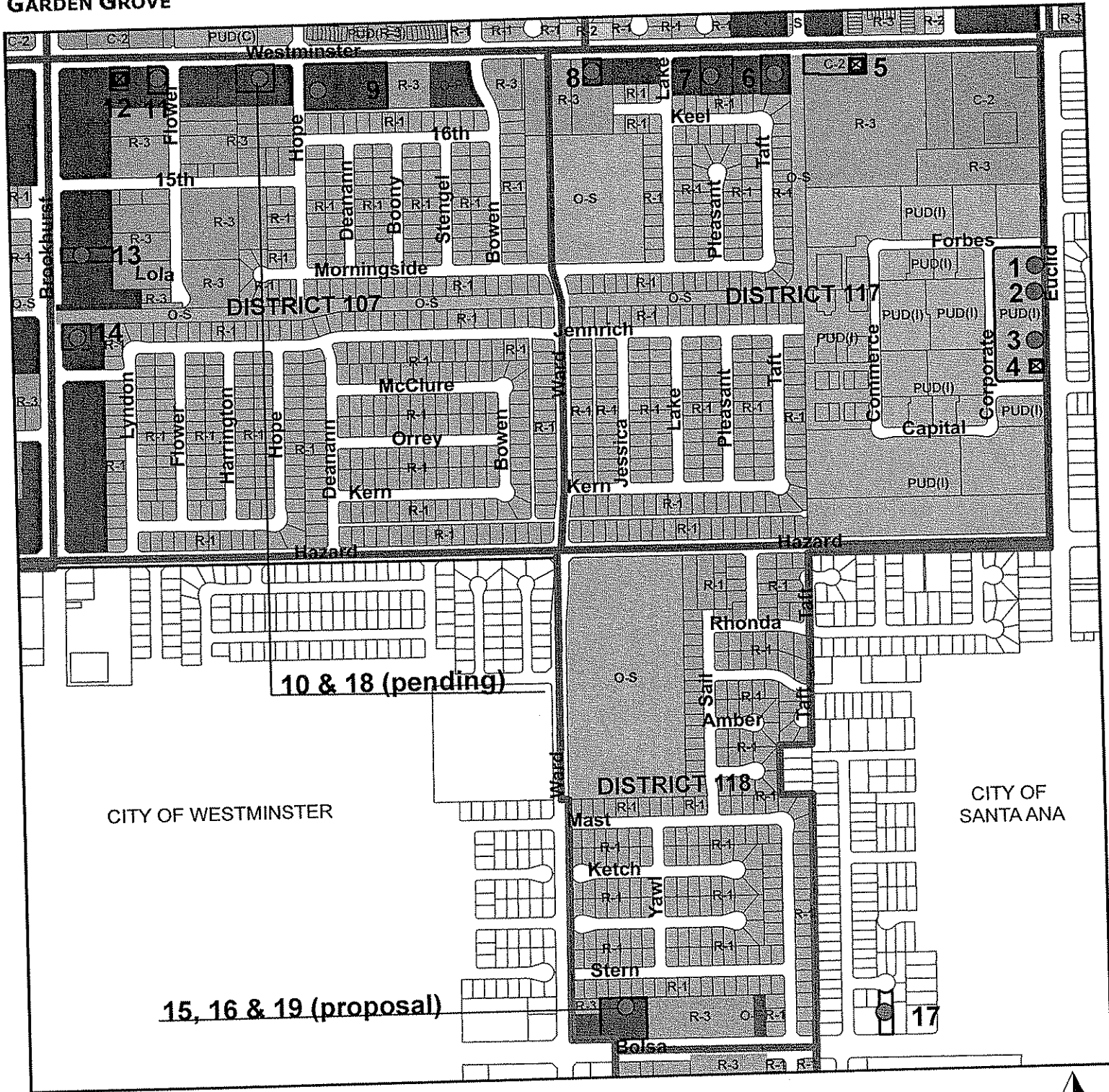


CITY OF GARDEN GROVE
 COMMUNITY DEVELOPMENT DEPARTMENT
 PLANNING DIVISION
 GIS SYSTEM
 JANUARY 2009



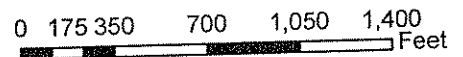
GARDEN GROVE

EXISTING ON-SALE ALCOHOLIC BEVERAGE CONTROL LICENSES IN CRIME REPORTING DISTRICT NOS. 107, 117 AND 118



LEGEND

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

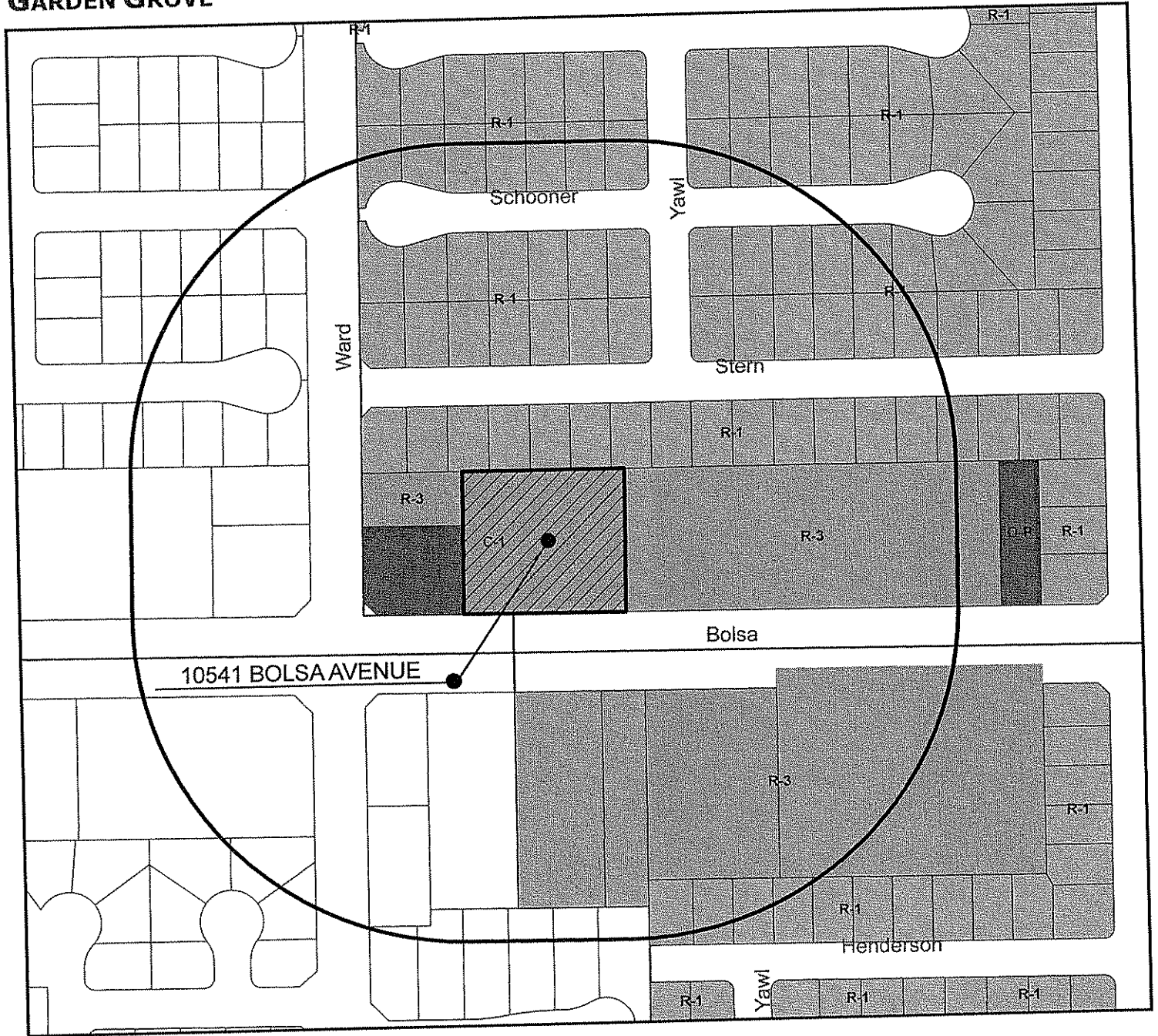


CITY OF GARDEN GROVE
 COMMUNITY DEVELOPMENT DEPARTMENT
 PLANNING DIVISION
 GIS SYSTEM
 JANUARY 2009




GARDEN GROVE

CONDITIONAL USE PERMIT NO. CUP-255-09



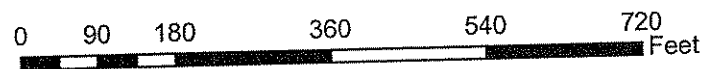
LEGEND

 PROJECT SITE - 10541 BOLSA AVENUE

 500 FEET RADIUS

NOTES

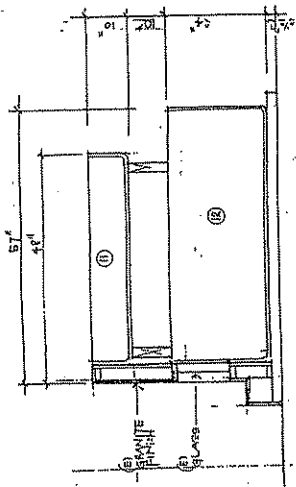
1. GENERAL PLAN: LIGHT COMMERCIAL
2. ZONE: C-1 (NEIGHBORHOOD COMMERCIAL)



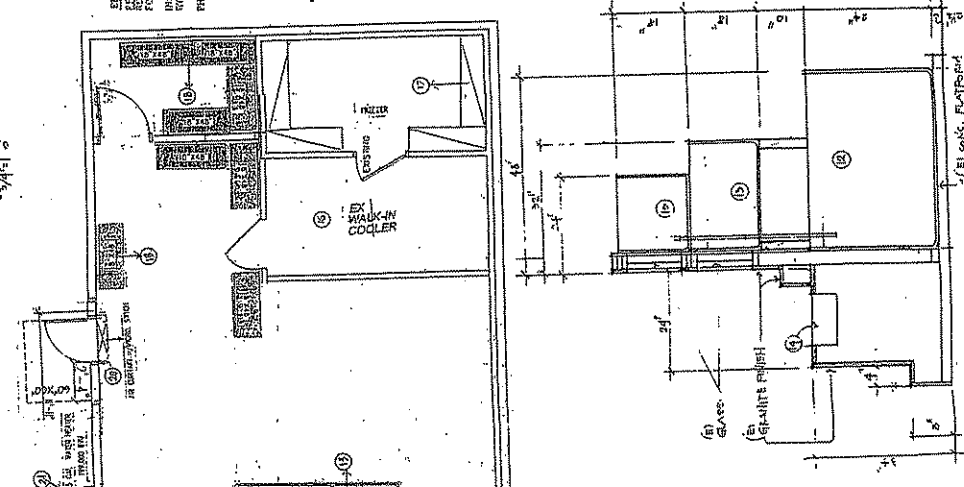
CITY OF GARDEN GROVE
 COMMUNITY DEVELOPMENT DEPARTMENT
 PLANNING DIVISION
 GIS SYSTEM
 DECEMBER 2008

TYPE OF FISH SCHEDULE:

- (A) CAT FISH
- (B) LIVE TILAPIA FISH
- (C) STRIPS BASS FISH
- (D) STONE COD FISH
- (E) LIVE LOBSTER
- (F) LIVE CLAMS
- (G) LIVE SHELL-FISH
- (H) OYSTERS



SECTION 2 FISH HOLDING PAN
3/4 x 1/2



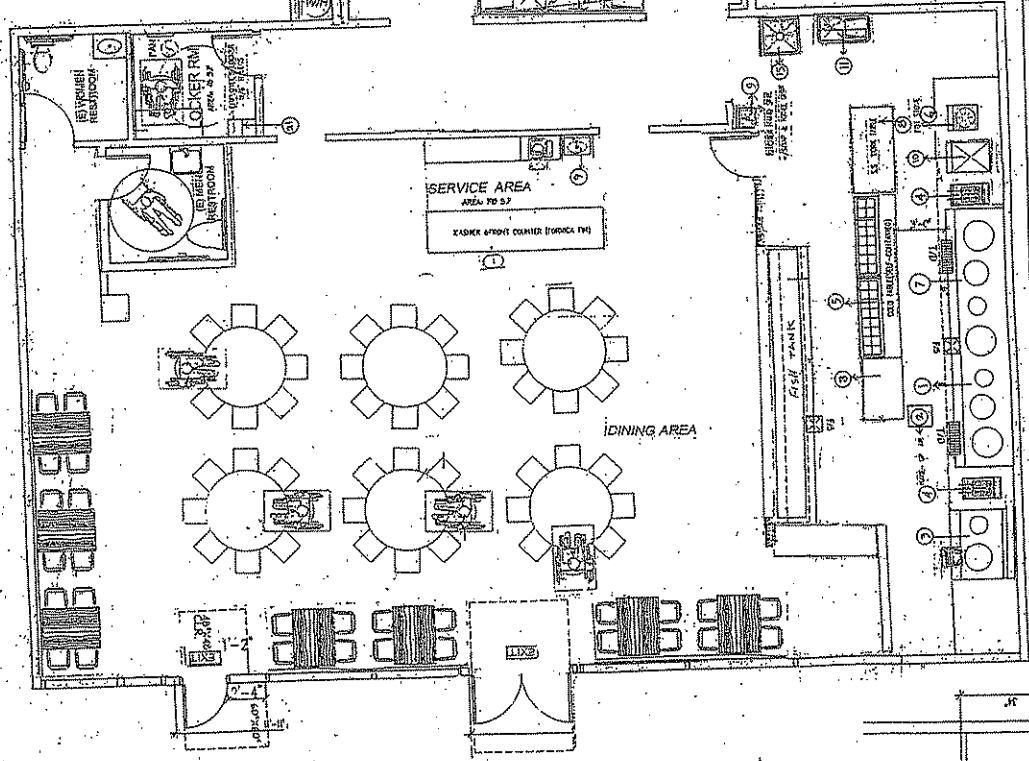
SECTION 2 FISH TANK
3/4 x 1/2

NEWPORT SEAFOOD RESTAURANT
 10541 BOUSA AVE.
 GARDEN GROVE CA 92643
 PROJECT NO: 102-2001

APPROVED FOR CONSTRUCTION BY THE
 ENGINEER OF RECORD FOR THE PROJECT
 AND THE ARCHITECT OF RECORD FOR THE PROJECT
 AFTER REVIEWING THE CONSTRUCTION OF THE
 PROJECT AND THE CONSTRUCTION OF THE
 PROJECT.

PLANNING APPROVAL
 CITY OF NEWPORT BEACH
 PLANNING DEPARTMENT
 1000 BAYVIEW BLVD., SUITE 200
 NEWPORT BEACH, CA 92660
 DATE: 08/14/08

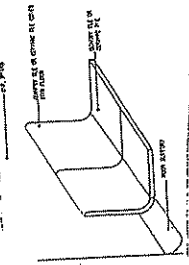
THE APPROVAL DOES NOT CONSTITUTE A GUARANTEE
 OF THE ACCURACY OF THE INFORMATION PROVIDED
 HEREON. THE ARCHITECT AND ENGINEER SHALL BE
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 HEREON.



FINISH SCHEDULE

ROOM NAME	FLOOR	WALL	CEILING	REMARKS
CAFETERIA	REP. GRANITE TILE	STAINLESS STEEL WALLS ALL OTHER WALLS GRANITE TILE	WOOD	WOOD VARIABLE WOOD WOOD WOOD

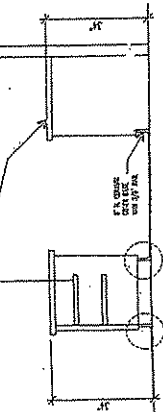
TYP. CERAMIC OR QUARRY TILE DETAIL



All counter surface including underneath to be smooth,
 non-porous, non-absorbent, easy
 to clean and resistant to
 heat, stains, acids, alkalis, and
 other high pressure liquids.

BACK COUNTER
SCALE: 1/2"=1'-0"

All counter surface including underneath to be smooth,
 non-porous, non-absorbent, easy
 to clean and resistant to
 heat, stains, acids, alkalis, and
 other high pressure liquids.



FRONT COUNTER
SCALE: 1/2"=1'-0"

RESOLUTION NO. 5667

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE DENYING CONDITIONAL USE PERMIT NO. CUP-255-09.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove does hereby deny Conditional Use Permit No. CUP-255-09 for a property located on the north side of Bolsa Avenue, east of Ward Street at 10541 Bolsa Avenue, Assessor's Parcel No. 099-51-331.

BE IT FURTHER RESOLVED in the matter of Conditional Use Permit No. CUP-255-09, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by Ngo Trong for Newport Seafood Restaurant.
2. The applicant is requesting Conditional Use Permit approval to operate an existing restaurant, Newport Seafood 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 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 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 located in a small commercial shopping center on Bolsa Avenue that in the C-1 (Neighborhood Commercial) zone. The restaurant occupies a 3,000 square foot tenant space located on the west side of the shopping center.

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

The restaurant is located in a low-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. 118
- The crime count for the District is 40.
- 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 37% below the citywide average; therefore, it is considered a low-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" licensed on December 4, 2008 that increased the total number of licenses in the census district from seventeen (17) to eighteen (18). Approval of this license will increase the total number of licensed in the district to nineteen (19).

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 Light Commercial and is zoned C-1 (Neighborhood Commercial). Eating establishments with alcohol sales are conditionally permitted in this zone.

The restaurant is located in a low-crime area; however, it is located 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. While the restaurant is located in a crime district that has a low crime count, the crime district is located in the same census district that has two (2) other crime districts that have a high crime count. Crime District No. 117, located to the north, is 83% above the Citywide average, and Crime District No. 107, located to the west of Crime District No. 117, is 32% above the Citywide average. These crime districts currently generate a high number of calls for service by the Police Department, and the addition of a new on-sale ABC license in the census district can exacerbate existing crime problems.

Approval of the proposed on-sale license is not in keeping with the spirit and intent of the General Plan as the proposed on-sale license can potentially increase the crime rate and/or cause other undesirable effects on the surrounding area that can potentially increase the number of calls for service by the Police Department. One of the goals of the General Plan is to reduce crime and to provide safer neighborhoods. 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.

While the existing restaurant is located in a low-crime area, it is located 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 licenses. The Planning Commission approved the eighteenth on-sale ABC license on December 4, 2008.

The shopping center has two (2) existing restaurants that operate with an on-sale ABC license: Phuong Hoang Restaurant, located at 10557 Bolsa Avenue, and 4 Mua Restaurant, located at 10561 Bolsa Avenue. These two (2) restaurants provide a convenience to the local residents by offering on-sale beer and wine. The addition of a new on-sale ABC license in the same shopping center will not provide a convenience or necessity as the two (2) 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 increasing the crime rate and subsequently increasing 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, Newport Seafood Restaurant, to operate with an 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 as the restaurant is located in an area within an undue concentration of on-sale alcohol licenses. This can result in an increase to the crime rate and calls for service by the Police Department, as well as causing other undesirable affects to the surrounding residential uses. 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 outweigh the potential economic benefits that the business may achieve by obtaining the license. Approval of the application may negatively impact the surrounding 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 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-255-09
APPLICANT: NGO TRONG
LOCATION: NORTH SIDE OF BOLSA AVENUE, EAST OF WARD STREET AT 10541 BOLSA AVENUE
DATE: FEBRUARY 5, 2009

REQUEST: To allow a restaurant, Newport Seafood, to operate with an 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. Two letters of opposition were written by Karen Ellis and Sam and Nila Shah.

Commissioner Kirkham asked Staff if there were more ABC outlets than the one indicated on Page 1 of the CLEW study?

Staff replied that they are not aware as to why the other outlets are not included in the CLEW study as there are two other businesses with licenses in the shopping center; that this is a low crime district, however, the establishment is in a census tract that has an extreme amount of licenses on the south end portions of the City.

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

Mr. Dien Phan, the applicant's representative, approached the Commission.

Vice Chair Pak asked Mr. Phan why he wanted to apply for an alcohol license now and not before, especially when he has operated his restaurant without a license for years.

Mr. Phan replied that his business had been a 'to go' business only; and that to help the business, which has 3,000 square feet of space, he wanted a sit down business in which customers could enjoy their seafood with beer and wine.

Commissioner Beard asked Mr. Phan to explain the public convenience or public necessity that would warrant the Commissioners granting him a license.

Mr. Phan responded that he would have more customers with a sit down restaurant; that beer and wine goes along with seafood; that he has spent money remodeling by adding tables and chairs and an additional restroom; and that the license would increase the business and sales.

Vice Chair Pak asked Mr. Phan if he had contacted the Garden Grove Police Department as to whether or not it would be possible to obtain an ABC license.

Mr. Phan replied that the Police Department said that obtaining a license would be difficult; and also, that it was difficult to beat the license lottery so they had stopped trying.

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

Vice Chair Pak asked staff to clarify the number of parking spaces for the sit down restaurant.

Staff replied that there were a total of 89 parking spaces located both in the front and rear of the shopping center and that the number of spaces complies with code.

Staff added that the applicant did converse with Staff prior to submitting the application for the ABC license, indicating that they were aware of the concerns.

Commissioner Brietigam asked Staff to clarify the number of ABC licenses in the tract.

Staff replied there were 19 licenses with only ten allowed; that previously, a request for an ABC license case was brought to the Planning Commission last November with a recommendation of denial and that Staff was directed to bring back a resolution of approval, however, the Planning Commission voted to deny the case. Also, that the case has been appealed and is still pending, and that now, there are 18 licenses with the potential of one more being added pending the City Council's decision on the November case.

Commissioner Beard commented that based on the staff report and the Police Department's recommendation, the financial gain or losses of the business owner cannot be considered; that with the undue concentration of the on-sale licenses and the inability to make a finding of public convenience or necessity, he is in favor of denial.

Commissioner Brietigam agreed that there is not a finding of public convenience or necessity and would support the denial.

Vice Chair Pak commented that the crime count is only 40 and the average for the City is 106 crimes, however, with the saturation of licenses, and the fact that the business has been operating for a number of years already, he would support the denial. He also commented that the applicant should do more study before embarking on this type of project.

Commissioner Brietigam moved to approve the denial of Conditional Use Permit No. CUP-255-09, seconded by Commissioner Beard, pursuant to the facts and reasons contained in Resolution No. 5667. 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-255-09

WHEREAS, the case, initiated by Ngo Trong requested Conditional Use Permit approval to operate an existing restaurant, Newport Seafood 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 north side of Bolsa Avenue, east of Ward Street at 10541 Bolsa Avenue, Assessor's Parcel No. 099-513-31; 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. 5667, the Planning Commission, at a public hearing on February 5, 2009, denied Conditional Use Permit No. CUP-255-09; 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-255-09, based upon the facts, findings and reasons set forth in Planning Commission Resolution No. 5667.

A copy of Planning Commission Resolution No. 5667 is on file in the office of the City Clerk and is 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-255-09

WHEREAS, the case, initiated by Ngo Trong, requested Conditional Use Permit approval to operate an existing restaurant, Newport Seafood 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 north side of Bolsa Avenue, east of Ward Street at 10541 Bolsa Avenue, Assessor's Parcel No. 099-513-31; 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 located in a small commercial shopping center on Bolsa Avenue that is in the C-1 (Neighborhood Commercial) zone. The restaurant occupies a 3,000 square foot tenant space located on the west side of the shopping center.

The applicant is requesting Conditional Use Permit approval to operate an existing restaurant, Newport Seafood 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-255-09 with a 6-0 vote, with Commission Nguyen absent. In denying the Conditional Use Permit request, the Planning Commission determined that they were unable to make a finding of public convenience or necessity as the restaurant is located in an area with an undue concentration of on-sale ABC licenses. Furthermore, the Planning Commission stated that they could not take into consideration the financial gains or losses of the business.

The restaurant is located in a low-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. 118.
- The crime count for the District is 40.
- 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 37% below the Citywide average; therefore, it is considered a low-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. On February 24, 2009, 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, which will increase the total number of licenses in the census district from seventeen (17) to eighteen (18). Approval of this license will increase the total number of licenses in the district to nineteen (19).

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, and 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 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 Newport Seafood 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 Commercial and is zoned C-1 (Neighborhood Commercial). 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-255-09.
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-255-09.
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 Newport Seafood Restaurant.

EXHIBIT "A"
Conditional Use Permit No. CUP-255-09

10541 Bolsa Avenue

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.

Conditional Use Permit No. CUP-255-09
Conditions of Approval

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 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

12. 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.
13. 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.
14. 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.
15. At all times when the establishment is open for business, the sale of alcoholic beverages shall be incidental to the sale of food.

16. 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.
17. No outside storage or displays shall be permitted at any time.
18. 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.
19. 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.
20. There shall be no raised platform, stage or dance floor allowed on the premises at any time.
21. There shall be no chairs or stools at any counter area.
22. There shall be no uses or activities permitted of an adult-oriented nature as outlined in City Code Section 9.08.070.
23. There shall be no separate bar or lounge area to provide direct service of alcoholic beverages to customers.
24. 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.
25. All rear doors shall be kept closed at all times, except to permit employee ingress and egress, and in emergencies.
26. 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.
27. 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. If additional trash enclosures are necessary to accommodate the existing trash bins, the

applicant/property owner shall construct the necessary trash enclosures prior to issuance of the ABC license.

28. 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.
29. 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.
30. 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.
31. No satellite dish antennas shall be installed on said premises unless, and until, plans have been submitted to and be approved by the Community Development Department, Planning Division. No advertising material shall be placed thereon.
32. Permits from the City of Garden Grove shall be obtained prior to displaying any temporary advertising (i.e., banners).
33. 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.
34. 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.
35. 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.
36. A copy of the decision and the conditions of approval for Conditional Use Permit No. CUP-255-09 shall be kept on the premises at all times.

Conditional Use Permit No. CUP-255-09

Conditions of Approval

37. The permittee shall submit a signed letter acknowledging receipt of the decision approving Conditional Use Permit No. CUP-255-09, and his/her agreement with all conditions of the approval.
38. 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.
39. 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-255-09. 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.