

**AGENDA MEMO****CITY COUNCIL MEETING DATE: APRIL 7, 2010****DEPARTMENT: PLANNING AND DEVELOPMENT****ITEM DESCRIPTION: VAR-37295 - APPLICANT/OWNER: WINNER PROPERTIES, LLC**

**** CONDITIONS ****

Staff recommends DENIAL. The Planning Commission (7-0) recommends APPROVAL, subject to conditions:

Planning and Development

1. Conformance to the conditions of approval for Special Use Permit (SUP-36961) and Site Development Plan Review (SDR-36962), if approved.
2. This approval shall be void two years from the date of final approval, unless a building permit has been issued for the principal building on the site. An Extension of Time may be filed for consideration by the City of Las Vegas.

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**** STAFF REPORT ****

PROJECT DESCRIPTION

The applicant is requesting a Variance to allow no additional parking spaces where 36 additional parking spaces are required for the expansion of an existing Supper Club located on a portion of 36.8 acres at 9500 West Sahara Avenue. The pad site with the proposed expansion is located on the south side of an existing commercial subdivision. The proposed design of the expansion will not provide any additional parking spaces to be incorporated into the site. As this is due to site design and not the physical characteristics of the land, the hardship is self-imposed and denial is recommended. If this application is denied, associated requests for a Site Development Plan Review (SDR-36962) and Special Use Permit (SUP-36961) must also be denied.

ISSUES

- Approval of this request is necessary for the approval of a companion Site Development Plan Review (SDR-36962) and companion Special Use Permit (SUP-36961).
- The subject site is part of a commercial subdivision with shared access and parking throughout.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc and Property Sales</i>	
12/22/80	The City Council approved a request for Annexation (A-0018-80) of a parcel of land generally bounded by Sahara Avenue on the south, Hualapai Way on the west, Ducharme Avenue on the north and Durango Drive on the east, containing approximately 2,246 acres of land. Planning Commission and staff recommended approval.
02/15/89	The City Council approved a Rezoning (Z-0139-88) application for the reclassification of property from N-U (Non Urban) under Resolution of Intent to R-PD4 (Residential Planned Development - 4 Units Per Acre), P-R (Professional Office and Parking), C-1 (Limited Commercial), and C-V (Civic), to R-PD7 (Residential Planned Development- 7 Units Per Acre), R-3 (Medium Density Residence), and C-1 (Limited Commercial) for property generally located on the west side of Fort Apache Road, between Sahara Avenue and Charleston Boulevard. The Planning Commission and staff recommended approval.

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07/14/97	The City Council approved a request for a Special Use Permit (U-0049-97) for a proposed Tavern in conjunction with restaurant on property located on the north side of Sahara Avenue, west of Fort Apache Road. Planning Commission and staff recommended approval.
	The City Council approved a request for a Special Use Permit (U-0050-97) for a proposed Tavern with a Waiver of the 1,500-foot distance separation requirement from an existing and proposed tavern on property located on the north side of Sahara Avenue, west of Fort Apache Road. Planning Commission and staff recommended approval.
10/27/97	The City Council approved a request for a Site Development Plan Review [Z-0139-88(19)] for a proposed 8,400 square-foot one story retail building located at 9310 West Sahara Avenue. The Planning Commission recommended approval of the request.
11/24/97	The City Council approved a request for a Site Development Plan Review [Z-0139-88(21)] for a proposed 16,708 square-foot one story drugstore with drive-through located on the northwest corner of Sahara Avenue and Fort Apache Road. The Planning Commission recommended approval of the request.
01/26/98	The City Council approved a request for a Special Use Permit (U-0128-97) for the sale of Packaged Liquor in conjunction with a proposed 16,708 square-foot drugstore on property located on the northwest corner of Sahara Avenue and Fort Apache Road. Planning Commission recommended approval.
03/23/98	The City Council approved a request for a Site Development Plan Review [Z-0139-88(23)] for a proposed 4,716 square-foot restaurant located on the north side of Sahara Avenue, west of Fort Apache Road. The Planning Commission recommended approval of the request.
04/27/98	The City Council approved a request for a Special Use Permit (U-0146-97) for a proposed three-story, non-gaming residence hotel, consisting of seventy-three one-bedroom units on property located on the north side of Sahara Avenue, west of Fort Apache Road. Planning Commission recommended approval.
	The City Council approved a request for a Special Use Permit (U-0020-98) for a Restaurant Service Bar in conjunction with a proposed 3,784 square-foot restaurant located at 9350 West Sahara Avenue. Planning Commission recommended approval.
05/11/98	The City Council approved a request for a Special Use Permit (U-0031-98) for the On-Premise sale of Beer and Wine in conjunction with a proposed restaurant located at 9350 West Sahara Avenue. Planning Commission recommended approval.

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06/08/98	The City Council approved a request for a Special Use Permit (U-0038-98) for a proposed Supper Club in conjunction with a proposed 6,648 square-foot restaurant on property located on the north side of Sahara Avenue, west of Fort Apache Road. Planning Commission recommended approval.
	The City Council approved a request for a Site Development Plan Review [Z-0139-88(24)] for a proposed 27,418 square-foot two-story retail and office building and a 33,207 square-foot two-story retail and office building located on the north side of Sahara Avenue, west of Fort Apache Road. The Planning Commission recommended approval of the request.
09/28/98	The City Council approved a request for a Special Use Permit (U-0080-98) for the On-Premise sale of Beer and Wine in conjunction with a proposed 2,160 square-foot restaurant located on the northwest corner of Fort Apache Road and Sahara Avenue. Planning Commission recommended approval.
	The City Council approved a request for a Site Development Plan Review [Z-0139-88(27)] for a proposed 4,212 square-foot commercial retail building located on the northwest corner of Sahara Avenue and Fort Apache Road. The Planning Commission recommended approval of the request.
10/12/98	The City Council approved a request for a Special Use Permit (U-0090-98) for a proposed Supper Club in conjunction with a proposed 6,990 square-foot restaurant on property located on the north side of Sahara Avenue approximately 1,400 feet west of Fort Apache Road.
10/16/98	The City Council approved a request for a Site Development Plan Review [Z-0139-88(29)] for a proposed 3,190 square-foot restaurant located on the north side of Sahara Avenue, west of Fort Apache Road. The Planning Commission recommended approval of the request.
11/09/98	The City Council approved a request for a Special Use Permit (U-0115-98) for a proposed Supper Club in conjunction with a proposed 8,802 square-foot restaurant on property located on the north side of Sahara Avenue, west of Fort Apache Road.
07/12/06	The City Council approved a Variance (VAR-12102) to allow 2,404 parking spaces where 2,440 is the minimum number of spaces required in conjunction with the addition of a 1,200 square-foot restaurant within the existing shopping center. The Planning Commission recommended approval and staff recommended denial.
01/22/10	The Planning and Development Department administratively approved a Minor Amendment (SUP-37062) to a previously approved Special Use Permit (U-0038-98) to allow alcohol service into an additional 617 square-feet of existing outdoor seating at an existing 6,648 square foot Supper Club at 9500 West Sahara Avenue.
02/25/10	The Planning Commission recommended APPROVAL of the companion items SUP-36961 and SDR-36962 concurrently with this agenda.
	The Planning Commission (7-0) recommends APPROVAL (PC Agenda Item #11/gk)

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<i>Related Building Permits/Business Licenses</i>	
07/15/98	A building permit (#98014454) was issued for a new restaurant Certificate of Occupancy at 9500 West Sahara Avenue. The building permit was finalized on 02/02/99.
	A building permit (#98014455) was issued for on-site improvements and hardscapes at 9500 West Sahara Avenue. The building permit was expired on 04/01/00.
09/02/98	A building permit (#98017819) was issued for on-site fire and water at 9500 West Sahara Avenue. The building permit was expired on 04/01/00.
11/09/98	A building permit (#98022139) was issued for patio addition for a restaurant at 9500 West Sahara Avenue. The building permit was expired on 04/01/00.
11/18/98	A building permit (#98022669) was issued for a sign at 9500 West Sahara Avenue. The building permit was finalized on 02/02/99.
12/17/98	A business license (#L21-00012) was issued for a Supper Club at 9500 West Sahara Avenue. The license was marked out on 12/08/09.
09/02/99	A building permit (#99017403) was issued for two illuminated wall signs at 9500 West Sahara Avenue. The building permit was finalized on 09/16/99.
11/13/09	A building permit (#151159) was issued for an illuminated wall sign at 9500 West Sahara Avenue. The building permit has not been finalized.
12/07/09	A temporary business license (#L21-92278) was issued for a Supper Club at 9500 West Sahara Avenue. The license is still active.
12/08/09	A business license (#R09-00907) was issued for a Restaurant seating 45 people or more at 9500 West Sahara Avenue. The license is still active.
<i>Pre-Application Meeting</i>	
09/16/09	A pre-application meeting was held where submittal requirements for a Site Development Plan Review were discussed. Topics discussed included: • Title 19 Zoning Code requirements • Application Materials and Documents • Meeting Dates and Deadlines
<i>Neighborhood Meeting</i>	
A neighborhood meeting was not required, nor was one held.	

<i>Field Check</i>	
12/22/09	During a routine site inspection staff observed a well maintained commercial center.

<i>Details of Application Request</i>	
<i>Site Area</i>	
Gross Acres	36.8

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Surrounding Property	Existing Land Use	Planned Land Use	Existing Zoning
Subject Property	Shopping Center	SC (Service Commercial)	C-1 (Limited Commercial)
North	Apartments	M (Medium Density Residential)	R-PD21 (Residential Planned Development – 21 Units Per Acre), R-3 (Medium Density Residential)
South	Bank, Apartments	SC (Service Commercial), M (Medium Density Residential)	C-1 (Limited Commercial), R-PD20 (Residential Planned Development – 20 Units Per Acre)
East	Commercial Shopping Center	M (Medium Density Residential), SC (Service Commercial)	C-1 (Limited Commercial), R-PD18 (Residential Planned Development – 18 Units Per Acre)
West	Library, Church, Apartments	PF (Public Facilities), SC (Service Commercial), M (Medium Density Residential)	C-V (Civic) C-1 (Limited Commercial), R-3 (Medium Density Residential)

<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Area Plan		X	N/A
<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Purpose and Overlay Districts		X	
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

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DEVELOPMENT STANDARDS

Pursuant to Title 19.10, the following parking standards apply:

Parking Requirement							
Use	Gross Floor Area or Number of Units	Required			Provided		Compliance
		Parking Ratio	Parking		Parking		
			Regular	Handi-capped	Regular	Handi-capped	
Commercial Center (Existing)	425,720 S.F.		2,406	34	2,324	80	
SubTotal			2,440		2,404*		
Supper Club (Proposed Increase)	1,392 S.F.	1:50	28		0	0	
	1,428 S.F.	1:200	8				
SubTotal			34	2			
TOTAL			2,476		2,112**		N

*As approved by Variance (VAR-12102)

**Per physical inventory

ANALYSIS

The applicant is requesting a Variance to allow no additional parking spaces where 36 additional parking spaces are required for a proposed 2,820 square-foot expansion of an existing Supper Club. The proposal includes 2,036 square-feet of additional building area and 784 square-feet of additional outdoor seating area. A companion Site Development Plan Review (SDR-36962) and companion Special Use Permit (SUP-36961) have been submitted to address the proposed expansion.

The subject site is located within a commercial subdivision with reciprocal parking and access throughout. A previous Variance (VAR-12102) was approved in 2006 to allow 2,404 parking spaces where 2,440 spaces were required. There are currently 2,112 spaces that are provided within the commercial subdivision, based on a physical inventory conducted by staff during a field check. The previous Variance was calculated based on the individual uses that existed at the site at the time of the request. A condition has been added to require a revised site plan and parking analysis for the entire commercial subdivision prior to or at the time of submittal for a building permit.

The current request is to account for the increase in parking that is required as a result of the proposed expansion of the existing Supper Club use only, or 36 spaces. Currently, Title 19.04 allows parking for either a Shopping Center or a Regional Mall to be calculated at the rate of one space per 250 square feet of gross floor area, regardless of the individual uses. This would result in a parking requirement of 1,703 spaces for the entire commercial subdivision, and a Variance would not be necessary as there are 2,112 spaces provided. However, per Title 19.04, a Shopping Center is limited to a minimum of 25,000 to 350,000 square feet of gross floor area

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and a Regional Mall is defined as an enclosed structure with a minimum of 350,000 square feet of gross floor area, with typical means of access to the various uses from inside the mall structure. The subject site does not meet either of these requirements as the gross floor area exceeds the maximum 350,000 square feet allowed for Shopping Center, and consists of numerous pad sites containing buildings with less than 350,000 square feet of gross floor area each, and with separate outside access from one another. Therefore, the parking requirement for the overall commercial subdivision must be calculated based on the individual uses.

The additional required parking spaces result in an increase in the parking deficiency of the overall commercial subdivision, and the applicant has provided no evidence of a unique or extraordinary circumstance that would substantiate the Variance request; therefore staff is recommending denial of the request as the applicant has created a self-imposed hardship by proposing to overbuild the site.

FINDINGS

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070L states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship. Alternative development of the site with a reduced building footprint would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

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PC ACTION

The Planning Commission amended conditions as shown.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED

8

NOTICES MAILED

1,489 (By City Clerk)

APPROVALS

6

PROTESTS

5