



Planning Commission

Agenda Item

April 1, 2013

TO: Chair Steiner and
Members of the Planning Commission

THRU: Leslie Aranda Roseberry
Planning Manager

FROM: Doris Nguyen
Associate Planner

SUBJECT

PUBLIC HEARING: Conditional Use Permit 2892-13 & Administrative Adjustment 202-13 – Jeff’s Restaurant, located at 1904 N Tustin Street

SUMMARY

The applicant proposes to open a new restaurant called Jeff’s Restaurant and requests an Alcoholic Beverage Control (ABC) Type 47 license (On-Sale General for a Bona Fide Public Eating Place).

RECOMMENDED ACTION

A Resolution will be provided in the future based on the Planning Commission action.

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 alcohol beverages in the Commercial Tustin Redevelopment (C-TR) District. 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 March 21, 2013, the City sent a Public Hearing Notice to a total of 358 property owners/tenants within a 300-foot radius of the project site, and persons specifically requesting notice. The project site was also posted in two locations with the notification.

ENVIRONMENTAL REVIEW

Categorical Exemption: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Existing Facilities) because the project consists of the operation and licensing of an existing private structure. There is no environmental public review required for a Categorical Exemption.

PROJECT BACKGROUND

<i>Applicant:</i>	Jeffrey Gagnon
<i>Property Owner:</i>	Tustin Square LLC
<i>Property Location:</i>	1904 N Tustin Street
<i>Existing General Plan Land Use Element designation:</i>	General Commercial (GC)
<i>Existing Zoning Classification:</i>	Commercial-Tustin Redevelopment (C-TR)
<i>Old Towne:</i>	Not Applicable
<i>Specific Plan/PC:</i>	Not Applicable
<i>Site Size:</i>	1,440 SF tenant space on a 5.5-acre lot
<i>Circulation:</i>	The restaurant is located on the west side of Tustin Street. This segment of Tustin Street is considered a Major Arterial.
<i>Existing conditions:</i>	The site is developed with an existing commercial development. There are retail, restaurant, and office uses on-site.
<i>Surrounding land uses and Zoning:</i>	West - Residential Multi-Family (R-3) East - Commercial (C-TR) North - Commercial (C-TR) South - Commercial (C-TR) & Single-Family Residential (R-1-8)
<i>Previous Applications/Entitlements:</i>	There are no previous entitlements for this tenant space. There are not previous general entitlements that affect the entire parcel for this matter.

PROJECT DESCRIPTION

The applicant is requesting approval of CUP 2892-13 to allow an ABC Type 47 license in order to sell beer, wine, and distilled spirits at a bona fide public eating place. Jeff’s Restaurant would be a new steak house at the center. This is the first restaurant that the applicant has opened, although he has worked in the industry for decades.

The hours of operation would be 11:00 A. M. to 10:00 P.M. Monday through Sunday. The restaurant’s menu would include appetizers, salads, sandwiches, prime meats, seafood, and dessert

(See Attachment No. 5 – Restaurant Menu). There are 37 seats shown on the floor plan, broken down as 26 table seats, 7 seats at the open kitchen bar, and 4 seats at the drinks bar (see Exhibit A). There is no live entertainment or happy hours proposed.

The addition of a restaurant within this center requires an Administrative Adjustment for the reduction in 23 parking spaces (7%). Currently, the center provides 312 parking spaces. With the addition of the restaurant, 335 spaces are required. This will be discussed in more depth in the Analysis section below.

Development Standards

A review of the development standards is not merited for this application, because no new construction is proposed. 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: Conditional Use Permit (CUP) 2892-13 is proposed for the sale, service, and consumption of beer, wine, and distilled spirits under an Alcoholic Beverage Control Type 47 license (On-Sale General for a Bona Fide Public Eating Place).

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.

Administrative Adjustment: Administrative Adjustment (AA) 202-13 is proposed for the 7% reduction of required parking spaces.

Required Findings:

1. That the reduction in standards will not be detrimental to the public health, safety, and general welfare of persons residing or working on the subject property or in the vicinity.
2. That issuance of the permit does not compromise the intent of this code.

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 4, PC Radius Evaluation Map).

Existing Licenses

Establishment Name	License Type	Address
Yang Ming Garden	Type 47 (On-Sale Beer, Wine & Distilled Spirits – Eating Place)	1866 N Tustin Street
Chuck E Cheese	Type 41 (On-Sale Beer & Wine – Eating Place)	1875 N Tustin Street
Ralph’s Submarine	Type 41 (On-Sale Beer & Wine – Eating Place)	1891 N Tustin Street
Oshima Japanese	Type 41 (On-Sale Beer & Wine – Eating Place)	1956 N Tustin Street
Dona Mecha Mexican Food	Type 41 (On-Sale Beer & Wine – Eating Place)	1981 N Tustin Street
Darya Restaurant	Type 47 (On-Sale Beer, Wine & Distilled Spirits – Eating Place)	1998 N Tustin Street
Beverages & More	Type 21 (Off-Sale General) & Type 42 (On-Sale Beer & Wine – Public Premises)	2000 N Tustin Street
Polly’s Bakery & Cafe	Type 41 (On-Sale Beer & Wine – Eating Place)	2025 N Tustin Street
Zito’s Pizza	Type 41 (On-Sale Beer & Wine – Eating Place)	2036 N Tustin Street
King Lobster Palace	Type 41 (On-Sale Beer & Wine – Eating Place)	2045 N Tustin Street

Issue 2: Sensitive Receptors

The OMC requires a Conditional Use Permit (CUP) for the sale of alcoholic beverages, and for any subsequent modifications to such CUPs, to ensure there will be no adverse impact on surrounding land uses or allow the availability of alcoholic beverages to minors. For 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 are approximately 127 residences within 600’ of the subject property as listed below.

Sensitive Receptors

Establishment Name	Address	Distance To Project Site
Single-Family Residential (8)	1851, 1864, 1865, 1874,	Directly adjacent to the center on

Establishment Name	Address	Distance To Project Site
	1884, 1885, 1894, 1895 N Shattuck Pl	the south side
Single-Family Residential (8)	1859, 1860, 1869, 1870, 1879, 1880, 1892, 1893 N Nordic Place	Within 600' of the parcel
Single-Family Residential (1)	1891 N Lincoln Street	Within 600' of the parcel
Orange Plaza Apartments (106)	1449 Grove Ave #1-34 1450 Grove Ave #25-84 1410 Grove Ave #13-24	Directly adjacent to the center on the west side
Multi-Family Residential (4)	1742 Grove Ave # A-D	Within 600' of the parcel

Issue 3: Census Tract Alcohol and Crime Statistics Information

The Police Department reports, in Attachment 5, that the business is proposed within a census tract that is considered over concentrated with on-sale and off-sale Department of Alcohol Beverage Control (ABC) licenses as follows:

Alcohol Licenses

	Existing	Allowed
On Sale Licenses	18	5
Off-Sale Licenses	11	3

The ABC establishes an over concentration of alcohol licenses based on the average of alcohol licenses versus the population in a given census tract. However, the ABC and the City recognize that licenses should be reviewed on a case-by-case basis to ensure that such sales will not adversely affect surrounding residents, businesses, and institutions and to ensure that any such use operates in a manner compatible with existing and future adjacent uses.

The applicant is applying for an ABC license in Reporting District 017E, which is not considered to be a high crime area as follows:

2011 Crime Statistics

Reporting District Arrests	Citywide Average Arrests	Percent Difference
72	77	6% below average

Census tracts are defined as small geographical areas established by local committees and approved by the Census Bureau, which contain a population segment with relatively uniform economic and social characteristics and clearly identifiable boundaries averaging approximately 1,200 households.

The Police Department recommends denial of this applicant's request for a Type 47 license. This recommendation is based on:

1. The area is over concentrated by more than 3 times the allowed number of on-sale licenses. The additional license would be the 19th license when 5 are allowed. This would be the third alcohol license within the same center.
2. There are a number of apartments and single-family residences, directly adjacent to the south and west of the subject parcel.

Issue 4: Parking Reduction

The center provides 312 parking spaces, while requiring 327 spaces under the current Code requirements and existing tenant mix. This makes the center underparked by 15 spaces. If the subject tenant space were a proposed retail use, it would be permitted in the space because the Code allows large centers, over 25,000 SF to use a shopping center rate for retail uses. This center is nearly 67,000 SF. Although the previous use was a restaurant, they vacated the space in March 2009. The legal non conforming status expired 6 months after the restaurant closed.

A new restaurant within this center would require 8 additional parking spaces above what a retail use would require. These 8 spaces, plus the existing deficit of 15 spaces totals 23 spaces, which requires a 7% Administrative Adjustment. With a restaurant, there are 335 spaces required, while 312 spaces are provided.

Permit history research does not show any previous Administrative Adjustments or Variances for parking at the center. In fact, there is more parking in the center now than was previously shown in site plans from 1990.

An Administrative Adjustment would need to be approved to any restaurant in the center, regardless of whether it sells alcohol or not.

Issue 5: Options for the Planning Commission.

Staff will prepare a Resolution depending on the Planning Commission decision. Staff suggests that the Commission discuss the findings and conditions during the meeting so that a Resolution can be prepared for immediate signature instead of for discussion at a future meeting.

Option A: Continue for More Information:

If the application is continued, the applicant shall return with the information that the Planning Commission requests at a later hearing date.

Option B: Denial of the Entire Application

If the PC denies the entire application, the applicant and others would not be able to open a restaurant within the subject tenant space, nor sell alcohol.

Option C: Approval of the Parking AA and Denial of the Alcohol CUP

Approval of the parking Administrative Adjustment would allow a restaurant within the subject tenant space, but would not allow the restaurant to have an ABC Type 47 license.

Option D: Approval of the Parking AA and Approval of the Alcohol CUP

Approval of the alcohol CUP requires approval of the parking AA because a restaurant use would not be permitted without the parking AA. Since the ABC Type 47 license is for a bona fide eating place, it can only be used in conjunction with a restaurant. If the Planning Commission would like to approve both the parking AA and alcohol CUP, the Planning Department suggests that the Planning Commission add the following conditions below and those listed in Police Department Memo, included as Attachment 5. The Planning Department suggests that the PC modify Condition 8 of the PD memo as follows:

1. Modify Condition 8 of the Police Department Memo to add the following underlined text, “The sale of beer, wine, and/or distilled spirits for consumption off the premises shall be prohibited.
2. The parking configuration of the site shall conform in substance and be maintained in general conformance with the plan and the parking spreadsheet approved by the Planning Commission for Administrative Adjustment No. 202-13 on April 1, 2013, including modifications required by the conditions of approval.
3. An Administrative Adjustment for the reduction of 23 parking spaces of the required 335 parking space which represents seven percent (7%) of the required parking spaces is permitted.
4. There shall be no outdoor seating that creates additional dining space.
5. The applicant, business owner, managers, successors, and all future assigns shall comply with all Federal, State and local laws, including all City regulations. Violation of any of those laws in connection with the use will be cause for revocation of this permit.
6. Except as otherwise provided herein, this project is approved as a precise plan. After any application has been approved, if changes are proposed regarding the location or alteration of any use or structure, a changed plan may be submitted to the Community Development Director for approval. If the Community Development Director determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, the Community Development Director may approve the changed plan without requiring a new public hearing.
7. Any future expansion in area or in the nature and operation of the use approved by Conditional Use Permit No. 2892-13 shall require an application for a new or amended Conditional Use Permit.
8. Prior to the issuance of building permits, the applicant shall pay all applicable development fees including but not limited to: City sewer connection, Orange County Sanitation District Connection Fee, Transportation System Improvement Program, Fire Facility, Police Facility, Park Acquisition, Sanitation District, and School District, as required.
9. Construction permits shall be obtained for all construction work, as required by the City of Orange, Community Development Department’s Building Division and Public Works Grading Division. Failure to obtain the required building permits will be cause for revocation of this permit.

10. All structures shall comply with the requirements of Municipal Code – Chapter 15.52 (Building Security Standards), which relates to hardware, doors, windows, lighting, etc. (Ord. 7-79). Plans shall include sections of the security code that apply. Specifications, details, or security notes may be used to convey the compliance.
11. The final approved conditions of approval shall be reprinted on the first or second page of the construction documents when submitting to the Building Department for the plan check process.
12. If not utilized, project approval expires twenty-four months from the approval date. Extensions of time may be granted in accordance with OMC Section 17.08.060. The Planning entitlements expire unless Building Permits are pulled within 2 years of the original approval.

ADVISORY BOARD RECOMMENDATION

The application includes the upgrade of an alcohol license and Administrative Adjustment for a reduction in parking. An Administrative Adjustment is typically the purview of the Zoning Administrator, however, since the Planning Commission is a higher body; it becomes the final determining body. Therefore, no advisory boards were required to review the application.

ATTACHMENTS/EXHIBITS

Attachments to Report:

1. Draft Planning Commission Resolution No. PC 15-13 (reserved, will provide at a later date)
2. Vicinity Map
3. Legal Description
4. PC Radius Evaluation Map
5. Orange Police Department Memorandum
6. Restaurant Menu
7. Draft Alcohol Management Plan

Exhibits provided to the Planning Commission:

- A. Site Plan and Floor Plan (date stamp received Feb 20, 2013)

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Ascension Monjaraz, Orange Police Department