

REPORT TO PLANNING COMMISSION

DATE: APRIL 18, 2024

TO: HONORABLE CHAIR AND MEMBERS OF THE PLANNING COMMISSION

FROM: DENICE THOMAS, AICP, COMMUNITY DEVELOPMENT DIRECTOR

BY: VALERIE DARBOUZE, ASSOCIATE PLANNER

REQUEST: APPROVE A RESOLUTION DENYING CONDITIONAL USE PERMIT CASE NO. CUP-2023-0026 TO ALLOW A TYPE 47 LICENSE FOR ON-SITE CONSUMPTION OF ALCOHOLIC BEVERAGES AND TO REVISE THE FACILITY'S HOURS OF OPERATION; AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

At its regularly scheduled meeting on April 4, 2024, the Planning Commission conducted a public hearing and considered a request for a Type 47 license for on-site consumption of alcoholic beverages at an existing restaurant (Cronies) and to revise the facility's hours of operation.

After the close of the public hearing and following deliberations, on a 3-0 vote, the Planning Commission directed staff to return to the next regularly scheduled meeting with a resolution to deny the project based on the findings made by the Planning Commission during the hearing.

The Draft Resolution of Denial for the Conditional Use Permit is attached to this staff report.

FISCAL IMPACT

The denial of CUP-2023-0026 will not impact the City's Fiscal Year 2023-24 Budget as all permit fees have been paid by the applicant.

RECOMMENDATION

Staff respectfully requests the Planning Commission approve the resolution denying Conditional Use Permit Case No. CUP-2023-0026, and make a determination of exemption under the California Environmental Quality Act.

Attachment: Draft Resolution

ATTACHMENT

Draft Resolution of Denial for the Conditional Use Permit

RESOLUTION NO. 24-1290

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF AGOURA HILLS, CALIFORNIA, DENYING CONDITIONAL USE PERMIT CASE NO. CUP-2023-0026 TO ALLOW A TYPE 47 LICENSE FOR ON-SITE CONSUMPTION OF ALCOHOLIC BEVERAGES AND TO REVISE THE FACILITY'S HOURS OF OPERATION; AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

THE PLANNING COMMISSION OF THE CITY OF AGOURA HILLS, CALIFORNIA, HEREBY FINDS, RESOLVES, AND ORDERS AS FOLLOWS:

Section I. An application was duly filed by Dave Foldes for Cronies Sports Grill (Croag Inc.), for the real property located at 5687 Kanan Road (Assessor's Identification Number 2053-007-030), requesting the approval of a Conditional Use Permit (Case No. CUP-2023-0026) to allow a Type 47 license for on-site consumption of alcoholic beverages at an existing restaurant and to revise the facility's hours of operation ("Project").

Section II. The Planning Commission's approval of this resolution and denial of the Project application is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15270 as a disapproved project.

Section III. The Planning Commission of the City of Agoura Hills considered the Project application at a public hearing held on April 4, 2024, at 6:30 p.m. in the City Council Chambers located at 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, means of participation in, and purpose of the aforesaid hearing was duly given and published as required by state law.

Section IV. Evidence, both written and oral, including the staff report and supporting documentation, was duly presented to, and considered by the Planning Commission at the aforesaid public hearing.

Section V. Conditional Use Permit. Pursuant to the Agoura Hills Municipal Code (AHMC) §9673.2.E, and based upon the evidence presented at the hearing, including the staff report and oral and written testimony, for the following reasons the Planning Commission cannot make the required findings for the Conditional Use Permit:

1. The proposed use is not consistent with the intent and purpose of Article IX of the AHMC, the goals and objectives of the general plan and any applicable specific plan, and the purposes of the district in which the use is located. General plan policy LU-7.8 requires that residential neighborhoods be preserved and enhanced through enforcement of land use and property standards that ensure that adjacent nonresidential uses are buffered from residences in

harmonious and attractive ways, and policy LU-7.11 requires that residential areas be protected from the encroachment of incompatible nonresidential uses. Although the on-site consumption of alcoholic beverages at a restaurant is permitted in the Commercial Service – Mixed Use – Affordable Housing (CS-MU-AH) district with a CUP, the Project would result in potential impacts of increased noise associated with the use and the extended hours, based on the written comments received from nearby property owners and the comments given by the speakers during the public comment period of the public hearing. Due to the Project's proximity to sensitive uses, such as the residential areas to the West, Agoura High School to the East, and Kumon Math and Reading Center in the same shopping center, the Planning Commission finds the Project would be incompatible with residential areas and other sensitive uses, which does not meet the intent and purpose of general plan goals LU-7.8 and LU-7.11.

2. The proposed use is not compatible with the surrounding properties based on the factors set forth in AHMC §9673.2.E.2. The Planning Commission received several public comments stating existing noise levels from the Project site already impact nearby residences, even with shorter operating hours and without on-site consumption of alcoholic beverages under a Type 47 license. The Planning Commission found that the wash separating the Project site from the nearby residential neighborhood is not a sufficient buffer in light of the noise levels associated with music, outdoor dining, and late-hour alcohol consumption if the Project were approved. Additionally, the allowance of a Type 47 license would increase the likelihood of intoxicated individuals on the premises at later hours, thereby increasing potential noise and secondary nuisance impacts. There is insufficient separation between the nearby residential development and the commercial development where the Project would operate to mitigate for the noise generated during the additional hours of operation. The noise levels permitted by the AHMC between the hours of 10:00 p.m. to 7:00 a.m. are the quietest of noise levels. The intent of these regulations is to mitigate noise impacts on adjacent properties. The Planning Commission finds the project will increase offsite noise levels at later hours than other similar nearby uses and therefore is incompatible with the nearby residential neighborhood.

3. The purpose and the conditions under which the business would be operated or maintained will be detrimental to the public health, safety, or welfare based on the factors set forth in AHMC §9673.2.E.3. The Project has the potential to result in harmful secondary nuisances that cannot be controlled through reasonable mitigation measures. Allowing on-site consumption of alcohol under a Type 47 License, and expanding operating hours beyond the allowed hours of a restaurant would increase risk of public intoxication on adjacent properties or public rights-of-way, which could also result in increased risk of trespass or vandalism.

Section VI. Alcoholic Beverage Sales. Based upon the evidence presented at the hearing, including the staff report and oral and written testimony, for the following reasons the Planning Commission cannot make the required findings under AHMC §9396.3:

A. The requested use at the proposed location will adversely affect the use of a school, park, playground, or similar use within a 500-foot radius, particularly two children tutoring facilities, the Kumon Math and Reading Center of Agoura, and Lexit Robotics Academy, both of which are within 500 feet of the Project's location. Both establishments provide academic and educational services to minors during the daytime and evening hours and can therefore be considered similar uses to schools. Allowing the sale of distilled spirits, in addition to beer and wine, under a Type 47 license will increase the risk of harmful secondary nuisances, such as an increased risk of public intoxication on adjacent properties or public rights-of-way, including an increased risk of intoxicated drivers, which could negatively impact the nearby sensitive uses.

B. The requested use at the proposed location is not sufficiently buffered by public and private improvements or natural topography from residentially zoned areas within the immediate vicinity so as not to adversely affect said areas. The Project is located adjacent to a residential neighborhood to the west, separated only by a wash. This is not a sufficient buffer between the Project and the residential areas to protect against adverse effects that can reasonably be expected to result from the Project, including heightened noise and the risk of public intoxication and intoxicated drivers on surrounding public rights-of-way. The Planning Commission received written testimony from members of the public stating that the current use is already adversely affecting the nearby residential areas. Allowing the sale of distilled spirits, in addition to beer and wine, under a Type 47 license and increasing the hours of operation would increase the likelihood that the facility would adversely affect the nearby residences.

C. The proposed operating characteristics of the business are not compatible, and would adversely affect, the abutting properties and the surrounding neighborhood. The Planning Commission received public testimony stating that the business is already impacting the surrounding neighborhood with noise impacts, therefore extending the hours of operation and serving distilled spirits in addition to beer and wine would worsen the impact compared to existing conditions.

D. The sale of alcoholic beverages may be restricted to certain hours of each day of the week as necessary to ensure that activities related to the project are compatible with the quiet enjoyment of the neighborhood. However, the request would extend the permitted hours to 7:00 a.m. to 12:00 a.m. Sunday through Thursday and until 1:00 am on Friday and Saturday. These hours are not compatible with the quiet enjoyment of the nearby residential neighborhood, as no

other similar businesses in the vicinity are allowed to operate as late into the evening and midnight on the weekdays and 1 a.m. on the weekends is unreasonably late for this type of use.

Section VII. After due consideration, and based on the aforementioned findings, and all the evidence in the record of the proceeding, the Planning Commission hereby denies Conditional Use Permit Case No. CUP-2023-0026, with respect to the property described in Section I hereof. The Planning Commission makes this decision because the following AHMC findings, explained in Sections V and VI above, cannot be met:

1. §9673.2.E.1
2. §9673.2.E.2
3. §9673.2.E.3
4. §9396.3.A
5. §9396.3.B
6. §9396.3.D
7. §9396.3.E

Section VIII. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and this certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Section IX. Any interested party may appeal this decision to the City Council pursuant to Sections 9804.5 and 9804.6. of the Agoura Hills Municipal Code. Section 1094.6 of the Code of Civil Procedure of the California Code governs the time within which judicial review, if available, of the Planning Commission's decision must be sought, unless a shorter time is provided by other applicable law.

PASSED, APPROVED and ADOPTED this 18th day of April, 2024, by the following vote to wit:

AYES: (
NOES: (
ABSENT: (
ABSTAIN: (
(

Kate Anderson, Chair

ATTEST:

Denice Thomas, Secretary