



City of Huntington Beach Planning Department
STUDY SESSION REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning & Building
BY: Jill Arabe, Assistant Planner 
DATE: June 14, 2011
SUBJECT: SIX-MONTH REVIEW OF CONDITIONAL USE PERMIT NO. 09-001 (DIGG'S RESTAURANT & BAR)

**APPLICANT/
BUSINESS**

OWNER: Philip Chung, Digg's Restaurant & Bar, 8052 Adams Avenue, Huntington Beach, CA 92646

PROPERTY

OWNER: Henry Chung, 434 W. Summerfield Circle, Anaheim, CA 92802

LOCATION: 8052 Adams Avenue, 92646 (southeast corner of Beach Blvd. and Adams Ave.)

STATEMENT OF ISSUE:

This item represents a six-month review of Conditional Use Permit (CUP) No. 09-001, approved by the Planning Commission on June 23, 2009. The previous applicant (Sandbox Sports Grill), for whom the CUP was originally granted, vacated the subject property prior to completion of all conditions of approval. Within 12 months of the approval of CUP No. 09-001, the current applicant (Digg's Restaurant & Bar) applied for a certificate of occupancy, requesting transfer of the existing entitlement. The transfer was granted through an acceptance of conditions agreement and the certificate of occupancy was issued in November 2010.

Conditional Use Permit No. 09-001 permitted the establishment of alcohol service within a 1,110 sq. ft. outdoor dining area of an existing 5,539 sq. ft. restaurant at 8052 Adams Avenue. When Conditional Use Permit No. 09-001 was approved, the Planning Commission required a review of the use within six (6) and twelve (12) months of the approval of CUP No. 09-001 (Condition of Approval No. 3). Because the site was vacated prior to the required reviews, the condition applies from the date of the issuance of the certificate of occupancy for the current business.

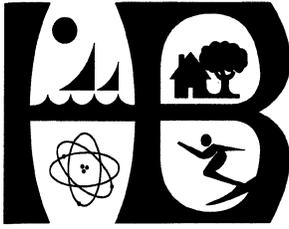
The purpose of the review is to verify compliance with the conditions of approval and assess any potential impacts to surrounding properties resulting from the occupancy of the new business. The review considered police and code enforcement complaints and included on-site inspections and monitoring by

Police, Planning, and Code Enforcement staff. To date, one complaint has been received regarding noise emanating from the live entertainment/dj in the restaurant on Sunday nights.

A noticed public hearing of the six-month review is scheduled for the June 24, 2011, Planning Commission meeting.

ATTACHMENTS:

1. Planning Commission Notice of Action dated June 24, 2009 (CUP No. 09-001)
2. Code Enforcement Division Memorandum dated June 7, 2011
3. Police Department Memorandum dated June 3, 2011



Huntington Beach Planning Commission

2000 MAIN STREET

CALIFORNIA 92648

NOTICE OF ACTION

June 24, 2009

Scott Natvig, Architect
12528 Gilmore Avenue
Los Angeles, CA 90066

SUBJECT: CONDITIONAL USE PERMIT NO. 09-001 (SANDBOX SPORTS GRILL)

APPLICANT: Scott Natvig, Architect

REQUEST: To permit the establishment of 1) a 150 sq. ft. indoor area for dancing, 2) alcohol service within a 1,110 sq. ft. outdoor dining area, and 3) valet service for an existing 5,539 sq. ft. sports bar restaurant

PROPERTY OWNER:

Antonio Orlando, 8052 Adams Avenue, Huntington Beach, CA, 92646

LOCATION: 8052 Adams Avenue, 92646 (southeast corner of Beach Blvd. and Adams Avenue)

DATE OF ACTION: June 23, 2009

On Tuesday, June 23, 2009, the Huntington Beach Planning Commission took action on your application, and your application was **conditionally approved**. Attached to this letter are the findings and conditions of approval.

Please be advised that the Planning Commission reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to commencement of the project. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your total application. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Zoning and Subdivision Ordinance requirements.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Planning Commission becomes final at the expiration of the appeal period. A person desiring to appeal the decision shall file a written notice of appeal to the City Clerk within ten (10) calendar days of the date of the Planning Commission's action. The notice of appeal shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal. Said appeal must be accompanied by a filing fee of One Thousand, Five Hundred Forty-One Dollars (\$1,541.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property and Two Thousand Three Hundred

ATTACHMENT NO. 1.1

Seventy-Nine Dollars (\$2,379.00) if the appeal is filed by any other party. In your case, the last day for filing an appeal and paying the filing fee is July 6, 2009 at 5:00 PM.

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless actual construction has started.

"Excepting those actions commenced pursuant the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to Government Code §66020."

If you have any questions, please contact Jill Arabe, the project planner, at jarabe@surfcity-hb.org or (714) 374-5357 or the Planning Department Zoning Counter at (714) 536-5271.

Sincerely,

Scott Hess, Secretary
Planning Commission

By:



Herb Fauland, Planning Manager

SH:HF:JA:lw

Attachment: Findings and Conditions of Approval – CUP No. 09-001

c: Honorable Mayor and City Council
Chair and Planning Commission
Fred Wilson, City Administrator
Scott Hess, Director of Planning
Bill Reardon, Division Chief/Fire Marshal
Leonie Mulvihill, Senior Deputy City Attorney
Steve Bogart, Senior Civil Engineer
Gerald Caraig, Permit-Plan Check Manager
Property Owner
Project File

ATTACHMENT NO. 1.2

ATTACHMENT NO. 1

FINDINGS AND CONDITIONS OF APPROVAL

CONDITIONAL USE PERMIT NO. 09-001

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301 of the CEQA Guidelines, because the project involves negligible or no expansion of the existing restaurant use.

FINDINGS FOR APPROVAL – CONDITIONAL USE PERMIT NO. 2009-001:

1. Conditional Use Permit No. 2009-001 for the establishment, maintenance and operation of alcohol service and consumption within an existing outdoor dining patio of an existing restaurant will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The existing outdoor dining area is located north of the subject restaurant and oriented towards arterial streets, so potential noise do not impact residential uses to the south and east of the commercial center. Alcohol service will be in conjunction with food service, such that the restaurant use will be consistent both within the exterior of the northwest patio and within the interior of the building. The project will be modified to remove the 150 sq. ft. dance floor and valet plan because these additional requests may cause detrimental impacts related to noise and traffic. The restaurant will remain as an eating and drinking establishment.
2. The conditional use permit will be compatible with surrounding uses because nearby residential uses are buffered from the existing outdoor dining area by buildings and parking lots. Noise generated by the outdoor dining patrons will be consistent with a restaurant use. Outdoor dining patrons may only be served and consume alcohol in conjunction with food service, such that the restaurant use remains unaltered. Vehicular traffic and noise will be similar to other eating and drinking establishments within close proximity to residential uses. The outdoor dining patio is surrounded by minimum five (5) foot high screen walls and building walls to restrict access to and from the area and to minimize noise spreading to residential uses.
3. The granting of the conditional use permit, as modified by conditions of approval, will not adversely affect the General Plan. It is consistent with the following goals and policies of the General Plan:

A. Land Use Element

Policy LU 10.1.6 Require that commercial projects abutting residential properties adequately protect the residential use from the excessive or incompatible impacts of noise, light, vehicular, traffic, visual character, and operational hazards.

ATTACHMENT NO. 1.3

Policy LU 10.1.8 Require that entertainment, drinking establishments, and other similar uses provide adequate physical and safety measures to prevent negative impacts on adjacent properties.

The subject site operates with alcohol service and live entertainment, which are ancillary to the restaurant use. The proposed alcohol service and consumption within the existing outdoor dining area is compatible with the restaurant use and neighboring commercial uses. The expansion of the alcohol menu to the existing outdoor area does not increase the intensity of the permitted use. As suggested by condition of approval, the alcohol service and consumption will be in conjunction with food service. The outdoor dining patio is located along the north and west exterior of the building towards the arterial streets. It is surrounded by the building and minimum five (5)-foot high screen walls. The residential uses are buffered from the patio area by commercial buildings, parking lots, and perimeter walls. Also, the restaurant is the furthest building from nearby residential properties, which offers adequate relief. The restaurant will operate with conditions placed on the Entertainment Permit issued by the Police Department.

B. Noise Element

Objective N 1.4 Minimize noise spillover or encroachment from commercial and industrial land uses into adjoining residential neighborhoods or "noise sensitive" uses.

The expansion of alcohol service and consumption in conjunction with food service will not increase the existing conditions generated by patrons utilizing the outdoor dining area. The outdoor patio is located towards the arterial streets and further away from residents. Vehicular traffic along the arterial streets absorbs noise generated by the outdoor dining patrons. The outdoor patio located southeast of the building will not be utilized by patrons as modified by a condition of approval.

CONDITIONS OF APPROVAL – CONDITIONAL USE PERMIT NO. 09-001:

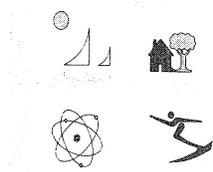
1. The site plan, floor plan, and elevation received and dated May 4, 2009, shall be the conceptually approved design with the following modifications:
 - a. The 150 sq. ft. dance floor shall be removed.
 - b. The proposed valet parking plan shall be removed.
 - c. The proposed (2) parking spaces south of the subject building shall be removed.
2. The use shall comply with the following:
 - a. Dancing shall be prohibited (PD).
 - b. Valet service shall not be permitted until such time a revised valet plan is submitted to the Planning Department for review and approval by the Planning Commission.
 - c. Doors shall remain closed during hours of operation.
 - d. Alcoholic beverages may only be served and consumed in conjunction with food service within the 1,110 sq. ft. outdoor dining patio along the north and west side of the building. The area shall be monitored for compliance by Code Enforcement and the Police Department.

ATTACHMENT NO. 1.4

- e. A security guard shall be on duty to monitor parking, trash, and noise from 7pm until a minimum one-half hour after closing.
 - f. Patrons will not be permitted in the patio areas along the south and east sides of the business. (PD)
 - g. Food from the regular restaurant menu must be available from opening until one-half hour prior to the scheduled closing time. (PD)
 - h. The use shall conform with all conditions of the Entertainment Permit as approved by the Police Department.
 - i. All previous conditions of approval per Conditional Use Permit No. 94-9 shall apply.
3. A review of the use shall be conducted by the Planning Commission with public hearing within (6) months and (12) months of Conditional Use Permit No. 09-001 approval to verify compliance with all conditions of approval and applicable Chapters of the Huntington Beach Zoning and Subdivision Ordinance. At that time the Planning Commission may consider modifications to the conditions of approval.
 4. The Planning Commission reserves the right to amend the conditions or revoke Conditional Use Permit No. 09-001 if any violation of these conditions of the Huntington Beach Municipal or HBZSO occurs.
 5. The Development Services Departments (Building & Safety, Fire, Planning, and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Planning Commission's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Planning Commission may be required pursuant to the provisions of HBZSO Section 241.18.
 6. Incorporating sustainable or "green" building practices into the design of the proposed structures and associated site improvements is highly encouraged. Sustainable building practices may include (but are not limited to) those recommended by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Program certification (<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>) or Build It Green's Green Building Guidelines and Rating Systems (<http://www.builditgreen.org/index.cfm?fuseaction=guidelines>).

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING AND BUILDING

www.huntingtonbeachca.gov

Planning Division

714.536.5271

Building Division

714.536.5241

Date: June 7th, 2011
To: Jill Arabe, Assistant Planner
From: Kathy Schooley, Code Enforcement Officer
Location: Diggs Restaurant and Bar 8052 Adams Avenue

Summary of Inspection:

A six-month review of the Conditional Use Permit was performed at Digg's Restaurant and Bar located at 8052 Adams. The inspection revealed the front doors were secured open in violation of CUP 09-001 2c. No other violations were found during the review that would appear to fully justify modifying or revoking Conditional Use Permits 94-9 or 09-001.

Summary of CUP Conditions:

1. Dancing is not permitted.
2. Security guard on duty to monitor parking, trash and noise.
3. Doors shall remain closed during business hours.
4. Valet service shall not be permitted.
5. Food service from the restaurant menu must be available from opening until one-half hour prior to the scheduled closing time.

Code Enforcement Complaints:

There has been one call for service regarding noise in which the complaining party states the music is excessive on Sunday nights. Upon inspection, Code Enforcement found the doors to be open thus exasperating the noise levels. The restaurant and bar close at 9pm on Sunday.



CITY OF HUNTINGTON BEACH

2000 MAIN STREET
P.O. BOX 70

POLICE DEPARTMENT

CALIFORNIA 92648
Tel: (714) 960-8811

Kenneth W. Small
Chief of Police

Date: June 3, 2011
To: Jill Arabe, Planning Department
From: Kevin Kesler, Special Investigations Bureau Vice Unit
Subject: Police Department Six Month Review: DIGGS Restaurant
Location: 8052 Adams Avenue

Summary:

A six month review of incidents requiring police services was performed at DIGGS Restaurant, located at 8052 Adams, as required by Condition of Appeal No. 3 of CUP 09-001. No violations were found during the review that would appear to fully justify modifying or revoking the Conditional Use Permit. There was however, some very concerning behavior regarding a number of substantial potential violations which will be addressed in further detail herein. The Police Department review found no violation of conditions contained in CUP 09-001. However, conditions contained in CUP 94-9 regarding security were violated.

Summary of CUP Conditions:

DIGGS Restaurant was granted a Conditional Use Permit (09-001) authorizing service/on-site consumption of alcohol in the outdoor dining area. CUP 94-9 permits live entertainment. Provided below is a summary of the CUP conditions:

1. Dancing is prohibited.
2. Doors shall remain closed during business hours.
3. A security guard shall be on duty to monitor parking, trash and noise from 7 PM until a minimum of one-half hour after closing.

Summary of ABC Conditions:

DIGGS Restaurant was granted a type 47 ABC license (ABC License # 47-500159). Provided below is a summary of the ABC license conditions:

1. Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of 10:00 AM and 12:00 midnight Sunday through Thursday and 10:00 AM and 2:00 AM Friday and Saturday.

2. There will be no dancing allowed on the premises.

Crime Analysis:

As part of the review, Vice Detectives examined calls for service, crime reports, and arrests at the above location since the location has had an active entertainment permit (11/01/2010 to Present). There have been no police calls for service at the location which were directly related to DIGGS restaurant other than the incident described below.

Vice Detectives received information regarding a private party at the location scheduled for Saturday 19 March. Promotional fliers for the event stated there would be “stripper poles” and “dance stages” at the private party. When detectives researched the website referenced on the promotional flyer (<http://plushparties.net>) it was readily apparent the private party was intended to be a sexually oriented event commonly referred to as a “swingers party”. Prior to the event occurring, the owner was contacted and warned that dancing and sexually oriented business activities were not authorized with his current permit. He was told he would be in violation of his Entertainment Permit, Conditional Use Permit and the Huntington Beach Municipal Code if he allowed the event to occur. The owner agreed not to allow the activities.

During a subsequent inspection on 3/19/2011, officers noted what appeared to be a dance area located near the DJ where the furniture had been moved out of the way. Officers also noted that it appeared individuals were in the process of setting up for the event. There was lighting equipment and at least one table with a variety of sex-related devices including condoms displayed on it along with a quantity of flyers for the event promoter.

Officers additionally noted the on-site security guard did not have a State of California Guard Card, as is required per the current entertainment permit. A report was taken and citation issued under DR 2011-4387.

A follow up inspection by officers was performed on 4/2/2011. During the inspection officers noted live entertainment was being performed, however no security guards were present as is required by the Entertainment Permit. The owner was contacted and stated he told his security guards not to show up as there were not that many customers. A report was taken and citation issued under DR 2011-05181.

Vice has performed two undercover inspections at the location. No violations were noted during those inspections. During the inspections no customers were dancing, however two areas appeared to be cleared out (tables removed from the dining area floor) to allow for dancing.

Recommendation:

Based on the foregoing information, the Huntington Beach Police Department has found the public peace, safety and welfare has not been negatively impacted by the issuance of this Conditional Use Permit. It is obvious however, that had the police department been less proactive in their efforts, the business owner would have willingly violated his Conditional Use Permit, Entertainment Permit and the Huntington Beach Municipal Code even after being

cautioned against doing so. I therefore recommend the CUP be reviewed again for compliance in six months. I also recommend the responsibility of the owner to follow all the conditions imposed on the operation of his business be reiterated to him. Specifically, the CUP condition prohibiting dancing, regulations related to sexually oriented business activities and the Entertainment Permit condition requiring the use of licensed Security Staff. If any future modifications are made, it is recommended the hours listed in the ABC license (condition #1 above) for sales, service and consumption of alcohol be added to the CUP.