



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Stephen M. Haase

**SUBJECT:** SEE BELOW

**DATE:** July 27, 2005

Approved: \_\_\_\_\_

Date: \_\_\_\_\_

August 3, 2005

COUNCIL DISTRICT: 3

SNI AREA: None

**SUBJECT: CP04-104. APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY A CONDITIONAL USE PERMIT TO ALLOW THE OFF-SALE OF ALCOHOLIC BEVERAGES AT AN EXISTING RETAIL ESTABLISHMENT LOCATED AT THE WEST SIDE OF S. FIRST STREET 100 FEET NORTH OF POST STREET (33 S. FIRST STREET)**

## RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the City Council uphold the Planning Commission's decision to deny Conditional Use Permit CP04-104 ("CUP") to allow off-sale of alcohol at an existing retail store.

## BACKGROUND

On April 11, 2005, the Planning Commission held a public hearing to consider the proposed CUP. The Planning Commission denied the proposed project by a vote of 4-2-1, Commissioners Dhillon and Zito opposed, and Commissioner Pham absent.

Four Downtown business owners spoke in opposition to the proposed CUP. They testified that past problems in the Downtown were caused by public drunkenness. They further stated they were pleased the City had taken steps to remove off-sale of alcohol establishments from Downtown. They said approval of another off-sale of alcohol establishment would return Downtown to the problems of the past. They further testified that there were sufficient existing opportunities in the Downtown to purchase alcohol, both for off-site and on-site consumption.

The Planning Commission focused on the appropriateness of approving the off-sale of alcohol at this specific location given its proximity to light rail, bus stops, and other existing off-sale alcohol establishments as well as the option to limit the sale of alcohol to 10% of the shelf space of a grocery store. Commissioner Campos said he was concerned that the business was not truly a full

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service grocery store where a limitation on shelf space for alcohol sales could be incidental. Commissioners Levy, James and Dhillon said they recognized the need to support small businesses and asked staff whether appropriate conditions, such as limiting space allowed for displaying alcoholic beverages, could be included in the CUP. Planning staff said that conditions could be attached to the CUP but advised against structuring a permit that would require constant monitoring to ensure compliance. The Planning Commission generally agreed that limiting the space for approved off-sale of alcohol at this location would be appropriate. Commissioner Dhillon made a motion to approve the CUP with a maximum of 10% of shelf-space allowed for the off-sale of alcohol. The motion failed with no second.

Commissioner Campos then made a motion to deny the proposed CUP. This motion passed by a vote of 4-2-1, Commissioners Dhillon and Zito opposed and Commissioner Pham absent.

### **ANALYSIS**

On April 19, 2005, the applicant appealed the Commission's CUP denial decision. The issues raised in the appeal are addressed below. Please also see the original staff report for this project ("Staff Report"), attached hereto for convenient reference, for a more complete discussion of the proposed CUP.

The Permit Appeal submitted by the applicant included the following information for the reasons for appeal:

"Not all facts were communicated. Modified hours of operation: Mon – Sat 9 a.m. to 7 p.m., Closed on Sundays. Less than 10% of sales space."

In response to the modified hours of operation suggested by the applicant, the Zoning Ordinance allows the operation of the retail establishment by right between the hours of 6:00 a.m. and midnight in the DC Downtown Primary Commercial District. Staff could not limit the hours of operation of the retail establishment because the Zoning Ordinance allows such hours by right. Although the Applicant can offer to voluntarily limit its hours at this point in time, the Applicant would not be prohibited from extending those hours up to midnight in the future, since such additional hours would be allowed by right in the Downtown. Additionally, limiting the off-sale of alcohol to less than ten percent (10%) of sales space in a very small retail establishment would be difficult to consistently enforce because it would require continual site checks to ensure compliance.

With respect to limiting the percentage of shelf space to less than ten percent, Planning staff has utilized this condition in other permits to ensure that the off-sale of alcohol is clearly incidental to the overall retail use. With regard to this proposal however, the submitted plan set was unclear as to how the interior of the retail space would be laid out and utilized. Although limiting the amount of space devoted to the off-sale of alcohol is a reasonable condition, in this case, staff believes it would not obviate the larger concerns raised and discussed in the original Staff Report regarding (1) crime levels in the surrounding Downtown area, (2) the close proximity of the subject site to

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light rail and bus stops, and (3) the over concentration of existing off-sale alcohol establishments in the surrounding area.

The applicant has submitted the attached supplemental information sheet, entitled "MARKET 4 LESS," to respond to the issues raised in the Staff Report. This supplemental information shows an 8-foot long by 1-foot deep liquor display area behind the employee counter. While limiting liquor sales to this area would prevent the business from focusing all of its sales towards liquor, enforcement of this limitation would be difficult. Furthermore, the limiting of the floor area dedicated towards liquor sales does not address the crime, proximity to light rail, and over concentration issues raised earlier.

### **PUBLIC OUTREACH**

Notices for the public hearings for the project and for this appeal were mailed to the owners and tenants of all properties located within 500 feet of the project site. Additionally, prior to the public hearing, an electronic version of the staff report has been made available online, accessible from the City Council agenda, on the City's website. Staff has been available to discuss the proposal with members of the public.

### **COORDINATION**

Preparation of this memorandum has been coordinated with the City Attorney's office.

### **ENVIRONMENTAL REVIEW**

Exempt, CP04-104



STEPHEN M. HAASE, AICP DIRECTOR  
Planning, Building and Code Enforcement

#### Attachments:

- Planning Commission Staff Report & Attachments
- Synopsis of Planning Commission hearing
- Appeal Application
- Supplemental letter from applicant

cc: Applicant/Appellant