

**Council Meeting: February 10, 2008**

SUBJECT: **2008-0881:** Appeal by the applicant of a decision of the Planning Commission denying an application for a Special Development Permit to allow the sale of beer and wine at an existing gas station and convenience store. The property is located at **698 N Fair Oaks Avenue** (at Caliente Dr) in a C-1/PD (Neighborhood Business/Planned Development) Zoning District.

Motion **Special Development Permit** to allow the sale of beer and wine at an existing gas station and convenience store.

REPORT IN BRIEF

Existing Site Conditions Automobile service station with convenience store

Surrounding Land Uses

North	Commercial
South	Commercial
East	Residential
West	Residential

Issues Off-site sales of beer and wine

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

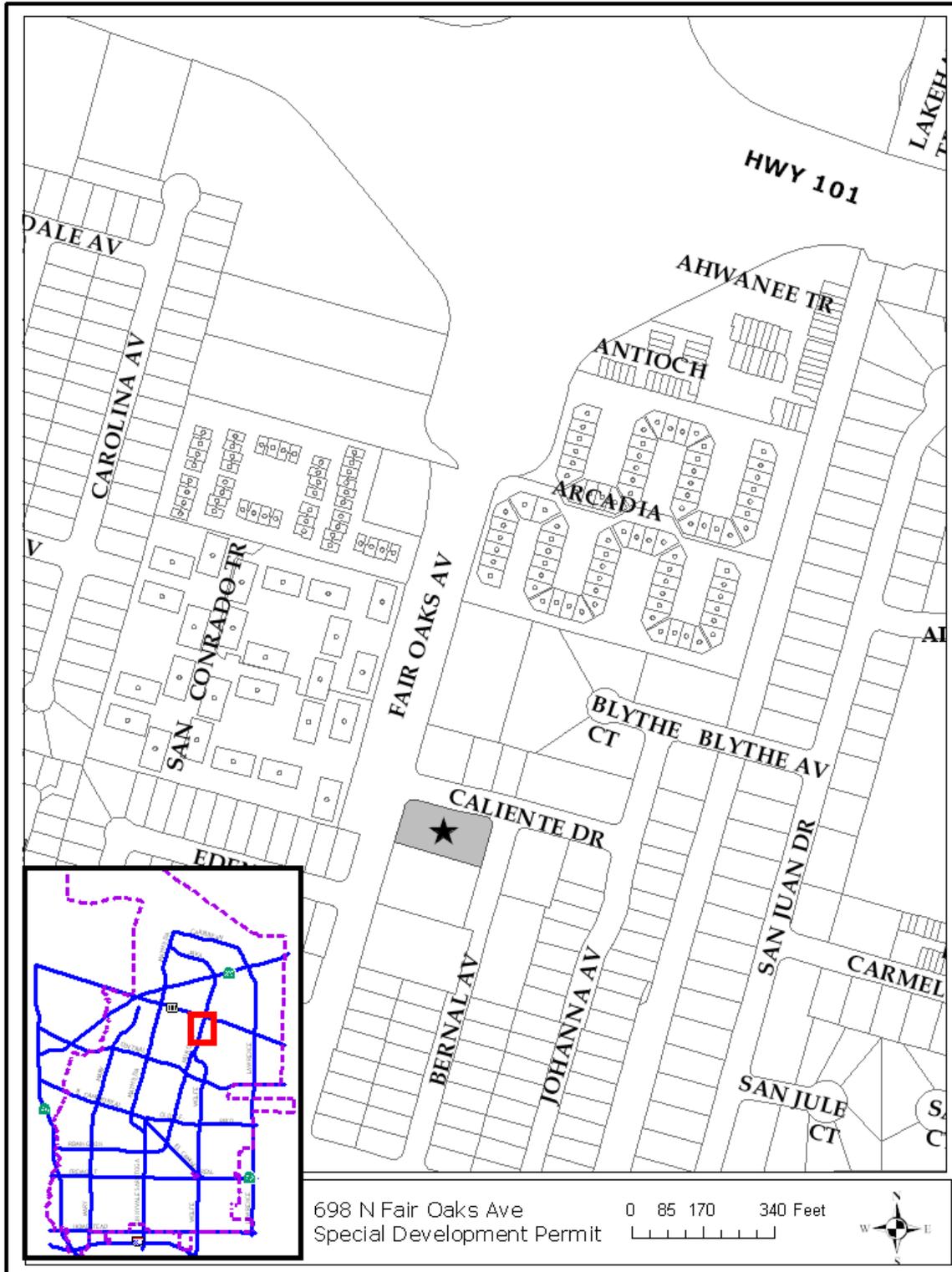
Planning Commission Action Denied the Special Development Permit

Staff Recommendation Grant the appeal of the Planning Commission decision and approve the Special Development Permit with conditions.

**2008-0881: Appeal of Special Development Permit
Application for 698 N Fair Oaks Avenue**

February 10, 2009

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PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Commercial Neighborhood	Same	Commercial Neighborhood
Zoning District	C-1/PD	Same	C-1/PD
Lot Size (s.f.)	26,137	Same	No min.
Gross Floor Area (s.f.)	2,100	Same	No max.
Lot Coverage	8%	Same	No max.

ANALYSIS

Description of Proposed Project

The applicant proposes to offer the off-site sale of beer and wine at an automobile service station's existing convenience store. This refers to the purchase of beer and wine that would occur at the proposed site, but the consumption would take place off-site. Beer and wine sales will occur from existing coolers and shelves within the store. No physical changes or expansion of area are proposed to the interior or exterior of the structure (Attachment C).

Background

Previous Actions on the Site: The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing/Decision	Date
2008-0034	Miscellaneous Permit to allow grocery sales at an existing service station	Admin Hearing/Approved	1/23/2008
2000-0395	Miscellaneous Plan Permit to replace signs	Staff Review/Approved	8/1/2000
1994-0083	Miscellaneous Plan Permit to allow new gas pumps	Staff Review/Approved	9/8/1994

Planning Commission Action: The subject application was approved at the Administrative Hearing on September 24, 2008 (minutes located in Attachment D). Subsequent to this approval, an appeal was filed by an interested party stating that the concentration of alcohol-related uses in the vicinity was too great. On December 8, 2008, the Planning Commission granted the appeal,

thereby denying the applicant the ability to sell beer and wine from the convenience store (minutes located in Attachment E). The applicant is appealing the Planning Commission decision stating the off-site sale of beer and wine will not have a negative impact on surrounding residents, properties, or uses (appeal request in Attachment F).

Environmental Review

A Class #1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class #1 Categorical Exemptions include minor modifications at existing facilities.

Use Permit

Site Layout: The subject site is located on the corner of Fair Oaks Avenue and Caliente Drive and has driveways taking access off both streets. There is a single fuel canopy on the west of the property having six fuel pumps. A 2,100 square foot convenience store is located on the east of the property with parking to the north along the site's Caliente Drive frontage. Adjacent uses along Fair Oaks Avenue and Caliente Drive are commercial.

Compliance with Development Standards/Guidelines: Off-site sales of beer and wine may be allowed at an automobile service station with approval of a Special Development Permit provided three findings can be made. These findings address "off-site" sales where beer and wine is purchased and taken away (such as grocery and liquor stores) and not "on-site" sales where it is consumed on-site (such as restaurants or bars). The findings are:

- 1) The service station may not be located within 500 feet of another use with off-site alcohol sales (the described distances are measured from the property line of the subject site);
- 2) The service station may not result in a concentration of more than four businesses with off-site sales of alcohol within a 1,000-foot radius; and
- 3) The service station may not be located within 500 feet of a public park or public school.

The proposed project meets Finding 2 because it would not result in a concentration of more than four businesses with off-site sales of alcohol within a 1,000-foot radius, and meets Finding 3 since it is not within 500 feet of a public park or public school (see map located in Attachment G). However, Finding 1 can not be met because the proposed project is located within 500 feet of other uses with off-site alcohol sales (see map in Attachment H).

The zoning ordinance allows for approval of applications that do not meet all three findings provided three additional findings are met. These additional findings are:

- a) The project will not adversely affect persons residing or working in surrounding areas;
- b) The project will not adversely affect surrounding property values; and
- c) The project will not be detrimental to public health, safety, and welfare.

The City's Department of Public Safety has inspected the subject site and existing security measures and does not believe the addition of alcohol sales will be detrimental to surrounding persons or properties, nor will it be detrimental to the public health, safety, or welfare. Maps prepared by DPS for the Grocery Sales at Automobile Service Stations Study Issue (RTC 07-353) do not show an over-concentration of drunk in public calls, robberies or aggravated assaults in the subject area (Attachment I).

During 2008, there were two similar requests for selling beer and wine at service stations, both of which needed to make the additional findings as described above. In both cases, the Administrative Hearing Officer was able to make the findings and approved the requests.

To ensure negative impacts do not result, SMC section 19.98.020 requires that off-site sales of beer and wine at an automobile service station must comply with the following requirements:

- 1) No beer or wine shall be displayed within 5 feet of the cash register or front door unless inside a permanently-affixed cooler;
- 2) No advertisements for beer or wine shall be displayed at motor fuel islands; and
- 3) Employees on duty between the hours of 10 p.m. and 2 a.m. who sell beer or wine shall be at least 21 years old.

Staff has added these items as Condition of Approval #3 (Attachment B). As a result of the input from DPS, and with inclusion of the conditions of approval, staff believes the required findings can be made for the proposed project.

In addition to these requirements, the applicant is also required to meet specific requirements and findings of the State Department of Alcohol Beverage Control (ABC).

Expected Impact on the Surroundings: As stated earlier, staff does not expect the proposed use to have a negative impact on surrounding residents, properties, or uses. The proposed sales would occur along with grocery sales in the existing convenience store. Adequate site security is in place to discourage

loitering, theft, on-site consumption of alcoholic beverages, and other unpermitted activities. Existing crime data does not show that there is an over-concentration of activity in the area, and the addition of alcohol sales at the service station is not expected to change that activity.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected.

Public Contact

Planning Commission Public Hearing: Subsequent to the approval at the Administrative Hearing on September 24, 2008, citizens near the property appealed the decision to the Planning Commission. At the December 8, 2008 Planning Commission appeal hearing, letters of opposition to the project were submitted along with a petition in opposition with 38 signatures (Attachments J and K, respectively). In general, the stated concern was that there is already a high concentration of establishments in the area that sell alcohol and that the proposed site is near elementary schools and loitering is already a problem in the area.

The commission voted 6-0 to grant the appeal and deny the application, determining the proposed project does not meet all of the required findings, and that the project would negatively affect the peace, health and safety of the area. The Planning Commission believed that, in combination with the “on-site” uses in the vicinity, there was an over concentration of alcohol-related uses in this neighborhood, even though the findings related to on-site sales could be met.

The appellant of the Administrative Hearing Officer decision provided general information at the Planning Commission hearing about the distances between related off-site alcohol uses. Staff has subsequently re-evaluated the distances between the project and the uses identified in letters from the public, and the correction information is as follows (see map in Attachment H):

Off-site sales within 500 feet:

1. Fiesta Liquors, 672 N. Fair Oaks Ave. adjacent to proposed site
2. 7-11 Market, 708 N. Fair Oaks Ave, 62 feet
3. Chavez Supermarket, 666 N. Fair Oaks Ave., 152 feet

Off-site sales outside 500 feet:

1. Save N Go Market, 343 E. Maude Ave., 2850 feet
2. Quik Shop Market, 395 N. Fair Oaks Ave., 2905 feet

On-site sales (restaurants) within 500 feet:

1. Tres Potrillos Taqueria, 670 N. Fair Oaks Ave., adjacent to proposed site
2. Rene Rose Island Cuisine, 621 Caliente Dr., 270 feet

Notice of Negative Declaration and Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 399 notices mailed to the property owners and residents within 300 ft. of the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Website• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• City of Sunnyvale's Website

Conclusion

Comments on Appeal

Applicant's Justification: The applicant appealed the Planning Commission action stating the use will not increase the crime level in the area nor negatively impact the children and young adults (Attachment F).

As a part of the subject appeal, the applicant submitted a letter stating that the off-sale (the City's finding refer to these as "off-site") sale of beer and wine at the proposed location will not negatively impact the surrounding area. In this letter, the applicant made several assertions, including that some of the off-sale outlets that the neighbors listed in their petitions (Attachment K) are located over 2,500 feet from the subject property, that most nearby alcohol sales are at "on-sale" locations (meaning the alcohol must be consumed on the site and cannot be taken away), among other statements. Attachment H shows a map of nearby properties prepared by staff with on-site and off-site sales of alcohol, including those that were listed in the neighbors' petitions. Three off-sale establishments (Chavez Supermarket at 666 Fair Oaks Avenue, Fiesta Liquors at 672 Fair Oaks Avenue, and 7-Eleven 708 Fair Oaks Avenue) are located less than 200 feet from the property.

Discussion: If the proposed site is less than 500 feet from a use with off-site alcohol, additional findings are required, as stated earlier. In this case, there are other off-sale locations within 500 feet of the proposed site; therefore these additional findings must be made.

Staff reviewed the crime data provided by DPS for the Study Issue that subsequently allowed the sales of alcohol at service stations, and reviewed the specific application with DPS and found that the findings can be made and that the proposed sale of beer and wine will not have a detrimental effect on the surrounding area. Staff supported the application because:

1. The service station added cameras and security as part of the grocery sales permit, which would reduce possible criminal activity,
2. DPS does not oppose the addition of another point of sale for alcohol,
3. Maps prepared by DPS for the Grocery Sales at Automobile Service Station Study Issue show the area does not experience high crime rates
4. The applicant will require a separate review by ABC, which looks closely at over-concentration of alcohol sales issues.
5. The application is similar to two other requests to sell beer and wine at service stations that were approved at a public hearing, both of which were required to make the additional findings.

Planning Commission Action: The Planning Commission approved the appeal of the neighbors, thereby denying the application to sell beer and wine at the service station. The Commission could not make the finding that the project would not adversely affect the persons residing or working in the area.

Findings and General Plan Goals: Staff was able to make the required Findings based on the justifications for the Special Development Permit. Findings and General Plan Goals are located in Attachment A.

Conditions of Approval: Conditions of Approval are located in Attachment B.

Alternatives

1. Grant the appeal and approve the Special Development Permit with the attached conditions.
 2. Grant the appeal and approve the Special Development Permit with modified conditions.
 3. Deny the appeal and uphold the decision of the Planning Commission denying the Special Development Permit.
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Recommendation

Alternative 1, overturn the decision of the Planning Commission by granting the appeal and approving the Special Development Permit with the attached conditions.

Reviewed:

Hanson Hom
Director of Community Development Department
Reviewed by: Trudi Ryan, Planning Officer
Prepared by: Laura Gurney, Project Planner

Reviewed:

Gary Luebbers
City Manager

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Floor Plans
- D. Minutes of Administrative Hearing on September 24, 2008
- E. Minutes of Planning Commission Hearing on December 8, 2008
- F. Letter of Appeal from the Applicant
- G. Map of Nearby Schools and Parks
- H. Map of Nearby Properties with On-Sale and Off-Sale of Alcohol
- I. Crime Analysis Map from Prior Study Issue (RTC 07-353)
- J. Letters from Other Interested Parties
- K. Petitions from Neighbors

Recommended Findings – Special Development Permit

Goals and Policies that relate to this project are:

Land Use and Transportation Element – Policy C4.1

Maintain a diversity of commercial enterprises and industrial uses to sustain and bolster the local economy.

Land Use and Transportation Element – Action Statement C4.1.3

Promote commercial uses that respond to the current and future retail service needs of the community.

Land Use and Transportation Element – Action Statement N1.13.2

Support convenient neighborhood commercial services that reduce automobile dependency and contribute positively to neighborhood character.

Law Enforcement Sub-Element – Goal 4.1A

Provide a safe and secure environment for people and property in the community.

Required findings for Use Permits:

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale. *[Finding made]*

The proposed addition of beer and wine sales would provide additional retail services for neighborhood residents, and is not anticipated to have a negative impact on surrounding properties or uses.

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties. *[Finding made]*

The proposed beer and wine sales would occur along with the currently permitted sale of other grocery items at the convenience store. As conditioned, measures would be taken to protect against sale of beer and wine to, or theft of beer and wine by, persons under the age of 21. There are three other sites within a 1000-foot radius offering the off-site sale of beer and wine; however, the proposed sales are not expected to result in an over-concentration of alcohol sales in the area. The site has existing security measures including lighting and clear visibility into and out of the store to discourage loitering, on-site consumption of alcoholic beverages, and other unpermitted activities. As a result, the proposed use would not result in negative impacts on surrounding properties or uses.

Additional required findings for the sale of beer and wine at automobile service stations:

1. The proposed site must be at least 500 feet from a use with off-site sales of alcohol, unless additional findings can be made that the proposed new sales :
 - a. will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding areas; and
 - b. will not impair the value of property of other persons located in the vicinity of the area; and
 - c. will not be detrimental to the public health, safety or welfare.
[Findings made]

There are existing businesses within 500 feet of the subject site which offers off-site sales of alcohol, requiring the findings above (a-c) to be made. These findings can be made. The proposed off-site sale of beer and wine would occur along with the currently permitted sale of other grocery items at the convenience store. As conditioned, measures would be taken to protect against sale of beer and wine to, or theft of beer and wine by, persons under the age of 21. There are 3 other sites within a 500-foot radius offering the off-site sale of beer and wine, which the proposed sales are not expected to result in an over-concentration of alcohol sales in the area. The site has existing security measures including lighting and clear visibility into and out of the store to discourage loitering, on-site consumption of alcoholic beverages, and other unpermitted activities. As a result, the proposed use would not negatively impact surrounding residents, would not impair surrounding property values, and would not be detrimental to the public health, safety, or welfare.

2. The proposed site will not exceed a concentration of more than four businesses with off-site sales of alcohol within a 1000-foot radius, unless the findings above (1.a - 1.c) can be made. *[Finding made]*

The proposal will result in a total of four sites licensed for off-site alcohol sales within a 1000-foot radius.

3. The proposed site shall not be located closer than 500 feet from any public park or public school unless the above findings (1.a - 1.c) can be made. *[Finding made]*

The subject site is not located within 500 feet of a park or school.

Recommended Conditions of Approval – Special Development Permit

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. Execute a Special Development Permit document prior to issuance of the building permit.
- B. Project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development, major changes may be approved at a public hearing.
- C. The Special Development Permit for the use shall expire if the use is discontinued for a period of one year or more.
- D. The Special Development Permit will be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.

2. COMPLY WITH OR OBTAIN OTHER PERMITS

- A. Obtain Building permits if required for any proposed equipment installation or other building modifications.
- B. Obtain all appropriate permits and/or licenses from the Department of Alcoholic Beverage Control (ABC).
- C. Comply with all requirements of the previously approved Miscellaneous Plan Permit (#2008-0034) related to grocery sales at the existing service station.

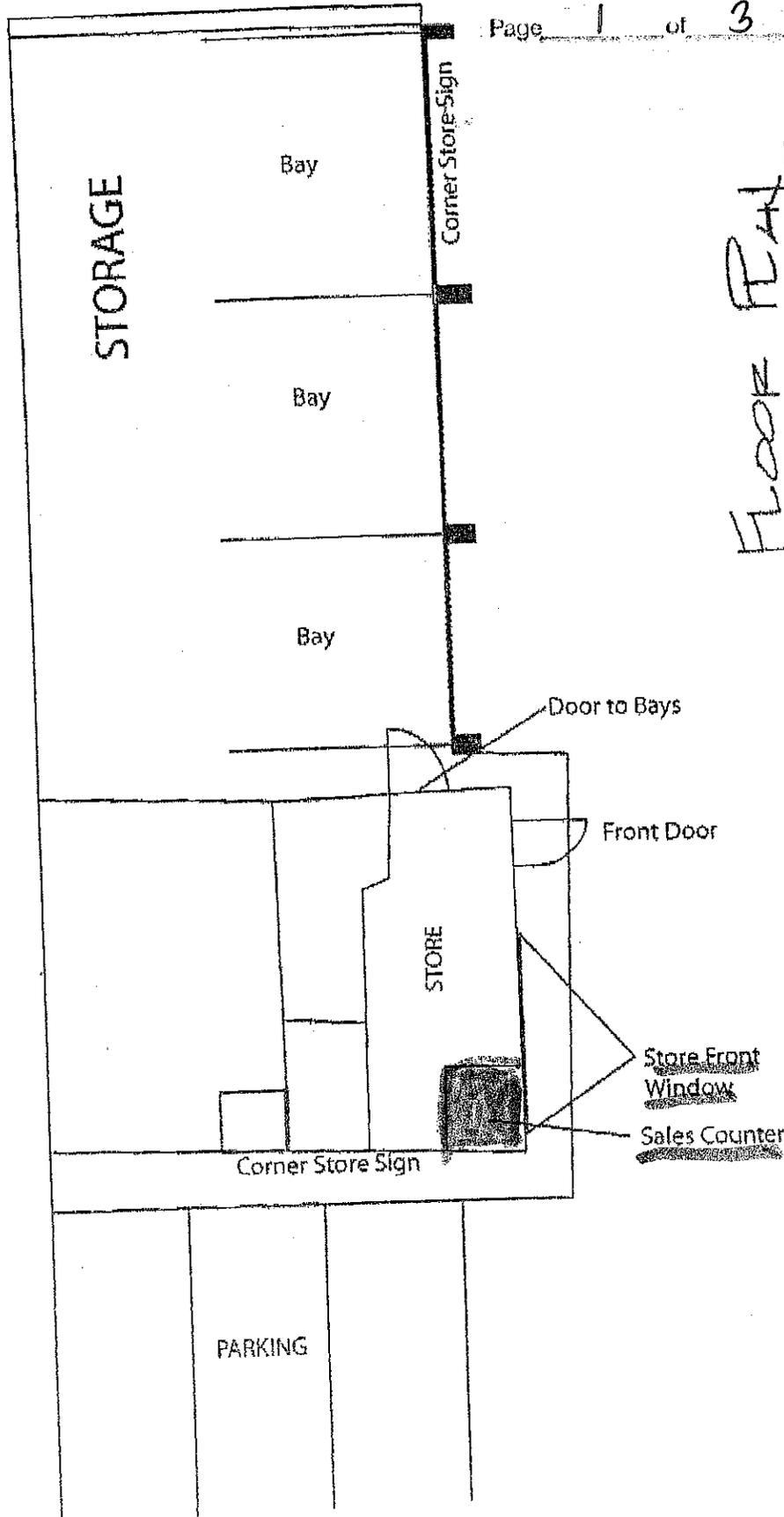
3. OFF-SITE SALE OF BEER & WINE

- A. No beer or wine shall be displayed within 5 feet of the cash register or front door unless it is inside a permanently-affixed cooler.
- B. No advertisement of alcoholic beverages shall be displayed at motor fuel islands.
- C. Employees on duty between the hours of 10:00 p.m. and 2:00 a.m. who sell beer or wine shall be at least 21 years old.

- D. The sale of single servings of beer is prohibited (less than 24 ounces).
- E. Prior to the Department of Community Development approving any licensing by the California Department of Alcoholic Beverage Control, the applicant shall be in compliance with all conditions of approval of the previous permit #2007-1320 that are related to security measures, including lighting and a panic alarm.
- F. The site shall be maintained in a clean manner free of debris and noise to avoid impacts on adjacent residential uses.

ATTACHMENT C

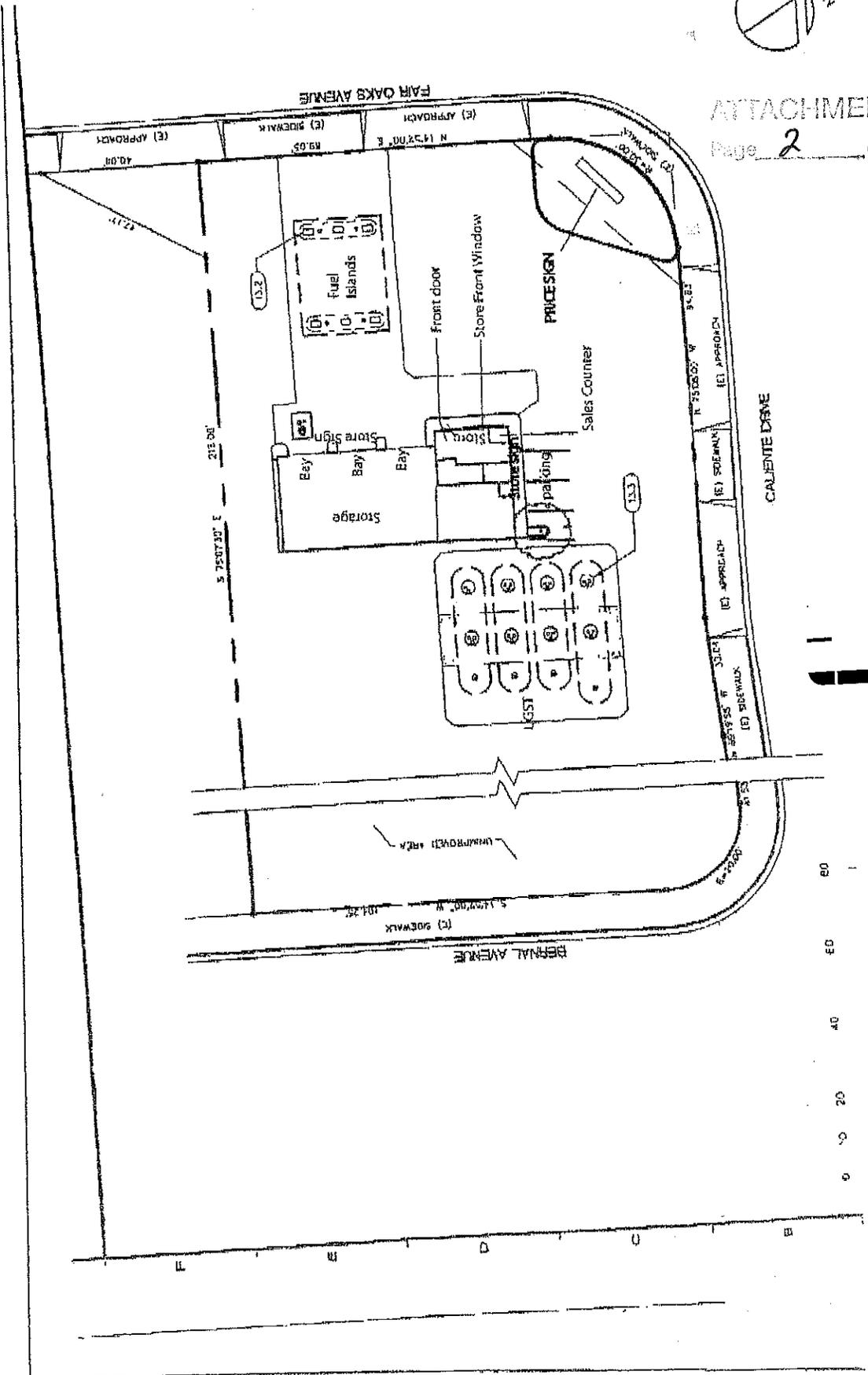
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FLOOR PLAN



ATTACHMENT C
Page 2 of 3



SITE PLAN

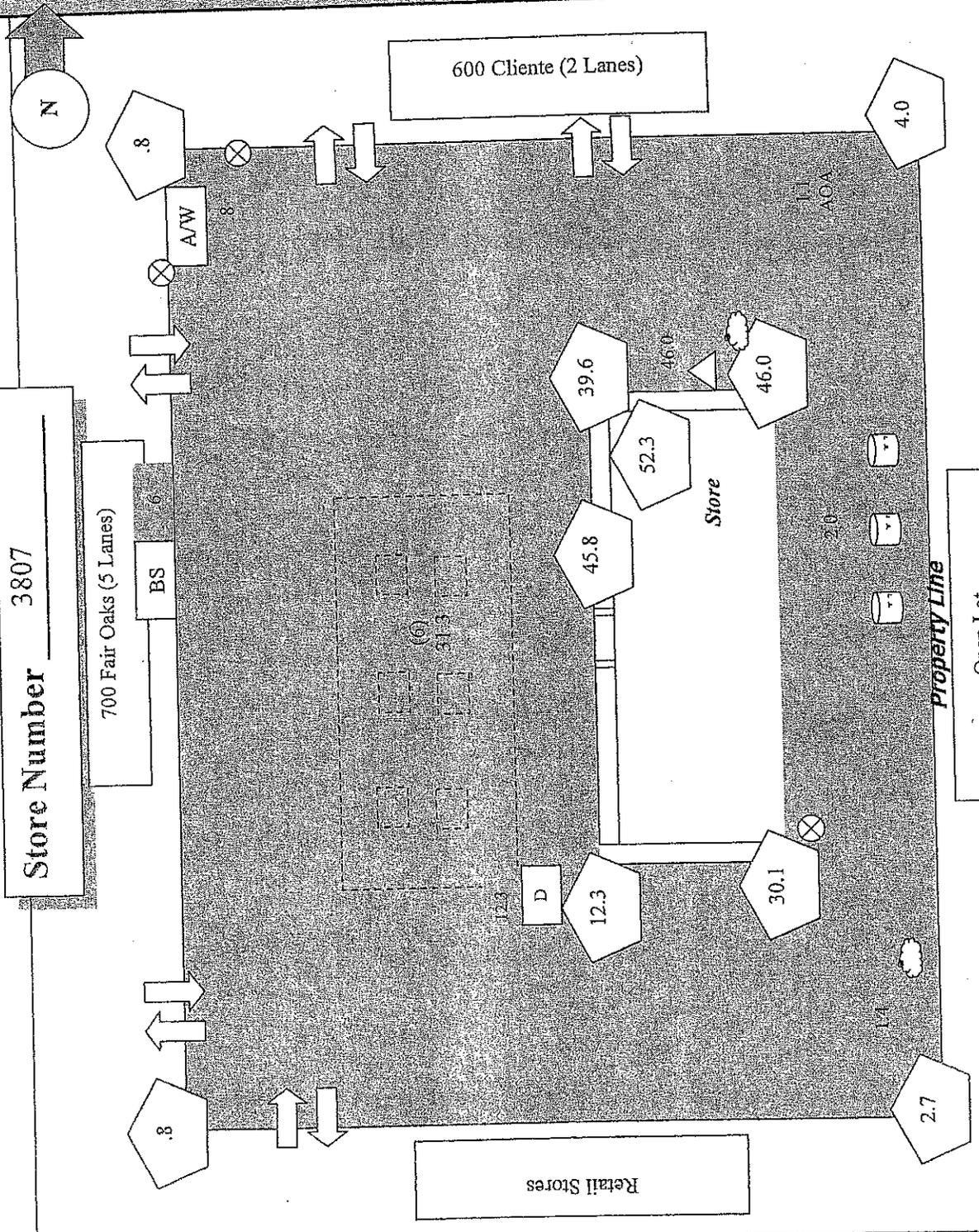
Approved by the Planning Division
 By Manuel Calvo Date 4/10/10
 Director of Community Development
 Subject to conditions

an-21

Valero Watch Site Sketch Layout C

Store Number 3807

700 Fair Oaks (5 Lanes)



Legend	A/W Air & Water	DM Dumpster	ES Bus Stop	FP Foot Paths
	Canopy & Pumping Station	Tree or Brush	T Telephone	
		Tennis		

Legend	Entrances	Fence-line	Florescent Lighting	Light (Except Florescent)	14.1 Light Measurement Point	XX Parking Lot Measurement	O/F Open Field	D/C Ditch or Culvert
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REMARKS

SITE PLAN / LIGHTING PLAN

Unit operates 24 hr/365 DAYS

dated 1/4/2008 4:17:00



**CITY OF SUNNYVALE
ADMINISTRATIVE HEARING**

ATTACHMENT D
Page 1 of 2

**MINUTES
Wednesday, September 24, 2008**

2008-0881: Valero [Applicant] **Mohan S and Hardev K Dhanota** [Owner]: Application for a Special Development Permit to allow the sale of beer and wine at an existing gas station and convenience store. The property is located at **698 N Fair Oaks Avenue** (at Caliente Dr) in a C-1/PD (Neighborhood Business/Planned Development) Zoning District. (APN: 205-01-010) NC

In attendance: Mike Amidi, Applicant; Gerri Caruso, Administrative Hearing Officer; Laura Gurney, Project Planner; Luis Uribe, Staff Office Assistant.

Ms. Gerri Caruso, Administrative Hearing Officer, on behalf of the Director of Community Development, explained the format that would be observed during the public hearing.

Ms. Caruso announced the subject application.

Laura Gurney, Project Planner, stated that the applicant proposes to offer the off-site sale of beer and wine at an automobile service station's existing convenience store. Beer and wine sales will occur from existing coolers and shelves within the store. No physical changes are proposed to the interior or exterior of the structure. Ms. Gurney noted a correction on Attachment B condition 3.D. stating that a single serving is less than 24 ounces. She also mentioned that she received 37 written statements from neighbors against the application.

Ms. Caruso opened the public hearing.

Mike Amidi, Applicant, received and reviewed a copy of the staff report. The applicant stated that he did not believe that many residents would be against his business selling beer and wine and he also mentioned that beer and wine does have negative affects on the neighborhood. Mr. Amidi stated that his primary business is selling gas and that beer and wine sales would not be a top priority for him, it is more a convenience for customers. The applicant stated that he would like to have the application denied so that he may have an opportunity to speak with his neighbors. Ms. Caruso and Mr. Amidi spoke about possible options regarding the final decision.

Ms. Caruso closed the public hearing.

Ms. Caruso took action to approve the application subject to the Findings and Conditions of Approval highlighting that the permit will expire after two years if the product is not placed in the store.

Ms. Caruso stated that the decision is final unless appealed to the Planning Commission with payment of the appeal fee within the 15-day appeal period.

2008-0183 795 Nisqually Drive

Administrative Hearing
September 24, 2008
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The meeting was adjourned at 2:11 p.m.

Minutes approved by:

ATTACHMENT D
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Gerri Caruso, Principal Planner

PLANNING COMMISSION MINUTES OF DECEMBER 8, 2008

2008-0881: Appeal by a neighbor of a Special Development Permit to allow the sale of beer and wine at an existing gas station and convenience store. **Valero** [Applicant] **Mohan S and Hardev K Dhanota** [Owner]: Application for a property located at **698 N Fair Oaks Avenue** (at Caliente Dr) in a C-1/PD (Neighborhood Business/Planned Development) Zoning District. (APN: 205-01-010) LG

Gerri Caruso, Principal Planner, presented the staff report. She said staff is recommending the Commission deny the appeal and uphold the decision of the Administrative Hearing Officer approving the Special Development Permit.

Comm. Sulser said his understanding of the City code is there is not supposed to be an over concentration of alcohol outlets within a certain number of feet from the proposed use. He asked staff the definition of an alcohol outlet. Ms. Caruso said the definition would be retail sales of alcohol for off-site consumption, confirming that a restaurant would not be considered an alcohol outlet because the alcohol sales would be for on-site consumption.

Comm. Klein referred to attachment E of the report. He asked if staff checked the approximate distances of the seven other sites that sell alcohol in the area to see if the distances indicated in the citizen' letters are accurate adding that the seven sites listed are a mixture of restaurants and retail locations. Ms. Caruso said the report acknowledges that the distances are not met and that other conditions contributed to the approval. Comm. Klein said that staff indicates there are three retail locations and the letters in attachment E show, four retail locations within 1000 feet. Comm. Klein further discussed with staff the concentration of sites that sell alcohol within a 1000-foot radius of this site. Ms. Caruso said that she could not confirm the specific distances between the proposed site and the seven nearby sites.

Vice Chair Chang opened the public hearing.

Janet Ayres, appellant, said she lives approximately 500 feet from the proposed site and the other establishments mentioned in attachment E. She said the new license would allow a fifth retail establishment within a 1000-foot radius in the neighborhood. She said many signatures from neighbors opposing this application have been provided to the Commission. She said there are two elementary schools nearby and children walk through the area near the proposed site. She said she feels it would be inappropriate to add another retail establishment that sells alcoholic beverages, commenting that there have been loitering problems in the past which required more Public Safety presence. She

thanked the Commission for their time and asked the Commission to deny the application as a protection to neighboring residents and school children in the area.

Comm. Hungerford discussed the findings that the Commission has to make to grant the appeal confirming with Ms. Ayres that her reasons for the appeal include that if the application were granted that the action would adversely affect people working or residing in the area. She said that specifically the school children who walk through this area are affected as there are loitering problems in an open lot behind this gas station and sometimes people loiter and drink alcohol in the lot. She said there are also foreclosed homes in the area that have been broken in to and occupied. She said adding more alcohol to the situation would not be helpful.

Rick Cole, representing the applicant, said he agrees with staff's recommendation to approve the Special Development Permit. He said he is available to answer any questions the Commission may have.

Comm. Sulser said there has been concern expressed about the clustering of alcohol sales in the area and asked Mr. Cole to comment about the concern. Mr. Cole said that the ABC (Alcoholic Beverage Control) uses the census track to determine how many licenses are allowed in an area and according to the ABC this area can have another license. Comm. Sulser said that the City of Sunnyvale requirements allow a maximum concentration of four locations to sell off-site alcohol within a 1000-foot radius. Mr. Cole said that the ABC requirements are different than the City of Sunnyvale requirements. **Kathryn Berry**, Senior Assistant City Attorney, said the City has more restrictive requirements, and this is pursuant to a new ordinance for gas stations allowing the sale of packaged goods. She said, notwithstanding what the ABC might require, that it would be up to the Commission whether to make an exception for this site. Comm. Sulser asked Mr. Cole if he had a chance to look at attachment E from the nearby residents. Mr. Cole said yes and that one of the Fair Oaks sites listed is more than a 1000 feet away. He said he only sees three locations within the 1000-foot radius.

Comm. McKenna asked why the applicant is seeking this license. Mr. Cole said that the applicant is seeking the license for the convenience for his customers who have requested that alcohol be sold, commenting that the amount of beer he would be allowed to sell would be restricted.

Ms. Ayres said she believes that there are already four establishments in this area that have retail off-site sales which are the Seven Eleven, Fiesta, Chavez

market, and the Liquor and Food. She said most of the establishments are within 200 feet of the proposed site and one is about 500 feet from the site.

Comm. Sulser asked Ms. Ayres what type of establishment the "Fiesta" is. Ms. Ayres said it is a liquor store with some food items.

Mr. Cole said he has been transferring liquor licenses for over 40 years and commented that the letters of protest appear to be one letter prepared that was circulated through the neighborhood for signatures. He said it could be that the competition does not want another store there. He said he does not think the ability to sell alcohol in this small store is going to affect anyone except those who want to purchase it.

Vice Chair Chang closed the public hearing.

Comm. Hungerford moved to grant the appeal which would result in the denial of the ability to sell beer and wine at this site. **Comm. McKenna** seconded the motion.

Comm. Hungerford said, as explained by staff and the code, that there are rules about how close together establishments can be that sell beer and wine. He explained the findings that the Commission must make to approve the Special Development Permit, as shown on page 4 of the report. The proposed project does not meet all of the findings so to approve this request additional findings must be made. He said he could not make the additional findings as he thinks this project would "adversely affect persons residing or working in surrounding areas" as there are already some problems in this area. He said he thinks there are enough beer and wine sales in this area as it is.

Comm. McKenna said she agrees with **Comm. Hungerford's** reasoning. She said she has been in this neighborhood and thinks the restaurants should be included when looking at this issue. She said it is important to hear from those who live in the neighborhood and thinks if she lived in this neighborhood she would be concerned about protecting the children in the neighborhood and the feeling of safety.

Comm. Klein said he would be supporting the motion. He said approximately a year ago when this ordinance was created one of the concerns was the concentration of retail establishments for alcohol sales in a location. He said with this project there are multiple establishments that sell alcohol and combined with the resident's views into consideration, the ongoing affects on the community, he cannot in good conscience support the request. He said he thinks the appeal makes sense.

Comm. Travis said he would be supporting the motion. He said there are already four locations nearby that provide retail sales of alcohol and, though he understands the applicant's desire to sell alcohol, he thinks the other locations provide adequate convenience to customers to purchase alcohol.

Comm. Sulser said he would be supporting the motion. He said that given what is already available at the nearby establishments that he thinks approving this application would result in one too many establishments selling alcohol. He said if there was not the existing concentration he would probably have supported the request.

Vice Chair Chang said he would be supporting the motion. He discussed the ordinance, the findings, and the concentration of existing retail alcohol sales establishments. He said considering the factors and the concerns of the nearby residents that he would be supporting the motion.

ACTION: Comm. Hungerford made a motion on 2008-0881 to grant the appeal and deny the Special Development Permit. Comm. McKenna seconded. Motion carried, 6-0, with Chair Rowe absent.

APPEAL OPTIONS: This action is final unless appealed to City Council no later than December 23, 2008.

ATTACHMENT TO APPEAL:

APPELLANT/APPLICANT: Mohan S. and Hardev K. Dhanota

ADDRESS: 698 North Fair Oaks Avenue

Applicants appeal from the denial by the Planning Commission at its December 8, 2008, meeting. The matter was item 2008-0881.

The Administrative Hearing Officer, having considered the project on September 24, 2008, approved the Special Development Permit. Planning Commission staff recommended approval.

At the Planning Commission meeting, the Commission reversed these considerations and findings and denied the Special Development Permit.

The Applicants assert:

1. The Planning Commission acted on inaccurate information – it was asserted at the meeting that other off-sale alcohol outlets were within about 500 feet and 700 feet. Actual measurement of these businesses indicates that these off-sale outlets are both over 2,500 feet from the applicants' business.
2. Two of the seven other businesses identified as being in close proximity to applicants' business sell alcohol on an on-sale basis only, meaning that these are restaurants which do not have the ability to sell to consumers for off-sale consumption.
3. None of the seven other businesses identified by the protesting neighbors provides the convenience to the consumer of being able to purchase beer and wine at the same location where the consumer buys gasoline.
4. The Alcoholic Beverage Commission had already indicated its approval of the license for the applicants' premises subject to conditions developed by the ABC.
5. It appears that at least one competitor (an existing off-sale business identified by the protesting neighbors) may have been instrumental in organizing opposition – not because of detriment to the neighborhood, but for protection of existing business and suppression of competition.
6. The information presented to the Planning Commission was not sufficient to overturn the findings and conclusions of the Administrative Hearing Officer and the Planning Commission staff.

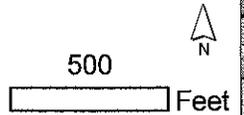
NEARBY SCHOOLS AND PARKS



Legend

- Subject Site
- Distance to Property Line

698 N Fair Oaks Ave
Special Development Permit



NEARBY PROPERTIES WITH OFF-SITE SALE OF ALCOHOL

ATTACHMENT H
Page 1 of 2

US HWY 101

Seven-Eleven
708 N Fair Oaks Ave
Distance to property line of subject site: 62 ft.

Fiesta Liquors
672 N Fair Oaks Ave
Directly adjacent to subject site

Save N Go Market
343 E Maude Ave
Distance to property line of subject site: 2,850 ft

Chavez Supermarket
666 N Fair Oaks Ave
Distance to property line of subject site: 152 ft

Quik Shop Market
395 N Fair Oaks Ave
Distance to property line of subject site: 2,905 ft

LEGEND

-  Subject Site
-  500 ft Radius from Property Line of Subject Site
-  1000 ft Radius from Property Line of Subject Site
-  Properties with Off-Site Sale of Alcohol

698 N Fair Oaks Ave
Special Development Permit

500 Feet



NEARBY PROPERTIES WITH ON-SITE SALE OF ALCOHOL

ATTACHMENT H
Page 2 of 2

US HWY 101

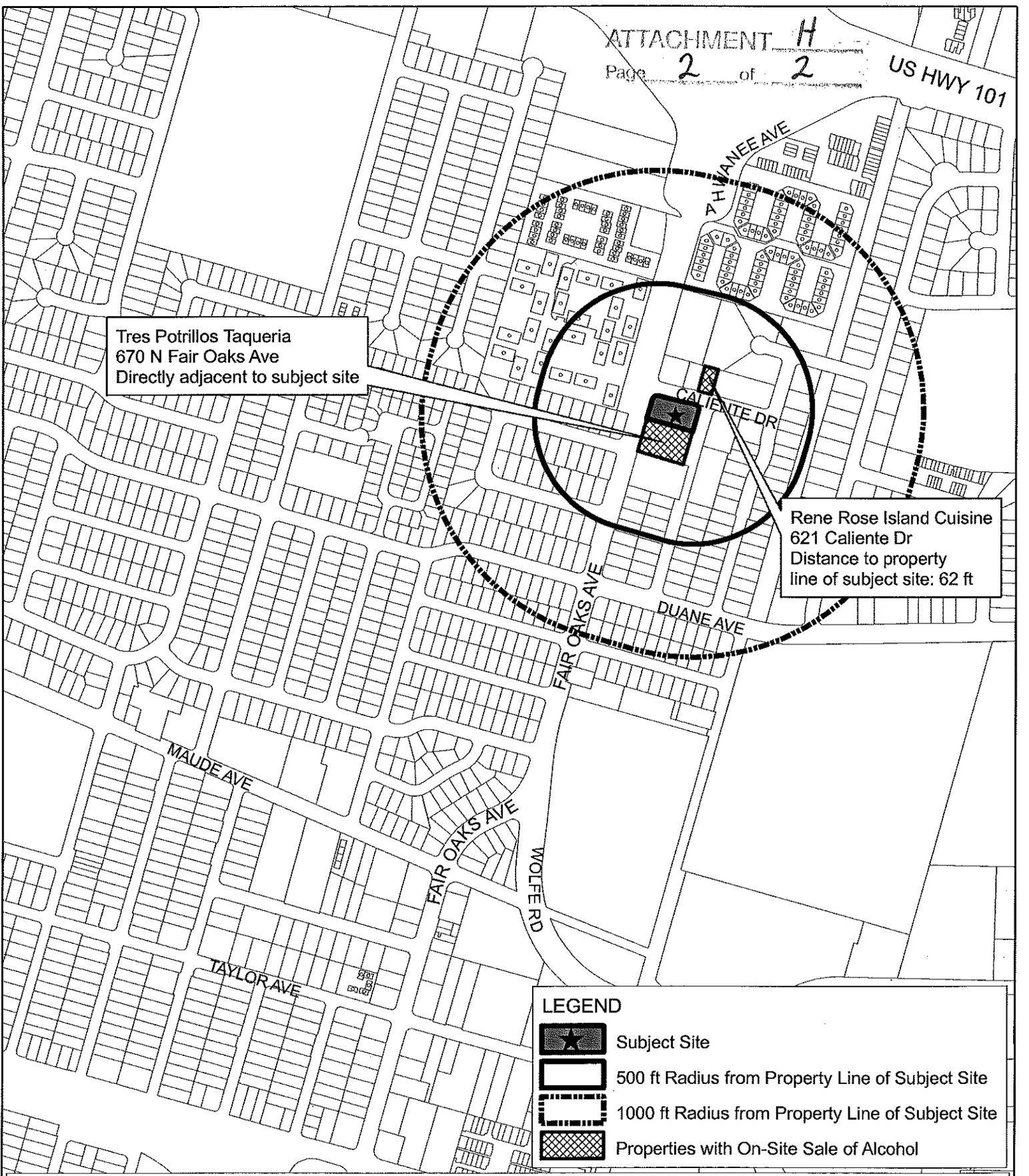
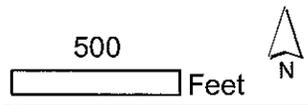
Tres Potrillos Taqueria
670 N Fair Oaks Ave
Directly adjacent to subject site

Rene Rose Island Cuisine
621 Caliente Dr
Distance to property
line of subject site: 62 ft

LEGEND

-  Subject Site
-  500 ft Radius from Property Line of Subject Site
-  1000 ft Radius from Property Line of Subject Site
-  Properties with On-Site Sale of Alcohol

698 N Fair Oaks Ave
Special Development Permit



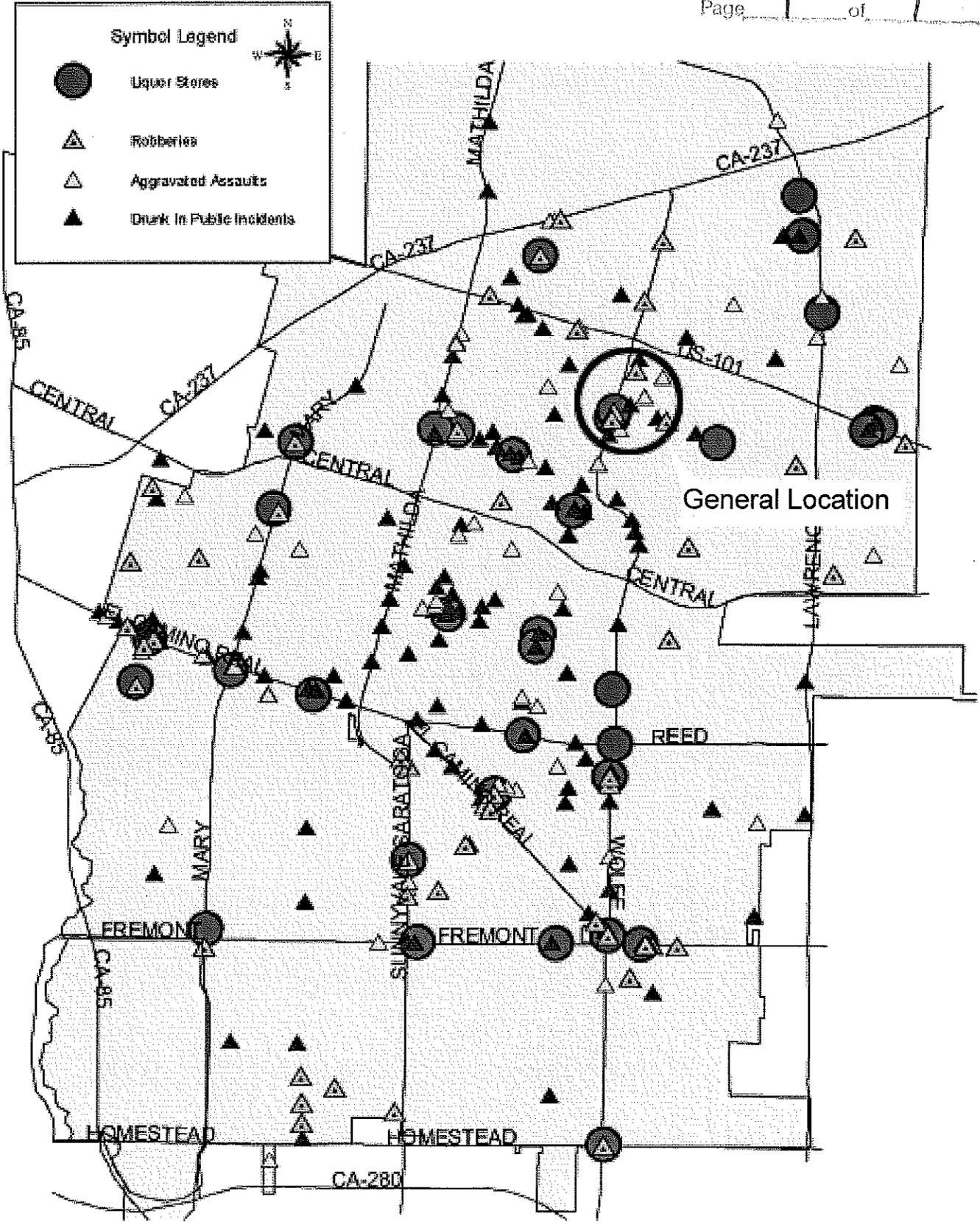


August 16, 2007

Sunnyvale Liquor Stores and Locations of Drunk in Public Calls, Robberies and Aggravated Assaults (7/1/06 – 6/31/07)

Liquor store (convenience store) locations provided by Community Development Dept.
Aggravated assaults are assaults with weapons or objects.

ATTACHMENT I
Page 1 of 1



Supplemental Information
Project 2008-0881
Planning Commission, 12-8-08

ATTACHMENT J
Page 1 of 3

RECEIVED

DEC - 4 2008

PLANNING DIVISION

R.W. Zukin Corporation

December 1, 2008

Ms. Laura Gurney, Project Planner
City of Sunnyvale
456 West Olive Ave.
Sunnyvale, CA 94086

Subject: File Number 2008-0881

Dear Ms. Gurney,

I am sending this letter in response to the public notice which has been received regarding the above-referenced file number.

As agent for the owners of the property located at the addresses listed below, I have been asked to advise you that the owners of this property are opposed to the granting of a beer and wine license at the existing gas station and convenience store located at 698 N. Fair Oaks Blvd., Sunnyvale, CA.

720 N. Fair Oaks Blvd.
639 Caliente Drive
642 Caliente Drive
656 Blythe Court
665 Blythe Court
674 Blythe Court

Thank you for the opportunity to address this matter.
If you have any questions please feel free to contact me.

Sincerely,



Rosemarie A. Minasi
Property Manager
Assistant Operations Manager
R. W. Zukin Corporation

4080 Campbell Avenue,
Menlo Park, CA 94025
(415)328-5050

Supplemental Information
Project 2008-0881
Planning Commission, 12-8-08

Sunnyvale Neighbors of Arbor Including La Linda (SNAIL)
Neighborhood Association
P.O. Box 62072
Sunnyvale, CA 94088-2072

December 4, 2008

Laura Gurney/Project Planner
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

RE: File Number 2008-0881
698 N. Fair Oaks Avenue (APN: 205-01-010)
Sale of Beer and Wine

Ms. Gurney:

In response to the Public Notice mailed to our Neighborhood Association, we would like to offer our input regarding the above noted application for the sale of beer and wine.

While our group does not vote on such issues we did discuss this matter at length tonight at our monthly general meeting. The overwhelming consensus was that we, as concerned citizens, do not favor another outlet for the sale alcoholic beverages. While current statutes allow such sales at gas stations, we feel it sends a mixed message (drinking and driving).

In the exact same area there is a liquor store, and across the street is a 7-11 store that sells beer and wine. Further, each of these businesses is within 200-400 feet of the applicant's gas station.

We do not wish to discourage business in our neighborhoods and wish these business owners success, but another business selling alcoholic beverages in that area makes no sense, and could cause more harm than good.

Please list the Sunnyvale Neighbors of Arbor Including La Linda (SNAIL) as opposed to the granting of this permit.

Sincerely,



Michael Rose
Chairperson

Noren Caliva - Re: File number 2008-0881

From: "Carol"
To: "Noren Caliva" <NCaliva@ci.sunnyvale.ca.us>
Date: 9/12/2008 5:13 PM
Subject: Re: File number 2008-0881

Hi Noren

Can you accept this email as my vote NOT to have 2208-0881 passed. No beer or wine to be sold at an existing gas station and convenience store. Applicant/owner - Valero/Mohan S and Hardev K Dhanota

Thank You
Carol Pagan

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

As a resident of Sunnyvale, I would like to express my concern over a possible allocation of alcoholic beverage permit, to Valero Gas Station, located at 698 Fair Oaks, Sunnyvale.

There are numerous businesses already selling alcoholic beverages around the close vicinity of the above mentioned location. I list some of them below:

1. Seven Eleven, 708 N. Fair Oaks Ave, Sunnyvale (approx. 200 ft)
2. Island Cuisine, 621 N. Rene Rose, Sunnyvale (approx. 200 ft)
3. Fiesta, 672 N. Fair Oaks, Sunnyvale (approx. 150 ft)
4. Tequiria, 670 N. Fair Oaks, Sunnyvale (approx. 100 ft)
5. Chavez, 666 N. Fair Oaks, Sunnyvale (approx. 200 ft)
6. Liquor and Food, 395 N. Fair Oaks Ave, Sunnyvale (approx. 500 ft)
7. Save N Go Liquor, 343 E. Maude Ave, Sunnyvale (approx. 700 ft)

As a humble resident of this neighborhood, I do not see any reason why another alcoholic beverage selling license needs to be issued to the Valero Gas Station. There is a considerable population of school going children and young adults in this thickly populated residential area, and more businesses like these are certainly not desirable.

I express my concern to you, with a hope that you will take the right decision, of not adding any more such businesses in this area.

With all respect,

Name: Francisco Chapin Signature: 

Address: 797 San Juan dr
Sunnyvale CA
94085

Phone: (408) [REDACTED] - [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

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I express my concern to you, with a hope that you will take the right decision, of not adding any more such businesses in this area.

With all respect,

Name: Jose Pimentel Signature: 

Address: Esq. N. Valero # 9

Phone: 

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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I express my concern to you, with a hope that you will take the right decision, of not adding any more such businesses in this area.

With all respect,

Name: Connie Buech Signature: Connie Buech

Address: 1025 Tanager Dr.
Sunnyvale

Phone: _____

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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I express my concern to you, with a hope that you will take the right decision, of not adding any more such businesses in this area.

With all respect,

Name: JORGE RAMIREZ

Signature: Jorge Ramirez

Address: 571-N-EDEN-AVE

SUNNYVALE

CA

Phone: _____

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

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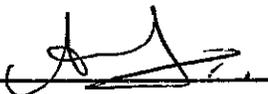
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I express my concern to you, with a hope that you will take the right decision, of not adding any more such businesses in this area.

With all respect,

Name: Aokul Patel

Signature: 

Address: 1086 BRADFORD DR
SUNNYVALE CA 94089

Phone: (408) 

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

As a resident of Sunnyvale, I would like to express my concern over a possible allocation of alcoholic beverage permit, to Valero Gas Station, located at 698 Fair Oaks, Sunnyvale.

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With all respect,

Name: Rocky Dornas

Signature: 

Address: 516 Fair Ave
SUNNYVALE
CA 94086

Phone: _____

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

As a resident of Sunnyvale, I would like to express my concern over a possible allocation of alcoholic beverage permit, to Valero Gas Station, located at 698 Fair Oaks, Sunnyvale.

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I express my concern to you, with a hope that you will take the right decision, of not adding any more such businesses in this area.

With all respect,

Name: Awen Delia

Signature: Awen Delia

Address: 678 Pharoah #14
Sunnyvale Calif
940850

Phone: [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

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I express my concern to you, with a hope that you will take the right decision, of not adding any more such businesses in this area.

With all respect,

Name: William Hernandez Signature: 

Address: 628 San Juan St #B
Sunnyvale CA 94086

Phone: (608) [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

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With all respect,

Name: Leonardo Gonzalez

Signature: Leonardo Gonzalez

Address: 749 San Juan #6

Phone: [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: MIKE BOLLEN Signature: Mike Bollen

Address: 613 ARCADIA TER #302

Phone: [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: JULIETA BONGATO Signature: J. Bongato

Address: 1002 CANDLEWOOD AVE.
SUNNYVALE, CA. 94089

Phone: 408 - [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

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With all respect,

Name: Roberto Rivers Signature: Roberto Rivers

Address: 756 Santa Paula
Sunnyvale

Phone: 408 [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

As a resident of Sunnyvale, I would like to express my concern over a possible allocation of alcoholic beverage permit, to Valero Gas Station, located at 698 Fair Oaks, Sunnyvale.

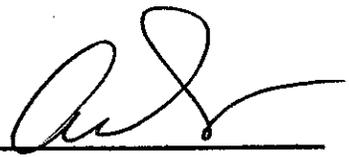
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I express my concern to you, with a hope that you will take the right decision, of not adding any more such businesses in this area.

With all respect,

Name: Richard Aron Signature: 

Address: 755 N. Fair Oaks #4

Phone: 408- [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

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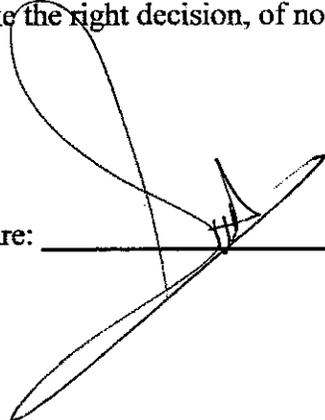
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I express my concern to you, with a hope that you will take the right decision, of not adding any more such businesses in this area.

With all respect,

Name: Salvador Avelal

Signature: 

Address: 797 San Martin Dr
Sunnyvale CA

Phone: 408 [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

As a resident of Sunnyvale, I would like to express my concern over a possible allocation of alcoholic beverage permit, to Valero Gas Station, located at 698 Fair Oaks, Sunnyvale.

There are numerous businesses already selling alcoholic beverages around the close vicinity of the above mentioned location. I list some of them below:

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6. Liquor and Food, 395 N. Fair Oaks Ave, Sunnyvale (approx. 500 ft)
7. Save N Go Liquor, 343 E. Maude Ave, Sunnyvale (approx. 700 ft)

As a humble resident of this neighborhood, I do not see any reason why another alcoholic beverage selling license needs to be issued to the Valero Gas Station. There is a considerable population of school going children and young adults in this thickly populated residential area, and more businesses like these are certainly not desirable.

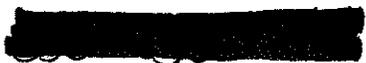
I express my concern to you, with a hope that you will take the right decision, of not adding any more such businesses in this area.

With all respect,

Name: John Rodgers

Signature: 

Address: 509. N. fair oaks

Phone: 

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: CORINNE E BROWN Signature: *Corinne E Brown*

Address: 225 LONETA #4
SUNNYVALE, CA

Phone: N/A

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: Dr Julius Castro Signature: Dr Julius Castro

Address: 57757 - San Juan
Drive Sunnyvale
Cal - 94085

Phone: (408) [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: Wally Escobar

Signature: 

Address: 736 San Jule
ct Sunnyvale
94085

Phone: 408 [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

ATTACHMENT K
Page 20 of 38

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With all respect,

Name: Holly L. Harter

Signature: 

Address: 600 E. Weddell Dr. #150
Sunnyvale, CA 94089

Phone: 408-

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

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With all respect,

Name: Carrie McCartney

Signature: Carrie McCartney

Address: 1000 E. Weddell Dr #41
Sunnyvale, CA 94089

Phone: (408) [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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I express my concern to you, with a hope that you will take the right decision, of not adding any more such businesses in this area.

With all respect,

Name: Marck O'delia Signature: Marck O'delia

Address: 673 Johanna ave

#1

Sunnyvale CA 94085

Phone: _____

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: Toby Crawford Signature: Toby Crawford

Address: 572 Balsam Ave
Sunnyvale CA 94085

Phone: 408- [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: Janet Ayers Signature: Janet Ayers

Address: 400 E Weddell #110
Sunnyvale Ca

Phone: 408 [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

ATTACHMENT K
Page 25 of 38

To the City of Sunnyvale Planning Development Department,

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With all respect,

Name: BERNARD THOMPSON Signature: [Handwritten Signature]

Address: 672 - BLISS AVE
SUNNYVALE CA
94086

Phone: 408 - [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: DANIEL LUEVANO

Signature: Daniel Luevano

Address: 674 BLUJHE Ct. #43
SUNNYVALE, CA 94085

Phone: 408 - [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: EVA ARULO

Signature: 

Address: 676 Johanna Ave.
Sunnyvale Ca 94085

Phone: (408) [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: SERGEY LEONGARDT Signature: SLeong

Address: 604 ARCADIA TER#101
SUNNYVALE, CA 94085

Phone: 408- [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: Alvaro Signature: Alvaro

Address: 642 Coliente
Dr. Ant 28

Phone: (408) [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: Aaron Cetina

Signature: [Handwritten Signature]

Address: 701 San Juan Apt 5

Phone: 408- [Redacted]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: Rafael Cordoba Signature: Rafael C

Address: 580 Awhame Ave
Sunnyvale CA 94085

Phone: _____

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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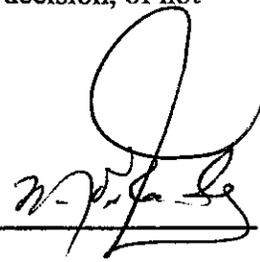
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With all respect,

Name: Tony Valado

Signature: 

Address: BALSAM
SUNNYVALE CA

Phone: (408) [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: Pedro Cipres

Signature: Pedro Cipres

Address: 642 Caliente DR
Sunnyvale CA
94085

Phone: 408 [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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As a humble resident of this neighborhood, I do not see any reason why another alcoholic beverage selling license needs to be issued to the Valero Gas Station. There is a considerable population of school going children and young adults in this thickly populated residential area, and more businesses like these are certainly not desirable.

I express my concern to you, with a hope that you will take the right decision, of not adding any more such businesses in this area.

With all respect,

Name: Andres Matos Signature: Andres Matos

Address: 666 Bernab Av.
SUNNYVALE
94086
Phone: (408) [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

To the City of Sunnyvale Planning Development Department,

As a resident of Sunnyvale, I would like to express my concern over a possible allocation of alcoholic beverage permit, to Valero Gas Station, located at 698 Fair Oaks, Sunnyvale.

There are numerous businesses already selling alcoholic beverages around the close vicinity of the above mentioned location. I list some of them below:

1. Seven Eleven, 708 N. Fair Oaks Ave, Sunnyvale (approx. 200 ft)
2. Island Cuisine, 621 N. Rene Rose, Sunnyvale (approx. 200 ft)
3. Fiesta, 672 N. Fair Oaks, Sunnyvale (approx. 150 ft)
4. Tequiria, 670 N. Fair Oaks, Sunnyvale (approx. 100 ft)
5. Chavez, 666 N. Fair Oaks, Sunnyvale (approx. 200 ft)
6. Liquor and Food, 395 N. Fair Oaks Ave, Sunnyvale (approx. 500 ft)
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With all respect,

Name: Mouly Bykne

Signature: 

Address: 824 SAN JUAN DR
SUNNYVALE CA

Phone: (408) [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: Benjamin Robles Signature: Benjamin Robles

Address: 883 San Juan Dr
Sunnyvale CA 94085

Phone: (408) [REDACTED]

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: IVAN SINCEK

Signature: 

Address: 600 E. WEDDELL

81

SUNNYVALE, CA 94089

Phone: _____

Attn: Project Planner
Sunnyvale, CA
9/19/2008

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With all respect,

Name: Consuelo Castro Signature: Consuelo Castro

Address: 755 East Diane Ave, APT. F
Sunnyvale, CA 94085

Phone: (408) [REDACTED]