

FINAL DRAFT, STAFF REPORT, October 3, 2007

Project Address: 1142 Abbot Kinney Boulevard

Case Number: ZA-2007-2874-CUB, ENV-2007-2875-MND

Applicant: Bart Miali and Caroline Sachs (husband and wife), 629 Milwood Avenue, Venice (310) 890-2956 email: BMiali@Verizon.net

Nature of Application: Pursuant to Los Angeles Municipal Code section 12.24W1, a conditional use to permit a Department of Alcoholic Beverage Control [Type 20] license for the off-site sale of beer and wine in conjunction with a 1,004 square foot gourmet shop having hours of operation from 8:00am to 11:00pm, daily. The Applicant also seeks to conduct wine tasting on the premises.

Size of parcel: 30' x 90', 30' street frontage on AK, 90' deep, backs onto alley called Alhambra Court, APN: 4238-003-021

Note: The building on this parcel, like the parcels on both sides of it, is divided into two separate stores/ businesses (1140 AK and 1142 AK), the proposed business, and Tales and Toys (toy store). To the east is Glencrest Bar-B-Que and Venice Vintage Paradise (furniture and accessories), and to the west is Salt (clothing) and Strange Invisible Perfumes (fragrances). The proposed business occupies half of the 2,700 square foot parcel.

Size of project: The building on the parcel is 2,008 square feet, and the proposed business would occupy half of the building, 1,004 square feet.

The Floor Plan shows that the “display area” is 598 square feet, the “wine tasting” area is 98 square feet, and the rear portion of the business (which includes the bathroom, receiving, and storage areas) collectively totals approximately 250 square feet.

The building was built in 1965, and the current owner, Harriet Benjamin, purchased the building with her deceased husband in 1977. Her daughter, Ann Benjamin (310-390-9712), manages the property and was present at the LUPC meeting. She explained how she has received dozens of offers to rent the stores, and how she has carefully selected both tenants to fill community needs on Abbot Kinney, and stated that she gives both tenants reduced rent to help them succeed. Ann Benjamin states that her family has lived in Venice for many decades.

At the rear of the parcel behind both retail stores, is a 20' deep structure extending across the width of the entire parcel (30'), which appears to be illegal, since the tax records show that the building on the parcel is 2,040 square feet, and this is the approximate size of the existing building, not including the rear structure. The Applicant’s site plan shows (and the Architect confirms) that the Applicant intends to remove the structure on the Applicant’s half of the rear portion of the parcel, but not the half behind the existing toy store. The property owner states that the Applicant has already removed the structure, but there is a tall solid fence so it is impossible to confirm.

Zoning: C2-1-0-CA

General Plan Land Use: Community Commercial

Venice Subarea: North Venice, VCZSP Section 10.F.
VCZSP Section 11.B.2, entitled “Abbot Kinney Boulevard Ground Floor Commercial Development,” provides useful guidelines

Parking requirement: Under the VCZSP, a “general retail store” is required to provide one parking space for each 225 square feet of floor area, and this same requirement applies to “Food Store. Grocery Store, Supermarket, or similar use.” The floor area of the entire building (1,004 square feet) is used to calculate parking, not just the “Retail area” and the “Wine Tasting Area,” such that 4 parking spaces would be required.

The Beach Impact Zone parking requirement is “One parking space for each 640 square feet of floor area of the Ground Floor,” which would be two BIZ parking spaces.

The Applicant is taking the position that no parking is required beyond what was required when the building was built, because there is no change in use from retail. The Applicant’s position is likely supported by the City of Los Angeles Department of Building and Safety Zoning Code Manual and Commentary, fourth edition, May 2005, at Section 12.21A4. Additionally, the definition of “Change In Intensity of Use” in Section 5.F. of the VCZSP does not seem to be met in this case, as there is no increase in the Service Floor area, no increase in trips generated, and no change in the required parking.

This raises the question of what parking requirement was imposed when the building was built, and the Applicant does not have an answer to this question. The Applicant’s Architect points out that, using current parking space design standards, at most 2 parking spaces might have been required when the building was built. A history of the imposition and calculation of parking requirements is found in the City of Los Angeles Department of Building and Safety Zoning Code Manual and Commentary, fourth edition, May 2005, at page 69, entitled “History Of Parking For Commercial Buildings.” The Manual appears to state that, in 1965, there was no parking requirement for commercial buildings under 5,000 square feet.

However, some Zoning Administrators view a Conditional Use (Beverage) application, which adds the serving of alcohol to an existing use, as a reasonable basis for imposing new conditions, including increased parking requirements.

The size of the Applicant’s half of the rear yard, after the apparently illegal construction is removed, is 15' wide and 20' deep, but this is interrupted to some extent by a utility pole which is located approximately 3'- 4' from the east property line, at the rear property line at the alley. Please see the Applicant’s “Floor Plan,” which shows the location of the utility pole. A compact parking space is 7'6" wide and 15' deep, and it appears (and the Applicant’s Architect concurs) that two compact parking spaces can be created in the rear of the Applicant’s premises, though these spaces may need to be slightly substandard, including with respect to turning radius.

Ideally, the apparently-illegal construction should also be removed from the rear yard of the toy store located at 1140 Abbot Kinney, which would provide 4 slightly-substandard parking spaces for both businesses. However, the toy store is a new business, and reports that it is highly dependent upon the storage space to maintain profitability, as the storage space allows for the purchase of larger quantities of merchandise at a lower price, and reduces the chance of a lost sale because an item is out of stock. The toy store states that it would cause great hardship to this

new business to lose their storage space. A site visit to the toy store is recommended to assess and appreciate the high quality of this business operation.

The Applicant states that there may be as many as 5 employees on the site at any one time, but the owner lives nearby (Milwood and Electric) and intends to walk to the business.

Applicant's representative: Brandon Finch and Elizabeth Peterson, Elizabeth Peterson Group (323) 674-2686; email: BrandonFinch@PacBell.net; Elizabeth@EPGLA.com

Applicant's Architect: Don Dimster, Dimster Architecture (310) 694-8553; email: xx

Permit Application Date: June 16, 2007 (as per Applicant's representative)

ZA Hearing Date: October 4, 2007 (as per Applicant's representative)

Position of Neighbors: The manager of Glencrest Bar-B-Que and the employee of Tales & Toys were consulted, and both said that the owners of their respective businesses had no objection to the proposed wine shop and gourmet food store, and suggested no conditions that they wished to be imposed on the Applicant.

ABC: The District Director, Ms. Karemon Waddell-Peterson, was contacted to inquire into the restrictions on wine tasting with a Type 20 license, and any standard conditions that the ABC places on licenses, but she did not respond in time for the LUPC hearing. Ms. Waddell-Petersen was out of the office for an extended period, and referred the questions to another ABC person, Supervising Investigator JoAnn Aguilar, who responded that "There are no standard conditions that are placed on each license. Conditions that are imposed on the license are a case by case basis."

In answer to the question of restrictions on wine tasting with a Type 20 license, Ms. Aguilar responded "The type of license they need is a type 42 which is an On-Sale Beer and Wine License Public Premises (no one under 21 would be allowed). There is no limit to the number of wine-tastings they could schedule... However, on the case where the premise is licensed with a type 20 and they want to put a type 42 license for wine-tasting only we add the following condition: 'Individual servings of alcoholic beverages shall not exceed two ounces per glass or container. This condition shall not be construed so as to provide a patron from sampling one than one glass and/or container of an alcoholic beverage for the purpose of comparative tasting(s).'"

The LUPC believes that there is an obvious mistake in this language and that it was intended to say: "Individual servings of alcoholic beverages shall not exceed two ounces per glass or container. This condition shall not be construed so as to prevent a patron from sampling more than one glass and/or container of an alcoholic beverage for the purpose of comparative tasting(s)."

Issues and LUPC Discussion:

The issue of whether loading and receiving should take place on Abbot Kinney or Alhambra Court was discussed, as Alhambra Court is behind residential property. The LUPC felt that no regulation of this activity was needed.

The question of whether the Applicant should be required to provide landscaping in the approximately-two-feet deep setback of the building along Abbot Kinney was raised. The LUPC felt that this was unnecessary.

The issue of whether the illegal construction in the rear of the other half of the parcel should be removed when the toy store relocates or no longer occupies the property, and parking installed there, was discussed, and the LUPC rejected this condition. The LUPC was in favor of the Applicant providing 2 substandard parking spaces. The parking spaces would be substandard only because of the telephone pole somewhat obstructing access from the alley. The Applicant said that they would try to create two substandard parking spaces.

Restrictions upon the Applicant's scheduled wine tastings were discussed, as to frequency, day of week, and time of day. The LUPC felt that this was unnecessary.

The question of whether the Applicant should be required to provide off-site parking for any wine tasting events at the same calculation as a restaurant (one space per 50 square feet of Service Area) was discussed. The Applicant stated that wine tasting can legally take place only in the designated area of 100 square feet. The LUPC felt that off-site event parking was not called for at this time, as street parking would be sufficient. If necessary, it may be possible for the Applicant to rent the parking lot behind Glencrest Bar-B-Que and Venice Vintage Paradise after those businesses close for the evening;

The hours of operation were discussed, and no limitation on the Applicant's requested hours of operation were deemed necessary.

The Applicant's request to sell "fortified wine" was discussed. Previous licenses to sell alcoholic beverages for off-premises consumption in the Venice area have been conditioned upon not selling fortified wines, to prevent the licensee from selling Thunderbird, Mad Dog, and other fortified wines believed to be consumed by undesirable elements. The Applicant desires to sell Port, Sherry, Amontillado, etc., and the LUPC sought to craft language for a condition that would allow the wealthy to buy fortified wines, but prevent the sale of rot gut to the poor, by requiring all fortified wines to be sold above a certain price point.

Similarly, the Applicant seeks to sell single cans and bottles of beer such as microbrew and specialty beer. Again, the LUPC crafted language that would only allow malt beverages to be purchased above a certain price point, and in bottles or cans under 16 ounces. Neither the Applicant nor the LUPC pointed out that many specialty beers come in bottles larger than 16 ounces.

The LUPC discussed the signage visible from Abbot Kinney which would advertise alcoholic beverages, and concluded that only advertisements with a particular brand of alcoholic beverages should be prohibited. The Applicant concurred with this restriction.

The LUPC discussed the nine conditions suggested by the Applicant, and also the conditions imposed on some previous applications in the Venice area for licenses to sell alcoholic beverages for off-premises consumption. The LUPC went through the conditions one-by-one, with the input of the Applicant, and crafted the conditions set forth below. However, the information from the ABC concerning wine tasting, and the necessity for a different type of

license than the Applicant was seeking, was not available to the LUPC at the time of the hearing. The Applicant's representative states that the Applicant has not yet applied for an ABC license because the Conditional Use must be approved first. There has been some discussion as to whether the Applicant should come back for another hearing before the LUPC to discuss a Type 42 license and any additional conditions, because a Type 42 license is for a bar. However, the LUPC fully considered the wine-tasting aspect of the Applicant's intended business, so this would seem unnecessary, particularly because the VNC Board will have the opportunity to consider this new issue. The LUPC asks that the VNC Board add the condition specified by the ABC, and asks that the VNC Board to also add a condition that the Type 42 license is "For wine tasting only."

LUPC Recommendation:

The LUPC passed a Motion recommending that the VNC Board approve the requested Application with the following conditions:

- (1) Applicant will post on the premises a laminated copy of the conditions of approval, in a conspicuous place where the public can see them ("Busybody copy");
- (2) Applicant shall provide two (2) substandard parking spaces;
- (3) No branded alcohol advertisements shall be placed in the window or door glass of the property which is visible from the outside of the premises;
- (4) Malt beverages shall not be sold in single-serving containers larger than 16 ounces capacity and all malt beverages sold must be priced \$5.00 per unit or greater. Malt beverage based coolers in containers of 16 ounces or less may only be sold in four-pack quantities as pre-packaged by the manufacturer. All other malt beverages in containers of 16 ounces or less may only be sold in six-pack quantities as pre-packaged by the manufacturer. Applicant may only sell fortified wines that 20% fortification or less and priced at \$10.00 per unit or greater. The sale of alcoholic beverage miniature bottles (2 ounces or less), and pint or half pint containers will not be permitted.
- (5) No self-service alcohol vending machines shall be allowed on the premises;
- (6) Hours of operation are from 8am to 11pm, with hours of alcohol sales being the same;
- (7) That the use and development of the property shall be in substantial conformance with the floor plan submitted and marked Exhibit "A." With reference to this condition, please note that we have requested the Applicant to clearly "bubble" and label on the Exhibit (floor plan) the area within which alcohol will be displayed to the public, attached as Exhibit "A;"
- (8) No further additions or structural alterations shall be made to the subject building unless necessary to comply with an order issued by a governmental agency in the interests of health, safety, or welfare;

- (9) The subject building and property shall be maintained in a neat, attractive, and safe condition at all times including repainting of the building on a regular basis;
- (10) No adult books, magazines, and video tapes shall be sold on the premises;
- (11) No tobacco sales allowed on the premises;
- (12) In addition to the business name or entity, the name of the Applicants – Bart Miali and Caroline Sachs – shall appear on the alcohol license and any related permits;
- (13) No pay phone will be maintained on the exterior of the premise;
- (14) There shall be no coin-operated games or video machines maintained upon the premises at any time;
- (15) Any graffiti painted or marked upon the premises or on any adjacent area under the control of the Petitioner(s) shall be removed or painted over within 24 hours of being applied, and the paint shall match the original color;
- (16) The Petitioner(s) shall be responsible for maintaining free of litter, the area and adjacent to the premises over which they have control;
- (17) Electronic age verifications device(s) which can be used to determine the age of any individual attempting to purchase alcoholic beverages or tobacco products shall be installed on the premise at each point-of-sale location. This device(s) shall be maintained in an operational condition and all employees shall be instructed in their use prior to the sale of any alcoholic beverage or tobacco product;
- (18) The Petitioner(s) shall install and maintain security cameras and a one-month video library that covers all common areas of the business, high-risk areas and entrances or exits. The videotapes shall be made available to police upon request;
- (19) Any future operator or owner for this site must file a new Plan Approval Application to allow the City of Los Angeles to review the “mode and character” of the usage;
- (20) If at any time during the period of the grant, should documented evidence be submitted showing continued violation(s) of any condition(s) of the grant, resulting in a disruption or interference with the peaceful enjoyment of the adjoining and neighboring properties, the Zoning Administrator will have the right to require The Petitioner(s) to file for a plan approval application together with the associated fees, to hold a public hearing to review The Petitioner(s) compliance with and the effectiveness of the conditions of the grant. The Petitioner(s) shall submit a summary and supporting documentation of how compliance with each condition of the grant has been attained;

The LUPC asks that the VNC Board consider adding the following condition:

- (21) The Type 42 ABC license shall be restricted “For wine tasting only.” With respect to the wine tasting, individual servings of alcoholic beverages shall not exceed two ounces per glass or container. This condition shall not be construed so as to prevent a patron from sampling more than one glass and/or container of an alcoholic beverage for the purpose of comparative tasting(s).