



January 3, 2023

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Dana Point, CA 92624

**CITY OF DANA POINT
ADMINISTRATIVE PERMIT
MINOR CONDITIONAL USE PERMIT CUP22-0014(M)**

PROJECT APPLICANT: Lisa McCoy, BarVino Wine Bar

PROPERTY OWNER: Ruth Clark, RAC Properties, LP

LOCATION: 24671 La Plaza, Unit #1 (APN: 682-271-23)

REQUEST: A request to establish a wine retail store and ancillary tasting bar (BarVino Wine Bar) with Type 42 (on-sale beer and wine) and Type 20 (off-sale beer and wine) Alcoholic Beverage Control (ABC) licenses, allowing for the sale of beer and wine for on-site and off-site consumption in an existing 1,400 square-foot commercial suite with a 520 square-foot ancillary wine tasting bar.

ENVIRONMENTAL: Pursuant to the California Environmental Quality Act (CEQA), the project is categorically exempt per Section 15301 of the CEQA Guidelines (Class 1 –Existing Facilities) since the project consists of establishing an Alcoholic Beverage Outlet within an existing commercial suite.

DETERMINATION: The Community Development Director hereby
_____ APPROVES
_____ DENIES
the requested ENTITLEMENT described herein subject to the attached findings and applicable conditions.

Brenda Wisneski, Director
Community Development Department

BACKGROUND/DISCUSSION:

- The property is located within the Town Center Mixed-Use Zoning District (TC-MU) as depicted on the City's Zoning Map.
- The subject suite is located on the first floor of a two-story commercial structure fronting La Plaza that contains a total of three suites and four existing onsite parking stalls. Furthermore, the subject site is credited an additional four on-street parking stalls in the Dana Point Plaza Shared Parking program adopted by the Planning Commission on July 11, 1995.
- Currently, the subject suite is vacant and was previously occupied by a massage establishment. The subject suite shares the commercial structure with two other tenants: a water filter business on the first floor and a pilates studio on the second floor.
- The project site is surrounded by a variety of commercial and residential uses and structures. To the east, west, and south of the site are commercial structures within the TC-MU Zoning District. To the north of the site are residential structures within the RMF 14 Zoning District.
- The applicant is requesting a dual license through the California Department of Alcoholic Beverage Control. First, the applicant is requesting to establish a retail store with an ABC Type 20 license that allows for the sale of beer and wine for off-site consumption. Second, the applicant is requesting to establish a wine tasting bar with an ABC Type 42 license to allow the sale of beer and wine for on-site and off-site consumption.
- A Type 20 license from the California Department of Alcoholic Beverage Control relates to a package store and authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.
- A Type 42 license from the California Department of Alcoholic Beverage Control relates to a bar or tavern and authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
- The business will offer a retail wine and craft beer shop with a wine bar that serves wine, craft beer, and cheese/charcuterie plates. The on-site consumption of beer and wine will be permitted inside the wine bar, which is located within the interior of the suite. The suite will have clearly defined areas between the retail space and the bar space, with a sign that states that no one under 21 years of age is allowed in the bar space.
- Pursuant to Dana Point Municipal Code Section 9.35.080(e)(42), the proposed retail store and ancillary wine tasting bar complies with the parking requirements for multi-tenant general retail with restaurant space less than 20% of the total gross floor area of the entire commercial structure. Therefore, the proposed use does not result in an intensification of use and does not require additional parking.

- Within the subject suite, approximately 520 SF will be dedicated to the tasting bar and cold kitchen, and 940 SF will be dedicated to retail and storage space. The hours of operation are proposed from 12:00 PM to 9:00 PM Sunday through Monday.
- The Land Use Matrix of the Dana Point Town Center Plan (DPTCP) identifies that Alcoholic Beverage Outlets are a conditional use subject to special use standards. Section 9.07.040 (Alcoholic Beverage Outlets) contained in Chapter 9.07 (Special Use Standards) of the Dana Point Zoning Code (DPZC) specify the regulations for the establishment, operation, and maintenance of any alcoholic beverage outlet.
- Pursuant to DPZC Section 9.07.040(b)(2)(B), a Minor Conditional Use Permit (CUP(M)) is required to establish an Alcoholic Beverage Outlet within one hundred (100) feet of any area zoned or used for residential purposes. Since the location is adjacent to residential dwelling units along the rear property line, a CUP(M) is required.
- Staff recommends approval subject to the attached findings and conditions of approval.

FINDINGS:

- A. Based on the evidence presented at the public hearing, the Director of Community Development makes the following findings and approves Minor Conditional Use Permit CUP22-0014(M), subject to conditions of approval:
1. The proposed conditional use is consistent with the City of Dana Point General Plan **in that the proposed Alcoholic Beverage Outlet for the on-site sale and consumption of alcoholic beverages in combination with the establishment of a new retail wine and beer shop promotes Goal 1 of the Land Use Element of the General Plan, which aims to achieve a desirable mixture of land uses to meet the commercial needs of the City's residents and visitors.**
 2. The nature, condition, and development of adjacent uses, buildings, and structures have been considered, and the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures **in that all alcoholic beverage sales and consumption will be indoors. In addition, the hours of operation for the use will be in conjunction with that of adjacent land uses, and no expansion of the existing building footprint is being proposed to accommodate the new use.**
 3. The proposed site is adequate in size and shape to accommodate the yards, fences, parking and loading facilities, landscaping and other land use development features prescribed in the Dana Point Municipal Code (DPMC) and required in order to integrate the use with existing and planned uses in the vicinity **in that while the existing parking is nonconforming as to the number of on-site and on-street shared dedicated parking stalls, the retail and bar uses associated with the proposed Alcoholic Beverage Outlet does not result in an intensification**

of use that requires additional parking stalls, and no enlargement or expansion of the existing building or suite is proposed as a part of the requested Alcoholic Beverage Outlet.

4. The proposed use will not be contrary to the public interest or injurious to nearby properties, and the spirit and intent of Section 9.07.040 (Alcoholic Beverage Outlets) of the DPMC will be observed **in that the proposal is to establish an Alcoholic Beverage Outlet to allow the sale of beer and wine for on-site consumption (Type 42 license) that will also include the sale of beer and wine for off-site consumption (Type 20 license). Customers will be limited within the confines of the wine tasting bar serving area to consume alcohol along with food items, and therefore the new use will not be contrary to the public interest or injurious to nearby properties.**
5. The proposed use will not enlarge or encourage the development of a “skid row” area **in that the applicant proposes to establish an Alcoholic Beverage Outlet for the sale of beer and wine for on-site consumption (Type 42 license) and for off-site consumption (Type 20 license). The on-site sale and consumption of alcoholic beverages (Type 42 license) will be limited to the ABC-approved wine tasting bar within the existing suite and will be secondary to the primary use of the retail store (Type 20 license). No expansion of the existing suite’s floor area and only tenant improvements are proposed. Therefore, the establishment of an Alcoholic Beverage Outlet would not enlarge or encourage the development of a “skid row” area and serve public convenience or necessity.**
6. The establishment of an additional regulated use in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any other City program **in that the subject site and the additional regulated use are not subject to any neighborhood conservation program, nor will it interfere with any other City program.**
7. All applicable regulations of the zoning district in which the use is permitted will be observed **in that pursuant to the DPTCP, Alcoholic Beverage Outlets are a conditionally permitted use subject to the provision of Section 9.07.040 (Alcoholic Beverage Outlets) of the DPZC. Conditions of approval contained in this permit will ensure the Alcoholic Beverage Outlet use will not result in adverse impacts to neighboring development, and all proposed improvements are subject to building permit approval to ensure all zoning developments standards are met.**
8. The requirements of the California Environmental Quality Act have been satisfied **in that the project qualifies as a Class 1 (Section 15301 Existing Facilities) exemption pursuant to the applicable provisions of the California**

Environmental Quality Act (CEQA) because the project involves the establishment of an alcoholic beverage outlet within an existing structure involving only minor interior or exterior alterations.

CONDITIONS OF APPROVAL:

The City of Dana Point hereby grants approval of Minor Conditional Use Permit CUP22-0014(M) for the referenced project. This permit is valid subject to the following conditions of approval:

A. General:

1. Approval of this application permits the establishment of an alcoholic beverage outlet allowing the sale of beer and wine for on-site and off-site consumption inside an existing commercial suite, located at 24671 La Plaza, Unit #1. Subsequent changes to the approved scope-of-work shall be in substantial compliance with those plans presented to the Community Development Director, and in compliance with applicable provisions of the City of Dana Point General Plan and Municipal and Zoning Codes.
2. The application is approved as a plan for the location and design of the uses, structures, features, and materials shown on the approved plans. Any demolition beyond that described in the approved plans or any relocation, alteration, or addition to any use, structure, feature, or material, not specifically approved by this application, will nullify this approving action. If any changes are proposed regarding the location or alteration to the appearance or use of any structure, an amendment to this permit shall be submitted for approval by the Director of Community Development. If the Director of Community Development determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the amendment as for the approved plot plan, he may approve the amendment without requiring a new public hearing.
3. This discretionary permit(s) will become void two (2) years following the effective date of the approval if the privileges authorized are not implemented or utilized or, if construction work is involved, such work is not commenced with such two (2) year time period or; the Director of Community Development or the Planning Commission, as applicable grants an extension of time. Such time extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the initial two-year approval period, or any subsequently approved time extensions.

4. Failure to abide by and faithfully comply with any and all conditions attached to the granting of this permit shall constitute grounds for revocation of said permit.
5. The applicant or any successor-in-interest shall defend, indemnify, and hold harmless the City of Dana Point ("CITY"), its agents, officers, or employees from any claim, action, or proceeding against the CITY, its agents, officers, or employees to attack, set aside, void, or annul an approval or any other action of the CITY, its advisory agencies, appeal boards, or legislative body concerning the project. Applicant's duty to defend, indemnify and hold harmless the city shall include paying the CITY's attorney fees, costs and expenses incurred concerning the claim, action or proceeding.

The applicant or any successor-in-interest shall further protect, defend, indemnify and hold harmless the City, its officers, employees, and agents from any and all claims, actions or proceedings against the City, its officers, employees, or agents arising out of or resulting from negligence of the applicant or the applicant's agents, employees or contractors. Applicant's duty to defend, indemnify and hold harmless the City shall include paying the CITY's attorney fees, costs and expenses incurred concerning the claim, action, or proceeding.

The applicant shall also reimburse the City for City Attorney fees and costs associated with the review of the proposed project and any other related documentation.

6. The applicant and applicant's successors in interest shall be fully responsible for knowing and complying with all conditions of approval, including making known the conditions to City staff for future governmental permits or actions on the project site.
7. The applicant and applicant's successors in interest shall be responsible for payment of all applicable fees along with reimbursement for all City expense in ensuring compliance with these conditions.
8. The applicant shall obtain all applicable permits for the proposed improvements.
9. Building permits are required for the proposed project. Permits shall be applied for after the approval of the discretionary permit. All applicable California Building Code requirements shall be met.
10. The hours of operation shall be as follows: Sunday through Monday: 12:00 PM to 9:00 PM. Subsequent changes to the approved hours shall be in substantial compliance with this permit and in compliance with the applicable provisions of the DPZC. If the City receives complaints from the public related to noise levels, the City reserves the right to require the Alcoholic Beverage Outlet to limit hours as needed.

11. There shall be no advertisement of alcoholic beverages outdoors or in windows.
12. Any employee selling alcoholic beverages shall be 21 years of age or over and complete a Licensee Education on Alcohol and Drugs (LEAD) training and receive a certificate prior to selling alcohol.
13. All proposed uses shall comply with the provisions of the City's Noise Ordinance at all times.
14. In order to reduce noise caused by the clanking of bottles into trash/recycling containers at the close of business, all glass containers shall be properly disposed of after 7:00 A.M., the following day into appropriate trash/recycling bins.
15. Consumption of alcoholic beverages shall only be permitted at 24671 La Plaza, Unit #1 and within the boundaries of the wine tasting bar approved by this permit and illustrated on the attached ABC license Premise diagram.
16. The ABC license holder/operator shall maintain, post, and enforce the current "Do Not Sell List" provided by the Orange County Sheriff Department.
17. There shall be appropriate and conspicuous postings of a notice inside the premises, indicating that consumption of alcohol outside the approved consumption areas is prohibited by law. The notice shall be at least one and one-half (1.5) square feet in size.
18. No live entertainment is permitted unless approved through a separate Special Event Permit. A Special Event Permit shall be issued for any future activities which temporarily intensify the impacts (i.e., parking, traffic, noise, light and glare, etc.) of the tap room.
19. Any proposed exterior building signage shall be reviewed and approved under a separate permit.
20. The City shall maintain the option to reconsider the Conditional Use Permit (and conditions contained herein), at any time if the Community Development Director finds it necessary to re-evaluate impacts of the use on the surrounding community.
21. The owner/operator shall install "Good Neighbor" signage in and around entrances and exits from the establishment to remind patrons to be considerate of neighboring residential areas.

22. Deliveries and refuse collection shall be prohibited between the hours of 10:00 P.M. and 8:00 A.M. daily, unless otherwise approved by the Director of Community Development.
 23. The applicant/operator shall ensure that the trash dumpsters and/or containers are maintained to control odors.
 24. All trash shall be stored within containers located in the trash enclosure (three walls and self-latching gate) behind the building in the rear of the property or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies.
 25. Prior to issuance of a building permit for the proposed tenant improvements, the applicant shall submit for review and approval by the Community Development Department plans, specifications and/or samples of the finish materials and colors used to delineate the designated drinking/eating area. The applicant shall address accessibility requirements for ADA compliance in any submitted plans subject to approval by the Building/Safety Division.
- B. Prior to the issuance of a certificate of use and occupancy or during operation of the project the applicant shall meet the following:**
26. If not already displayed, the construction site shall be posted with signage indicating that construction does not commence before 7:00 A.M. and must cease by 8:00 P.M, Monday through Saturday. No construction activities shall be permitted on Sundays or Federal Holidays.
 27. The subject "Conditions of Approval" section of this permit shall be copied in its entirety, placed directly onto a separate plan sheet in both the City and job plan sets prior to the Planning Division signing off for building final.
 28. Verification of all conditions of approval are required by all City Departments.
 29. All approvals from outside Departments and Agencies are required.
 30. The applicant shall contact the Planning Division to conduct an inspection of the completed project including compliance with all conditions and installation of alcoholic beverage consumption areas, "Good Neighbor" signage, prior to contacting the Building/Safety Division for final project sign-off.
 31. Building/Safety Division approval is required to finalize building permits.