

BRENTWOOD RESIDENTS COALITION
ZONING | LAND USE | PLANNING | ENVIRONMENTAL

August 16, 2011

Shawn Kuk
Los Angeles City Planning Department
Office of Zoning Administration
200 N. Spring Street, Room 763
Los Angeles, CA 90012

**Re: ZA 2011-0930(CU)(CUE), ENV 2011 931-CE
11714 San Vicente Blvd., Los Angeles 90049**

Dear Mr. Kuk:

The Brentwood Residents Coalition (“BRC”) ¹ is writing in opposition to the applications of Spumoni Brentwood LLC (“Applicant”) for a conditional use permit for the sale of alcoholic beverages (beer and wine) for on-site consumption, per Municipal Code Section 12.24 X.2, for a conditional use permit to allow the combined outdoor seating to exceed 50% of the interior floor area of the restaurant, per Municipal Code Section 12.24 W.32, and for an Alcoholic Beverage License, 41 for On Sale Beer and Wine - Eating Place.

The applications must be denied as premature because the preconditions for the requested uses have not been satisfied for the following reasons:

1. The Applicant cannot be permitted to serve alcohol on-site or provide more than 50% of its seating outdoors because the Applicant has no authority to serve any patrons on-site or provide tables and chairs for on-site dining.

This Applicant’s restricted use of the property as a “take out only” restaurant is reflected in the June 10, 2003, Application for Building Permit and Certificate of Occupancy, attached, which approves a change of use from “retail to restaurant (take out only).” This “take out only” use is consistent with conditions imposed on the property in the May 13, 2003 Design Review and Project Compliance Determination, DIR 2003-1365 SPP-DRB, attached, which states on page 3, paragraph II.A: “There shall be no tables and chairs for dining purposes placed inside the restaurant, or in the patio/courtyard immediately adjacent thereto.”

¹ The BRC is a grass roots, non-profit advocacy group whose purposes are to preserve and enhance the environment and quality of life in Brentwood, to protect the integrity of residential neighborhoods, to assist with planning, to uphold zoning and municipal codes, to encourage traffic safety, and to educate the public on issues that affect quality of life and the environment.

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The applications cannot even be considered unless and until the Applicant properly seeks and obtains (1) Project Permit Compliance authorizing a change of use from “restaurant (take out only)” to “restaurant (on-site and take out)” and (2) Design Review and Director’s Determination from the Los Angeles City Planning Department to provide on-site tables and chairs for dining purposes.

2. The applications are also premature because there is insufficient parking on the project site to support the requested use. The Certificate of Occupancy issued on May 20, 1965, attached, requires 14 on-site parking spaces. The application states that there are 11 parking spaces, however, a physical inspection of the parking lot reveals that there are only 10 parking spaces. The Applicant’s parking calculations not only differ from the Certificate of Occupancy, but they are also inconsistent with the parking requirements under the San Vicente Scenic Corridor Specific Plan. The Applicant improperly bases its calculations on Municipal Code, but the Specific Plan supersedes Municipal Code requirements (except where Municipal Code requirements are more stringent than Specific Plan requirements). Unless and until the Applicant provides the number of parking spaces required under the Certificate of Occupancy, brings the parking up to current code per the Specific Plan, or obtains a variance under Municipal Code Section 12.27, the applications must be denied.

3. The application to increase the percentage of outdoor-dining seats per Municipal Code Section 12.24 W.32 must also be denied because all outdoor seating plans must **first** be presented to the San Vicente Design Review Board (“DRB”) and approved by the Director of Planning.

Municipal Code Section 16.50.A specifies that the role of the DRB is to evaluate “the placement of mass, form, and spatial elements and overall quality of the design of proposed projects” based on standards specified in specific plans. No building permit may be issued in a specific plan area unless the Planning Director has reviewed and approved the project *after* consideration of the DRB’s recommendation. *LAMC Section 16.50.D(b)*. And changes in the design of the project’s “open space” areas, such as by the addition of outdoor patios, sidewalks and other outdoor seating areas, are specifically within the role assigned to the DRB under the Specific Plan. *Specific Plan §9.B.2*. The Specific Plan makes clear the DRB’s role by specifying that the DRB “shall review and approve the use of open space areas and sidewalks.” *Specific Plan §9.B.1*. The word “shall” indicates that prior DRB review is mandatory, not discretionary, *LAMC §11.01*. The Planning Director thereby lacks discretion to approve outdoor seating without prior DRB review.²

Further, the outdoor “patio” seating has displaced the outdoor planters and landscaping that were previously required under the design review process, as stated in the May 13, 2003

² The sidewalk dining is also illegal because the Applicant has failed to obtain a revocable permit from the Board of Public Works after receiving DRB/Planning approval, as required under Specific Plan Section 9.B.3.

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Project Permit Compliance (also see attached 2003 Exhibits). Thus, the Applicant has not only failed to seek approval for its existing outdoor seating, as required, it has also violated the existing landscaping requirements per the 2003 approval. The project must therefore return to the DRB for design review before the Applicant seeks the conditional use permit for outdoor dining.

4. The outdoor dining application is further premature because the existing courtyard and patio seating does not comply with the Americans with Disabilities Act (ADA) due to numerous accessibility obstacles. Specifically, the outdoor “courtyard” has barriers to handicap access – (1) the courtyard entrance is too small to accommodate a wheelchair, (2) the courtyard is elevated without a handicap access ramp, and (3) the courtyard design provides inadequate space for maneuverability. Further, the outdoor seating section that is referred to as the “patio” is likewise inaccessible because the tables and chairs are elevated without an access ramp. Again, this ADA violation must be cured before the Applicant may seek approval of the outdoor dining application. (See photos attached)

5. The alcohol permit must also be denied as premature because the restaurant lacks separate restroom facilities as required by the City Building Code and County Health Code. Per Section 6302.4 of the City’s Building Code, “Each place of business selling beer, wine, or liquor to be consumed on the premises shall be provided with separate toilet rooms for each sex, which also are readily available to the customers and patrons. These toilet rooms shall contain at least one water closet and lavatory, and at least one urinal for men.”

Similarly, the County Health Code requires that, where alcohol is sold for on-site consumption, “toilet rooms must be located within the food facility.” This requirement is described in the Retail Construction Guideline issued by the County’s Public Health Department:

“Where alcoholic beverages are sold or given away for consumption on the premises there shall be provided for use by the public, separate toilet rooms for each gender, with the men’s toilet room having at least one urinal. At least one lavatory shall be provided in conjunction with and convenient to each toilet room. The toilet rooms must be located within the food facility and where consumers, guests, and invitees do not pass through food preparation, storage, or utensil washing areas to reach the toilet facilities. Los Angeles County Code, Title 11.38.570(D).”

Before the Applicant may seek the requested permits, it must either comply with the City and County requirements for separate on-site restroom facilities or seek and obtain a variance issued by each of these governmental agencies.

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The two applications are therefore premature for the many reasons described above. The Applicant must first (1) seek and obtain Project Permit Compliance authorizing a change of use from “restaurant (take out only)” to “restaurant (on-site and take out);” (2) provide additional on-site parking or obtain a variance authorizing less than code-mandated parking; (3) obtain the Planning Director’s approval to provide on-site tables and chairs for dining purposes; (4) obtain design review approval of the outdoor seating and landscaping, requiring that the project first be presented to the DRB for its consideration and then approved by the Director of Planning; (5) provide ADA compliant outdoor seating; and (6) install separate male and female restrooms on the restaurant premises or obtain variances from both the City and County. The applications must therefore be denied because these prerequisites have not been satisfied.

Respectfully submitted,



Thomas R. Freeman



Wendy-Sue Rosen

Donald G. Keller

Donald G. Keller

cc:

Councilmember Bill Rosendahl