



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

DATE: October 16, 2019

TO: Hearing Officer

SUBJECT: Modification of Conditional Use Permit #5471

LOCATION: 96 East Colorado Blvd

APPLICANT: Cuzcoluna Corporation

ZONING DESIGNATION: CD-1-AD-1 (Central District subarea 1 (Old Pasadena), Alcohol Overlay District 1)

GENERAL PLAN DESIGNATION: Medium Mixed-Use (0.00 – 2.25 FAR)

CASE PLANNER: Beilin Yu

STAFF RECOMMENDATION: Adopt the Environmental Determination and the Specific Findings in Attachment A to: 1) **disapprove** the Modification to Conditional Use Permit #5471; 2) **disapprove** the Expressive Use Permit; and 3) **disapprove** the Variance for separation between uses.

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- PROJECT PROPOSAL:**
- 1) Modification to Conditional Use Permit #5471: To modify two conditions of approval: a) Condition #14 to permit the charging of a cover charge, and b) Condition #15 to permit live entertainment.
 - 2) Expressive Use Permit: To establish a nightclub club through the addition of two 96 square-foot performance area and dance floor.
 - 3) Variance: To establish a nightclub with alcohol service less than 250 feet from an existing bar or tavern, billiard parlor with alcohol service, nightclub with alcohol service, or use which provide sales of alcohol for off-site consumption within the AD-1 (Alcohol Density overlay, 1) district.

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)(5); Administrative Code, Title 14, Chapter 3, §15270(a), Projects which are Disapproved. This Statutory Exemption states that CEQA does not apply to projects which a public agency rejects or disapproves.

BACKGROUND:

Site characteristics: The subject site is a 9,383 rectangular shaped lot located on the south side of Colorado Boulevard between Raymond Avenue and Arroyo Parkway. The site is bounded by Plotkin Alley on the rear and by a Los Angeles County Metropolitan Transportation Authority right-of-way to the east. It is developed with a two-story commercial structure. The existing restaurant occupies 4,500 square feet space on the first floor, and a 500 square-foot basement.

Adjacent Uses: North – Commercial/Retail
South – Commercial/Retail
East – Commercial/Retail
West – Commercial/Retail

Adjacent Zoning: North – CD-1 (Central District subarea 1 (Old Pasadena), Alcohol Overlay District 1)
South – CD-1-AD-1 (Central District subarea 1 (Old Pasadena), Alcohol Overlay District 1)
East – CD-1-AD-1 (Central District subarea 1 (Old Pasadena), Alcohol Overlay District 1)
West – CD-1-AD-1 (Central District subarea 1 (Old Pasadena), Alcohol Overlay District 1)

Previous zoning cases on this property: Mod to CUP #5471: To modify condition #11 to allow the sale of full alcohol (beer, wine and distilled spirits) until 2:00 a.m. Current condition allows the serving alcohol until 11:00 p.m. Approved on February 3, 2016.

CUP #5471: To allow the sale of full alcohol (beer, wine, and distilled spirits) in conjunction with food service at an existing restaurant (*Choza Mama*). Currently the restaurant is permitted to have limited alcohol sales (beer and wine). Approved on August 17, 2011.

CUP #4924: To allow the sale of a full-line of alcoholic beverages for on-site consumption in conjunction with the operation of an existing restaurant, an upgrade from the sale of beer and wine only, and to install four video games ancillary to the operation of the restaurant (*Hooters*). Disapproved August 4, 2008

CUP #4257: To allow the on-site sale of alcohol (beer and wine) in conjunction with the expansion of an existing restaurant (*Hooters*). Approved on January 21, 2004.

CUP #3667: To allow the sale of alcohol (beer and wine) in conjunction with the establishment of a new restaurant (*Hooters*). Approved March 29, 2000.

PROJECT DESCRIPTION:

The applicant and business owner, Cuzcoluna Corporation, has submitted an application to modify Conditional Use Permit #5471, approved on August 17, 2011, for the sale of a full-line of alcoholic beverages (beer, wine, and distilled spirits) for on-site consumption at the existing restaurant (*Choza 96*). On February 3, 2016, the Hearing Officer approved a modification to Conditional Use Permit #5471 to allow the extension of alcohol sales from 11:00 p.m. to 2:00 a.m.

The current modification application seeks to revise the following two existing conditions of approval in order to allow live entertainment in the form of a live DJ, live band to include up to eight members, the ability to charge cover charge, and to allow a dance floor:

Current condition #14: No cover charges, entry fees, or minimum drink orders shall be charged/required of patrons. There shall be no restrictions on the age of customers.

Proposed condition #14: Cover charge or entry fees shall be permitted on nights in which entertainment is offered at the subject premises. No minimum drink orders shall be charged/required of patrons.

Current condition #15: Customized lighting and sound system conducive of a nightclub atmosphere shall be prohibited at all times.

Proposed condition #15: Entertainment shall be permitted Thursday through Sunday, consisting of the following: Live entertainment in the form of a DJ and bands, not to exceed eight total members.

Additionally, the applicant is proposing two 96 square-foot performance area and dance floor. Per the City's Zoning Code, a restaurant may provide accessory live entertainment, where the performance area does not exceed 75 square feet and customer dancing does not occur. However, the use shall be classified as a nightclub (commercial entertainment) if the performance area exceeds 75 square feet or customer dancing is provided. As such, by adding two 96 square-foot performance area and dance floor, the existing restaurant use would be reclassified as a nightclub; an Expressive Use Permit is required to establish a nightclub.

The establishment of a nightclub use also requires the approval of a Variance, as *Choza 96* is located less than 250 feet from an existing bar or tavern, billiard parlor with alcohol service, and nightclub with alcohol service within the AD-1 (Alcohol Density overlay, 1) district (Zoning Code Section 17.28.030 - AD Alcohol Overlay District). In this case, *Club 54* is located approximately 220 feet away, *Ixtapa* is approximately 175 feet away, and *Barney's Beanery* is approximately 97 feet away.

ANALYSIS:

1) Modification to Conditional Use Permit

The Conditional Use Permit process allows the City to review a project to determine if the proposed project would be compatible with the surrounding area and require adherence to specific conditions related to the operation of the proposed use. In order to approve a Conditional Use Permit, six specific findings must be made in the affirmative for each of the Conditional Use Permit requests. These findings relate to a project meeting the intent and purpose of the subject property's Zoning District and the Zoning Code, not being detrimental to the surrounding properties, and being compatible with surrounding uses among other things. The proposed modifications are considered a change to an approved project. Section 17.65.050 permits changes to an approved project subject to the same procedures as the original approval. Before approval of the changes, the applicable review authority is required to make the findings required for the original approval, and the additional finding that there are changed circumstances sufficient to justify the modification of the original approval.

As stated above, the application requests modification of two conditions of approval to allow live entertainment in the form of a live DJ, live band to include up to eight members, the ability to charge a cover charge, and to allow a dance floor.

Currently, condition #14 states that no cover charges, entry fees, or minimum drink orders shall be charged/required of patrons. The applicant is requesting the ability to charge a cover charge during the nights when live entertainment occurs.

This is a standard condition of approval that City staff regularly applies to Conditional Use Permits for alcohol sales at restaurants. Its purpose is to ensure that the restaurant remains a restaurant and does not transform into a nightclub or other similar use. Adherence with the conditions of approval would ensure that the restaurant remains a bona fide restaurant, and would not operate as a nightclub or other similar use whose operational impacts were not considered. The operation of a nightclub would require the approval of an Expressive Use Permit. The City, while supportive of a variety of dining and entertainment uses, has been sensitive to nightclubs and similar uses.

The applicant has submitted an Expressive Use Permit application to allow live entertainment beyond the limited 75 square feet of performance area permitted by-right with a restaurant use; and to allow customer dancing, and the elimination of this condition would be consistent with the new classification of the use as a nightclub. However, as discussed in the Variance section below, staff is not able to make all the required Variance findings in the affirmative, as such, staff is unable to support the modification of condition #14. If the use is to remain a restaurant, this condition would continue to be applicable to ensure the restaurant use continues to operate as a bona fide restaurant.

It is staff's position that while some live entertainment in the form of a live DJ or live band are allowed as part of the "Restaurants with Limited Live Entertainment" definition, the restaurant shall remain first and foremost a restaurant. To charge entry fees would be directly contradictory of this and would potentially result in a business that staff does not support: a nightclub. As a result, staff does not support this modification request and recommends disapproval.

Currently, condition #15 prohibits customized lighting and sound system conducive of a nightclub atmosphere at all times. The applicant is requesting the ability to have live entertainment in the form of a live DJ, live band to include up to eight members, Thursdays through Sundays.

Similar to the request above, this is a standard condition of approval that City staff regularly applies to Conditional Use Permits for alcohol sales at restaurants. Its purpose is to ensure that the restaurant remains a restaurant and does not transform into a nightclub or other similar use. Adherence with the conditions of approval would ensure that the restaurant remains a bona fide restaurant, and would not operate as a nightclub or other similar use whose operational impacts were not considered. The operation of a nightclub would require the approval of an Expressive Use Permit. The City, while supportive of a variety of dining and entertainment uses, has been sensitive to nightclubs and similar uses.

As stated above, the applicant has submitted an Expressive Use Permit application to allow live entertainment beyond the limited 75 square feet of performance area permitted, and to allow customer dancing, and the elimination of this condition would be consistent with the new classification of the use as a nightclub. However, as discussed in the Variance section below, staff is not able to make all the required Variance findings in the affirmative, as such, staff is unable to support the modification of condition #15. If the use is to remain a restaurant, this condition would continue to be applicable to ensure the restaurant use continues to operate accordingly.

It is staff's position that to permit a live DJ and bands entertainment beyond the 75 square-foot performance area permitted with a restaurant use would result in exactly the type of use that the condition is attempting to prevent: a nightclub. As shown in this report, the necessary findings cannot be made to approve such a use, and therefore staff recommends disapproval of the modification request.

Furthermore, staff does not find that there are changed circumstances to warrant support for the approval of changes to an approved project.

2) Expressive Use Permit

The Expressive Use Permit process was established in order to ensure an orderly and thorough City review of applications for certain expressive uses and to ensure compatibility with the surrounding uses the subject property. In this case, an Expressive Use Permit is needed to allow a performance area greater than 75 feet and to provide for customer dancing at *Choza 96*. While the Zoning Code permits "Restaurants with Limited Live Entertainment" with certain restrictions (i.e. limited to a performance area of 75 square feet) without any special review, providing for customer dancing or exceeding a performance area of 75 square feet reclassifies the use as a nightclub ("Commercial Entertainment") instead of a restaurant. In this case, the applicant is proposing two 96 square-foot performance area and dance floor, as such, under the City's Zoning Code, the use would be reclassified as a nightclub, and an Expressive Use Permit is therefore required.

In addition to the Expressive Use Permit, a Variance is needed to establish the nightclub use. The Variance is needed because *Choza 96* is located within 250 feet of three existing nightclubs.

The five findings necessary to approve an Expressive Use Permit focus on the ability of the proposed use to provide and maintain: 1) wastewater and sanitary sewer services; 2) solid waste services; 3) fire prevention and suppression services; and 4) police services and crime prevention services. The remaining finding must find that the use complies with the applicable development and design requirements of the zoning district and all applicable provisions of the Zoning Code.

In this case, staff is not concerned with the ability of the use to properly handle wastewater, solid waste, and fire prevention services, as all three are subject to review and permitting processes to ensure compliance with the applicable regulations. Further, while the Police Department has investigated the use in the past, staff is not aware of a significant number of serious incidents (e.g. fights, public drunkenness, etc.) that would be indicative of a potentially problematic or nuisance use. However, staff is unable to make the finding that shows compliance with the Zoning Code. This is because the proposed use requires a Variance and therefore staff is unable to make all of the necessary findings to support the request (see Variance discussion below). Without the approval of this Variance, all of the findings for the Expressive Use Permit cannot be made. Therefore, staff is recommending disapproval of the Expressive Use Permit request to establish a nightclub.

3) Variance

In addition to being located in the CD-1, *Choza 96* is also located within AD-1 (Alcohol Density 1) overlay district. The AD overlay district has additional regulations that apply to proposed bars or taverns, billiard parlors with alcohol service, nightclubs with alcohol service, and uses which provide for the sale of alcohol for off-site consumption.

The two purposes of the AD overlay district are to: 1) have increased public notification for when these uses are proposed; and 2) regulate the density of these uses. The first purpose is achieved by increasing the notification period from 14 days prior the hearing to 28 days prior and by including building occupants, not just property owners. The density regulation purpose is achieved by not permitting new bars or taverns, billiard parlors with alcohol service, nightclubs with alcohol service, and uses which provide for the sale of alcohol for off-site consumption to be located within a specified distance of these same uses that already exist. Within the AD-1 overlay district, this distance is 250 feet (within the AD-2 overlay district, this distance is 1,000 feet). The separation requirement has been in place in 1995.

In the case of *Choza 96*, it is located approximately 220 feet from *Club 54*, located at 54 East Colorado Boulevard, 175 feet from *Ixtapa*, located at 119 East Colorado Boulevard, and 97 feet from *Barneys Beanery* located at 99 East Colorado Boulevard. As a result, a Variance is necessary to deviate from the 250-foot separation requirement.

The Conditional Use Permit regulating *Club 54* as a nightclub, was approved in November 1994. The approval included three Conditional Use Permits: 1) Conditional Use Permit to establish a Commercial Recreation use, which allows the provision of pool tables in conjunction with the operation of an eating and drinking establishment in the CD-1 zoning district; 2) Conditional Use Permit to allow alcohol sales, including spirits, in conjunction with the Commercial Entertainment establishment; and 3) Conditional Use Permit to establish a Live Entertainment use, which includes live bands, karaoke, recorded music, dancing, billiards, fashion shows, art exhibitions, private group functions, comedy acts, in conjunction with the Commercial Recreation use. A review and modification to this Conditional Use Permit was conducted by the Hearing Officer on December 2010, at which time additional conditions were added to the Live Entertainment, Commercial Recreation, and Alcohol Sales use.

The Conditional Use Permit regulating *Ixtapa* was approved in October 1988. The approval included two Conditional Use Permits: 1) Conditional Use Permit to allow alcohol sales for on-site consumption; and 2) Conditional Use Permit to establish a Live Entertainment use, which provides live music and recorded music with a 550 square-foot dance floor in a restaurant. A

review and modification of this Conditional Use Permit was conducted by the Hearing Officer on August 2017, at which time new conditions were added.

Lastly, the Conditional Use Permit regulating Barney's Beanery was approved in July 1991. The approval included two Conditional Use Permits: 1) Conditional Use Permit to establish a Commercial Entertainment. Specifically, the Conditional Use Permit established a billiard parlor in the CD-1 zoning district; and 2) Conditional Use Permit to allow a full service alcohol license in conjunction with a billiard parlor and restaurant use. A Modification to this Conditional Use Permit was approved in September 1999 to modify the Commercial Entertainment use. Specifically, it allowed an interior remodel and conversion of the basement level into a dance floor on the site of an existing billiard parlor and restaurant with full alcoholic service. This approval vacated the dance floor and bar area located at 89 East Colorado Blvd.

In order to approve a Variance application, it must be shown that: 1) there are exceptional or extraordinary circumstances or conditions applicable to the subject site that do not apply generally to sites in the same zoning district; 2) granting the application is necessary for the preservation and enjoyment of a substantial property right of the applicant and to prevent unreasonable property loss or unnecessary hardship; 3) granting the application would not be detrimental or injurious to property or improvements in the vicinity of the subject site, or to the public health, safety, or general welfare; 4) granting the application is in conformance with the goals, policies, and objectives of the General Plan, and the purpose and intent of any applicable specific plan and the purposes of this Zoning Code, and would not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zone district; and 5) cost to the applicant of strict compliance with a regulation is not be the primary reason for granting the Variance.

In this case, staff cannot make the first finding that there are exceptional or extraordinary circumstances or conditions related to the site. The separation regulation applies equally to all properties in the AD-1 overlay district; this property is not treated differently or singled-out. Further, *Club 54*, *IxTapa*, and *Barney's Beanery* are established businesses and the 250-foot separation requirement has been in place since their respective Conditional Use Permits were approved. As was noted above, these establishments have been permitted uses since 1994, 1988, and 1991, respectively. In short, the separation requirement has been in place long before *Chozza 96* was approved as a restaurant with alcohol sales in 2011 and before the current application was submitted in May of 2018.

Because staff cannot make the exceptional or extraordinary circumstances finding as shown in Attachment A, it is recommended that the Variance be disapproved.

ENVIRONMENTAL:

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)(5); Administrative Code, Title 14, Chapter 3, §15270(a), Projects which are Disapproved. This Statutory Exemption states that CEQA does not apply to projects which a public agency rejects or disapproves.

COMMENTS FROM OTHER DEPARTMENTS:

The proposal was reviewed by the Pasadena Departments of Fire, Police, Public Health, Public Works, Transportation, and the Building and Current Planning Sections of the Planning &

Community Development Department. Of these reviewers, the Police Department stated that “it is in support of the requested changes. The concern as a Police Department is that *Choza 96* provide sufficient security guards to monitor the door, restrooms, and floor area, including the dance space. It is also important the camera system is functional and accessible to police personnel.”

CONCLUSION:

Of the three entitlements requested, Modification of Conditional Use Permit #5471 to modify conditions #14 and #15, Expressive Use Permit to establish a nightclub, and Variance for separation, it is staff’s assessment that the findings cannot be made.

Staff is unable to make all of the findings necessary to approve the Variance for the 250-foot separation requirement for the proposed nightclub from existing similar uses, and as a result cannot make all of the findings necessary to approve the Expressive Use Permit to establish the proposed nightclub.

Staff is also unable to make the findings for the modifications to Conditional Use Permit #5471 to eliminate the conditions to allow for (a) the charging of entry fees for events, and (b) customized lighting and sound systems for events.

Therefore, it is staff’s recommendation that the Hearing Officer disapprove the 1) Modification to Conditional Use Permit #5471; 2) Expressive Use Permit to establish a nightclub; and 3) Variance for separation of the proposed nightclub.

Attachments:

Attachment A: Specific Findings Disapproval

ATTACHMENT A
SPECIFIC FINDINGS FOR MODIFICATION OF CONDITIONAL USE PERMIT #5471

Modification to Conditional Use Permit #5471

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 subject site is located within the Central District's Old Pasadena area (CD-1) and the AD-1 (Alcohol Density 1) overlay district. One of the purposes of the AD overlay district is to regulate the density of proposed bars or taverns, billiard parlors with alcohol service, nightclubs with alcohol service, and uses which provide for the sale of alcohol for off-site consumption. The density regulation purpose is achieved by not permitting new bars or taverns, billiard parlors with alcohol service, nightclubs with alcohol service, and uses which provide for the sale of alcohol for off-site consumption to be located within 250 feet of these same uses that already exist. The separation requirement has been in place in 1995. The request to modify conditions #14 and #15 to allow live entertainment in the form of a live DJ, live band to include up to eight members, the ability to charge cover charge, and to allow a dance floor, will be directly contradictory to the purpose of AD-1 overlay district. The modification to the conditions will result in the existing restaurant operating as a nightclub, which increases the density of nightclubs within the AD-1 overlay district.

Expressive Use Permit

2. *The proposed use is allowed with an Expressive Use Permit within the subject zoning district and does not comply with the applicable development and design requirements of the subject zoning district and with all applicable provisions of this Zoning Code.* Nightclubs ("Commercial Entertainment") are permitted in the CD-1 zoning district subject to the approval of an Expressive Use Permit. In this case the need for an Expressive Use Permit is required because the applicant intends to install a two 96 square-foot dance floor for customer dancing. However, the establishment of the proposed nightclub requires the approval a Variance because the use is located within 250 feet of existing bar and tavern, billiard parlor with alcohol sales, and nightclubs. Staff is unable to make all of the necessary findings to support the Variance applicable and consequently, cannot make this finding that the proposed use complies with all applicable provisions of the Zoning Code.

Variance: Separation between nightclubs with alcohol service

3. *There are not exceptional or extraordinary circumstances or conditions applicable to the subject site that do not apply generally to sites in the same zoning district.* The 250-foot separation regulation for a new nightclub with alcohol service applies equally to all properties in the AD-1 overlay district; this property is not treated differently or singled-out. In the case of *Choza 96* is located approximately 220 feet from *Club 54*, located at 54 East Colorado Boulevard; 175 feet from *Ixtapa*, located at 119 East Colorado Boulevard; and 97 feet from *Barneys Beanery* located at 99 East Colorado Boulevard. The separation requirement has been in place long before *Choza 96* was approved as a restaurant with alcohol sales in 2011 and before the current application was submitted in January 2018.