

PLANNING COMMISSION

Agenda Item No.: G.1
Date: October 23, 2012

CASE NUMBER: PHG 12-0019

APPLICANT: Mikes BBQ

LOCATION: 1356 W. Valley Parkway (Suites A & B)

TYPE OF PROJECT: Conditional Use Permit

PROJECT DESCRIPTION: A Conditional Use Permit for Mikes BBQ to allow amplified entertainment and dancing (cabaret permit).

STAFF RECOMMENDATION: Approval

GENERAL PLAN DESIGNATION: Planned Commercial (PC)

ZONING: Planned Development-Commercial (PD-C)

BACKGROUND/SUMMARY OF ISSUES:

Mikes BBQ is located within an approximately 11,000 SF suite within the Sports Authority Commercial Center, which contains a variety of commercial uses and restaurants. Limited live entertainment as an incidental use within a restaurant is a permitted use, but entertainment that includes amplified music and dancing requires a Conditional Use Permit. The applicant is requesting to allow nighttime amplified entertainment and dancing. A small 324 SF area within the Sports Bar section of the restaurant is proposed to be designated for dancing and amplified entertainment, along with a small area for bands/entertainers. This area currently contains restaurant/bar seating, which can be arranged to suit the needs of specific events. The ABC license also would need to be modified to allow live amplified entertainment and to extend the operating hours the restaurant could serve alcohol to begin at 8:30 a.m. (up to seven days a week) and up to 12:30 a.m., Sunday – Thursday. The current ABC license allows the restaurant to serve alcoholic beverages up to 1:30 a.m. only on Friday and Saturday, and up to 12:00 midnight Sunday through Thursday. The CUP conditions would require entertainment and dancing to conclude by 12:00 midnight.

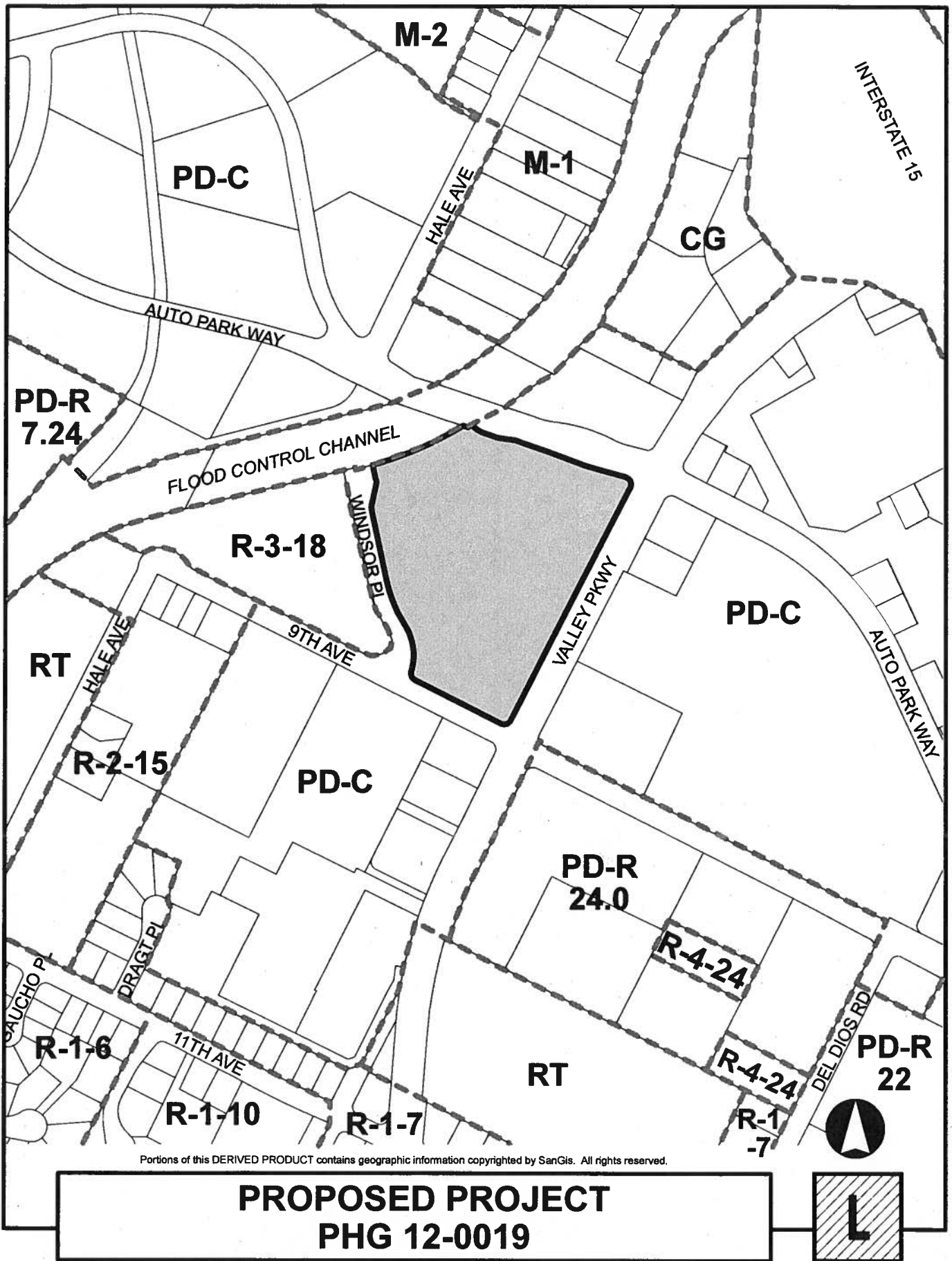
Staff has not identified any issues with this request.

REASON FOR STAFF RECOMMENDATION:

1. Staff feels the request to allow amplified music and dancing will not create problems for neighboring properties because conditions have been developed in consultation with the Police Department to allow the restaurant to offer entertainment while expressly prohibiting a nightclub-style operation. These conditions include a cessation of entertainment by 12:00 A.M./Midnight, a prohibition on outside promoters and cover charges, a requirement to keep the kitchen open and serving food during all hours of operation, and a requirement to provide a minimum number of security personnel during entertainment hours. In addition, potential noise issues will be minimized by the restaurant staff keeping the music indoors and keeping the doors closed during the hours music/entertainment occurs as required by the conditions of approval.

Respectfully Submitted,


Jay Paul
Associate Planner

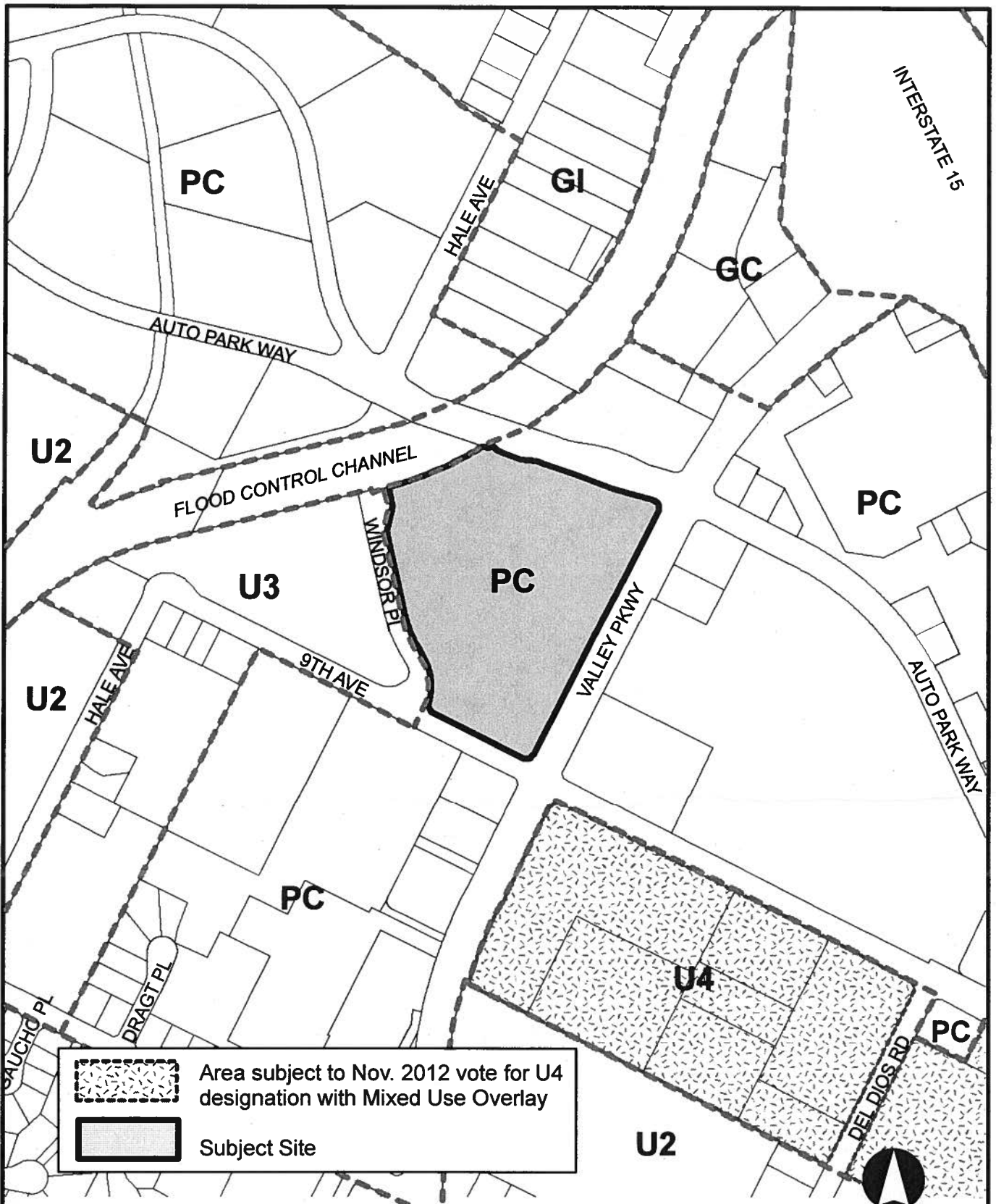




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**PROPOSED PROJECT
PHG 12-0019**



LOCATION/ZONING



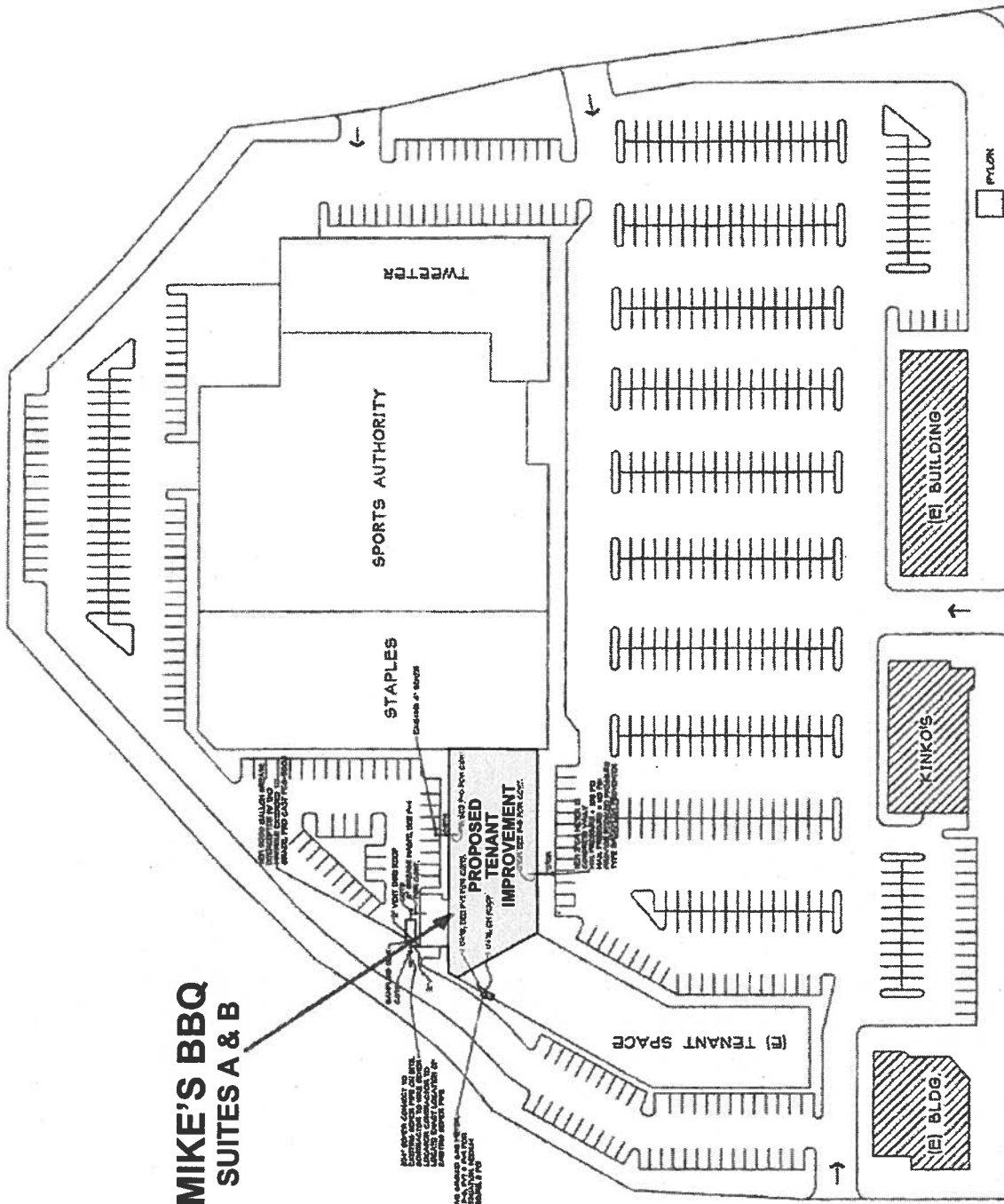
 Area subject to Nov. 2012 vote for U4 designation with Mixed Use Overlay
 Subject Site

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**PROPOSED PROJECT
PHG 12-0019**



AUTO PARKWAY



WEST VALLEY PARKWAY

NINTH AVENUE

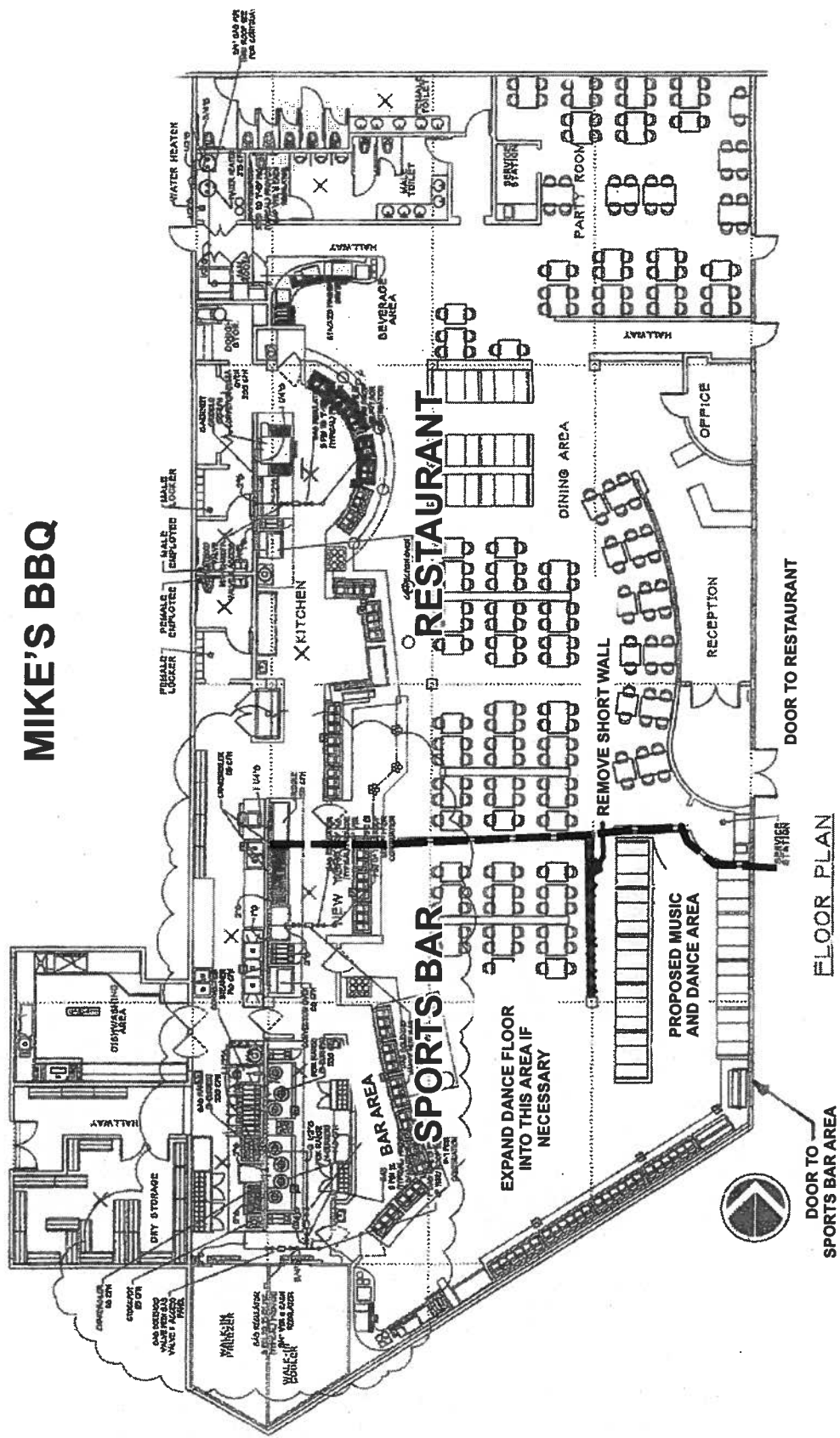


**PROPOSED PROJECT
PHG 12-0019**



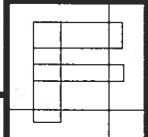
SITE PLAN

MIKE'S BBQ



FLOOR PLAN

PROPOSED PROJECT PHG 12-0019



FLOOR PLAN

ANALYSIS

A. LAND USE COMPATIBILITY/SURROUNDING ZONING

NORTH - PD-C zoning (Planned Development Commercial) / A commercial development is located north of the site on the northern side of Auto Park Way.

SOUTH - PD-C zoning (Planned Development Commercial) / A commercial development is located south of the site on the southern side of Ninth Avenue. A multi-family residential apartment complex is located southeast of the project site on the southeastern corner of West Valley Parkway and Ninth Avenue.

EAST - PD-C zoning (Planned Development Commercial) / Del Dios Middle School is located east of the project site on the eastern side of West Valley Parkway. The school's recreation fields are located along the street frontage.

WEST - R-3-18 zoning / (Multi-Family Residential, up to 18 du/ac) / A multi-family residential development is located west of the project site on the western side of Windsor Place. A masonry block wall is located around the perimeter of the property adjacent this residential development. The rear of the subject commercial building faces the residential development to the west.

B. ENVIRONMENTAL STATUS

The proposal is exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Section 15301, "Existing Facilities," and a Statement of Exemption was prepared for the proposed project. In staff's opinion, the request does not have the potential for causing a significant effect on the environment.

C. PROJECT ANALYSIS

General Plan

The City of Escondido General Plan designates the project site as Planned Commercial, which is characterized by a broad range of retail and service activities in local commercial, community shopping/office complexes and regional shopping centers.

Whether the Proposal for Amplified Music and Dancing would Create Problems in the Surrounding Area

Conditional Use Permits for amplified entertainment and dancing generally receive heightened scrutiny due to the potential for noise and security problems occurring late in the evening in locations where alcoholic beverages are served. Conditions are commonly applied to ensure that potential disruptions to neighboring businesses and residents are minimized to the extent feasible. In this case, comments received from the Escondido Police Department include a desire to preclude the business from turning into a nightclub which would likely result in increased calls for service. The Police Department does not object to the request for amplified music and dancing subject to the implementation of a number of conditions designed to control on-site activities and minimize the potential for disturbances. Staff has coordinated with the Police Department to develop a specific set of conditions tailored to this particular business, which includes limiting entertainment to four nights each week (Wednesday – Saturday) and would be required to conclude by 12:00 A.M./Midnight. The applicant does not object to this requirement. All entertainment would be required to be conducted as part of normal restaurant operations, which requires the kitchen to be open and serving food during all hours of operation. The use of outside promoters and the establishment of cover charges would be prohibited, and security personnel wearing identifiable clothing also would be required during all hours entertainment is provided.

Commercial development is located immediately to the north and south of the site, with residential development to the west (rear of the building) and a middle-school to the east across W. Valley Parkway. Staff feels that amplified entertainment and dancing would not create any adverse impacts to adjacent businesses since many of these businesses would be closed during the restaurant's later entertainment hours. Potential noise issues for neighboring residents and business would be minimized by a condition requiring all music and loudspeakers to be located inside the building with exterior doors to be closed when amplified music is being played. The nearest residential uses are located approximately 90 feet to the west, and 500 feet to the southeast across W. Valley Parkway. The rear of the restaurant orients towards the west and the existing building would mitigate any noise issues to the closest residents to the west since the doors to the restaurant orients inwards towards the commercial center facing east. Intervening commercial buildings and activities provide a buffer between the subject suite and adjacent residential development to the southeast. All requirements of the Noise Ordinance will continue to remain in effect and a standard condition has been included allowing the Planning Commission to consider modification or revocation of the CUP in the event significant problems arise or there is a failure to comply with the terms of the permit.

ABC License Modification

The current terms of the ABC license for the restaurant (On-Sale General for Bona Fide Public Eating Place, Type 47) specifies the operating hours for the service, sale and consumption of alcoholic beverages on the site. The current license restricts all alcohol sales, service and consumption of alcoholic beverages to the hours of 11:00 a.m. and 12:00 midnight, Sunday through Thursday, and between the hours of 11:00 a.m. and 1:30 a.m., Friday and Saturday. The applicant has submitted a request with ABC to modify the hours of operation to allow the following:

Sales, Service and Consumption of Alcohol

8:30 a.m. to 12:30 a.m. Sunday – Thursday
8:30 a.m. to 1:30 a.m. Friday – Saturday

The applicant indicated the request to modify the hours of operation is to allow the sale of alcoholic beverages during earlier sporting events to attract additional customers to the facility, especially during Saturday and Sunday college and professional football events and professional baseball events. Professional soccer events also occur all through the week at varying hours due to the different time zones throughout the world. The Police Department did not express any concerns with the proposed modification to the hours of operation. The final decision on the modification to the hours of operation are determined through the ABC licensing procedure, which can be more restrictive than the CUP, if deemed necessary.

SUPPLEMENT TO STAFF REPORT/DETAILS OF REQUEST

A. PHYSICAL CHARACTERISTICS

The restaurant is located within an approximately 11,000 SF suite within a group of in-line shops which are part of a larger 11+ acre commercial center. The site is fairly level and developed with several commercial buildings, paved parking and ornamental landscaping. Access to the commercial center is provided by Auto Park Way, W. Valley Parkway and 9th Avenue.

B. SUPPLEMENTAL DETAILS OF REQUEST

1. Property Size: Two suites located within the approx. 11.3-acre commercial center (Sports Authority Center)
2. Existing Restaurant 11,000 SF

Proposed Cabaret Area: Approx. 324 SF area (for band and dance floor area). This area includes movable tables/chairs that can be configured as each event dictates to provide a stage area and dance floor. Additional dancing area is available beyond the initial 324 area as needed (as shown on the floor plan).
3. Hours of Operation:
Existing: Restaurant Monday – Sunday, typ. 11:00 a.m. – 10:00 p.m. main restaurant seating area.

The kitchen and bar area seating typically remain open until 12:00 midnight based on daily demand.

Proposed: Restaurant Monday – Sunday, typ. 9:00 a.m. – 12:00 p.m. main restaurant seating area
The kitchen and bar area seating could remain open until 1:30 a.m., as required by demand.

Amplified Entertainment:
Dancing Wednesday – Saturday from 7:00 p.m. to 12:00 a.m./midnight
4. Number of Employees: Approx. 75
5. Entertainment: Live bands, DJ's, singers, karaoke, comedy, public speakers, etc. Dancing would also be permitted. Amplified entertainment and dancing must occur within the designated indoor areas and the exterior doors must be closed during performances.
6. Existing Alcohol License: On-Sale General for Bona Fide Public Eating Place (Type 47)

EXHIBIT "A"
FINDINGS OF FACT
PHG 12-0019

Conditional Use Permit

1. Granting the Conditional Use Permit for the proposed use would be based on sound principles of land use and in response to services required by the community, since the site is zoned for commercial uses including restaurants and the restaurant would provide a variety of live entertainment options for the local community. Appropriate parking is available to accommodate the proposed uses. Granting the proposed Conditional Use Permit would be based upon sound principles of land use and in response to services required by the community since the site is located within an established commercial area on a Circulation Element roadway and physically suitable to accommodate the restaurant and its patrons. All potential noise issues will be controlled through the conditions of approval and enforcement of the Noise Ordinance.
2. Granting the Conditional Use Permit will not cause deterioration of bordering land uses or create special problems for the area since the site is zoned for commercial uses; the commercial building and restaurant are existing uses; and the conditions relating to alcohol sales and service applied through the ABC license would eliminate any potential alcohol-related problems. In addition, potential noise issues will be minimized by the restaurant staff keeping the amplified music indoors and exterior doors closed during the hours music/entertainment occurs as required by the conditions of approval. The conditions include a prohibition on outside promoters and cover charges, a requirement to keep the kitchen open and serving food during all hours of operation, and a requirement to provide a minimum number of security personnel during entertainment hours.
3. The proposed Conditional Use Permit has been considered in relationship to its effect on the community and the neighborhood and would not result in a negative impact to the surrounding neighborhood, since the property is zoned commercial, the restaurant is existing, and conditions applied to the CUP and ABC license would prohibit any activities which could create problems in conjunction with live entertainment activities or the sales of alcoholic beverages. Because many of the adjacent businesses generally would be closed during the majority of hours when entertainment activities would occur, the addition of amplified music and dancing to the dining experience would not create problems for neighboring commercial properties. The orientation of the commercial center and subject suite, and distance from any residential uses would mitigate any potential noise issues.
4. The proposal is exempt from the requirements of the California Environmental Quality Act in conformance with CEQA Section 15301, "Existing Facilities," and a Statement of Exemption was prepared for the proposed project. In staff's opinion, the request does not have the potential for causing a significant effect on the environment.

EXHIBIT "B"

CONDITIONS OF APPROVAL

PHG 12-0019

Mikes BBQ

General

1. All construction shall comply with all applicable requirements of the Escondido Zoning Code and requirements of the Planning Department, Director of Building, and the Fire Chief.
2. The legal description attached to the application has been provided by the applicant and neither the City of Escondido nor any of its employees assume responsibility for the accuracy of said legal description.
3. Prior to or concurrent with the issuance of any building permits, the appropriate development fees and Citywide Facility fees shall be paid in accordance with the prevailing fee schedule in effect at the time of building permit issuance, to the satisfaction of the Director of Planning and Building.
4. As proposed, the design and materials of the proposed facilities shall be in accordance the staff report, exhibits and the project's Details of Request, to the satisfaction of the Planning Division.
5. All project generated noise shall conform to the City's Noise Ordinance (Ordinance 90-08).
6. All uses shall be consistent with the Details of Request and conditions of approval contained within this report, to the satisfaction of the Director of Community Development. Minor modifications to the conditions and operational details may be approved by the Director of Community Development and/or Police Chief without requiring a modification to the use permit, as determined by the Director of Community Development.
7. For the purposes of this CUP, entertainment (amplified or non-amplified) does not include televisions, juke box, radio/stereo systems, etc., as determined by the Director of Community Development.
8. All ABC requirements shall be adhered to at all times.
9. The primary use of the operation shall remain a restaurant with the kitchen open and offering food during all hours of operation, to the satisfaction of the Police Department. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently that on a quarterly basis and shall be made available to the Police Department on demand.
10. All doors shall be kept closed at all times during the operation of the premises except in the case of emergency, and normal ingress and egress. Said doors shall not consist solely of a screen or ventilated security door.
11. The sale of alcoholic beverages for consumption off the premises is strictly prohibited, unless authorized by the Department of Alcoholic Beverage Control (ABC).
12. The applicant shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control.
13. No other laws shall be violated. Any violation of this Conditional Use Permit or additional conditions set forth in the premise license issued by the Department of Alcoholic Beverage Control may result in a suspension or revocation of this CUP.
14. This CUP shall become null and void unless utilized within twelve months of the effective date of approval
15. This item may be referred back to the Planning Commission upon recommendation of the Director of Community Development for review and possible revocation or modification of the Conditional Use Permit upon receipt of nuisance complaints regarding the facility or non-compliance with the Conditions of Approval.
16. The City of Escondido hereby notifies the applicant that the County Clerk's office requires a documentary handling fee of \$50.00 in order to file a Notice of Exemption for the project (environmental determination for the project). In order

to file the Notice of Exemption with the County Clerk, in conformance with the California Environmental Quality Act (CEQA) Section 15062, the applicant should remit to the City of Escondido Planning Division, within two working days of the final approval of the project (the final approval being the hearing date of the Planning Commission or City Council, if applicable), a certified check payable to the "County Clerk" in the amount of \$50.00. The filing of a Notice of Exemption and the posting with the County Clerk starts a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. Failure to submit the required fee within the specific time noted above will result in the Notice of Exemption not being filed with the County Clerk, and a 180 day statute of limitations will apply.

Police Department

The following conditions may be modified by the Police Department without requiring a separate Planning Commission hearing. The specific interpretation and/or implementation of the following conditions may be determined by the Police Department and/or Director of Community Development.

17. Entertainment (amplified or non-amplified) and dancing shall end by 12:00 a.m., midnight, to the satisfaction of the Police Department and as may be restricted by the Department of Alcoholic Beverage Control.
18. The rear doors of the premises shall be equipped on the inside with an automatic locking device and shall be closed at all times, and shall not be used as a means of access by patrons to and from the licensed premises. Temporary use of these doors for delivery of supplies does not constitute a violation.
19. There shall be no amusement machines, video game devices pool or billiard tables in the premises at anytime, unless specifically authorized by in writing by the Police Department and also authorized by ABC, as may be required.
20. The applicant shall provide appropriate security, numbering no less than two, when dancing and entertainment are held. Security personnel will be dedicated solely for security purposes. The Escondido Police Department may at anytime raise or lower the number of required security personnel. The change of required personnel would be made in writing and delivered to a managing agent of the premises.
21. Amplified music/entertainment, loudspeakers and dancing shall be restricted to the designated interior spaces, to the satisfaction Police Department, and as may be restricted by ABC requirements. All doors for the designated indoor entertainment area(s) shall remain closed during hours when amplified music/entertainment is ongoing. The use of any amplifying system or device is prohibited on patio(s) or outdoor area(s), and the use of any such system/device inside the premises shall not be audible outside the premises, to the satisfaction of the Police Department.
22. The applicant shall police the area under their control in an effort to prevent the loitering of persons drinking outside the premises.
23. There shall be no exterior advertising or sign of any kind or type, including advertising specifically directed to the exterior from within, promoting or indicating the availability of alcoholic beverages.
24. The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot. Additionally, such lighting shall not disturb the normal privacy and use of any neighborhood residences.
25. Peace officers, as listed in Section 830.1 of the California Penal Code, and the Director and other persons employed by the Department of Alcoholic Beverage Control for the administration and enforcement of the Alcoholic Beverage Control Act are hereby authorized to visit and inspect the proposed premises, at any time the undersigned is exercising the privileges authorized by their ABC license on such premises.
26. No obstructions shall be attached, fastened or connected to either the partitions or ceiling to separate the booths/dining areas within the interior space of the licensed premises (specifically the area designated for amplified entertainment). Any proposed partitions separating the booths/dining areas shall not exceed 52" in height, as may be determined by the Police Department and Director of Community Development. Any interior modification which may affect this requirement must be approved by the Police Department and/or the Director of Community Development.
27. The licensee(s) shall not maintain or construct any type of enclosed room intended for use by patrons or customers for any purpose, unless specifically authorized by this use permit and/or the Police Department.

28. The licensee shall not permit "Taxi Dancing" to occur on the licensed premises wherein partners are provided for dancing or social purposes. Social purposes include but are not limited to the soliciting or accepting of any alcoholic beverages from any customers while in the premises.
29. No employee or agent shall be permitted to accept money or any other thing of value from a customer for the purpose of sitting or otherwise spending time with customers while in the premises, nor shall the licensee(s) provide or permit, or make available either gratuitous or for compensation, male or female persons who act as escorts, or guests of and for the customers. No employee or agent shall solicit or accept any alcoholic or non-alcoholic beverage from any customer while in the premises.
30. The applicant shall post and maintain a professional quality sign facing the premises parking lot(s) that reads: NO LOITERING, NO LITTERING, NO DRIKING OF ALCOHOLIC BEVERAGES, VIOLATORS ARE SUBJECT TO ARREST. The sign shall be at least two square feet in area with two-inch block lettering. The sign shall be in English and Spanish.
31. All events and entertainment shall be booked directly with the restaurant owners/employees. No outside promoters shall be allowed to book events at this restaurant.
32. The applicant shall not require an admission charge or a cover charge, and there shall not be a requirement to purchase a minimum number of drinks.
33. No distilled spirits shall be sold by the bottle. No bottles of distilled spirits shall be stored in the premises for specific customers. There shall be no selling of alcoholic beverages for future consumption.



CITY OF ESCONDIDO
PLANNING DIVISION
201 NORTH BROADWAY
ESCONDIDO, CA 92025-2798
(760) 839-4671

Notice of Exemption

To: San Diego County Recorder's Office
Attn: Deputy County Clerk
P.O. Box 121750
San Diego, CA 92112-1750

From: City of Escondido
201 North Broadway
Escondido, CA 92025

Project Title/Case No.: PHG 12-0019

Project Location - Specific: 1356 W. Valley Parkway (Suites A & B)

Project Location - City: Escondido, **Project Location - County:** San Diego

Description of Project: A Conditional Use Permit for Mikes BBQ to allow live amplified entertainment and dancing (cabaret permit).

Name of Public Agency Approving Project: City of Escondido

Name of Person or Agency Carrying Out Project

Name Steve and Jackie Olson (Mikes BBQ) Telephone (760) 746-4444
Address 1356 West Valley Parkway, Escondido, CA 92029

Private entity School district Local public agency State agency Other special district

Exempt Status: Categorical Exemption. Section 15301 "Existing Facilities."

Reasons why project is exempt:

1. The project only involves a Conditional Use Permit to allow live amplified entertainment and dancing as an accessory use to an existing restaurant within an existing 11,000 SF commercial suite. No physical expansion of the site or buildings is proposed. No additional parking is required.
2. The site is in an area where all public services and facilities are available to allow for the proposed use.
3. The project site is not in an area that is environmentally sensitive, and would have no impact to fish and wildlife.
4. The project would not create any significant increase in vehicle trips, nor impact vehicular circulation on or around the site. Appropriate parking is provided on the site to accommodate all uses. The project is located within a commercial zone and is surrounded by a variety of commercial uses. Appropriate separation from nearby residential development is provided. The project would not generate any significant noise impacts to adjacent uses through the project/building design and compliance with the project Conditions of Approval. The project would not result in the destruction of desirable natural features, nor be visibly obtrusive or disharmonious with surrounding areas.

Lead Agency Contact Person: Jay Paul, Planning Division Area Code/Telephone/Extension (760) 839-4537

Signature: October 4, 2012
Date

Jay Paul, Associate Planner

Signed by Lead Agency Date received for filing at OPR: N/A