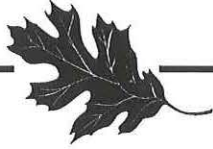


OAKLEY



CALIFORNIA

Agenda Date: 07/12/2016
Agenda Item: 4.1

STAFF REPORT

Date: July 12, 2016
To: Bryan Montgomery, City Manager
From: Kenneth W. Strelo, Senior Planner
SUBJECT: **Daub 4 Kidz Bingo Hall (CUP 01-16) – Continued Public Hearing**

Approved and Forwarded to City Council:

A handwritten signature in blue ink, appearing to read "B. Montgomery".

Bryan Montgomery, City Manager

Summary

This is a continued public hearing on a request by Francine McMahon (“Applicant”) for approval of a Conditional Use Permit to operate a non-profit Bingo Hall (Assembly, Public) within a 6,000 square foot space located at 2105-2107 Main Street (former Diablo Water District Offices within the Cypress Square Shopping Center) (“Project”). The applicant proposes to operate up to four sessions a week, including Tuesday and Friday nights, and Saturday and Sunday afternoons. Up to 100 players, 12 volunteers, and 1 security guard may be present during any given sessions. The site is zoned C (General Commercial) District.

Modification to Project Description – During the June 28, 2016 public hearing, the property owner representative, Mr. Bob Garrison of Sierra Pacific Properties, declared a change to the size of the tenancy for the proposed use. Due to a new karate studio tenant leasing a portion of the space proposed to be occupied by the bingo hall, the use is now proposed to occupy less space at approximately 4,421 square feet, which would be addressed as only 2107 Main Street.

Staff recommends the City Council adopt the proposed resolution approving the request for a Conditional Use Permit to operate a bingo hall located at 2107 Main Street (CUP 01-16), as conditioned.

Background

This project was originally presented to the City Council on April 26, 2016 as a public hearing item. At that time, Staff recommended denial of the project. The Council deliberated on the project with different opinions for and against the proposal. It was moved to prepare a resolution for approval addressing the concerns raised of accommodating parking and increased security. The motion failed to be approved and no additional motion was made.

The project was brought back to the City council for a second public hearing on June 28, 2016 with the same Staff recommendation for denial. At that hearing, the applicant and her representatives presented some changes to the proposed use, as described above, as well as presented other details of the draft lease agreement, such as delegated parking areas for bingo players. After receiving the Staff report and additional testimony, the Council deliberated on the project and eventually there was a motion (which passed 4 ayes, 1 no) to direct Staff to bring back a resolution for approval of the conditional use permit, with added conditions.

The Council directed Staff to implement the following items into a resolution for approval:

- Limit the timeframe for the conditional use permit for 2 years of operation.
- In the event of an unusual drain on the Oakley Police Department caused by either direct or indirect operation of the use, provide the ability to either bill the operator for additional police calls, require additional security provided by the operator, or consider revocation of the conditional use permit.
- It was suggested whether a conditional use permit can be limited to a specific operator and be conditional to disallow transfer to another operator. The City Attorney committed to researching the request.

Environmental

This project is exempt from requiring an Initial Study analysis under the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15301 (Class 1 - Existing Facilities).

Analysis

In order to approve a conditional use permit, the [City Council] must make all of the following findings ([OMC Section 9.1.1602\(f\)](#)):

1. That the site for the proposed use is adequate in size and shape to accommodate the use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this title to adapt the use with land and uses in the neighborhood;
2. That the site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use;
3. The proposed use will be arranged, designed, constructed, operated and maintained so as to be compatible with the intended character of the area and shall not change the essential character of the area from that intended by the general plan and the applicable zoning ordinances;
4. That the proposed use provides for the continued growth and orderly development of the community and is consistent with the various elements and objectives of the general plan;

5. That the proposed use, including any conditions attached thereto, will be established in compliance with the applicable provisions of the California Environmental Quality Act.

Findings 1 and 2 can be made because the proposed location is already existing. Size, shape, yards, spaces, etc. do not constitute any need for additional analysis. Also, access to the site is well established and a parking analysis shows there to be surplus parking available in and around the use and the surrounding uses within the shopping center to accommodate overlapping operation times.

Findings 3 and 4 were the subject of Staff's original recommendation for denial. Based on deliberations by the City Council at the June 28, 2016 public hearing, the project will not result in any inconsistencies with either finding. In summary, the Council found that the specific assembly use of a bingo hall at this specific location would support the findings because the tenant location was not in a main part of the shopping center, the commercial property manager representative provided testimony to difficulty in leasing out the space to a retail, office, or food related business.

Finding 5 requires compliance with the California Environmental Quality Act (CEQA). As stated previously, the project complies with CEQA in that it is categorically exempt from further CEQA analysis.

The proposed resolution includes conditions of approval to address some of the amendments recommended to be included by the City Council, including:

- Placing a two (2) year limit on the life of the conditional use permit. The conditions allows the applicant to request an extension to the conditional use permit at least 60 days prior to the two (2) year expiration. An extension of up to two (2) additional years may be approved at staff level, or brought to the City Council for consideration.
- Validating the conditional use permit only for a bingo hall as approved and under operation by the applicant. In order to transfer the conditional use permit to another operator, the new operator would be required to submit a signed letter to the Planning Division stating they have read, understand, and agree to abide by and implement all conditions of approval in the project resolution.
- Giving the City discretion to require additional security personnel or requiring the operator to reimburse the City for additional police calls beyond an average of one (1) per month if caused by the operation, whether directly or indirectly.

Findings

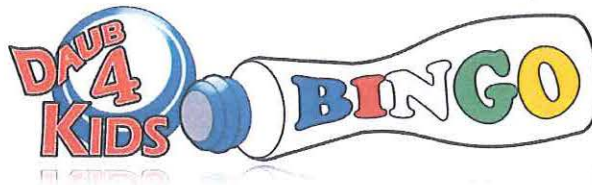
Draft findings are included in the proposed resolution.

Recommendation

Staff recommends the City Council adopt the proposed resolution approving the request for a Conditional Use Permit to operate a bingo hall located at 2107 Main Street (CUP 01-16), as conditioned.

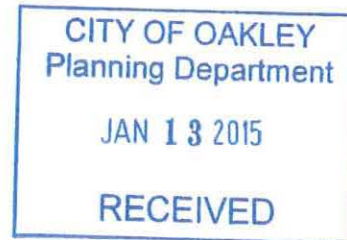
Attachments

1. Applicant's Original Project Description and Company Background
2. Staff Report from June 28, 2016 Public Hearing without Attachments
3. Proposed Resolution for Approval



Daub4KidsBingo.com

January 6, 2016



City of Oakley
Planning and City Council Members
Oakley, CA 94561

Re: Conditional Use Permit - 2105 & 2107 Main Street, Oakley Cypress Square Shopping Center (former water department).

Dear Planning and City Council Members:

Daub 4 Kidz Inc. is a newly formed non-profit organization formed solely for the purpose of helping the children in our local community by donating to the local schools and community sports programs. We are a registered 501(C)(3) charity organization, registered with the State of California, Department of Justice and the Internal Revenue. Our Tax Id #47-1599528. We are compliant with the California Bingo Regulations 326.5.

Our organization was founded in August of 2014. As the President, I have been involved in charitable, non profit organizations since 1999, including Good Shepard, St. Peter Martyr School, Terrapins Swim Team, Love 2 Dance and most recently resigned from the East County Hot Shots, to open my own non profit organization. We have been their fiscal sponsor and donated large sums of money, we felt our time and efforts could be utilized more efficiently reaching out to more organizations than be exclusive to one. We now can reach out to our local schools and local sports programs.

Our goal is to reach out to more children, schools and sports programs by providing the additional assistance and funds needed. We will help pay for new uniforms, travel, equipment, field repairs, hardship tuitions, scholarships, indoor training facilities that the kids can go to practice and improve there skills. We are very proud of all our previous accomplishments to date and would love to make our new home in Oakley, CA.

Every year in October, we kick off our canned food drive, every player comes in with a canned food item and receives \$ 5.00 off there buy in for bingo, to date all canned food items have gone to Shelter Inc. in Bay Point, CA. In November and December each year we do our " Toys for Tots ", again each player brings in a toy, receives a discount on there buy in. If no toy is brought in, a donation goes into the kitty that is used to

purchase bikes and helmets for the less fortunate children in our community. In Mid December, we take the toys and bikes to the local "Toys for Tots" location to be distributed.

We have worked together with Sam Billeci, President at the Flor-Do Oakley Bingo Hall in Oakley, Ca. We have a verbal agreement in place not to operate on each others nights. Flor- Do Oakley Bingo operates on Monday and Thursday evenings. Should you have any questions, please feel free to contact Sam at 916-801-2546, he fully supports our operations and can speak on behalf of our organization.

Our request is to have 4 sessions a week of Bingo. Our preference is to operate Tuesday and Friday Nights and Saturday and Sunday afternoons. During our evening sessions, doors open at 4:00 p.m., with bingo beginning at 6:30 p.m., and ending between 10:30 p.m and 11:30 p.m. For our afternoon sessions, doors open at 11:00 a.m, bingo begins at 1:00 p.m. and ending between 5:30 and 6:30 p.m. Based on the attendance we receive at the new location, we might change the afternoon session to Saturday and Sunday evenings. This to be determined at a later time. We typically run special events 3-4 times per year, New Years Eve, New Years Day, Presidents Day, and 4th of July.

Our use is for regular bingo sessions and compliant with the California Bingo Regulations section 326.5. On any given session, our attendance ranges from 50-100 players. Many have been our regular players for years.

We are staffed with 10-12 volunteers, including myself, our Board of Directors and Members. We have 1 paid security guard on the premises at all times during bingo.

We truly believe that we are a perfect fit at this location, our customers will use the local shopping center for food, grocery shopping, we will use the local restaurants for our special events that will generate additional money to the City of Oakley. We hope to have a fair opportunity to have our permit request reviewed and approved by the City of Oakley Planning and Council members. We would love to begin donating to the local Oakley schools and sports programs helping to keep kids off the streets and live there dreams.

We look forward to making this a wonderful place for our bingo players to come and enjoy come an afternoon or evening of fun and in a safe environment.

We would be happy to answer any questions you may have regarding our request and would be happy to have you visit this location and discuss our operations.

Please do not hesitate to contact me via e-mail at francinemcmahon53@aol.com or (925) 726-6211.

Sincerely,

A handwritten signature in blue ink that reads "Francine McMahon" followed by a horizontal line.

Francine McMahon
President
Daub 4 Kidz, Inc.

OAKLEY

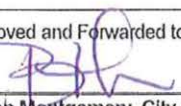


CALIFORNIA

STAFF REPORT

Date: June 28, 2016
To: Bryan Montgomery, City Manager
From: Kenneth W. Strelo, Senior Planner
SUBJECT: Daub 4 Kidz Bingo Hall (CUP 01-16) – Second Public Hearing
 (Recommendation of Denial)

Approved and Forwarded to City Council:


 Bryan Montgomery, City Manager

Summary

This is a second public hearing on a request by Francine McMahon ("Applicant") for approval of a Conditional Use Permit to operate a non-profit Bingo Hall (Assembly, Public) within a 6,000 square foot space located at 2105-2107 Main Street (former Diablo Water District Offices within the Cypress Square Shopping Center) ("Project"). The applicant proposes to operate up to four sessions a week, including Tuesday and Friday nights, and Saturday and Sunday afternoons. Up to 100 players, 12 volunteers, and 1 security guard may be present during any given sessions. The site is zoned C (General Commercial) District.

Staff recommends the City Council adopt the proposed resolution denying the request for a Conditional Use Permit to operate a bingo hall located at 2105-2107 Main Street (CUP 01-16).

Background

This project was originally presented to the City Council on April 26, 2016 as a public hearing item. At that time, Staff recommended denial of the project. The Council deliberated on the project with different opinions for and against the proposal. It was moved by Councilmember Pope and seconded by Councilmember Hardcastle to prepare a resolution for approval addressing the concerns raised of accommodating parking and increased security. The motion failed to be approved with the following tie vote:

Ayes: Hardcastle, Pope
 Noes: Perry, Romick
 Abstained: Higgins

A second motion was not made to either approve or deny the project. During the presentation, it was stated if the project were denied at the subject location, Staff would

meet with the applicant about looking at other options in more appropriate zones or locations.

Since that meeting, Staff has communicated with the Applicant that the project was neither approved nor denied, and that direction for Staff to come back with a resolution for approval failed. Therefore, the project was still on file and action still needed to be taken in order to close the file. Options were provided to the applicant to withdraw the application, or proceed to go back for a formal action, which would be recommended the same as the original recommendation. The Applicant chose to proceed with another public hearing. Since the item was not continued on April 26, 2016, the public hearing has been re-noticed.

Since the April 26, 2016 meeting, the Applicant has not contacted Staff for assistance in seeking other potential locations, nor submitted any new information or inquiries regarding other locations. As stated in the original Staff Report from April 26, 2016 (attached), it is Staff's opinion that the use is not appropriate for a retail shopping center. The analysis for operation at the proposed location remains unchanged from the original Staff Report analysis. Staff was not directed to further look into any specific analysis; however, if it could be found that parking could be accommodated and that additional security would reduce potential for issues to arise, the use would still be inappropriate for the retail shopping center.

Recommendation

Staff recommends the City Council adopt the proposed resolution denying the request for a Conditional Use Permit to operate a bingo hall located at 2105-2107 Main Street (CUP 01-16).

Alternatively, if the City Council passes a motion directing Staff to come back with a resolution in support of the project, it is recommended the City Council include support for findings 3 and 4 from the April 26, 2016 Staff Report. The content of these findings would become part of the record, and they would need to support how the proposed use 1) is compatible with the intended character of the area, and does not change the essential character of the area from that intended by the General Plan and C (General Commercial) District, and 2) provides for the continued growth and orderly development of the community and is consistent with the various elements and objectives of the General Plan. The Staff Report from April 26, 2016 provides an analysis on why Staff believes these two findings cannot be made.

Attachments

- ~~1. Applicant's Project Description and Company Background~~
- ~~2. Public Hearing Notice~~
- ~~3. Staff Report from April 26, 2016 Public Hearing without Attachments~~
- ~~4. Proposed Resolution for Denial~~

RESOLUTION NO. XX-16

A RESOLUTION OF THE CITY OF OAKLEY CITY COUNCIL MAKING FINDINGS AND DENYING A CONDITIONAL USE PERMIT (CUP 01-16) TO OPERATE A BINGO HALL AT 2107 MAIN STREET FOR THE PROJECT KNOWN AS “DAUB 4 KIDZ BINGO HALL” APN 037-110-026

WHEREAS, on January 13, 2016, Francine McMahon of Daub 4 Kidz, Inc. (“Applicant”) submitted an application requesting approval of a Conditional Use Permit to operate a non-profit Bingo Hall (Assembly, Public) within a 6,000 square foot space located at 2105-2107 Main Street (former Diablo Water District Offices within the Cypress Square Shopping Center) (“Project”). The applicant proposes to operate up to four sessions a week, including Tuesday and Friday nights, and Saturday and Sunday afternoons. Up to 100 players, 12 volunteers, and 1 security guard may be present during any given sessions (“Project”); and

WHEREAS, on February 12, 2016, the project application was deemed complete per Government Code section 65920 et. seq; and

WHEREAS, the project is designated as *Commercial* in the Oakley 2020 General Plan, and zoned C (General Commercial) District on the City of Oakley Zoning Map; and

WHEREAS, this project is from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15301 (Class 1 – Existing Facilities); and

WHEREAS, on April 26, 2016 a duly noticed public hearing was held on the proposed project at the regular City Council meeting. At that meeting, a motion to approve the project failed to pass (2 ayes, 2 noes, and 1 abstention), and no other motion was made. The project was not continued at that time; and

WHEREAS, on June 16, 2016, a second Notice of Public Hearing for the Project was duly noticed by being posted at Oakley City Hall located at 3231 Main Street, outside the gym at Delta Vista Middle School located at 4901 Frank Hengel Way, outside the library at Freedom High School located at 1050 Neroly Road, and at the project site. The notice was also mailed out to all owners of property within a 500-foot radius of the subject property’s boundaries, to parties requesting such notice, and to outside agencies; and

WHEREAS, on June 28, 2016, a second duly noticed public hearing was held on the proposed project at a regular City Council meeting. At that meeting, the Council opened the public hearing at which it received a report from City Staff, oral and written testimony from the public, and deliberated on the project. At the conclusion of its deliberations, the City Council took a vote (4 ayes, 1 no) to continue the public hearing to July 12, 2016, and directed Staff to bring back a resolution for approval for the proposed project; and

WHEREAS, during the June 28, 2016 public hearing, the applicant and her representatives presented a modification to the proposed project, whereby the originally proposed 6,000 square foot tenant space was to be reduced to approximately a 4,421 square foot tenant space due to the leasing of a portion of it to a different tenant; and

WHEREAS, on July 12, 2016, the City Council continued the June 28, 2016 public hearing at which it received a report from City Staff, oral and written testimony from the public, and deliberated on the project. At the conclusion of its deliberations, the City Council took a vote and adopted this resolution to approve the project, as revised by the City Council during its deliberations; and

WHEREAS, if any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of these Findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City; and

WHEREAS, these Findings are based upon the City's General Plan, the City's Zoning Ordinance, and the information submitted to the City Council at its July 12, 2016 meeting, both written and oral, including oral information provided by the applicant, as reflected in the minutes of such meetings, together with the documents contained in the file for the project (hereinafter the "Record"); and

NOW, THEREFORE, BE IT RESOLVED THAT, on the basis of the above findings of fact and the entire Record, the City Council makes the following additional findings in support of the project:

- A. In regards to the application requesting approval of a Conditional Use Permit (CUP 01-16) to operate a non-profit Bingo Hall (Assembly, Public) within a 4,421 square foot space located at 2107 Main Street (APN 037-110-026):
 1. The site for the proposed use is adequate in size and shape to accommodate the use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this title to adapt the use with land and uses in the neighborhood; and
 2. That the site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use in that:
 - a. The proposed location is already existing. Size, shape, yards, spaces, etc. do not constitute any need for additional analysis. Access to the site is well established and a parking analysis shows there to be surplus parking available in and around the use and the

surrounding uses within the shopping center to accommodate overlapping operation times.

3. The proposed use will be arranged, designed, constructed, operated and maintained so as to be compatible with the intended character of the area and shall not change the essential character of the area from that intended by the general plan and the applicable zoning ordinances; and
4. The proposed use provides for the continued growth and orderly development of the community and is consistent with the various elements and objectives of the general plan in that:
 - a. The specific assembly use of a bingo hall at this specific location would support the findings because the tenant location is not in a main part of the shopping center, the commercial property manager representative provided testimony to difficulty in leasing out the space to a retail, office, or food related business.
 - b. Given the current economic status, the conditional use permit is approved with a 2-year life at which time it must be re-evaluated by Staff, and potentially the City Council.
5. The proposed use, including any conditions attached thereto, will be established in compliance with the applicable provisions of the California Environmental Quality Act.

B. The project complies with Measure J Growth Management requirements.

BE IT FURTHER RESOLVED THAT, on the basis of the above Findings and the Record, the City Council approves of the Applicant's request for a Conditional Use Permit, subject to the following Conditions of Approval:

Applicant shall comply with the requirements of the Oakley Municipal Code ("OMC"). Any exceptions must be stipulated in these Conditions of Approval. Conditions of Approval are based on the application received by the Planning Division on January 13, 2016, and any subsequent documents made part of the record.

THE FOLLOWING CONDITIONS OF APPROVAL SHALL BE SATISFIED PRIOR TO THE ISSUANCE OF A BUILDING PERMIT UNLESS OTHERWISE NOTED:

Planning Division Conditions

General:

1. The Conditional Use Permit is approved as proposed in the application received January 13, 2016, by the Planning Division, as modified during the June 28, 2016

City Council meeting and described in the July 12, 2016 Staff Report, and as modified by the following conditions of approval, subject to final review and approval by the Planning Division.

2. This approval shall be effectuated within a period of six (6) months from the effective date of this resolution by legally establishing the use, and if not effectuated shall expire on January 12, 2017. Prior to said expiration date, the applicant may apply for an extension of time pursuant to Oakley Municipal Code section 9.1.1602(h).
3. The Conditional Use Permit shall be valid for a period no longer than two (2) years from the effective date of this resolution, and shall expire on July 12, 2018. In order to continue operation beyond that time frame, the applicant shall notify the Planning Division at least 60 days prior to the expiration date, in writing, of their intent to continue operation of the conditional use permit. At that time, the Planning Manager will review the request and either A) administratively approve an additional extension of up to two (2) years, if he or she finds that the permittee has exhibited a record of compliance with all permit conditions, or B) refer the matter to the City Council for consideration. The applicant shall be responsible to pay the applicable fee for an administrative (Planning Manager consideration) or public hearing (City Council consideration) permit extension.
4. This conditional use permit is only valid for the specified public assembly use of a bingo hall operated in the manner described in the project record and conditioned, herein. Prior to any transfer of operator, the new operator shall submit copy of an original signed letter to the City of Oakley Planning Division stating they have read, understand, and agree to abide by all conditions of approval contained in this resolution. Failure to submit this letter prior to transferring operation of the bingo hall will constitute a failure to implement the adopted conditions of approval and may be ground for revocation of the conditional use permit.
5. If at any time the use creates the need for an average of two (2) or more police calls per month, whether directly or indirectly related to operation of the use, the applicant agrees to either A) provide additional security personnel, subject to review and approval of the Police Chief, or B) be responsible for reimbursement to the City of Oakley for any police calls that meet or exceed the two (2) per month average.
6. Any improvements drawings submitted for plan check shall be in substantial compliance with the project as presented to and approved by the City Council on July 12, 2016.
7. Hours of operation for the use shall be limited to four (4) sessions a week as follows:
 - A. Tuesdays and Fridays: 4:00 P.M. to 11:30 P.M.
 - B. Saturdays and Sundays: 11:00 A.M. to 6:30 P.M.

C. A maximum of four (4) additional special events per calendar year.

Any change to the routine hours of operation shall be made valid through modification of this conditional use permit, subject to City Council approval. Any additional special events proposed outside of the allowable four (4) per calendar year are subject to a temporary use permit, pursuant to Oakley Municipal Code section 9.1.1606, for each event.

8. Operation of each bingo event shall not exceed 100 participants, excluding the operator, volunteers not participating in the games, and security personnel.
9. All conditions of approval shall be satisfied by the owner/developer. All costs associated with compliance with the conditions shall be at the owner/developer's expense.
10. The applicant shall indemnify, defend, and hold harmless the City of Oakley, the City Approving Authorities, and the officers, agents, and employees of the City from any and all claims, damages and liability (including, but not limited to, damages, attorney fees, expenses of litigation, costs of court).

Signage:

11. All permanent and temporary signage shall be subject to Oakley Municipal Code Chapter 9.5 (Regulation of Signs and Outdoor Advertising) and require a building permit when applicable.

Building Division Conditions

12. Plans shall meet the currently adopted Uniform Codes as well as the newest T-24 Energy Requirements per the State of California Energy Commission, as applicable. To confirm the most recent adopted codes please contact the Building Division at (925) 625-7005.

Advisory Notes

Please note advisory notes are attached to the conditions of approval but are not a part of the conditions of approval. Advisory notes are provided for the purpose of informing the applicant of additional ordinance requirements that must be met in order to proceed with development.

- A. The applicant/owner should be aware of the expiration dates and renewing requirements prior to requesting building permits.
- B. Comply with the requirements of the Ironhouse Sanitary District.
- C. Comply with the requirements of the East Contra Costa Fire Protection District.

D. Comply with the requirements of the Diablo Water District.

Comply with the requirements of the Building Inspection Department. Building permits are required prior to the construction of most structures.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 12th day of July, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

Kevin Romick, Mayor

Date

ATTEST:

Libby Vreonis, City Clerk

Date