



Planning Commission Report

Meeting Date: August 12, 2013

Subject: **14 North La Cienega Boulevard (Phoenix Restaurant)**
Development Plan Review Permit, Extended Hours Permit and Transitional Use License

Discussion and direction to staff regarding the possible revocation, suspension, or modification of a Development Plan Review Permit allowing open air dining; revocation or conditioning of an Extended Hours Permit and Transitional Use License.

PROJECT APPLICANT: City of Beverly Hills

Recommendation: That the Planning Commission:

1. Conduct a public hearing and receive testimony on the project; and,
2. Direct staff to prepare a resolution revoking, suspending, or modifying the existing Development Plan Review Permit for open air dining and revoking or conditioning the existing Extended Hours Permit.

REPORT SUMMARY

Planning Commission Resolution No. 1124, adopted February 23, 2000, conditionally approved a Development Plan Review Permit to allow open air dining and conditionally approved an Extended Hours Permit for a restaurant located at 14 North La Cienega Boulevard. Staff is bringing this matter before the Planning Commission because the restaurant has not been operating in compliance with those approvals and has been disrupting the quiet enjoyment of nearby residential properties.

Beverly Hills Municipal Code (BHMC) Section 10-3-3509 regarding suspension and revocation of open air dining permits allows the Director of Community Development to initiate a revocation or suspension proceeding before the Planning Commission if the Director determines that evidence could be presented to the Planning Commission which may support grounds for revocation or suspension of an open air dining permit. Resolution No. 1124 approving open air dining for a restaurant at 14 North La Cienega Boulevard includes a condition of approval (#5) stating that the Planning Commission may impose additional conditions upon the open air dining approval and/or may restrict the operating hours of the outdoor dining or the restaurant if the Commission determines, after a noticed public hearing, that the restaurant is being operated in a manner that interferes with the quiet enjoyment of nearby residential properties and that the existing conditions of approval are inadequate to halt the interference.

Attachment(s):

- A. Beverly Hills Municipal Code Excerpts (BHMC 10-3-3509);
- B. PC Resolution 1124, Adopted 2/23/00 (DPR)
- C. June 5, 2013 letter from City Prosecutor

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Pursuant to Beverly Hills Municipal Code (BHMC) Section 10-3-1959 (**Attachment A**), the Director of Community Development may refer an Extended Hours Permit or Transitional Use License to the Planning Commission to consider revocation or conditioning of the permit or license if the Director believes that a business may not be in compliance with the provisions of the Zoning Code, particularly BHMC Section 10-3-1950 (Transition Between Commercial and Residential Uses).

This report provides information about the history of restaurants at 14 North La Cienega Boulevard, information about the Phoenix Restaurant approvals and compliance of the restaurant with Planning Commission Resolution No. 1124, and a summary of code enforcement activities at the site by the City and state. Pursuant to Planning Commission direction following discussion, staff will return with a resolution regarding open air dining and/or the Extended Hours Permit, as appropriate, at a future meeting. It is noted that this hearing was originally intended to include review of the Transitional Use License issued to this restaurant. Upon further review, staff determined that the restaurant is exempt from the Transitional Use License requirement because the restaurant is already subject to a Planning Commission resolution granting a Development Plan Review that includes conditions regarding an Extended Hours Permit (BHMC Sec. 10-3-1956B.3.).

BACKGROUND

File Date	N/A
Application Complete	N/A
Subdivision Deadline	N/A
CEQA Deadline	60 days from CEQA Determination (8/2/13)
Applicant(s)	Restaurant Owner: (see below); Enforcement Action Applicant: City
Owner(s)	Sweetzer Plaza inc.
Representative(s)	Lonnie Moore and Michael Malin
Prior PC Action	Development Plan Review (DPR) for open air dining on private property within 170' of a residential zone; Extended Hours Permit (2000) (Approved with conditions)
Prior AC Action	A variety of Architectural Commission reviews including for an awning over the open air dining area (2001)

PROPERTY AND NEIGHBORHOOD SETTING

Property Information

Address	14 North La Cienega Boulevard
Legal Description	Beverly Hills Tract #4988 Lot 372
Zoning District	C-3
General Plan	Commercial Low-Density
Existing Land Use(s)	Restaurant
Lot Dimensions & Area	110' x 50' = 5,500 square feet
Year Built	1957
Historic Resource	The property is not listed on any local, state or federal inventory. The original building was designed by Master Architects Lundberg, Armet and Davis, considered the foremost proponents of the "Googie" style of restaurant architecture; however, the subject building has been remodeled

such that it is not considered a historic resource.
Protected Trees/Grove None

Adjacent Zoning and Land Uses

North	C-3 Commercial
South	C-3 Commercial
East	R-4 Multiple-Family Residential
West	C-3 Commercial

Circulation and Parking

Adjacent Street(s)	La Cienega Boulevard and Wilshire Boulevard
Adjacent Alleys	None
Parkways & Sidewalks	La Cienega Boulevard: 15' parking and sidewalk Wilshire Boulevard: 15' parkway and sidewalk
Parking Restrictions	La Cienega Boulevard: X2 hr. metered: 9AM-4PM; No Parking 7AM-9AM and 4PM-6PM Wilshire Boulevard: Parking prohibited (south side); Restricted peak hour parking (north side)
Nearest Intersection	La Cienega Boulevard and Wilshire Boulevard
Nearest Signalized Circulation Element	La Cienega Boulevard: Collector Wilshire Boulevard: Arterial
Average Daily Trips	La Cienega: approximately 47,000 Wilshire Boulevard: 45,000

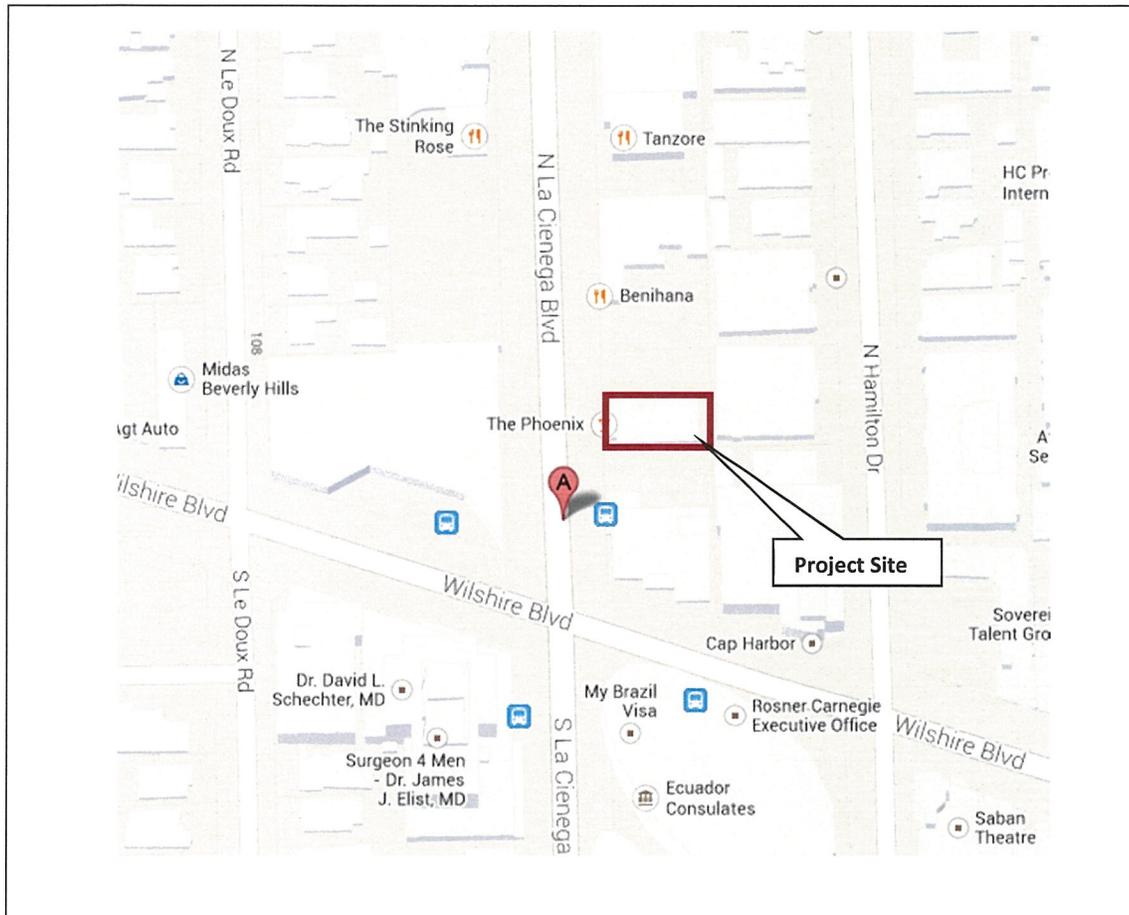
PROJECT HISTORY

The subject property was developed in 1957 as a coffee shop, and has subsequently been occupied by restaurant uses of various types, including Tiny Naylor's in the 1970s, the Beverly Hills Café in the 1990s and Temple Restaurant in 2000. The site was extensively remodeled in 1999 and 2000 by property owner Naylor Properties which applied for a Development Plan Review Permit for open air dining and an Extended Hours Permit. Both permits were conditionally approved by the City through Planning Commission Resolution No. 1124, adopted in 2000 (Attachment B). Pursuant to that Resolution which waived 29 parking spaces for a new outdoor dining area of 1296 square feet, the open air dining area is limited to 42 seated guests, the restaurant may receive patrons up to and including 11:00 p.m. seven days a week, and no patrons shall be permitted to sit in the open air dining area after 11:00 p.m. Temple Restaurant was one of six projects to receive a Beverly Hills Architectural Design Award for projects completed in 2000-2001. In 2005, The Lodge Restaurant located at the site with approved plans for maximum occupancy of 82 patrons. The Lodge was followed by La Seine Restaurant which received building permits in 2011.

The Phoenix opened at the site in October, 2012. All of the restaurants that succeeded Temple Restaurant, including the Phoenix, appear to have used the outdoor dining area approved by Resolution No. 1124. Subsequent to the opening of the Phoenix Restaurant, a number of City departments became involved with the restaurant from a code enforcement perspective. A summary of code enforcement at the property is provided in the "Discussion" section of this report. The City is working with the applicant to bring the restaurant into compliance but ultimately the owner decided to voluntarily close down while remodeling the restaurant to address outstanding violations. The

remodel includes nonstructural demolition, a new bar extension (in an area currently designated for bar and dining) and creating ADA-compliant bathrooms. It is staff's understanding that it is the applicant's desire to at least maintain the approvals granted by Resolution No. 1124. The owners may choose to return to the Planning Commission in the future with a request to remain open later. The property owner has indicated a desire to complete the interior work so the restaurant may reopen and is working with the Planning Division on approval of the exterior design of the building.

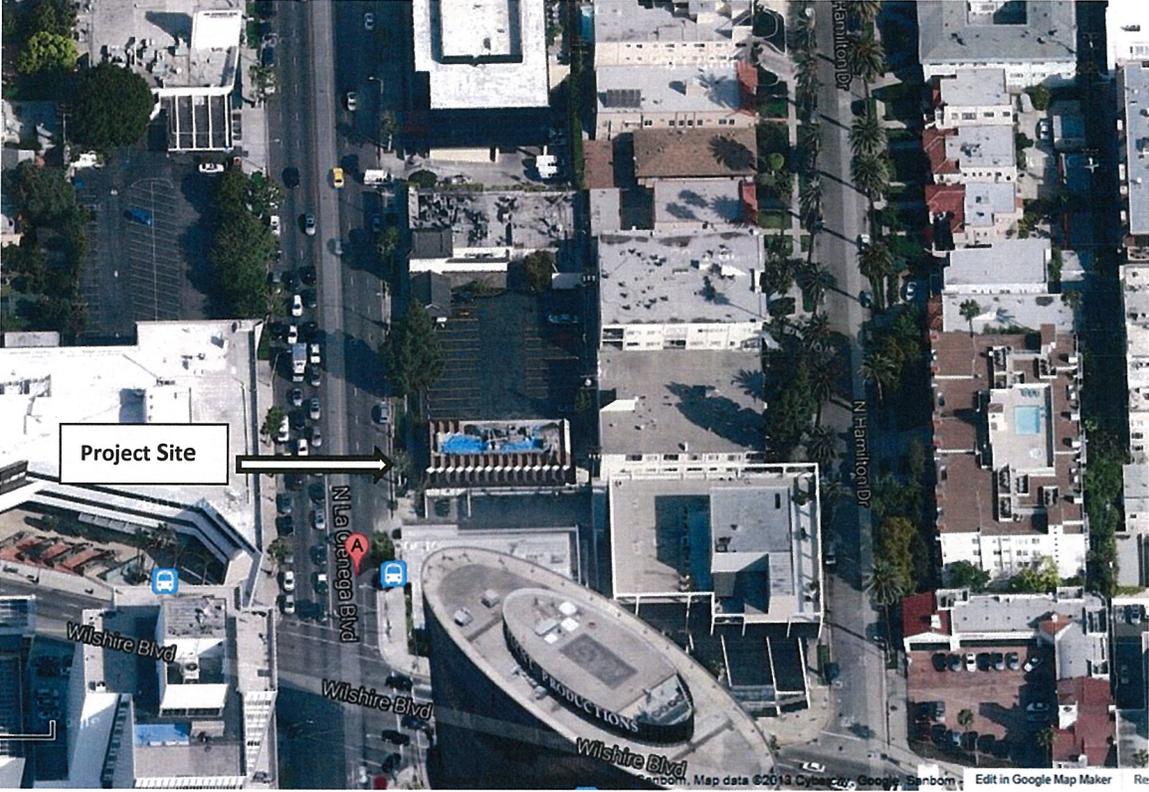
Project Site Area



NEIGHBORHOOD CHARACTER

The site is located on the east side of La Cienega Boulevard, between Wilshire Boulevard and Clifton Way on a block that has traditionally been known as Restaurant Row. The subject site is smaller than many other sites in the area and the existing restaurant building on the site covers most of the lot; however, it still has less than a .5 Floor Area Ratio because it is only one story. Unlike most of the other sites on the block, the subject site has no parking. The block is zoned C-3 commercial use and is currently a mix of large and smaller commercial buildings, including a substantial amount of medical use, and several destination restaurants. The nearest intersection to the subject site is La Cienega Boulevard and Wilshire Boulevard. Unlike most commercial blocks in the City that are adjacent to residential zones, there is no rear alley that separates the commercial buildings on the east side of La Cienega from the two to four-story multi-family residential buildings behind them. A six-foot high wall along the rear

property line of the subject property separates it from the three-story residential building behind it on Hamilton Drive. Abutting the subject site to the north is the surface parking lot for Benihana Restaurant and to the south is a surface parking lot for the one-story Citibank located at the northeast corner of La Cienega and Wilshire Boulevards. Across the street is a three-story commercial building and the surface parking lot for The Stinking Rose Restaurant.



PROJECT DESCRIPTION

Phoenix Restaurant occupies an existing one-story building at 14 La Cienega, that was originally built as a restaurant. Basic information about the building is in the table below.

Dimensions	EXISTING	Notes
Lot Size	5,490 SF	
Structure Floor Area	2,540 SF	1296
<ul style="list-style-type: none"> Indoor Dining 	114 SF	No Change
<ul style="list-style-type: none"> Open Air Dining 	1296 SF	On Private Property; limited to 42 persons; waiver of 29 parking spaces
<ul style="list-style-type: none"> Kitchen and Other 	662 SF	No Change
Height	16'	
Parking	None	Valet Parking provided

Permits Under Review

Planning Commission Resolution No. 1124

This resolution approved the following two permits:

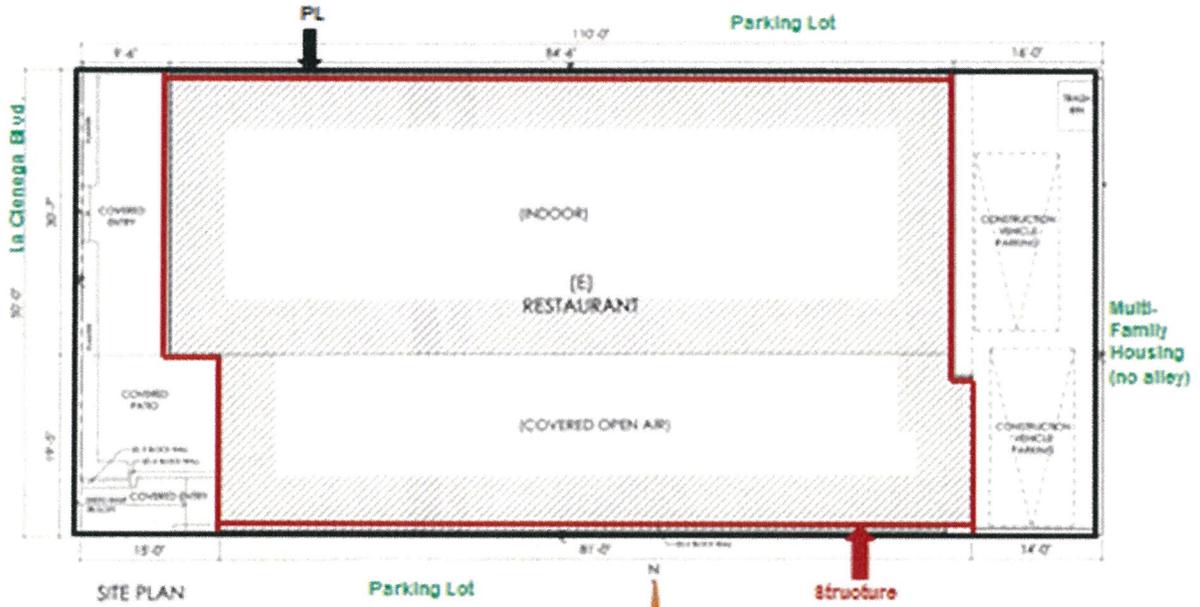
Development Plan Review Permit. The existing Development Plan Review Permit is for open air dining serving 42 persons in a 1,296 square-foot area located entirely on private property. A total of 29 parking spaces would have been needed for the restaurant to use the additional 1,296 square-feet for bar and dining (1 parking space for every 45 square feet of bar and dining floor area) but the Planning Commission waived the parking requirement, finding in 2000 that there was sufficient parking in the area, particularly the meters along La Cienega, combined with the provision of a valet parking operation by the restaurant and parking at nearby businesses to satisfy parking needs. A Development Plan Review Permit was required because an open air dining permit was sought for an open air dining area serving more than 12 persons and located on private property within 170 feet of an R-1 or R-4 Zone. The Planning Commission is asked to consider whether the outdoor dining permit should be maintained, modified (additional or modified conditions of approval), suspended or revoked. The findings for the Development Plan Review Permit are included in Attachment B to this report.

Extended Hours Permit. The existing Extended Hours Permit on the site allows the restaurant to receive patrons up to and including 11:00 p.m. seven days a week; however, patrons shall not be permitted to sit in the open air dining area after 11:00 p.m. An Extended Hours Permit is required because the subject site is located in a commercial-residential transition area and the restaurant operates during the "Extended Hours" period for commercial-residential transition areas (10:00 PM until 7:00 AM weekdays and 10:00 PM until 9:00 AM on weekends). The Planning Commission is asked to consider whether the Extended Hours Permit should be maintained until 11:00 p.m., modified (additional or modified conditions of approval), suspended or revoked. The findings for an Extended Hours Permit are Attachment B to this report.

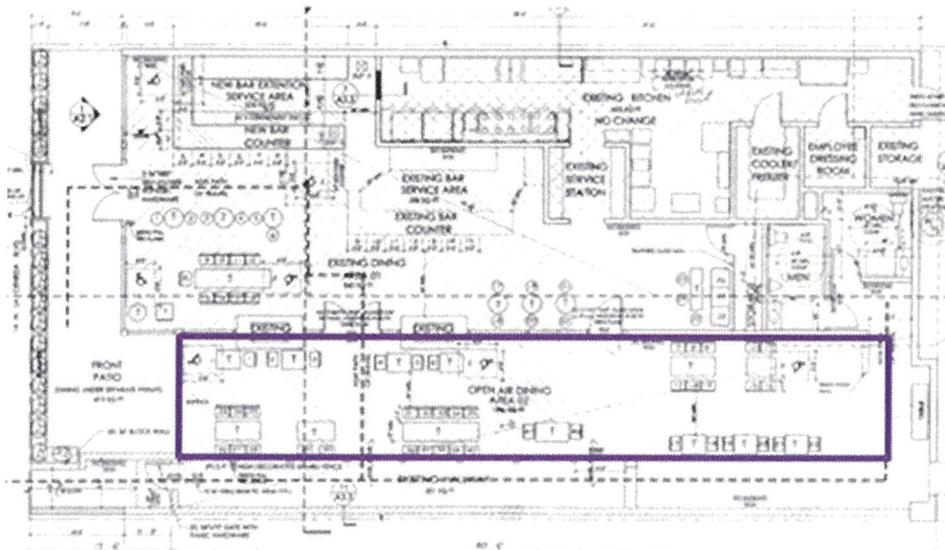
Transitional Use License.

Although a Transitional Use License is not currently required for this business, should the Planning Commission direct staff to prepare a resolution revoking Planning Commission Resolution No. 1124 that granted the open air dining and Extended Hours Permit to the restaurant at 14 North La Cienega, Phoenix Restaurant would then need a Transitional Use License to operate in the Commercial-Residential Transition Zone. The license would be issued by the Director of Community Development if the business meets the criteria for approval as summarized above; nevertheless this public hearing is an opportunity for the Planning Commission to provide direction to the restaurant owner that may be helpful in heading off the need for future Planning Commission public hearings regarding a Transitional Use License that may be issued to the business in the future.

Phoenix Restaurant
Site Plan



Phoenix Restaurant
Approved Open Air Dining Area



Restaurant Operation and Compliance with Resolution No. 1124

Since opening in October, 2012 at 14 North La Cienega Boulevard, Phoenix has operated as a happy hour and dinner restaurant with a very active bar component in the evenings. It is not considered a nightclub

pursuant to the Zoning Code because it does not have a dance floor. The restaurant includes indoor and outdoor areas that were permitted pursuant to Planning Commission Resolution No. 1124. Staff has determined that the restaurant has not been operating in compliance with all of the conditions of approval in Resolution No. 1124 and each condition (Section 10 of the Resolution) is discussed below:

Condition #1. “Except as otherwise provided by these conditions, the Project shall be constructed and operated in substantial compliance with the plans submitted to and approved by the Planning Commission at its meetings of January 26, 2000.”

The existing structure and layout of the restaurant had been modified somewhat over time but is still substantially in compliance with the plans approved by the Planning Commission except for a mobile office structure that was added to the site in the rear, adjacent to the property line that borders the residential area. This structure is not allowed pursuant to the Building Code because it is not a permanent structure and it is not allowed pursuant to the Zoning Code because it is in a required setback. The structure will be removed.

Condition #2. “A valet operation for the evening operating hours of the restaurant (after 6:00 p.m.) shall be provided, pursuant to the requirements of the Department of Transportation and in a manner satisfactory to the Director of Transportation.”

The restaurant provides valet parking on La Cienega which appeared to have been well-used by the restaurant’s customers. The service was provided pursuant to a Commercial Valet Parking Permit issued by the City and therefore fulfilled Condition of Approval #2 in Resolution No. 1124 which required a valet operation for the evening operating hours of the restaurant after 6:00 p.m. pursuant to the requirements of the City’s Department of Transportation. It is noted that the valet operation has had some violations (see “Discussion” section of this report).

Condition #3. “The applicant shall provide proof of free employee parking located within a reasonable distance from the restaurant to the satisfaction of the Director of Transportation, prior to issuance of the Certificate of Occupancy, and shall require all persons working for or at the project site, as a condition of employment or hire, and as a condition of this approval, to park in such location while present at the project site. In the event that persons working at the project are failing to utilize the required employee parking site as required by this condition, applicant shall take all reasonable steps requested by the Director of Transportation necessary to enforce the terms of this condition. Such steps shall be in addition to any other remedies available to City for violation of this resolution of the Beverly Hills Municipal Code.”

The restaurant owner has an agreement with the bank to the south of the subject site to use the bank’s surface parking lot for valet parking in the evening since the businesses operate at different times. One of the restaurant owners indicated that employees are given a discounted valet rate and the owners were recently also exploring the use of the surface parking lot at the restaurant site to the north of the subject site.

Condition #4. “The rear wall enclosure of the open air dining area shall be of sufficient height to screen any sight line views from the adjacent apartment building to the east.”

The entire outdoor dining area is screened by a wall and a canopy from the view of the adjacent apartment buildings. This is in compliance with the City's Zoning Code which states:

"OPEN AIR DINING: The serving and/or consumption of food and/or drink outside of a residential zone if: a) such consumption takes place in an area that is not fully enclosed within a permanent building by walls and a roof, but is located immediately adjacent to a restaurant use that is so enclosed, or b) such consumption takes place in an area fully enclosed within a permanent building, such building has windows that can be opened, and such windows are located on a wall that is oriented, at an angle of ninety degrees (90°) or less, toward residentially zoned properties adjacent to the building or separated from the building by a public right of way."

The site is required to have a solid wall at the rear that is a minimum of six feet tall and the subject site complies with this requirement. An eight-foot high wall may be permitted by Code and a ten-foot wall may be permitted by the City with a Minor Accommodation Permit.

Condition #5. "The restaurant may receive patrons up to and including 11:00 p.m. seven days a week. The restaurant shall not receive patrons at any time after the foregoing time. Patrons shall not be permitted to sit in the open air dining area after 11:00 p.m. Additionally, the Planning Commission reserves the power and right to impose additional conditions upon this approval and/or to further restrict the operating hours of the outdoor dining or the restaurant if the Commission determines after a noticed public hearing that the restaurant is being operated in a manner that interferes with the quiet enjoyment of nearby residential properties and that the existing conditions of approval are inadequate to halt the interference."

Phoenix Restaurant was previously open from 5:00 pm to 2:00 am daily and that information is still on the restaurant's website. The restaurant owners have been made aware of the business hour restrictions in Beverly Hills and the specific hours allowed for this project pursuant to Resolution No. 1124. The restaurant may currently accept patrons until 11:00 p.m. pursuant to Resolution No. 1124. The Zoning code defines Extended Hours and an Extended Hours Operation as follows:

"EXTENDED HOURS: The time between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M. on the following weekday, and the time between the hours of ten o'clock (10:00) P.M. and nine o'clock (9:00) A.M. on the following weekend day or holiday.

EXTENDED HOURS OPERATION: A commercial use that receives patrons during extended hours."

The Code definitions address receiving patrons, not the removal of all patrons from the premises. The Planning Commission may condition approvals to address either situation.

Staff would also recommend that the Planning Commission consider the following statement in Condition #5:

"Patrons shall not be permitted to sit in the open air dining area after 11:00 p.m."

The statement specifically references sitting in the open air dining area and may be construed as not addressing standing in that same area and standing is often more of an issue in a bar environment. The

Planning Commission may wish to consider revising this condition if it directs staff to modify the resolution.

Condition #6. “The open air dining shall be limited to thirteen (13) tables and forty-two chairs.”

The remodeling plans for the Phoenix include this requirement.

Conditions #7, #8 and #9 address the issues of trash, loading and maintenance of the open air dining area and the area to the rear of the restaurant that is adjacent to the residences. This area appears to be used for storage and the Planning Commissioners may wish to consider modifying one of these conditions to further limit storage in that area if the Planning Commission discusses modifying the resolution. Limiting the types of activities that may occur in that area could help to limit employee and patron noise adjacent to residences.

Condition #10. “The applicant shall provide sufficient valet parking attendants to accommodate patron demand and ensure that vehicles will not queue on the street except in loading areas designated as a valet parking zone.”

The Planning Commission may wish to discuss the restaurant’s valet parking operations.

Condition #11. “All rear lighting shall be shielded and oriented so that it does not illuminate an area beyond the bounds of the project site.”

This will be a condition of the owners’ project to do exterior work on the building.

Condition #12. “These conditions of approval shall run with the land and shall remain in force for the duration of the life of the project.”

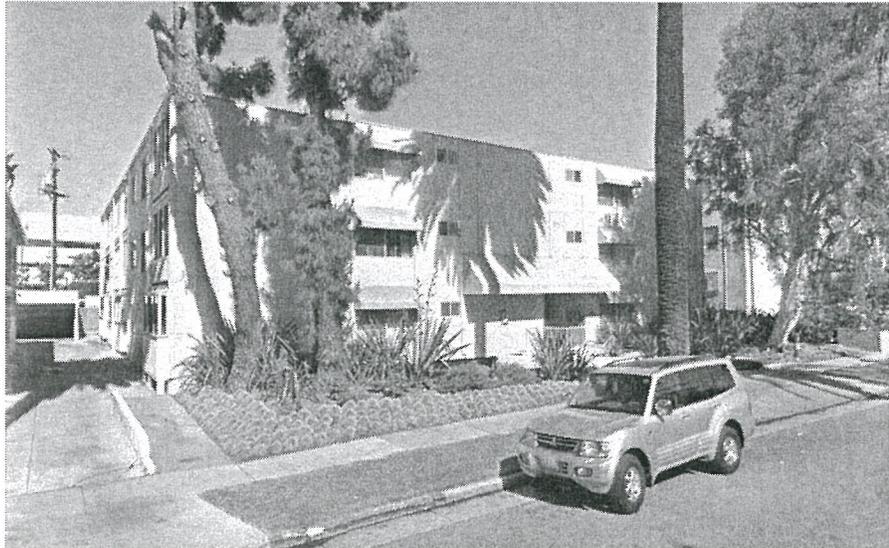
The Planning Commission may wish to discuss whether the Development Plan Review Permit for open air dining should “run with the land” or perhaps it could more clearly run with a particular business or for a specific period of time.

DISCUSSION

As a result of a Beverly Hills Fire Department inspection in the fall of 2012, staff became aware of certain health and safety issues at the subject site that ultimately involved not only the City Fire Department but the Police Department, Building and Safety, Code Enforcement and Planning Divisions (Community Development Department), Transportation and Finance Divisions, the Department of Alcoholic Beverage Control, the Los Angeles County Health Department and the City’s Prosecutor, Steven H. Rosenblitt. Attached is Mr. Rosenblitt’s June 5, 2013 letter (**Attachment C**) memorializing each department's/division's code violation findings as well as the city's efforts to obtain code compliance. Staff representatives will be present and available at the meeting to speak to these matters and to answer questions.

It is noted that disturbances of the peace as discussed in Mr. Rosenblitt's letter are based on Police Department reports and on communications from residents to City staff. These comments generally deal with concerns about noise from the restaurant, particularly from the bar operations at night. Not included in the letter are citations from the Transportation Division for valet parking violations.

115 N. Hamilton –
Multi-Family Building Located Directly Behind Phoenix Restaurant



GENERAL PLAN¹ POLICIES

The General Plan includes goals and policies relevant to the Planning Commission's review of the project including:

N 1 Land Use Conflicts

N 1.3 Limit Hours of Commercial and Entertainment Operations. Limit hours of commercial and entertainment operations adjacent to residential neighborhoods and other noise-sensitive receptors in order to minimize exposure to excessive noise.

N 3 Non-Transportation Noise

N 3.2 Regulation of Sound-amplifying Equipment. Continue to regulate the use of sound-amplifying equipment.

¹ Available online at http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp

ENVIRONMENTAL ASSESSMENT

This project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The project qualifies for a Class 21 Categorical Exemption for an enforcement action by a regulatory agency (the City), and the project has been determined not to have a significant environmental impact and is exempt from the provisions of CEQA.

PUBLIC OUTREACH AND NOTIFICATION

The following methods were utilized for public outreach and notification of the review of the existing entitlements for open air dining, Extended Hours and a Transitional Use License.

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Posted Notice	N/A	N/A	N/A	N/A
Newspaper Notice	N/A	N/A	N/A	N/A
Mailed Notice (Owners & Residents - 300' Radius)	10 days	8/2/2013	8/2/13	10 days
Website	N/A	N/A	N/A	N/A

Public Comment

As of the date of the preparation of this report, staff has received two telephone calls from neighbors of the subject property inquiring about the hearing and the method of submitting comments for consideration by the Planning Commission.

NEXT STEPS

It is recommended that the Planning Commission conduct a public hearing and receive testimony on the project; pursuant to Planning Commission direction following discussion, staff will return with a resolution, as appropriate, at a future meeting.

Report Prepared By:



Michele McGrath, Principal Planner