



AGENDA MEMO

PLANNING COMMISSION MEETING DATE: JULY 24, 2008

DEPARTMENT: PLANNING AND DEVELOPMENT

ITEM DESCRIPTION: SUP-28467 - APPLICANT/OWNER: AAMAX ENTERPRISES, LLC

**** CONDITIONS ****

STAFF RECOMMENDATION: DENIAL. If Approved, subject to:

Planning and Development

1. Conformance to all minimum requirements under LVMC Title 19.04.010 for Beer/Wine/Cooler Off-Sale Establishment use, including parking requirements.
2. Approval of this Special Use Permit does not constitute approval of a liquor license.
3. This business shall operate in conformance to Chapter 6.50 of the City of Las Vegas Municipal Code.
4. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.
5. The sale of individual containers of any size of beer and wine coolers is prohibited. All such products shall remain in their original configurations as shipped by the manufacturer. Further, no repackaging of containers into groups smaller than the original shipping container size shall be permitted.

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**** STAFF REPORT ****

PROJECT DESCRIPTION

This is a request for a Special Use Permit for a proposed Beer/Wine/Cooler Off-Sale Establishment within a proposed 1,992 square-foot General Retail Store with a Waiver to allow a distance separation of 360 feet from a protected use, where 400 feet is required at 540 Eastern Avenue, Suite #145. The proposed use does not satisfy all of the Title 19.04 Special Use Permit requirements; staff recommends denial of this request.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
08/06/52	The subject property was Annexed (Ordinance Number 498) into the City of Las Vegas as part of larger request.
09/18/02	The City Council approved a request for a Rezoning (Z-0062-02) from: R-E (Residence Estates) to: C-1 (Limited Commercial) on 1.79 acres at 540 North Eastern Avenue. The Planning Commission and staff recommended approval.
09/18/02	The City Council approved a request for a Site Development Plan Review [Z-0062-02(1)] and a Reduction of the Perimeter Landscaping Requirements to allow a five foot wide landscape planter on the north property line, where an eight-foot wide landscape planter is required for a proposed 25,200 square-foot commercial center on 1.79 acres at 530 and 540 North Eastern Avenue. The Planning Commission recommended approval. Staff recommended denial.
03/17/04	The City Council approved a request for a Special Use Permit (SUP-3636) for a Liquor Establishment (Off-premise Consumption) in conjunction with a proposed grocery store adjacent to the east side of Eastern Avenue 150 feet north of Mesquite Avenue. The Planning Commission and staff recommended approval.
03/16/05	The City Council approved a request for a Reinstatement and Extension of Time (EOT-6043) for an approved Rezoning (Z-0062-02) from: R-E (Residence Estates) to: C-1 (Limited Commercial) on 1.79 acres at 540 North Eastern Avenue. Staff recommended approval of this request.

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05/30/06	The Planning and Development Department received a Special Use Permit (SUP-13887) for a proposed Gaming Establishment within a proposed Restaurant on the east side of Eastern Avenue, approximately 153 feet north of Mesquite Avenue. This request was withdrawn (08/11/06) without prejudice.
09/06/2006	The City Council approved a request for a Special Use Permit (SUP-13882) for a Supper Club on 2.07 acres on the east side of Eastern Avenue, approximately 153 feet north of Mesquite Avenue. The Planning Commission and staff recommended approval of this request.
09/06/2006	The City Council approved a Special Use Permit (SUP-13884) for a General Business-Related Gaming Establishment within an Existing Restaurant on 2.07 acres on the east side of Eastern Avenue approximately 153 feet north of Mesquite Avenue. The Planning Commission recommended approval, staff recommended denial.
09/06/2006	The City Council approved a request for a Variance (VAR-14355) to allow a 20-foot Residential Adjacency Setback, where 70.75 feet is required for a proposed 30,904 square-foot retail center on 2.07 acres on the east side of Eastern Avenue, approximately 153 feet north of Mesquite Avenue. The Planning Commission and staff recommended denial of this request.
<i>Related Building Permits/Business Licenses</i>	
09/08/89	A building permit (#89038647) was issued for a Tenant Improvement- Interior Remodel at 530 N. Eastern Avenue. A final inspection was completed 11/15/89.
07/28/06	A building permit (#07001537) was issued for a Certificate of Completion on Retail Shell Building B at 540 N. Eastern Avenue. A final inspection was completed 01/03/08.
07/28/06	A building permit (#07001538) was issued for a Certificate of Completion on Retail Shell Building A at 546 N. Eastern Avenue. A final inspection was completed 01/03/08.
<i>Pre-Application Meeting</i>	
05/29/08	A pre-application meeting was held and elements of this application were discussed. In addition to this application, a Waiver of the 400 feet minimum distance separation requirement from a religious institution was discussed and required by the applicant.
<i>Neighborhood Meeting</i>	
A neighborhood meeting is not required, nor was one held.	
<i>Field Check</i>	
06/11/08	A field check was made on site. The site is currently developed with several businesses operating on site.

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<i>Details of Application Request</i>	
<i>Site Area</i>	
Net Acres	2.0

Surrounding Property	Existing Land Use	Planned Land Use	Existing Zoning
Subject Property	Undeveloped/ Commercial	SC (Service Commercial)	R-E (Residence Estates) under Resolution of Intent to C-1 (Limited Commercial) and C-1 (Limited Commercial)
North	Commercial/ Retail Center	SC (Service Commercial)	C-1 (Limited Commercial)
South	Commercial/ Retail and Apartments	M (Medium Density Residential) and SC (Service Commercial)	R-3 (Medium Density Residential) and C-1 (Limited Commercial)
East	Undeveloped and Single Family Residences	M (Medium Density Residential)	R-3 (Medium Density Residential)
West	Commercial/ Retail	SC (Service Commercial)	C-1 (Limited Commercial)

<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Purpose and Overlay Districts		X	N/A
Trails		X	N/A
Rural Preservation Overlay District		X	N/A
Development Impact Notification Assessment		X	N/A
Project of Regional Significance		X	N/A

DEVELOPMENT STANDARDS

Pursuant to Title 19.10, the following parking standards apply:

Parking Requirement							
<i>Use</i>	<i>Gross Floor Area or Number of Units</i>	<i>Parking Ratio</i>	<i>Required</i>		<i>Provided</i>		<i>Compliance</i>
			<i>Parking</i>		<i>Parking</i>		
			Regular	Handi-capped	Regular	Handi-capped	
Financial Institution	1,360 SF	1/200 GFA	7 Spaces				
Restaurant	2,500 SF	1/50 GFA	50 Spaces				
Restaurant	846 SF	1/200 GFA	5 Spaces				
General Retail	26,198 SF	1/250 GFA	105 Spaces				
SUB TOTAL			161	6	97	5	N*
TOTAL			167		102		N*

* A Variance (VAR-13881) was approved to allow 103 parking spaces where 167 spaces are required and to allow two loading zones where three are required.

ANALYSIS

- **Zoning**

The subject property is located in a C-1 (Limited Commercial) zoning district. The C-1 (Limited Commercial) district is intended to provide most retail shopping and personal services, and may be appropriate for mixed-use developments. This district should be located on the periphery of residential neighborhoods and should be confined to the intersections of primary and secondary thoroughfares along major retail corridors. The C-1 District is consistent with the Service Commercial, and the Neighborhood Center categories of the General Plan. The proposed use as a Beer/Wine/Cooler Off-Sale Establishment within a proposed General Retail Store is permissible in the C-1 District with approval of a Special Use Permit. This application is intended to satisfy this requirement.

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- **Use**

Beer/Wine/Cooler/Off-Sale Establishment is defined as an establishment whose license to sell alcoholic beverages is limited to the sale of beer, wine and coolers to consumers only and not for resale, in original sealed or corked containers, for consumption off the premises where the same are sold, and is operated in connection with a grocery store, drug store, convenience store or specialty merchandise store.

The proposed 1,992 square-foot General Retail Store will sell beer, wine and coolers in conjunction with their retail goods. The floor plan does not designate the location for the sale of beer, wine and coolers.

- **Minimum Special Use Permit Requirements:**

Pursuant to its general authority to regulate the sale of alcoholic beverages, the City Council declares that the public health, safety, and general welfare of the City are best promoted and protected by requiring that:

- (1) Except as otherwise provided in this Chapter, no beer/wine/cooler on-sale establishment (hereinafter establishment) shall be located within 400 Feet of any church, synagogue, school, child care facility licensed for more than 12 children, or City park.
- (2) Except as otherwise provided in Requirement (3) below, the distances referred to in Requirement (1) shall be determined with reference to the shortest distance between two property lines, one being the property line of the proposed establishment which is closest to the existing use to which the measurement pertains, and the other being the property line of that existing use which is closest to the proposed establishment. The distance shall be measured in a straight line without regard to intervening obstacles. For purposes of measurement, the term property line refers to property lines of fee interest parcels and does not include the property line of:
 - (a) Any leasehold parcel; or
 - (b) Any parcel which lacks access to a public street or has no area for on-site parking and which has been created so as to avoid the distance limitation described in Requirement (1).
- (3) In the case of an establishment proposed to be located on a parcel of at least eighty acres in size, the minimum distances referred to in Requirement (1) shall be measured in a straight line:

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- (a) From the nearest property line of the existing use to the nearest portion of the structure in which the establishment will be located, without regard to intervening obstacles; or
 - (b) In the case of a proposed establishment which will be located within a shopping center or other multiple-tenant structure, from the nearest property line of the existing use to the nearest property line of a leasehold or occupancy parcel in which the establishment will be located, without regard to intervening obstacles.
- (4) When considering a Special Use Permit application for an establishment which also requires a waiver of the distance limitation in Paragraph (1), the Planning Commission shall take into consideration the distance policy and shall, as part of its recommendation to the City Council, state whether the distance requirement should be waived and the reasons in support of the decision.
- (5) The minimum distance requirements in Paragraph (1) do not apply to:
- (a) An establishment which has a non-restricted gaming license in connection with a hotel having two hundred or more guest rooms on or before July 1, 1992 or in connection with a resort hotel having in excess of two hundred guest rooms after July 1, 1992; or
 - (b) A proposed establishment having more than fifty thousand square feet of retail floor space.
- (*6) All businesses which sell alcoholic beverages shall conform to the provisions of Chapter 6.50 of the Las Vegas Municipal Code.
- (7) The minimum distance requirements set forth in Requirement 1, which are otherwise nonwaivable under the provisions of Section 19.040.050(A)(4), may be waived:
- (a) In accordance with the provisions of Section 19.040.050(A)(4) for any establishment which is proposed to be located on a parcel within the Downtown Casino Overlay District;
 - (b) In accordance with the applicable provisions of the Town Center Development Standards Manual for any establishment which is proposed to be located within the T-C (Town Center) Zoning District and which is designated MS-TC(Main Street Mixed Use) in the Town Center Land Use Plan;

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(c) In connection with a proposed establishment having between 20,000 square feet and 50,000 square feet of retail floor space, if no more than 10 percent of the retail floor space is regularly devoted to the display or merchandising of alcoholic beverages; or

(d) In connection with a retail establishment having less than 20,000 square feet of retail floor space, if the area to be used for the sale, display or merchandising of alcoholic beverages and each use to be protected are separated by a highway or right-of-way with a width of at least 100 feet.

The proposed 1,992 square-foot General Retail Store does not meet the minimum Special Use Permit requirement set forth in # 1. The applicant does however meet the requirement set forth in # 7 (d), which may allow the 400 feet distance separation from any church, synagogue, school, child care facility licensed for more than 12 children, or City park waived based on the retail establishment having less than 20,000 square feet of retail floor space and if the area to be used for the sale, display or merchandising of alcoholic beverages and each use to be protected are separated by a highway or right-of-way with a width of at least 100 feet. Therefore the applicant should apply for a Waiver to allow a distance separation of 360 feet from a protected use, where 400 feet is required.

FINDINGS

In order to approve a Special Use Permit application, per Title 19.18.060 the Planning Commission and City Council must affirm the following:

- 1. The proposed land use can be conducted in a manner that is harmonious and compatible with existing surrounding land uses, and with future surrounding land uses as projected by the General Plan.**

The proposed land use cannot be conducted in a manner that is harmonious and compatible with existing surrounding land uses, and with future surrounding land uses as projected by the General Plan. Title 19 Development Standards require a Beer/Wine/Cooler/Off-Sale Establishment to be a minimum of 400 feet from any church, synagogue, school, childcare facility licensed for more than twelve children or City Park, as measured from property line to property line. In this case, this use does not meet the minimum distance separation requirements, as such there has been a Church identified within 400 feet of the subject property. The Church is located at 2413 Cedar Avenue which is approximately 360 feet away from the proposed Beer/Wine/Cooler/Off-Sale Establishment.

- 2. The subject site is physically suitable for the type and intensity of land use proposed.**

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The subject site is physically suitable for the type and intensity of land use proposed. Under the current C-1 (Limited Commercial) district, the subject site is physically suitable for a proposed Beer/Wine/Cooler Off-Sale establishment within a General Retail Store; however the applicants need for a Waiver indicate that there are other sites within the City of Las Vegas that would be more suitable.

3. Street or highway facilities providing access to the property are or will be adequate in size to meet the requirements of the proposed use.

The site gains access from Eastern Avenue, a 100-foot Primary Arterial as designated in the Master Plans Streets and Highways. Eastern Avenue provides adequate access to and from the shopping center.

4. Approval of the Special Use Permit at the site in question will not be inconsistent with or compromise the public health, safety, and welfare or the overall objectives of the General Plan.

A Beer/Wine/Cooler Off-Sale Establishment within a General Retail Store will be subject to regular City and County inspections for licensing; therefore, public health, safety, and welfare will not be compromised.

5. The use meets all of the applicable conditions per Title 19.04.

The use does not meet all of the applicable conditions per Title 19.40; due to the proximity to a Church; a Waiver to allow a distance separation of 360 Feet from a protected use, where 400 feet is required has been requested.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 9

ASSEMBLY DISTRICT 11

SENATE DISTRICT 2

NOTICES MAILED 470

APPROVALS 4

PROTESTS 0