



CITY OF NEWARK

Planning Commission

City Hall, City Council Chambers

37101 Newark Boulevard, Newark, CA 94560 | (510) 578-4330 | E-mail: planning@newark.org

AGENDA

Tuesday, January 10, 2023
7:00 P.M.

**HYBRID IN-PERSON/VIRTUAL MEETING
REFER TO THE END OF THE AGENDA TO REVIEW
OPTIONS FOR PARTICIPATING IN THE MEETING REMOTELY OR IN-PERSON**

**IF YOU ATTEND THE MEETING IN PERSON, A FACE COVERING IS RECOMMENDED BUT NOT
REQUIRED.**

A. ROLL CALL

B. MINUTES

**B.1 Approval of Minutes of the regular Planning Commission meeting of November
8, 2022.**

(MOTION)

C. WRITTEN COMMUNICATIONS

D. ORAL COMMUNICATIONS

Members of the public are invited to address the Planning Commission on any item not listed on the agenda. Public Comments are generally limited to 5 minutes per speaker. Please note that State law prohibits the Commission from acting on non-agenda items.

E. PUBLIC HEARINGS

- E.1 Public Hearing to consider a Resolution recommending approval of a Conditional Use Permit (U2022-005) for a Live Entertainment Use located at 39143 Cedar Boulevard (APN 901-188-7). The subject site is zoned Neighborhood Commercial (NC).**

(RESOLUTION)

F. STAFF REPORTS

G. COMMISSION MATTERS

- G.1 Annual Election of Officers**

H. PLANNING COMMISSIONER COMMENTS

I. ADJOURNMENT

HYBRID IN-PERSON/VIRTUAL MEETING NOTICE

This meeting is being conducted utilizing teleconferencing and electronic means consistent with Assembly Bill 361(2021). Members of the public may attend the meeting in person, virtually via Zoom, or watch it via YouTube. If you attend the meeting in person, a face covering is recommended but not required.

Chair Becker, Vice Chair Fitts, and Commissioners Aguilar, Otterstetter, and Bogisich may be attending this meeting via teleconference. Teleconference locations are not open to the public. In the event that any members of the Planning Commission elect to attend this meeting via teleconference, all votes conducted during the teleconferencing session will be conducted by roll call vote.

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Submission of Public Comments: Public comments received by 4:00 p.m. on the Planning Commission meeting date will be provided to the Planning Commission and considered before Planning Commission action. Comments may be submitted by email to planning@newark.org.

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MINUTES

Tuesday, November 8, 2022
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A. ROLL CALL

Chair Becker called the meeting to order at 7:00 pm. Except for Commissioner Aguilar, all members of the Planning Commission were present: Vice-Chair Fitts, Chair Becker, Commissioner Bogisich, and Commissioner Pitpitan. Commissioner Pitpitan, the newest member of the Planning Commission, was welcomed by Chair Becker.

B. MINUTES

B.1 Approval of Minutes of the regular Planning Commission meeting of August 9, 2022.

MOTION APPROVED

Commissioner Bogisich moved, Vice-Chair Fitts seconded, to approve the Minutes of the regular Planning Commission meeting on August 9, 2022. The motion passed **3 AYES – 1 ABSTAIN (Commissioner Pitpitan abstained from voting) – 1 ABSENT (Commissioner Aguilar was absent)**

C. WRITTEN COMMUNICATIONS

None.

D. ORAL COMMUNICATIONS

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None.

E. PUBLIC HEARINGS

E.1 Public Hearing to consider a Resolution recommending approval of a Design Review, Conditional Use Permit, Minor Use Permit, and Master Sign Program (DR2020-002) for a hotel development located at 39888 Balentine Drive (APN 901-195-10)

(RESOLUTION)

Community Development Director (CDD) Steven Turner introduced Carmelisa Lopez, Senior Planner, who gave the staff report that evening.

Senior Planner (SP) Carmelisa Lopez welcomed the commissioners, introduced herself and announced that she would be speaking on the AC Marriott project, a proposed hotel development at 39888 Balentine Drive.

Senior Planner (SP) Carmelisa Lopez gave a presentation including the project's site information, the project proposal, the floor plan, the general plan, and zoning conformance, the Conditional Use Permit (CUP) required findings, the entitlements requested, which are a Design Review, a CUP, a Minor Use Permit (MUP), and a Master Sign Program.

As presented by SP Carmelisa Lopez, the project is a 1.66-acre site, which features the Nijo Castle Restaurant, bordered by Balentine Drive, Mowry School Road, and a paved access easement. It's also surrounded by restaurants, hotels, offices, and auto dealership uses. SP Lopez said that the project's applicant is Nimish Patel of Patel Real Estate, who is proposing an AC Hotel by Marriott. The project is approximately 75,000 square feet, five stories tall, almost 60 feet tall, 132 rooms,

it contains two ballrooms, 96 parking spaces and some signage that is included in the proposal, and some amenities. SP Lopez noted that the owner of this project is the same applicant for the Hyatt Place that's currently under construction on 5600 John Muir Drive, located north of the project site.

The Site Plan and the Circulation Plan are displayed on a slide that SP Carmelisa Lopez provided. She clarified that parking is shown on the site plan to be all around the building, with the major parking lot being along Mowry School Road. Two entrances are suggested for the hotel; one would be used for large events and visitors, while the other would be used for minor truck deliveries and for picking up and dropping off guests. SP Carmelisa Lopez clarified that the green arrows on the Circulation Plan scheme on the right side of the slide represented car access from the public right-of-way, while the red arrows represented pedestrian access. She continued by pointing out that there is a walkway that circles the structure, numerous points of entry from the easement to the hotel, and two additional driveways that now lead to the project site.

The Landscape Plan was the next slide in SP Carmelisa Lopez's presentation. She noted on this slide that the project incorporates a variety of landscaping elements around the site as well as various elevations of vertical panels covered in vegetation that help to screen the project site from the public rights-of-way.

The Ground Story Plan, which SP Lopez described in the next slides of her presentation, is where she emphasized a few key aspects, including guest facilities, the ballrooms, a guest-accessible fitness center, and the initial set of hotel rooms, which are on the second floor. She mentioned that the third story has a roof terrace for the guests' use and the fourth and fifth-floor plan are all hotel rooms.

SP Carmelisa Lopez then moved on to the slides for the South and East elevations, noting that while they appeared darker on the slides due to a printing problem, they used a white and gray color scheme. She emphasized that the proposed signage and awnings are visible on these elevations. She also noted that the vertical panels covered in vegetation on the ground level are visible on the slides for the North and West Elevations.

The project's conformity with the General Plan and Zoning Code was further explained by SP Carmelisa Lopez. She stated that the hotel use, which is permitted in the land use designation area, is consistent with the General Plan, and that under the Zoning Code, hotels are allowed by right while the banquet hall use, which is a secondary use to the hotel, is allowed with the approval of a Conditional Use Permit (CUP). She stated that, overall, the project complies with all relevant zoning regulations, apart from the ground floor height, the on-site loading areas, and the on-site parking. She continued by saying that the ground floor height requirement, which exclusively applies to ground floor retail use, is not necessary for this project, and that on-site loading spaces are also not necessary because large delivery vehicles are not anticipated there.

SP Carmelisa Lopez added that the entitlements requested for this project are a Design Review, a CUP, a Minor Use Permit (MUP), and a Master Sign Program.

SP Carmelisa Lopez then went into detail about the Design Review, CUP, and MUP regulations. She said that all new construction projects must undergo a design review. The applicant has collaborated with staff to improve the building and site design to enhance the site's appearance and surroundings. The project's contemporary design is well-articulated and makes use of a variety of colors and materials. SP Carmelisa Lopez showed a slide of a night rendering on which rib panel siding and blue indigo accent lights are displayed; she explained that these elements serve as accents. She emphasized how the canopies and the signage on this slide showcase the ground floor. The 4,200-square-foot banquet hall, which will be used for a variety of events including weddings, meetings, and seminars, requires a Conditional Use Permit (CUP). The entrance to the banquet hall will be on the southeast side of the building, next to the main parking lot. Many event attendees are expected to stay at the hotel and/or use Lyft or Uber to travel to and from the events, according to the hotel's operator. SP Carmelisa Lopez underlined that staff has imposed a few conditions of approval for this proposed use, such as limiting the hours and requesting a Minor Use Permit (MUP) for events with live entertainment, to guarantee that it complies with all CUP standards. Staff will need more analysis if any complaints are made, she noted. The zoning code permits a parking reduction with this project's approval of a Minor Use Permit (MUP). The applicant provided a parking demand study to support their request, which concluded that the project meets the hotel's parking needs and that, with the implementation of a Transportation Demand Management (TDM) Plan, the parking demand would be reduced by 15%, resulting in the need for only 78 parking spaces rather than the 132 currently required by the zoning code.

SP Carmelisa Lopez kept going with her slide presentation as she discussed the Master Sign Program, the final entitlement. When five or more signs are suggested for a project, she said, a Master Sign Program is required, and the proposed signage sites for the structure were displayed on that slide. She also mentioned that monument signs, other building signage, and awning signs would be present.

Regarding the project's environmental review, SP Carmelisa Lopez stated that the staff had determined that it qualified for a Class 32 Categorical Exemption (CE). The staff had also hired Rincon Consultants to conduct an environmental analysis to determine whether the project was consistent with the Class 32 CE, and a representative from this firm was present in case there were any questions about the environmental review. Overall, the report determined that this project is consistent and eligible, she said.

SP Carmelisa Lopez concluded her presentation by stating that the required findings for each of the entitlements are included in the Staff Report, Attachment 3 and that the project complies

with all the required findings. She also stated that the requested entitlements for this project include a Design Review for the proposed hotel, a CUP for banquet hall use, an MUP for proposed parking reduction, and a Master Sign Program for proposed signage.

Staff Recommendation: Staff recommends that the Planning Commission approve, by resolution, DR2020-002, as requested by the project applicant, based on the findings provided in Attachment 3, Draft Resolution.

Chair Becker thanked SP Carmelisa Lopez for her thorough presentation and asked if the Commissioners had any questions for staff. Nobody had any questions. Chair Becker commented that he had previously discussed the parking reductions with staff and that after talking with staff and learning about the required parking study, staff stated that it resulted in a 15% reduction in parking demand. He then inquired about some examples of offsets that the parking plan would involve.

SP Carmelisa Lopez responded that the hotel operator would be developing a Transportation Demand Management Plan, with examples including a shuttle service to the airport and rideshare opportunities for employees to provide transportation benefits. She also mentioned that there are some options for long and short-term bicycle parking, as well as bicycle lockers for employees. SP Carmelisa Lopez added that while staff does not know the specifics of what the hotel operator will implement at this time, they will monitor the TDM Plan every year to ensure that it is working effectively.

Chair Becker expressed concern about the 132 rooms and only 96 parking spaces, as well as the ballroom. He then inquired as to the ballroom's occupancy load.

SP Carmelisa Lopez responded that it would depend on the layout and that the applicant has informed staff that it will occupy up to 600 people, but that everyone will be standing for this occupancy. She stated that they anticipate a variety of events, including weddings, meetings, and seminars with tables and chairs, and that she is hopeful that the conditions of approval will address any issues with exceeding the amount of parking demand.

Chair Becker stated that he was unaware that the ballroom could hold 600 people in addition to the hotel rooms. He went on to say that 96 parking spaces seemed insufficient for the project, but that the applicant could clarify that when he speaks.

Since there were no more questions, Chair Becker opened the public hearing and asked if anyone in the audience wanted to speak on the item, starting with the applicant as is traditional.

The project's architect, Sharad Lal, approached the podium.

Chair Becker inquired whether he had read the resolution and agreed to all the conditions. Mr. Lal said, yes, they did. Then, Mr. Lal explained that he was there to give a brief talk and answer any questions. He thanked the Planning Commission for giving him the opportunity to be there and to represent Mr. Patel. He also stated that Mr. Patel is grateful to the City of Newark for selecting this as his second project and that both parties hope that this will be a much better project. Mr. Lal stated that he has been working on this project for about three years, with previous iterations, and that he has worked with valuable input from staff up to this point. Mr. Patel wanted to add another amenity that would distinguish this project from other hotels, so he decided to add a ballroom, which would not only help fill hotel rooms but would also be great for long-term business proposals; it would make the hotel more successful and workable. Both parties agreed to go with a more upscale brand in the form of AC Hotel, and the ballroom would supplement the business plan in relation to the hotel.

Mr. Lal went on to discuss the reservation Chair Becker had about parking. According to him, hotel rooms are empty during events that take place during the day, making parking spaces available for attendees. However, when weddings or other similar events take place on the weekends, guests and attendees will share parking spaces. Additionally, he added, ridesharing and/or shuttle services may be able to assist with the parking situation, and if there were any problems, they would be able to offer valet parking for the visitors.

Chair Becker asked Mr. Lal whether they had considered making reciprocal arrangements with the nearby businesses. Mr. Lal responded that the adjacent parking lot is empty, but they have no formal agreements with them, it is an option if they need to implement anything beyond what the hotel can handle. Mr. Lal also thanked staff for putting together a good presentation and guiding them through the process. He also indicated that he would remain in case there were any questions, and Mr. Rajin Patel and his civil engineer were present as well to address any additional questions or concerns.

Chair Becker thanked Mr. Lal and asked if anyone else would like to speak on the item while the public hearing was still open. Nobody said anything.

Chair Becker asked Community Development Director (CDD) Steven Turner if there was anyone via Zoom who would like to speak on the item. CDD Steven Turner responded that no one wanted to speak via Zoom.

Chair Becker thanked CDD Steven Turner, closed the public hearing, and brought it back to the Commission. He asked the Commissioners if there were any questions or comments regarding the project.

Commissioner Fitts reiterated Chair Becker's concern regarding the parking lot, and he understood that if there were any issues with the parking space and the neighboring businesses, the hotel would be able to resolve the parking problems. Commissioner Fitts also inquired about the third-floor terrace and whether the restaurant and bar would be open to people who would not be staying at the hotel. Mr. Lal responded that the restaurant and bar would primarily serve hotel guests, offering breakfast, lunch, and dinner. Mr. Lal also explained that the hotel rooms on the third floor face the inside of the courtyard, which is an open area where guests can sit and relax. He added that they do not have many details because the interior designers focused on the exterior, but that the interior designers will take care of that part of the building in the next phase of the project. Commissioner Fitts assumed that part of the building would be for guests rather than a public area. Mr. Lal confirmed that it would be for hotel guests only and assured him that it would be a place for socializing.

Commissioner Fitts stated that he researched the AC Marriott property and discovered it to be a nice, upper-scale property that would be a good addition. Mr. Lal stated that AC Marriott began in Spain and that the entire food menu is inspired by Spain. Commissioner Fitts inquired of Mr. Lal about his involvement in the Hyatt Place project. Mr. Lal replied that he was involved in it and that it would open in a month to a month and a half. Commissioner Fitts inquired if Hyatt Place would have a grand opening. Mr. Lal responded that this was their intention. Mr. Lal also mentioned that he worked with CDD Steven Turner in Redwood City, so he is likely familiar with his work.

Chair Becker inquired of Mr. Lal about the state of the hotel business in the aftermath of the pandemic, given the proximity of the two hotels. Mr. Lal responded that it is improving and that in the long run, when the projects are completed, he hopes it will be better than it is now. He also stated that the hotel industry suffered greatly during the Covid period. Chair Becker stated that if the owner does not believe that the hotel business will recover, he will not invest. Mr. Lal confirmed that the owner is moving forward and is pleased with the City of Newark.

Commissioner Fitts inquired about the anticipated opening date. Mr. Lal responded that it would be in two and a half years.

Chair Becker questioned staff if there were any issues in the future concerning the parking and if staff would be able to circle back to address the issue. Deputy Community Development Director (DCDD) Art Interiano, responded that, in addition to the requirement of the Transportation Demand Management (TDM) Plan, which will reduce parking to 15%, there is a condition of approval, which is part of Exhibit B, which requires the property owner to address and alleviate any parking issues or complaints the City may receive, at the owner's expense. Chair Becker was happy to hear this.

Chair Becker motioned to approve by resolution the Design Review, the Conditional Use Permit, the Minor Use Permit, and the Master Sign Program as recommended by staff. Commissioner Fitts moved to approve the motion recommended by staff, and Commissioner Bogisich seconded the motion.

Chair Becker requested to vote.

Chair Becker announced the motion passed; 4 AYES, 1 ABSENT. Commissioner Jeff Aguilar was absent.

F. STAFF REPORTS

None

G. COMMISSION MATTERS

G.1 Report on City Council actions.

Chair Becker directed the attention to Community Development Director (CDD) Steven Turner.

(CDD) Steven Turner stated that it was a pleasure to see all the commissioners that night because it had been a while since the last meeting, and he hopes to have Commissioner Aguilar join future meetings so that all five commissioners are present. He went on to report a couple of Council items. He stated that on September 22nd, Council acted on two items, which he described as a

great day for the Community Development Department. One of the actions was the City Council's approval of the FMC Willow, a project presented to the Planning Commission in July by the Deputy Community Development Director (DCDD) Art Interiano.

Community Development Director (CDD) Steven Turner directed attention to DCDD Art Interiano, for a refresher on the FMC Willow Project. DCDD Art Interiano stated that the FMC Willow project is moving forward, that Lennar is a part of the agreement, and that the project parameters are a 22-acre site, a 90-unit affordable housing project, a five-acre grand park, which was originally approved with the Harbor Point Project a few years ago, 292 market-rate housing units, and the transit station, which will be the future station once the railroad arrives.

Community Development Director (CDD) Steven Turner went on to say that it was a significant step forward for the Bayside Newark TOD area because it completed many of the development phases there. The second item on which Council acted was the consolidation of the Town Suites Hotel and Cedar Community Apartments affordable housing. The City Council reviewed and approved the agreements to be established between the City and the developer, Allied Housing, which is a division of Abode Services, a well-known and respected affordable housing and service provider in the community. As a result, The Marriott Corporation, the hotel's owner, was able to transfer ownership to Allied Housing, and Allied Housing now controls the site and the buildings. They are currently preparing to transition the hotel into affordable housing marketing activities involving tenant recruitment. As part of those activities, the City is sending a postcard to every address in Newark informing residents of the availability of this opportunity, and those eligible households interested in the Cedar Community Apartments can visit a website to learn how to apply and get more information. This opportunity is intended for extremely low-income families, but there is a reminder that there will be 124 units available, which should be filled within the next four to five months.

Community Development Director (CDD) Steven Turner stated that Council will hold a meeting on Thursday, and in terms of hotels, Council will review the state of Transit Occupancy Taxes (TOT) in Newark. During that meeting, the Community Development Department, Finance Department, and hotel consultants would present their joint effort to give the Council and the community a sense of how Newark is doing in terms of TOT as it emerges from the recession. This presentation will also provide useful information on how Newark is relatively well-positioned in the region to capitalize on the hotel market as it emerges from the pandemic. Community Development Director (CDD) Steven Turner stated that on December 8th, Council will hold its final meeting of the year, which will be mostly a ceremonial meeting to seat a new

mayor and possibly one or two council members, as well as to bid Mayor Nagi farewell as he completes his term as Mayor and City Council member. He invited the Planning Commissioners to the meeting. He concluded by announcing that the City's holiday tree lighting ceremony, which was cancelled during Covid, will be held on December 5th, at 5:30 p.m., an annual event that was popular last year. He also invited the Planning Commission to attend.

Community Development Director (CDD) Steven Turner stated that he has invited Sofia Castillo, the Administrative Support Specialist, to attend the Planning Commission meetings to assist with the technology portion of the meeting, allowing DCDD Art Interiano and him to focus more on the meetings.

H. PLANNING COMMISSIONER COMMENTS

Commissioner Fitts congratulated Chair Becker on receiving the Viola Blythe Award, which is the City of Newark's Volunteer of the Year. He stated that Chair Becker was previously the City Manager, putting in a lot of time and effort, and has continued to serve in the community as a volunteer. Chair Becker received a significant and well-deserved award. He also stated that Mayor Nagi and Councilman Bucci were the recipients of the Viola Blythe award as well.

Chair Becker thanked Commissioner Fitts.

I. ADJOURNMENT

Chair Becker adjourned the regular Planning Commission meeting at 7:35 p.m.

Respectfully submitted,

STEVEN TURNER
Secretary

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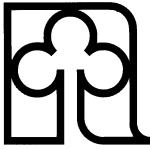
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- E. 1 Hearing to consider U2022-005, a Conditional Use Permit for a Live Entertainment establishment, Xcapade Newark, located at 39143 Cedar Boulevard (APN 901-188-7). The subject site is zoned NC: Neighborhood Commercial and has a General Plan Land Use designation of Neighborhood Commercial – from Deputy Director Interiano.**

(RESOLUTION)

Background/Discussion

The City has received an application for a Conditional Use Permit (CUP) to allow Live Entertainment through the use of a business called Xcapade Newark which plans to have escape rooms which provides group entertainment through solving puzzles, collecting clues and finding a way to achieve a mission. The typical room is decorated based on a specific theme: bus station, hunting lodge, hospital, or Egyptian tomb, etc. Usually, players have specific roles and are assigned tasks to fulfill. Articles in the rooms contain important clues to lead the players to find the key props toward the goal. The proposed business would be located within the Lyons Shopping Center at 39143 Cedar Boulevard.

The project site is zoned Neighborhood Commercial (NC). The project site has a general plan designation of Neighborhood Commercial and is bounded by Mowry Avenue and Cedar Boulevard. Generally, the NC district is intended to provide areas for smaller-scale neighborhood shopping centers which provide goods, services, and businesses to meet the day-to-day needs of surrounding residential neighborhoods.

The project applicant and business owner, Chentao Wang, is requesting Planning Commission approval of the CUP to allow for live entertainment use.

Project Context and Proposal

The business is expected to take up two spaces within the shopping center which would provide a total of 2,800 sq.ft. for the use. The commercial use of “escape room” is not specifically listed in the zoning table for commercial uses, therefore staff’s interpretation is that this can be categorized as a Live Entertainment use. Having said that, the proposed use will not have the typically characteristics of live entertainment because the Xcapade Newark business will be limited to a maximum of 20 persons at a time and there will be no amplified music or performers except for occasional help from employees. The Xcapade Newark business is not expected to have any impacts to the surrounding neighborhood and therefore is a good fit for the Neighborhood Commercial zoning district. The business is expected to be open on weekends from 11am-11pm and open during the week from 2:30pm-11pm. The business will only be open for appointments and will not be a “walk-in” facility. It is expected that 3 employees will supervise customers during the appointments.

In terms of improvements, there will only be modifications to the interior of the building. The proposed establishment will accommodate four theme rooms, one reception area, and two

bathrooms. In regards to parking impacts, given that the business will be appointment only, have limited hours, and limited to maximum 20 customers at a time, it is expected that the parking demands for the proposed business are less impactful than a retail use in terms of volume and frequency, and therefore no increase in parking demand is expected. The project is located within a shopping center which has a variety of uses which were originally parked for all retail uses.

The application has been reviewed and approved by all city departments. To accommodate the interior modifications needed and avoid any potential impacts to the surrounding area, certain conditions of approval have been requested. The conditions of approval are listed in Exhibit B.

Requested Entitlements

Pursuant to [NMC §17.08.020, Land-Use Regulations](#), “Live Entertainment” uses in the NC zoning district are subject to a CUP. The use permit review and approval process is intended to apply to uses that are generally consistent with the purposes of the zoning district where they are proposed but require special consideration to ensure that they can be designed, located, and operated in a manner that will not interfere with the use and enjoyment of surrounding properties. Therefore, per [NMC §17.35.030](#), the Planning Commission shall approve or conditionally approve the CUP request based on the findings required by [NMC §17.35.060](#):

- A. *The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this title [NMC Title 17] and all other titles of the Municipal Code;*

The proposed use is considered a commercial neighborhood use and requires approval of a Conditional Use Permit before it can be approved as a permitted use. The proposed use complies with all other provisions of the zoning code and conditions of approval listed in Attachment 1, which will ensure that any improvements and operations are consistent with the Neighborhood Commercial zoning district.

- B. *The proposed use is consistent with the general plan and any applicable specific plan;*

The proposed use is considered a commercial use which is consistent with the General Plan designation of Neighborhood Commercial. This finding can be made in the affirmative.

- C. *The proposed use will not be adverse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements;*

The proposed use is considered a commercial neighborhood use. Based on the analysis of the staff report the proposed use is consistent with other neighborhood uses in that it does not have impacts that would exceed the subject property and therefore has a limited impact on the area. This finding can be made in the affirmative.

- D. *Tax revenue generated by the development will exceed the city's cost of the service demand as a result of the development or a compelling community benefit will be provided;*

The revenue generated by this type of proposed business to the city is mainly limited to property taxes, however it is expected that this type of business have some synergy with other adjacent businesses which will be a positive impact to retail and restaurant sales. This finding can be made in the affirmative.

- E. *The proposed use complies with any design or development standards applicable to the zoning district or the use in question unless waived or modified pursuant to the provisions of this title [NMC Title 17];*

The proposed use does not expect to make any exterior modifications to the subject building. In terms of development standards, the proposed use is expected to have minimal impacts and be consistent with the current development standards. This finding can be

made in the affirmative.

- F. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and*

The proposed use will be limited to appointments only and have a limited impact to surrounding businesses therefore the proposed business is expected to be compatible with adjacent land uses. This finding can be made in the affirmative.

- G. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.*

The proposed use is expected to use the existing 2,800 sq.ft. building located at 39143 Cedar Boulevard. The site already has the appropriate parking and utilities in place that will be needed by the proposed building and there are no physical constraints that have been identified. This finding can be made in the affirmative.

The inability to make one or more of the findings is grounds for denial of an application. Based on staff's analysis, the CUP findings for the proposed Project can be made in the affirmative and are provided above.

Community Notice

Per the requirements of the CUP, a notice has been sent to all property owners within 500 feet of the subject property. No correspondence or communication has been received regarding this application.

California Environmental Quality Act (CEQA)

A [Class 1, Existing Facilities, Categorical Exemption](#) relieves this project from the California Environmental Quality Act (CEQA) provisions. Per [CEQA §15301\(e\)\(2\)](#), environmental review is not required because:

- a. The proposed project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan; and
- b. The area in which the project is located is not environmentally sensitive.

Furthermore, the proposed Project is exempt from environmental review under State CEQA Guidelines [§15061\(b\)\(3\), Common Sense Exemption](#). CEQA Guidelines [§15061\(b\)\(3\)](#) states that a project is exempt from CEQA if: "The activity is covered by the common sense exemption that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

Based on the Project plans and description, the proposed use is not expected to result in a physical change in the environment. The subject property is occupied by an existing commercial building which will be continued to be used as a commercial use. Approval of the requested CUP does not involve the expansion of the existing building, nor does it disturb the physical environment. Any future development of the site would be subject to review under NMC Title 17 (Zoning) and CEQA. Therefore, no further environmental review is required.

Action

Staff recommends that the Planning Commission approve, by resolution, Conditional Use Permit

U2022-005, as requested by the project applicant, based on the findings provided in Attachment 1, Draft Resolution.

Attachment(s)

1. Draft Resolution
 - a. Exhibit A –Findings of Fact
 - b. Exhibit B- Conditions of Approval

RESOLUTION NO. _____

RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF NEWARK APPROVING A CONDITIONAL USE
PERMIT FOR LIVE ENTERTAINMENT USE (I.E., XCAPADE
NEWARK) AT 39143 CEDAR BOULEVARD (APN 901-188-7)

WHEREAS, Chentao Wang, Xcapade Entertainment LLC (the “Applicant”), has filed with the City of Newark an application for a Conditional Use Permit for a Live Entertainment use (i.e., Xcapade Newark) at 39143 Cedar Boulevard (APN 901-188-7) (the “Project”); and

WHEREAS, the property at 39143 Cedar Boulevard (the “Project Site”) has a General Plan Land-Use designation of Neighborhood Commercial and is currently zoned NC: Neighborhood Commercial; and

WHEREAS, pursuant to [Newark Municipal Code \(NMC\) §17.08.020](#), a live entertainment use is subject to approval of a Conditional Use Permit; and

WHEREAS, the Project Site is comprised of a 2,800 square foot tenant space; and

WHEREAS, the Applicant proposes interior improvements that includes installing partition walls for the forming of areas, which requires a building permit and fire permit. No exterior improvements are proposed to the existing building and site; and

WHEREAS, the Project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to [CEQA Guidelines, Article 19, §15301](#) for Existing Facilities that involves minor alterations and negligible expansion of use; and

WHEREAS, the Project is also categorically exempt from CEQA pursuant to [CEQA Guidelines, Article 5, §15061\(b\)\(3\)](#), as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and

WHEREAS, pursuant to NMC [§17.31.060](#) and [§17.35.050](#), a public hearing notice was published in The Tri City Voice on December 20, 2022 and mailed as required for a public hearing , and the Planning Commission held a meeting on said application at 7:00 p.m. on January 10, 2023; and

WHEREAS, the Planning Commission fully considered the Project application and entitlements, the Applicant’s statements, staff report, findings of fact, conditions of approval, public comments, and all other testimony and evidence presented at the public hearing; and

WHEREAS, the Planning Commission finds that the staff report, Categorical Exemptions from CEQA, and standards for approval reflects the City’s independent judgement and analysis of the Project; and

WHEREAS, the Planning Commission finds that the Project does satisfy the requisite findings of fact necessary for approval as further explained in the staff report and the findings of fact associated with this Resolution, as identified in “Exhibit A” attached to this Resolution; and

WHEREAS, the City’s General Plan and the Zoning Code are incorporated herein by reference and are available for review at City Hall during normal business hours and on the City’s website.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Newark as follows:

Section 1. That the forgoing recitals are true and correct and made part of this Resolution.

Section 2. That the Planning Commission does hereby make the necessary findings and determinations required by [NMC §17.35.060](#) to approve the requested Conditional Use Permit for a live entertainment use (i.e., Xcapade Newark) at 39143 Cedar Boulevard, as further explained in the staff report and findings of fact for approval as set forth in “Exhibit A” attached hereto and incorporated herein by this reference.

Section 3. Based on the findings and determinations, the Planning Commission does hereby approve Conditional Use Permit for U2022-005 allowing for live entertainment use (i.e., Xcapade Entertainment) at 39143 Cedar Boulevard, subject to the Conditions of Approval, as further set forth in “Exhibit B” attached hereto and incorporated herein by this reference.

This Resolution was introduced at the City of Newark Planning Commission’s January 10, 2023 regular meeting by Commissioner _____, seconded by Commissioner _____, and passed as follows:

AYES:

NOES:

ABSENT:

STEVEN TURNER, Secretary

WILLIAM “BILL” FITTS, Chairperson

Exhibit A

FINDINGS OF FACT

U2022-005

39143 Cedar Boulevard

Alameda County Assessor's Parcel Number 901-188-7

Conditional Use Permit (Newark Municipal Code [NMC] Chapter 17.35)

- A. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this title [NMC Title 17] and all other titles of the Municipal Code.

The proposed use is considered a commercial neighborhood use and requires approval of a Conditional Use Permit before it can be approved as a permitted use. The proposed use complies with all other provisions of the zoning code and conditions of approval listed in Attachment 2 will ensure that any improvements and operations are consistent with the Neighborhood Commercial zoning district. This finding can be made in the affirmative.

- B. The proposed use is consistent with the general plan and any applicable specific plan.

The proposed use is considered a commercial use which is consistent with the General Plan designation of Neighborhood Commercial. This finding can be made in the affirmative.

- C. The proposed use will not be adverse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements.

The proposed use is considered a commercial neighborhood use. Based on the analysis of the staff report the proposed use is consistent with other neighborhood uses in that it does not have impact that would exceed the subject property and therefore has a limited impact of the area. This finding can be made in the affirmative.

- D. Tax revenue generated by the development will exceed the City's cost of the service demand as a result of the development or a compelling community benefit will be provided.

The revenue generated by this type of proposed business to the city is mainly limited to property taxes, however it is expected that this type of business have some synergy with other adjacent businesses which will be a positive impact to retail sales. This finding can be made in the affirmative.

- E. The proposed use complies with any design or development standards applicable to the zoning district or the use in question unless waived or modified pursuant to the provisions of this title [NMC Title 17].

The proposed use does not expect to make any exterior modifications to the subject building. In terms of development standards, the proposed use is expected to have minimal impacts and

Exhibit A: Findings of Fact

be consistent with the current development standards. This finding can be made in the affirmative.

- F. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity.

The proposed use will be limited to appointments only and have a limited impact to surrounding businesses therefore the proposed business is expected to be compatible with adjacent land uses. This finding can be made in the affirmative.

- G. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

The proposed use is expected to use only the existing 2,800 sq.ft. building located at 39143 Cedar Boulevard. The site already has the appropriate parking and utilities in place that will be needed by the proposed building and there are no physical constraints that have been identified. This finding can be made in the affirmative.

California Environmental Quality Act Categorical Exemption Findings

The Project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, Section 15301, as it is an Existing Facility that involves minor alterations and negligible expansion of use; is in an area where all public services and facilities are available to allow for maximum development; and is not located in an environmentally sensitive area.

The Project is also categorically exempt from CEQA pursuant to CEQA Guidelines, Article 5, Section 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Exhibit B

CONDITIONS OF APPROVAL

U2022-005

39143 Cedar Boulevard

Alameda County Assessor's Parcel Number 901-188-7

Planning Division

- a. The approval of the use permit shall only be applicable to 39143 Boulevard, a 2,800 sq.ft. leaseable space.
- b. The operations of the live entertainment facility shall be limited to puzzle solving, teamwork exercises, and simulated escape-room scenarios. All operations of the business shall be conducted wholly within the enclosed leasable space.
- c. The business shall not be permitted to sell/serve any alcohol.
- d. No live entertainment such as bands, live entertainers or other type of musical performance shall be allowed. The business shall abide by the Newark Noise Ordinance.
- e. The business shall be limited to the following hours of operation, Monday to Friday from 2:30p.m.-11p.m., and weekends from 11a.m. to 11p.m., by appointment only.
- f. The business shall not exceed a maximum capacity of 20 persons at a time.
- g. Approval of this use permit shall supersede and revoke any previous approval at this location.
- h. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission review and, if so decided, said changes shall be submitted for the Commission's review and decision. The developer shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission review and approval.
- i. Prior to commencing business activity, the operator of the subject facility shall obtain a [Business License](#) with the City of Newark.
- j. Prior to commencing business activity, the operator of the subject facility shall obtain any and all necessary federal, state, or county approvals. Failure to obtain the necessary approvals shall make the subject use permit null and void.
- k. If any complaint regarding parking and/or traffic is received, a parking/traffic analysis shall be prepared at the discretion of the Community Development Director and at the cost of the applicant. The applicant shall mitigate any problems identified by the study(ies).

Exhibit B: Conditions of Approval

- l. Prior to the installation of any signage for the proposed facility, the property owner/applicant shall obtain a Sign Permit and any necessary building permits through the City of Newark.
- m. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up.
- n. The applicant and/or developer hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.
- o. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to [Government Code §66020\(d\)\(1\)](#), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The developer is hereby further notified that the 90-day approval period in which the developer may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code §66020(a), has begun. If the developer fails to file a protest within this 90-day period complying with all of the requirements of §66020, the developer will be legally barred from later challenging such exactions.

Building Inspection Division

- p. Permits required for all alterations, temporary or permanent.
- q. Exiting shall be readily identifiable, and if has a locking mechanism, shall fail open upon alarm.

Alameda County Fire Department

- r. Fire extinguishers will be required.
- s. Knox box will be required.
- t. Exit door in escape rooms shall be readily identifiable.
- u. Changes to the existing fire sprinkler or fire alarm system may be required.