

Justification/Appeal for Appeal

Case: ZA-2019-5721-CUB-CUX-CU-POD; ENV-2019-5722

Address: 3070 Los Feliz Avenue

Applicant: Grand Venue, Inc.

1. Reason for Appeal.

The Applicant, Grand Venue, Inc., owns and operates a banquet hall located at 3070 Los Feliz Avenue. (the "Property") The Property is on a busy major commercial street directly across from a car wash and a local bar known as The Roost, and adjacent to a gas station. The banquet hall primarily hosts weddings. The 8,800 square foot building has an entry foyer, a banquet hall, and an existing kitchen. The kitchen is utilized by staff or caterers to serve the events on site. The banquet hall relies on caterers to use their alcohol license to serve alcohol at events. Because weddings require alcohol service, the venue must rely on outside caterers to service these events with a Type 58 alcohol license. Over 90 percent of the events on site are weddings, which virtually all require alcohol service. Many banquet halls have their own alcohol license so that the banquet hall staff can host the events and serve food and alcohol to the guests without relying on third parties.

The Applicant proposed to add a 1,213 square foot second floor, including a 205 square foot terrace, and to remodel 327 square feet for use as part of the kitchen. They also requested to increase the hours of operation from 11 pm to 2 am, and to permit live entertainment/dancing, and a full line of alcoholic beverages during these times.

The Zoning Administrator ("ZA") approved the Conditional Use permit to allow live entertainment and dancing in conjunction with a banquet hall between 8am and 11pm daily and approved a Pedestrian Oriented District Plan Approval for the 1,213 square foot second floor addition. The ZA also approved the related CEQA exemption, Class 1 (reuse of an existing building) and Class 3 (conversion of existing space in a structure from one use to another). However, the Zoning Administrator denied the Conditional Use permit to extend the hours of operation from 11pm to 2am, and denied the Conditional Use permit for the sale and consumption of alcoholic beverages by the Applicant. The ZA also denied the live entertainment and dancing in association with a restaurant (but not a Banquet Hall).

The Applicant appeals the decision by the ZA, because it requires the entitlements in order to operate the business of a Banquet Hall. Virtually all events at the Property require the service of alcohol, and many of the guests request times that extend after 11pm in the evenings.

2. How Applicant is Aggrieved by the Decision.

The Applicant is aggrieved by the decision for the following reasons.

First, the operation of a banquet hall use, which is primarily a wedding venue, requires the service of alcohol to its patrons as part of events on site. The banquet hall currently requires a patron to hire a third party caterer with a Type 58 alcohol license for the event on site. The Applicant is aggrieved because they do not have control over the alcohol service on their Property, and do not financially benefit from the sale of alcohol and food in the banquet hall. As a business,

they should have the same rights as a caterer to prepare food and serve alcohol to their patrons, if they comply with the same requirements.

Second, the Applicant is aggrieved by not having similar hours of operations as other venues that are restaurants and bars on Los Feliz Avenue. Patrons seek venues that allow events, especially weddings, to continue after 11 pm at night. There are other banquet hall venues with later hours, and most of the bars and restaurants on Los Feliz Avenue within a few blocks of the Property have approved hours until 2 am. The ZA Determination cites hours of operation during covid, but the conditions of approval of multiple sites permit 2 am closings, as set forth below.

Third, the City requested that the Applicant file for a CUP and extended time for a restaurant use, because this is the use required to serve food and alcohol at the banquet hall. Then, the ZA denied the CUP for alcohol and the CUP for entertainment at the restaurant use, as well as the hours of operation after 11 pm. However, a caterer with a Type 58 license can serve food and alcohol at the venue. Again, it will have no different impacts on the community whether the food and alcohol are served by the banquet hall owner or a third party caterer; however, it makes significant impact on the business of the banquet hall. The ZA states that the Applicant can file for a Plan Approval in lieu of a Conditional Use for alcohol (CUB), but this is not permitted in the code.

Fourth, the Applicant did extensive community outreach efforts, and gained numerous signatures in support of the application from direct neighbors that were submitted to the file. The ZA relied improperly on unfounded complaints from a few neighbors and the Neighborhood Council when making the decision to deny the CUB. As stated in a letter by Fred Gaines, dated April 6, 2021, to the Atwater Village Neighborhood Council, ("AVNC") at least seven members of the Neighborhood Council's Environmental and Land Use Committee conducted secret deliberations and decisions regarding Grand Venue's application, in violation of the Brown Act, that impacted the Neighborhood Council's recommendation. The ZA then improperly relied on this recommendation in violation of due process. The Neighborhood Council is supposed to be held to the highest standards as they are a group certified by the City to represent the community. Not only were the AVNC activities described above not representative of the community, the AVNC's actions were illegal, unethical and biased.

3. **Specific Points at Issue.**

The following are the specific points at issues. The findings and reasons that the ZA abused their discretion are evaluated in detail in Part 4.

(a) ***Service of Alcohol at Events.*** The service of alcohol is essential to hosting events at a banquet hall, including weddings, religious ceremonies and receptions. The City already permits the service of alcohol through a third party catering license, and there are no greater impacts to the community by allowing the banquet owner to serve the food and beverage than requiring a third party to do it. Therefore, the ZA provides no substantial evidence to support findings to deny the CUP for alcohol service on the Property.

(b) ***Live Entertainment at Events.*** Live entertainment is essential to hosting events at a banquet hall, including weddings, religious ceremonies and receptions. The ZA approved the

live entertainment at the banquet hall, but denied it in the restaurant use. The ZA had informed the Applicant that they needed to have a restaurant use to serve food and alcohol at the banquet hall. Therefore, it is inconsistent that the ZA would permit the live entertainment for a banquet hall but not restaurant.

(c) ***Neighborhood Venue Hours of Operation.*** The ZA Determination denied extended hours for the banquet hall from 11pm to 2am based on noise impacts to the nearby residential community. However, a number of nearby restaurants and bars nearby are open until 2am, or have CUPs that permit opening to 2am even if they had reduced hours during Covid. These include the Morrison, the Roost, Big Foot Lodge, and High Low, which just opened in February 2022. The banquet hall will lose significant business if it cannot host weddings and other events that want to continue past 11pm at night. Most of these events are held on the weekend when the nearby restaurants and bars are busy. Therefore, the ZA is not treating the Applicant or the venue in the same manner as similarly situated properties.

(d) ***Noise.*** The ZA relied on noise complaints by neighbors as evidence to find the service of alcohol by the banquet hall owner and that extended hours after 11pm were not compatible with surrounding uses. However, most of the neighbor complaints were about all of the bars and restaurants in the neighborhood, and patrons parking on their residential streets to walk to the venues at night. There was not substantial evidence in the record that the banquet hall caused the noise. And where there was one complaint about hearing music when the windows are open, the ZA could condition the CUP to require that the banquet hall close the windows after a certain time of night.

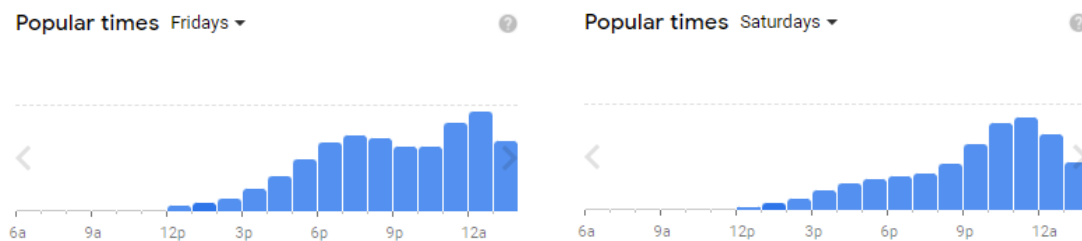
(e) ***Parking.*** Similarly, the ZA relied on parking complaints by neighbors as evidence to find the service of alcohol by the banquet hall owner and that extended hours after 11pm were not compatible with surrounding uses. Again, most of the neighbor complaints were about all of the bars and restaurants in the neighborhood, and patrons parking on their residential streets to walk to the venues at night. In this case, the banquet hall has sufficient off-street parking at the car wash directly across the street, unlike many of the surrounding bars and restaurants.

(f) ***Community Serving Uses.*** The ZA Determination states that the banquet hall use with alcohol service will not be compatible with and will adversely affect degrade adjacent properties, the surrounding neighborhood, or public health, welfare and safety. However, the surrounding sites are a car wash, gas station, fast food restaurant, and bar that is open to 2am and often has noise complaints. The banquet hall provides a clean, renovated, well maintained building that hosts weddings and events that are community serving uses.

4. Reasons the Zoning Administrator Erred or Abused Their Discretion.

The ZA erred or abused their discretion because they failed to provide substantial evidence to support the ZA's findings, and the findings did not support the ZA's decision to deny the Conditional Use for alcohol service on the Property or the extension of hours of operation to 2 am. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506) An abuse of discretion is established if the findings are not supported by substantial evidence in the light of the whole record. (*Zakessian v. City of Sausalito* (1972) 28 Cal.App.3d 794, 798)

(a) ***The ZA erred or abused their discretion by improperly relying on false statements by neighbors regarding causes of noise and parking in the neighborhood.*** The Decision Letter states that the conversion of the banquet hall to a full time restaurant and banquet hall with hours of operation until 2 am would not enhance the neighborhood or provide a service that is beneficial to the neighborhood, based on complaints by neighbors. The Decision Letter states that "The Zoning Administrator believes that once the operators have established a track record of operations that did not raise the levels of complaints against the current use that an application for a restaurant with a full line of alcohol service would be acceptable." As stated in the Decision Letter, The ZA relies on unsubstantiated statements by neighbors such as: they can hear music when the windows are open; they hear people talking when walking from their cars to the banquet hall; people will congregate in front of the banquet hall and make noise; they have only seen 50 cars parked at the car wash and not 150 cars; the delivery trucks block the sidewalk; and the employees are rude to members of the community. Many of these statements were not true or the complaints were really about other bars and restaurants; for instance, the windows of the building do not even open. There were no incident or noise reports of the operation to the police, and the Applicant requested these records to submit as part of the appeal. In fact, Los Feliz is a busy commercial street with a number of nighttime establishments within a few blocks, including The Roost (the bar across the street), The Morrison, Bigfoot Lodge, The High Low, and Tam O'Shanter, among other bars and restaurants. The Roost is open until 2am daily, and is known for having noise complaints from patrons, and being packed between 11pm and 2am, as shown in the google map time diagrams below: ¹



Therefore, the neighbor complaints regarding noise and parking are most likely caused by the numerous existing bar and restaurant establishments in the neighborhood, most of which have no or insufficient parking. The neighbors will always complain about noise and parking in the neighborhood based on the existing uses, and therefore, the Applicant will never be able to create a track record of no complaints. Requiring full neighbor support or lack of any complaints in the neighborhood is not a standard required for providing alcohol service by the banquet hall owner. Here, the Applicant has sufficient parking on site and at the car wash directly across the street. For patrons coming to a wedding or religious event, they will want to park off street at the car wash site that provides a safe parking area, and does not require them to drive around the neighborhood looking for spaces. The banquet hall also provides the off-site parking information to patrons, and can direct them to not park in the residential neighborhood south of Los Feliz Boulevard. Also, the neighbors can apply for permit parking to alleviate their concerns about parking from the

¹ See google map information on The Roost at:
<https://www.google.com/maps/place/The+Roost+Cocktails/@34.1252522,-118.2653597,17.25z/data=!4m9!1m2!2m1!1sthe+roost!3m5!1s0x80c2c0e83008ffa5:0x771a06b020a193cc!8m2!3d34.12435!4d-118.2665324!15sCgl0aGUgcm9vc3RaCyIJdGhlIHJvb3N0kgEMY29ja3RhaWxfYmFy>

numerous venues. The Applicant is also committed to maintaining a quiet establishment, and would comply with noise conditions. Therefore, the ZA should have approved the conditional use for service of alcohol and extended hours, and then provided conditions to require a limit on noise levels and to prohibit parking in the nearby neighborhood, instead of providing an illusory finding that the conditional uses will only be allowed in the future when the neighbors stop complaining about the existing neighborhood bars and restaurants.

(b) ***The ZA erred or abused their discretion by impermissibly restricting an allowed use in the zone.*** The Property is zoned [Q]C4-1XL-RIO-POD, which permits a banquet hall use within the Commercial Corner hours from 7am to 11pm. As stated in the ZA's Determination, the proposed restaurant and banquet hall use is allowed in the C4 zone and is in conformance with the type of use and development that the underlying zone allows. The banquet hall venue hosts weddings with religious ceremonies. Most of these gatherings require the service of alcohol, especially those that occur on the weekends and on Friday and Saturday nights. By denying a conditional use permit for the service of alcohol in the banquet hall, the ZA effectively prohibited all private gatherings that serve alcohol, which is most of the business at the banquet hall. This has the actual effect of prohibiting the banquet hall use. It will require every patron to hire a third party caterer to serve alcohol at an event. The caterer is required to serve food as part of their license, and so will take over the food and beverage service of the banquet hall. Therefore, although the banquet hall is an allowed use in the zone, the ZA will require that the banquet hall owner either obtain a separate catering license, or that they outsource the food and beverage to a third party. This is not the intent of the zoning, where the remedy is to permit CUPs for alcohol in conjunction with a banquet hall use. Here, the Applicant made all of the findings to serve food and alcohol in on the Property, and the ZA denied the request solely based on neighbor complaints about the area. The ZA abused their discretion by effectively disallowing a permitted use in the zone.

(c) ***The ZA erred or abused their discretion by failing to properly evaluate the findings for a conditional use permit.*** The Property is zoned [Q]C4-1XL-RIO-POD, which permits a banquet hall use within the Commercial Corner hours from 7am to 11pm. State law permits the service of alcohol on site if the location is approved by the Department of Alcoholic Beverage control. (the "ABC") The ZA denied the banquet hall owner the right to serve alcohol on site even though a third party caterer has the right to serve alcohol on site. The ZA failed to provide substantial evidence for their findings. First, the findings require that the project should enhance the built environment in the surrounding neighborhood or perform a function or service that is essential or beneficial to the community, city or region. Here, the banquet hall is an upgrade in the neighborhood with a renovated well maintained structure that is surrounded by more industrial uses such as a gas station and car wash. The building walls are masonry to fully block any noise from inside the structure. The banquet hall use is primarily on the weekends, and Friday and Saturday night, and so it does not increase traffic during weekday peak hours and is not heavily used during the weekdays. Therefore, the building does enhance the built environment. Second, the primary use is for weddings and family gatherings. These are essential services to the community. This is not a nightclub, but a place for families and friends to gather for events in their lives.

The ZA also found that the banquet hall will not be compatible with and will adversely affect degrade adjacent properties, the surrounding neighborhood, or public health, welfare and

safety. The ZA identifies that lots adjacent to the subject site are developed with gas stations, fast food restaurants, commercial office space, restaurants and bars, and single family residences. Then, the ZA claims that the noise from the banquet hall could be heard by nearby single family houses and uses this evidence alone to determine that it will degrade adjacent properties. In fact, the surrounding uses in the commercial zone on Los Feliz Avenue are car washes, fast food establishments, gas stations and bars. The banquet hall use will not degrade these uses, and has instead substantially improved the block with a clean well maintained building that is in far superior condition than the neighboring commercial uses. The noise impact to residential neighbors can be eliminated with conditions that require compliance with the City's noise ordinance, closing doors and windows, and eliminating outdoor loitering in the late evening.

For similar reasons as stated above, the service of alcohol and hours of operation of the banquet hall will not adversely affect the welfare of the community, because bars and restaurants are already located in the community, and within blocks of the property on Los Feliz Avenue. The banquet hall owners would serve alcohol in lieu of using a caterer with a Type 58 license at the event, and therefore there would not be any increase in the concentration of sale or dispensing of alcoholic beverages for on-site consumption. The service of alcoholic beverages at events at the banquet hall will primarily occur in the evenings and on weekends, and not during school hours; therefore, proximity to a public school will not detrimentally affect the community.

(d) ***The ZA erred or abused their discretion by failing to consider the project in the same and equal manner as similarly situated uses in violation of the equal protection clause of the Constitution.*** The surrounding commercial bar and restaurant uses on Los Feliz avenue are all permitted to operate until midnight or later even though they are located in Commercial Corner sites. As stated, The Roost is open until 2 am daily; the Morrison is permitted to be open from 11am to 2pm (ZA-2014-1216), the Bigfoot Lodge is open until 2 am, and High Low, a 1970's inspire lounge that opened February 9, 2022 at 3000 Los Feliz avenue is open until 2 am. Virtually every other bar and restaurant on this commercial strip, whether open for decades or just a week, has a 2 am closing time. The ZA must apply the same standards that apply to alcohol service at nearby establishments, all of which were also Commercial Corner sites. The banquet hall use will cause substantially less noise and parking impacts than the bar uses, because it will serve a group of family or friends that are coming to the banquet hall and remaining on site for the entire evening. Many patrons of the bars walk between the bars all evening and make noise and loiter outside. The banquet hall serves a single group that are there to spend time together. In addition, many events such as weddings, last until after 11 pm, and so patrons may seek other banquet halls for their events. Refusing to allow hours after 11 pm will significantly limit the wedding use at the venue. Therefore, the ZA erred by not applying the same standards for a conditional use for alcohol and extended hours to this Property as to other similarly situated sites and uses.

(e) ***The ZA erred or abused their discretion by impermissibly restricting gatherings as required by the First Amendment.*** Where the subject of a grant of discretion, such as a conditional use permit, involves a wedding or other public gathering, there is a sufficient nexus to protected expression under the First Amendment to pose a "real and substantial threat" of censorship. (See *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1020 (9th Cir. 2009); *Kaahumanu v. Hawaii*, 682 F.3d 789, 802 (9th Cir. 2012); *Epona v. County of Ventura*, 876 F.3d 1214 (2017)) Here, the denial of a conditional use permit to serve alcohol could effectively eliminate weddings and other public gatherings at the venue. In addition, limiting the

time period to 11 pm, which other surrounding venues, including restaurants and bars, are permitted to remain open until 2 am would similarly restrict the use so that it is not competitive in the market. Such restraint on expression creates a threat of censorship by the ZA, and should have been considered as part of the entitlement findings.