



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

DATE: June 20, 2018

TO: Hearing Officer

SUBJECT: Modification to Conditional Use Permit #4530

LOCATION: 727 South Arroyo Parkway

APPLICANT: City of Pasadena

ZONING DESIGNATION: CD-6 (Central District, Arroyo Corridor/Fair Oaks Sub-District)

GENERAL PLAN DESIGNATION: High Mixed Use

CASE PLANNER: Jennifer Driver

STAFF RECOMMENDATION: Adopt the Environmental Determination and the Specific Findings in Attachment A and **approve** the Modification to Conditional Use Permit #4530 with the conditions in Attachment B.

PROJECT PROPOSAL: Modification to Conditional Use Permit #4530: a City-initiated Modification to Conditional Use Permit #4530, originally approved by the Hearing Officer on July 8, 2005, to modify conditions of approval related to the operation of an existing retail sales land use (CVS Pharmacy). The modifications would include, but are not limited to, extending the hours of operation and increasing on-site security measures. No new floor area or construction is proposed.

ENVIRONMENTAL DETERMINATION: This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15301, Class 1, (Existing Facilities), and there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. This class exemption exempts from environmental review projects that involve negligible or no expansion of an existing use.

BACKGROUND:

Site characteristics: The subject property is on the northwest corner of South Arroyo Parkway and Fillmore Street. The subject site is generally flat and approximately 0.94 acres. The site is currently developed with a 13,356 square-foot retail sales land use (CVS Pharmacy) with a drive-thru pharmacy. The site is adjacent to the Metro Gold Line Fillmore Station.

Adjacent Uses:

- North – Commercial Office
- South – Mixed Commercial
- East – Restaurant
- West – Metro Gold Line Station (Fillmore)

Adjacent Zoning:

- North – CD-6 (Central District Specific Plan, Arroyo Corridor/Fair Sub-District)
- South – CD-6 (Central District Specific Plan, Arroyo Corridor/Fair Oaks Sub-District)
- East – CD-6 (Central District Specific Plan, Arroyo Corridor/Fair Oaks Sub-District)
- West – CD-6 (Central District Specific Plan, Arroyo Corridor/Fair Oaks Sub-District)

Previous Cases: V #11208: To allow queuing aisle with less than five automobile parking spaces for reduced parking; to allow establishment of the use within 500 feet of another take-out use; and Sign Exception to allow signage over the roof (approved with conditions September 1996).

CUP #3655: To provide the off-site sale of beer and wine, establish a drive-thru pharmacy, and a Sign Exception to exceed the maximum number of allowable walls signs (approved with conditions September 2001).

CUP #4530: To upgrade an existing Conditional Use Permit to allow for the off-site sale of beer, wine and distilled spirits in conjunction with an existing retail store (Save-On Drugs) (approved with conditions July 2005).

The subject site is currently developed with a 13,356 square-foot retail sales use (CVS Pharmacy), with off-site sales of beer, wine and distilled spirits, and a drive-thru pharmacy.

Conditional Use Permit (CUP) #3655 was approved in September 2001 for Sav-On Drugs, The CUP permitted the retail store to be open from 6:00 a.m. to 9:00 p.m. and the drive-thru pharmacy to be open 24-hours a day. The sale of alcohol was limited to 9:00 a.m. to 9:00 p.m.

Conditional Use Permit (CUP) #4530 was approved in July 2005 for Sav-On Drugs to add the sale of distilled spirits to the existing operation. In addition to permitting the sale of distilled spirits, the CUP restricted the hours of operation of the store to 7:00 a.m. to 10:00 p.m., while not requiring any changes to the 24-hour operation of the drive-through pharmacy.

The proposed modification would help resolve an active Code Enforcement violation. Staff received complaints about the operating hours of the use, and determined that the CVS store has been operating 24 hours daily, in conflict with the hours of CUP #4530. City staff has been working

with the operators of the CVS store to address the site issues relating to litter, loitering and hours of operation and has initiated the modification of Conditional Use Permit (#4530). Staff is recommending that the hours of operation for the retail store be 24 hours, while restricting the hours of the sale of alcohol to 9:00 a.m. to 10:00 p.m. In conjunction with this recommended change, staff has also recommended conditions of approval to augment existing security, lighting and litter abatement conditions.

ANALYSIS:

Pursuant to Chapter 17.78 of the Zoning Code, the Zoning Administrator can call for a review of the conditions of approval at a duly noticed public hearing if it can be reasonably shown that there are grounds for modification of CUP #4530. Based on the information observed by Code Enforcement, the Zoning Administrator has determined that there is sufficient evidence to begin the modification process of CUP #4530.

Acting on the provisions of Section 17.78.090.F.3 (Permit Revocation or Modification) of the Zoning Code, the City has the authority to modify any discretionary land use permit, such as a Conditional Use Permit, if the adopted conditions of approval are violated and/or if the business operates in a manner that constitutes a nuisance. Such action only occurs at a duly noticed public hearing. Conditions may be modified or new conditions may be added to reduce any impacts of the use.

Hours of Operation:

Currently the retail sales in-store is required to be closed from 10:00 p.m. to 7:00 a.m.; while the drive-through pharmacy is able to remain open 24 hours. In working with the project applicant, staff has recommended that the operating hours be modified to cease alcohol sales at 10:00 p.m., but allow the retail portion of the business to operate 24 hours, consistent with the hours permitted for retail uses in the Central District. As a part of the modification, staff has recommended additional enhancements to security, lighting and litter abatement to address the additional hours of operation.

The hours governing the sale of alcoholic beverages are not changing from existing conditions and will be permitted from 7:00 a.m. to 10:00 p.m., daily. In addition, the proposed use will be required to operate in accordance with all other applicable City laws. This will ensure compatible co-existence of this use with others in the area and protect other uses in the area from adverse impacts.

The proposal was also reviewed by the Police Department, who had no objections to the Conditional Use Permit request as recommended, with the presence of a uniformed security guard, increased lighting and a litter abatement program. In addition, this request is consistent with the operating standards applicable to the Central District, and staff has determined that the modification is appropriate for this type of use within this area.

Security:

Currently, Condition Number 28 in Conditional Use Permit #4530, states:

“The applicant shall provide a uniformed security guard on the premise during the hours of operation from 5:00 p.m. to 10:30 p.m.”

This condition of limited hours for a security guard was applicable when the hours of operation for the business were restricted to 7:00 a.m. to 10:00 p.m. However, as recommended as a part of this application, the hours of operation for the retail sales would be expanded to 24 hours. Staff recommends modifying the condition relating to the security guard to ensure the safety of patrons and the community. As supported by the Police Department, and as conditioned, a uniformed security guard shall be present from 10:00 p.m. to 6:00 a.m., seven days a week, and shall conduct sweeps of the property at least twice an hour during this on-duty period.

Lighting:

Currently, there are no specific conditions pertaining to lighting onsite, and the site is subject to basic lighting requirements as stated in Section 17.40.080. In order to increase the visibility and security of patrons, employees and the surrounding community, including those at the adjacent Metro station, staff recommends that a photometric plan be prepared documenting that the entirety of the parking lot has a lighting level of at least one foot-candle.

Litter Abatement:

Currently, only Condition Number 5 in CUP #4530 pertains to the cleanliness of the site. This condition reads:

“The applicant shall ensure that the front of the retail drugstore and immediate adjacent areas, including the public right-of-way shall be maintained free of trash and debris and loiterers at all times.”

Staff has reviewed current site conditions, and the operation of other similar businesses in the Central District, and recommends augmenting the litter abatement condition by establishing a plan for periodic assessment of the exterior areas in order for staff to maintain a clean and safe site.

Zoning and Land Use:

As stated previously, the subject sites restrictions on the operating hours for the non-alcoholic retail sales is not in line with other like businesses within the same CD-6 zoning district. The Zoning Code specifically states in Section 17.40.070.A.4, that the restricted hours are not applicable to properties within the Central District Specific Plan. The modification to the existing CUP is simply to bring the existing operation into conformance with current code provisions for like-zoned properties and land uses. As a result, the proposed modifications will not be a detrimental impact on the intent of the Zoning Code's application.

GENERAL PLAN CONSISTENCY:

The proposed modification to CUP #4530 to remove restrictions on the hours of operation of an existing retail sales use in the CD-6 zoning district is in conformance with the goals, policies, and objectives of the General Plan and the purposes of this Zoning Code. Granting the modification to the CUP would be consistent with General Plan Land Use Element Goals and Policies that focus on creating vibrant commercial districts. As conditioned, the operation of the use would be consistent with General Plan Land Use Element Policy 4.3, 'An Active Central District,' and Policy 12.1, 'Vital Commercial Districts.' In addition, the approval would bring the current operation into alignment with the Zoning Code's restrictions on hours of operation within the Central District. Adherence with the recommended conditions of approval pertaining to security, lighting and litter abatement, as well as the reinforcement on the permitted sales of alcoholic beverages, would

ensure that the use would not be detrimental to the general safety and welfare of the community. In addition, the modification would enhance the existing commercial district by providing a convenient, 24-hour retail sales land use.

ENVIRONMENTAL REVIEW:

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15301, Class 1, Existing Facilities) and there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. This class exemption exempts from environmental review projects that involve negligible or no expansion of an existing use.

REVIEW BY OTHER DEPARTMENTS:

The City's Police Department reviewed the proposal and provided comments and recommended conditions of approval that have been included in Attachment B of this staff report. No other comments or concerns were provided.

CONCLUSION:

Approval of the modification to Conditional Use Permit #4530 to augment security, lighting conditions and litter abatement for the betterment of the patrons, the employees and the community ensures compatibility of the use with the surrounding commercial setting. Further, the modified hours of operation for the retail sales use is consistent with the General Plan Land Use Element, and complies with applicable development standards of the Zoning Code as conditioned. The hours of operation would also be consistent with the hours of operation imposed on other commercial uses located in the Central District. Therefore, staff recommends approval of the application based on the findings in Attachment A and the conditions in Attachment B.

Attachments:

Attachment A: Findings

Attachment B: Conditions of Approval

**ATTACHMENT A
SPECIFIC FINDINGS FOR
THE MODIFICATION TO CONDITIONAL USE PERMIT #4530**

1. *There are sufficient grounds to justify revocation that can be corrected by modifying existing conditions or imposing new or additional conditions.* By removing the restrictions on hours for the non-alcohol related aspect of the existing retail sales land use, the business will be in alignment with other properties zoned CD-6. This will foster economic activity and provide a necessary convenience for the surrounding community. In addition, as the Police Department has identified the overnight hours as a period of concern for loitering or disorderly conduct, the inclusion of a security guard overnight, increased lighting in the parking lot and a litter abatement plan, as conditions, will ameliorate these concerns.

**ATTACHMENT B
CONDITIONS OF APPROVAL FOR
THE MODIFICATION TO CONDITIONAL USE PERMIT #4530**

The applicant or successor in interest shall meet the following conditions:

1. Development shall occur substantially as shown on the submitted floor plan and site plan stamped "Received at Hearing July 6, 2005", except as modified herein.
2. The approval of this application authorizes the sale of pre-packaged beer, wine, and distilled spirits for off-site consumption only. Any change from the proposed use with regard to alcohol sales would require a new Conditional Use Permit.
3. The Conditions of Approval for CUP #3655 shall remain in effect, except as modified herein.
4. The hours of operation onsite shall be:
 - a. 7:00 a.m. to 10:00 p.m., seven days a week for all sales of beer, wine and distilled spirits; and
 - b. 24 hours, seven days a week for all other retail sales inside the store and drive-through pharmacy
5. Within 60 days of the effective date of this permit, a litter cleanup plan shall be submitted for review and approval by the Zoning Administrator. The plan's objective is to maintain an attractive site, free of litter and discarded material. The litter cleanup plan shall:
 - a. Cover the entire site including, but not limited to, the parking lot area, queuing lanes, landscaping area, walkways, exterior windows, doors, lights and signage.
 - b. Identify when the cleanup would occur, with a minimum of five times a day, with two occurring between the hours of 5:00 p.m. to 10:00 p.m.
 - c. Identify the location of exterior trash receptacles.
6. The applicant shall ensure that the front of the retail drugstore and immediate adjacent areas, including the public right-of-way shall be maintained free of trash and debris and loiterers at all times.
7. All employees selling alcohol shall be required to participate in an alcohol management training program prior to selling alcohol.
8. The owner shall continually educate staff regarding alcohol laws.
9. Signs advertising brands of alcoholic beverages or the availability of alcoholic beverages for sale at the subject site shall not be visible from the exterior of the building.
10. The display of alcoholic beverages shall be interior only (no outdoor display) at all times.
11. No alcoholic beverages shall be consumed on the premises or any property adjacent to the subject site.
12. A sign stating "No Loitering or Public Drinking" shall be posted in the parking lot. Said sign shall be approved by the Zoning Administrator and Public Works and Transportation Department.

13. The sale of beverages containing alcohol for off-site consumption is conducted as an incidental use to operation of a full service retail pharmacy.
14. The area set aside for the display and refrigeration of beverages containing alcohol shall be in the extreme rear of the store and shall not be visible from outside the store.
15. Malt liquors or based products with alcoholic content greater than five percent by volume shall not be sold from the premises.
16. Wine, with the exception of wine coolers, shall not be sold in containers of less than 750 milliliters. Wine coolers shall not be sold in less than four-pack quantities.
17. Wine shall not be sold with an alcoholic content of greater than fifteen percent by volume, except corked, finished products aged two years or more.
18. Fortified wine shall not be sold on the premises.
19. Disposable cups or similar containers may be sold but only in packaged quantities of twenty or more.
20. Ice shall be sold only in bags of three pounds or greater.
21. A sign shall be posted on the site stating that parking is reserved for customers only.
22. A sign shall be posted on the site within a clear view of any interested person containing a telephone number and the name of a person to be contacted in the event that the operation of the involved store is causing concerns or problems in the adjacent neighborhood resulting from the subject use.
23. All pay telephones on the subject property shall not be equipped to receive incoming calls. Calls for patrons of the store shall not be received at any telephone on the subject site to prevent loitering
24. No beer or wine shall be displayed within five feet of the cash register.
25. No display or sale of beer or wine shall be made from an ice tub.
26. Any graffiti, which may appear on the exterior of the premises, shall be removed within 24-hours of the time identified thereof.
27. The proposal shall meet all of the Zoning Code requirements and any other requirements as established in the Pasadena Municipal Code
28. The project shall comply with all other City department requirements.
29. All deliveries, truck loading, and trash pick-up is allowed only between the hours of 7:00 a.m. to 9:00 p.m., Monday through Friday, and between 9:00 a.m. to 5:00 p.m. on Saturday.
30. On-Site Security.
 - a. Within 60 days of the effective date of this permit, an on-site security plan shall be submitted for review and approval by the Zoning Administrator and shall include at least the following information:

- i. The number of uniformed security guards on-duty at a time, with at least one uniformed security guard on the premises from 10:00 p.m. to 6:00 a.m.
 - ii. A schedule of sweeps performed by the security guard of the outdoor portion of the site, with a minimum of two sweeps per hour.
 - iii. A site plan documenting the path of travel during the sweeps and the location of the stationery guard while not conducting the sweeps.
31. Within 60 days of the effective date of this permit, a lighting (photometric) plan demonstrating a minimum one foot-candle of illumination of all parking, driveway, landscape, walkways and common areas shall be submitted for review and approval by the Zoning Administrator. The lighting plan shall include a site plan showing locations of ground-mounted light fixtures, and shielding to orient light away from adjacent properties.
32. Beer in containers greater than 16-ounces shall not be sold on the premises.
33. Beer in containers under one quart shall not be sold in less than six-pack quantities.
34. Overnight parking of vehicles or trucks shall not be permitted on the premises except for employees of the business or customers while conducting business in the retail establishment.
35. No outdoor sales shall be conducted on the premises.
36. The Zoning Administrator, at any time, can call for a review of the approved conditions at a duly notice public hearing. These conditions may be modified or new conditions added upon a finding of public nuisance or violation of a condition of approval.
37. No final zoning inspection or condition monitoring is required for this project.
38. The applicant must show evidence to the Zoning Administrator that they have contracted with a shopping cart retrieval service for the retrieval and return of shopping carts to the business site and that the contract will be maintained for the duration of the business.
39. Sales from the drive-thru pharmacy are limited to prescription medications and other medical supplies.
40. A landscaping and irrigation plan shall be submitted to the Zoning Administrator for review and approval.
41. The parking lot and loading zone shall comply with the requirements of Chapter 17.46 of the Pasadena Municipal Code except as modified herein.
42. Refuse storage area shall comply with the requirements of Chapter 17.40.120 of the Pasadena Municipal Code except as modified herein.
43. Pursuant to Chapter 17.46, Off-street Parking Regulations, off-street parking shall be provided at a ratio of 2.5 parking spaces per 1,000 square feet of gross building area.