

Midway City Council
6 September 2022
Regular Meeting

Heirloom Common /
Conditional Use Permit /
Local Consent /
Proximity Variance



Midway

CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: September 6, 2022
NAME OF PROJECT: Alcohol Dispensing Establishment
NAME OF APPLICANT: Tessa Meyer Santiago
OWNER: Heirloom Corner, LLC
AGENDA ITEM: Conditional Use Permit
LOCATION OF ITEM: 195 West Main
ZONING DESIGNATION: C-2

ITEM: 3

Heirloom Corner, LLC is applying for a Conditional Use Permit, Local Consent, and a Proximity Variance for an alcohol dispensing establishment. The restaurant is located at 195 West Main Street. The property is 0.28 acres in size and is located the C-2 zone.

BACKGROUND:

Heirloom Corner, LLC is requesting a Conditional Use Permit (CUP), local consent, and proximity variance for an alcohol dispensing establishment. Heirloom Corner, LLC has been managing The Corner Restaurant since the Spring of 2021 and purchased The

Corner Restaurant in the Fall of 2021. Karl Probst, original owner and builder of The Corner Restaurant, was approved for a Conditional Use Permit and local consent to serve alcohol by the City Council on May 9th, 2018. Recently it was brought to the City's attention that The Corner Restaurant is changing its name to Heirloom Common, and a new restaurant is opening on the lower floor called Heirloom Market. After reviewing the City's current business and alcohol license information, City staff contacted the current business owner of record, Karl Probst. Mr. Probst indicated that he has not managed the business since spring of 2021 and has not owned the business since fall of 2021 even though all the City's records indicate that he is the owner. Since ownership had changed, all business licensing and alcohol licensing must be brought up to date which did not occur until June 29th, 2022. Business licenses are not transferable from one person to another per Section 7.01.100 of the Midway Municipal Code. The Utah Department of Alcoholic Beverage Control (UDABC) also recently revoked The Corner Restaurant's ability to serve alcohol since the current owner has not yet received their approval. If Midway approves the CUP and local consent then Heirloom Corner, LLC will be able to apply for approval from the UDABC.

Another concern that the City is working with the owners to correct is the issue of signage. Temporary banner signs have been installed at their location to advertise the two new businesses. These banners have been in place since the beginning of June. The City has asked that the new monument sign that will advertise the new businesses must be installed by September 1, 2022, or the temporary banners must be removed.

Surrounding property owners have also voiced concerns over parking and noise that have been created because of special events, some large in nature, that have occurred on the property without receiving proper approvals from the City. Staff has met with the owners directly about these issues and recently there have not been any problems.

The property is in the C-2 zone and restaurants are permitted uses in that zone though alcohol dispensing establishments must be approved for a conditional use permit if they are allowed to serve alcohol. If they receive City consent, the applicant will apply for a Full-Service Restaurant Liquor License from the UDABC. They plan to offer beer, wine, and liquor, as well as non-alcoholic beverages in the restaurant. Regarding the restaurant, there are two floors with 3,108 square feet on the upper floor and 2,826 on the lower floor. There are approximately 147 seats, spread among the floors. There is also outdoor seasonal seating.

As part of the local consent, a Proximity Variance is required for this approval because of The Corner Restaurant's proximity to Midway's Town Square. The front door of The Corner Restaurant to the Town Square is about 100'. State Code requires a minimum straight-line measurement of 200' for a license to be granted without a variance by the City. Therefore, since the distance is less than the requirements, the City will also have to grant a "Local Consent for Proximity Variance".

The approval of a CUP is an administrative act but, as per State Code, the approval of the ability to sell alcohol is a legislative act and the City has broad discretion in that decision.

We do know tourism does generate business and taxes and some would argue that limiting beer licenses could damage tourism in the City.

Currently the City has approved the following licenses:

Lupita's
Café Galleria
Zermatt Resort
Homestead Resort
7-11
Ridley's
Ridley's Market (convenience store)
Blue Boar Inn
Midway Mercantile
Lola's

The original CUP approved The Corner Restaurant limited alcohol related signage. The City Council approved the CUP with the following condition:

- No alcohol related signage would be visible on the exterior of the building or on the inside, visible from the outside including from 200 West.

The reason this condition was approved was based on the following issues. The City code does allow illuminated product signs which does include alcoholic beverage signs. Staff is concerned about any alcohol related signage in the Heirloom Common building for a few reasons. First, the structure is very visible from Town Square and from Main Street, the City's main transportation corridor partly because of the 10' setback that is allowed in the commercial zones. Second, 200 West and Main Street are highly used so the restaurant will be very visible because of its location on the corner. All vehicles turning from 200 West, heading south, onto Main Street will see the restaurant. Also, the City has constructed a trail directly north across Main Street that will be used by all age groups. Staff would not like the restaurant to have a bar appearance with alcoholic beverage signs because of the three items listed above.

This item has been noticed in the local newspaper for two weeks and on the State's website for the Planning Commission meeting. Mailed notice will be sent out to all property owners within 600' before the public hearing before the City Council.

ANALYSIS:

The comments in italicized represent Planning Staff's comments pertaining to compliance or lack of compliance with the findings the City Council must make in considering this request. Section 16.26.120 requires specifically the City Council to find that:

1. The proposed use is conditionally permitted within the Land Use Title and would not impair the integrity and character of the intended purpose of the subject zoning district and complies with all of the applicable provisions of this Code; *planning staff believes that the proposal will not have a significant impact on the neighborhood as long as special events are held with the proper permitting.*
2. The proposed use is consistent with the General Plan; *no issues have been identified.*
3. The approval of the conditional use or special exception permit for the proposed use is in compliance with the requirements of state, federal and Midway City or other local regulations; *the applicant shall obtain approval of the CUP, Local Consent and Consent for Proximity Variance from the City Council and obtain and comply with all applicable state licensing requirements of the DABC. Currently there are zoning violations on site pertaining to the banners that have been installed.*
4. There will be no potential, significant negative effects upon the environmental quality and natural resources that could not be properly mitigated and monitored; *no issues have been identified.*
5. The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses with the general area in which the proposed use is to be located and will not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity or adverse to the public interest, health, safety, convenience, or welfare to the City; *the proposed use and associated traffic is consistent with commercial uses in the commercial zone of the City. Staff has received concerns from the neighboring property owner to the east, L. A. Dresden's, that there is a significant amount of smoke that impacts her property from a woodburning stove that is used to bake pizzas located on the southside of the restaurant. Also, the dumpster for the restaurant has received concern from the neighbors. The original owner had stated that a dumpster enclosure would be constructed for the dumpster. That enclosure has never been built and the dumpster does have a visual impact on 200 West for motorists and surrounding neighbors.*
6. The subject site is physically suitable for the type and density/intensity of the proposed use; *it appears that the proposal is suitable based on the existing approved use. Special events will need to receive the proper City approvals that will look specifically at noise and traffic impacts of any proposed events.*
7. There are adequate provisions for public access, including internal and surrounding traffic flow, water, sanitation, and public utilities, and services to ensure that the proposed use would not be detrimental to public health and safety; *no detrimental impacts have been identified.*

PLANNING COMMISSION RECOMMENDATION:

Motion: Commissioner Simons: I make a motion that we recommend approval for a Conditional Use Permit for an alcohol dispensing establishment. The restaurant is located at 195 West Main Street. The property is 0.28 acres in size and is located the C-2 zone. Approve the findings in the staff report and the conditions and add conditions that the date of October 31, 2022 for the completion of the dumpster enclosure, enclose the freezer with materials that match the building and that beer garden shall not be issued during Swiss Days.

Seconded: Commissioner Garland

Chairman Nicholas: Any discussion on the motion?

Chairman Nicholas: All in favor.

Ayes: Commissioners: Ream, Bouwhuis, Wardle, Osborne, Lineback, Garland and Simons

Nays:

Recused:

Motion: Passed

POSSIBLE FINDINGS:

- The proposed license would allow the sell of alcohol at Heirloom Common and Heirloom Market.
- The restaurant property is located within 200' of public property.
- The State will require a proximity variance because of its closeness to the Town Square.
- Currently there are signage code issues on the property.
- There have been large events held on the property, without City approval, that has created noise and parking concerns for the community.
- The State does regulate this type of alcohol license.

ALTERNATIVE ACTIONS:

1. Approval (conditional). This action can be taken if the City Council feels that conditions placed on the approval can resolve any outstanding issues.
 - a. Accept staff report
 - b. List accepted findings
 - c. Place condition(s)

2. Continuance. This action can be taken if the City Council feels that there are unresolved issues.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again

3. Denial. This action can be taken if the City Council feels that the request does not meet the intent of the ordinance.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

PROPOSED CONDITIONS:

1. No alcohol related signage would be visible on the exterior of the building or on the inside, visible from the outside including from 200 West.
2. The new monument sign must be installed by September 1, 2022, or the temporary banners must be removed.
3. A dumpster enclosure, reviewed and approved by the Vision Architectural Committee, must be constructed to mitigate the visual impact of the dumpster for neighbors and for passing motorists.