

RESOLUTION 2011-47

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BELL APPROVING CONDITIONAL USE PERMIT CUP 2011-06 AND ISSUING A DETERMINATION OF A PUBLIC CONVENIENCE OR NECESSITY (PCN) TO ALLOW OFF-SALE BEER AND WINE FOR A PROPOSED RETAIL GROCERY LOCATED WITHIN AN EXISTING 4,000 SQUARE FOOT BUILDING ON AN 11,362 SQUARE FOOT LOT. THE SUBJECT PROPERTY IS LOCATED AT 6399 ATLANTIC AVENUE WITHIN THE C-3 ZONING DISTRICT, APN: 6317-018-407.

A. RECITALS

WHEREAS, Fresh & Easy Neighborhood Market (the Applicant") filed a complete application requesting the approval of Conditional Use Permit 2011-06 described herein ("Application");

WHEREAS, the Application pertains to an approximate 11,362 square foot property on Los Angeles County Assessor's parcel number 6317-018-407, more commonly known as 6399 Atlantic Avenue, Bell, California ("Property");

WHEREAS, the Applicant requests approval Conditional Use Permit CUP 2011-06 and issuing a determination of a Public Convenience or Necessity (PCN) to allow Off-sale Beer and Wine for a proposed Retail Grocery Store located within an existing 4,000 square foot building, pursuant to Bell Municipal Code, Chapter 17.96.030.2.c and

WHEREAS, an environmental assessment form was submitted by the Applicant pursuant to pertinent City requirements. Based upon the information received and Staff's assessment, the project was determined not to have a significant environmental impact on the environment and is categorically exempt from the California Environmental Quality Act ("CEQA") (Public Resources Code Section 210000 et seq.) and pursuant to Section 15301 of the CEQA guidelines, Title 14, Chapter 3 of the California Code of Regulation; and

WHEREAS, on October 26, 2011 the Planning Commission of the City of Bell conducted a duly noticed Public Hearing on the Application, and continued the Public Hearing to the November 22, 2011 Planning Commission meeting to allow time for the applicant and staff to review and resolve several conditions of approval; and

WHEREAS, Staff has met with the applicant, and has reviewed and resolved the conditions of approval whereby the applicant as well as the City Attorney, have reviewed the conditions of approval and found them to be acceptable; and

WHEREAS, on November 22, 2011, the Planning Commission of the City of Bell concluded a duly noticed continued Public Hearing on the Application, and all legal pre-requisites to the adoption of this resolution have occurred.

WHEREAS, on December 14, 2011, the Planning Commission of the City of Bell re-opened the public hearing on the Application, reconsidered and amended the conditions of approval.

RESOLUTION

NOW, THEREFORE, THE PLANNING COMMISSION DOES HEREBY FIND, DETERMINE AND DECLARE AS FOLLOWS:

1. All of the facts set forth in the recitals, Part A of this resolution, are true and correct and are incorporated herein by reference.
2. All necessary public hearings and opportunities for public testimony and comment have been conducted in compliance with State law and the Municipal Code of the City of Bell.
3. Upon independent review and consideration of all pertinent information and the information contained in the Notice of Exemption for the CUP, the Planning Commission hereby finds and determines that the proposed project is exempt from California Environmental Quality Act ("CEQA") (Public Resources Code Section 21000 et seq.) pursuant to the Class 1 categorical exemption in Section 15301(a) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) in that the project involves the occupation of an existing building. The Planning Commission further finds that the proposed project will not result in direct or indirect significant impact on the environment. Accordingly, the Planning Commission adopts the Notice of Exemption and directs the Staff to file the Notice of Exemption as required by law.
4. Based upon substantial evidence presented to this Commission during the November 22, 2011 public hearing and the re-opened hearing of December 14, 2011, including public testimony and written and oral staff reports, this Commission finds as follows:
 - a) The site for the proposed use is adequate in size, shape and topography to accommodate the proposed use. The existing site has a fully approved building that will accommodate the proposed use. The proposed site plan showed only minor modifications to the current building with the addition of signs and themed painting on the existing building. There will be a tenant improvement for the interior of the store to accommodate the grocery sales area and the proposed bakery.
 - b) The subject site has sufficient access to public streets and highways adequate in width and pavement type, to carry the quantity and quality of vehicular and pedestrian traffic expected to be generated by the proposed use. The subject site is located on

Gage Avenue and Atlantic Avenue which are major arterial streets that can handle the current and future generated traffic for this existing facility. Additionally, the site is arranged to provide adequate circulation for ingress and egress from Gage and Atlantic Avenues, effectively eliminating any direct traffic incidents on Atlantic Avenue.

- c) The existing building to be utilized in conjunction with the use will be architecturally compatible with the existing and prospective uses of land located in the immediate vicinity of the site. The applicant will not modify the exterior of the building other than to paint the exterior surfaces to renew the appearance of the existing building.
- d) The location of the proposed use on the site is compatible with existing and proposed uses along the commercial corridor along Atlantic and Gage Avenues. The proposed sale of beer and wine for off-site consumption will not adversely affect or be materially detrimental to such adjacent uses, buildings or structures or to the public health, safety or general welfare in that the surrounding area is composed of other similar commercial uses that sell beer and wine.
- e) The conduct of the proposed use is in compliance with the applicable provisions of the general plan of the City of Bell. The proposed use will be promoting economic stability through the provision of an additional service to patrons which will result in the diversification of the commercial base along the Gage and Atlantic Avenue corridors.
- f) The proposed use of the site including the sale of beer and wine for off-site consumption is deemed to be of necessity to the applicant's business plan and part of the desired services offered to the public as a convenience while shopping at the proposed market.

Based upon the foregoing findings, the Planning Commission hereby approves Conditional Use Permit No. 2011-06, subject to the following **amended** conditions:

B. CONDITIONS OF APPROVAL

That the property shall be maintained in accordance with:

- A. The Applications and Exhibits thereto, "A" through "D" included in this report on file in the office of the Clerk of the City of Bell; and
- B. All applicable laws, including, but not limited to, Bell Municipal Code and the Bell Zoning Code, Specifically Chapter 17, as the same exist as of the

date of approval of this Application or as the same may hereafter be amended; and

C. All of the conditions of approval as set forth in this Conditional Use Permit No. 2011-06 and all applicable conditions as set forth in the site's existing Resolution 90-25; and

1. That this Conditional Use Permit (CUP 2011-06) entitlement shall be for an Express Grocery Store with an Alcoholic Beverage Control Department license Type 20 for the sale of beer and wine only (no liquor) for off-site consumption; any increase, intensification and/or change of use shall be subject to review by the Planning Commission through a Conditional Use Permit process as noted in Chapter 17; and
2. That the applicant's total yearly alcohol sales area shall make up no more than twenty five (25) percent of the establishment's total gross floor sales area and that the beer and wine use shall be ancillary to the primary Grocery Store use; and
3. That if the chief of police determines that there is a continuing police problem arising from store operations, he or she may, after having sought to have the applicant and/or landlord address the problem, require that the store provide a police-approved doorman and/or security personnel during normal business hours; and
4. That the Conditional Use Permit conditions shall be placed on the property in a location where employees can easily read the conditions; and
5. That this Conditional Use Permit is subject to annual review by the appropriate City of Bell Department, including but not limited to Police, Building and Safety, Planning, Public Works, Finance, CAO; and
6. That prior to the issuance of building permits the applicant will submit two sets of plans to the department of building and safety for plan check review and shall obtain approval of such plans by all agencies pertinent to the project proposal; and
7. That all conditions of approval, as requested in writing by the Los Angeles County Fire Department, the Los Angeles County Health Department, and in compliance with the 2010 California Building Code, regarding but not limited to hazardous/flammable storage of chemicals and/or materials, access, fire flow, and maximum occupancy requirements for the property shall be complied with or guaranteed prior to the issuance of building permits for improvements of the property; and
8. That all textures, materials, and colors utilized on exterior elevations of the building are subject to review by the City of Bell Architectural Review Board and/or Planning Commission; and

9. That the Applicant *to the extent that he controls*, guarantees that there will be no deviation from the approved number of parking spaces, including reserved parking, compact parking, loading spaces, car and vanpool parking and any other ancillary forms of parking provided, and that the project will at all times conform to the parking plan indicated in Exhibit "C" to the Agenda Report accompanying this Resolution; and
10. That the Applicant agrees that all tenant improvements shall be in accordance with all necessary local, state and federal guidelines for handicapped access including, but not limited to the Americans with Disabilities Act, and the 2010 California Building Code; and
11. That there shall be no public telephones located on the property except within an enclosed building. Building as used herein shall not include telephone booths; and
12. That any signage shall require that a signage plan be submitted separately and approved by the Architectural Review Board, pursuant to the provisions outlined in the Bell Zoning Code; and
13. That the applicant and each of his agents, contractors, and subcontractors engaged in construction activities on the property shall obtain proper business and contractor's licenses from the City of Bell; and
14. That the Applicant has volunteered that it is its intention to hire locally the majority of staff for the store, however this condition does not obligate it to do so; and
15. That Applicant *to the extent that he controls*, agrees to maintain the property and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, and walls in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all Federal, State, County and local bodies and agencies having jurisdiction, at applicant's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) building surfaces and structures shall be painted and kept in good repair; (ii) signs shall be maintained in a first class condition of repair; (iii) sweeping and trash removal shall be performed regularly; (iv) shrubbery, plantings, and other landscaping shall be cared for and kept in a healthy condition, and replaced as needed; and (v) asphalt or concrete paving shall be repaired, replaced and restriped using the same type of material originally installed, to the end that such paving at all times be kept in a level and smooth condition; and
16. That all commercial deliveries to the Property shall be prohibited between the hours of **2:00 p.m. to 6:00 p.m.**, Mondays through Fridays; and

17. That Applicant shall be responsible for filing any and all pertinent documents with the Los Angeles County Recorder's Office and that copies of said licenses and certifications shall be maintained on file with the City of Bell; and

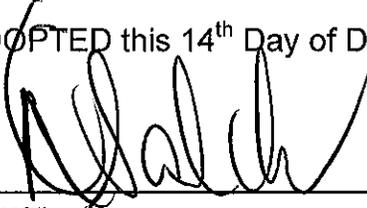
Enforcement of Conditions

18. That, if based upon complaints received concerning the operation of the property, or for other cause, the Planning Director determines that the approved use is exercised contrary to any conditions imposed upon the Conditional Use Permit, or is exercised to the detriment of public health or safety, or constitutes a nuisance, or is otherwise in violation of any laws or this Conditional Use Permit, then the Planning Director shall schedule a noticed public hearing before the Planning Commission in accordance with Bell Municipal Code § 17.96.170 to determine whether the Conditional Use Permit should be revoked. The Commission may revoke the Conditional Use Permit if it finds cause therefore in accordance with Bell Municipal Code § 17.96.170; and
19. That any proposed or actual (i) substantial modification to a building or structure located on the property, or (ii) intensification of use so as to make the parking inadequate, as determined by the Chief Administrative Officer or designee, or (iii) other change in the use of the property, shall be cause to either revoke the Conditional Use Permit under Condition 4 or to review the conditions of the Conditional Use Permit for modification. Any review shall be undertaken through a public hearing before the Planning Commission pursuant to Bell Municipal Code Section 17.96.190. A modification may be approved if necessary to protect the public peace, health and safety, or if necessary to permit reasonable operation under the Conditional Use Permit; and
20. That any graffiti placed on any building or structure located on the property shall be removed promptly after its placement; failure on the Applicant's behalf to remove such graffiti upon twenty-four (24) hours written notice shall empower the City to enter upon the property and cause such removal, or painting over, of said graffiti, at the expense of the Applicant. The Applicant shall promptly pay, upon receipt of an invoice from the City, all the City's reasonable costs of such work; and
21. That the Applicant or a representative shall execute an Affidavit indicating that he/she is aware of all of the terms and accepts all the conditions imposed upon this Conditional Use Permit; and
22. That the applicant shall agree to defend, indemnify and hold harmless, the City of Bell, its agents, officers and employees from any claim, action or proceeding against the City of Bell or its agents, officers or employees to attach, set aside, void or annul, an approval of the City of Bell, its legislative body, advisory agencies, or administrative officers concerning the subject

Application. The City of Bell will promptly notify the applicant of any such claim, action or proceeding against the City of bell and the applicant will either undertake defense of the matter and pay the City's associated legal or other consultant costs or will advance funds to pay for defense of the matter by the City Attorney. If the City of Bell fails to promptly notify the applicant of any such claim, action or proceeding, or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify or hold harmless the City of Bell. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the applicant's consent, but should it do so, the City shall waive the indemnification herein, except, the City's decision to settle or abandon a matter following an adverse judgment or failure to appeal, shall not cause a waiver of the indemnification rights herein.

- C. That the City of Bell Clerk shall certify the adoption of this Resolution and shall forward a copy of this Resolution to Fresh & Easy Neighborhood Market.

ADOPTED this 14th Day of December, 2011



Mayor

ATTEST:



Rebecca Valdez
City Clerk

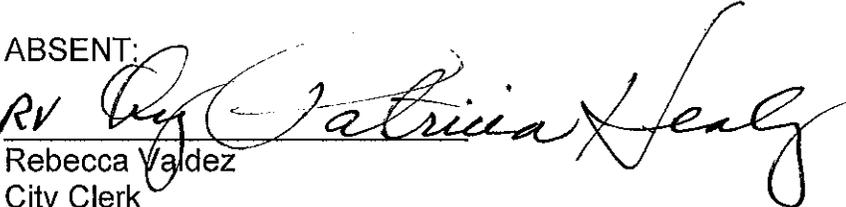
I CERTIFY that the foregoing Resolution No. 2011-47 was adopted by the Planning Commission of the City of Bell at a regular meeting thereof held on the 14th day of December, 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:



Rebecca Valdez
City Clerk