

Honorable Commission President Glenda E. Martinez,

I have been a resident of the Abbot Kinney neighborhood for 13 years, over which time I have seen substantial and dramatic changes in the community. Notably, since 2000, 14 Conditional Use Permits for Alcohol (including 2 Plan Approvals) have been approved within a ¼-mile stretch of Abbot Kinney (or 1 CUB every 330 feet), between Main Street and Venice Boulevard. Not only has this resulted in a severe impact on the availability of parking in the area, but also in the quality of life for the local residents. It is this issue, the quality of life, which our community hopes this Area Planning Commission would help defend by granting this appeal based on the following discussion.

The Zoning Administrator erred in modifying or deleting Conditions #2, #6, #7, #26 and #27, and abused her discretion in modifying or deleting #6, #7, #25 and #27 of ZA-2006-5028-CUB.

Errors of the Zoning Administrator:

The Zoning Administrator a) modified Conditions #2, #6, #7, #26 to defer to DIR-2006-6829(SPP) and any modifications thereto made by the Director of City Planning, and b) deleted Condition #27 which requires compliance with Ordinance 168,999. These changes and deletion may lead to further confusion for the applicant and the community.

- A. DIR-2006-6829(SPP), which became effective on October 27, 2006, has since expired and therefore cannot be further modified. (No time extension was requested and therefore the expiration of DIR-2006-6829(SPP) was October 27, 2008.) Specifically, Section 11.5.7-D of the Los Angeles Municipal Code (L.A.M.C.) states that modifications “shall only be valid for Project Permit Compliance decisions which have not expired.”

Deferring to DIR-2006-6829(SPP) would restrict any further expansion of the restaurant unless another Approval of Plans was requested and approved which modified the language of Conditions #2, #6 and #26 so as to not defer to the expired Project Permit Compliance.

- B. The original 2006 Zoning Administrator action incorrectly titles Ordinance No. 168,999 as the “Central Transportation Corridor Specific Plan.” In the instance case, the Zoning Administrator further confused “Central Transportation Corridor Specific Plan” with the West Los Angeles Traffic Improvement and Mitigation Specific Plan. As a result, the Zoning Administrator deleted Condition #27, which required compliance with Ordinance No. 168,999 stating that it was addressed by Condition #26 and that “the site is located outside the boundaries of the West Los Angeles Traffic Improvement and Mitigation Specific Plan.”

First, in addition to Condition #27’s inaccurate citation of Ordinance No. 168,999, Condition #26 does so as well (as was the case in the original 2006 approval). Specifically, Condition #26 states that “the operation and business shall... comply with the Venice Specific Plan (Ordinance No. 168,999).” The Venice Specific Plan (or correctly titled, the “Venice Coastal Zone Specific Plan”) was not established under Ordinance No. 168,999, but instead under Ordinance No. 175,693.

Second, while the subject property is not located within West Los Angeles Traffic Improvement and Mitigation Specific Plan, it is located within the Coastal Transportation Corridor Specific Plan, which was established under Ordinance No. 168,999.

Therefore, in order to avoid any further confusion, Condition #26 should be modified to accurately title the “Venice Specific Plan” as the “Venice Coastal Zone Specific Plan” and to accurately cite Ordinance No. 175,693 as the establishing ordinance for the Specific Plan; and Condition #27 should be retained, but modified to correct the “Central Transportation Corridor Specific Plan” to read instead the “Coastal Transportation Corridor Specific Plan.” Full compliance with all applicable provisions of the Coastal Transportation Corridor Specific Plan shall be required.

Abuse of discretion by the Zoning Administrator:

The Zoning Administrator a) modified Conditions #6, #7 and #26 so as to remove language restricting the number of patrons and seats permitted, and b) modified Condition #25 removing the requirement to obtain a new Condition Use Permit, and c) deleted Condition #27.

- A. The public hearing, as stated in the Hearing Notice for the September 20, 2010 (attached to this appeal), was for a "Zoning Administrator's Determination of Approval of Plans, pursuant to the provisions of Section 12.24-M of the Los Angeles Municipal Code and Condition No. 29 of Case No. ZA 2006-5028(CUB) to review the effectiveness and compliance with the conditions of approval for the continued operation, use and maintenance of an existing restaurant serving beer and wine for on-site consumption as an accessory use. **The hearing will also be for consideration of revocation if so warranted.**" (emphasis added)

Nothing in the Public Notice acknowledged that the applicant sought any changes in the existing Conditional Use Permit. Notably, the applicant did not request any modification of the existing conditions until December 1, 2010 when the representative sent an email to Fernando Tovar (attached to this appeal), first suggesting that Zoning Administrator had the authority to make certain modifications and then providing language for some of the modifications shown in the final approval. Any modification resulting in an expansion or intensification of the existing operation would be a violation of Due Process as the public was not duly notified of the proposal changes. The community should have the opportunity to provide input to the initial decision-maker in regards to any changes which may adversely affect our neighborhood.

Furthermore, a review of Approval of Plans applications in the West Los Angeles Area Planning Commission area for the past two (2) years shows that at least six (6) requests were scheduled for a Public Hearing, and were Publicly Noticed, specifically requesting changes to the original Conditions of Approval. In the one (1) instance where no request to modify the original Conditions of Approval was Publicly Noticed, the Approval of Plans modified the conditions only to further reduce the maximum floor area and to establish a maximum number of patrons.

- 1009 Abbot Kinney Boulevard - ZA 2006-7948(CUB)(ZV)(SPP)(PA1)
- 10939 Venice Boulevard - ZA 2009-2886(PAB)
- 22-24, 26-28 Windward Avenue - ZA 93-1128(CUB)(PA1)
- 10433 West National Boulevard - ZA 2009-3022(PAB)
- 13020 Pacific Promenade, #1/6031 South Seabluff Drive - ZA 2004-5381(CUB)(PA1)
- 10928 West Pico Boulevard - ZA 2006-9398(CUB)(PA1)

- B. In the instance case the Zoning Administrator states that "the record is clear that in approving the original determination to permit on-site consumption of beer and wine only in lieu of the applicant's request for a full line of alcoholic beverages, and in prohibiting the maintenance of a bar or cocktail lounge and live music, it was the Zoning Administrator's intent to lessen the intensification of the restaurant operation. However, the record is not clear whether in limiting the seat capacity, the Zoning Administrator also intended to limit the intensity of the use or was simply a reflection of the applicant's proposal."

Contrary to the instant approval, the record is clear. In 2006, the Zoning Administrator made the following findings:

1. Finding #2 (page 32) of the original Conditional Use Permit states that "the location is in proper in relation to adjacent uses or the development of the community," in that:
 - a) The proposed restaurant will accommodate 44 seats within the building and an additional 16 seats within the rear outdoor patio area. (applicant's statement), and
 - b) With the imposition of conditions relative to the restaurant operation, the proposed activity is also proper in relation to those residential uses. (Those conditions include a restriction on the number of patrons and seats.)

2. Finding #3 (page 33) states that “the use will not be materially detrimental to the character of the development in the immediate neighborhood,” in that:
 - a) ...the small size of the restaurant, and other imposed operational conditions should assure no material detriment. (Those conditions include a restriction on the number of patrons and seats.)
3. Finding #5 (page 34) states that “the proposed use will not adversely affect the welfare of the pertinent community,” in that:
 - a) A review of letters to the file and testimony given at a public hearing have led to the fashioning of a number of conditions the intent of which is the protection of the community. Not the least of these conditions has been the limiting of the sale of alcoholic beverages to beer and wine only, the non-allowance of live entertainment, the non-allowance of having a bar, and restricted hours of use for the outdoor patio requiring that it not be used in any fashion after 11 p.m. (Those conditions include a restriction on the number of patrons and seats.)

Therefore, the record is clear that the Zoning Administrator approved the project as being “proper in relation to adjacent uses or the development of the community,” and as not “being materially detrimental to the character of the development in the immediate neighborhood,” or “adversely affect the welfare of the pertinent community,” based on those conditions imposed, which include, among other things:

1. Condition #6, which limits the seating to a maximum of 44 indoor seats and 16 outdoor seats for a total of 60 seats.
2. Condition #7, which again limits the seating to a maximum of 44 patrons indoors and 16 patrons on the patio.

The modification of Conditions #6 and #7 conflicts with the conditions, findings and justification for the original approval. Therefore, modifying such conditions (and thereby relaxing the operational conditions) would substantially deviate from the intent of the original action of the Zoning Administrator, and further detach from the quality of life within this community. To suggest that the Zoning Administrator’s only intent in imposing certain conditions was “simply a reflection of the applicant’s proposal” is not reasonable, nor does it fairly reflect the deliberative process performed by the applicant, the community (which include over 40 communications from the public) and the Zoning Administrator.

- C. In the instant case, the Zoning Administrator findings that “the operation is not in full compliance” of the original approval, however then modifies Condition #25 to remove the requirement for the applicant to obtain a new Conditional Use Permit, and instead obtain “a new authorization for the sale of alcohol.” Not only does this conflict findings and justification for the original approval, based on new City policies, removing the time limit and removing any further requirement for an Approval of Plans would permit the use to continue without future review by the Zoning Administrator to ensure compliance with the enumerated conditions has been met. Furthermore, it conflicts with the written testimony provided to the Zoning Administrator and the speakers at the Public Hearing.
 1. Non-compliance of the original approval.
 - a) Violation of Condition #7: According to the Zoning Administrator, “the Certificate of Occupancy indicates the approved use consists of 3,513 square feet of restaurant.” Not only is this 894 square feet larger than the approved 2,619 square-foot restaurant, it conflicts with the proposed project description for the original Mitigated Negative Declaration (ENV-2006-5029-MND) and therefore a violation of CEQA, and also would require additional parking per the Venice Coastal Zone Specific Plan.
 - b) Violation of Condition #19: According the Zoning Administrator, only one (1) staff member of the restaurant has received STAR Training. This violates the provision that “Within six months of the

opening of the restaurant, **all** employees involved with the sale of alcoholic beverages shall enroll in the Los Angeles Police Department "Standardized Training for Alcohol Retailers (STAR)"

- c) On January 14, 2009, the applicant was cited by the Department of Building & Safety for violation of the Los Angeles Municipal Code (L.A.M.C.) for construction work being performed with the required permits, and for the remodel of the upstairs single-family dwelling to an addition to the first level restaurant being constructed without the required permits and approvals. (Order to Comply #: A-2008518, attached to this appeal)

The applicant has since remodeled the second floor to a dwelling, however we contend the area continues to be used for restaurant purposes, but is only designed in a manner to look like a dwelling. (See attached photos for patrons at second floor window.)

The Zoning Administrator in the instant case does impose an additional condition (#31) requiring the existing dwelling to be maintained as a dwelling.

In addition, the applicant has recently obtained building permits for 1427 Abbot Kinney (which is the same building as 1429) for 1) tenant improvement, 2) change of use from retail to restaurant, and 3) structural upgrades to the roof. We contend that the structural upgrades to the roof are to provide additional outdoor space for the second floor, which we contend continues to be used as a restaurant.

Both the use of the second floor as a restaurant and the addition of outdoor space at 1427 Abbot Kinney would result in additional Service Floor Area per the Venice Coastal Zone Specific Plan, and therefore additional parking.

While these may be considerations of the Venice Coastal Zone Specific Plan, it would be inappropriate of the Zoning Administrator, and now the West Los Angeles Area Planning Commission to grant any further entitlements on the subject property without

These three (3) violations of the previous approval demonstrate a willful intent of the applicant to disregard the conditions imposed by the Zoning Administrator which were designed to protect the best interests of the neighborhood, to ensure that the development is compatible with the surrounding neighborhood, and to lessen any detrimental effect on the surrounding neighborhood. Granting the instant request would be rewarding behavior that is inconsistent with the conduct of a business that shows due regard for the character of the surrounding area.

2. Findings and justification for the original approval.

- a) On page 30 of the original Conditional Use Permit the Zoning Administrator states that "the grant was made for a fixed and limited period of time - **five years** - in order to give the Applicant 1) an ability to recover his construction and planning costs, and 2) **to allow him to establish a track record with the community.**" (emphasis added)
- b) Finding #2 (page 32) of the original Conditional Use Permit states that "the location is in proper in relation to adjacent uses or the development of the community," in that:
- i. This grant has been limited to a **five year term** and a one year review of conditions was also imposed on the project so that the restaurant could be reevaluated relative to changes to the area, particularly relative to noise.

3. New policies of the City regarding Conditional Use Permits for Alcohol.

- a) Based on ZA Memorandum No. 122, issued on July 28, 2010, an applicant may file for an Approval of Plans prior to the expiration of the original Condition Use Permit. This would permit the Zoning Administrator to waive a Public Hearing thereby bypassing the public process. At the very least, the Condition #25 should be modified to include that a public hearing shall be conducted.

4. The written testimony and speakers at the Public Hearing.

- a) The Zoning Administrator indicates that no speakers (not including the applicant) at the public hearing were in support of the proposed Approval of Plans. Four (4) members of the community expressed opposition and provided testimony as to the detrimental nature of the restaurant in the neighborhood.

Subsequent to the hearing “a video was submitted showing that music can be heard emanating from the restaurant onto the sidewalk adjacent to the premises on Milwood Avenue. A Gjelina’s business card was also furnished which provides a phone number for inquires concerning service on the second floor.”

In addition, of the approximately five (5) letters were submitted in support of the Approval of Plans, two (2) were from individuals who live outside of the City limits

Therefore, in light of the restaurant’s non-compliance with the current Conditional Use Permit, the findings and justification of the original Zoning Administrator’s action, new City policies for Conditional Use Permits for Alcohol and the testimony provided in writing and at the Public Hearing for the instant case, removal of the requirement for the applicant to obtain a new Conditional Use Permit is an abuse of discretion in that the instant case was only “to review the effectiveness and compliance with the conditions of approval”. Similar to complaint “A” under abuse of discretion, such an action must be Publicly Noticed, or would otherwise result in violation of Due Process. Nonetheless, such an action conflicts with good planning practice and public policy and ignores the facts.

Requested Action:

In light of all the evidence submitted, and the adverse impact the existing use has imposed on your community, the requested Approval of Plans should be denied, and revocation proceedings should be initiated based on the following finding: (Only one finding is required to deny a use, though the following may be applicable to a number of the required findings.)

The sale of alcoholic beverages for on-site consumption is subject to a Conditional Use procedure, and may be granted provided a number of findings are made, the objective of which is to ensure that the proposed use at this location is convenient to the public convenience and welfare, is proper in relation to adjacent uses or the development of the community, and will not be materially detrimental to the character of development in the immediate neighborhood. Insofar as these findings cannot be made in the positive, the grant of this request at this location would not be in harmony with the various elements and objectives of the General Plan, which intends to protect residential neighborhoods.

The applicant’s failure to abide by the conditions of approval has demonstrated that, consistent with Finding #3 of the original approval, it can be determined that the subject restaurant is not in compliance with the conditions of approval and has become a nuisance to the area.

Additionally, at the time of the original approval, according to the State’s Department of Alcoholic Beverage Control licensing criteria, 3 on-site and 2 off-site licenses were allocated to subject Census Tract No 2733. There were currently 3 on-site and 1 off-site licenses in this Census Tract. Within 600 feet of the subject property, there were 3 on-site and 1 off-site existing licenses. Currently, according to the State of California Department of Alcoholic Beverage Control (ABC) licensing criteria 4 on-sale and 3 off-sale licenses are allocated to the Census Tract. There are currently 10 on-site and 5 off-site licenses in this Census Tract.

The increase in the number of licenses in the census tract, and the failure of the applicant to abide by the conditions of approval results in the sale of beer and wine at this location to be deemed not desirable to the public convenience or welfare, not in proper in relation to adjacent uses or the development of the community and to be materially detrimental to the character of development in the immediate neighborhood.

In the event that the West Los Angeles Area Planning Commission finds it appropriate to allow the existing restaurant to continue its operation, the following conditions of the Zoning Administrator's 2010 action are requested to be modified or added.

2. The use and development of the property shall be in substantial conformance with the plot plan submitted with the application and marked Exhibit "A, except as may be revised as a result of this action. A new Exhibit "A" shall be prepared to the satisfaction of the Zoning Administrator that will show a) removal of the previously requested bar, b) the construction or installation of a noise barrier either solid or of plant material along the eastern and southern edge of the patio, c) a note on the plans that indicate absolutely no use of the patio past 11 p.m., and d) a note on the plans that the existing one car garage shall be used for parking only and not for storage.
6. Maximum seating for the restaurant shall not exceed 44 indoor seats and 16 outdoor seats for a total of 60 seats. No outdoor seating in the public right-of-way sidewalk area shall be permitted.
7. Approved herein is the sale and dispensing of beer and wine only for on-site consumption a 2,619 square-foot proposed restaurant with seating for 44 patrons indoors and 16 patrons on the patio, with operating hours of 6 a.m. to 1 a.m. daily for the interior of the premises. The patio shall not be used for any activity whatsoever after 11 p.m. No after hours use of the restaurant is permitted, including any use for private or promotional events.
25. Notwithstanding any other provisions of the Code or permitted time extensions, the authorization granted herein for the sale of alcohol is for a period of **five (5) years** from the effective date of the original grant dated May 4, 2007. Thereafter, this authorization shall become null and void and a new authorization for the sale of alcohol will be required. A public hearing shall be conducted.
26. The project and operation of the business shall fully comply with all of the conditions identified in Case No. DIR-2006-6829(SPP) to the satisfaction of the Director of Planning or her designee and hence comply with the Venice Specific Plan (Ordinance No. 175,693).
27. The project shall fully comply with the Coastal Transportation Corridor Specific Plan (Ordinance No. 168,999) to the satisfaction of the Department of Building and Safety.
33. Prior to the issuance of any building permit, the applicant shall submit evidence to the satisfaction of the Zoning Administrator that the Certificate of Occupancy from the Department of Building and Safety is for a maximum 2,619 square-foot restaurant.

I, and the neighbors of Abbot Kinney, appreciate your consideration in this appeal and hope that you find as we have, that the existing operation of the restaurant has not lived up to the expectations of the original action of the Zoning Administrator, nor the expectations of the Venice community, which has always demonstrated a willingness to support good operators who add value to our neighborhood and our quality of life.

Thank you,

Arminda Diaz

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MAYOR

**DEPARTMENT OF
BUILDING AND SAFETY**
201 NORTH FIGUEROA STREET
LOS ANGELES, CA 90012

ANDREW A. ADELMAN, P.E.
GENERAL MANAGER
RAYMOND CHAN
EXECUTIVE OFFICER

ORDER TO COMPLY

FRAN CAMAJ
641 VERNON AVE
VENICE, CA 90291

CASE #: 245361
ORDER #: A-2008518
EFFECTIVE DATE: January 14, 2009
COMPLIANCE DATE: February 08, 2009

OWNER OF
SITE ADDRESS: **505 E MILWOOD AVE**
ASSESSORS PARCEL NO.: 4241-036-007
ZONE: C2; Commercial Zone

An inspection has revealed that the property (Site Address) listed above is in violation of the Los Angeles Municipal Code (L.A.M.C.) as follows:

VIOLATION(S):

1. Construction work is being performed without the required permits.

You are therefore ordered to: 1) Stop all work being performed without the required permit(s).
2) Obtain all required permits and approvals prior to commencing any work.

Code Section(s) in Violation: 91.104.2.4, 91.106.1.1, 93.0310A, 94.102.2.3 and 95.108.5 of the L.A.M.C.

2. The remodel of the upstairs single family dwelling to an addition to the first level restaurant is being constructed without the required permits and approvals.

You are therefore ordered to: 1) Demolish and remove all construction work performed without the required permit(s).
2) Restore the existing structure(s) to its originally approved condition.

OR

3) Submit plans, obtain the required permits and make the structure(s) comply with all requirements of the L.A.M.C.

Code Section(s) in Violation: 91.8105, 91.106.1.1, 91.106.1.2, 91.108.4, 91.106.3.2, 91.103.1, 12.21A.1.(a) of the L.A.M.C.

PD
JAN 09 2009



CODE ENFORCEMENT BUREAU

For routine City business and non-emergency services: Call 3-1-1

www.ladbs.org

NON-COMPLIANCE FEE WARNING:

YOU ARE IN VIOLATION OF THE L.A.M.C. IT IS YOUR RESPONSIBILITY TO CORRECT THE VIOLATION(S) AND CONTACT THE INSPECTOR LISTED BELOW TO ARRANGE FOR A COMPLIANCE INSPECTION BEFORE THE NON-COMPLIANCE FEE IS IMPOSED. Failure to correct the violations and arrange for the compliance inspection within 15 day from the Compliance Date, will result in imposition of the fee noted below.

A proposed noncompliance fee in the amount of **\$325.00** may be imposed for failure to comply with the order within 15 days after the compliance date specified in the order or unless an appeal or request for slight modification is filed within 15 days of the compliance date.

If an appeal or request for slight modification is not filed within 15 days of the compliance date or extensions granted therefrom, the determination of the department to impose and collect a non-compliance fee shall be final. Section 98.0411 L.A.M.C.

NOTE: FAILURE TO PAY THE NON-COMPLIANCE FEE WITHIN 30 DAYS AFTER THE DATE OF MAILING THE INVOICE, MAY RESULT IN A LATE CHARGE OF TWO (2) TIMES THE NON-COMPLIANCE FEE PLUS A 50 PERCENT COLLECTION FEE FOR A TOTAL OF **\$1,137.50**.

Any person who fails to pay the non-compliance fee, late charge and collection fee shall also pay interest. Interest shall be calculated at the rate of one percent per month.

PENALTY WARNING:

Any person who violates or causes or permits another person to violate any provision of the Los Angeles Municipal Code (L.A.M.C.) is guilty of a misdemeanor which is punishable by a fine of not more than \$1000.00 and/or six (6) months imprisonment for each violation. Section 11.00 (m) L.A.M.C.

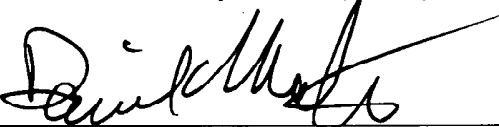
INVESTIGATION FEE REQUIRED:

Whenever any work has been commenced without authorization by a permit or application for inspection, and which violates provisions of Articles 1 through 8 of Chapter IX of the Los Angeles Municipal Code (L.A.M.C.) , and if no order has been issued by the department or a court of law requiring said work to proceed, a special investigation fee which shall be double the amount charged for an application for inspection, license or permit fee, but not less than \$400.00 , shall be collected on each permit, license or application for inspection. Section 98.0402 (a) L.A.M.C.

APPEAL PROCEDURES:

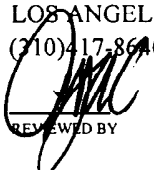
There is an appeal procedure established in this city whereby the Department of Building and Safety and the Board of Building and Safety Commissioners have the authority to hear and determine err or abuse of discretion, or requests for slight modification of the requirements contained in this order when appropriate fees have been paid. Section 98.0403.1 and 98.0403.2 L.A.M.C.

If you have any questions or require any additional information please feel free to contact me at (310)417-8640. Office hours are 7:00 a.m. to 5:00 p.m. Monday through Friday.

Inspector: 

Date: January 07, 2009

DAVID MATSON
7166 W MANCHESTER AVE, STE 10A
LOS ANGELES, CA 90045
(310)417-8640

 1-8-09
REVIEWED BY