



**CITY OF SUNNYVALE
REPORT
Planning Commission**

February 23, 2009

SUBJECT: **2008-0994 - Ben P. Aibuedefe** [Appellant] **B&A Enterprises** [Owner]: Application for a property located at **801 N. Fair Oaks Avenue** (at E. Ahwanee Ave. near Hwy. 101) in a C-1/PD (Neighborhood Business/ Planned Development) Zoning District.

Motion Appeal by the applicant of a decision by the Director of Community Development denying a Miscellaneous Plan Permit for construction of a wood trash enclosure in lieu of a masonry enclosure at an existing ConocoPhillips automobile service station.

REPORT IN BRIEF

Existing Site Conditions Automobile service station

Surrounding Land Uses

North Single-family residential (mobile home park)

South Multi-family residential

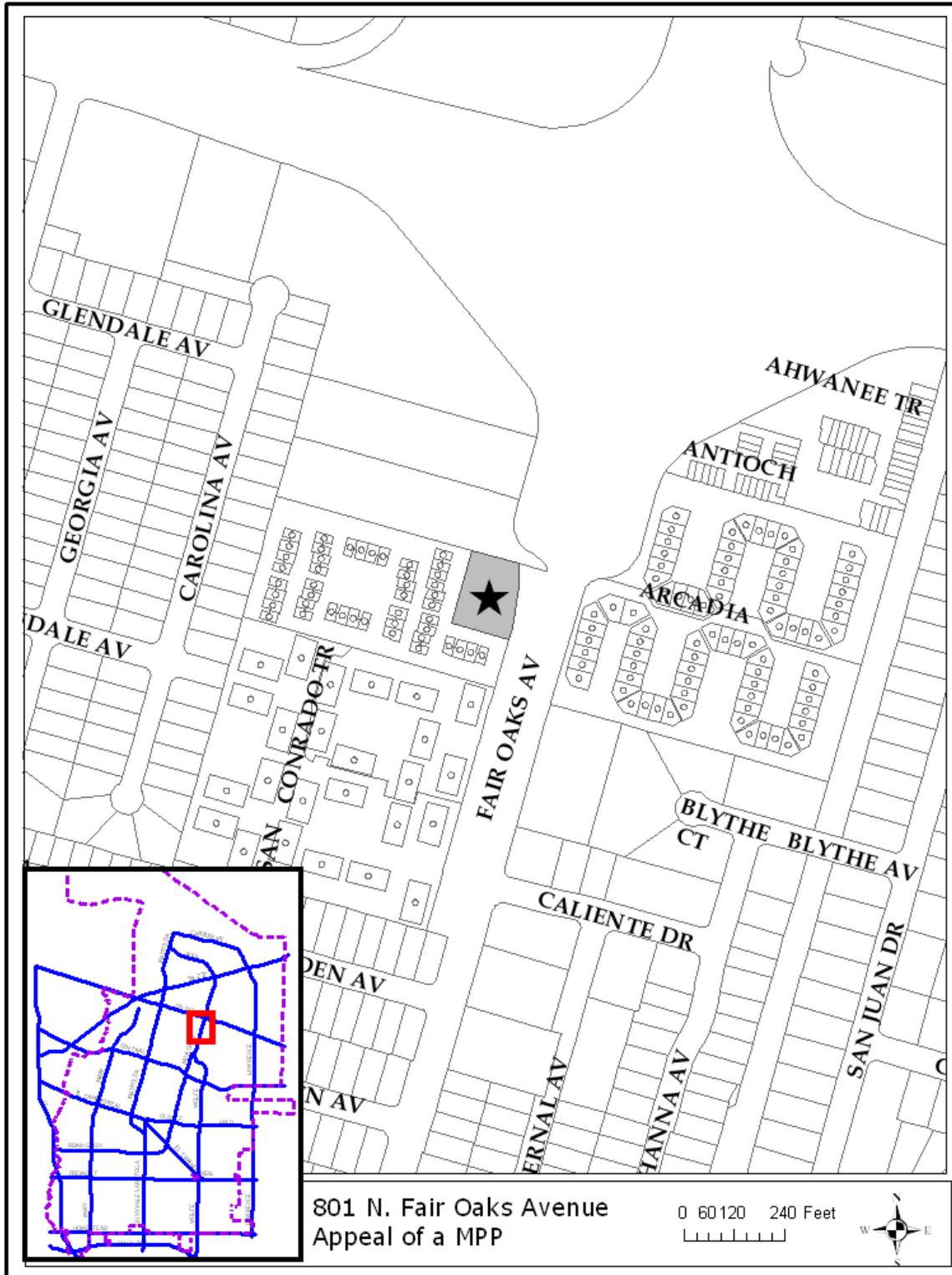
East Multi-family residential (across Fair Oaks Avenue)

West Multi-family residential

Issues Enclosure materials and design

Environmental Status A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Deny the appeal and uphold the decision of the Director of Community development to deny the Miscellaneous Plan Permit for a wood trash enclosure.



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Commercial Neighborhood Shopping	Same	Commercial Neighborhood Shopping
Zoning District	C-1/PD	Same	C-1/PD
Lot Size (s.f.)	25,160	Same	No min.
Gross Floor Area (s.f.)	2,285	Same	No max.
Lot Coverage (%)	9.1%	Same	35% max.
Floor Area Ratio (FAR)	9.1%	Same	No max.

ANALYSIS**Description of Proposed Project**

On September 9, 2008, the applicant submitted a Miscellaneous Plan Permit (MPP) application for site and architectural approval for a new trash enclosure. The proposed enclosure would be located in the southwest corner of the site facing Fair Oaks Avenue, would be constructed of redwood material, and would have dimensions of 8 feet by 16 feet (see Attachment C – Site Plans and Elevations). The design of the proposed enclosure is not in compliance with SMC 19.38.030(c), which requires the use of masonry materials. Staff and the applicant had extended conversations over several months regarding the Code requirements and design options, after which the applicant opted to continue with the originally proposed design. As a result, the MPP application was denied by staff on December 11, 2008. The applicant is appealing this denial. Note that construction of a trash enclosure at this site is required as a condition of previously-approved MPP #2008-0067, which allowed grocery sales at the station. Additional information on the previous permit and conditions is included in the Background section below.

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
2008-0478	Miscellaneous Plan permit to allow an auto wholesale office at an existing service station	Staff Review / Approved	04/30/2008
2008-0067	Miscellaneous Plan permit to allow grocery sales at an existing service station	Staff Review / Approved	07/31/2008
1999-0268	Special Development Permit to allow expansion of propane sales use	Administrative Hearing / Approved	03/24/1999
1992-0319	Special Development Permit to allow a propane sales tank	Administrative Hearing / Approved	08/05/1992
1987-0103	Special Development Permit to allow 24-hour operation	Planning Commission / Denied	11/09/1987
1983-0151	Special Development Permit to allow on-site parking of a tow vehicle	Planning Commission / Approved	12/13/1983
1968-0314	Special Development Permit to allow construction of an automobile service station	Planning Commission / Approved	04/15/1968

In October of 2007, the City Council considered a Study Issue and introduced an ordinance to allow the sale of groceries at automobile service stations through the Miscellaneous Plan Permit process. As part of this study, the Council noted that many service station sites in the City have a long history of Code violations. The Council directed staff to pursue aggressive Code enforcement for those stations applying for grocery sales to ensure full compliance with the Sunnyvale Municipal Code. One of the items identified by staff on many sites was the lack of a solid waste and recycling enclosure. For all service station properties applying for grocery sales and not having an existing enclosure, staff added a condition of approval requiring construction of a conforming enclosure.

On January 23, 2008, the applicant submitted an MPP application to allow grocery sales at the subject site (#2008-0067). Unpermitted grocery sales were already being conducted at the site, as with many other stations in the City. Staff identified 20 Code violations and deficiencies on the subject site,

including the lack of a solid waste or recycling enclosure. The grocery sales MPP was approved on May 1, 2008, with a condition requiring construction of an enclosure within 60 days (by July 1, 2008). After working further with the applicant regarding his questions about the enclosure and other requirements, staff agreed to issue a revised approval on July 31, 2008, extending the timeline for enclosure construction until October 1, 2008. The approval letters including conditions of approval and Code compliance issues for MPP #2008-0067 are provided in Attachment F. The applicant did not appeal the decision or conditions of MPP #2008-0067, therefore the decision on this application became final on August 16, 2008, after expiration of the 15-day appeal period.

The subject application (MPP #2008-0994) was submitted on September 9, 2008, for site and architectural review of the required enclosure. After reviewing the proposal, staff found that the location of the enclosure could be approved with minor modifications, but the proposed material could not be approved as it is not compliant with Code. Additional information is provided below in the "Design and Location" section. The applicant stated he was unable to afford the design required by Code and therefore would not modify his proposal to comply. As a result, staff denied the Miscellaneous Plan Permit (see Attachment D).

Environmental Review

A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 3 Categorical Exemptions include new construction or conversion of small structures such as equipment enclosures and other accessory structures.

Miscellaneous Plan Permit

Design and Location: As proposed by the applicant, the enclosure would be constructed of redwood material (see Attachment C). The applicant also offered an alternative proposal for chain link material with wood slats. SMC section 19.38.030(c) states that all properties in commercial zoning districts must have a solid waste and recycling enclosure constructed of masonry materials with steel doors. Chain link enclosures may be permitted in industrial districts, but not in commercial or residential districts. Code requirements are not subject to discretionary review. However, staff and the Planning Commission do have discretion to review the exterior treatment of a masonry enclosure (pattern and color) to ensure compatibility with the main structure, as well as to review enclosure location and size.

The proposed enclosure would be located in the southwest corner of the site facing Fair Oaks Avenue. The City's Solid Waste Division reviewed the plans and indicated the enclosure should be angled approximately 45 degrees to face

toward the northeast corner of the site. This orientation would allow easier service by collection vehicles. The Solid Waste Division also noted that the waste generation pattern on this site suggests a minimum of two standard-sized bins are needed. The proposed dimensions of the enclosure (8 feet by 16 feet) would be insufficient to accommodate two standard bins. If bins are stored end-to-end as in the applicant's proposal, the interior dimensions of the enclosure would need to be at least 6 feet by 16.5 feet, so a slight increase in size would be required. Alternatively, bins could be stored side-by-side rather than end-to-end to maximize efficiency, in which case the minimum enclosure dimensions would be 9 feet by 10 feet. If the Planning Commission is able to make the findings to approve the Miscellaneous Plan Permit, staff is recommending the conditions of approval in Attachment B, including modifying the size and orientation of the enclosure and requiring the exterior treatment of the enclosure to match the existing building.

Applicant's Appeal: The applicant raises several issues in his appeal letters. These include:

1. The applicant states that the business has been operating on the site for over 20 years with no enclosure and therefore the lack of an enclosure should be "grandfathered."
2. The applicant states that implementation of the grocery sales ordinance has caused him to lose income that was generated by unpermitted leasing of the site for storage of moving vans.
3. The applicant states that he does not have the funds to construct a masonry enclosure and would like to use an alternative material such as wood or chain link. He notes that there are many chain link enclosures existing on other sites in the City.

The applicant's appeal letters and supporting documents are located in Attachment E.

Staff Comment on Appeal: Staff has addressed the key issues raised by the applicant below. Staff has also provided additional comment regarding the options available to the Planning Commission for this appeal.

1. Staff has determined that the lack of a trash enclosure on this site is not legal non-conforming or "grandfathered." In 1975, the Code incorporated a provision requiring all existing uses without trash enclosures to provide enclosures by October of 1976. Under this Code requirement, the station had an obligation to construct an enclosure. The applicant is correct that this violation has been existing on the site for many years without enforcement. This was one of the key concerns of the City Council in allowing grocery sales at service stations. The Council directed staff to pursue Code enforcement for all stations applying for grocery sales.

2. The applicant previously rented space on his site to a moving company for storage of their vans. This was a Code violation which was remedied through enforcement actions related to the previous MPP for grocery sales (#2008-0067). The issue of moving van storage is unrelated to the current appeal of the trash enclosure.
3. The Sunnyvale Municipal Code specifies that solid waste and recycling enclosures in commercial zoning districts must be constructed of masonry materials with steel doors. There is no provision to allow approval of alternative materials except through the Variance process (see below for additional information). Staff concurs that there are other enclosures in the City which use chain link materials. Some of these are located in industrial zoning districts, where chain link is permitted. Others were constructed prior to the current Code requirement for masonry enclosures, which was adopted in 1986.

Staff notes that granting an exception from SMC 19.38.030(c) is not an available option as part of this appeal, as Code requirements cannot be waived except through approval of a Variance at a public hearing. During the MPP process, staff advised the applicant of his right to apply for a Variance from the construction material standards in SMC 19.38.030(c). However, staff also advised the applicant that approval of such a Variance would be unlikely, as it does not appear the required findings could be made. There do not appear to be any constraints related to the property or use that prevent the applicant from complying with Code. Instead, the applicant's reason for requesting a Variance would be financial in nature. Staff also discussed with the applicant the option of appealing the decision to deny an MPP for the design and location of the trash enclosure. SMC section 19.98.070(b) states that "any person aggrieved...by the decision of the director of community development...may file an appeal after the date of such decision. The appeal shall be in writing stating the ground therefor." Although an appellant must state the grounds for an appeal, the Code does not specify any particular grounds as valid or invalid. Staff advised the applicant of this right to appeal, noting that an MPP appeal would not give him the ability to use an alternative material, since neither the Planning Commission nor staff can grant Code exceptions without a Variance. After considering the options, the applicant decided to appeal the MPP decision.

Although granting an exception from SMC 19.38.030(c) is not an available option as part of this appeal, the Planning Commission does have an option to approve a Miscellaneous Plan Permit for a trash enclosure with a revised design which meets Code requirements. Conditions could be added to such an approval related to discretionary items such as exterior color treatment, size, and location. As part of an MPP approval, the Planning Commission also has an option to grant the applicant additional time to complete construction of an enclosure. The available options are provided in the Alternatives section below.

Compliance with Development Standards/Guidelines: As proposed, the trash enclosure would not be in compliance with SMC 19.38.030(c). The applicant proposes use of a redwood construction material or a chain link material with wood slats. SMC 19.38.030(c) requires all solid waste enclosures in commercial districts to be constructed with solid masonry materials and steel doors. The applicant is currently selling grocery items under approved MPP #2008-0067 but has not constructed an enclosure as required under the conditions of approval of that permit; therefore the applicant is not in compliance with the terms of his approved MPP.

Expected Impact on the Surroundings: The proposed solid waste and recycling enclosure would be visible from the public street as well as from adjacent residential properties. The required materials in SMC 19.38.030(c) are intended to ensure a high-quality appearance which is compatible with the main structure and fully screens trash and debris from public view. The materials proposed by the applicant are not compatible with the main structure and would not present a high-quality commercial appearance, therefore the project has the potential to have a negative visual impact on the surrounding area. As conditioned in Attachment B, the enclosure would comply with SMC 19.38.030(c) and would not have a detrimental visual impact on the area.

Fiscal Impact

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

Public Contact

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 • 262 notices mailed to property owners and residents adjacent to the project site 	<ul style="list-style-type: none"> • Posted on the City of Sunnyvale's Web site • 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 Web site

Staff has not received any contacts from the public related to this application.

Conclusion

Findings and General Plan Goals: Staff is recommending denial of the project because the Findings (Attachment A) were not made. Staff concludes that the Planning Commission does not have the option to grant the appeal and approve the Miscellaneous Plan Permit with the applicant's proposed design, as such action would not be compliant with SMC 19.38.030(c). A Variance would be required. Instead, the Planning Commission has an option to approve the Miscellaneous Plan Permit for a modified project using the materials required by Code.

Conditions of Approval: If the Planning Commission is able to make the required findings to grant the appeal and approve the Miscellaneous Plan Permit with a modified project design meeting Code requirements, staff is recommending the Conditions of Approval in Attachment B.

Alternatives

1. Deny the appeal and uphold the decision of the Director of Community Development to deny the Miscellaneous Plan Permit.
2. Grant the appeal and approve the Miscellaneous Plan Permit with the Conditions in Attachment B, while confirming that a modified project with masonry walls and a steel door is required by Code.
3. Grant the appeal and approve the Miscellaneous Plan Permit with modified conditions, while confirming that a modified project with masonry walls and a steel door is required by Code.

Recommendation

Alternative 1

Prepared by:

Mariya Hodge
Project Planner

Reviewed by:

Trudi Ryan
Planning Officer

Attachments:

- A. Recommended Findings
- B. Standard Development Requirements and Recommended Conditions of Approval
- C. Site Plans and Elevations
- D. Denial Letter
- E. Applicant's Appeal Letters
- F. Approval Letters for Previous MPP #2008-0067

Recommended Findings – Miscellaneous Plan Permit

Goals and Policies that relate to this project are:

Solid Waste Sub-Element – *Goal 3.2A. Ensure that all municipal solid waste generated within the City is collected and transported in a manner that protects public health and safety.*

Land Use and Transportation Element – *Policy N.1.4. Preserve and enhance the high quality character of residential neighborhoods.*

Land Use and Transportation Element – *Policy N.1.4. Promote an attractive and functional commercial environment.*

1. The permit will attain the objectives and purposes of the General Plan of the City of Sunnyvale. *[Finding not made]*

The proposed trash enclosure would confine recycling and solid waste on the site to a single location. This would provide more attractive and sanitary conditions on the site and would allow easier pick-up of materials. However, the proposed design of the enclosure does not comply with Code requirements and has the potential for a negative visual impact on surrounding residential properties and the streetscape. In addition, the proposed enclosure dimensions would not be sufficient to accommodate the necessary bins and the proposed orientation of the enclosure would not facilitate efficient collection by service vehicles. A modified proposal using the materials required by Code, combined with conditions of approval to modify the enclosure's dimensions and orientation, would be compatible with the site and surrounding environment and avoiding negative impacts. With a modification to the project meeting Code requirements and with the conditions in Attachment B, this finding could be made.

2. The permit 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 not made]*

The proposed design of the enclosure does not comply with Code requirements. The project proposes use of materials which are not compatible with the existing building on the site and are not of the high-quality character required by Code for commercial zoning districts. As a result, the proposal has the potential for a negative visual impact on surrounding residential properties and the streetscape. A modified

proposal using the materials required by Code would be compatible with the site and surrounding environment, thereby avoiding negative impacts. With a modification to the project meeting Code requirements and with the conditions in Attachment B, this finding could be made.

**Recommended Conditions of Approval (discretionary) –
Miscellaneous Plan Permit**

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, some of which are outlined on Page 2 below, 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 and approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. The 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 shall be subject to review and approval at a public hearing.
- B. The Conditions of Approval shall be reproduced on a page of the plans submitted for a Building permit for this project.

2. RECYCLING AND SOLID WASTE

- A. The plans for the solid waste and recycling enclosure shall be revised as follows:
 1. The masonry style selected for the enclosure walls shall be compatible with the appearance of the main structure on the site. The enclosure walls and door shall be painted to match the main structure.
 2. Enclosure dimensions shall be sufficient to accommodate two standard-sized collection bins. If the enclosure is designed for bins to be stored end-to-end, the minimum interior dimensions would be 6 feet by 16.5 feet. If the enclosure is designed for bins to be stored side-by-side, the minimum interior dimensions would be 9 feet by 10 feet. Consult the Solid Waste Division for specific sizing requirements prior to applying for Building permits.
 3. Wheel stops shall be installed a minimum of 8 to 12 inches from the interior walls of the enclosure. Wheel stops may consist of concrete curbs, metal, or wood.
 4. The enclosure shall be angled approximately 45 degrees from its proposed location (facing out from the southwest corner of the site) to facilitate access by collection vehicles.
 5. The area in front of the enclosure shall be striped for “no parking” to prevent vehicles from blocking access to the enclosure.

**Standard Development Requirements (non-discretionary) –
Miscellaneous Plan Permit**

Below is a list of some of the City's standard requirements which are applicable to this project. Other City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations also apply and must be complied with in full.

1. OBTAIN OTHER PERMITS

- A. Obtain Building Permits for construction and demolition activities as required.

2. RECYCLING AND SOLID WASTE

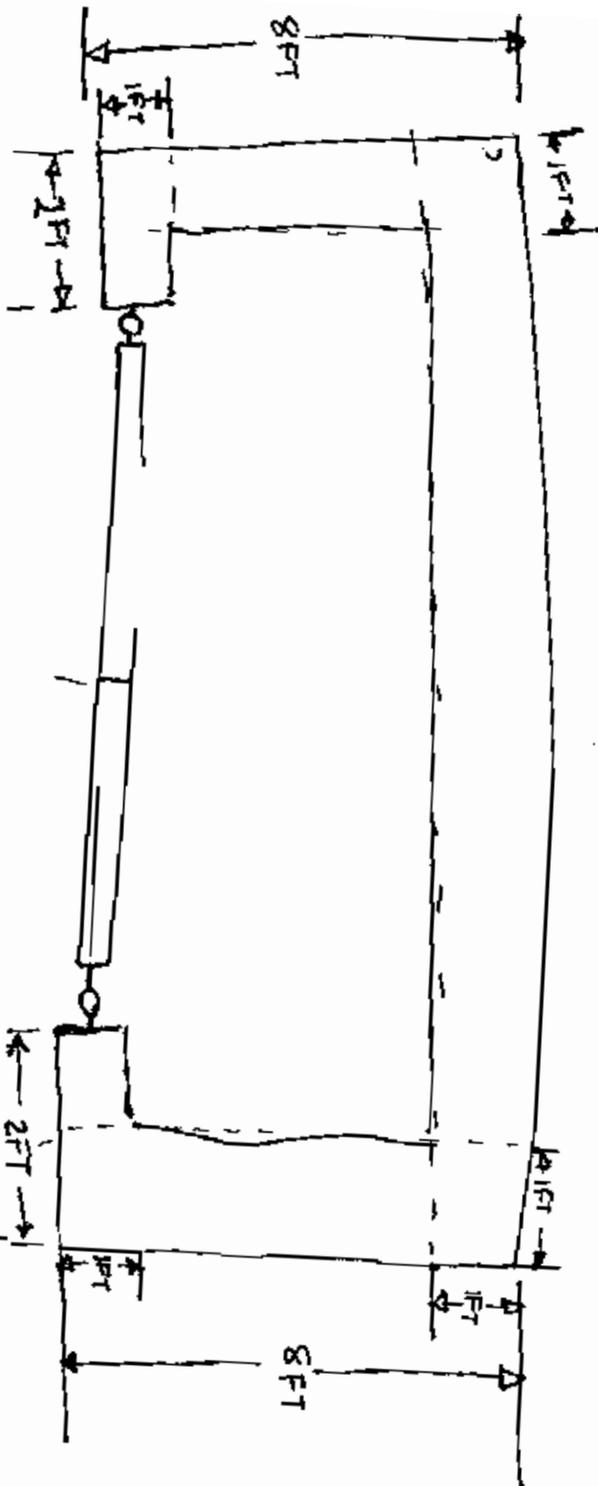
- A. The material for the enclosure walls shall be solid masonry as required by SMC section 19.38.030(c).
- B. The material for the enclosure door shall be steel as required by SMC section 19.38.030(c).
- C. All exterior recycling and solid waste shall be confined to approved receptacles. Loose debris shall not be stored on the site.
- D. Recycling and solid waste receptacles shall be stored within the approved enclosure with their lids closed, and enclosure doors shall remain closed when not in use.

TOP VIEW

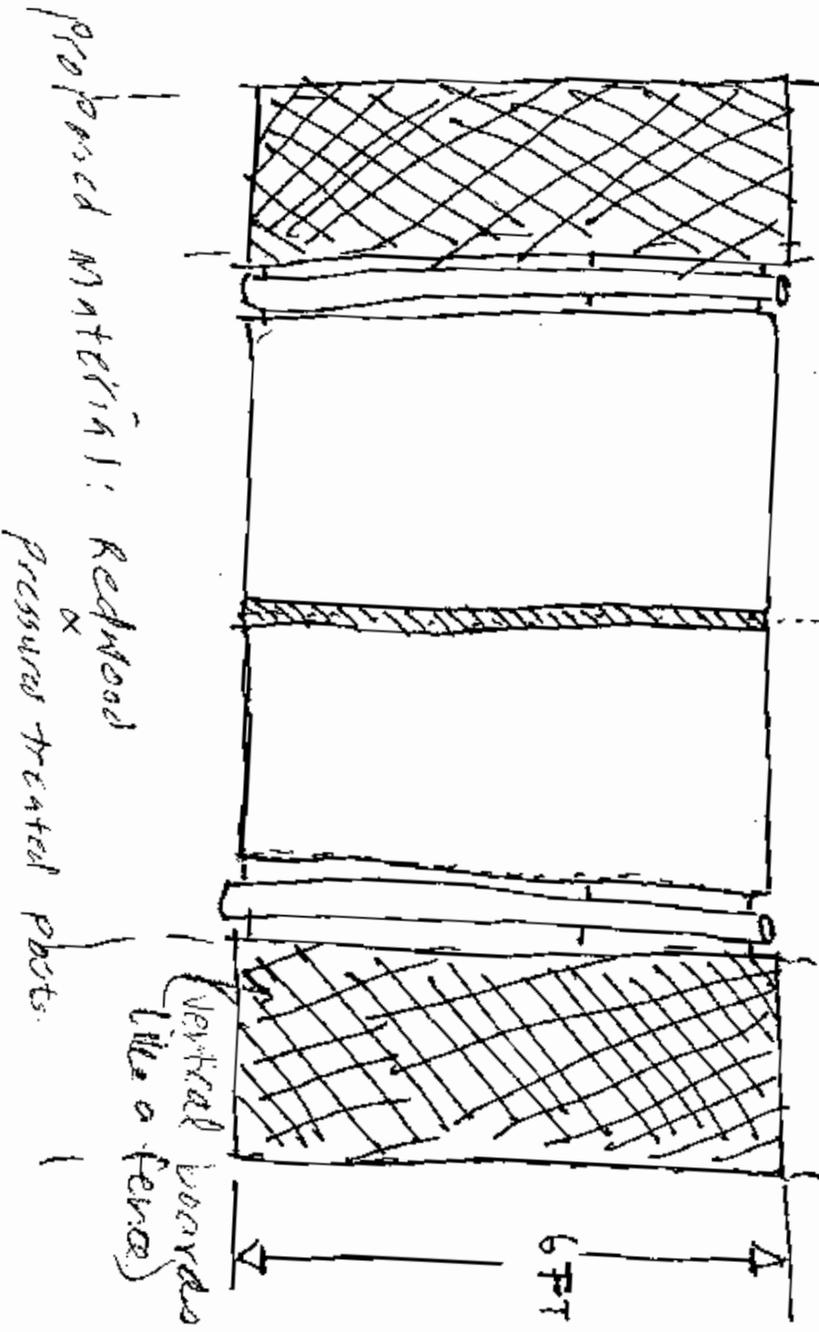
16 FT

ATTACHMENT C

Page 2 of 2



FRONT VIEW



TRASH ENCLOSURE



December 11, 2008

Sent via e-mail to: benp_a@yahoo.com

Sent via U.S. Mail to:

Ben Aibuedcfe
3038 Fairfax Avenue
San Jose, CA 94148

Subject: Miscellaneous Plan Permit – 801 N. Fair Oaks Ave., Sunnyvale, CA
File No.: 2008-0994

Dear Mr. Aibuedefe:

The Department of Community Development has reviewed your application for a Miscellaneous Plan Permit for a property located at 801 N. Fair Oaks Avenue to allow:

- Construction of a new trash enclosure along the south property line;
- Construction of a new storage enclosure being the building.

The Miscellaneous Plan Permit application has been **denied**. Please see below for additional information.

Staff had previously indicated that the proposal for a wooden storage enclosure at the rear of the building could be approved, but would need to be equipped with fire sprinklers due to State Fire Code requirements. Alternatively, you could modify your proposal to relocate the enclosure at least 5 feet from the building to avoid a requirement for sprinkler installation. On December 8th, we spoke about this issue at the One Stop Permit Center and you requested the storage enclosure be removed from the scope of the permit to allow you more time to consider its location. As a result, this portion of the application has been withdrawn. You may reapply for a storage enclosure at a later date if you wish. In the meantime, please note that you are still bound by the conditions of approval of your previous Miscellaneous Plan Permit for grocery sales (#2008-0067) which prohibit unenclosed outdoor storage of materials on the site.

The remaining item in the scope of the application is construction of a trash enclosure as required by the conditions of approval of MPP #2008-0067. Your proposal to construct a trash enclosure out of wood materials cannot be approved by Planning. Sunnyvale Municipal Code section 19.38.030(c) states that all commercial sites must provide a trash enclosure constructed of solid masonry materials with a steel door. Alternative materials are not permitted by Code. You have stated that you are not able to use masonry materials due to financial concerns, and therefore are not able to modify your proposal to use

ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707

TDD (408) 730-7501

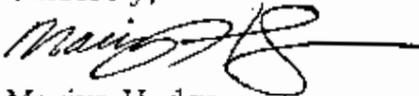
Mr. Ben Aibuedefe
December 11, 2008
Page 2 of 2

the materials required by Code at this time. As a result, staff cannot approve the proposal. The Miscellaneous Plan Permit application has been denied. Please note that your approved grocery sales permit (MPP #2008-0067) required construction of a trash enclosure no later than October 1, 2008, therefore you are currently not in compliance with this condition of approval.

If you are in disagreement with staff's decision to deny the Miscellaneous Plan Permit, you may appeal the decision within fifteen (15) calendar days of the date of the date of this notice (by 12/26/08). An appeal filing must be submitted in person at the One Stop Permit Center during business hours and must include a completed and signed appeal form (blank form attached), a written letter of appeal stating the reasons for disagreement with staff's decision, and a \$117 filing fee.

If you have any questions regarding this letter, please contact me at (408) 730-7659. Thank you for your cooperation.

Sincerely,



Mariya Hodge
Associate Planner

Enclosure: Appeal form

December 17, 2008

B & A Enterprises
DBA Bayshore 76
801 N. Fair Oaks Ave.
Sunnyvale, CA 94085
Ph: 408-732-8900

City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA. 94088

Ref: file# 2008-0994

TO WHOM IT MAY CONCERN

Dear Sir or Madam:

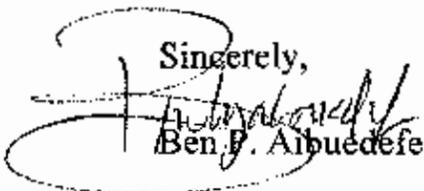
I write to appeal your planning department denial of my application to construct a trash enclosure of a chain links with wood insert as seen in many businesses/commercial sites similar to mine.

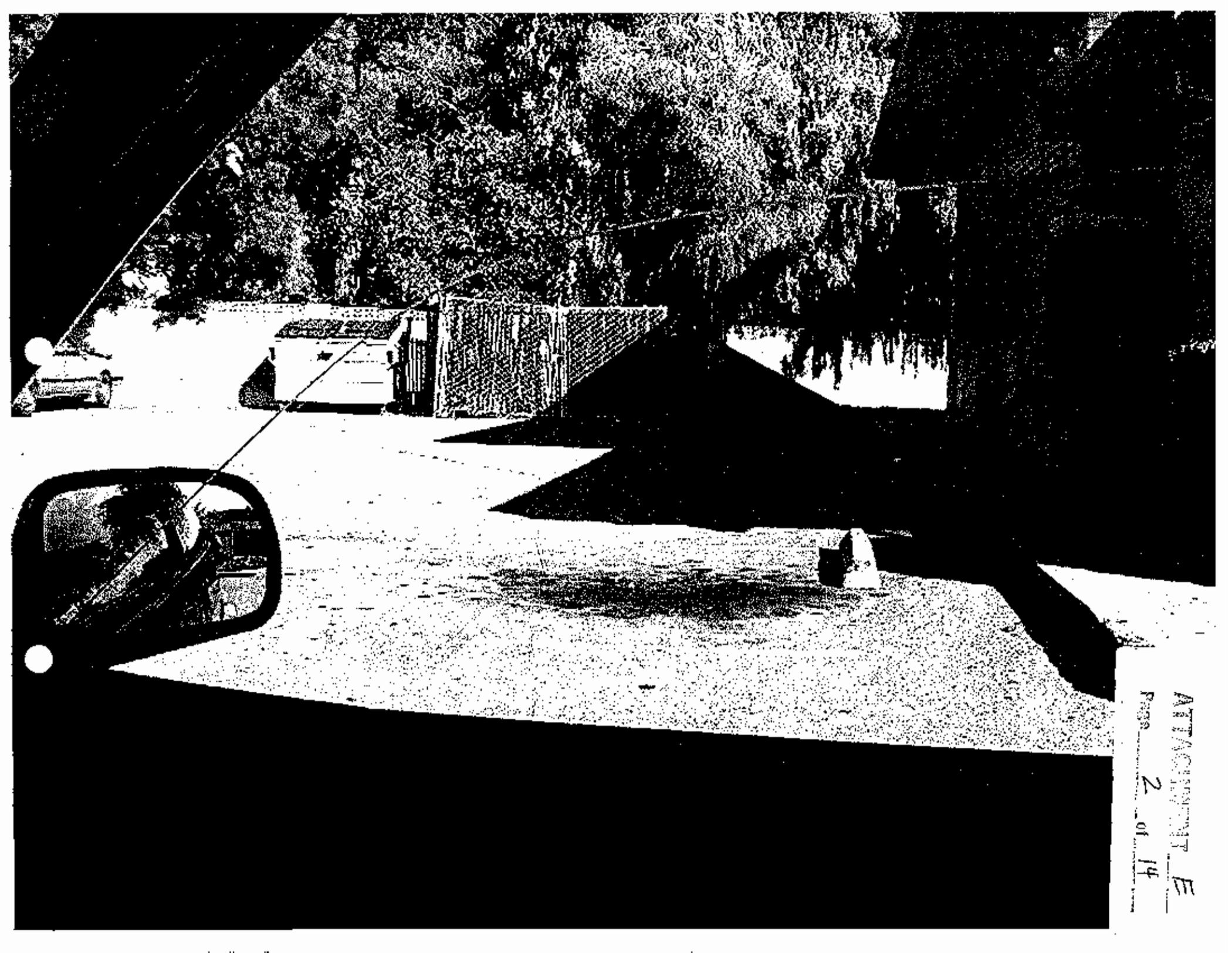
This business has been here for over twenty years and trash bins in same location without enclosure, I only took ownership of the real estate January 2008. I do not question the City requirement to have a trash enclosure, however, I do feel it's unfair to insist on constructing enclosure of expensive material when there are several businesses within the City that have enclosure of the same material I am proposing.

I do hope you will give me a chance to appear before your zoning commission for an opportunity to appeal this decision and give a more detail information.

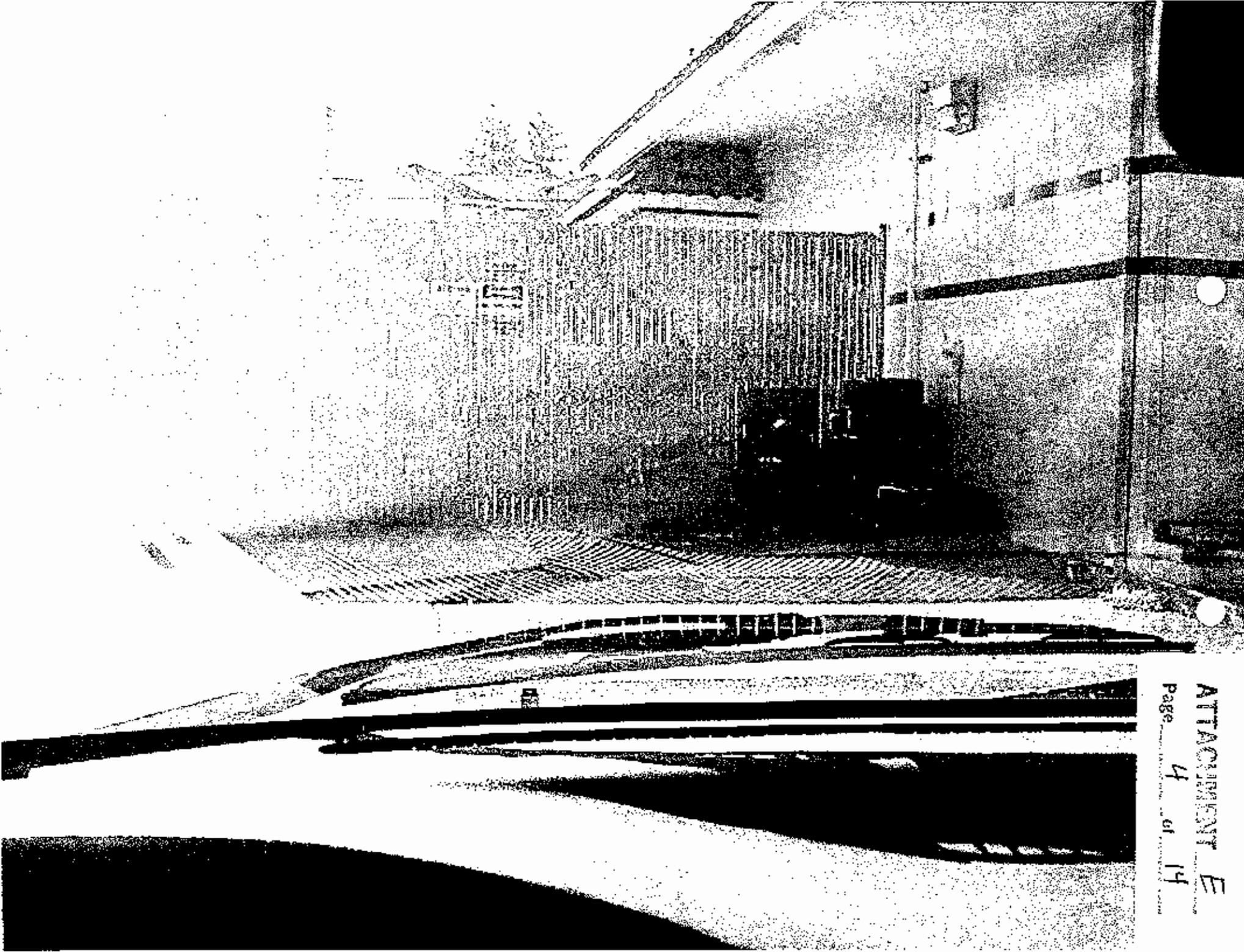
I have enclosed a couple of photographs of businesses with enclosure of similar materials.

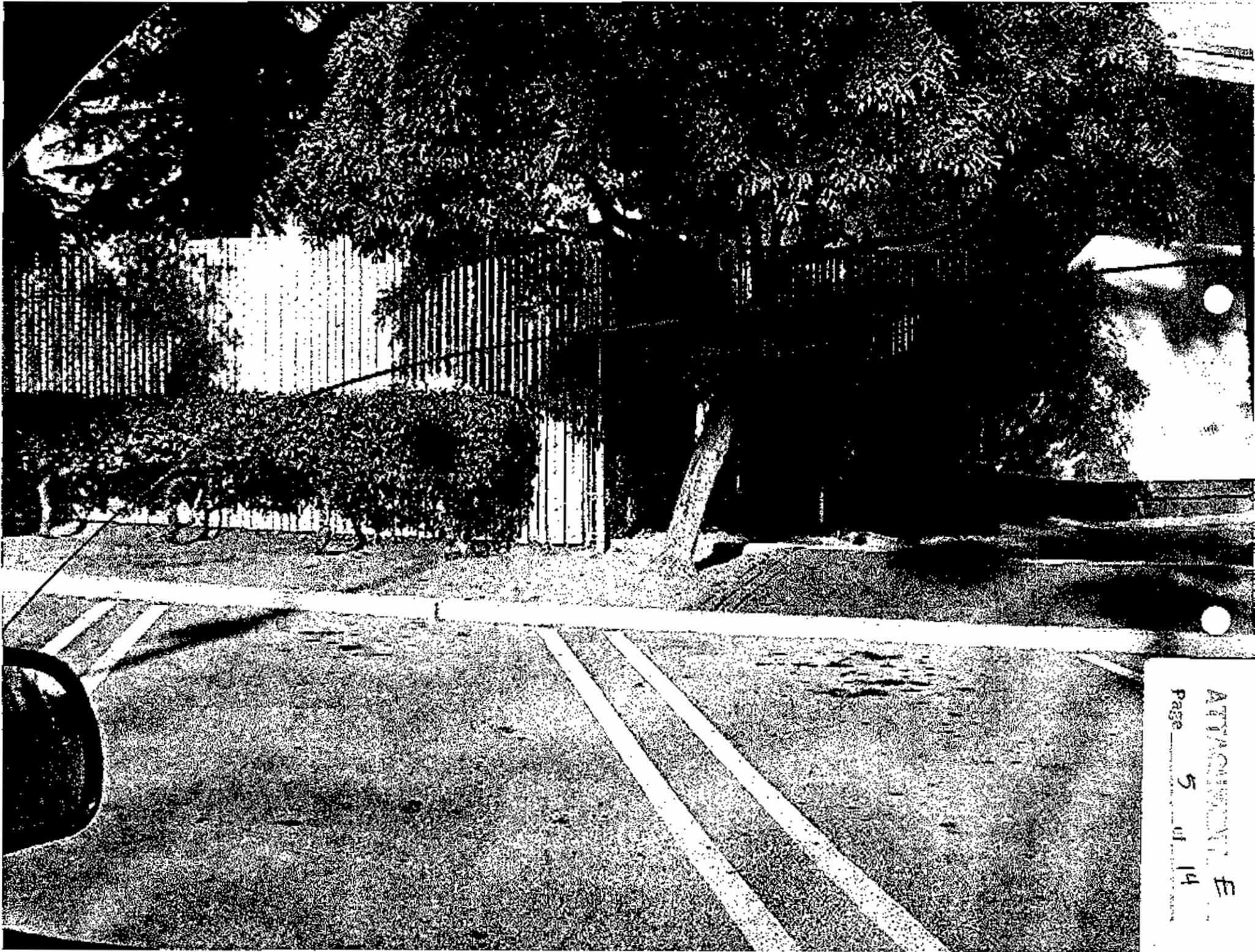
Sincerely,


Ben F. Albudefe









ATTACHMENT E
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January 17, 2008

City Of Sunnyvale
P.O. Box 3707
Sunnyvale, CA. 94088
Attn: Planning Commission

File# 2008-0994

Dear Sir or Madam:

A public hearing for my appeal of the trash enclosure denial has been scheduled for Monday, February 23 2009. I decided to forward this medium before the hearing explaining my dilemma. First, let me clear any misconception, I am not asking to be exempted from constructing a trash enclosure, but do want the City consider some of my propositions.

My business is a place that has been in existence for more than twenty-five years, now that the City decided to implement a twenty-five years plus ordinance; I would have thought that some of this requirement will be grandfather in.

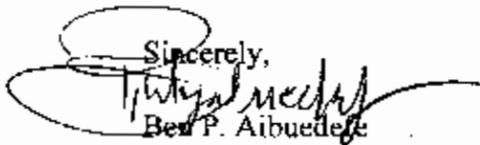
Please allow me to say that the implementation of this "CODE" has cost me \$6,000 to \$6,500 in Monthly income. There was a moving company called "World Moving Co." that operated for over Fifteen (15) years out of my station. The rental and Monthly gas/diesel purchases of World Moving Co, was part of my valuation to justify the asking price when I purchased the business. However, I lost that income when The City asked that I cancel the lease agreement, because it not zone for parking. Excuse me, you mean it took the City fifteen (15) years to figure that out. If you consider the lost income due to this implementation, couple with present financial crunch, that has drop my volume by 20%, I just do not have the fund to construct an expensive enclosure the City is insisting.

During the permitting process with planning, I constantly stated that I do not have the fund to undertake the more expensive material as my expenses has tripled since the purchase of the real estate from ConocoPhillips in January 2008. Only to be told that financial hardship is not a criteria for any exceptions. In addition, as a temporary solution, I proposed to relocate the trash bins with lids to the back of my building, which has more privacy, and pull them to the open on pick-ups days. Alternatively, be allowed to construct enclosure with chain links as seem in several businesses within the City (see-attached photographs) for cost effective.

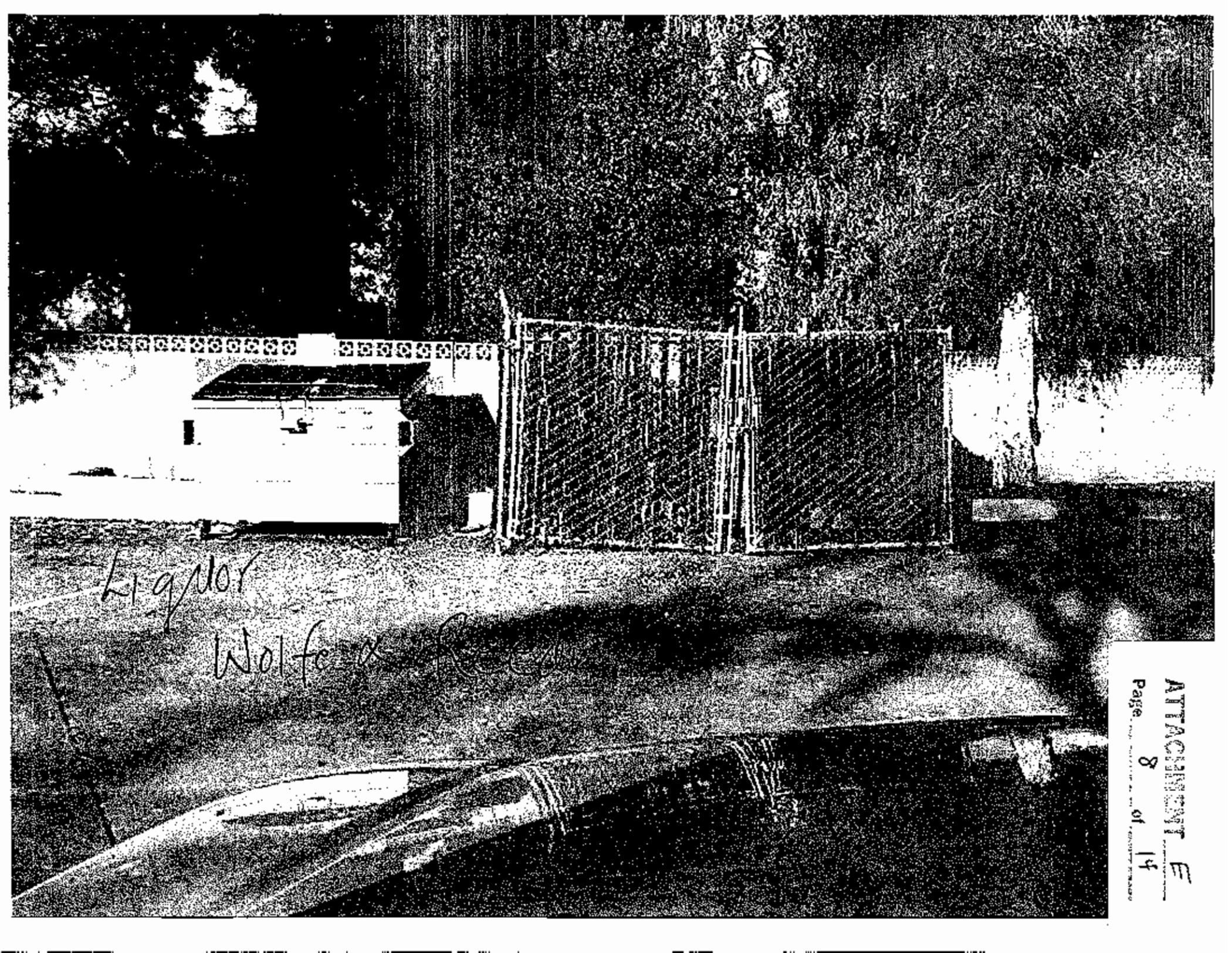
I pray the commission will take into consideration my situation as a small businessperson doing all I can to survive in these difficult times and hold on to what was achieved through pure hard work while playing the rules.

In closing, I hope you will use your good office to reconsider my proposals either to relocate the trash bins to the back of my building or allow the use of chain links like several businesses in the City and give me an extension.

Sincerely,



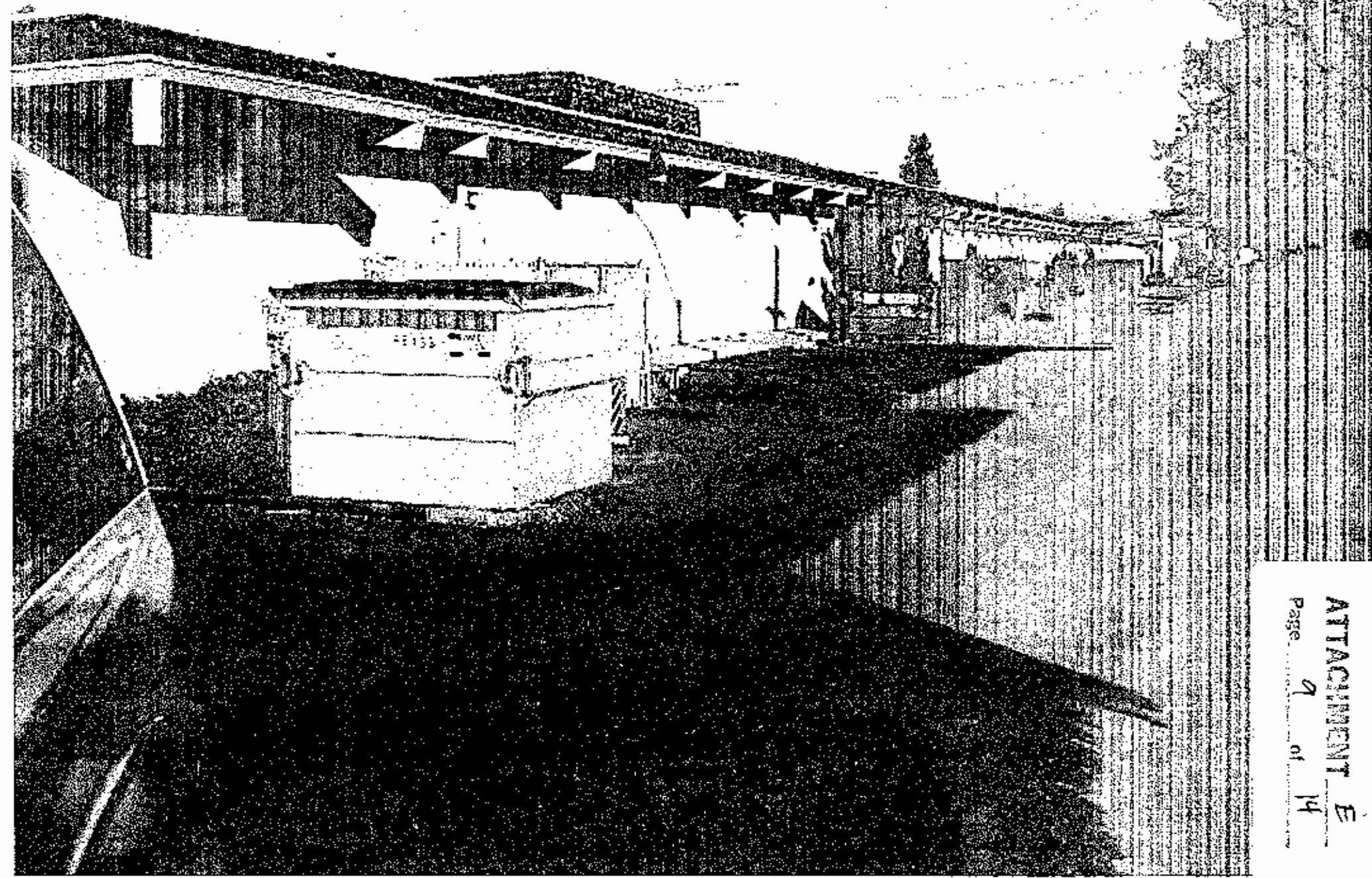
Ben P. Aibuedefe



Liquor

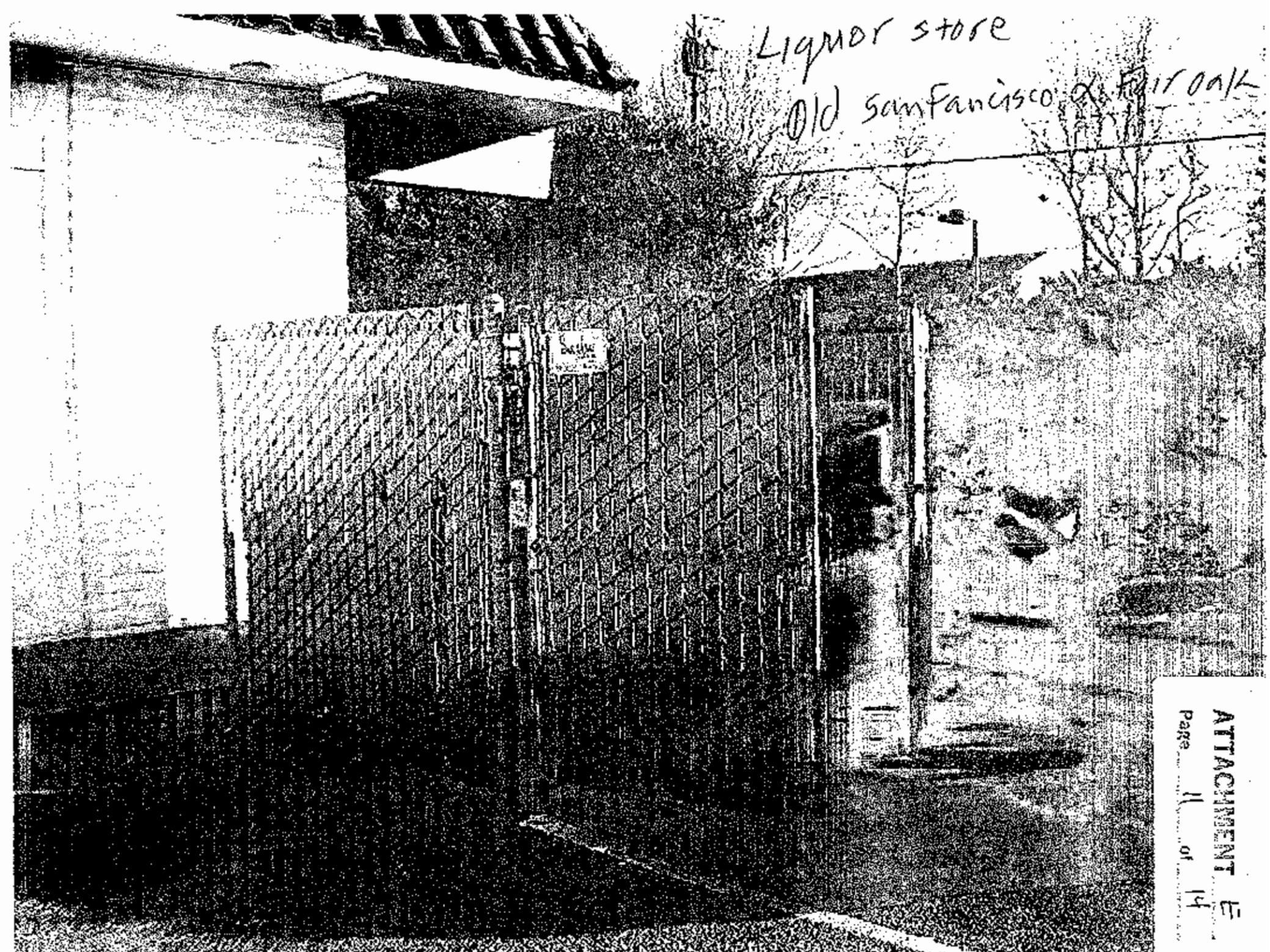
Wolfe & Reed

Market Old San Francisco & Gail



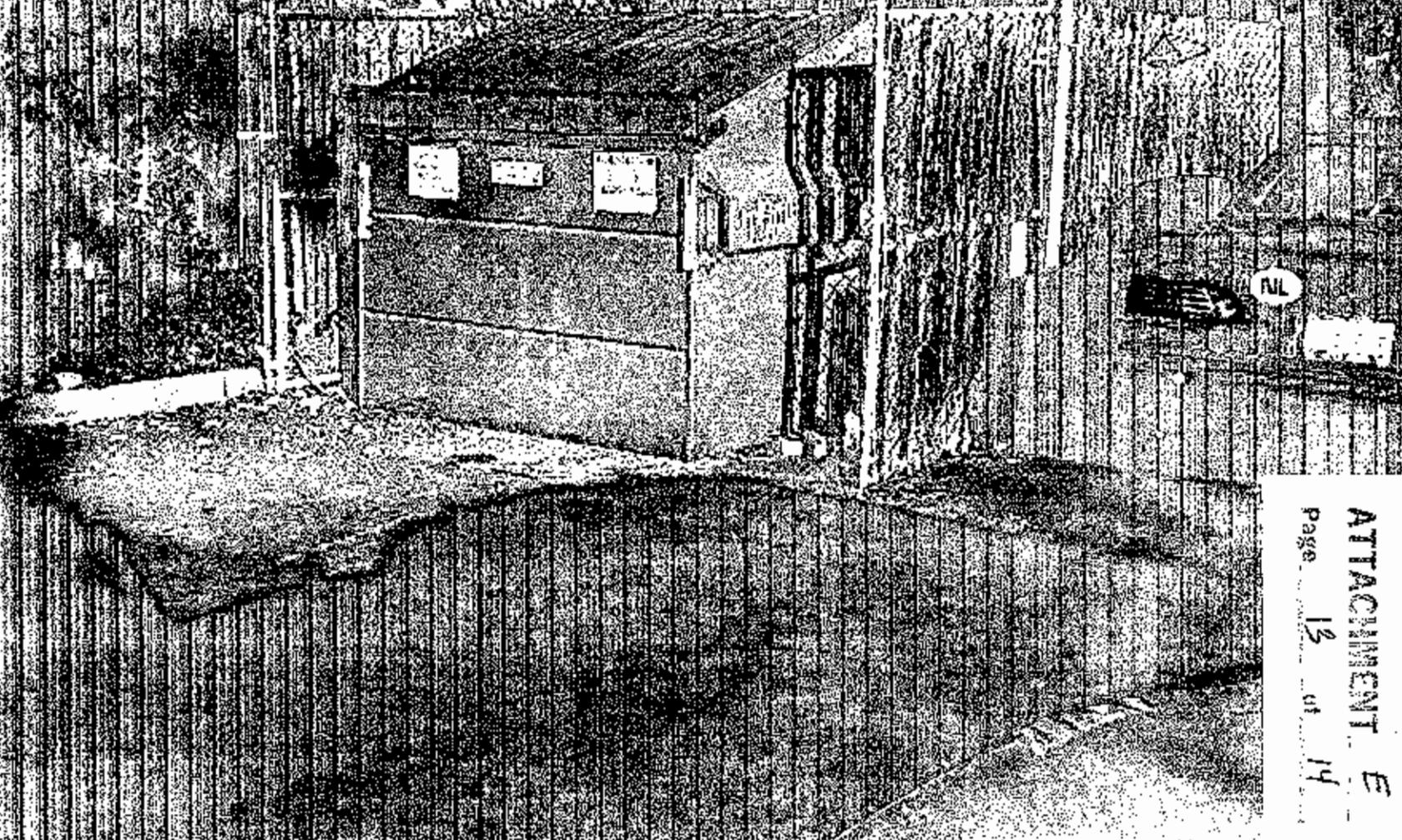
Old Francisco, N. B. Mail

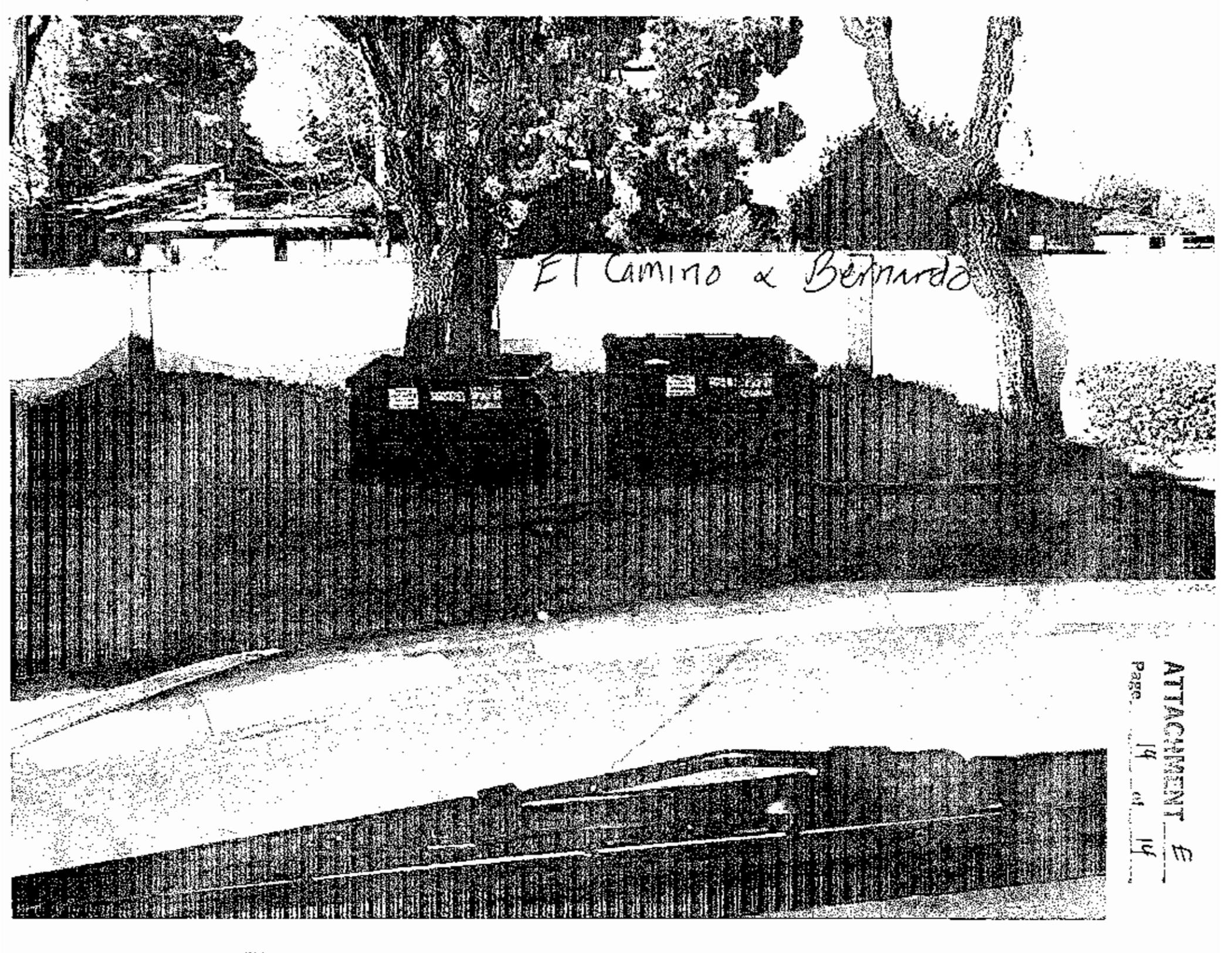
Liquor store
Old San Francisco & Fruit oak



old San Francisco & Fair 2011

Pastoria Office





El Camino & Bernardo



May 1, 2008

Ben P. Aibuedefe
801 N. Fair Oaks Avenue
Sunnyvale, CA 94085

Subject: Miscellaneous Plan Permit - 801 N. Fair Oaks Ave., Sunnyvale, CA
File No.: 2008-0067

Dear Ben P. Aibuedefe:

The Department of Community Development has reviewed your application for a Miscellaneous Plan Permit to allow the following activities at the above address:

- Grocery sales at an automobile service station;
- One advertisement sign on top of each fuel pump (1.5 square feet each)
- One information sign ("smog check") to be located on the front face of the building, maximum 10 square feet.

The Miscellaneous Plan Permit has been approved subject to the following conditions:

1. The project shall be in conformance with the approved plans.
2. Visibility:
 - a. The floor plan layout of shelves and racks shall not block visibility in and out of the store.
 - b. Windows at the payment area inside the store shall be clear of signs and displays to allow easy visibility to pumps and access points onto the property.
3. Lighting:
 - a. Maintain the approved exterior lighting plan on the site at all times. Any broken or dim lights shall be immediately replaced.
4. Signs and advertisements:
 - a. All temporary and permanent signs shall be in conformance with the Municipal Code and with approved designs and locations.
 - b. Any banner signs visible from the public street or from adjacent properties require approval of a Temporary Sign Permit. Each site is limited to a total of 60 days of banners per year; therefore, banners may not be used for permanent advertising purposes.
 - c. Advertisement signs within the fuel canopy area that are readily visible from the public right-of-way shall be limited to one double-faced sign affixed to each fuel pump with a maximum size of 1.5 square feet per sign face. Additional advertisement signs,

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- regardless of size, may be allowed if they are not readily visible from the public right-of-way (face inwards and not towards the street).
- d. Information signs including alternative fuel price signs (discounted with purchase of car wash or with cash, etc.) which are visible from the public street shall be made of high-quality, rigid, durable materials and shall be permanently affixed to the ground or surface they are on. The preferred location for information signs such as alternative fuel price signs is at each end of the fuel pump islands. All information signs require a Planning permit.
 - e. Animated, flashing, or moving signs are not permitted at any time.
 - f. LCD monitors on fuel pumps are permitted only if they meet the following conditions:
 - i. Audible LCD monitors are prohibited;
 - ii. LCD monitors on fuel pumps may not exceed 1.5 square feet in size;
 - iii. LCD monitors displaying dynamic images are prohibited if they are visible from the public right-of-way. LCD monitors visible from the public right-of-way may display only one static image per day.
5. Landscaping:
- a. Maintain all designated landscape areas shown in the plans for previously-approved Special Development Permit #1999-0268.
 - b. Landscaping areas shall be maintained in good condition and free of trash, debris, storage, or excessive weeds.
 - c. Seating may be included in landscape areas, but it shall not interfere with the growth or maintenance of approved landscaping. Any seating shall be made of durable materials (metal and/or wood) and shall be compatible with the design and materials of the site.
6. Security:
- a. Security cameras are required which allow the cashier to monitor all portions of the site. Install additional security cameras to meet this requirement by **June 1, 2008**. Current cameras only provide visibility of the front of the lot.
 - b. Maintain a panic alarm for the cashier area (existing).
 - c. Regularly inspect and maintain security cameras and alarm systems to ensure they are functional at all times.
7. Parking and circulation:
- a. Maintain all parking shown in the plans for previously-approved Special Development Permit #1999-0268.
8. Trash and debris:
- a. All recycling and solid waste shall be contained in approved receptacles and enclosures at all times. Trash enclosure doors

- shall be closed when not in use. No loose debris storage is permitted on the site.
- b. All hazardous materials storage shall be appropriately contained and labeled. Hazardous materials storage shall be secured to prevent unauthorized access.
9. Fences and walls:
- a. A fence or wall must be maintained to separate the site from adjacent properties.
- b. All fences and walls shall be maintained in a safe and neat condition at all times.
10. Outdoor display of merchandise:
- a. Outdoor display of merchandise is not permitted unless specifically authorized through approval of a Miscellaneous Plan Permit, Special Development Permit, or Use Permit.
11. Code compliance:
- a. As required by the City Council, automobile service stations applying for grocery sales must correct all Sunnyvale Municipal Code violations. All violations, including the following listed below, shall be corrected **immediately** (by May 2, 2008), unless a separate compliance date is specifically provided below.

List of current Sunnyvale Municipal Code violations to be corrected:

1. Permitted uses:
- a. Storage of commercial vehicles is prohibited in the C-1 Zoning District. As a result, moving vans may not be stored on the site. Remove all vans from the site and discontinue commercial vehicle storage by **May 15, 2008**.
- b. Outdoor repair of vehicles is not permitted. Discontinue any outdoor repair and confine all vehicle service to approved service bays.
2. Landscaping:
- a. Maintain all designated landscape areas shown in the plans for previously-approved Special Development Permit #1999-0268.
- i. Apply for a Tree Removal Permit to remove the dead tree located in the rear landscaping area by **June 1, 2008**.
- ii. Remove the tree stumps along the side and rear property lines remaining on the site from previously-removed trees by **June 1, 2008**.
- iii. Replant any removed trees in their required locations as shown on the approved landscape plans by **June 1, 2008**.
- iv. Plant vines to grow over and screen the chain link fence surrounding the propane tank at the north side of the site as required by the above-referenced Special Development

Permit by **June 1, 2008**. In-ground irrigation shall be maintained for the vines and other landscaping as required by the Special Development Permit.

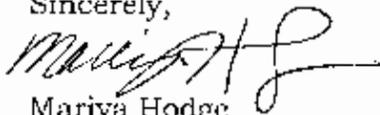
- b. All landscaping areas shall be maintained and free of garbage, junk, debris, overgrown weeds, storage, or other items. Remove any debris located in landscaping areas.
 - c. Remove the existing picnic table in the landscaping area to the right of the building, as it is in poor condition and is interfering with the required landscaping area.
3. Lighting:
- a. Replace broken and dim lights in the rear of the building with fully-functional, bright, fluorescent lighting by **June 1, 2008**. Note all lights adjacent to residential uses should be shielded to cast light downwards and avoid glare.
4. Trash enclosures:
- a. Construct a trash enclosure on the site by **July 1, 2008**. Note that separate Planning and Building permits are required for construction of the trash enclosure. The enclosure shall meet all size and design requirements for commercial sites (see attached brochure).
5. Outdoor storage:
- a. There shall be no visible outdoor storage of equipment, junk, recyclables, tires, trash, or other materials. Remove the tires and other debris currently stored on the sides and rear of the building.
 - b. The existing storage container located in the parking area is not permitted and shall be removed. If additional storage areas are needed, consult with Planning for information on options for an appropriately designed and located enclosure.
 - c. Abandoned vehicles may not be stored on the property. Remove all abandoned vehicles and promptly address any future abandoned vehicle issues by calling the Nuisance Vehicle Hotline at 730-7706.
6. Obstructions:
- a. Access walkways and parking stalls shall be free of obstructions, including chairs, merchandise, racks, cords, debris, and other items. Moving vans and a storage container have been observed blocking parking stalls, including the ADA accessible parking.
7. Signs:
- a. Portable freestanding signs such as "A-frame" signs and temporary ground signs such as alternative fuel price signs are prohibited. Multiple temporary ground signs and A-frame signs are located along the property frontage and near the building. All portable and temporary signs shall be removed.

- b. Temporary banners were observed on the side fences. Banners and signs on fences are not permitted and must be removed.
- c. The existing "smog check" banner is not permitted as a permanent sign. You may either remove the banner or relocate the banner inside the building. This can be accomplished by attaching the banner to the inside wall of the service bay doors so that it can be considered an exempt "indoor" sign. Note that banners attached to the outside of the bay or to the front of the bay doors are not considered to be indoor signs
- d. The existing "smog check" wall sign attached to the front of the building is considered to be an information sign requiring a Miscellaneous Plan Permit. It has been included in the scope of this permit (see top of page 1). The smog check sign may be up to 10 square feet in size and must be made of high-quality, rigid, durable materials.
- e. Window signs shall not exceed 25% coverage of the window area and shall not obstruct visibility into and out of the cashier area. Remove or relocate window signs as needed to comply with.
- f. Currently the advertisement signs in the fuel canopy exceed the limits established in condition of approval 4.c on page 1. The top of each pump has a 3 square foot double-sided sign, and there are small advertisement signs measuring 0.5 square feet on the sides of the pumps, many of which are visible from the public street. Remove these advertisement signs. Alternative signs meeting the limits specified in 4.c (1.5 square feet) may be installed.

All conditions of approval must be satisfied by the specified dates or the sale of groceries must be ceased. All code violations must be corrected by the specified dates (or by May 2, 2008, if no date is specified). Fines of up to \$500.00 per day may be imposed for non-compliance.

If you have any questions regarding this application, please contact me at (408) 730-7659 or at mhodge@ci.sunnyvale.ca.us. Thank you for your cooperation.

Sincerely,



Mariya Hodge
Assistant Planner

Cc: Dale Huber, Senior Neighborhood Preservation Specialist

Enclosures:

1. Approved Plans
2. Trash Enclosure Brochure
3. Copy of Conditions of Approval of Previous SDP #1999-0268



July 31, 2008

Ben P. Aibuedefe
801 N. Fair Oaks Avenue
Sunnyvale, CA 94085

Subject: Miscellaneous Plan Permit - 801 N. Fair Oaks Ave., Sunnyvale, CA
File No.: 2008-0067

REVISED APPROVAL LETTER

Dear Ben P. Aibuedefe:

The Department of Community Development has reviewed your application for a Miscellaneous Plan Permit to allow the following activities at the above address:

- Grocery sales at an automobile service station;
- One advertisement sign on top of each fuel pump (1.5 square feet each)
- Two information signs ("smog check"), to be located on the front face of the building, maximum 10 square feet each. *(revised)*

The Miscellaneous Plan Permit has been approved subject to the following conditions:

1. The project shall be in conformance with the approved plans.
2. Visibility:
 - a. The floor plan layout of shelves and racks shall not block visibility in and out of the store.
 - b. Windows at the payment area inside the store shall be clear of signs and displays to allow easy visibility to pumps and access points onto the property.
3. Lighting:
 - a. Maintain the approved exterior lighting plan on the site at all times. Any broken or dim lights shall be immediately replaced.
4. Signs and advertisements:
 - a. All temporary and permanent signs shall be in conformance with the Municipal Code and with approved designs and locations.
 - b. Any banner signs visible from the public street or from adjacent properties require approval of a Temporary Sign Permit. Each site is limited to a total of 60 days of banners per year; therefore, banners may not be used for permanent advertising purposes.
 - c. Advertisement signs within the fuel canopy area that are readily visible from the public right-of-way shall be limited to one double-faced sign affixed to each fuel pump with a maximum size of 1.5

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- square feet per sign face. Additional advertisement signs, regardless of size, may be allowed if they are not readily visible from the public right-of-way (face inwards and not towards the street).
- d. Information signs including alternative fuel price signs (discounted with purchase of car wash or with cash, etc.) which are visible from the public street shall be made of high-quality, rigid, durable materials and shall be permanently affixed to the ground or surface they are on. The preferred location for information signs such as alternative fuel price signs is at each end of the fuel pump islands. All information signs require a Planning permit.
 - e. Animated, flashing, or moving signs are not permitted at any time.
 - f. LCD monitors on fuel pumps are permitted only if they meet the following conditions:
 - i. Audible LCD monitors are prohibited;
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5. Landscaping:
- a. Maintain all designated landscape areas shown in the plans for previously-approved Special Development Permit #1999-0268.
 - b. Landscaping areas shall be maintained in good condition and free of trash, debris, storage, or excessive weeds.
 - c. Seating may be included in landscape areas, but it shall not interfere with the growth or maintenance of approved landscaping. Any seating shall be made of durable materials (metal and/or wood) and shall be compatible with the design and materials of the site.
6. Security:
- a. Security cameras are required which allow the cashier to monitor all portions of the site. Install additional security cameras to meet this requirement by **June 1, 2008**. Current cameras only provide visibility of the front of the lot.
 - b. Maintain a panic alarm for the cashier area (existing).
 - c. Regularly inspect and maintain security cameras and alarm systems to ensure they are functional at all times.
7. Parking and circulation:
- a. Maintain all parking shown in the plans for previously-approved Special Development Permit #1999-0268.

8. Trash and debris:
 - a. All recycling and solid waste shall be contained in approved receptacles and enclosures at all times. Trash enclosure doors shall be closed when not in use. No loose debris storage is permitted on the site.
 - b. All hazardous materials storage shall be appropriately contained and labeled. Hazardous materials storage shall be secured to prevent unauthorized access.
9. Fences and walls:
 - a. A fence or wall must be maintained to separate the site from adjacent properties.
 - b. All fences and walls shall be maintained in a safe and neat condition at all times.
10. Outdoor display of merchandise:
 - a. Outdoor display of merchandise is not permitted unless specifically authorized through approval of a Miscellaneous Plan Permit, Special Development Permit, or Use Permit.
11. Code compliance:
 - a. As required by the City Council, automobile service stations applying for grocery sales must correct all Sunnyvale Municipal Code violations. All violations, including the following listed below, shall be corrected **immediately** (by May 2, 2008), unless a separate compliance date is specifically provided below.

List of current Sunnyvale Municipal Code violations to be corrected:

1. Permitted uses:
 - a. Storage of commercial vehicles is prohibited in the C-1 Zoning District. As a result, moving vans may not be stored on the site. Remove all vans from the site and discontinue commercial vehicle storage by **August 1, 2008**. *(revised date)*
 - b. Outdoor repair of vehicles is not permitted. Discontinue outdoor repair and confine all vehicle service to approved service bays.
2. Landscaping:
 - a. Maintain all designated landscape areas shown in the plans for previously-approved Special Development Permit #1999-0268.
 - i. Apply for a Tree Removal Permit to remove the dead tree located in the rear landscaping area by **June 1, 2008**.
 - ii. Remove the tree stumps along the side and rear property lines remaining on the site from previously-removed trees by **June 1, 2008**.
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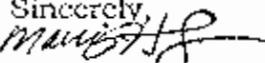
- iv. Plant vines to grow over and screen the chain link fence surrounding the propane tank at the north side of the site as required by the above-referenced Special Development Permit by **June 1, 2008**. In-ground irrigation shall be maintained for the vines and other landscaping as required by the Special Development Permit.
 - b. All landscaping areas shall be maintained and free of garbage, junk, debris, overgrown weeds, storage, or other items. Remove any debris located in landscaping areas.
 - c. Remove the existing picnic table in the landscaping area to the right of the building, as it is in poor condition and is interfering with the required landscaping area.
3. Lighting:
 - a. Replace broken and dim lights in the rear of the building with fully-functional, bright, fluorescent lighting by **June 1, 2008**. Note all lights adjacent to residential uses should be shielded to cast light downwards and avoid glare.
4. Trash enclosures:
 - a. Obtain Planning and Building approval and complete construction a trash enclosure on the site by **October 1, 2008** (*revised date*). Note that separate Planning and Building permits are required for construction of the trash enclosure. The enclosure shall meet all size and design requirements for commercial sites (see attached brochure). Chain link material will not be permitted.
5. Outdoor storage:
 - a. There shall be no visible outdoor storage of equipment, junk, recyclables, tires, trash, or other materials. Remove the tires and other debris currently stored on the sides and rear of the building.
 - b. The existing storage container located in the parking area is not permitted and shall be removed no later than **August 15, 2008** (*revised date*). If additional storage areas are needed, consult with Planning for information on options for an appropriately designed and located enclosure.
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If you have any questions regarding this application, please contact me at (408) 730-7659 or at mhodge@ci.sunnyvale.ca.us. Thank you for your cooperation.

Sincerely,

Mariya Hodge
Assistant Planner

Cc: Dale Huber, Senior Neighborhood Preservation Specialist