



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

DATE: July 17, 2019

TO: Hearing Officer

SUBJECT: Conditional Use Permit #6749

LOCATION: 750 S. Arroyo Parkway

APPLICANT: Mike Obogeanu of Apex LA on behalf of Shake Shack Restaurant

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

GENERAL PLAN DESIGNATION: Medium Commercial

CASE PLANNER: Nathan Gapper

STAFF RECOMMENDATION: Adopt the Environmental Determination and Specific Findings in Attachment A to **approve** Conditional Use Permit #6749 with the conditions in Attachment B

PROJECT PROPOSAL: Conditional Use Permit: To allow the on-site sale of limited alcohol (beer and wine) in conjunction with the operation of a previously approved restaurant (Shake Shack).

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 and, therefore, there are no unusual circumstances. This section specifically applies to the operation, permitting, licensing or minor alteration of existing structures where there is negligible or no expansion of the use. The sale of alcohol in conjunction with the operation of a restaurant is a negligible expansion of use.

BACKGROUND:

Site characteristics: The subject property is located on the southeast corner of Arroyo Parkway and Fillmore Street. The 11,128 square-foot site is being developed with an approved 2,115 square-foot single-story, single-tenant commercial building (Shake Shack), 775 square-foot patio dining area, and a surface parking lot to the rear of the building with 24 parking spaces.

Adjacent Uses: North: General Commercial
South: General Commercial
East: Multi-Family Residential
West: General Commercial

Adjacent Zoning: North: CD-6 (Central District Specific Plan, Arroyo Corridor/Fair Oaks subdistrict)
South: CD-6 (Central District Specific Plan, Arroyo Corridor/Fair Oaks subdistrict)
East: RM-32 OC (Multi-Family Residential, 0 – 32 units per acre, Office Conversion Overlay)
West: CD-6 (Central District Specific Plan, Arroyo Corridor/Fair Oaks subdistrict)

Previous Zoning Cases: None.

PROJECT DESCRIPTION:

The applicant, Mike Obogeanu, has submitted a Conditional Use Permit application to allow the on-site sale of alcohol (beer and wine) in conjunction with the operation of a restaurant (Shake Shack). The building, which is currently under construction, is 2,115 square feet, including a dining room, kitchen facilities, entry lobby area, restrooms, an office, and refrigeration and storage areas. No dedicated bar area for preparing and/or serving alcohol is proposed. An outdoor dining area of 775 square feet is also included.

The proposed hours of operation are from 7:00 a.m. to 11:00 p.m., daily. The California Department of Alcoholic Beverage Control (ABC) license requested is a Type 41 (On-Sale Beer and Wine for Bona Fide Public Eating Place). This ABC license type authorizes the sale of beer and wine for consumption on the premises where sold. It requires the operator to maintain the licensed premise as a bona fide eating establishment, maintain suitable kitchen facilities, and make actual and substantial sales of meals for consumption on the premises.

ANALYSIS:

The subject property is located in the CD-6 (Central District Specific Plan, Arroyo Corridor/Fair Oaks subdistrict) zoning district. The purpose of the CD-6 zoning district is to provide for a broad mix of uses at the periphery of the urban core, including employment-generating uses that are adaptable to changing economic conditions, as well as to establish Arroyo Parkway as a visually important and attractive gateway to Downtown. The Zoning Code currently allows restaurant uses by-right within the district. The proposed accessory sale of alcohol for on-site consumption

is subject to the approval of a Conditional Use Permit pursuant to Table 3-1 of Zoning Code Section 17.30.030 (Central District Land Uses and Permit Requirements).

The Conditional Use Permit process allows the City to review a project to determine its compatibility with the surrounding area. This review may result in recommended conditions or requirements associated with the operation of the use, specifically the on-site sale of alcohol (beer and wine). The Hearing Officer may approve a Conditional Use Permit for the accessory sale of alcohol only after making five findings identified in the Zoning Code. The general purpose of the findings is to evaluate compliance with the Zoning Code and General Plan, whether the use would be detrimental or injurious to the neighborhood, and compatibility of the operation with existing and future uses. In this case, the analysis focused on whether the request to allow the sale and consumption of alcohol would create a negative impact on the general welfare of the surrounding property owners or result in an aggravation of existing alcohol-related problems such as loitering, public drunkenness, sales to minors, or noise.

According to the applicant, the sale and consumption of alcohol would be ancillary to the service of food and the principal restaurant use. Alcohol sales are intended to be paired with food consumption. Although limited live entertainment is allowed, where the performance area does not exceed 75 square feet and customer dancing does not occur, none is proposed. Included conditions of approval prohibit a number of items, including the sale of alcohol in disposable containers, cover charges, age restrictions, and amplified music conducive with a nightclub atmosphere.

The on-site sale and consumption of beer and wine, in conjunction with the operation of an existing restaurant, would be consistent with the surrounding uses within the Central District, Arroyo Corridor/ Fair Oaks subdistrict and would promote the vitality of this previously approved restaurant use, and is not viewed as being in conflict with the surrounding commercial uses. The approved restaurant is designated as a bona fide, dine-in restaurant, where alcohol sales and consumption would occur on-site and in conjunction with food sales only. The conditions of approval would ensure the use remains a bona fide restaurant.

Parking

As reviewed during the building permit process, the restaurant will provide 23 surface parking spaces to the rear (east) of the building. The required off-street parking for a fast food restaurant use greater than 2,000 square feet in gross floor area in the CD-6 zoning district is 10 spaces per 1,000 square feet of gross floor area, including any outdoor dining area not located in the public right-of-way. However, as this site is located within the Central District Transit-Oriented Area (Section 17.30, Figure 3-5), it is subject a mandatory parking reduction of ten percent, with an optional reduction of up to 20 percent.

In this instance, the building area and outdoor dining area total 2,890 square feet. The 'base' parking requirement results in 29 parking spaces, and with a 20 percent reduction, the number of required parking spaces is reduced to 23. As such, the provided 23 parking spaces complies with the parking requirement.

Hours of Operation

The subject site is located within the Central District Specific Plan and may operate 24 hours by right. It is not subject to Section 17.40.070 (Limited Hours of Operation) of the Zoning Code, except for loading, unloading, and trash-pick up limitations, which are 7:00 a.m. to 9:00 p.m.,

Monday through Friday, and between 9:00 a.m. to 5:00 p.m. on Saturdays. No truck loading, unloading, or trash pick-up are allowed on Sundays. The proposed hours of operation are from 7:00 a.m. to 11:00 p.m., daily.

Concentration of Alcohol Sales

The subject property is located in Census Tract 4640. According to the Alcohol Beverage Control (ABC), a maximum of five alcohol licenses for on-site consumption and three for off-site consumption can be issued, unless specific findings can be made to allow additional licenses. According to data provided by the ABC, currently there are 14 alcohol licenses within this Census Tract (nine for on-site sales and consumption, five for off-site consumption). The ABC may approve the applicant’s request if the applicant can demonstrate the issuance of a license would serve public convenience or necessity. The ABC only requires this finding to be made by the local governing agency if the applicant is applying for an off-sale beer and wine license, an off-sale general license, an on-sale beer and wine (public premises) license, or an on-sale general (public premises) license. Since the applicant does not intend to file for one of those license types, the City is not required to make findings for public convenience and necessity when evaluating this application.

A Conditional Use Permit application for alcohol sales requires the applicant to identify uses with either on-site or off-site alcohol consumption within 1,000 feet of the subject property. According to the applicant, there are currently five establishments within 1,000 feet of the subject property possessing active on-sale or off-sale ABC licenses. Table 1 summarizes these establishments.

Table 1: Existing Alcohol License Types within 1,000 Feet

Site	Business Name	Address	License Type
1	CVS Pharmacy 9668	727 S. Arroyo Pkwy.	Type 21 – Off-sale
2	Pitfire Artisan Pizza	730 S. Arroyo Pkwy.	Type 47 – On-sale
3	Sushi Ichi	633 S. Arroyo Pkwy.	Type 41 – On-sale
4	Trader Joes 51	610 S. Arroyo Pkwy.	Type 21 – Off-sale
5	Bevmo	885 S. Arroyo Pkwy.	Type 21 – Off-sale; Type 42 – On-sale

The project is located in the CD-6 subdistrict of the Central District Specific Plan, which is intended to provide for a broad mix of uses at the periphery of the urban core, including employment generating uses that are adaptable to changing economic conditions, as well as to establish Arroyo Parkway as a visually important and attractive gateway to Downtown. Although an undue concentration of alcohol establishments (as defined by ABC) exists in the area within the Census Tract, the existing alcohol establishments are mostly restaurants. Unlike nightclubs or bars, restaurants are not typically a problematic use. The approval of this request will add to the number of alcohol licenses; however, serving beer and wine at a privately owned restaurant would be an added amenity to the mixed-use neighborhood. Therefore, the project will not contribute negatively to the undue concentration of alcoholic establishments in the Census Tract.

Proximity to Sensitive Uses

The sale of alcohol shall be designed and operated to avoid any significant adverse impact on adjacent or nearby parks (e.g., public parks or recreation centers), playgrounds (e.g., public or parochial), religious facilities, or schools (e.g., public, parochial, or private elementary, junior high,

or high schools). The subject property is located on South Arroyo Parkway and is surrounded by various commercial, retail, and restaurant uses. Although an existing residential property to the east on Fillmore Street is 25 feet away from the subject property, an alley and garages separate the uses and the distance from the commercial structure to the primary residential structure is approximately 90 feet. In addition, the restaurant is situated in such a manner as to minimize noise in the residential neighborhood, with the building sited along Arroyo Parkway at the furthest distance possible from the residential uses.

The subject property generally maintains a sufficient distance from sensitive uses that have the potential to attract minors, such as park and recreation facilities, places of public assembly, public or private schools, hospitals, or religious facilities. The nearest park, Allendale Park and Library, is more than 2,220 feet away. The subject property is approximately 1,000 feet away from both the Art College Center of Design and Huntington Memorial Hospital. With the exception of the nearest residence, none of these sensitive uses are within 500 feet of the subject property.

The proposed on-site sale of beer and wine would be an accessory use to a previously approved restaurant. It is the staff's position that the sale of alcohol would not be detrimental to the nearby religious facilities, schools, or surrounding residential units because the operational characteristics of the restaurant do not encourage activities that cause negative effects on these sensitive uses. Therefore, the sale of alcohol in conjunction with the proposed bona fide restaurant would not detrimentally affect the surrounding area.

GENERAL PLAN CONSISTENCY:

The subject property is located within the Central District Specific Plan area. According to the General Plan Guiding Principle #5, "Pasadena will be a city where people can circulate without cars. Specific plans in targeted development areas will emphasize a mix of uses, pedestrian activity, and transit". The proposed alcohol sales use accessory to an existing restaurant promotes pedestrian activity in a way that is compatible with nearby residential uses. The proposed on-site sale of alcohol in conjunction with the operation of a restaurant would enhance the commercial district by offering a quality dining experience that would attract customers, consistent with General Plan Land Use Element Policy 31.1 (Focus Growth) and 31.7 (Expanded Economic Opportunities).

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 and, therefore, there are no unusual circumstances. This section specifically applies to the operation, permitting, licensing or minor alteration of existing structures where there is negligible or no expansion of the use. The sale of alcohol in conjunction with the operation of a restaurant is a negligible expansion of use.

REVIEW BY OTHER CITY DEPARTMENTS:

The Building and Safety Division and Design and Historic Preservation Section along with the Departments of Transportation, Fire, Public Works, Public Health, and Police reviewed the proposal. These sections and departments, including the Police Department, did not express any concerns with the application.

CONCLUSION:

Staff has determined that all findings for approval of the Conditional Use Permit can be made. The site is located in the Central District Specific Plan, which encourages a diverse mix of land uses and services. The proposed sale of alcohol for on-site consumption would be complimentary to the surrounding area and to other existing restaurants in the vicinity. The establishment would provide a full menu during hours of operation with the sale of alcohol incidental to food sales. Conditions of approval and periodic condition monitoring would ensure that the use would not deviate from the planned operation reviewed under this application. Therefore, staff recommends that the Hearing Officer approve the application with the findings in Attachment A and the Conditions of Approval in Attachment B.

Attachments:

Attachment A: Specific Findings of Approval

Attachment B: Conditions of Approval

ATTACHMENT A
SPECIFIC FINDINGS FOR CONDITIONAL USE PERMIT #6749

Conditional Use Permit – To allow the on-site sale and consumption of alcohol (beer and wine) in conjunction with the operation of a restaurant.

1. *The proposed location of the site for the Conditional Use Permit would not adversely affect the general welfare of the surrounding property owners.* The on-site sale of alcohol will occur in conjunction with an approved restaurant use on South Arroyo Parkway. Nearby uses include restaurant, retail, personal services, and multi-family residential. The proposed use complements and provides an amenity for the adjacent uses, maintaining a mix of uses in the area. Alcohol sales associated with the use would occur as an accessory to the restaurant establishment. The proposed use will operate in accordance with City laws, ordinances, and conditions of approval that ensure the continuity of the compatible coexistence of this use with uses in the surrounding area.
2. *The proposed location of the site for the Conditional Use Permit would not result in an undesirable concentration of premises for the sale of alcoholic beverages, including beer and wine, in the area.* Although there is an overconcentration of licenses in the census tract, as defined by ABC, the proposal will add an amenity to the area. All of the existing, on-site alcohol-serving establishments nearby are restaurants. Unlike traditional nightclubs or bars, restaurants typically serve alcohol with food and have shorter hours of operation, decreasing significant negative effects on the surrounding area. To ensure the proposed establishment remains a bona fide restaurant, the Conditional Use Permit prohibits cover charges, age restrictions, and amplified music conducive of a nightclub atmosphere. The proposal does not include a bar area or a request for live entertainment, further reducing any potential for significant negative impacts associated with alcohol sales.
3. *The proposed location of the site for the Conditional Use Permit would not detrimentally affect the nearby surrounding area after giving special consideration to the proximity and nature of the proposed use with respect to the following: a. Residential uses and residential districts; b. Hospitals, park and recreation facilities, places of public assembly, public or private schools, and religious assembly uses that attract minors and other similar uses; and c. Other establishments offering alcoholic beverages (including beer and wine) for sale for consumption both on-site.* Although an existing residential property to the east on Fillmore Street is located 25 feet away from the subject property, an alley and garages separate the uses and the distance from the commercial structure to the primary residential structure is approximately 90 feet. In addition, the restaurant is situated in such a manner as to minimize noise in the residential neighborhood, with the building sited along Arroyo Parkway at the furthest distance possible from the residential uses.

The subject property generally maintains a sufficient distance from sensitive uses that have the potential to attract minors, such as park and recreation facilities, places of public assembly, public or private schools, hospitals, or religious facilities. The nearest park, Allendale Park and Library, is more than 2,220 feet away. The subject property is 1,075 feet from the Art College Center of Design and Huntington Memorial Hospital is approximately 1,000 feet away. With the exception of the nearest residence, none of these sensitive uses are within 500 feet of the subject property. Furthermore, the sale of alcohol would not be detrimental to the nearby religious facilities, schools, or surrounding residential units because the operational characteristics of the restaurant do not encourage activities that cause negative effects on

these sensitive uses. Therefore, the sale of alcohol in conjunction with the proposed bona fide restaurant would not detrimentally affect the surrounding area.

4. *The proposed location of the site for the Conditional Use Permit would not aggravate proposed problems created by the sale of alcohol (e.g., littering, loitering, noise, public drunkenness, and sales to minors).* The incidental sale of alcohol in conjunction with a bona fide restaurant is generally not a problematic use. The Police Department reviewed the proposal and did not express any significant concerns. With this approval, the project is subject to the City's Condition/Mitigation Monitoring Program. Non-compliance with any of the conditions of approval or any of the provisions of the Zoning Code may result in the revocation of the Conditional Use Permit. These measures will limit any potential aggravation of existing or proposed problems created by the sale of alcohol.

5. *The proposed use is in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of any applicable specific plan.* The subject property is located within the Central District Specific Plan Area. According to the General Plan Guiding Principle #5, "Pasadena will be a city where people can circulate without cars. Specific plans in targeted development areas will emphasize a mix of uses, pedestrian activity, and transit". The alcohol sales use accessory to an existing restaurant promotes pedestrian activity in a way that is compatible with nearby residential uses. The proposed on-site sale of alcohol in conjunction with the operation of a restaurant would enhance the commercial district by offering a quality dining experience that would attract customers, consistent with General Plan Land Use Element Policy 31.1 (Focus Growth) and 31.7 (Expanded Economic Opportunities).

ATTACHMENT B
CONDITIONS OF APPROVAL FOR CONDITIONAL USE PERMIT #6749

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

1. The proposed project shall substantially conform to the site plan submitted with this application and dated "Approved at Hearing July 17, 2019", except as modified herein.
2. In accordance with Section 17.64.040 of the Pasadena Municipal Code, the exercise of the right granted under this application must be commenced within three years of the effective date of approval. The Hearing Officer can grant a one-year extension of this approval in compliance with Section 17.64.040.C of the Zoning Code. Such a request and the appropriate fee must be received prior to the expiration date.
3. The approval of this application authorizes the accessory on-site sale and consumption of alcohol (beer and wine) in conjunction with the operation of a restaurant, as depicted in the plans submitted with this application and dated "Approved at Hearing July 17, 2019".
4. The Zoning Administrator, at any time, can call for a review of the approved conditions at a duly noticed public hearing. These conditions may be modified or new conditions added to reduce any impacts of the use. The Hearing Officer may revoke the Conditional Use Permit if sufficient cause is given.
5. Any change to these conditions of approval or expansion of the use shall require the modification of this Conditional Use Permit or a new Conditional Use Permit.
6. The applicant or successor in interest shall meet the applicable code requirements of all other City Departments.

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7. The primary use shall be a bona fide restaurant with ancillary alcohol sales (beer and wine) for on-site consumption. The sale of alcoholic beverages shall be in conjunction with food sales. Food service along with a full menu shall be made available during all hours of business operation.
8. The premises shall operate under ABC License Type 41 (On-Sale Beer and Wine for Bona Fide Public Eating Place) and be maintained as a bona fide eating establishment. The premises shall not obtain any other public premises type licenses without the approval of a Conditional Use Permit and/or Expressive Use Permit.
9. The provision of a bar or counter used for preparing and serving alcoholic beverages within the establishment shall require a modification to this Conditional Use Permit or a new Conditional Use Permit.
10. Any live entertainment shall be limited to 75 square feet of floor area. Dancing by customers shall be prohibited at all times.
11. Alcoholic beverages shall not be served in disposable containers.

12. No cover charges, entry fees, or minimum drink orders shall be required of patrons. There shall be no restrictions on the age of customers.
13. Promoter-produced parties or events shall be prohibited. These events include private parties that involve third parties who profit from organizing and/or drawing attendees to the events.
14. Customized lighting and sound system conducive to a nightclub atmosphere shall be prohibited at all times.
15. Amplification of music shall comply with the regulations of Chapter 9.36 (Noise Restrictions) of the Pasadena Municipal Code.
16. Signs advertising brands and types of alcoholic beverages or the availability of alcohol for sale at the subject site shall not be visible from the exterior of the premises.
17. The following preventive measures shall be undertaken to reduce the potential for alcohol related problems:
 - a. Food service shall remain available during all hours of operation;
 - b. Taxicab phone numbers shall be posted in a conspicuous location at all times in the area(s) where alcohol is served to customers;
 - c. All employees selling or serving alcohol shall be required to participate in an alcohol training program offered by the Alcoholic Beverages Control prior to the operation of selling/serving alcohol;
 - d. The availability of a variety of non-alcoholic beverages shall be made known and offered to customers, and
 - e. No more than four video games shall be permitted.
18. These conditions of approval must be posted in a conspicuous location for public viewing within the restaurant on a continuous basis for the life of this Conditional Use Permit beginning on the date the alcohol sales commence.
19. The site and surrounding area shall be maintained in a litter and graffiti free manner. Any graffiti that should appear on the site shall be removed within 48 hours.
20. Compliance with the City of Pasadena Refuse Storage regulations, see Section 17.40.120 (Refuse Storage Facilities) of the Pasadena Municipal Code, shall be maintained at all times.
21. The establishment shall allow patrons of all ages at all times.
22. The dollar sales of alcoholic beverages shall not exceed the dollar amount of food and non-alcoholic beverages in a quarterly basis to ensure the primary use of the premises as a restaurant. The sales record shall be maintained at the premises at all times and be presented to the City agencies for review upon request.
23. Truck loading, unloading, 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 Saturdays. No truck loading, unloading, or trash pick-up is allowed on Sundays.