Planning Commission
Agenda Item

February 6, 2012

TO: **Chair Steiner and Members of the Planning Commission**

THRU: **Leslie Aranda Roseberry**
Planning Manager

FROM: **Chad Ortlieb**
Senior Planner

SUBJECT

PUBLIC HEARING: CUP 2839-11, Asiana Grill, 1273 N. Tustin Street, Unit A

SUMMARY

The applicant proposes to sell beer, wine, and sake under a California Department of Alcoholic Beverage Control Type 41 license in association with an approximately 2,000 square foot restaurant use.

RECOMMENDED ACTION

Adopt Planning Commission Resolution No. 06-12 entitled:

> **A RESOLUTION OF THE PLANNING COMMISSION APPROVING CONDITIONAL USE PERMIT NO. 2839-11, TO ALLOW AN ALCOHOLIC BEVERAGE CONTROL TYPE 41 LICENSE (ON-SALE BEER AND WINE - EATING PLACE) WITH A FINDING OF PUBLIC CONVENIENCE OR NECESSITY FOR AN EXISTING RESTAURANT LOCATED AT 1273 NORTH TUSTIN STREET, UNIT A**

AUTHORIZATION/GUIDELINES

Orange Municipal Code (OMC) Section 17.30.030.C. and Table 17.08.020 authorizes the Planning Commission to review and take action on Conditional Use Permits for eating establishments with the sale of alcoholic beverages in the Limited Business Tustin Redevelopment Project Area (C-TR) zone. Section 17.10.080 requires that the project be reviewed in accordance with California Environmental Quality Act provisions and the City of Orange Environmental Review Guidelines.

PUBLIC NOTICE

On January 26, 2012, the City sent a Public Hearing Notice to a total of 126 property owners/tenants within a 300-foot radius of the project site, and persons specifically requesting notice. A notice was published in the Orange City News newspaper on January 26, 2012. The project site was also posted in two locations with the notification on that same date.

ENVIRONMENTAL REVIEW

Categorical Exemption: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act per State CEQA Guidelines Section 15301 (Class 1 – Existing Facilities) because the project only involves the licensing of alcohol sales and no new construction is proposed in association with the request. There is no public review required.

No public comments have been received.

PROJECT BACKGROUND

Applicant:	William Fancher/Fancher Development Services
Property Owner:	Lazarus Days, LLC
Property Location:	1273 N Tustin Street, Unit A
Existing General Plan Land Use Element designation:	General Commercial Max. 1.0 FAR (GC)
Existing Zoning Classification:	Limited Business Tustin Redevelopment Project Area (CTR)
Old Towne:	Not Applicable
Redevelopment Project Area:	Tustin Street Project Area
Specific Plan/PC:	Not Applicable
Site Size:	161,760 square foot commercial center
Circulation:	The site is accessed by two drive entrances off Katella Avenue and two drive entrances off Tustin Street with consideration that the center is reciprocally tied to the parcels occupied by Petco and Michaels to the east and Wendy's to the south. Additional reciprocal access is obtained by the shopping center to the south.
Existing conditions:	The site consists of a 161,760 square foot commercial center consisting of three buildings located in a developed urban commercial corridor for Tustin Street and Katella Avenue. The subject tenant space is approximately 2,000 square feet and currently occupied by a Yoshinoya restaurant. (Exhibit A – Site Plan)
Surrounding land uses and Zoning:	The entire area surrounding the site consists of similar commercial retail and food service uses under the same zoning classification.

Previous Applications/Entitlements:	Although separate from the subject application, DRC No. 4598-11 has been applied for to have the Design Review Committee consider a proposal to construct exterior façade modifications and new tenant signage for the tenant's exterior.

PROJECT DESCRIPTION

The applicant proposes to sell beer, wine, and sake under a California Department of Alcoholic Beverage Control Type 41 license in association with an approximately 2,000 square foot restaurant use (Attachment 3 – Project Description). The remodeled restaurant will have 42 seats inside and no outdoor dining (Exhibit B – Floor Plan). No bar area or bar seating is proposed. Permitted alcoholic beverages would be displayed behind glass by the order intake area. No large display advertising for the alcoholic beverages is proposed. The restaurant will serve lunch and dinner (Attachment No. 5 – Menu). The hours of operation will be from 10:00 A.M. to 10:00 P.M. daily. Alcohol sales are proposed during those times. No bands, live entertainment, dancing, drink specials, amplified music, disc jockey, karaoke, pool tables, or entertainment devices are proposed with the use. Orange Police Department does not oppose the applicant's effort to obtain an Alcoholic Beverage Control Type 41 License subject to recommended conditions of approval.

Development Standards

Because no new construction is proposed and because no new parking standards or parking review is triggered due to the fact that a restaurant exists in the subject tenant space, a review of development standards is not merited for this application. Hence the table typically found in this section of the staff report to compare proposed, existing, and code required conditions has been omitted.

APPLICATION(S) REQUESTED/ REQUIRED FINDINGS

Conditional Use Permit: The applicant is requesting a Conditional Use Permit to sell beer, wine, and sake under a California Department of Alcoholic Beverage Control Type 41 license in association with an approximately 2,000 square foot restaurant use.

Required Findings:

1. A Conditional Use Permit shall be granted upon sound principles of land use and in response to services required by the community.
2. A Conditional Use Permit shall not be granted if it will cause deterioration of bordering land uses or create special problems for the area in which it is located.
3. A Conditional Use Permit must be considered in relationship to its effect on the community or neighborhood plan for the area in which it is located.

4. A Conditional Use Permit, if granted, shall be made subject to those conditions necessary to preserve the general welfare, not the individual welfare of any particular applicant.

ANALYSIS/STATEMENT OF THE ISSUES

Issue 1: Existing Licenses within 600 feet of the Site

For information purposes, staff identified the following facilities selling alcoholic beverages that are located within a 600-foot proximity to the restaurant's entrance (See Attachment 6, PC Evaluation Map).

Existing Licenses

Establishment Name	License Type	Address	Conditioned Business Hours
Orange Kat ARCO AM PM	Type 20	1935 E Katella Ave.	None
Royal Thai Orchid	Type 41	1315 N Tustin St., Suite B	None
Round Table Pizza	Type 41	1737 E Katella Ave.	None
Shiki Palace	Type 47	1936 E Katella Ave.	Alcohol service to cease one hour before closing.
CVS Pharmacy	Type 21	1535 E Katella Ave.	None
Norms Restaurants	Type 41	1550 E Katella Ave.	No alcohol served between 2 a.m. and 6 p.m.
The Rupee Room/Village Affair	Type 47	1160-1170 N Tustin St.	Alcohol service, amplified music, banquet use, and dancing limited to between 10:30 a.m. to 1:00 a.m. Alcohol service to cease one hour before closing.

Issue 2: Sensitive Receptors

The OMC requires a Conditional Use Permit for the sale of alcoholic beverages to ensure there will be no adverse impact on surrounding land uses or allow the availability of alcoholic beverages to minors. When reviewing alcohol permits, the Zoning Ordinance details specific land uses that are sensitive to alcohol activities, but does not establish any specific distances for these uses. The State Alcoholic Beverage Control Board investigation requires applicants to identify the sensitive land uses within 600 feet of the site. There exist three potentially sensitive receptors in the vicinity of the subject property:

Potential Sensitive Receptors

Establishment Name	Address	Distance To Project Site
Multi-family residential properties	E Wilson Avenue (Multiple Addresses)	200 feet and greater
Multi-family residential properties	N Shattuck Street	500 feet and greater
The Main Place Christian Fellowship	1140 N Tustin Street	500 feet

The selling of alcoholic beverages, from the project site, is not anticipated to have an adverse impact on "sensitive" land uses for the following reasons:

A. No schools, hospitals, or public playgrounds are in the vicinity of the site.
B. The residential multi-family uses are located in separate distinct areas buffered from the commercial corridor other streets, alleys, buildings, and fences.
C. The Church is located on the opposite side of the street 500 feet away in a commercial center.
D. Potential undesired side effects of overconsumption of alcohol is not anticipated to occur at the subject casual dining restaurant where food service consumption is the primary function.

Issue 3: Census Tract Alcohol and Crime Statistics Information

The Orange Police Department's Vice Unit reviewed the proposal and has determined that the location is not over-concentrated for on-sale and off-sale alcohol serving businesses. The area is considered to be high crime but the Police Department does not oppose the application due to the applicant's business plan and its history of not causing a burden on police resources combined with the proposed project conditions which are anticipated to reduce if not eliminate any detrimental effects of on-site alcohol sales. The number of alcohol licenses in the census tract followed by a summary of crime statistics in the project area is as follows:

Alcohol Licenses

	Existing	Allowed
On Sale Licenses	5	8
Off-Sale Licenses	3	5

Crime Statistics

Census Tract Arrests	Citywide Average Arrests	Percent Difference
135	74 per district	81%

Issue 4: Finding of Public Convenience or Necessity

The Planning Commission is being asked by the ABC to make a finding of public convenience or necessity. The Planning Commission may find that the sale of alcoholic beverages at a restaurant is an appropriate accessory use with the serving of food, and is a service typically expected by the public. Should the project be approved, a draft letter to the ABC finding the project merits favor based on public convenience or necessity is provided for the Commission Chair's signature (Attachment 6).

Issue 5: Proposed Condition Limiting Hours of Operation

Condition 13 in Planning Commission Resolution No. 06-12 is proposed from the Police Department to require the business hours to be limited to between 10:00 a.m. and 12:00 a.m. (midnight). The applicant proposed business hours are 10:00 a.m. to 10:00 p.m. The Police Department likely recommended Condition 13 to facilitate the option of two extra evening business hours with a midnight closing in case the proposed restaurant or their successors desire the expanded business hours.

In the last 3-4 years, the Planning Commission has taken a stance that, for the purpose of equal competition, conditions pertaining to alcohol serving restaurant hours should be applied equally to all restaurants in larger commercial centers (i.e. the Stadium Promenade). As a result, Planning Division staff has not been proposing conditions limiting business hours on all recent past Conditional Use Permits for restaurants that serve alcohol. Since Asiana Grill is not part of a larger commercial center with a number of restaurants that serve alcohol and since the center's characteristics are not quite the same as an entertainment destination focused commercial center, the Planning Division is including the Police Department recommended condition to limit business hours.

If the Planning Commission chooses to support recommended Condition No. 13, support could be based on finding that limiting hours for the proposed use is merited based on isolated circumstances of the restaurant such as the following:

- The applicant has agreed to the limited hours and has no plans to extend business hours
- There are no other alcohol serving restaurants in the center
- The center does not have an entertainment destination focus
- The center does not have independent on site security
- Since the Conditional Use Permit will run with the life of the land, the limited hours would assist in providing a regulatory safety net for any future alcohol serving restaurant that may not be as responsible as the proposed restaurant.

If the Planning Commission chooses not to support recommended Condition No. 13, removal of the condition could be based on a comparison of the hours of operation of businesses selling alcoholic beverages within 600 feet of the site as shown in the "Existing Licenses" table on page four of the staff report. None of the businesses in the table have restrictions on business hours. Several of the businesses have restrictions requiring alcohol service to cease an hour before closing. However,

conditions that restrict hours of alcohol service are antiquated because the City Attorney's Office has opined that the City is unable to regulate alcohol service hours because such regulation is a function of the State Department of Alcoholic Beverage Control which is the higher regulatory body.

ADVISORY BOARD RECOMMENDATION

No departments other than the Planning Division and Police Department needed to review the proposal. Hence, no advisory board review occurred. Staff is recommending project approval subject to recommended conditions.

ATTACHMENTS/EXHIBITS

Attachments to Report:

1. Planning Commission Resolution
2. Vicinity Map
3. Project Description
4. Site Photos
5. Menu
6. PC Evaluation Map
7. Police Department Memo Dated October 31, 2011 with Project Evaluation and Recommendation
8. Police Department Memo Dated November 2, 2011 with Recommended Conditions of Approval

Exhibits provided to the Planning Commission:

A. Site Plan date stamped February 6, 2012
B. Floor Plan date stamped February 6, 2012

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