Atascadero City Council

Staff Report – Community Development Department

On-site Alcohol Sales License
Determination of Public Convenience
PLN 2011-1390 / ABC 2011-0009
8005 El Camino Real
(BLT-Atascadero 7210, LLC/Walgreens)

(Request to approve an off-site sale of beer and wine to an existing establishment Alcohol Beverage Control license application)

RECOMMENDATION:

Council adopt Draft Resolution “A” finding that a public convenience would be served by allowing the issuance of a type 20 off-site sales of beer and wine license for Walgreens Drug Store, an existing retail establishment located at 8005 El Camino Real (APN 030-141-077).

DISCUSSION:

The applicant has applied, through the Department of Alcohol Beverage Control (ABC), for an off-site sale of beer and wine at their existing location (8005 El Camino Real). This retailer currently does not sell wine or beer at this location. Walgreens is a neighborhood drug-store that contains a drive-through pharmacy, photo center and general merchandise for sale.

The site is zoned both Commercial Professional (CP) and Commercial Retail (CR) with a General Commercial (GC) General Plan Land Use Designation. The drug-store with drive-through pharmacy was approved in December 2002 as Conditional Use Permit (CUP) 2002-0069.

The sale of beer and wine at this location will be ancillary to its existing use as a pharmacy and general merchandise retailer. The applicant estimates that approximately 24 feet of shelf space and one (1) 10-foot cooler will be utilized for the sale of beer and wine. It is estimated that beer and wine sales will amount to less than five (5) percent of total sales.
This particular location is a 24-hour operation, however sales will be limited from 6:00 am to 2:00 am, consistent with State law. In addition, Walgreens product mix will only contain beer in six packs, 12 packs and 18 packs. No single or 40 ounce bottles will be sold. Spirits and malt liquor will also be limited to only those products that contain less than 5.9 percent alcohol by volume (refer to Attachment 2).

Analysis:

Section 23958.4 of the Alcoholic Beverage Control Act requires the local governing body of the area to determine that the license will serve public convenience or necessity. This process is only required when it is found that “Undue Concentration” of liquor licenses exists within the area. In this case, the Department of Alcoholic Beverage Control (ABC) has determined that there is an undue concentration of liquor licenses within the area and that a determination from the local governing body (City Council) will be required.

The proposed site is located in census tract number 0125.03, which allows six (6) ABC licenses within the area without Council review. There are currently nine (9) licenses existing within the census tract, and therefore Council review is required prior to adding any additional licenses to the area. The site is also more than 500 feet from any public school properties.

Staff has reviewed the request to determine that approval of this application, or conditional approval, would not negatively influence the rate of criminal activity in the neighborhood and that it would be compatible with the neighborhood character. The Atascadero Police Department has determined that the impact to public safety would be negligible based on the consideration of the physical location of the current establishment and the number of past calls for service.

FISCAL IMPACT:

Slight positive fiscal impact expected from increased sales tax.

ATTACHMENTS:

1. Location Map
2. Applicant Letter
3. Applicant Product Display Example
4. Draft Resolution “A”
January 19, 2011

Via Federal Express
Tracking No. 794336984514

Atrascadero Planning Division
6907 El Camino Real
Atrascadero, CA 93422
Attn: Callie Taylor, Associate Planner

Re: Request for Determination of Public Convenience or Necessity for Walgreens
Located at 8005 El Camino Real, Atrascadero, California 93422-5211

Dear Ms. Taylor,

This firm represents Walgreen Co. (“Walgreens”). Walgreens recently applied for a Type-20 license (Application no. 506849) for the off-premises sale of beer and wine at its store located at 8005 El Camino Real, Atascadero, CA 93422 (the “Store”).

We have been informed by the Department of Alcoholic Beverage Control that a determination of public convenience or necessity by the City of Atascadero is a condition to its issuance of this license. Section 23958.4(b)(2) of the California Business and Professions Code provides for the issuance of an off-sale beer and wine license

“If the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (a) notification by the department of an application for licensure, or (b) a completed application according to local requirements, if any, whichever is later.”

On behalf of Walgreens, we respectfully request that the City determine that an off-sale beer and wine license at this store will serve public convenience or necessity.
Walgreens – 8005 El Camino Real, Atascadero, CA  
Page: 2

I. Project Description

The sale of beer and wine at the Store will be ancillary to its existing use as a pharmacy and general retailer. Walgreens estimates that only 24 feet of shelf space, and one 10-foot wide cooler will be devoted to the display of beer and wine (please see attached photos and floor plan). It is estimated that the sale of beer and wine at this Store will amount to less than 5% of total sales.

The introduction of beer and wine will involve no physical change to the interior space (other than some minor rearrangement of merchandise, shelving and coolers) nor to the building envelope, building exterior or landscaping. These minor interior changes will involve no grading, construction or construction equipment at the Store. Although the Store is a 24-hour location, beer and wine sales will be limited from 6:00 a.m. to 2:00 a.m., in accordance with California law.

II. The Product Mix is Designed to Appeal only to Social Drinkers.

Walgreens has carefully selected its product mix to appeal to light to moderate social drinkers, and not to those looking to abuse alcohol. Walgreens will only sell beer in 6 packs, 12 packs, 18-packs, and cases – no singles or 40 oz. bottles will be sold. There will be no spirits and no malt liquor in excess of 5.9 percent alcohol by volume. Moreover, Walgreens will not sell fortified wine or any other product that is generally considered conducive to alcohol abuse. The wine selection will consist predominantly of well-known, reasonably-priced California varietals.

III. The sale of beer and wine at the Store will serve public convenience or necessity.

By adding beer and wine to its inventory, Walgreens intends to provide a “one-stop” shopping experience for its customers. This “one-stop” shopping will result in increased efficiency for shoppers, and is consistent with what today’s consumers expect from a retail pharmacy and general merchandiser such as Walgreens.

It is anticipated that the same customers who currently shop at the Store will continue to shop there, with the added benefit of being able to purchase beer and wine at the Store as opposed to having to travel to another possibly more distant and inconvenient location. It is Walgreens’ expectation that (a) the sale of beer and wine at the Store will not change the existing numbers of customers at the Store, (b) the limited selection of beer and wine will not materially increase the number of truck deliveries or vehicles that currently come to the Store, and (c) the additional traffic generated by the addition of beer and wine will be minimal.
IV. The sale of beer and wine at the Store is consistent with adjacent uses.

The Walgreens store is located in a zone designated as Commercial Professional (CP). This zoning allows for the sale of beer and wine off-premises. Current adjacent uses include various restaurants, shops and markets. Many of these businesses are licensed to sell alcohol and some, such as 7 Eleven, Albertson’s, and Food 4 Less are licensed to sell alcohol off-premises.

Therefore, because the Store is adjacent to other businesses where the sale of alcohol is an ancillary use, the sale of beer and wine at the Store is consistent with adjacent uses.

V. The issuance of a Type-20 license to the Store will not create a burden on the Police Department.

Based on information provided by the ABC, there are 6 off-sale liquor licenses allowed and 9 existing in census tract 0125.03. The ABC did not provide crime statistics for this area. However, Walgreens believes the addition of beer and wine at the Store will not add to crime or any police-related problems in the surrounding community, given that the product mix is not of a nature that would attract criminal elements.

VI. The sale of beer and wine at the Store will not have a detrimental impact on the surrounding area.

So as to ensure minimal disruption to surrounding neighborhoods, Walgreens has taken preemptive measures to ensure that alcoholic beverages will be sold in a highly responsible and conscientious manner. Detailed alcohol sales policies and procedures, endorsed by legal counsel and senior management, are already in place and will be strictly enforced. Some of these policies and procedures are:

- Employees must undergo training prior to beer and wine being made available at the Store;
- Each cash register clerk must submit a policy acknowledgement as part of the daily log-in and log-out process;
- Cash register clerks are required to request identification and proof of age for any customer attempting to purchase beer or wine who appears to be under the age of 40. Pre-programmed cash register “prompts” will remind the clerks to request this proof;
- Under-aged employees will not be allowed to handle the selling or stocking of alcoholic beverages.
Training will be through a Walgreens internal alcohol sales training program, which is required for all clerks and managers. The training program focuses on recognizing and preventing any sales of alcohol that may be detrimental to the public welfare (i.e., the sale of alcohol to minors and intoxicated persons). Implementation of this program will help ensure that the sale of beer and wine at the Store will not be detrimental to residents, shoppers, or other businesses in the vicinity of this Store. To prevent abuses, Walgreens will only sell beer in 6 packs, 12 packs, 18 packs and cases. Walgreens will not sell beer by the individual can or bottle. Moreover, Walgreens will not sell spirits or any other product considered conducive to alcohol abuse.

To further limit any possible nuisance in and around the Store, Walgreens has closed circuit security cameras that monitor the alcohol sales area and a public view monitor, which serves to discourage loitering and acts as an additional security measure. For security purposes, the beer and wine will not be located near any exit area, thereby discouraging theft. In addition, the Store’s parking lot is well lit.

VII. Conclusion.

The sale of beer and wine as an ancillary use at the Store will enable Walgreens to provide shoppers in the City of Atascadero the convenience of one-stop shopping that consumers have come to expect from a national pharmacy and general retailer. Walgreens is committed to providing this convenience in a safe and conscientious manner, with minimal disruption to the surrounding neighborhood. For these reasons, Walgreens respectfully requests that the City determine that public convenience or necessity will be served by the issuance of a Type-20 license to the Store.

Please find enclosed the Planning Application, an authorization form from the property owner, a copy of the ABC license application, form ABC-245, and check number 58478 in the amount of $615.00 for the processing fee. We would appreciate it if the City would complete Section 3 of the 245 form and send it to the Department of Alcoholic Beverage Control, 3220 S. Higuera St., Suite 233, San Luis Obispo, CA 93401.

Please feel free to contact me at dkramer@hnattorneys.com or (415) 365-4004 if you need any further information. Thank you in advance for your consideration.

Very truly yours,
HAAS NAJARIAN, LLP

Daniel J. Kramer, Esq.
DRAFT RESOLUTION “A”

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, FINDING THAT A PUBLIC CONVENIENCE WILL BE SERVED BY ALLOWING THE ISSUANCE OF AN ALCOHOL LICENSE AT 8005 EL CAMINO REAL ON APN 030-141-077 (BLT-ATASCADERO 7210, LLC/WALGREENS)

WHEREAS, an application has been received from Hass Najarian, LLP on behalf of BLT-Atascadero 7210, LLC (120 Newport Center Drive, #220 Newport Beach, CA 92660) Property Owner, and Walgreens Co. (104 Wilmot Rd MS 1447, Deerfield, IL 60005) Applicant, to request that the City Council make a finding of public convenience or necessity to allow the Department of Alcohol Beverage Control (ABC) to issue an off-site beer and wine sales license at 8005 El Camino Real, (APN 030-141-077); and,

WHEREAS, the site’s current General Plan Designation is GC (General Commercial); and,

WHEREAS, the site’s current Zoning Designation is CR/CP (Commercial Retail/Commercial Professional); and,

WHEREAS, retail establishments that sell beer and wine for off-site consumption are consistent with the zoning district and the City’s economic development efforts; and,

WHEREAS, the Atascadero Police Department has reviewed the application and does not foresee any significant public safety issue related to the requested license; and,

WHEREAS, the license is requested at a site that is located more than 500 feet from public school property; and,

WHEREAS, the City Council of the City of Atascadero considered the requested application at a public meeting on February 8, 2011; and,

NOW THEREFORE, the City Council of the City of Atascadero, hereby determines that a public convenience will be served by the issuance of an off-site sale license for beer and wine to Walgreens at 8005 El Camino Real.
On motion by Council Member ______________ and seconded by Council Member ________________, the foregoing Resolution is hereby adopted in its entirety on the following roll call vote:

AYES:

NOES:

ABSENT:

ADOPTED:

CITY OF ATASCADERO

By: ____________________________
    Tom O’ Malley, Mayor

ATTEST:

_______________________________________
Marcia McClure Torgerson, C.M.C., City Clerk

APPROVED AS TO FORM:

_______________________________________
Brian A. Pierik, City Attorney