



Meeting Date: 05 / 01 / 2012

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s) _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s) _____	<input checked="" type="checkbox"/> Public Hearing
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Brian Foote, AICP, Associate Planner Agenda Item No. L-1

Reviewed By: City Manager City Attorney Finance Other (Specify) _____

DATE: April 17, 2012

TO: City Council

FROM: Susan L. Martin, AICP, Planning Manager
Development Services Department

SUBJECT: Appeal of the Planning Commission’s denial of Planning & Zoning Permit No. 11-550-01 for Ruby’s Café. Located at 348 and 350 South Oxnard Boulevard. Filed by designated agent David Mora Plascencia, Mora Entertainment Enterprises, Inc.

RECOMMENDATION

That City Council adopt a resolution denying the appeal and upholding the Planning Commission’s denial of Planning and Zoning Permit No. 11-550-01.

DISCUSSION

On March 15, 2012, the Planning Commission considered an application for a major modification to Special Use Permit No. 04-500-28 to allow removal of one interior wall between suites and relocate one existing bar within Ruby’s Café to facilitate expansion of the dining and dance floor area by combining suites 348 and 350. The Commission followed standard protocol by opening and closing a public hearing, heard testimony, and considered the facts and circumstances of the proposed project. A motion to approve the request failed to pass with voting results being 3 ayes and 3 nays; therefore, pursuant to Commission bylaws, this failure constitutes denial or recommendation for denial of the application. As a result of the tie vote, no findings were made and no resolution was adopted.

On April 2, 2012, the City Clerk received timely notice appealing the Commission’s action. The appellant’s attorney, Oscar C. Gonzalez, Esq., prepared Attachment A to the appeal that questions the evidence (or lack thereof) upon which the Commission’s deliberation was based. Pursuant to section 16-548 of the City Code, the Council’s review of an appeal from a Commission decision may be heard de novo, and the Council is not restricted to considering the grounds specified in the notice of appeal.

The grounds for appeal, as stated on the Notice of Appeal (Attachment 6), indicates that “The Commissioners who voted against the permit cited fire concerns (the project will be up to Code), questioned whether a ‘bona fide’ restaurant was being operated, expressed concerns about binge drinking, and the impact of removing the interior wall on Police resources. No evidence of the sort that responsible persons are accustomed to rely upon in the conduct of serious affairs was submitted to the

Planning Commission to serve as the basis for any of these concerns.”

The record of proceedings indicates that the Commission considered and deliberated substantial evidence, and the decision was not arbitrary and capricious. The record shows that the evidence included the following: the Police Department report; Planning Commission staff reports dated December 2, 2004, and March 15, 2012; Planning Commission Resolution No. 2004-84 (approving the original special use permit in 2004); testimony from the applicant and Police staff provided during the public hearing; and the Commissioner's observations from site visits. One member of the public spoke favorably about the item, and one additional speaker discussed the project. The Commission reviewed a substantial amount of evidence prior to voting, and asked several questions of the applicant's representatives and Police staff. The Commission deliberated in depth regarding the expansion of the nightclub use during the late evening hours, and the nightclub activity was the context for which the Commissioners cited fire concerns, questioned whether a 'bona fide' restaurant was being operated, expressed concerns about binge drinking, and the potential for impacts on Police resources.

In summary, the Commission's deliberation and action was consistent with the provisions of City Code Section 16-561 (Major Modifications). The Commission deliberated, based on substantial evidence, and exercised independent judgment prior to making a decision. The motion to approve the project was made and seconded, and subsequently failed to receive the required number of votes to pass. Consistent with the established rules and procedures pertaining to conduct of the Planning Commission, staff recommends that Council uphold the Planning Commission's action and deny the appeal.

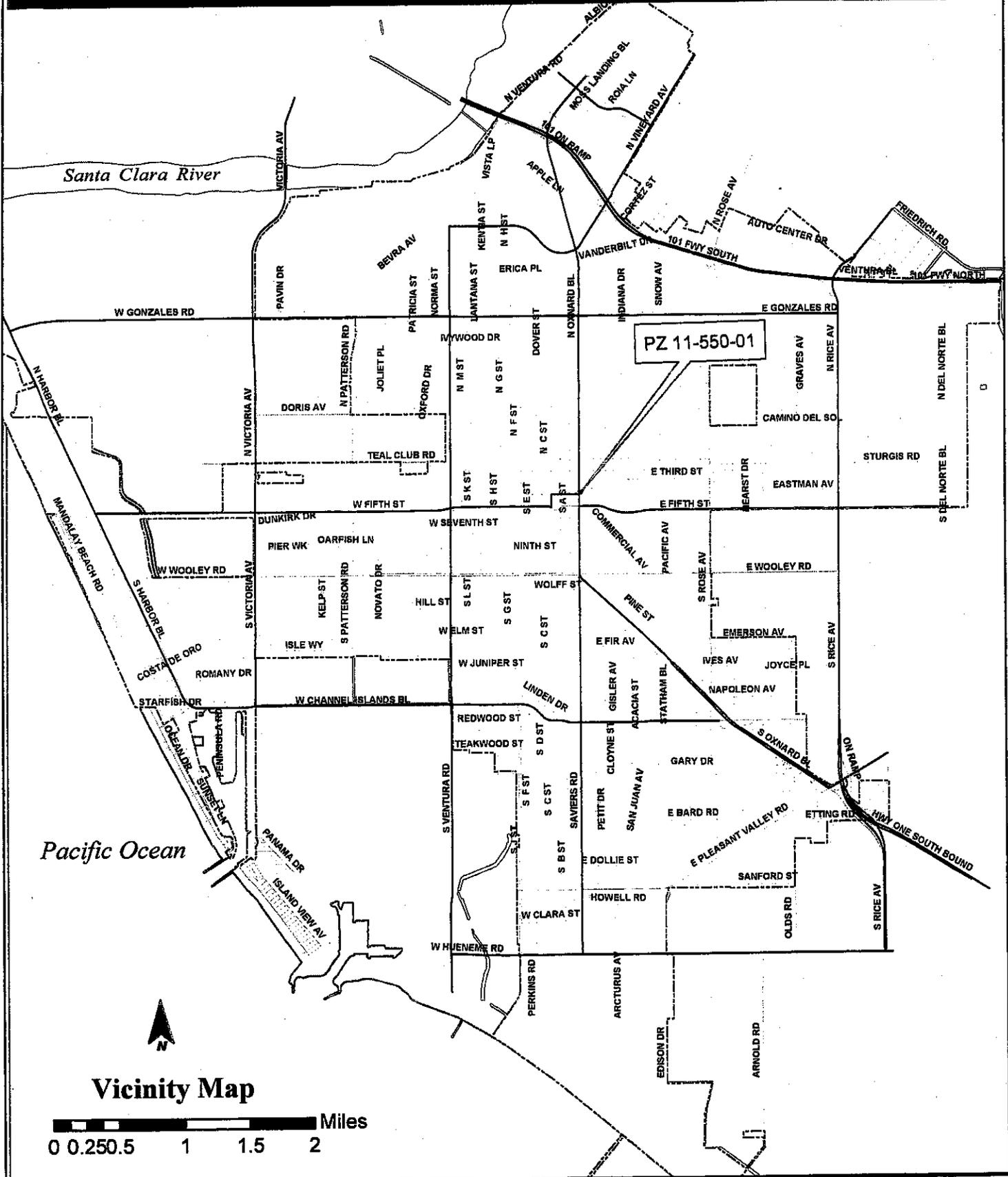
FINANCIAL IMPACT

None. The appellant paid the applicable filing fee.

- Attachment #1 – Vicinity Map
#2 – City Council Resolution
#3 – Planning Commission Staff Report
#4 – Planning Commission Meeting Minutes
#5 – Planning Commission Resolution No. 2004-84
#6 – Notice of Appeal

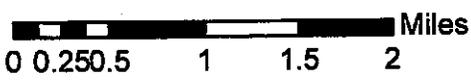
Note: Attachment 3 has been provided to the City Council under separate cover. Copies are available for review at the Circulation Desk in the Library after 9:00 a.m. on Saturday prior to the Council meeting, and at the City Clerk's Office after 8:00 a.m. on the Monday prior.

Vicinity Map



PZ 11-550-01

Vicinity Map



Oxnard Planning
March 9, 2011

PZ 11-550-01
Location: 348 S Oxnard Bl
APN: 201016026
Mike Sanchez

ATTACHMENT 1
PAGE 1 OF 1

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DENIAL OF PLANNING AND ZONING PERMIT NO. 11-550-01 (MAJOR MODIFICATION TO SPECIAL USE PERMIT NO. 04-500-28) TO ALLOW REMOVAL OF ONE INTERIOR WALL BETWEEN SUITES 348 & 350, AND RELOCATION OF ONE BAR IN SUITE 350, TO FACILITATE COMBINING SUITES 348 AND 350 WITHIN RUBY'S CAFÉ. THE SUBJECT PROPERTY IS LOCATED AT 348 & 350 SOUTH OXNARD BOULEVARD. FILED BY DESIGNATED AGENT DAVID MORA PLASCENCIA, 348 SOUTH OXNARD BOULEVARD, OXNARD, CALIFORNIA 93030.

WHEREAS, the application for a Major Modification (PZ No. 11-550-01), filed by Mike Sanchez of Coastal Architects on behalf of property owner Guadalupe Martinez, failed to receive the number of votes required for approval by the Planning Commission, thereby resulting in a denial of said application pursuant to subsection III.D of the Planning Commission Rules and Procedures; and

WHEREAS, the Planning Commission's action was appealed to the City Council; and

WHEREAS, the City Council has carefully reviewed the application, staff report, minutes of testimony, and record of proceedings at the Planning Commission public hearing; and

WHEREAS, on April 24, 2012, the City Council conducted a public hearing and received evidence in favor of and opposed to the application for a major modification to a special use permit at the property located at 348 and 350 South Oxnard Boulevard; and

WHEREAS, Sections 15270 and 15301 of Title 14 of the California Code of Regulations exempts the project from the requirement for the preparation of environmental documents imposed by the California Environmental Quality Act; and

WHEREAS, after due study, deliberation and public hearing, and based on the record of proceedings in this matter, the City Council finds that the following circumstances exist:

1. The denial of the proposed modification to the special use permit will not affect the preservation and enjoyment of substantial property rights of the applicant.

2. The proposed modification to the special use permit would adversely affect and be materially detrimental to adjacent uses and to the public health, safety and general welfare in that it would likely create or significantly aggravate police problems within 1000 feet of the subject property.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Oxnard hereby denies the appeal and upholds the Planning Commission's action on Planning and Zoning Permit No. 11-550-01, based on the findings set forth herein.

PASSED AND ADOPTED this day of , 2012, by the following vote:

AYES:

NOES:

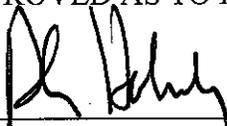
ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney

MINUTES

OXNARD PLANNING COMMISSION
REGULAR MEETING
March 15, 2012

A. ROLL CALL

At 7:00 p.m., the regular meeting of the Oxnard Planning Commission convened in the Council Chambers. Commissioners Stephen Huber, Anthony Murguia, Gilbert Guevara, Saul Medina, Vincent Stewart, and Steven Nash were present. Chairman Murguia presided and called the meeting to order. Staff members present were: Susan Martin, Planning Manager, Paul Wendt, Senior Civil Engineer; Jason Samonte, Traffic Engineer; Stephen Fischer, Assistant City Attorney; Chris Williamson, Principal Planner, Brian Foote, Associate Planner; Senior Officer Cliff Waer, Police; and Lori Maxfield, Recording Secretary.

B. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES

Commissioner Nash led the pledge of allegiance.

C. PUBLIC COMMENTS

D. READING OF AGENDA

Planning Manager Martin reviewed the agenda including staff's recommendation to continue Item G-2 (PZ 11-500-07) off calendar; and continue Item G-3 (PZ 08-550-03) to April 5, 2012.

MOTION Commissioner Nash moved and Commissioner Guevara seconded a motion to continue Item G-2 (PZ 11-500-07) off calendar; and continue Item G-3 (PZ 08-550-03) to April 5, 2012. The question was called and the motion carried 6-0-1, Commissioner Mullin absent.

E. CONSENT AGENDA

1. APPROVAL OF MINUTES – February 2, 2012

MOTION Commissioner Nash moved and Commissioner Huber seconded a motion to approve the minutes of February 2, 2012 as presented. The question was called and the motion carried 6-0-1, Commissioner Mullin absent.

F. CONTINUED PUBLIC HEARINGS

1. PLANNING AND ZONING PERMIT NO. 10-0005 (Tentative Subdivision Map), a request to subdivide approximately 32 acres into seven parcels varying in size between 2.19 and 10.82 acres each, for future industrial development consistent with the PD zone. No development is

Proposed at this time. There is no substantial evidence that the proposed project may have a significant effect on the environment, and a mitigated negative declaration (MND # 11-04) will be adopted. Located at 2600 Challenger Place and 150, 300, 350 & 400 Discovery Drive. Filed by Valerie Draeger, Triliad Development, Inc., on behalf of owner PEGH Investments LLC, 270 Conejo Ridge Ave., Suite 200, Thousand Oaks, CA 91361-4944.

PROJECT PLANNER: Brian Foote

Associate Planner Foote presented the staff report including the surrounding uses; no development is currently proposed; and Mitigated Negative Declaration 11-04 with traffic study, archaeological survey, air quality, hydrology and drainage, and geotechnical engineering report. He also displayed the location, vicinity, General Plan zoning; and tentative maps.

Traffic Engineer Samonte explained the basis for the increase in traffic.

Chairman Murguia opened the public testimony.

Ms. Valerie Draeger, Triliad Development, gave a brief presentation.

Chairman Murguia closed the public testimony.

MOTION Commissioner Nash moved and Commissioner Stewart seconded a motion to adopt a resolution recommending City Council approval of PZ 10-300-05, a Tentative Subdivision Map to allow subdivision of approximately 32 acres on vacant land into six parcels for future industrial development plus one common lot, located at 2600 Challenger Place and 150, 300, 350, and 400 Discovery Drive, subject to certain findings and conditions. The question was called and the motion carried 5-1-1, Commissioner Medina voting no, Commissioner Mullin absent.

G. NEW PUBLIC HEARINGS

1. **PLANNING AND ZONING PERMIT NO. 11-550-1 (Major Modification)**, a request for approval of a major modification to Special Use Permit No. 04-500-28, to remove one interior wall between dining rooms and relocate one existing bar in Ruby's Café. The project site is located at 348 and 350 South Oxnard Boulevard. The project is exempt from environmental review pursuant to Sections 15301 of the California Environmental Quality Act (CEQA) Guidelines. Filed by Coastal Architects, on behalf of property owner Guadalupe Martinez, 505 South A Street, Suite #200, Oxnard, CA 93030.

PROJECT PLANNER: Brian Foote

Associate Planner Foote presented the staff report including surrounding uses; parking study; access/exit doors; occupancy limits; Police Department not opposed to the project; and Condition No. 50 to be deleted. He also displayed the location, General Plan, and zoning maps; aerial and site photos; aerial photo of parking facilities; existing and proposed floor plans; interior photos;

Chairman Murguia opened the public testimony.

Mr. Mike Sanchez, Coastal Architects, representing the property owner, gave a brief presentation.

Senior Officer Waer indicated that RAPAC was not contacted on this proposal, but was included in original request; discussed calls for service; new owner cooperating with Police; and not currently a nuisance establishment with the cooperation of the owner to improve existing problems.

Mr. Oscar Gonzales, legal counsel for Mora Enterprises (tenant), discussed business purchased in September, 2010; primarily a restaurant, nightclub 20 hours per week; restaurant 80 hours per week; all proposed conditions are currently in effect; tenant has lost opportunities for banquets in excess of 180 people; owner has their own security, including the parking lot; would bring people downtown; and agreed to all conditions.

Ms. Jannet Mendez and Ms. Barbara Macri-Ortiz spoke in favor of the project.

Ms. Pat Brown, Five Points Neighborhood Chair, discussed the proposed project.

Chairman Murguia closed the public testimony.

MOTION Commissioner Medina moved to adopt a resolution denying PZ 11-550-1. The motion failed due to a lack of a second.

MOTION Commissioner Nash moved and Commissioner Stewart seconded a motion to adopt a resolution granting PZ 04-500-28, a Major Modification to Special Use Permit PZ 04-500-28, to allow removal of one interior wall dividing suites 348 and 350, relocation of one bar in suite 350, and other interior improvements as may be necessary to comply with all applicable requirements of the California Building code, located at 348 and 350 South Oxnard Boulevard. The question was called and the motion failed 3-3, Commissioners Guevara, Medina, and Murguia voting no, Commissioner Mullin absent.

Assistant City Attorney Fischer explained the applicant's appeal rights when a motion fails to be approved due to a tie vote.

RECESS Chairman Murguia called a recess at 8:52 p.m. The meeting reconvened at 9:00 p.m. with all Commissioners present, except Commissioner Mullin.

2. ~~PLANNING AND ZONING PERMIT NO. 11-500-07 (Special Use Permit) and 11-300-03 (Tentative Parcel Map), a request to subdivide an irregular shaped 1.31-acre site into two parcels, a 1.17-acre and a 0.14-acre parcel and construct a 4,729 square foot automated drive thru carwash facility on the proposed 1.14-acre site; construct a 1,500 square foot building for restaurant (speculative) on the proposed 0.18-acre lot. The car wash facility will accommodate 16 vacuum and drying stations, vending machines, self serve cleaning, and detail services. The project site is located at 1811 E. Channel Islands Blvd. This project is exempt from environmental review pursuant to Section 15321 of the California Environmental Quality Act (CEQA) Guidelines. Filed by Bijan Shahmordadi, 8730 Wilshire Boulevard, Suite 202 Beverly Hills, California 90211.~~
PROJECT PLANNER: Juan Martinez

RESOLUTION NO. 2004-84

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD APPROVING SPECIAL USE PERMIT PZ 04-500-28 FOR SALE OF ALCOHOLIC BEVERAGES FOR ON-SITE CONSUMPTION IN CONJUNCTION WITH A RESTAURANT, FOR A NIGHTCLUB ON THURSDAY THROUGH SUNDAY NIGHTS, FOR SHARED PARKING AND FOR USE OF 112 ON-STREET PARKING SPACES FOR RUBY'S CAFE OF OXNARD LOCATED AT 348 & 350 SOUTH OXNARD STREET IN THE CENTRAL BUSINESS DISTRICT (201-0-160-15 & -16). APPLIED FOR BY SHERRY & ASSOCIATES, ARCHITECTS, 629 STATE STREET, NO. 216, SANTA BARBARA, CA 93101.

WHEREAS, the Planning Commission of the City of Oxnard has considered an application for Special Use Permit PZ 04-500-28, filed by the Sherry & Associates, Architects; and

WHEREAS, the project is in conformance with the description of projects listed in Article 19, Section 15302 of Division 6 of Title 14 of the California Code of Regulations as categorically exempt from the requirement for the preparation of environmental documents imposed by the California Environmental Quality Act; and

WHEREAS, after due study, deliberation and public hearing, the Planning Commission finds pursuant to Section 34-147 of the City Code, that the following circumstances exist:

1. That the proposed use is in conformance with the *2020 General Plan* and other adopted policies of the City of Oxnard.
2. That the proposed use will not adversely affect or be materially detrimental to the adjacent uses, buildings or structures or to the public health, safety or general welfare.
3. That the site for the proposed use is adequate in size and shape to accommodate the setbacks, parking, landscaping, and other City standards except as may be specifically excepted by the special findings and conditions of this resolution.
4. That the site for the proposed use will be served by streets and highways adequate in width and structure to carry the kind and quantity of traffic such use will generate.
5. That the site for the proposed use will be provided with adequate sewerage, water fire protection and storm drainage facilities.

WHEREAS, the Planning Commission has reviewed the parking study submitted by the applicant in support of the application to use 112 on-street parking spaces to meet the parking requirement for the project, as authorized by section 34-105.6(g)(2) of the City Code and an application for administrative relief from parking requirements through a shared parking agreement for a minimum of 7 off-street parking spaces, as authorized by section 36-7.1.31 (B)(1) of the City Code; and

WHEREAS, the Planning Commission has reviewed the Police Department report prepared for this application and finds as follows, in accordance with City Council Resolution No. 11,896:

1. Because the establishment will be located less than 350 feet from one other establishment of the same type selling alcoholic beverages at retail, a presumption arises of an undue concentration of such establishments. However, the presumption is rebutted by a preponderance of the evidence in that the area in which the establishment will be located (the Central Business District) will benefit from the development of restaurants selling alcoholic beverages and providing entertainment in the evening, thereby facilitating redevelopment and economic enhancement of the area.
2. The establishment is not likely to create or significantly aggravate police problems within 1000 feet of the subject location because the conditions of approval contained in this resolution will prevent or mitigate such problems.

WHEREAS, the Planning Commission finds that the applicant agrees with the necessity of and accepts all elements, requirements, and conditions of this resolution as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work or visit this establishment in particular.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard hereby approves Special Use Permit PZ 04-500-28 with the conditions of approval attached, permitting the use of 112 on-street parking spaces and shared parking for a minimum of 7 parking spaces, permitting the sale of alcoholic beverages for on-site consumption in the on-site restaurant and permitting the operation of a nightclub with music and public dancing on Thursday, Friday, Saturday, and Sunday nights.

The decision of the Planning Commission is final unless appealed in accordance with the provisions of Section 34-155 of the Oxnard City Code.

**STANDARD CONDITIONS OF APPROVAL
FOR LAND USE PERMITS**

Note: The abbreviations below identify the City department or division responsible for determining compliance with these standard conditions. The first department or division listed has responsibility for compliance at plan check, the second during inspection and the third at final inspection, prior to issuance of a certificate of occupancy, or at a later date, as specified in the condition. If more than one department or division is listed, the first will check the plans or inspect the project before the second confirms compliance with the condition. The italicized code at the end of each condition provides internal information on the source of each condition: Some are standard permit conditions (e.g. *G-1*) while some are taken from environmental documents (e.g. *MND-S2*).

DEPARTMENTS AND DIVISIONS			
CA	City Attorney	PL	Planning
DS	Dev Services/Eng Dev/Inspectors	TR	Traffic
PD	Police	B	Building Plan Checker
SC	Source Control	FD	Fire
PK	Parks	CE	Code Enforcement

GENERAL PROJECT CONDITIONS

1. This permit is granted for the property described in the application on file with the Planning Division, and may not be transferred from one property to another. (PL, *G-1*).
2. This permit is granted for the plans dated September 16, 2004, ("the plans") on file with the Planning Division. The project shall conform to the plans, except as otherwise specified in these conditions, or unless a minor modification to the plans is approved by the Planning and Environmental Services Manager or a major modification to the plans is approved by the Planning Commission. A minor modification may be granted for minimal changes or increases in the extent of use or size of structures or of the design, materials or colors of structures or masonry walls. A major modification shall be required for substantial changes or increases in such items. (PL, *G-2*)
3. This permit shall automatically become null and void 24 months from the date of its issuance, unless Developer has diligently developed the proposed project, as shown by the issuance of a grading, foundation, or building permit and the construction of substantial improvements, or the beginning of the proposed use. (PL, *G-3*)
4. All required off-site and on-site improvements for the project, including structures, paving, and landscaping, shall be completed prior to occupancy unless the Development Services Manager allows Developer to provide security or an executed agreement approved by the City Attorney to ensure completion of such improvements. (DS, *G-4*)

5. By commencing any activity related to the project or using any structure authorized by this permit, Developer accepts all of the conditions and obligations imposed by this permit and waives any challenge to the validity of the conditions and obligations stated therein. (CA, G-5)
6. Developer agrees, as a condition of adoption of this resolution, at Developer's own expense, to indemnify, defend and hold harmless the City and its agents, officers and employees from and against any claim, action or proceeding to attack, review, set aside, void or annul the approval of the resolution or any condition attached thereto or any proceedings, acts or determinations taken, done or made prior to the approval of such resolution that were part of the approval process. Developer's commencement of construction or operations pursuant to the resolution shall be deemed to be an acceptance of all conditions thereof. (CA, G-6)
7. Any covenants, conditions, and restrictions (CC&R's) applicable to the project property shall be consistent with the terms of this permit and the City Code. If there is a conflict between the CC&R's and the City Code or this permit, the City Code or this permit shall prevail. (CA, G-7)
8. Developer shall record with the Ventura County Recorder a "Notice of Land Use Restrictions and Conditions" in a form acceptable to the City Attorney. Before the City issues building permits or allows Developer to occupy the project, Developer shall submit a copy of the recorded document to the Planning and Environmental Services Manager. (PL, G-8)
9. Before placing or constructing any signs on the project property, Developer shall obtain a sign permit from the City. Except as provided in the sign permit, Developer may not change any signs on the project property. (PL/B, G-10)
10. Developer shall obtain a building permit for any new construction or modifications to structures, including interior modifications, authorized by this permit. (B, G-11)
11. Developer shall not permit any combustible refuse or other flammable materials to be burned on the project property. (FD, G-12)
12. Developer shall not permit any materials classified as flammable, combustible, radioactive, carcinogenic or otherwise potentially hazardous to human health to be handled, stored or used on the project property, except as provided in a permit issued by the Fire Chief. (FD, G-13)
13. If Developer, owner or tenant fails to comply with any of the conditions of this permit, the Developer, owner or tenant shall be subject to a civil fine pursuant to the City Code. (CA, G-14)
14. Prior to issuance of building permits, Developer shall correct all violations of the City Code existing on the project property. (PL, G-15).

PARKS CONDITIONS

15. All trees planted or placed on the project property by Developer shall be at least 24-inch-box size. All shrubs and vines shall be at least five-gallon size, except as otherwise specified by this permit. (PK, PK-6)
16. Developer must maintain the proposed ceramic pots and planted material at all times.

PLANNING STANDARD CONDITIONS

17. The final building plans submitted by Developer with the building permit application shall depict all building materials and colors to be used in construction. (PL/B, PL-1)
18. Any application for a minor modification to the project shall be accompanied by three copies of plans reflecting the requested modification, together with applicable processing fees. (PL, PL-2)
19. Before the City issues building permits, Developer shall include a reproduction of all conditions of this permit as adopted by resolution of the Planning Commission and/or the City Council in all sets of construction documents and specifications for the project. (PL, PL-3)
20. Before the City issues building permits, Developer shall provide to the Planning and Environmental Services Manager color photographic reductions (8 1/2" by 11") of full-size colored elevations and any other colored exhibit approved by the Planning Commission. Developer may retain the full-size colored elevations after the reductions are so provided. (PL, PL-4)
21. Developer acknowledges that because of population limitations placed on the City by the Air Quality Management Program, approval of this permit does not guarantee that the City will issue building permits. The City's issuance of building permits may be delayed as a result of implementation of an air quality plan. (PL, PL-5)
22. Before the City issues building permits, Developer shall provide to the Planning and Environmental Services Manager a disk in DWG format of a 100-foot scale site plan of the project as approved. (PL, PL-6)
23. This permit shall automatically be null and void 12 months from the date of issuance, unless Developer has received from the State Department of Alcoholic Beverage Control a license to sell alcoholic beverages on the project property. (PL, PL-8)
24. Developer may not modify any use approved by this permit unless the Planning and Environmental Services Manager determines that Developer has provided the parking required by the City Code for the modified use. (PL, PL-13)

25. Developer shall recess or screen roof heating and cooling systems and other exterior mechanical equipment from adjoining property and public streets, as required by this permit. Plumbing vents, ducts and other appurtenances protruding from the roof of structures shall be placed so that they will not be visible from the front of the property or other major public vantage points. Developer shall include a note on the construction plumbing drawings of exterior elevations to indicate to contractors that roof features shall be grouped and located in the described manner. Roof vents shall be shown on construction drawings and painted to match roof material color. (PL/B, *PL-15*)
26. For any exterior utility meter panels, Developer shall paint such panels to match the structure upon which it is located. Such panels shall be located to take advantage of screening (e.g. landscaping or other building elements) from public right-of-ways, to the maximum extent feasible. (PL, *PL-16*)
27. Project on-site lighting shall be of a type and in a location that does not constitute a hazard to vehicular traffic, either on private property or on adjoining streets. To prevent damage from vehicles, standards in parking areas shall be mounted on reinforced concrete pedestals or otherwise protected. Developer shall recess or conceal under-canopy lighting elements so as not to be directly visible from a public street. Developer shall submit a lighting plan showing standard heights and light materials for design review and approval of the Planning and Environmental Services Manager. (PL/B, *PL-17*)
28. In order to minimize light and glare on the project property, all parking lot and exterior structure light fixtures shall be high cut-off type that divert lighting downward onto the property and shall not cast light on any adjacent property or roadway. (PL, *PL-18*)
29. Developer shall provide for dust control at all times during project property preparation and construction activities. (B/DS, *PL-19*)
30. Before the City issues building permits, Developer shall submit and obtain approval from the Downtown Design Review Committee or comply with the requirements of "Over the Counter Downtown Design Review Permits" approved by City Council Resolution 12,097 on February 26th, 2002 for a master sign program for the project, which shall indicate on the site plan the elevations, the size, placement, materials, and color of all proposed free-standing and building signs. The square footage of all signs shall be calculated in accordance with the City Code. (PL/ B, *PL-20*)
31. Developer agrees to participate in a water conservation program that includes refitting water fixtures existing on the project property with water conserving devices within residences or businesses in the City's water service area, if such a program is in effect when building permits are issued for this project. Among the requirements of such a program might be refitting existing toilets, faucets, shower heads, landscaping irrigation or other fixtures and items that consume water within the structure. (PL, *PL-24*)

32. Because of water limitations placed upon the City by its water providers, approval of this permit does not guarantee that the City will issue building permits. Issuance of building permits may be delayed as a result of implementation of a water conservation or allocation plan. (PL, *PL-25*)
33. Prior to issuance of building permits, Developer shall pay a document imaging fee for the Planning files in an amount calculated by Planning staff at the time of building permit review based on fees then in effect. (PL/B, *PL-26*).

PLANNING SPECIAL CONDITIONS

34. Prior to issuance of a Certificate of Occupancy and as required by section 36-7.1.31 of the City Code Developer shall enter into a shared parking agreement with the City, in the form on file with the City Clerk, to use a minimum of 7 stalls in the Oxnard Transportation Center Parking lot. The agreement is subject to approval as to form by the City Attorney. (PL)
35. Prior to issuance of building permits Developer shall either merge the two subject parcels or record with the County of Ventura a Covenant and Agreement regarding the maintenance of off-site parking spaces requiring that the parking provided on APN 201-0-160-15 be maintained with six parking stalls for sole use of APN 201-0-160-16 (Ruby's Café). (PL)
36. Prior to issuance of building permits Developer shall obtain Planning Manager approval of the applicant's Downtown Design Review Committee submittal for all exterior architectural changes to the building.

POLICE CONDITIONS

37. Permittee and all sellers or servers shall complete a course in Responsible Beverage Sales and Service (RBS) within sixty days of license granting and/or date of employment. Training can be arranged through the Oxnard Police Department. (PL/PD)
38. Permittee and all general managers, managers or policy makers shall complete a course in the Responsible Alcohol Policy Program (available through the Oxnard Police Department) within 12 months of license granting and/or date of employment. This training course is in addition to the RBS class listed above and is specifically intended for the owners and managers or for any other persons responsible for establishing internal operational policies. (PD)
39. The Police Chief or designee may immediately suspend operation of the uses approved by this permit pending a hearing on the revocation of this permit if the Chief finds that there have been violations of the use permit conditions and/or ABC permit, or there is a single significant violent crime or single significant incident to which multiple police units or multiple police jurisdictions respond associated with the operation of this use, which the Chief determines is detrimental to the public safety or health. (PD)

40. When the Permittee hosts an event that includes public or private dancing, live entertainment or amplified music, security guards are required and must be present 30 minutes before and after the event. Permittee shall provide one guard for 25-50 persons and one guard for each additional 50 people up to eight guards. During such events, there shall be at least one additional security guard present to monitor the area immediately surrounding the exterior of the premises that is under the reasonable control of the Permittee. Security and other staff must not permit people to loiter outside or otherwise disrupt or annoy any nearby residents or businesses. Security guards are defined as any person licensed by the State of California pursuant to Chapter 11.5 (commencing with section 7580) of Division 3 of the Business and Professions Code, or who is employed by such a licensed person as a security guard, and who wears a uniform with a badge identifying the person as a security guard, and who has no duties in the premises except duties related to security. (PD)
41. Permittee shall maintain accurate records of all security personnel on the premises at any given time and make those available to the police upon demand. These records shall, at a minimum, provide the name, date of birth, copies of security guard credentials or license and any other permits or certifications related to security work. This would include copies of permits for weapons or other tools the guard may be authorized to carry. Security personnel shall remain in compliance with updated training related to their work as set forth by any existing or future state and/or local regulations.
42. Dancing, live entertainment and/or amplified music are considered incidental to the primary use of the business which is a restaurant. During times that Permittee provides alcoholic beverages for sale at the same time that there is public dancing, amplified or live music, there shall be no persons under the age of 21 allowed within the premises. The only exception is when the premises are being used exclusively by a private party and are not open to the public.
43. Permittee has submitted a design plan which allows the premises to be divided into two separate sections. When a section is used by a private party, persons in the private party under the age of 21 years shall not enter the area designated for public dancing.
44. 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 than on a quarterly basis and shall be made available to the Police Department upon demand. (PL/PD)
45. Permittee shall comply with the provisions of Section 23038 of the Business and Professions Code and acknowledges that incidental, sporadic, or infrequent sales of meals or a mere offering of meals without actual sales shall not be deemed sufficient to consider the premises in compliance with the aforementioned section.(PL/PD)

46. The premises shall be equipped and maintained in good faith as a bonafide restaurant and shall possess, in operative condition, such conveniences for cooking and storage of foods such as stoves, ovens, broilers, refrigeration or other devices, as well as pots, pans or containers which can be used for cooking or heating foods on the type heating device employed. (PL/PD)
47. The premises shall possess the necessary utensils, table service, and the condiment dispensers with which to serve meals to the public. (PL/PD)
48. Permittee shall offer an assortment of food items to customers at all times. After 9:30 p.m. or during the times that the premises is hosting a public dance and/or live or amplified entertainment, Permittee may modify the standard menu or reduce the number of menu items offered to the customers but shall continue to make available a reasonable assortment of food items.
49. High-capacity beverage containers, such as pitchers, shall be made of plastic.
50. Alcoholic beverages shall not be offered at significantly reduced prices that are meant to encourage greater consumption of alcohol such as during "happy hour" type promotions. Permittee shall not develop any other promotional activity that is designed to encourage excessive drinking of alcoholic beverages. Promoting a "happy hour" or other event that offers reduced prices on food or other items shall not be considered a violation of this condition and are actually encouraged. (PD)
51. The use of any amplifying system or device shall not be audible outside the premises nor shall it be disruptive to neighboring businesses. (PD)
52. The premises shall be equipped with a sufficient number of seats to adequately accommodate customers. There shall be no service area that is designed or used as a standing area only. (PD)
53. There shall be no advertising of alcoholic beverages visible from the outside of the establishment, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. (PL/PD)
54. The sale of alcoholic beverages shall not occur after 1:30 a.m. or before 8:00 am (PD)
55. The subject Alcoholic Beverage Control License shall not be exchanged for any other type of Alcoholic Beverage Control License without Planning Commission or City Council approval.
56. Upon any individual transfer (person-to-person) of the subject Alcoholic Beverage Control License, the City reserves the right to review the SUP and apply or remove conditions as appropriate to mitigate existing or potential problems.

57. In the areas surrounding the business, not otherwise licensed by the Department of Alcoholic Beverage Control allowing the service of alcohol, Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee's reasonable control. (PD)
58. Prominent signs shall be posted stating, in effect, "No persons under 21 will be served alcoholic beverages" and "Valid ID is required to purchase alcoholic beverages". These signs shall, at minimum, be posted at all stationary points of sale. (PD)
59. The sale of alcoholic beverages for consumption off the premises is strictly prohibited. (PD)
60. Any graffiti painted or marked upon the premises or on any adjacent area under the control of Permittee shall be removed or painted over within forty-eight (48) hours of being applied. (PL/PD)
61. Permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which they have reasonable control. (PL/PD)
62. The parking lot and adjacent areas of the premises under the reasonable control of Permittee (including the rear of the business) shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of all persons on or about the area. (PL/PD)
63. No pay phone on the exterior of the premises shall be allowed and any pay phones installed inside shall be blocked from incoming calls. (PL/PD)
64. Permittee shall regularly police the area under Permittee's control in an effort to prevent the loitering of persons about the premises. (PL/PD)
65. Any rear door or patio entrance 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. (PD)
66. Permittee shall establish cash handling procedures to reduce the likelihood of robberies and thefts. (PD)
67. Permittee shall install a video surveillance system that shall, at a minimum, monitor the entrances and exits, any centralized point of sale and areas immediately surrounding the exterior of the business. (PD)
68. Permittee shall install height gauges at all exit doors prior to final inspection. (PD)

69. Prior to issuance of a Certificate of Occupancy, Permittee shall install an electronic intrusion detection system that detects portal openings, glass break, and interior motion. (PD)
70. Permittee shall bolt down all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery. (PD)
71. Permittee shall have drop-safes installed to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically \$50). (PD)
72. Permittee shall install time lock safes if there is a need for accessing change throughout the business day. (PD)
73. Permittee shall install signage which indicates that employees do not possess keys to safes and that minimal levels of cash are available in register. (PD)
74. A copy of these conditions must be maintained on the premises and made available upon the demand of any peace officer at all times. (PL/PD)
75. Developer shall install obtain an encroachment permit from CalTrans to install a 42" railing in front of subject properties along Oxnard Boulevard as a pedestrian safety device to prevent people from wandering into Oxnard Boulevard. If after a documented effort a permit cannot be obtained from CalTrans, Developer shall obtain an encroachment permit from City and install a 42" railing after Oxnard Boulevard and the sidewalks are owned by City. The railing shall be at least 50 percent open and approved by the Planning Division. (PD/PL)
76. Developer shall submit a security and lighting plan to the Police Department for approval prior to occupancy. (PL)

SOLID WASTE MANAGEMENT STANDARD CONDITIONS

77. To ensure that solid waste generated by the project is diverted from the landfill and reduced, reused or recycled, Developer shall submit a "Solid Waste Management & Recycling Plan" to the City for review and approval. The plan shall provide for at least 50% of the waste generated on the project be diverted from the landfill. Plans shall include the entire project area, even if tenants are pursuing or will pursue independent programs. The plan shall be submitted to Planning & Environmental Services and Solid Waste Divisions and approved by the Solid Waste Division prior to issuance of a building permit. The plan shall include the following information: material type to be recycled, reused, salvaged or disposed; estimated quantities to be processed; management method used; destination of material including the hauler name and facility location. Developer shall use the attached Solid Waste Management & Recycling Plan form or a similar format.

78. Developer shall follow the plan and provide for the collection, recycling, and/or reuse of materials (i.e., concrete, wood, metal, cardboard, green waste, etc.) and document results during construction and/or demolition of the proposed project. After completion of demolition and/or construction, Developer shall complete the Solid Waste Management & Recycling report and provide legible copies of weight tickets, receipts, or invoices for materials sent to disposal or reuse/recycling facilities. For other discarded or salvaged materials, Developer shall provide documentation, on the disposal facility's letterhead, identifying where the materials were taken, type of materials, and tons or cubic yards disposed, recycled or reused, and the project generating the discarded materials. Developer shall submit and obtain approval of the Solid Waste Management & Recycling C&D Report form prior to issuance of a certificate of occupancy.
79. Developer shall arrange for materials collection during construction, demolition, and occupancy with either the City Solid Waste Reduction & Disposal Division or other City permitted hauling companies, or Developer shall arrange for self-hauling to an authorized facility.
80. If the project will generate waste on an ongoing basis during occupancy, Developer shall make provisions to divert at least 50% of the material through source reduction, recycling, reuse, and/or green waste programs. Developer shall submit an Occupancy Recycling Plan which shall include the following information: estimated quantities and materials to be generated, management method to be used to reduce landfill disposal; quantity, size and location of recycling and trash bins, destination of material including the names of haulers and facility locations. The Occupancy Plan form must be submitted and approved prior to issuance of a certificate of occupancy.

In addition, Developer shall submit an Occupancy Recycling Report annually to the Solid Waste Division on the anniversary date of the certificate of occupancy. The Report shall include the following information: material type recycled, reused, salvaged or disposed; quantities, management method, destination of material including hauler names and facility locations. Documentation must be included such as weight tickets or receipts regarding the above.

DEVELOPMENT SERVICES STANDARD CONDITIONS

81. Developer shall provide adequate vehicle sight distance as specified by CalTrans specifications at all driveways and intersections. (TR-71)
82. Prior to issuance of a building permit, pavement marking and sign plans shall be prepared by a registered California traffic engineer and approved by the City Engineer prior to issuance of a grading, site improvement or a building permit. (TR-74)
83. Prior to issuance of an encroachment permit, Developer's shall obtain City's approval of a contractor qualified to install pavement markings and signs. (TR-76)

PASSED AND ADOPTED by the Planning Commission of the City of Oxnard on this 2nd day of December 2004, by the following vote:

AYES: Commissioners: Dean, Okada, Clarke, Duff, Fischer, Burdullis

NOES: Commissioners: None

ABSENT: Commissioners: Lopez



Joseph E. Burdullis, Chairman

ATTEST: SM Miller
Marilyn Miller, Secretary

CITY OF OXNARD
CITY CLERK

PLEASE PROVIDE AN ORIGINAL AND 2 COPIES
A \$525 FEE MUST ACCOMPANY THIS APPEAL

2012 APR -2 P 12:47
TO: Oxnard City Clerk

NOTICE OF APPEAL
(from member of the public)

I, David Mora, am aggrieved or directly affected by
(name of person filing appeal)

and appeal the March 15, 2012 decision from the Planning Commission regarding Planning and
(date of PC meeting)

Zoning Permit No. 11-550-1, more particularly described as follows: Request for Approval of
a Major Modification to Special Use Permit No. 04-500-28, to remove one
interior wall between dining rooms and relocate one existing bar in Ruby's Cafe.
The grounds for appeal are:

SEE ATTACHMENT "A".

I request the following relief:

The Oxnard City Council approve the Planning and Zoning Permit No. 11-550-1,
as amended, to modify Special Use Permit No. 04-500-28 to remove one
interior wall between dining rooms and relocate one existing bar in Ruby's Cafe.

David Mora President
(signature)

Date April, 2012

David Mora, President, Mora Entertainment Enterprises, Inc.

348 South Oxnard, California
(address)

cc: City Attorney
Project Planner
Development Services Department
Applicant

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02/2011

ATTACHMENT "A"

Grounds for Appeal of Planning Commission's March 15, 2011 Decision.

By way of background, David Mora is the President of Mora Entertainment Enterprises, Inc., a corporation he formed to purchase the restaurant known as "Ruby's Café" operating at 348-350 South Oxnard Boulevard (the "Premises"). The Corporation purchased the restaurant and took possession of the Premises on September 1, 2010 pursuant to a 5 year lease it entered in to with the Owner of the Premises, Guadalupe Martinez. Mora Entertainment Enterprises, Inc. holds two five-year options to extend the lease of the Premises through 2025. The City of Oxnard Community Development Department holds the First Deed of Trust which encumbers the Premises. The Phillip F. Condon & Jeanette C. Condon Revocable Trust holds the Second Deed of Trust which encumbers the Premises. At the time of the sale of the restaurant business, Guadalupe Martinez was in default on the obligations secured by the First and Second Deeds of Trust. The proceeds from the transaction were used to cure the defaults; the rental payments keep Guadalupe Martinez current on his obligations to the holders of the First and Second Deeds of Trust.

When Mora Entertainment Enterprises, Inc. took possession of the Premises, Ruby's Café had closed its doors. Mora Enterprises Entertainment, Inc. has spent a substantial amount of money re-opening the restaurant, making improvements to the Premises, and hiring management and chefs to operate a quality restaurant. The restaurant is currently open every day but Monday, in operation 86 hours a week, with food available at all times. Banquets are a large and important component of the restaurant's business. As presently configured, the Premises can seat 180 individuals for a banquet. A nightclub is operated on the Premises 20 hours a week; as many as 14 private security personnel are on the Premises during nightclub hours. The business operated on the Premises is primarily a restaurant: the majority of cash flow derives from the restaurant operations and the majority of expenses are incurred by the restaurant operations. The need to remove the interior wall on the Premises is driven by the need to expand the restaurant's banquet services by increasing the number of patrons that can be seated for a banquet from 180 patrons to over 300 patrons. It is noted that there is no large banquet

halls in Downtown Oxnard; a large banquet hall will bring numerous events (private and public) to Downtown Oxnard.

On March 15, 2012, Planning and Zoning Permit No. 11-550-1 was before the Oxnard Planning Commission. The Planning and Zoning Permit seeks to modify Special Use Permit No. 04-500-28 to remove an interior wall in the Premises and to relocate one existing bar. Before the hearing the Standard and Special Conditions set forth in the Proposed Resolution were amended to omit Condition No. 50 (which forbids the service of any beverages in bottles during the operation of the nightclub). After a lengthy hearing before Commissioners Murgia, Huber, Cuevas, Medina, Nash and Stewart, the Commission dead-locked on a 3 to 3 vote on whether to approve Permit No. 11-550-1 (Ayes: Commissioners Huber, Nash & Stewart; Noes: Commissioners Murgia, Cuevas, and Medina).

During the hearing the Planning Commission was provided with competent evidence that the proposed modification of Special Use Permit No. 04-500-28 conformed with the Findings of Fact previously adopted by Planning Commission Resolution No. 2004-84, specifically:

- “1. That the proposed use is in conformance with the 2020 *General Plan* and other adopted policies of the City of Oxnard.
2. That the proposed use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures or to the public health, safety or general welfare.
3. That the site for the proposed use is adequate in size and shape to accommodate the setbacks, parking, landscaping, and other City standards.
4. That the site for the proposed use will be served by streets and highways adequate in width and structure to carry the kind and quantity of traffic such use will generate.
5. That the site for the proposed use will be provided with adequate sewerage, water fire protection and storm drainage facilities.”

The Oxnard Police Department was not opposed to the proposal to modify the interior of the business. Police staff believed that the Standard and Special Conditions recommend, as amended (with Condition No. 50 omitted) would suffice to adequately

mitigate concerns by providing multiple enforcement options if problems do arise. Senior Office Cliff Waer testified that the new tenant had been "cooperative" to date, and that the operation "did not constitute a nuisance".

The Commissioners who voted against the permit cited fire concerns (the project will be up to Code), questioned whether a "bona fide" restaurant was being operated, expressed concerns about binge drinking, and the impact of removing the interior wall on Police resources. No evidence of the sort that responsible persons are accustomed to rely upon in the conduct of serious affairs was submitted to the Planning Commission to serve as the basis for any of these concerns. The Planning Commission was provided with competent evidence that the proposed modifications of Special Use Permit No. 04-500-28 conformed with the Findings of Fact previously adopted by Planning Commission Resolution No. 2004-84.