



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

DATE: February 2, 2022

TO: Hearing Officer

SUBJECT: Revocation of Conditional Use Permit #2726

LOCATION: 72 North Fair Oaks Avenue

APPLICANT: City of Pasadena, Initiated by

ZONING DESIGNATION: CD-1, AD-1 (Central District Specific Plan, Old Pasadena Subdistrict, Alcohol Density Overlay 1)

GENERAL PLAN DESIGNATION: Medium Mixed Use

CASE PLANNER: Alison Walker

STAFF RECOMMENDATION: Adopt the Environmental Determination and the Specific Findings in Attachment A to **approve** Revocation of Conditional Use Permit #2726.

PROJECT PROPOSAL: Revocation of Conditional Use Permit #2726: A City-initiated public hearing to consider the revocation of Conditional Use Permit (CUP) #2726, originally approved by the Hearing Officer on August 18, 1993. CUP #2726 allows the sale of alcoholic beverages, live entertainment, and commercial entertainment in conjunction with the operation of a restaurant use. The current operator is Der Wolfskopf. As authorized by Section 17.78.090 (Permit Revocation or Modification) of the Zoning Code, the Hearing Officer has the authority to revoke any discretionary land use permit, such as a Conditional Use Permit.

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, §15321, Class 21, Enforcement Actions by Regulatory Agencies), and there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. Section 15321 exempts actions by regulatory

agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered by the regulatory agency.

BACKGROUND:

Site characteristics: The subject site is located on east side of Fair Oaks Avenue, between Holly Street and Union Street. The property is rectangular with an area of approximately 23,700 square feet, and 132 feet of frontage along Fair Oaks Avenue. The site is developed with a one- and two-story commercial building, and basement tenant spaces. The existing business, Der Wolfskopf, occupies a first floor tenant space, with basement area, fronting on Fair Oaks Avenue.

Adjacent Uses: North: General Commercial and Residential
South: General Commercial
East: General Commercial
West: General Commercial

Adjacent Zoning: North: CD-1 (Central District Specific Plan, Old Pasadena Subdistrict)
South: CD-1 (Central District Specific Plan, Old Pasadena Subdistrict)
East: CD-1 (Central District Specific Plan, Old Pasadena Subdistrict)
West: PD-34 (100 West Walnut Planned Development)

Previous Cases: CUP #2726 – To allow the sale of alcoholic beverages, live entertainment, and commercial entertainment in conjunction with the operation of a restaurant use. Approved, by the Hearing Officer, on August 18, 1993.

Modification of CUP #2726 – A City-initiated public hearing to consider revocation of CUP#2726, originally approved by the Hearing Officer on August 18, 1993 for McMurphy’s. Revocation proceedings were initiated by the City as a result of violation of conditions of approval and problems related to alcohol sales (e.g. public intoxication and acts of violence). The Board of Zoning Appeals decided to approve modifications to the conditions of approval of CUP#2726, instead of revoking it, on September 13, 2001.

Six-Month Review of Modified CUP #2726 – A scheduled six-month review of Modified Conditional Use Permit #2726. Approved with additional modifications to the conditions by the Board of Zoning Appeals on March 20, 2002.

PROJECT DESCRIPTION:

The Zoning Administrator has determined that there are reasonable grounds for revocation of Conditional Use Permit (CUP) #2726. The CUP was originally approved by the Hearing Officer on August 18, 1993, and subsequently modified by the Board of Zoning Appeals on September 13, 2001 and March 20, 2002 due to violation of conditions of approval and problems related to alcohol sales (Attachment B) by a prior operator (McMurphy's). The revocation was originally scheduled to be heard on July 15, 2020, but the Hearing Officer decided to continue the case to a date uncertain to allow the property owner to work with the business owner to curtail the issues. This meeting is a continued public hearing. The CUP allows the sale of alcoholic beverages, live entertainment, and commercial entertainment in conjunction with the operation of a restaurant use. The current operator is Der Wolfskopf.

ANALYSIS:

Pursuant to Chapter 17.78 of the Zoning Code, upon a determination by the Zoning Administrator that there are reasonable grounds for revocation of a discretionary permit, a public hearing shall be scheduled by the Zoning Administrator before the review authority which originally approved the permit. The City's action to revoke the CUP shall have the effect of terminating the entitlement and denying the privileges granted by the original approval.

Acting on the provisions of Section 17.78.090 (Permit Revocation or Modification) of the Zoning Code, the City has the authority to revoke any discretionary land use permit, such as a Conditional Use Permit, if any one of the following findings of fact can be made in a positive manner:

- a. Circumstances under which the permit or entitlement was granted have been changed by the applicant to a degree that one or more of the findings contained in the original permit or entitlement can no longer be made in a positive manner and the public health, safety, and welfare require the revocation;
- b. The permit or entitlement was issued, in whole or in part, on the basis of a misrepresentation or omission of a material statement in the application or in the applicant's testimony presented during the public hearing for the permit or entitlement;
- c. One or more of the conditions of the permit or entitlement have not been substantially fulfilled or have been violated;
- d. The exercise of rights granted by the permit or entitlement has been discontinued for a continuous period of at least 12 months;
- e. The improvement authorized in compliance with the permit or entitlement is in violation of any code, law, ordinance, regulation, or statute; or
- f. The improvement/use allowed by the permit or entitlement has become detrimental to the public health, safety, or welfare, or the manner of operation constitutes or is creating a public nuisance.

The Zoning Administrator has determined, pursuant to finding "c" that conditions of the CUP have not been substantially fulfilled and have been violated by Der Wolfskopf.

In response to community complaints indicating that Der Wolfskopf has been operating and selling alcohol into the late hours, the Pasadena Police Department and the Code Compliance

Division conducted inspections. The inspections revealed several violations to the conditions of approval of the CUP.

It should be noted that the complaints that were received and inspections completed in 2020 were conducted while the State of California and City of Pasadena's "safer-at-home" orders were in effect as a result of the COVID-19 pandemic.

Below is a list of conditions that were violated by Der Wolfskopf and the dates the violations were observed:

Condition No. 3: *The hours of operation shall be limited from 9:00 a.m. to 1:30 a.m., seven days per week. Alcoholic beverage service shall terminate at 1:00 a.m.*

On May 16, 2020, June 27, 2020, July 4, 2020, and September 4, 2021, the Pasadena Police Department and the Code Compliance Division observed that alcohol sales were being conducted after 1:00 a.m. and that Der Wolfskopf was operating beyond 1:30 a.m. Complaints received by the public indicated that at times Der Wolfskopf was operating until 5:00 a.m.

On May 3, 2021, the Pasadena Police Department responded to the business concerning a disturbance call related to a fight in progress at the location at approximately 3:07 a.m. 10 employees were on the premises after the required closing time. On July 17, 2021, Pasadena Police Department received a call at 2:01 a.m. related to a fight including 20 people at the location, which resulted in three arrests. Both violent incidents occurred inside the establishment beyond the 1:30 a.m. restriction.

Condition No. 6(a): *Food service shall remain open during the hours that alcoholic beverages are sold.*

On May 16, 2020, June 27, 2020 and July 4, 2020, the Pasadena Police Department and the Code Compliance Division observed that food service was not available during the hours that alcoholic beverages were sold; in violation of the condition.

Condition No. 8: *The applicant shall maintain a minimum of one licensed and uniformed security guard per 20 patrons during the hours of 8:00 p.m. and 1:00 a.m.*

On June 27, 2020, July 4, 2020, and September 4, 2021, the Pasadena Police Department and the Code Compliance Division observed that there was not a licensed and uniformed security guard ; in violation of the condition.

Condition No. 9(e): *Live entertainment and amplified or unamplified music shall terminate no later than 1:00 a.m. nightly.*

On May 16, 2020, June 27, 2020, July 4, 2020, and September 4, 2021, the Pasadena Police Department and the Code Compliance Division observed that amplified and/or unamplified music was played after 1:00 a.m. in violation of the condition.

The Zoning Administrator has also determined, pursuant to finding "f" above, that the use allowed by the CUP has become detrimental to the public health, safety, and welfare, and the manner of operation is creating a public nuisance.

The existing conditions of approval for CUP#2726 are a result of previous revocation and modification hearings that were held to address alcohol issues and concerns associated with a previous operator. Der Wolfskopf, as the current operator, is subject to the same conditions that were adopted in order to reduce the potential for alcohol-related problems.

As demonstrated above, City staff has documented several instances where conditions of approval were violated: Der Wolfskopf is selling alcohol beyond the permitted hours, food service is not available, security is not provided, and music is played beyond the time period permitted.

In addition to the violation of conditions of approval, Der Wolfskopf is operating in a manner that is detrimental to the public health, safety, and welfare, and is creating a public nuisance. During the COVID-19 pandemic, the business opened the dining room for gatherings and consumption of alcohol in violation of the State of California and City of Pasadena's "safer-at-home" orders—orders designed to slow the spread of the virus. Furthermore, activities occurring beyond the conditioned closing time of 1:30 a.m. at the site on May 3, 2021 and July 17, 2021 included violent fights that required Pasadena Police Department response. Such activities and operations pose a risk to public health, safety, and welfare.

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, §15321, Class 21, Enforcement Actions by Regulatory Agencies), and there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. Section 15321 exempts actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered by the regulatory agency.

CONCLUSION:

It is staff's determination that there are reasonable grounds for revocation of the CUP. The Pasadena Police Department and the Code Compliance Division have conducted inspections that revealed that conditions of approval are consistently being violated. Furthermore, staff has determined that the use allowed by the CUP has become detrimental to the public health, safety, and welfare, and the manner of operation is creating a public nuisance. Therefore, staff recommends that the Hearing Officer revoke CUP #2726 with the findings in Attachment A.

ATTACHMENTS:

- Attachment A: Specific Findings for Revocation
- Attachment B: Decision Letter for Modified CUP#2726, current conditions of approval, dated March 20, 2002
- Attachment C: Administrative Citations to Property Owner and Business Operator, May 16, 2020; September 30, 2020; October 20, 2020; September 8, 2021
- Attachment D: Memorandum from Code Compliance to Zoning Administrator, January 17, 2022

ATTACHMENT A
SPECIFIC FINDINGS FOR REVOCATION OF CONDITIONAL USE PERMIT #2726

- c) *One or more of the conditions of the permit or entitlement have not been substantially fulfilled or have been violated.* The Pasadena Police Department and the Code Compliance Division have conducted inspections that revealed that the current operator is in violation of conditions of approval no. 3, 6(a), 8, and 9(e).
- f) *The improvement/use allowed by the permit or entitlement has become detrimental to the public health, safety, or welfare, or the manner of operation constitutes or is creating a public nuisance.* The existing conditions of approval for CUP#2726 are a result of previous revocation and modification hearings that were held to address alcohol issues and concerns associated with a previous operator. Der Wolfskopf, as the current operator, is subject to the existing conditions that were adopted to reduce the potential for alcohol related problems. The current operator has violated several conditions of approval: Der Wolfskopf is selling alcohol beyond the permitted hours, food service is not available when required to be, required security is not provided, and music is played beyond the time period permitted. In addition, during the COVID-19 pandemic, the business opened the dining room for gatherings and consumption of alcohol in violation of the State of California and City of Pasadena's "safer-at-home" orders— orders designed to slow the spread of the virus. More recently, activities occurring beyond the conditioned closing time of 1:30 a.m. at the site on May 3, 2021 and July 17, 2021 included violent fights that required Pasadena Police Department response. As a result, Der Wolfskopf is operating in a manner that is detrimental to the public health, safety, and welfare, and is creating a public nuisance