



City of Sebastopol
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APPROVED MINUTES

PLANNING COMMISSION
CITY OF SEBASTOPOL
MINUTES OF April 11, 2023

PLANNING COMMISSION:

The notice of the meeting was posted on April 6, 2023.

CALL TO ORDER: Chair Fernandez called the meeting to order at 6:00 P.M. and read a procedural statement.

1. ROLL CALL:

Present:	Chair Fernandez, Vice Chair Fritz, and Commissioners Burnes and Oetinger
Absent:	Commissioner Kelley (excused)
Staff:	Kari Svanstrom, Planning Director John Jay, Associate Planner

2. COMMENTS FROM THE PUBLIC ON ITEMS NOT ON AGENDA: None.

Steve Pierce

I'm here to talk about The Barlow Hotel. I know it is starting to move along in its process, and it was 2018 or 2019 the last time the Planning Commission considered this as a proposal, and the communication at the time was very prudent to say let's see what happens in Sebastopol after we build our first big hotel. Let's see what happens in terms of traffic and changing our town. We're talking about another \$500-plus a night hotel in Sebastopol. I'm not saying we'll end up being like Healdsburg with two hotels, but we're going down that path and it could irrevocably change the character of Sebastopol. I know two-way streets are part of this discussion. Let's hold on and see what happens with the first hotel. The developer is applying pressure to move The Barlow Hotel along, but the City has leverage, because this project needs a zoning variance to make this happen, and I support our Planning Department. If you attend the HEAD WEST festival you would see that Morris Street and the parking lot over there are crowded. How does that work with an 84-room hotel? There are quite a few issues that need to be examined, so let's go slowly and wait to see what happens with our other new hotel.

Lisa Pierce

I also strongly recommend that our town doesn't bow to the pressure of the developer regarding The Barlow Hotel. There is no reason to rush on such a major decision, and I think the new hotel that will soon be built may impact our town more than we realize, and

there is no reason to be bullied into getting this other project going before we feel confident that that is what Sebastopol wants.

3. STATEMENTS OF CONFLICTS OF INTEREST: None.

4. APPROVAL OF MINUTES:

None.

5. REGULAR AGENDA ITEMS:

A. 771 and 773 First Street – Thrive Construction Builders’ Studio – Variance

Thrive Construction Builders’ Studio is seeking approval from the Planning Commission for a Variance to allow the construction of a driveway and associated improvements to 771-773 First Street within a creek setback where typically not allowed by Chapter 17.100.060 of the Sebastopol Municipal Code. The driveway alignment conforms to the location for the shared driveway and easement requirement as approved by the City Council when the subdivision map was approved in 2002 and as recorded on the Final Map. The project is categorically exempt from the requirements of CEQA, pursuant to Section 15303, Class 3, which includes the construction and location of limited numbers of new, small facilities or structures.

Associate Planner Jay presented the staff report.

Chair Fernandez asked for Planning Commission questions of staff.

Evert Fernandez, Chair

The information we have is the up to date information from the Design Review Board as well?

John Jay, Associate Planner

The information that was provided in the packet is the most recent submittal. The Design Review Board did approve that submittal with a few conditions limiting the conditioned space of the primary residence to 3,050 square feet with 1,100 square feet of unconditioned space, and gave the Planning Department the discretion to review that without coming back to the Board. But that revised application has not been submitted the Planning Department yet.

Paul Fritz, Vice Chair

When the City Council approved this in 2002 did the zoning code have the setback? Was it something that was overlooked at the time in terms of getting this all taken care of at that time?

Kari Svanstrom, Planning Director

As far as we can tell, this Creek Ordinance was in place at that time in the same way. Generally creek ordinances that are written this way are more of a flood protection for the land and the structure in terms of not having buildings within a localized flood area. We previously talked with the Commission regarding potentially changing the Creek Ordinance in the future to be more protective of the creek, but as it stands right now it’s this more general language that most cities have for that.

Paul Fritz, Vice Chair

I went to the site and noticed that Lots 1 and 2 have a driveway built. How were they able to build a driveway without the variance?

Kari Svanstrom, Planning Director

You don't need a building permit for a driveway. They did put in utilities, which are allowed within the creek setback, so presumably they put in the utilities and then afterwards came through and did the grading for the driveway, so part of that is because Council approved it in the way they did back in 2002. This is making sure that we formalize it not just for this parcel, but you're correct, the driveway on those two parcels as well would be part of this approval.

Paul Fritz, Vice Chair

So that applies to all three parcels, the variance?

Kari Svanstrom, Planning Director

Correct.

Paul Fritz, Vice Chair

How do the California Department of Fish and Wildlife, the Sonoma County Regional Water Quality Control Board, and all those other agencies come into play? Do we have any obligation to those other entities, and if so, what are they? Is this creek setback just our zoning code?

Kari Svanstrom, Planning Director

This creek setback is our zoning code. There are requirements that they get any required permits from any of those agencies as part of their permitting process, and that is actually part of when the subdivision was approved there was a California Environmental Quality Act review study done for that and there was a Mitigated Negative Declaration, which means that they looked at potential impacts and did find some of significance, but they were able to be mitigated, and so there are mitigations included in this subdivision resolution that is attached to the staff report, and those would apply. So any necessary permits, usually that is when you're a little bit closer to the creek, when you're building a bridge over a creek or something like that, and it gets pretty technical in terms of where you're putting the foundations and stanchions and everything like that, and in terms of whether you're subject to that or not. Both the City Engineer and I will be reviewing that to make sure if there are any other permits, that they are processed.

Paul Fritz, Vice Chair

I see the plans and where they're proposing to put things. When we're approving the variance, the variance is just to allow the creation or construction of the driveway in the creek setback, but is there any specific boundaries they're saying, or is it like per the submitted plans, or is it just anywhere you want in the setback? Is there some kind of language, or what is the controlling mechanism of that?

Kari Svanstrom, Planning Director

Every approval that we have starts off with staying in substantial conformance with the approved plans, except as modified by, and then the rest of the conditions. As Associate Planner Jay noted, we are asking that the small portion that is within the floodable area of 1% chance, that the driveway be removed from that area, so that would be a modification and would actually bring it farther out away from the creek.

Kathy Oetinger, Commissioner

I had a similar question about the existing driveway on Lots 1 and 2. When I see the actual driveway it's a pretty straight shot after you turn the corner and head south that on all the existing drawings I've seen the driveway tends to have an S-curve. Again, it's that question of whether we're actually approving that driveway that is there now, or whether we're approving something that is in an actual drawing at some point, and I have a problem with that because I don't know what we're really looking at, I don't know exactly where it's going to be.

Kari Svanstrom, Planning Director

This is maybe a question for the applicant if you're able to coordinate, or the engineer is here as well. Do they intend to do any modifications to the existing driveway on Lots 1 and 2? Obviously, the work on Lot 3 is outlined pretty clearly in the drawings. Is that the question, Commissioner Oetinger?

Kathy Oetinger, Commissioner

Yes, but we can talk about that when we're asking the applicant. My other question to staff would be the building envelopes being a 20 feet setback from the northern property line. Is that cast in stone? It seems like we have also allowed a lot shorter distances.

Kari Svanstrom, Planning Director

It is cast in stone. When a building envelope is set like this it overrules any particular zoning envelope, because this was done as part of the actual subdivision. So, for instance, the north setback is 5 feet. Probably for the zone it could potentially be larger, but because of the way this went through the process the particular building envelopes and the particular setbacks were set as part of this, and I will note it went through a couple of design review iterations. There is a huge heritage tree that is being saved that would not be saved if you move the house closer to that property line.

Kathy Oetinger, Commissioner

I read that also. My other question, I didn't watch the Design Review Board meeting at all, and I'm wondering if in keeping with the character of that neighborhood there was any requirement for gutters and sidewalks along First Street, or whether that will remain pretty much as it has been engineered so far?

Kari Svanstrom, Planning Director

There were no requirements. This is essentially a landlocked parcel without the easement driveway in, which is part of what we're discussing in terms of the access, but this parcel would not be required to do any sort of curb of gutter sidewalk.

Kathy Oetinger, Commissioner

Down at the bottom of Lot 1.

Kari Svanstrom, Planning Director

No, this is Lot 3, the last lot to be developed. There is no requirement for them to do that on Lot 1 or offsite.

Kathy Oetinger, Commissioner

Or on any of the lots?

Kari Svanstrom, Planning Director

Yes, exactly. And Commissioner Oetinger, that's one where yes, Lots 1 and 2 are not developed at this point, but if you wanted to provide direction to staff for Lot 1, you can certainly do that during your deliberations in terms of anything like that.

Kathy Oetinger, Commissioner

But we are establishing a variance if we do for all three parcels?

Kari Svanstrom, Planning Director

Correct, but not development metrics. I believe R3 requires sidewalks when it's on the property, so when Lot 1 develops it would require that to be continued.

Evert Fernandez, Chair

First of all, for public disclosure, I did go to the site and did a walk-through. Could you expand a little bit more on the City Attorney's comment about Planning Commission denial being equivalent to a taking?

Kari Svanstrom, Planning Director

I'm going to ask our City Attorney, Larry McLaughlin, who is here on the screen, to comment on that.

Lawrence McLaughlin, City Attorney

We've also had this looked at by outside counsel. An argument can in fact be made that because when the City Council approved this subdivision back in 2002 it approved it in the configuration that's shown on the drawings that it might have de facto created a variance just by creating that subdivision in the way that it did. But putting that aside, it's apparent that the variance is required for any reasonable development of this lot, so when you create a subdivision in that manner you really have no option but to allow a variance from that, otherwise you've denied the property owner a viable use of his property. So that's the reason for my opinion and why I advise that this variance should be granted under the circumstances.

Chair Fernandez asked for further Commission questions of staff. Seeing none, he opened public comment and asked the applicant to make a presentation.

Kari Svanstrom, Planning Director

The applicant has let us know that they don't have any formal presentation, but they are available for questions. Just to note again, our City Engineer is here, but the applicant's attorney and civil engineer are available. And Chair Fernandez, I believe there was the question about whether any modifications to the driveway on Lots 1 and 2 were proposed.

The applicant's attorney made a presentation and was available for questions.

Chair Fernandez asked for Planning Commission questions of the applicant's attorney or civil engineer.

Kathy Oetinger, Commissioner

I can see it applying to Lots 1 and 2, but I have a hard time seeing it apply to Lot 3, since this driveway does go to Lot 3.

Tina Wallis, Attorney

I want to make sure I understand your question. You're asking about the variance requirement?

Kathy Oetinger, Commissioner

A variance for a driveway going all the way to Lot 3. It seems like there's already one that goes up to Lot 3, but it doesn't seem like the positioning of the driveway on Lot 3 has been established or approved previously.

Tina Wallis, Attorney

What I understand is that that driveway on all of the lots was approved in 2001, and also approving this variance is the only way to avoid a landlocked parcel and to avoid a takings. The owners have been through a lot, they want to work cooperatively with the City, and they do appreciate the awkwardness of having a variance before you that must be approved under the law. As to the location of the driveway on Lot 3 on the map, I'm going to ask Mr. Mosier to provide more detail, please.

Chad Mosier, Civil Engineer

If you look at the package that was submitted with this, there is a driveway that's shown in there that leads up to the proposed house locations, and so that would be the driveway that lies within the creek setback zone and it would connect to the existing driveway that goes up there, and there is no design beyond that point. We're going to utilize that existing driveway. The only thing that I would imagine would happen there would potentially be a repave given the condition of the existing driveway, but we would not be changing the location of that existing driveway.

Tina Wallis, Attorney

If I could add, there is a packet in the staff report. I have the hard copy, so I don't have the PDF page number. Kari, it looks like it's from the Recorder's Office; it's got a 647 at the top. If you look at that you can see how the driveway reaches the boundary of Lot 3, but it does not reach the building envelope on Lot 3, and what needs to happen is the driveway needs to go to the building envelope so that a structure can be constructed there.

Evert Fernandez, Chair

It looks like that area where the driveway is proposed has been flooded. What plans might be conceived to avoid that in the future?

Tina Wallis, Attorney

I don't have any firsthand information about flooding, however, as both your City Attorney, City staff, and the applicant's engineer can tell you, there are a number of standards that come into play and all the legally required standards will be met. I don't know if Mr. Mosier can elaborate on those standards.

Chad Mosier, Civil Engineer

There is a 100-year flood elevation along that creek and the houses of course are out of that, and I believe the roadbed itself is actually out of that, so up to the 100-year flood we shouldn't be experiencing any issues beyond that; that's unknown.

Chair Fernandez asked for Planning Commission questions of the applicant. Seeing none, he requested comments from the public.

Dan Salvadori

I had a question. We haven't seen any plans for the house now that the Design Review Board has limited its size, 1,000 square feet less, and under those conditions do you even need a variance? Can the driveway now be put up to the building envelope without building within the 30-foot setback, and so it becomes unnecessary? Is that possible? Another thing

that I came across in the geotechnical report is a note on page 5, Item D, about lateral spreading and lurching, and it says, "Lurching is an action which produces cracks and fissures parallel to streams or banks when the earthquake motion is at right angles. According to surface features in the topography data, the banks of the creek are shallow, 2-5 feet, and they could be prone to lurching under a moderate to large seismic event, however, the map shows an approximate 30-foot setback from the creek and this *should* be an adequate setback distance for future structures and improvements." Did anybody take this into consideration when they granted this thing at all? Because they are saying that if you have less than a 30-foot setback then the structures put there are going to be subject to damage from a moderate earthquake, and we had one not eight months ago and I bought earthquake insurance because my whole house on Jewell Avenue shook.

Chair Fernandez asked for further comments from the public. Seeing none, he closed public comment.

The Commission discussed the application as follows:

Evert Fernandez, Chair

Can we answer the question regarding the smaller footprint and whether it still necessitates having a variance?

Kari Svanstrom, Planning Director

Let me share the screen and go back to where the driveway alignment was approved and recorded. So that's the property line. The creek setback is dashed here, and then the driveway, and you can see that it was actually constructed with this little bit of curve up here. The distance between the driveway easement, which is where the drive is allowed to be by law—easements are a form of ownership—and the creek setback here is about 3 feet. To get a 16-18 foot wide driveway, there's no way to do that coming into the property and still have a driveway not in the creek setback. Do you understand what I'm saying, Commissioner Oetinger, because I think this was one of your questions? If you were to continue this line of the driveway you are in the creek setback on this parcel, so you can't have a 3-foot driveway and just stop the road. You'd have a sidewalk basically, so there's no actual way to do that without having a variance on this parcel. As well, we require two parking spaces, and you need a driveway to get to your parking spaces, and so obviously the variance being requested is for the creek setback, not for parking, for the property.

Kathy Oetinger, Commissioner

So that driveway is intuited to be there, but not actually drawn?

Kari Svanstrom, Planning Director

Correct, and the reason it's not drawn is because an easement is a form of ownership, so Lot 3 has rights of the driveway, access rights and the public utility rights to do improvements to get to their lot, and that's considered a form of ownership. When you see the title you'll see the parcel, but you'll also see those rights on the deed, and that's not something that can just be erased. The Lots 1 and 2 can't erase it and just pretend it doesn't exist, and the Lot 3 has a right to do that. Lot 3 also can't require those property owners to change it, and we can't condition a project on another property owner's approval to change something on their property, and so that's why this variance request is coming to you tonight. Tina, did you have anything you wanted to add to that? Then I will ask Laco to respond to the lateral spreading and lurching question.

Tina Wallis, Attorney

I do understand that the garage location, even when the plans are resubmitted, will not be changing from prior design iterations, which again ties into the driveway location. As your Planning Director pointed out, with just the tiny distance between the creek it is not possible to have a driveway to access this property without this variance, and as I believe your City Attorney noted, there is a de facto approval existing from 2001 that you are formalizing. I'll defer to Mr. Mosier on the geotechnical issues and the lurching and ask him to provide a more technical response. Obviously, as we know, any structure in California is prone to seismic activity. Mr. Mosier, do you have anything to add?

Chad Mosier, Civil Engineer

I don't really have much to add; I'm not a geotechnical engineer. What I can tell you is that during the design of this building, when it goes to actual structural design, the geotech's report will be taken into consideration. The building falls outside of that 30-foot setback, so really what we're talking about here is the driveway portion of the project. There shouldn't be any major impacts from lurching; it would be inconvenient but not detrimental.

Evert Fernandez, Chair

I have question for our City Attorney. Let's say the Commission approves this variance and it is appealed to the City Council, are they in the same situation in denying that variance?

Lawrence McLaughlin, City Attorney

Yes, I would give the City Council the exact same advice.

Evert Fernandez, Chair

So let's bring it back to the Commissioners for any other questions, comments, or motions.

The Commission discussed the application as follows:

Paul Fritz, Vice Chair

I have a typo to correct in Exhibit A, Item 5, just an A missing from the word "area." It's on page 10 of the PDF.

Vice Chair Fritz made a motion to approve a Variance for 771 and 773 First Street.

Commissioner Oetinger seconded the motion.

Kathy Oetinger, Commissioner

I really wanted to clear up exactly where the lines were in that driveway, because any person looking at that would wonder why that was permitted, and there were also some suggestions for other locations for the driveway. I also stepped over the chain link fence to walk into the property and think that it would be fine and that improvements to the slope would help it a lot. I did also notice that the existing asphalt is falling apart there. It looks like they are planning for a permeable surface that might be a little less likely to fall apart in that way if it's interlocking. But otherwise, yes, I support the variance as well.

Evert Fernandez, Chair

I will make a comment. It's an unusual situation where this project was already approved and gives the Commission unfortunate limitations to what we can do with that. Normally this would come to the Planning Commission first for the variance and then it would proceed for further approval.

Deborah Burnes, Commissioner

You actually said my comment, Chair Fernandez. It felt like our hands are tied.

AYES: Chair Fernandez, Vice Chair Fritz, and Commissioners Burnes and Oetinger

NOES: None

ABSTAIN: None

ABSENT: Commissioner Kelley

B. 6811 Laguna Park Way – Goatlandia – Conditional Use Permit

The request is to operate a full vegan kitchen and restaurant that will have over 50 seats and includes indoor and outdoor seating. Goatlandia also intends to sell beer and wine under a Type 41 alcohol license and intends on playing house-recorded music. The project is categorically exempt from the requirements of CEQA pursuant to Section 15301, Existing Facilities.

Associated Planner Jay presented the staff report.

Chair Fernandez asked for Planning Commission questions of staff.

Kathy Oetinger, Commissioner

Since we've discussed noise and sound and music at the site already, I noticed three areas where I thought there was some confusion. One is on the recommendations. I see in the staff report you mentioned Peacetown, but then you also say, "No sound may emanate from the building which can be heard more than 50 feet from business site," which seems like a different standard. Then on Condition of Approval 4, "No sound may emanate from the building which violates the Noise Ordinance or causes undue disturbance of neighbors," and I was wondering about people up the hill. Then Condition of Approval 12, "Music may be conducted inside the establishment only. Doors and windows closed during any activity," and it seemed like there's a lot of variance in there and I think we should clean that up somehow. But Peacetown, I think, should be allowed to make some noise and I would think that even amplified sound could be ambient outdoors as well, and be specified rather than only inside the building.

John Jay, Associate Planner

Maybe I can clarify it a little bit easier. For the Peacetown concert series, when Peacetown is here in town operating during those times, outside of that window they would be subject to the regular Sound Ordinance and Noise Ordinance conditions, so they are in there to make sure that the restaurant would be subject to the Noise Ordinance and those conditions outside of the Peacetown summer series, so it wouldn't be year round allowance for the same noise level that would be allowed during Peacetown.

Kathy Oetinger, Commissioner

It's confusing to me how sound cannot emanate from the building, and yet it can be heard no more than 50 feet away. Fifty feet away from the building is outside the building, and in one case it says it can't be outside the building and the other case says can be 50 feet away.

Kari Svanstrom, Planning Director

Fifty feet away from the business site, which is across the street. So that isn't just outside the building. You can still have noise on the property, but 50 feet away from the parcel.

Kathy Oetinger, Commissioner

Is that the Peacetown?

Kari Svanstrom, Planning Director

I think that can be part of the discussion, because we do still have a Noise Ordinance, but I don't know if that's a little bit higher than the no sound 50 feet from the site. If they wanted to exceed, there is a downtown noise permit that can be granted, but it's only allowed in the Downtown Commercial zone, and most of Peacetown is not in Commercial zone but a downtown zone. This is the only site that is, but they would need to ask for that entitlement. The applicant may be able to clarify what they plan on doing regarding Peacetown.

Kathy Oetinger, Commissioner

So according to Condition of Approval 12, except for Peacetown, at all other times music must be inside the establishment only with doors and windows closed. Is that really what we're asking them? So there's no sound in the patio area at all?

Kari Svanstrom, Planning Director

I will note some of these are the existing conditions that are part of the original approval, but as written it does say, "Recorded background music can be done only inside the establish." I think their intent is to do it outside, and so, again, that's probably something to be clarified in the conditions.

Paul Fritz, Vice Chair

A follow up on Condition of Approval 12, because it says all doors and windows during any music inside should be closed. The doors and windows are a piece of vinyl, so I don't know that that's really doing anything, so I agree Condition 12 needs to be reexamined. My other question is I know on the application they said it sounds like more of a dinner place from 5:00pm to 9:00pm. They will let the kitchen be used more for lunchtime, but I do see Condition 5, so the Planning Director should be able to modify the hours. In case they ever want to be open for lunch and expand their hours, do we need to state that in the conditions or can we just leave that up to the Planning Director to do that if that opportunity presents itself? I guess it's maybe more of a question for the Commission, so that's a public discussion item.

Deborah Burnes, Commissioner

I was going to say the same thing, that their hours of 5:00pm to 9:00pm should be extended now so they don't have to come back in case they decide to do lunch, as well as we have had sound issues at this site, so I think you guys just tackled both of my questions.

Evert Fernandez, Chair

I also had the same comment regarding the hours, and another question. Is there any intent to do any off-sale alcohol?

John Jay, Associate Planner

Yes, the applicant did want to have an off-sale opportunity, and under Type 41 ABC does allow them to do that, but we did include that as Condition of Approval 9. Normally that would have no off-sale beer and wine, but we did change that to have, "No beer or wine shall be displayed within 5 feet of the front door or cash register," so it does allow them to do off-sale if they want to.

Chair Fernandez asked for further Commission questions of staff. Seeing none, he opened public comment and asked the applicant to make a presentation.

The applicant gave a presentation and was available for questions.

Chair Fernandez asked for Planning Commission questions of the applicant.

Evert Fernandez, Chair

There was a question regarding the hours. Staff has recommended pushing you up to seven days a week so in case you ever want to do that you don't have to come back, and then what about the hours? Do you want to expand those as well?

Christina Sachs, Applicant

To streamline the process so we don't have to come back and do a review, we can absolutely say we can apply for seven days a week and extending to lunch hours. It's not within our proposal right now, but it is really great to have the option.

Chair Fernandez asked for further Commission questions of the applicant. Seeing none, he requested comments from the public.

Steve Dillin

I live up the street at 375 Taft Street and myself and 11 other members of my street had ongoing problems from the previous business. It looked like it was going in a direction we didn't like with the previous businesses use permit, and then he pulled that permit. I understood at the time that that use permit was dead, so when there is discussion about the use permit, I don't know what that use permit is. We have the same concerns about recorded music, because it's amplified music, and whether there is going to be some sound mitigation or at least reasonable addressing of the neighbors once the business gets established. The Peacetown thing, you all take care of that. It's loud, but I don't think anything they could do there would exceed what we hear from Peacetown, but we know it's limited during the year and we're okay with it.

Chair Fernandez asked for further public comments. Seeing none, asked for questions of staff or the applicant.

Evert Fernandez, Chair

There was a question regarding where we stand with the current use permit that goes with that property.

Kari Svanstrom, Planning Director

Steve Dillin is correct; the Bar B Que Smokehouse use permit to have additional music events was withdrawn by the owner when he retired. When we refer to the conditions in the original use permit, I don't know if it was the 2010 or so, but the original alcohol use permit did not... Condition 12 that we included was to note specifically that live music and entertainment isn't...it's not an entertainment venue and therefore it's not being permitted as that.

Evert Fernandez, Chair

The intent is to rent out the kitchen to other (inaudible), which is great; there's always a need for that. Are there any conditions of approval that relate to that that we should be aware of or consider?

Kari Svanstrom, Planning Director

I think understanding that the hours of operation are likely to be very different compared to the service hours. I do agree with the Commission and with Associate Planner's Jay's

recommendation that we shouldn't limit it to the five days, 5:00pm to 9:00pm, because there's no reason to. Associate Planner Jay and I had talked about seven days, and I'm not sure if Christine knows when they might start cooking in the morning, but in terms of morning hours I think it could go as early as 7:00am if someone wanted to do a breakfast kind of a thing, but otherwise the 9:00pm hour ending time makes sense, and I think that would also cover any of the commissary. The restaurant is an allowed use, so really this is simply the alcohol use permit and some of the ancillary activities that happen when people imbibe in an outdoor patio kind of a setting and making sure that those are appropriately conditioned.

Chair Fernandez asked for further questions of staff or the applicant. Seeing none, he closed public comment

The Commission discussed the application as follows:

Paul Fritz, Vice Chair

I think we should discuss Condition 12 to figure out what we want to say. I think background music is acceptable, so I think that's fine, and obviously they still need to comply with the City's Noise Ordinance, so no sound more than 50 feet from the property, but this condition needs to be cleaned up a bit.

Kathy Oetinger, Commissioner

The requirement that it's just inside, and the closed doors and windows.

Paul Fritz, Vice Chair

If they have some speakers out in the table area outside, I think that's fine as long as it's not loud enough to be heard 50 feet across the street, so I'm okay with kind of quiet background music; it's not a concert place other than possibly during Peacetown, and I understand that's a separate use permit that grants that activity.

Kari Svanstrom, Planning Director

I have the condition on the screen. It is, "The establishment is not approved as an entertainment venue. Dancing and/or regular live music shall not be permitted on the premises without prior City approval." So those are staying. "As an incidental use, recorded background music and occasional live acoustic music may be conducted inside the establishment only." Would you want to restrict live acoustic music to still be inside? Maybe the applicant can address this. Do you intend to have any live music at all?

Christina Sachs, Applicant

We do not have the intention to do live music; recorded music only.

Kari Svanstrom, Planning Director

So it make sense to just say, "As an incidental use, recorded background music is allowed."

Paul Fritz, Vice Chair

Yes, and take out the part about the doors and windows.

Kari Svanstrom, Planning Director

"The Police Department or Planning Director may require termination or modification of such activity," we can leave that in, because obviously if it's outside and too loud, then we would want them to modify it to turn it down.

Paul Fritz, Vice Chair

Could we say at the end of that, "Recorded background music is allowed within the confines and allowances of the Noise Ordinance," or something like that?

Kari Svanstrom, Planning Director

Yes, or, "As long as it cannot be heard more than 50 feet away from the business," because that's far easier to regulate.

Paul Fritz, Vice Chair

Yes, that's fine.

Kari Svanstrom, Planning Director

And just to remind everyone, 50 feet is the width of Laguna Park Way, so if you're standing on the sidewalk on the other side of Laguna Park Way you shouldn't be able to hear the music from the venue.

Evert Fernandez, Chair

Condition 10 talks about placement of bottles into outdoor recycling bins only during the hours of 9:00am to 9:00pm, but previously it says 9:00am to 10:00pm in the beginning description.

Kari Svanstrom, Planning Director

I believe our standard is 9:00am to 9:00pm, and I would suggest we keep it 9:00pm.

Chair Fernandez made a motion to approve a Conditional Use Permit for 6811 Laguna Park Way with Planning Commission recommended modifications.

Commissioner Oetinger seconded the motion.

AYES: Chair Fernandez, Vice Chair Fritz, and Commissioners Burns and Oetinger

NOES: None

ABSTAIN: None

ABSENT: Commissioner Kelley

Kari Svanstrom, Planning Director

Did we modify the hours of operation?

Paul Fritz, Vice Chair

We didn't change the time.

Kari Svanstrom, Planning Director

Chair Fernandez, would you like to amend your motion?

Evert Fernandez, Chair

Yes, I amend my motion to include the modifications to the conditional approval and to allow for seven days with operating hours of 9:00am to 9:00pm.

Paul Fritz, Vice Chair

I would suggest we leave in the previous language that said the Planning Director could modify the hours, in case they want to start at 8:00am or something.

Kari Svanstrom, Planning Director

So just modify the hours but not the ability to adjust, and that would be seven days and 9:00am to 9:00pm.

Paul Fritz, Vice Chair

Correct.

Kari Svanstrom, Planning Director

Does the seconder of the motion agree with that amended motion?

Kathy Oetinger, Commissioner

I repeat my second.

AYES: Chair Fernandez, Vice Chair Fritz, and Commissioners Burns and Oetinger

NOES: None

ABSTAIN: None

ABSENT: Commissioner Kelley

6. SUBCOMMITTEE UPDATES

None.

7. PLANNING DIRECTOR'S REPORT

A. Hybrid meeting format updates

B. Other

Director Svanstrom provided updates.

The Commission asked questions of Director Svanstrom.

8. ADJOURNMENT: Chair Fernandez recessed the meeting at 7:11 p.m. for five minutes before returning for the Planning Commission training video. The next regularly scheduled Planning Commission meeting will take place on Tuesday, April 25, 2023 at 6:00 p.m.

9. REGULAR AGENDA ITEMS

A. Training Video