

STAFF REPORT

HEARING DATE: August 3, 2016

STAFF REPORT DATE: July 27, 2016

TO: Planning Commission

STAFF: Steve Regner, Associate Planner

PROPOSAL: **CU2016-0006 – Hyland Hills AG Sports Bar Extended Hours of Operation**

LOCATION: 14342 SW Allen Boulevard
SW Allen Boulevard & SW Murray Boulevard
Tax Lots 16800 on Washington County Tax Assessor's Map 1S1-21BB

SUMMARY: The property owner, Hyland Hills Properties LLC, is seeking approval for extended hours of operation associated with the existing AG Sports Bar. Uses operating between 10:00 p.m. and 7:00 a.m. are a Conditional Use in the Community Service zone when within 500 feet of a residential use in a residentially zoned property. The applicant proposes to operate until 2:00 a.m. Monday through Sunday.

PROPERTY OWNER/
APPLICANT: Hyland Hills Properties LLC
PO Box 3228
Portland, OR 97208

APPLICANT'S
REPRESENTATIVE: Melynda Retallack Architect, LLC
2207 SE 51st Avenue
Portland, OR 97215

DECISION CRITERIA: Development Code Sections 40.03 *Facilities Review*, 40.15.15.3.C *Conditional Use*, and Comprehensive Plan Policy 8.4.1.a.

RECOMMENDATION: Staff has **NO RECOMMENDATION** for **CU2016-0006 – Hyland Hills AG Sports Bar Extended Hours of Operation**. Should the Planning Commission find that the application meets the approval criteria, staff has prepared conditions of approval identified at the end of this report.

BACKGROUND FACTS*

This proposal for extended hours applies to the AG Sports Bar, an existing bar operating in Hyland Hills retail center, which is zone Community Service (CS), within 500 feet of a residential use in a residential zone. Properties in the CS zone in this proximity to residential uses in a residential zone require a conditional use permit to operate between 10:00 pm and 7:00 am. On December 6, 2014, the City's Code Compliance Division received a noise complaint for loud music playing from AG Sports Bar as late as 1:30am. Following the citation, the scheduled a pre-application conference meeting in February, and submitted the Conditional Use permit application in May.

***This Background provides an accessible explanation of the application(s) under consideration. It is not a substantive part of the staff report. It does not contain proposed findings in response to the criteria and it does not evaluate evidence**

Key Application Dates

Application	Submittal Date	Deemed Complete	Final Written Decision Date	240-Day*
CU2016-0006	May 17, 2016	June 10, 2016	October 7, 2016	February 5, 2017

* Pursuant to Section 50.25.9 of the Development Code this is the latest date, with a continuance, by which a final written decision on the proposal can be made.

Existing Conditions Table

Zoning	Community Service (CS)	
Current Development	Multi-tenant shopping center	
Site Size	Approximately 5.34 Acres	
NAC	Highland	
Comprehensive Plan	Land Use: Main Street	
Surrounding Uses	Zoning: <u>North:</u> Neighborhood Service (NS) <u>South:</u> Residential Urban Medium (R4) <u>East:</u> Residential Urban Medium (R2) <u>West:</u> Community Service (CS)	Uses: <u>North:</u> Office/Retail <u>South:</u> Residential <u>East:</u> Residential <u>West:</u> Commercial

DESCRIPTION OF APPLICATION AND TABLE OF CONTENTS

Attachments:

	<u>Page No.</u>
<u>Attachment A:</u> Facilities Review Committee Technical Review and Recommendation Report	FR1 – FR3
<u>Attachment B:</u> CU2016-0006 <i>Conditional Use-Hours of Operation</i>	CU1-CU5
<u>Attachment C:</u> <i>Conditions of Approval</i>	COA1

Exhibits

Exhibit 1. Materials submitted by Staff

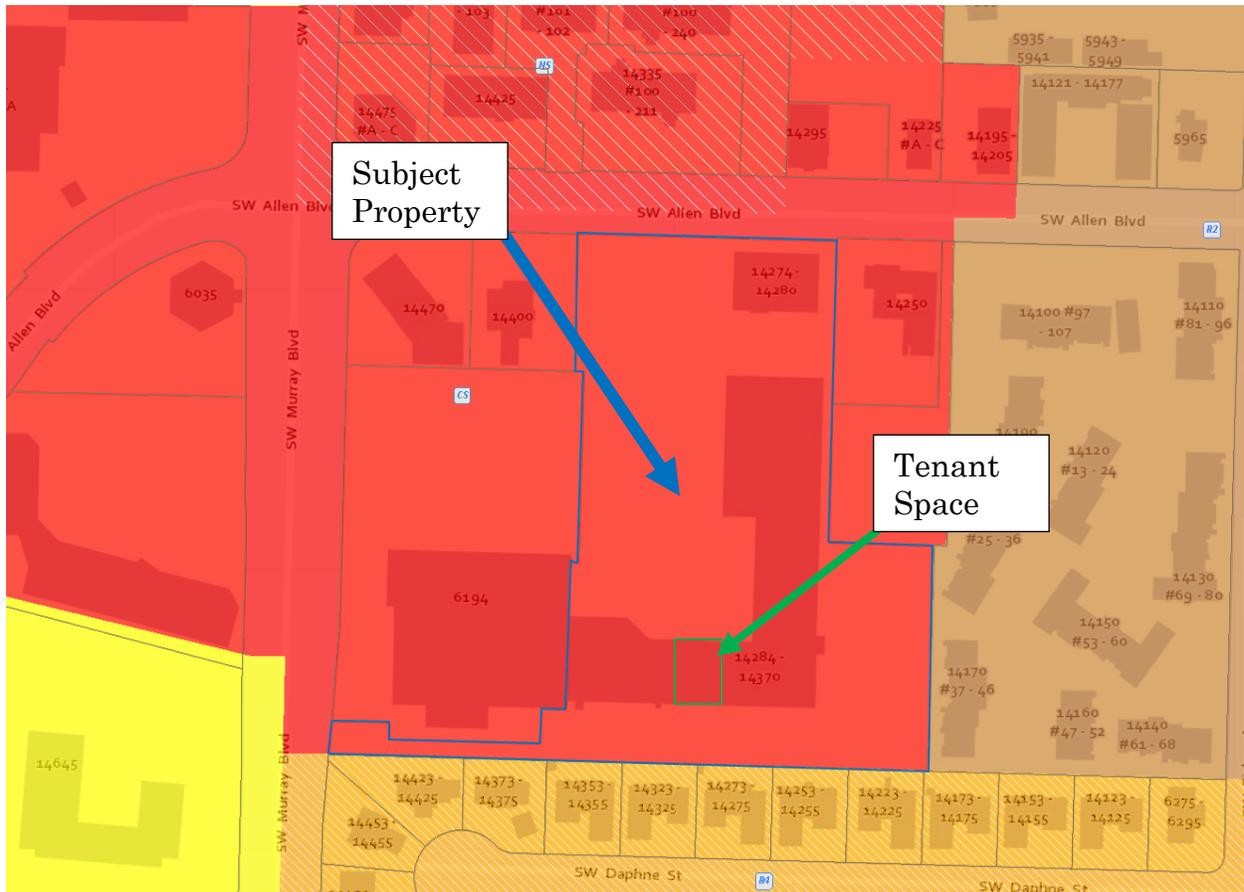
- Exhibit 1.1 Vicinity Map (page SR-4 of this report)
- Exhibit 1.2 Aerial Map (page SR-5 of this report)
- Exhibit 1.3 Code Compliance Program – Problem Log Listing

Exhibit 2. Public Comment

- Exhibit 2.1 E-Mail dated July 12, 2016 from Rita McCormick, Central Beaverton NAC Chair, expressing concerns about noise and clustering of establishments selling alcohol.
- Exhibit 2.2 E-Mail dated July 15, 2016 from Byron Delaney, Central Beaverton NAC Secretary, expressing concerns over the possible increase of drunk driving incidents related to the proposed extended hours request.
- Exhibit 2.3 Central Beaverton NAC meeting minutes dated July 11, 2016, submitted by Byron Delaney, Central Beaverton NAC Secretary. Minutes noted a discussion took place about how a clustering of establishments that sell alcoholic beverages and are open late may impact bordering residences.
- Exhibit 2.4 Letter dated July 15, 2016 from Cody Johnecheck, 2 Centerpointe Drive Suite 210, Lake Oswego, OR 97035, owner of Highland Hills Apartments, outlines a history of noise impacts and illicit activities in the rear parking lot.
- Exhibit 2.5 Letter dated July 15, 2016 from Sharon Slaybaugh and Mitch Nixon, 14253 SW Daphne, expressing concerns over current noise impacts caused by AG Sports Bar and activities in the rear parking lot.

Exhibit 3. Materials submitted by the Applicant

- Exhibit 3.1 Submittal Package, date stamped July 26, 2016



**Hyland Hills AG Sports Bar Extended Hours of Operation
CU2016-0006
Vicinity & Zoning Map**



**Hyland Hills AG Sports Bar Extended Hours of Operation
CU2016-0006
Vicinity & Zoning Map**

**FACILITIES REVIEW COMMITTEE DRAFT
TECHNICAL REVIEW AND RECOMMENDATIONS
Hyland Hills AG Sports Bar Extended Hours of Operation
CU2016-0006**

Section 40.03 Facilities Review Committee:

The Facilities Review Committee has conducted a technical review of the application, in accordance with the criteria contained in Section 40.03 of the Development Code. The scope of this application is limited to extended hours of operation. The Committee's approval criteria are provided below for reference.

The Facilities Review Committee Criteria for Approval will be reviewed for all criteria that are applicable to the submitted application as identified below:

- A. *All critical facilities and services related to the proposed development have, or can be improved to have, adequate capacity to serve the proposed development at the time of its completion.***

- B. *Essential facilities and services related to the proposed development are available, or can be made available, with adequate capacity to serve the development prior to its occupancy. In lieu of providing essential facilities and services, a specific plan may be approved if it adequately demonstrates that essential facilities, services, or both will be provided to serve the proposed development within five (5) years of occupancy.***

- C. *The proposed development is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are modified by means of one or more applications which shall be already approved or which shall be considered concurrently with the subject application; provided, however, if the approval of the proposed development is contingent upon one or more additional applications, and the same is not approved, then the proposed development must comply with all applicable provisions of Chapter 20 (Land Uses).***

- D. *The proposed development is consistent with all applicable provisions of Chapter 60 (Special Requirements) and all improvements, dedications, or both, as required by the applicable provisions of Chapter 60 (Special Requirements), are provided or can be provided in rough proportion to the identified impact(s) of the proposed development.***

- E. *Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas, as applicable: drainage facilities, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas, and other facilities not subject to maintenance by the City or other public agency.***

Code Conformance Analysis
Chapter 20 Use and Site Development Requirements
Community Service (CS) Zoning District

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Sections 20.10.20			
Permitted Uses	Eating or Drinking Establishments	The existing use is a sports bar, which is a permitted uses in the CS zoning district.	Yes
Conditional Uses	Uses operating between the hours of 10 p.m. and 7 a.m.	Applicant proposes to operate until 2:00 a.m. Monday through Sunday	Yes, if approved
Development Code Section 20.10.15			
Minimum Lot Area	7,000 square feet	Not applicable, no new lots proposed	N/A
Minimum Lot Dimensions	Width: 70 ft Depth: 100 ft	Not applicable, no new lots proposed	N/A
Yard Setbacks Minimums: Front Side Interior Side Corner Rear	20-feet 10-feet 20-feet 20-feet	Not applicable, no physical improvements proposed	N/A
Maximum Building Height	60 feet	Not applicable, no physical improvements proposed	N/A

**ANALYSIS AND FINDINGS FOR
CONDITIONAL USE APPROVAL
Hyland Hills AG Sports Bar Extended Hours of Operation
CU2016-0006**

Section 40.15.15.3.C. Approval Criteria:

In order to approve a New Conditional Use application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

- 1. *The proposal satisfies the threshold requirements for a Conditional Use application.***

Facts and Findings:

Development Code, Section 40.15.15.3.A, Threshold #1 states:

The proposed use is conditionally permitted in the underlying zoning district and a prior conditional use approval for the proposed use is not already in effect.

The applicant proposes to extend the hours of operation for a bar in the existing commercial development Hyland Hills. The applicant requests to operate from 11:30 am to 2:00 am Monday to Sunday.

Uses in the Community Service zoning district located within 500 feet of a residential use in a residential zone operating between 10:00 p.m. and 7:00 a.m. require a new conditional use permit. The tenant space is less than 100 feet from a residential use in a residential zone.

Therefore, staff finds that by meeting the conditions of approval, the criterion is met.

- 2. *All City application fees related to the application under consideration by the decision making authority have been submitted.***

Facts and Findings:

The applicant paid the required fees for a Conditional Use application on May 17, 2016.

Therefore, staff finds that the criterion is met.

3. The proposal will comply with the applicable policies of the Comprehensive Plan.

Facts and Findings:

Staff cites the following comprehensive plan policy and associated findings as applicable to this criterion:

Goal 8.4.1 Create and protect a healthy acoustical environment within the City.

Facts and Findings:

Policy 8.4.1.a reads as follows:

Policy 8.4.1.a Noise impacts shall be considered during development review processes.

The proposal is to extend the hours of operation for a bar in a commercial development that is immediately adjacent to a residential development. As noted on page SR-2, Code Services received a complaint about noise from a resident of the area. Due to the proximity of the residential development, staff must consider the potential impacts of noise if the city is to allow extended hours of operation.

In an effort to mitigate noise impacts from business operations following the Code Service complaint, the applicant states they undertook the following measures:

- Added additional layer of gypsum board and acoustic insulation along the southern wall (most adjacent to the residential uses) to attenuate noise transmission.
- The south facing service door is not opened after 10:00 pm to limit noise impacts.
- All trash is removed before 10:00 pm.
- No outdoor patios or sound systems exist on site, and smokers are directed to smoke outside on the north side of the building, in the interior of the site.
- Interior speakers have been relocated from the south wall to the north wall in an effort to reduce sound transmission.
- Signs in the southern parking lot stating no parking for “AG Sports Bar 10pm-7am All Days” have been installed in an effort to discourage late night parking in the southern parking lot.

The applicant further states that the following existing conditions support noise mitigation:

- There are no windows on the southern side of the tenant space.
- The southern property line is more than 70 feet away from the southern wall of the tenant space
- Adjacent homes to the south are visually buffered from the tenant by landscaping, a raised berm and a fence.

The applicant has submitted a Decibel Level Site Survey, taking readings from various points on the subject site to determine average ambient noise level. The applicant's results show the range of ambient decibel (dB) levels trended between 47 and 50 decibels, comparable to rainfall.

Staff has received two pieces of written testimony specifically outlining concerns over the extended hours request, noting noise from the tenant space, as well as noise and illicit activities in the rear parking lot. Staff has received additional testimony voicing concern over the clustering of uses that see alcohol, however, staff note that bars fall into the land use category 'Eating and Drinking Establishments', and are a permitted use in this zone, and is not within the scope of the Conditional Use Request

Written testimony from the owners of the Highland Hills Apartments, a multifamily development abutting the east property line have noted that while noise attenuation is outlined for southern properties, no such efforts have been explained for residences to the east. Staff notes that these apartments to the east are also within 500 feet of the use, and should be taken into account for evaluating the extended hours of operation request. The property owner specifically notes there is no landscaping, berm, or applicant supplied fence to attenuate noise on the east side of the parking lot. The owners state that smokers tend to congregate in a breezeway near the bar, especially in poor weather conditions that opens up the eastern rear parking lot and the apartment complex. Additionally, the owner has observed various late night activities in the rear parking lot, at least some being conducted by people who appear to be bar patrons. The owner states that their highest volume of complaints from his tenants come from activities in the rear parking lot area. Finally, the owner notes that while signage is provided for parking spaces near the southern property line, no such signs are recommended anywhere in the rest of the rear parking lot.

A separate property owner adjacent to the commercial center to the south provided written testimony stating that they have observed the following activities in the rear parking lot, which abuts their property:

- Loud voices of drinkers going to their cars parked in the rear parking lot.
- Loud car stereos
- Car alarms
- Loud music can be heard coming from the bar, even when the residence has all of the windows closed.

The property owner additionally states that they have called the police several times related to noisy activities occurring the rear parking lot.

Staff response to Policy 8.4.1.a and the applicant's statement is as follows:

The nearest residential units are located approximately 70 feet to the south, and 300 feet to the east as measured from the nearest residential property boundary to the nearest building wall associated with the applicant's tenant space. The breezeway east of the AG Sports Bar is also approximately 135 feet from the nearest residential property boundary. Staff acknowledges the efforts undertaken by the applicant to mitigate any noise impacts to the neighbors, and cites the sound study conducted between December 2015 and May 2016. However, comments provided by adjacent property owners suggest that the efforts do not

go far enough. Noisy activities in the rear parking lot and the breezeway smoking section may be better attenuated through more judicious security and management of the property. Most concerning to staff is the complaint voiced by a neighbor to the south who states that 'loud music thumping' can be heard inside their home with the windows closed. It is possible that more improvements can be made to the building, though it appears existing improvement have not reduced the noise impacts to a satisfactory level to at least one residential neighbor. The Planning Commission should evaluate whether the applicant's proposal complies with Comprehensive Plan Policy 8.4.1.a, or could comply with conditions of approval.

Staff has no recommendation.

4. *The size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.*

The site is approximately 5.34 acres in size and is currently developed with two commercial buildings and associated parking areas and landscaping on site. The greater shopping center contains four buildings in total and is approximately 9 acres in size. Natural features on site are limited to landscape plants and trees, including a row of trees and along the southern and eastern property line for screening purposes.

Staff concludes that natural and man-made features on the site are adequate to accommodate the proposal which is limited to extended hours of operation. There are no proposed changes to any natural features from what has been previously approved. The proposed use is fully enclosed and has ample parking in the main parking lot to the north of the commercial building, and does have the potential to support operations after 10:00 pm without impacting neighbors.

Therefore, staff finds that the criterion is met.

5. *The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have a minimal impact on livability and appropriate development of properties in the surrounding area of the subject site.*

The applicant states that the following measures are being taken or already exist to ensure AG Sports Bar remains compatible with residential properties surrounding the site:

- Added additional layer of gypsum board and acoustic insulation along the southern wall (most adjacent to the residential uses) to attenuate noise transmission.
- There are no windows on the southern side of the tenant space.
- The south facing service door is not opened after 10:00 pm to limit noise impacts.
- All trash is removed before 10:00 pm.
- The southern property line is more than 70 feet away from the southern wall of

the tenant space

- Adjacent homes to the south are visually buffered from the tenant by landscaping, a raised berm and a fence.
- No outdoor patios or sound systems exist on site, and smokers are directed to smoke outside on the north side of the building, in the interior of the site.
- Interior speakers have been relocated from the south wall to the north wall in an effort to reduce sound transmission.
- Signs in the southern parking lot stating no parking for “AG Sports Bar 10pm-7am All Days” have been installed in an effort to discourage late night parking in the southern parking lot.

Staff acknowledges the efforts taken by the applicant to have minimal impact on livability. However, written testimony provided by property owners to the east and south demonstrate that the use, as currently operated, does have compatibility issues, mostly related to noise. Staff cites analysis in approval criterion 3 to support this.

It is possible that strong enforcement of late night parking restrictions, a more centrally located smoking area, and greater noise attenuating materials within the tenant space may create a more compatible scenario. The Planning Commission should evaluate whether the applicant’s proposal complies with approval criterion 5, or could comply with conditions of approval.

Staff has no recommendation.

6. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.*

Facts and Findings:

The applicant has submitted the required application materials for review of a Conditional Use application. This review process is a required step to receive City approval for the development’s proposal.

Therefore, staff finds that the criterion is met.

RECOMMENDATION

Based on the facts and findings presented, staff has **NO RECOMMENDATION** on **CU2016-0006 (AG Sports Bar Extended Hours of Operation)**. Should the Planning Commission find that the application meets the approval criteria, staff has recommended conditions of approval in Attachment C.

**RECOMMENDATION AND CONDITIONS OF APPROVAL
BY THE FACILITIES REVIEW COMMITTEE:**

CU2016-0006 Conditional Use Application:

Based on the facts and findings presented, staff has NO RECOMMENDATION on CU2016-0006 (AG Sports Bar Extended Hours of Operation). Should the Planning Commission find that the application meets the approval criteria, staff has recommended conditions of approval below:

1. The Conditional Use permit shall run with the land and shall continue to be valid upon a change of ownership of the site or structure unless otherwise specified in conditions attached to the permit. (SR/Planning)

The Applicant or property owner shall continually comply with the following conditions:

2. Hours of operation for the bar, located at 14342 SW Allen Boulevard shall be 7:00 a.m. to 2:00 a.m. Monday through Sunday. (SR/Planning)
3. Hours of operation for trash removal from the tenant space to outdoor dumpsters on the site shall be limited to between the hours of 7:00 am and 10:00 pm Monday through Sunday. (Planning/SR)