

**BEFORE THE PLANNING COMMISSION FOR
THE CITY OF BEAVERTON, OREGON**

IN THE MATTER OF A REQUEST FOR A NEW) ORDER NO. 2929
CONDITIONAL USE FOR MEETING FACILITIES,) CU2022-0006 ORDER DENYING WITHOUT
QUEENZ ASIAN CUISINE, APPLICANT.) PREDJUDICE QUEENZ ASIAN CUISINE, NEW
) CONDITIONAL USE.

The matter came before the Planning Commission on February 8, 2023, on a request for a New Conditional Use to allow a Meeting Facilities land use to occur in an existing restaurant to host events for up to 206 occupants. The site is located at 8225 SW Apple Way, specifically identified as Tax Lot 01000 on Washington County Tax Assessor's Map 1S113BC.

Pursuant to the Beaverton Development Code (Development Code) Section 50.45, the Planning Commission conducted a public hearing and considered testimony and exhibits on the subject proposal.

Sound Monitoring. Commissioner Lawler asked if it is feasible for live bands to monitor the decibel level of their music and modulate the output to ensure the sound meets the imposed restrictions. Staff responded that the submitted sound study recommended that Queenz use a sound measuring device to monitor volumes inside the event space themselves to ensure it complies with the conditions of approval. Staff added that the applicant has obtained the sound measuring device.

Enforcement. Commissioner Lawler requested information on how enforcement is carried out for reports filed by residents outside the city limits. Staff responded that all complaints and reports of violations, whether raised

by Beaverton residents or residents of other jurisdictions, must be submitted to the City of Beaverton's Code Compliance Program since the subject property is within city limits. Commission Lawler then asked if excessive noise would be considered a violation of City Code and could the Beaverton Police Department take action to stop the noise. Staff replied that the Beaverton Police Department enforces the City Code after hours and use a reasonableness standard to determine if noise exceeds the restrictions of the City Noise Ordinance. Commissioner Glenewinkel also voiced concerns about the applicant's history of noncompliance with the development code and the lack of enforcement action taken despite the City's knowledge of unpermitted activities. Commissioner Glenewinkel asked how enforcement can be ensured moving forward if granted approval. Staff responded that the City's Code Compliance Program has been working with the applicant and had communicated that unpermitted activity is not allowed to occur on the site. Staff noted that past violations of the development code cannot be considered in the evaluation of this proposal since it is not an approval criterion of the application. The City Attorney added that the Code Compliance Program is equipped with sound measuring devices that can be used to investigate noise complaints. Commissioner Glenewinkel voiced concerns that approval of the request could result in excessive noise and given the pattern of noncompliance could impact livability on neighboring properties.

Acoustic Panels. Commissioner Winter asked the applicant when the acoustic panels were installed. The applicant said that the panels were

installed about one month before the sound study was done in November. The applicant also confirmed that events have been held since the panels were installed. Commissioner Winter later voiced concerns that the actions that have been taken by the applicant have not adequately mitigated noise and vibration impacts to surrounding residences.

Event Operations. Commissioners asked the applicant several questions regarding the operations of events. The applicant explained that during events, the kitchen is only open to prepare food for the event, and the restaurant is closed to the public. The applicant also explained that event customers hire their own music performers, which can be a live band or a DJ, and added that Queenz has its own AV technician who monitors the music volume. The applicant confirmed that they have a device to measure both dBA and dBC sound levels. Commissioner Ellis asked the applicant if they have prepared written instructions for musicians and AV technicians so they know the process and how to measure the sound levels. The applicant said they have told the AV technician the maximum sound level that is allowed.

Closure of Doors and Windows. Commissioner Lawler noted that the recommended conditions of approval require that doors and windows are kept closed except for normal entering and exiting during events and asked if that can be accomplished during hot summer months. The applicant replied that the space has efficient air conditioning but that the main entrance doors are often propped open during events. The applicant added that the doors are always closed by 10:00 p.m. Commissioner Ellis asked if the applicant could

comply with the condition of approval to keep the secondary, west-facing building entrance closed during events by locking the door. The applicant responded that due to the fire code, the entrance cannot be locked. Commissioner Ellis then asked if employees would have to monitor the entrance to make sure people do not use it and that the door stays closed. The applicant responded yes but noted that the entrance is sometimes used by guests, and it is not possible to completely prevent its use. The applicant added that the door is never open longer than five minutes. Commissioner Glenewinkel also asked where guests go to smoke and how they exit the building. The applicant responded that smokers would use the primary entrance further from the stage. Commissioner Glenewinkel then asked the applicant if they are sure that the secondary door can be kept closed. The applicant said that door is always locked during events, and Commissioner Glenewinkel noted that the applicant had previously said the door must be kept unlocked due to the fire code. The applicant clarified that three entrances need to be kept unlocked to comply with the fire code which are the main, rear, and kitchen exterior doors.

Public Testimony. Two individuals testified in opposition of the proposal. Both individuals identified unmitigated noise and vibration impacts associated with amplified music and noted that the applicant held an event last weekend. Noise and vibrations were heard and felt inside the individuals' residences until approximately midnight. The first person who provided testimony noted that the submitted sound study did not address vibration and suggested the

use of a floating floor to trap vibrations. The second individual said that although the noise meets the standards, it is still a nuisance and causes livability impacts. Concerns about enforcement were also voiced during public testimony including ongoing enforcement challenges and enforcement after the City's business hours.

The Planning Commission found in response to New Conditional Use Approval Criterion 40.15.15.5.C.5 that the proposal could not be made compatible with the surrounding residential properties due to unmitigated livability impacts related to noise and vibration from amplified music. Commissioner Glenewinkel noted that the recommended conditions of approval involve changes to the business's operations that the applicant has not demonstrated can be met, and Commissioner Lawler added that compliance with the conditions of approval may still result in livability impacts due to factors that are not regulated by the development code. Commissioner Winter added that mitigation measures that have been undertaken by the applicant have not been sufficient to mitigate impacts, so the proposal is not compatible and the approval criterion is not met. Commissioner Ellis voiced concerns about regulating the use based on specific decibel levels. He noted that dBC does not measure the vibrations associated with low-frequency sound and only solid mass can stop vibration. Commissioner Ellis added that a structural overhaul of the existing building would be needed to reliably and consistently prevent vibration impacts. Commissioner Akkal agreed with the

statements of other Commissioners and stated that there are noise impacts affecting the neighborhood.

After closing the public hearing and considering all oral and written testimony, Commissioner Lawler made a motion and Commissioner Akkal seconded to approve CU2022-0006. The motion failed by a vote of 1-5.

Then, Commissioner Lawler made a motion, which was seconded by Commissioner Akkal, to **DENY WITHOUT PREJUDICE CU2022-0006**, based on the testimony, reports and exhibits, and evidence presented during the public hearing on the matter and based on the facts, findings, and conclusions found in the Staff Report dated February 1, 2023, Staff Memoranda dated February 1, 2023 and February 8, 2023, and as modified by this Land Use Order. The motion passed unanimously.

Motion **CARRIED**, by the following vote:

AYES: Lawler, Akkal, Ellis, Glenewinkel, Nye, Winter.
NAYS: None.
ABSTAIN: None.
ABSENT: McCann.

Dated this 15 day of February, 2023.

To appeal the decision of the Planning Commission, as articulated in Land Use Order No. 2929 an appeal must be filed on an Appeal form provided by the Director at the City of Beaverton Community Development Department's office by no later than 4:30 p.m. on February 27, 2023.

PLANNING COMMISSION
FOR BEAVERTON, OREGON

ATTEST:

APPROVED:

BRITTANY GADA
Associate Planner

JENNIFER NYE
Chair

JANA FOX
Current Planning Manager