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January 31, 2019

Patricia Bergounoux (A) (O)  
Bon Vivant Market and Café, Inc.  
5177 Franklin Avenue  
Los Angeles, CA 90029

Michael LoGrande (R)  
LoGrande & Co., LLC  
2040 Ocana Avenue  
Long Beach, CA 90815

CASE NO. ZA 2012-2005-CUB-PA1  
PLAN APPROVAL  
3155 Glendale Boulevard  
Northeast Los Angeles Planning Area  
Zone : [Q]C4-1XL  
D.M. : 1545A207  
C.D. : 13  
CEQA : ENV-2018-6433-CE  
Legal Description: Lot Nos. 41 and 42, Block  
A, Tract No. 5006

Pursuant to CEQA Guidelines Section 15061, I hereby DETERMINE:

based on the whole of the administrative record, that the Project is exempt from CEQA pursuant to CEQA Guidelines, Section 15305 and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies.

Pursuant to Los Angeles Municipal Code Section 12.24-M, I hereby APPROVE:

plans to allow the continued sale and dispensing of a full line of alcoholic beverages for on-site consumption and to allow beer and wine for off-site consumption in conjunction with an existing restaurant in the [Q]C4-1XL Zone;

upon the following additional terms and conditions:

1. All other use, height and area regulations of the Municipal Code and all other applicable government/regulatory agencies shall be strictly complied with in the development and use of the property, except as such regulations are herein specifically varied or required.
2. The use and development of the property shall be in substantial conformance with the plot plan and the floor plan stamp dated November 1, 2012 and marked Exhibit "A", except as may be revised as a result of this action.

3. The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the Zoning Administrator to impose additional corrective Conditions, if, in the Administrator's opinion, such Conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.
4. All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.
5. A copy of the first page of this grant and all Conditions and/or any subsequent appeal of this grant and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the Development Services Center and the Department of Building and Safety for purposes of having a building permit issued.
6. **Modified.** ~~The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this approval which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.~~

#### **INDEMNIFICATION AND REIMBURSEMENT OF LITIGATION COSTS.**

Applicant shall do all of the following:

- a. Defend, indemnify and hold harmless the City from any and all actions against the City relating to or arising out of, in whole or in part, the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void, or otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions, or to claim personal property damage, including from inverse condemnation or any other constitutional claim.
- b. Reimburse the City for any and all costs incurred in defense of an action related to or arising out of, in whole or in part, the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages, and/or settlement costs.
- c. Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the Applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than \$50,000. The City's failure to

notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (b).

- d. Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (b).
- e. If the City determines it necessary to protect the City's interest, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

The City shall notify the applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action, or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the applicant shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event the Applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

"City" shall be defined to include the City, its agents, officers, boards, commissions, committees, employees, and volunteers.

"Action" shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims, or lawsuits. Actions include actions, as defined herein, alleging failure to comply with any federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the Applicant otherwise created by this condition.

7. The market and restaurant shall be limited to 4,220 square feet of floor area and 88 patron seats that include 8 seats on an outdoor patio within the public right-of-way along Glendale Boulevard as shown on Exhibit "A".

The patron seats above shall not exceed the maximum capacity/occupancy permitted by the Los Angeles Fire Department and the Department of Building and Safety.

8. Any use or development within the public right-of-way shall require approval of a revocable permit by the Department of Public Works subject to the following.
- a. A maximum of 8 seats are permitted within the public right-of-way; the number of seats and tables may be reduced if pedestrian access within the public right-of-way is obstructed, subject to final determination by the responsible City agencies.
  - b. A barrier with a minimum height of 3 feet 6 inches shall be provided on an outdoor patio in order to separate the dining area and pedestrian traffic within the public right-of-way. The barrier shall be landscaped with planters or flower pots in order to shield the view of the patio area.

9. **MODIFIED.** The hours of operation shall be limited to 9 ~~8~~ a.m. to 2 a.m. daily.

After hours use of the facility, other than for routine clean-up and maintenance, is not permitted. The operating hours shall be posted at the entrance of the restaurant and on the menu.

10. **MODIFIED.** ~~Amplified music inside the restaurant shall be limited to background music at a low volume such that any music playing shall not be audible beyond the subject premises.~~

Live entertainment shall be limited to a maximum five piece band and shall be limited to the interior of the premises.

No amplified music or any type of entertainment shall be permitted on the outdoor patio.

No public address system, no paging system shall be installed or maintained on the subject property, which are audible outside the building in which it is located.

Noise generated on-site shall not exceed the decibel levels stated in the Citywide Noise Ordinance.

11. Should there be a change in the ownership of the property/the restaurant and/or the business operator, the property owner and the business owner/operator shall provide the prospective new property owner and the business owner/operator with a copy of the conditions of this action prior to the legal acquisition of the property and/or the business. Prior to the closing of escrow for a potential change in the

ownership of the property/business owner or operator, evidence showing that a copy of this determination including the conditions required herewith has been provided to the prospective owner/operator, shall be submitted to the satisfaction of the Zoning Administrator.

12. ~~**Deleted.** The privileges granted for the sale of a full line of alcoholic beverages for on-site consumption and the sale of beer and wine for off-site consumption shall be for a period of **five years** from the effective date of the subject grant, after which a new grant should be "approved" to continue the sale of alcohol. The new entitlement application shall include condition compliance review with supporting documents showing that the required conditions have been complied with.~~

~~Further, at any time during the period of validity of this grant, should documented evidence be submitted showing a violation of any condition(s) of this grant resulting in a disruption or interference with the peaceful enjoyment of the adjoining and neighboring properties, the Zoning Administrator reserves the right to require the applicant to file for a plan approval application together with associated fees, the purpose of which will be to hold a public hearing to review the applicant's compliance with and the effectiveness of these conditions. The applicant/petitioner(s) shall provide a summary and supporting documentation of how compliance with each condition of the grant has been attained. Upon this review the Zoning Administrator may modify, add or delete conditions, and reserves the right to conduct the public hearing for nuisance abatement/revocation purposes. (See Condition No. 35)~~

13. No deviation from the required parking has been requested or granted herein. Parking shall be provided in compliance with the code and the Atwater Village Neighborhood Oriented District Parking Credit Condition Clearance Affidavit filed under Covenant and Agreement, Instrument No. 20120501380 agreeing to comply with the following:
- a. Pay yearly for the parking credits for so long as the market/restaurant is maintained.
  - b. Pay an annual fee pursuant to LAMC Section 19.01 (Miscellaneous Clearance – Director or Commission) in order to compensate the City for the costs of administering the parking program.
  - c. Should the use be terminated for a period of six or more months, the credits granted shall automatically return to the pool of available credits for the Atwater Parking Credit Area, and the applicant and the City.
14. The rear/side door(s) of the premises shall be equipped on the inside with an automatic locking device and shall be kept closed at all times. The door(s) shall not be used as a means of access by patrons to and from the premises. Temporary use of this door(s) for delivery of supplies does not constitute a violation. Said door(s) are not to consist solely of a screen or ventilated security door.

15. The premises shall be maintained as a bona fide market and restaurant with a kitchen to be used for cooking and preparing of food as defined by Section 91.0403 of the Los Angeles Municipal Code, and shall provide a menu containing an assortment of foods normally offered in such restaurants. Food service shall be available at all times during operating hours.
16. The applicant shall secure a City permit decal denoting approval of alcoholic beverage sales from a Planning Department public counter subsequent to the Zoning Administrator's signature on the Planning Department sign-off form and mount it on either the inside of the window of the subject site facing the street or on the outside of the building (if inside mounting is not possible). The decal shall be visible at all times and mounted before the privileges granted herein are utilized.
17. Coin operated game machines, pool tables or similar game activities or equipment shall not be permitted. Official California State lottery games and machines are allowed.
18. Pool tables, billiard tables, and Adult Entertainment uses [Municipal Code Section 12.70] shall be prohibited. There shall be no topless entertainment, no disc jockey, no karaoke, no male or female performers, or no fashion shows at the restaurant.  
  
No dancing is authorized. The applicant shall not sublet the premises for nightclub activity.
19. The Conditions of this grant shall be retained on the premises at all times and be immediately provided upon request of any Los Angeles Police officer or ABC investigator. The manager and all employees shall be knowledgeable of the Conditions herein.
20. The conditions of the subject grant shall be provided to employees for their review. Prior to the utilization of the grant, a statement signed by the employees stating that they reviewed and agree to comply with the conditions shall be submitted to the Zoning Administrator.
21. Prior to the utilization of the grant, all personnel acting in the capacity of a manager of the premise and all part time and full time employees who serve alcoholic beverages shall complete the STAR (Standardized Training for Alcohol Retailers) session sponsored by the Los Angeles Police Department.

All employees who serve alcoholic beverages shall attend follow-up STAR classes every 24 months. The STAR training shall be conducted for all new hires within two months of their employment.

Within 60 days after the effective date of the subject grant, a list of employees who serve alcoholic beverages, their hire date and written confirmation of their STAR training shall be submitted to the Zoning Administrator and shall be retained on the premises at all times and be immediately made available upon request of any Los Angeles Police officer or Department of Alcoholic Beverage Control investigator.

22. The applicant/business operator shall be responsible for maintaining free of litter, the area and adjacent to the premises over which they have control.

23. The applicant shall establish a designated driver program that may include signs on each table alerting patrons of the program, including a statement in the menus, or post signs in prominent locations in the dining areas.

Prior to the utilization of this grant, a written statement of the program shall be submitted to the satisfaction of the Zoning Administrator prior to the utilization of the grant.

24. Partitions separating booth/dining areas shall not exceed 54 inches in height. No obstructions shall be attached, fastened or connected to the booths/dining areas within the interior space of the facility that restrict, limit or obstruct the clear observation of the occupants.

No enclosed room, other than restrooms, intended for use by patrons or customers shall be permitted. No private dining room with a separate access door shall be permitted.

25. The business operator shall comply with Section 6404.5(b) of the Labor Code which prohibits smoking within any place of employment. There shall be no ashtrays or other receptacles used for the purpose of collecting ash or cigarette/cigar butts inside the restaurant or bathrooms.

26. Loitering shall be prohibited on or around these premises or this area under the control of the licensee.

27. The applicant / the restaurant operator shall identify a contact person and provide a 24-hour "hot line" telephone number for any inquiries or complaints from the community regarding the subject facility. Prior to the utilization of this grant, the

phone number shall be posted on the site so that is readily visible to any interested party. The hot line shall be:

- posted at the entrances, and the cashier,
  - responded to within 24-hours of any complaints/inquiries received on this hot line, and
  - documented in a log and available for review by the Los Angeles Police Department and the Zoning Administrator upon request on when the calls were received, returned and the action taken at a minimum.
28. All lighting shall be shielded and directed onto the site. No floodlighting is permitted. This Condition shall not preclude the installation of low-level security lighting.

29. An electronic age verification device(s) which can be used to determine the age of any individual attempting to purchase alcoholic beverages shall be installed on the premises at each point-of-sales location. These device(s) shall be maintained in an operational condition and all employees shall be instructed in their use prior to the utilization of this approval.
30. The exterior windows and glass doors of the restaurant shall be maintained substantially free of signs and other materials from the ground to at least 6 feet in height above the ground so as to permit surveillance into the restaurant by Police and private security.
31. **DELETED.** (Relocated to ABC Recommended Conditions) The following Conditions are alcoholic beverage specific conditions, which are volunteered by the applicant and/or recommended by the LAPD (and agreed to by the applicant), and shall be complied with:
  - a. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same time period. The licensee shall at all times maintain records which reflect separate numbers for the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department upon request.
  - b. There shall be no exterior advertising or signs of any type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition. This condition is not meant to preclude an interior display of alcoholic beverage containers within the interior of the restaurant space. The only exception to this restriction is the posting of a single menu on the outside wall.
  - c. There shall be no self-service of alcohol for on-site consumption. All alcoholic beverages sold/ordered for on-site consumption shall be delivered to patron tables by the restaurant employees.
  - d. The sale of alcoholic beverages for off-site consumption shall be limited to beer and wine only.
  - e. No person under 21 years of age shall sell or deliver alcoholic beverages. [LAPD]
  - f. There shall be no admission or cover charge, nor a minimum purchase or minimum drink sales. [LAPD]
32. Within 30 days of the effective date of this grant, the property owner shall record a covenant acknowledging and agreeing to comply with all the terms and conditions established herein in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770) shall run with the land and shall

be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Zoning Administrator for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Zoning Administrator for attachment to the subject case file.

33. **New. MViP – Monitoring Verification and Inspection Program.** Prior to the effectuation of this grant, fees required per L.A.M.C section 19.01-E,3 for Monitoring of Conditional Use Permits and Inspection and Field Compliance Review of Operations shall be paid to the City. At any time, a City inspector will conduct a site visit to assess compliance with, or violations of, any of the conditions of this grant. Observations and results of said inspection will be documented and included in the administrative file. The owner/operator shall be notified of the deficiency or violation and required to correct or eliminate the deficiency or violation. Multiple or continued documented violations or Orders to Comply issued by the Department of Building and Safety which are not addressed within the time prescribed, may result in additional corrective conditions imposed by the Zoning Administrator.
34. **New.** Should there be a change in the ownership and/or the operator of the business, the property owner and the business owner or operator shall provide the prospective new property owner and the business owner/operator with a copy of the conditions of this action prior to the legal acquisition of the property and/or the business. Evidence that a copy of this determination including the conditions required herewith has been provided to the prospective owner/operator shall be submitted to the Department of City Planning in a letter from the new operator indicating the date that the new operator/management began and attesting to the receipt of this approval and its conditions. The new operator shall submit this letter to the Department of City Planning within 30-days of the beginning day of his/her new operation of the establishment along with any proposed modifications to the existing the floor plan, seating arrangement or number of seats of the new operation.
35. **New.** At any time during the period of validity of this grant, if it is determined that the operation is not in substantial conformance with the approved floor plan, or the operation has changed in mode or character from the original approval, or if documented evidence be submitted showing a continued violation(s) of any condition(s) of this grant resulting in a disruption or interference with the peaceful enjoyment of the adjoining and neighboring properties, the Zoning Administrator reserves the right to require that the owner or operator file a Plan Approval application together with associated fees. The purpose of the plan approval will be to review the operation of the premise and establish conditions applicable to the use as conducted by the new owner or operator, consistent with the intent of the Conditions of this grant. Upon this review, the Zoning Administrator may modify, add or delete conditions, and if warranted, reserves the right to conduct this public hearing for nuisance abatement/revocation purposes.

**OBSERVANCE OF CONDITIONS - TIME LIMIT - LAPSE OF PRIVILEGES**

All terms and conditions of the approval shall be fulfilled before the use may be established. The instant authorization is further conditional upon the privileges being utilized within three years after the effective date of approval and, if such privileges are not utilized or substantial physical construction work is not begun within said time and carried on diligently to completion, the authorization shall terminate and become void.

**TRANSFERABILITY**

This authorization runs with the land. In the event the property is to be sold, leased, rented or occupied by any person or corporation other than yourself, it is incumbent upon you to advise them regarding the conditions of this grant.

**VIOLATIONS OF THESE CONDITIONS, A MISDEMEANOR**

Section 12.29 of the Los Angeles Municipal Code provides:

"A variance, conditional use, adjustment, public benefit or other quasi-judicial approval, or any conditional approval granted by the Director, pursuant to the authority of this chapter shall become effective upon utilization of any portion of the privilege, and the owner and applicant shall immediately comply with its Conditions. The violation of any valid Condition imposed by the Director, Zoning Administrator, Area Planning Commission, City Planning Commission or City Council in connection with the granting of any action taken pursuant to the authority of this chapter, shall constitute a violation of this chapter and shall be subject to the same penalties as any other violation of this Code."

Every violation of this determination is punishable as a misdemeanor and shall be punishable by a fine of not more than \$2,500 or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

**APPEAL PERIOD - EFFECTIVE DATE**

The applicant's attention is called to the fact that this grant is not a permit or license and that any permits and licenses required by law must be obtained from the proper public agency. Furthermore, if any Condition of this grant is violated or if the same be not complied with, then the applicant or his successor in interest may be prosecuted for violating these Conditions the same as for any violation of the requirements contained in the Municipal Code. The Zoning Administrator's determination in this matter will become effective after **FEBRUARY 15, 2019**, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at <http://planning.lacity.org>**. Public offices are located at:

**Downtown**

Figueroa Plaza  
201 North Figueroa Street,  
4<sup>th</sup> Floor  
Los Angeles, CA 90012  
(213) 482-7077

**San Fernando Valley**

Marvin Braude San Fernando  
Valley Constituent Service Center  
6262 Van Nuys Boulevard, Room 251  
Van Nuys, CA 91401  
(818) 374-5050

**West Los Angeles**

West Los Angeles Development  
Services Center  
1828 Sawtelle Boulevard,  
2<sup>nd</sup> Floor  
Los Angeles, CA 90025  
(310) 231-2598

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

**NOTICE**

The applicant is further advised that all subsequent contact with this office regarding this determination must be with the Zoning Administrator who acted on the case. This would include clarification, verification of condition compliance and plans or building permit applications, etc., and shall be accomplished **BY APPOINTMENT ONLY**, in order to assure that you receive service with a minimum amount of waiting. You should advise any consultant representing you of this requirement as well.

**FINDINGS OF FACT**

After thorough consideration of the statements contained in the application, the plans submitted therewith, all of which are by reference made a part hereof, as well as knowledge of the property and surrounding district, I find that the requirements for authorizing a plan approval under the provisions of Section 12.24-M have been established by the following facts:

**BACKGROUND**

The subject property is a 5,000 square-foot rectangular parcel of land comprised of two (2) contiguous lots with a frontage of approximately 50 feet along the west side of Glendale Boulevard and a depth of 100 feet. The subject property is zoned [Q]C4-1XL-RIO-POD with a Neighborhood Commercial land use designation within the Northeast Los Angeles Community Plan area. The subject property is also located within the Atwater Village Pedestrian Overlay Zone (POD), a State Enterprise Zone, a Transit Priority Area, and the River Improvement Overlay District. The predominant land use pattern within the Northeast Los Angeles Community Plan is mainly low-rise commercial uses on commercial corridors and clusters of interior single-family residences.

The project site is currently improved with a 4,204 square-foot café/retail/delicatessen as established by a Certificate of Occupancy issued in 2012 (Certificate of Occupancy No. 102183). On April 3, 2012, a covenant and agreement was recorded against the property as Instrument No. 20120501380, which states that the applicant and owner agree to pay an annual parking credit fee, maintaining a total of 109.69 parking credits, which entitles the applicant up to 28 of the off-site pool parking spaces of the Atwater Village Pedestrian Oriented District in satisfaction of Los Angeles Municipal Code-required parking. The

parking credits were calculated based on a floor area of 3,711 square feet, 2,864 square feet of which is occupied by a restaurant and 1,027 square feet of which is occupied by a market. According to staff responsible for the Atwater Village Pedestrian Oriented District, the Department of Building and Safety determined that the required parking for the new use would have been 35.39 spaces. The applicant was given credit for eight parking spaces in conjunction with the previous adult day care use, and therefore, the Department of Building and Safety determined that 28 additional parking spaces would have been required for the applicant's new market and café. These 28 spaces are being satisfied by the purchase of parking credits for the off-site parking available in the area.

Records from the California Department of Alcoholic Beverage Control show that there is an active Type 47, 58, 20 License (License No. 525747) for the establishment known as Bon Vivant Market & Café. The subject establishment has been operating as Bon Vivant Market & Café since June 28, 2012. The subject site was previously approved for a Conditional Use Permit to allow the sale and dispensing of a full line of alcoholic beverages for on-site consumption and beer and wine for off-site consumption in conjunction with the subject market and café on November 16, 2012. The entitlement was approved with a grant term of five (5) years.

The proposed project is a Plan Approval to permit the continued sale and dispensing of a full line of alcoholic beverages for on-site consumption and beer and wine for off-site consumption in conjunction with the operation of an existing market and café with indoor seating for 80 patron seats and an outdoor patio on the public right-of-way with 8 outdoor seats. The project seeks the following modifications to Case No. ZA 2012-2005-CUB: 1) modify Condition No. 9 to expand hours of operation from 9:00 a.m. to 2:00 a.m., daily to 7:00 a.m. to 2:00 a.m., daily and 2) modify Condition No. 10 to allow live entertainment indoors only.

The surrounding land uses consist of predominantly single-family residential uses and various commercial uses. Properties to the north across the alley are zoned R1-1-RIO and are improved with single-family homes. Properties to the east and west abutting the subject property are zoned [Q]C4-1XL-RIO-POD and are improved with retail uses which include a book store, a clothing store and a furniture store. Properties to the south across Glendale Boulevard are zoned [Q]C4-1XL-RIO-POD and are improved with a liquor store, a market and a bakery.

### **Streets**

Glendale Boulevard, adjoining the subject property to the south, is a designated Avenue II dedicated to a width of 150 feet and improved with asphalt roadway, landscaped median, concrete curb, gutter, sidewalk, street lights, and parking meters.

An alley, adjoining the subject property to the north, dedicated to a width of 15 feet and improved with asphalt roadway.

**Previous Cases, Affidavits, Permits, and Orders on the Applicant's Property**

Case No. ZA 2012-2005-CUB – On November 16, 2012, the Zoning Administrator approved a conditional use to permit the sale and dispensing of a full line of alcoholic beverages for on-site consumption; and a conditional use to permit the sale of beer and wine for off-site consumption, in conjunction with an existing market and café located at 3155 North Glendale Boulevard.

Certificate of Occupancy No. 11016-10000-18748 – On August 1, 2012, a certificate of occupancy was issued for the conversion of an existing adult day care into a combination café/delicatessen/coffee bar, and retail market with required parking waived by the Planning Department pursuant to the Atwater Village Pedestrian Oriented District.

Instrument No. 20120501380 – On April 3, 2012, a covenant and agreement was recorded against the property with the Los Angeles County Recorder to comply with the Atwater Village Neighborhood Oriented District Parking Credit Condition Clearance Affidavit, which stipulates that the applicant is entitled to up to 28 of the off-site pool parking spaces, is using a total of 109.69 parking credits, and must pay an annual fee for the parking credits so long as the use is maintained.

Ordinance No. 182,033 – On March 5, 2012, an ordinance amending Ordinance No. 173,676 to allow the use of parking credits in lieu of Los Angeles Municipal Code required parking became effective.

Ordinance No. 173,676 – On January 14, 2001, an ordinance establishing the Atwater Village Pedestrian Oriented District overlay became effective.

Ordinance No. 173,466 – On October 3, 2000, an ordinance changing the zone and height district on the subject site from C1.5-1-VL to [Q]C4-1-XL became effective. The [Q] conditions preclude 100 percent residential developments and limit residential density to the equivalent of the RD1.5 Zone.

**Previous Cases, Affidavits, Permits, and Orders on Surrounding Properties**

Case No. ZA 2017-4699-CUB – On April 10, 2018, the Zoning Administrator approved a Conditional Use to allow the continued sale and dispensing of beer and wine for on-site consumption in conjunction with an existing restaurant located at 3111 North Glendale Boulevard, Unit #3.

Case No. ZA 2017-4693-CUB – On April 10, 2018, the Zoning Administrator approved a Conditional use Permit to allow the continued sale and dispensing of beer and wine for off-site and on-site consumption in conjunction with an existing retail store and bar; located at 3111 North Glendale Boulevard, Unit #2.

Case No. ZA 2015-1143-CUB-CU – On July 2, 2015, the Zoning Administrator approved a Conditional Use to allow the sale and dispensing of beer and wine for on-site consumption in conjunction with a restaurant in the [Q]C4-1XL-RIO, and a Conditional Use to allow hours of operation exceeding the maximum permitted hours of 7:00 a.m. to 11:00 p.m. at a mini-shopping center location, located at 3224 North Glendale Boulevard.

Case No. ZA 2012-2587-CUB – On January 25, 2013, the Zoning Administrator approved a request for a Conditional Use Permit to permit the sale and dispensing of a full line of alcoholic beverages for on-site consumption, located at 3216 North Glendale Boulevard.

### **PUBLIC HEARING – WAIVED**

On January 30, 2019, the Chief Zoning Administrator acted to waive the required public hearing stating in part that:

Based on a preliminary review of the attached application, including plans and exhibits submitted therewith, and a review of the zoning and land use patterns in the area, I find that the nature of the request is such that it appears that the proposal:

1. will not have a significant effect on adjoining properties or on the immediate neighborhood and
2. is not likely to evoke public controversy.

On the basis of this determination, and as provided in the Los Angeles Municipal Code, the public hearing on this application is hereby WAIVED (including if otherwise required for this type of case a radius map and 500-foot ownership label list).

Address labels for the applicant, applicant's representative and property owners of all properties abutting the site and those directly across the street or alley from the site are still required.

### **CONDITIONS IDENTIFIED FOR CONSIDERATION BY THE STATE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL RELATIVE TO THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES**

In approving the instant grant, the Zoning Administrator has not imposed Conditions specific to the sale or distribution of alcoholic beverages, even if such Conditions have been volunteered or negotiated by the applicant, in that the Office of Zoning Administration has no direct authority to regulate or enforce Conditions assigned to alcohol sales or distribution.

The Zoning Administrator has identified a set of Conditions related to alcohol sales and distribution for further consideration by the State of California Department of Alcoholic Beverage Control (ABC). In identifying these conditions, the Office of Zoning Administration acknowledges the ABC as the responsible agency for establishing and enforcing Conditions specific to alcohol sales and distribution. The Conditions identified below are based on testimony and/or other evidence established in the administrative

record, and provide the ABC an opportunity to address the specific conduct of alcohol sales and distribution in association with the Conditional Use granted herein by the Zoning Administrator.

They may include those identified during hearing testimony, received as part of correspondence via the applicant, stakeholder groups, city agency, other responsible agency, Council District, Mayor's office, etc.

The following conditions are carried over from Condition No. 31 volunteered by the applicant under parent Case No. ZA-2012-2005-CUB approved on November 16, 2012:

- The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same time period. The licensee shall at all times maintain records which reflect separate numbers for the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department upon request.
- There shall be no exterior advertising or signs of any type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition. This condition is not meant to preclude an interior display of alcoholic beverage containers within the interior of the restaurant space. The only exception to this restriction is the posting of a single menu on the outside wall.
- There shall be no self-service of alcohol for on-site consumption. All alcoholic beverages sold/ordered for on-site consumption shall be delivered to patron tables by the restaurant employees.
- The sale of alcoholic beverages for off-site consumption shall be limited to beer and wine only.
- No person under 21 years of age shall sell or deliver alcoholic beverages. [LAPD]
- There shall be no admission or cover charge, nor a minimum purchase or minimum drink sales. [LAPD]

#### **AUTHORITY FOR PLAN APPROVAL**

Section 12.24-M of the Los Angeles Municipal Code provides in pertinent part:

"M. Development of Uses. (Amended by Ord. No. 173,992, Eff. 7/6/01)

1. Development of Site. On any lot or portion of a lot on which a deemed-approved conditional use is permitted pursuant to the provisions of this section, new buildings or structures may be erected, enlargements may be made to existing buildings, existing uses may be extended on an approved

site, as permitted in Subsection L of this Section, provided plans are submitted to and approved by the Zoning Administrator, the Area Planning Commission, or the City Planning Commission, whichever has jurisdiction at that time ...".

### **BASIS FOR CONDITIONAL USE PERMITS**

A particular type of development is subject to the conditional use process because it has been determined that such use of property should not be permitted by right in a particular zone. All uses requiring a conditional use permit from the Zoning Administrator are located within Section 12.24 of the Los Angeles Municipal Code. In order for the continued sale of a full line of alcoholic beverages for on-site consumption and the sale of beer and wine for off-site consumption to be authorized, certain designated findings have to be made.

### **FINDINGS**

Following (highlighted) is a delineation of the findings and the application of the relevant facts to same:

1. **The project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city or region.**

The subject site is located along the west side of Glendale Boulevard within the Northeast Los Angeles Community Plan area. The subject site is approximately 5,000 square feet and is improved with a 4,204 square-foot market and café.

The subject establishment was previously authorized for the on-site sale of a full line of alcoholic beverages and the off-site sale of beer and wine on November 16, 2012 under Case No. ZA 2012-2005-CUB subject to numerous conditions and subject to a five (5) year term limit. Records from the California Department of Alcoholic Beverage Control show that there is an active Type 47, 58, 20 License (License No. 525747) for the establishment known as Bon Vivant Market & Café. The subject establishment has been operating as Bon Vivant Market & Café since June 28, 2012.

The proposed project is a Plan Approval to permit the continued sale and dispensing of a full line of alcoholic beverages for on-site consumption and beer and wine for off-site consumption in conjunction with the operation of an existing market and café with indoor seating for 80 patron seats and an outdoor patio on the public right-of-way with 8 outdoor seats. The project seeks the following modifications to Case No. ZA 2012-2005-CUB: 1) modify Condition No. 9 to expand hours of operation from the current 9:00 a.m. to 2:00 a.m. daily to 8:00 a.m. to 2:00 a.m., daily and 2) modify Condition No. 10 to allow live entertainment indoors only.

The existing market and café are neighborhood oriented and have provided a beneficial amenity and service to the community. The addition of small scale live

performances will provide a unique amenity in a low-key environment. A variety of commercial uses are an intrinsic part of the service amenities necessary for the conservation, development, and success of a vibrant neighborhood. The availability of on-site alcohol and off-site beer and wine in conjunction with the existing market and café will continue to offer a convenient amenity to the local community.

2. **The project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare and safety.**

The project site is currently improved with a 4,204 square-foot café/retail/delicatessen as established by a Certificate of Occupancy issued in 2012 (Certificate of Occupancy No. 102183). Records from the California Department of Alcoholic Beverage Control show that there is an active Type 47, 58, 20 License (License No. 525747) for the establishment known as Bon Vivant Market & Café.

The subject property is zoned [Q]C4-1XL-RIO-POD with a Neighborhood Commercial land use designation within the Northeast Los Angeles Community Plan area. The subject property is also located within the Atwater Village Pedestrian Overlay Zone (POD), a State Enterprise Zone, a Transit Priority Area, and the River Improvement Overlay District. The predominant land use pattern within the Northeast Los Angeles Community Plan is mainly low-rise commercial uses on commercial corridors and clusters of interior single-family residences. The surrounding land uses consist of predominantly single-family residential uses and various commercial uses. Properties to the north across the alley are zoned R1-1-RIO and are improved with single-family homes. Properties to the east and west abutting the subject property are zoned [Q]C4-1XL-RIO-POD and are improved with retail uses which include a book store, a clothing store and a furniture store. Properties to the south across Glendale Boulevard are zoned [Q]C4-1XL-RIO-POD and are improved with a liquor store, a market and a bakery.

The subject establishment has been operating as Bon Vivant Market & Café since June 28, 2012 with no known issues. A review of the records indicates the premises has no disciplinary actions by ABC and is in good standing. The existing use and continued operation will continue to promote Atwater Village's Glendale Boulevard as a locally-focused commercial corridor. Conditions have been imposed under Case No. ZA 2012-2005-CUB to ensure the responsible operation of the establishment. The hours of operation have been modified to allow the restaurant/market to open one hour earlier at 8 a.m. instead of 9 a.m. and to allow live entertainment limited to a maximum five piece band. Live entertainment will be limited to the interior of the premises. The subject site abuts an alley to the rear (north) and the rear lot lines of residential uses to the north. The garages of the adjacent residential uses and the adjoining alley provide a buffer between the subject site and residential uses. The conditions of the grant require that the rear door of the premises be equipped with an automatic locking device to minimize noise leakage. The patron entrance is directly from Glendale Boulevard. As such,

the existing market and café with indoor live entertainment together with the sale of a full line of alcoholic beverages for on-site consumption and the sale of beer and wine for off-site consumption will continue to not adversely affect adjacent uses or degrade abutting properties.

3. **The project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any specific plan.**

There are twelve elements of the General Plan and each of these Elements establishes policies that provide for the regulatory environment in managing the City and for addressing concerns and issues. The majority of the policies derived from these Elements are in the form of Code Requirements of the Los Angeles Municipal Code (LAMC). Except for the entitlement described herein, the project does not propose to deviate from any of the requirements of the LAMC.

The Land Use Element of the City's General Plan is divided into 35 Community Plans. The subject property is located within the Northeast Los Angeles Community Plan, which designates the site for Neighborhood Commercial land uses, with corresponding zones C1, C1.5, P, C2, C4, and RAS3 Zones. The project site is zoned [Q]C4-1XL-RIO-POD. The Community Plan text is silent with regards to alcohol sales. In such cases, the Zoning Administrator must interpret the intent of the Plan. The property is within the area of the Atwater Village Pedestrian Oriented Overlay District, established by Ordinance No. 173,676 and amended by Ordinance No. 182,033.

Approval of the request is consistent with and advances the following goal, objective, and policy of the Northeast Los Angeles Community Plan:

Goal 2: Strong and competitive commercial areas that suitably serve the needs of community and attracts customers from outside the plan area by satisfying market demand and maximizing convenience and accessibility while preserving unique historic and cultural identifies

Objective 2-1: To conserve and strengthen potentially viable commercial areas in order to stimulate and revitalize existing businesses and create opportunities for appropriate new commercial development.

Policy 2-1.1: Consolidate commercial areas through appropriate planning and zoning actions to strengthen the economic base and expand market opportunities.

Approval of the request is also consistent with the General Plan Framework Element objectives and policy:

Objective 7-2: Establish a balance of land uses that provide for commercial and industrial development which meets the needs of local

residents, sustains economic growth, and assures maximum feasible environmental quality.

Objective 7-3: Maintain and enhance the existing businesses in the City.

Policy 7.3-2: Retain existing neighborhood commercial activities within walking distance of residential areas.

The availability of the sale of a full line of alcoholic beverages for on-site consumption and beer and wine for off-site consumption will continue to provide a convenient amenity for the community. Given the scope of the conditions and limitations established by this grant the surrounding land uses will not be significantly impacted by the continued operation of the proposed use. The proposed use conforms to the intent, purpose, and provisions of the General Plan and the Northeast Los Angeles Community Plan and advances the goals, objectives and intent of the plan by offering a convenient service to the visitors and residents in the community.

**4. That the proposed use will not adversely affect the welfare of the pertinent community.**

The predominant land use pattern within the Community Plan Area is mainly low-rise commercial uses on commercial corridors and clusters of interior single-family residences. The existing use will not adversely affect the welfare of the pertinent community because the sales and service of a full line of alcoholic beverages will not be detrimental to the character of the immediate area and will have a positive impact on the economic welfare of the community. The sale of a full line of alcoholic beverages for on-site consumption and beer and wine for off-site consumption within the existing market and cafe will continue to provide a local amenity to nearby residents and area patrons both in the immediate neighborhood and the Northeast Los Angeles community, and has been conditioned to be operated responsibly with substantial care placed to ensure that there are no adverse effects for the community. The market and cafe will continue to benefit the surrounding community and the imposed conditions will continue to ensure the responsible operation of the establishment.

**5. That the granting of the application will not result in an undue concentration of premises for the sale or dispensing for consideration of alcoholic beverages, including beer and wine, in the area of the City involved, giving consideration to applicable State laws and to the California Department of Alcoholic Beverage Control's guidelines for the undue concentration; and also giving consideration to the number and proximity of these establishments within one thousand foot radius of the site, the crime rate in the area (especially those crimes involving public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace and disorderly conduct), and whether revocation or nuisance proceedings have been initiated for any use in the area.**

According to the State Department of Alcoholic Beverage Control (ABC), three (3) on-site licenses and two (2) off-site licenses are allocated to Census Tract No. 1883. Currently, there are 12 active on-site licenses and four (4) active off-site licenses found within the census tract. Records from the California Department of Alcoholic Beverage Control show that there is an active Type 47, 58, 20 License (License No. 525747) for the establishment known as Bon Vivant Market & Café. The subject establishment has been operating as Bon Vivant Market & Café since June 28, 2012. Therefore, the project will not be adding an additional ABC License to the Census Tract.

Concentration of establishments offering the sale of alcohol can be undue when the addition of a license will negatively impact a community. Concentration is not undue when the approval of such a license does not negatively impact an area, but rather such a license will benefit the public welfare and convenience. The approval of the request will allow the applicant to continue to provide a convenient amenity to the community and visitors.

According to statistics provided by the Los Angeles Police Department Northeast Division, which has jurisdiction over the subject property within Crime Reporting District No. 1123, a total of 181 (89 Part I Crimes and 92 Part II arrests) were reported in 2017, compared to the citywide average of 191 crimes and arrests and the high crime average of 229 crimes for 2017. In 2017, there were (9) Narcotics, (5) Liquor Law, (3) Public Drunkenness, (0) Disturbing the Peace, (0) Disorderly Conduct, (0) Gambling, and (16) DUI related arrests. These numbers do not reflect the total number of arrests in the subject reporting district over the accountable year. Arrests for this calendar year may reflect crimes reported in previous years.

The crime rate in the reporting district where the subject site is located is generally consistent with the area average and is not located in a high crime area. Moreover, no evidence was submitted for the record establishing any link between the subject site and the area's crime rate. The existing subject establishment has no history of complaints or nuisance activity and no disciplinary history by ABC. The Zoning Administrator has imposed conditions that address noise, safety and security in order to prevent loitering, public drinking or any nuisance activity. As conditioned, allowing the sale and dispensing of beer and wine for off-site consumption and the sale and dispensing of a full line of alcoholic beverages for on-site consumption at the subject location will benefit the public welfare and convenience because as it will permit the continued operation of a community amenity and will not contribute to an undue concentration of licensed premises.

6. **That the proposed use will not detrimentally affect nearby residentially zoned communities in the area of the City involved, after giving consideration to the distance of the proposed use from residential buildings, churches, schools, hospitals, public playgrounds and other similar uses, and other establishments dispensing alcoholic beverages, including beer and wine.**

The project site is zoned for commercial uses and will continue to be utilized as such with the existing retail use. The following sensitive uses are located within a 1,000-foot radius of the project site:

- Single-family residential uses

The project is zoned for commercial uses in the Northeast Los Angeles Community Plan Area. The use of the subject site is consistent with and aids to advance the purpose of the Community Plan. The potential effects of excessive noise or disruptive behavior, criminal activity and underage drinking have been considered and addressed by requiring adequate lighting, and requiring the use of electronic age verification devices to deter underage purchases. The grant has been well conditioned, to protect the health, safety and welfare of the surrounding neighbors. The Zoning Administrator have given consideration to the distance of the subject establishment from the above-referenced sensitive uses and recognizes that implementing proactive security measures will decrease the potential for adverse effects to the community due to the alcohol consumption and operations of the subject site. Therefore, as conditioned, the use will not detrimentally affect nearby residentially zoned community and the sensitive uses located in close proximity to the subject site.

#### **ADDITIONAL MANDATORY FINDINGS**

7. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that this project is located in Zone C, areas of minimal flooding.

Inquiries regarding this matter shall be directed to **Joann Lim**, Planning Staff for the Department of City Planning at **(213) 978-1341**.



FERNANDO TOVAR  
Associate Zoning Administrator

FT:JL:bk

cc: Councilmember Mitch O'Farrell  
Thirteenth District  
Adjacent Property Owners