

City of Hesperia

STAFF REPORT



DATE: May 7, 2019

TO: Mayor and Council Members

FROM: Nils Bentsen, City Manager

BY: Mike Blay, Assistant City Manager
Chris Borchert, Acting Principal Planner
Daniel Alcayaga, Senior Planner

SUBJECT: Appeal APP19-00001; Applicant: M.O.R.R. (Round Table Pizza); APN: 0410-135-56

RECOMMENDED ACTION

It is recommended that the City Council consider Appeal APP19-00001 and adopt either Resolution No. 2019-16 denying the appeal and upholding the Planning Commission's decision to deny CUP19-00002, or Resolution No. 2019-17 approving the appeal and overturning the Planning Commission's decision to deny CUP19-00002.

DISCUSSION

Conditional Use Permit and Finding of Public Convenience

On January 15, 2019, Round Table Pizza filed an application for CUP to allow for the sale of beer, wine and liquor for on-site consumption (Type 47) at 17376 Main Street, Unit C (Attachment 1). This CUP involves consideration of a Type 47 license (On-Sale General for Bona Fide Public Eating Place).

The Planning Commission reviews applications for Conditional Use Permits (CUP) for on-site alcohol establishments (i.e. restaurants). Planning Commission decisions may be appealed to the City Council.

The Main Street and Freeway Corridor Specific Plan requires approval of a CUP to allow for on-site alcohol sales. California Department of Alcoholic Beverage Control (ABC) allows a maximum of six on-sale licenses within Census Tract 100.13 at which point the census tract is considered to be over concentrated. There are already currently six active on-sale licenses within this census tract requiring a finding of public convenience or necessity in addition to the CUP.

March 14, 2019 Planning Commission Meeting Decision

On March 14, 2019, staff presented CUP19-00002 to the Planning Commission with a recommended approval because it was in line with prior approvals and a finding of public convenience or necessity could be made.

The Planning Commission reviewed and denied CUP19-00002 with a vote of 4-0. The consensus reached by the Commission was that approving the alcohol license for Round Table Pizza would force current tenant Pasco's Pizza, a neighboring business, to move out of the shopping center.

On March 22, 2019, an appeal was filed by a representative of Round Table Pizza. Round Table Pizza would like the Council to reconsider the Commission's decision on the CUP

March 14, 2019 Applicant and Stakeholder Testimony

Testimony given at the meeting by the applicant and owners of Pasco's Pizza indicated a private civil dispute between Pasco's Pizza and the shopping center owner, as well as Round Table Pizza and the shopping center owner.

The following testimony was given during the hearing:

- Round Table Pizza representatives stated that they entered into a lease that gave them exclusivity within the shopping center (Attachments 2 & 3). Round Table Pizza stated the proposed Round Table Pizza is a clubhouse, not a bar and was catering to families and that the site was selected because of its location and size after being approached by the shopping center owner.
- Pasco's Pizza Owner (current tenant in the shopping center) expressed a desire to remain located at the center and stated that they would be forced to relocate if Round Table Pizza established there.

Subsequent to the meeting, the shopping center owner provided documentation to the City expressing his intent for Round Table Pizza to establish at this location as a result of a dispute between Pasco's Pizza (Attachment 4).

City Council Appeal Considerations and Options

The City Council's role in considering alcohol related CUP appeals includes reviewing information on the record related to the CUP and decide if Round Table Pizza should be issued a permit to serve alcohol within their establishment. As stated earlier in the report, a finding of public convenience or necessity must also be found if the appeal is approved.

The City Council has the option of denying the appeal for reasons related to over saturation of alcohol establishments in the area and/or public safety concerns. Alternatively, the Council can approve the appeal by determining that the site can support the proposed use and is supported by the General Plan.

Additionally, denial of the appeal may preclude other similar restaurants from establishing within the center and census tract.

Due to a civil dispute between the tenants and the shopping center owner, staff recommends that the City Council consider the testimony of all parties involved; consider the information related to the CUP; and determine if Round Table Pizza should be granted an alcohol license.

ALTERNATIVES:

1. Adopt Resolution No. 2019-16 denying the appeal and upholding the Planning Commission's decision to deny CUP19-00002 (Attachment 5);
2. Adopt Resolution No. 2019-17 approving the appeal and overturning the Planning Commission's decision to deny CUP19-00002 (Attachment 6).
 - a. The Council could amend the appeal and only issue a permit for beer and wine in conjunction with a restaurant instead of allowing beer, wine, and liquor.

ATTACHMENTS

1. Aerial Photo
2. Appeal Application
3. Letter from Applicant
4. Letter from Property Owner
5. Resolution No. 2019-16, denying the appeal
6. Resolution No. 2019-17, approving the appeal
7. Conditions of approval
8. Planning Commission Staff Report